HOUSING LAW PRACTITIONERS ASSOCIATION

Protecting Local Authority Leaseholders from Unreasonable Charges

Submission of the Housing Law Practitioners Association (HLPA)

October 2013

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About HLPA

The Housing Law Practitioners Association (HLPA) is an organisation of solicitors, barristers, advice workers, environmental health officers, academics and others who work in the field of housing law. Membership is open to all those who use housing law for the benefit of the homeless, tenants and other occupiers of housing. HLPA has existed for over 25 years. Its main function is the holding of regular meetings for members on topics suggested by the membership and led by practitioners particularly experienced in that area, almost invariably members themselves.

The Association is regularly consulted on proposed changes in housing law (whether by primary and subordinate legislation or statutory guidance. HLPA's Responses are available at www.hlpa.org.uk.

Membership of HLPA is on the basis of a commitment to HLPA's objectives. These objectives are:

- To promote, foster and develop equal access to the legal system.
- To promote, foster and develop the rights of homeless persons, tenants and others who receive housing services or are disadvantaged in the provision of housing.
- To foster the role of the legal process in the protection of tenants and other residential occupiers.
- To foster the role of the legal process in the promotion of higher standards of housing construction, improvement and repair, landlord services to tenants and local authority services to public and private sector tenants, homeless persons and others in need of advice and assistance in housing provision.
- To promote and develop expertise in the practice of housing law by education and the exchange of information and knowledge.

The Convenor of HLPA'S Law Reform Group has prepared this communication, with assistance from other members of the Group. The group meets regularly to discuss law reform issues as it affects housing law practitioners. The Convenor of the group reports back to the Executive Committee and to members at the main meetings which take place every two months. The main meetings are regularly attended by c.100 practitioners.

Introduction and response to question 4
Before turning to the specific questions in the consultation paper, HLPA wish to make the following wider points.

First, the way in which the government has presented this to the public is potentially extremely misleading.

The press-release accompanying the consultation paper (https://www.gov.uk/government/news/new-curbs-against-councils-rip-off-repair-charges) gives the impression that this is to be a true cap on major works costs, whereas, in reality, the cap will only apply where works are funded by central government funds. Nowhere is this made clear in the quotes from the Secretary of State. One has to read down to the "further information" section to discover this.

Our experience of acting for local authority leaseholders (and potential leaseholders, *i.e*. those planning on exercising the Right to Buy) is that very few, if any, leaseholders will appreciate this subtle but vital distinction. The government needs to ensure that it does not generate "false hope" amongst leaseholders with this announcement.

Secondly, we are concerned that there is no analysis of the existing steps which have been taken to assist local authority leaseholders who are faced with large major works bills. These provisions include ss.450A-D, Housing Act 1985, as recently amended and supplemented by ss.308 and 309, Housing and Regeneration Act 2008. It seems odd to move to introduce further directions in order to respond to a problem which was apparently resolved by the 2008 Act, without analysing the effect of the 2008 Act.

Linked to this point, HLPA would respectfully suggest that the 2008 Act provisions are preferable as they will ultimately entitle authorities recovering the total cost of the works. As a matter of principle, if the costs are reasonably incurred and reasonable in amount (see s.19, Landlord and Tenant Act 1985) it is hard to see why those who have the benefit of the works (leaseholders) should not be expected to contribute to those costs. By contrast, the directions result in public money being used to provide a private benefit.[1]

Thirdly, we question the practical use of the proposed new directions. Decent Homes funding is winding down and it is hard to see what purpose is served by capping recoverable costs. There are no (published) plans for either central government or the Homes and Communities Agency to provide new funding streams for major works in the near future. It is therefore wholly unclear what these directions will actually achieve.

The reality is that any major works which authorities are likely to carry out in the immediate future are likely to be funded from their own monies (*i.e*. within the Housing Revenue Account), and this cap will not apply to those works.

[1] And a private benefit to a class of persons, *i.e*. RTB leaseholders, who have already received a significant benefit at the public expense via the statutory discount.

Question 1
No, we do not agree with the proposed amendments to the existing directions. The aim of the proposed amendments seems to be to assist leaseholders in paying for major works costs (para.1). This has already been done via the 2008 Act provisions (themselves extending existing powers to assist under the Housing Act 1985). Unless and until it can be shown that the existing provisions are not working, we see no basis for the proposed new directions.

Questions 2 and 3
These are addressed to local authorities, and so we cannot respond.

Question 4
This has been dealt with as part of the introduction, above.

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