

PART 8 OF THE ENTERPRISE ACT 2002 (EA02) UNDERTAKINGS TO THE COMPETITION AND MARKETS AUTHORITY (CMA) UNDER SECTION 219 OF THE EA02 RELATING TO:

THE UNFAIR TERMS IN CONSUMER CONTRACT REGULATIONS 1999; AND PART 2 OF THE CONSUMER RIGHTS ACT 2015

Brigante Properties Limited, registered number 08252012, registered office Berkeley House, 304 Regents Park Road, London, England, N3 2JX and its subsidiaries within the meaning of section 1159 of the Companies Act 2006 and any interconnected trading companies within the meaning of section 223(4) of the EA02, including the companies listed in Annex A (**Brigante**), voluntarily give the following undertakings to the CMA under section 219 of the EA02.

These undertakings have been given as part of the CMA's consumer law investigation into the leasehold sector. As a result of that investigation the CMA commenced its enforcement action which relates only to the use of Doubling Clauses in Leases. Brigante has co-operated with the CMA's investigation to date. By providing the undertakings, Brigante makes no admission, express or implied, that it has infringed the law.

For the avoidance of doubt, these undertakings do not amount to an admission that any person has infringed the law.

The CMA acknowledges that Brigante has, pursuant to the obligations it voluntarily signed up to under the UK Government's Public Pledge for Leaseholders on 28 March 2019, offered Leaseholders with Doubling Clauses the opportunity to vary their Leases to RPI-based ground rent to assist them with concerns about the saleability or mortgageability of properties subject to a lease which contains a Doubling Clause.

The CMA further acknowledges that Brigante was not an original party to the Leases, which already contained Doubling Clauses when Brigante acquired its interest in them.

UNDERTAKINGS

In accordance with section 219(4) and section 219B of the EA02, Brigante undertakes:

- not to engage in any conduct which contravenes paragraphs 1 to 18 below;
- not to engage in such conduct in the course of its business or another business; and
- not to consent to or connive in the carrying out of such conduct by a body corporate with which it has a special relationship (within the meaning of section 222(3) of the EA02).

INTERPRETATION

Countryside means Countryside Properties PLC, registered number 09878920, registered office Countryside House, The Drive, Brentwood, Essex, CM13 3AT and its subsidiaries within the meaning of section 1159 of the Companies Act 2006.

Doubling Clause means a term or terms (or part of a term) in a Lease which state that the Ground Rent payable under the Lease will double (or will increase by the greater of double the Ground Rent and an alternative amount, such as a proportion of the value of an interest in the relevant property) more frequently than every 20 years, and includes any such term (or part of a term) which was in a Lease and has been subsequently varied to refer to a different rate of escalation (for example escalation by reference to the Retail Price Index (RPI)).

Estates & Management Limited means Estates & Management Limited, registered number 03244100, registered office Berkeley House, 304 Regents Park Road, London, England, N3 2JX and its subsidiaries within the meaning of section 1159 of the Companies Act 2006.

Former Leaseholder means an individual person who was previously a Leaseholder and who has sold their interest.

Ground Rent refers to the principal rent payable periodically by a Leaseholder to his or her landlord under the terms of a Lease, however described, but for the avoidance of doubt does not include other sums which may be reserved as rent such as, but not limited to, a service charge and insurance costs.

Lease means a long residential lease (i.e. for a term of at least 21 years) for a residential property located in the United Kingdom for which Countryside was originally the freeholder (or landlord) and that contains a Doubling Clause and for which Brigante is the freeholder (or landlord).

Leaseholder means a person who holds a leasehold interest in a property pursuant to a Lease.

