From: HorNet [redacted]
Sent: 13 September 2023
To: Housebuilding
Subject: Response from HorNet regarding possible MIR Private management of public amenities on new build estates

Dear Housebuilding team

From HorNet, the Home Owners Rights Network

We are a campaign group formed in 2016 of ordinary home buyers who found themselves caught in the private estate model. We have grown from 3 to over 10,500 in that time and heard of many adverse issues. Home buyers are not aware of the liability they are unwittingly taking on. The unpleasant truth usually dawns a few years down the line with escalating charges and the discovery that they cannot be challenged or disputed. We now have 10,500 members on our Facebook group, 350 newsletter subscribers and 840 documented estates on our database representing over 180,000 homes. We have no advertising budget, so have been "found" organically by homeowners with estate charge problems. We believe this is the tip of the iceberg, and estimate from government new build statistics that there are approaching 3 million homes on privately managed estates.

Summary Statement

We strongly support a Market Investigation Referral. We have gathered an overwhelming body of evidence indicating breaches of competition law. We have found widespread and consistent understating of the true liability in sales offices and by estate agents. We believe that the TP1/lease clauses represent unfair contract terms and that there is abuse of a dominant position in the provision of services. Home owners who have entered into these contracts have suffered loss through overcharging and in the long term devaluation of their homes. The mental stress cannot be quantified, but is also a very significant adverse impact.

Misrepresentation

Although most of us were informed of the existence of a "service charge" we were not made aware of the true nature of the liability we signed up to when we bought. Sales staff from all the big national building firms appear to use the same pitch " a small annual charge for grass cutting/keeping the estate tidy" when in fact the estate charge can cover:

Managing Agent's Fee

Company Secretary s Fee

Accountancy Fees

Accountants Certification Fee

Risk Management Fee

Insurance Claims

Building Insurance Valuation

Public Liability Insurance

Directors and Officers Insurance

Communal Building Insurance

Professional Fees

Out of Hours Emergency Service

TV Aerial and Satellite Costs

Garden and Grounds Maintenance

Gate Maintenance

General Minor Repairs

Electricity Costs

Electrical Repairs

Electrical Testing

Surface Water Filtration

Foul water pumping stations

Upkeep of adjacent green spaces like existing country parks or even in one case coastal flood defences

Sundries

Reserve Fund

This list is not exhaustive and the components do depend on the size and physical nature of the estate. Estates of mixed tenure are often managed by the same agent as for the leasehold properties and the charges are conflated. Public open spaces may be provided within the estate or as a subsidy for existing adjacent amenities. We have found all properties regardless of tenure pay an estate charge including any commercial and social rented properties.

When buying off plan from the builder the process is rushed towards an early exchange of contracts with both inducements (usually discounts or upgrading extras) together with threats of loosing the plot if deadlines are not met by the buyer. Similarly, threats of sales stalling and positive financial inducements are used to persuade buyers to use builder recommended solicitors. These are the same tactics by the same firms you will have heard about in the context of your investigation into onerous leasehold terms.

Estate charges are misleadingly referred to to as a service charge. Prospective buyers with some general knowledge may erroneously conclude that leasehold service charge legislation applies. It is our understanding that even leaseholders cannot challenge estate charges in the FTT, simply because there is no statutory framework for them to apply.

Unfair contracts.

The contracts formed in the transfer deeds or lease clauses are unbalanced in favour of the service provider. There is little or no direct accountability to the charge payers with no right to challenge or query the bills. The areas to be maintained and the standard of service are not usually clearly stated. We do not believe that property agreements are the right vehicle for such contracts as consumer protection is bypassed.

Monopoly provision of services.

We have found that there is no standardised implementation of privately managed estates model and enormous variation between developments. but we have discovered some common threads.
Developers set up a company usually in the estate name at the planning stage and appoint their own directors. The areas and structures to be managed are agreed with the planners and should also be in the deeds. They were never intended to be adopted. Often there is no concordance between the plans agreed with the council and the legal transfers with the home buyers. Documents are vague and don't tally.

The original company may be sold to a land owning management company named (embedded) in the house deeds. It has not proved possible to change managing agent in this scenario. Alternatively the builders retain ownership and pass day to day management to a property agent. There is some room for organised residents to negotiate more control. There is no obligation on the builders to permit this, if it happens it is by agreement. Finally and more recently the estate managing company is set up to be a membership company and each housing unit has a voting share. When the estate is finished, the builder's directors resign and ask for volunteer directors from the residents who can then engage an agent to run the estate. Even where self management structures are in place, we hear of many difficulties and delays over the handover. Remediation of defects is an important omission in many instances, so that unlike with Local Authority adoption, residents often take over upkeep of defective infrastructure.

Abuse

Feeling ripped off with nowhere to go for redress is the major reason people join our campaign. The fact that they have more consumer rights when buying a kettle or toaster is not lost on them. People find it hard to believe that such a situation can exist over what is for most the biggest purchase of their lives.

What we have heard is:-

Lack of value for money

Lack of service delivery

Overcharging

Repeated charging "errors" – how many errors constitute a deliberate scam???

Lack of response to challenges/queries. They know they don't have to explain their management decisions, so they don't.

Payments with held in dispute is treated a debt. Where a rent charge exists, threats of loosing your freehold interest are made under section 121 of the Law of Property Act. These threats are also sent to mortgage lenders to extract charges from them and reclaim under the mortgage.

Bills not sent out on time with very short deadlines for payment – cannot budget. Instalments hard to set up.

Services delivered by contractors who do not know which areas to work on

If a home owner wants to see the accounts (usually a clause in TP1 gives this right) they have to go to the managing agents/accountants office which may be hundreds of miles away. If they do this, they may not be shown full information. The information is presented without explanation for the meaning of headings and reasons for year on year movement. Without this, it is impossible to understand how the charges for a particular year have been made up.

Tendering for contractors is not transparent

Should a home owner challenge the charges in the small claims courts, the management company can recover its legal fees via the estate charge. There is no incentive at all for them to run the estate efficiently and economically.

The bottom line is that the estate managers can charge what they like for doing what they choose and the residents have no choice but to pay up. Their only redress would be as an individual in the small claims court where the judge will refer to the TP1/lease agreement and have to decide if the charges are "reasonable". For most, this avenue is simply not worth the time, stress and effort and in any event the cost of defence will hike up the charge for everyone.

Tenure - There is widespread confusion over this. A closer look at the legal framework will benefit understanding and inform recommendation for change.

We think there needs to be clarification of who pays estate charges and their rights over these. The situation for freehold home buyers is well known, but leaseholders also pay estate charges – often collected by the same managing agent, so even they may be unaware they are paying. We have seen many instances of leasehold invoices where it is not clear that grounds maintenance items form an estate charge rather than a service charge.

Potential outcomes

Should the CMA simply make recommendations to government for future improvements in this market the large tranche of home buyers currently saddled with these estate fees may be even further disadvantaged when it comes to selling their home. They may even find themselves in a negative equity situation.

We contend there have been breaches of consumer and competition law in this market, and have we have plenty of evidence of abuse. We note that in the Scottish Lands Tribunal, Marriott vs Greenbelt that it was considered the respondent had a dominant position, but evidence of abuse had not been presented: -

" Nothing more is said in the pleadings; for example, that the respondents' charges are excessive or that the work carried out is of poor quality or unnecessary. We cannot imagine that an investigation by the Competition and Markets Authority under the 1998 Act would not look closely into such matters."

We are in a position to provide masses of evidence if required.

Dr Cathy Priestley
Joint co-ordinator
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