Removal of Doubling Clauses

1. Brigante will make an offer to each Leaseholder to vary the Lease by removing the Doubling Clause, with any associated costs to the Leaseholder to be covered up to an amount of £750 and such costs to be reimbursed upon provision by the Leaseholder of reasonable evidence that such costs have been incurred. For the avoidance of doubt, the amount of £750 is the Leaseholder's maximum aggregate total entitlement under these undertakings for costs incurred and is inclusive of VAT.
2. The offer in paragraph 1 will be communicated by:
 - a. sending a letter to the relevant property; and
 - b. sending an email to the Leaseholder (where their email address is known).
3. The offer in paragraph 1 will be communicated within 30 working days of the date of these undertakings and then again annually for a maximum period of two years. If the offer is accepted by the Leaseholder before the expiration of the two year period, the requirement to communicate the offer to that Leaseholder shall cease at the point at which the offer is accepted by the Leaseholder.
4. Brigante will:
 - a. within 30 days of the date of these undertakings place and maintain details, on a suitable webpage of a website operated by Estates & Management Limited on behalf of Brigante, about a Leaseholder's ability to vary their Lease in order to remove a Doubling Clause;
 - b. include a link to the webpage in written correspondence sent to Leaseholders by or on behalf of Brigante offering to remove the Doubling Clause pursuant to paragraph 1; and
 - c. do so for a maximum period of two years or until all Doubling Clauses have been removed if that occurs earlier.
5. Once an offer has been accepted by a Leaseholder, Brigante will use all commercially reasonable endeavours to effect the variation without undue delay.

Non-reliance on Doubling Clauses

6. Brigante will not rely, or seek to rely, on a Doubling Clause against a Leaseholder, in order to collect any Ground Rent save as permitted by these undertakings. Brigante is permitted to collect the initial Ground Rent due under the Lease. Nothing in this paragraph or these undertakings shall prevent Brigante from recovering payment, or taking any steps required to enable the recovery, of the initial Ground Rent due under the Lease including using any statutory procedures available to Brigante, such as under the Housing Act 1988.
7. In respect of any Lease for which the Ground Rent has increased under a Doubling Clause only the initial Ground Rent due under that Lease is payable and where Brigante takes action for non-payment of Ground Rent Brigante will not seek to recover payment of any Ground Rent in excess of the initial Ground Rent due under that Lease. Further, Brigante will not take:

(i) any action or steps for possession against the Leaseholder for non-payment of Ground Rent in reliance on Ground 8 of Schedule 2 to the Housing Act 1988 or (ii) any action or steps leading to possession or any other sanction against a Leaseholder for non-payment of Ground Rent where in either case the actions or steps rely in whole or part on the fact that the Ground Rent is subject to an increase under a Doubling Clause. For the avoidance of doubt, Brigante is permitted to take action or steps for non-payment of the initial Ground Rent including relying on Ground 8 of Schedule 2 to the Housing Act 1988, and to take action or steps leading to possession or any other sanction against a Leaseholder for non-payment of the initial Ground Rent, where in either case the actions or steps do not rely in whole or part on the fact that the Ground Rent is subject to an increase under a Doubling Clause.

8. Brigante will offer to refund to each Leaseholder the following amounts the Leaseholder has paid to it (if any) under a Doubling Clause, namely any Ground Rent which the Leaseholder has paid to Brigante in excess of the initial Ground Rent and the charges directly associated with the excess Ground Rent which the Leaseholder has paid to Brigante. Such charges are limited to:
 - a. any interest payments in respect of late payment of any Ground Rent in excess of the initial Ground Rent; and
 - b. the appropriate proportion of any administration charges added to a Leaseholder's account as a result of having to send payment reminders in respect of the late payment of any Ground Rent in excess of the initial Ground Rent.

For the avoidance of doubt, this offer will not be subject to any administrative or other charges for the payment of the refund.

9. The offer under paragraph 8 will be communicated by:
 - a. sending a letter to the relevant property; and
 - b. sending an email to the Leaseholder (where their email address is known).
10. The offer under paragraph 8 will be communicated within 30 working days of the date of this undertaking and then again annually for a maximum period of two years. If the offer is accepted by the Leaseholder before the expiration of the two year period, the requirement to communicate the offer to that Leaseholder shall cease at the point at which the offer is accepted by the Leaseholder.

Other Leaseholders

11. Subject to paragraph 12 below, where any Former Leaseholder who has paid Ground Rent to Brigante under a Doubling Clause identifies themselves to Brigante, Brigante will offer to refund to them any amounts of Ground Rent which the Former Leaseholder has paid to Brigante under a Doubling Clause in excess of the initial Ground Rent and any charges directly associated with the excess Ground Rent, as described in paragraph 8 above, which the Former Leaseholder has paid to Brigante. For the avoidance of doubt, this offer will not be subject to any administrative or other charges for the payment of the refund, and the identity of any Former Leaseholder will be subject to verification by Brigante.
12. Brigante will, for a five-year period, maintain on a suitable webpage of a website operated by it or on its behalf by Estates and Management Limited, information about the availability of refunds to Former Leaseholders of the sums described in paragraph 11. Brigante will offer refunds of those sums to Former Leaseholders who respond to that information within that five-year period. The offer of such a refund will be made within 60 days of the response received by Brigante from the Former Leaseholder.

Payment of refunds

13. Once an offer of a refund under paragraph 8, or 11 and 12, as the case may be, has been accepted by a Leaseholder or a Former Leaseholder (again, as the case may be), Brigante will use all commercially reasonable endeavours to ensure that the refund is made to that person within 30 working days of their acceptance.
14. Each refund to a Leaseholder will be made by crediting the Leaseholder's billing account. Where the Leaseholder's billing account is not in arrears for the payment of Ground Rent (excluding any sums owed pursuant to a Doubling Clause which are in excess of the initial Ground Rent), the Leaseholder will be entitled to request that the credit amount be paid into their bank account by BACS pursuant to the usual process for issuing refunds utilised by Brigante or the managing agent (or, where payment by that means is not possible, by such other means as is agreed with the person to whom the payment is due).
15. Each refund to a Former Leaseholder will be made by making a payment to the Former Leaseholder's bank account by BACS (or, where payment by that means is not possible, by such other means as is agreed with the person to whom the payment is due).

Other matters

16. Whilst these undertakings are in effect, to the extent Brigante sells the freehold of any property which is subject to a Lease and for which it is the freeholder (or landlord), it will do so on terms that the purchaser will comply with a set of obligations in relation to the Leases acquired that are the same as those set out in paragraphs 1 – 7 of these undertakings (as applied to the Leaseholder in question), and the timing is to be taken to run from the date of the sale of the freehold and for the balance of any applicable period remaining under these undertakings.
17. Whilst these undertakings are in effect, to the extent that Brigante acquires the freehold of any property subject to a Lease, it will offer to remove the Doubling Clause under the same terms as set out in these undertakings. It will also comply with the requirements of paragraphs 6 and 7 above.
18. Without prejudice to any other information which the CMA may request, Brigante will provide the CMA:
 - a. within 30 working days of the applicable deadlines for making offers under paragraphs 1 and 8 above, with written confirmation that all such offers have been made to all Leaseholders (or, where, all such offers have not been made, the number outstanding and the reasons why together with a timetable for the satisfaction of outstanding requirements); and
 - b. for a period of 2 years from the date of these undertakings, with an annual report setting out:
 - i. the total number of offers made under paragraphs 1, 8, 11 and 12 above;
 - ii. the total number of such offers which have been accepted;
 - iii. the total number of Doubling Clauses removed;
 - iv. the total number and value of refunds made; and
 - v. confirmation of compliance with paragraphs 6 and 7 above.

BY SIGNING THESE UNDERTAKINGS BRIGANTE IS AGREEING TO BE BOUND BY THEM. CONDUCT WHICH CONTRAVENES PARAGRAPHS 1 TO 18 ABOVE MAY CONSTITUTE A COMMUNITY/SCHEDULE 13 INFRINGEMENT PURSUANT TO SECTION 212 OF THE EA02. IF HAVING SIGNED THIS DOCUMENT BRIGANTE BREACHES ANY OF THE ABOVE

