Law Commission
Reforming the law

THE LAW COMMISSION

RESIDENTIAL LEASES: FEES ON TRANSFER OF TITLE, CHANGE OF OCCUPANCY AND OTHER EVENTS

This optional response form is provided for consultees' convenience in responding to our Consultation Paper.

The response form includes the text of the questions in Chapter 14 of the Consultation Paper, with boxes for yes/no answers (please delete as appropriate) and space for comments. You do not have to respond to every question. Comments are not limited in length (the box will expand, if necessary, as you type).

Each question gives a reference in brackets to the paragraph of the Consultation Paper at which the question is asked. Please consider the surrounding discussion before responding.

We invite responses from 29 October 2015 until 29 January 2016.

Please return this form:

By email to: event_fees@lawcommission.gsi.gov.uk

By post to: Max Marenbon, Law Commission, 1st Floor, Tower, Post Point 1.53, 52 Queen Anne's Gate, London SW1H 9AG

We are happy to accept responses in any form. However, we would prefer, if possible, to receive emails attaching this pre-prepared response form.

Freedom of information statement

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If you wish your information to be confidential, please tell us why you regard the information as confidential. On a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded as binding on the Law Commission.

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YOUR DETAILS

Name:	
Organisation:	The Leaseholder Association
Role:	
Postal address:	
Telephone:	
Email:	

CONFIDENTIALITY

Do you wish to keep this response confidential?

Yes:	No: **X**
If yes, please give reasons:	

QUESTION 1: THE NEED FOR REFORM

(Consultation Paper, paragraph 10.15)

Do consultees agree that:

developers, operators and managing agents should do more to bring event fees to the attention of prospective purchasers at an early stage?

Yes: X	No:	Other:
Details of event fees and event charges should be in all sales' publicity and in any Leaseholders' Handbook (also known as Purchaser's Information Pack). Full details of event fees should be part of the sales information provided by the estate agent at an early stage, which is the time the property is first put on the market. WE WISH TO STRESS AT THE OUTSET THAT THE GROUPING OF ALL BACK-END CHARGES AND FEES UNDER THE GENERAL TERM 'EVENT FEES' INHIBITS MEANINGFUL ANSWERS TO SOME QUESTIONS. IN OUR OPINION IT IS NECESSARY TO DISTINGUISH BETWEEN PAYMENTS FOR A SERVICE (FEES OR ADMINISTRATION CHARGES) FROM PAYMENTS WHERE THERE IS NO SERVICE PERFORMED (DEFERRED PREMIUM PAYMENTS).		

there is a need to reform the law to achieve this objective?

Yes: X	No:	Other:
Property sales agents are required under CPR's to disclose material information at the point of sale. Although CPR's can be enforced by the local authority trading standards and fined up to £25,000 this provides no compensation to the flat buyer. Section 27C (2) of the Consumer Protection (Amendments) Regulations 2014 should be amended so that the definition 'relevant lease' would include residential leases originally granted for more than 21 years. This would enable the buyer to seek redress through the civil courts, in addition to rights of redress through the		

TPO. This would be a powerful incentive to sales agents to be more transparent and make it easier for buyers that have suffered to be fairly compensated.

Meanwhile the trade bodies such as the National Association of Estate Agents, The Conveyancing Association and the National House-Building Council should encourage their members to do everything possible to ensure event fees are brought to the attention of leaseholders at the earliest opportunity at the point of purchase.

QUESTION 2: BRINGING EVENT FEES WITHIN UNFAIR TERMS LEGISLATION

(Consultation Paper, paras 11.19 to 11.20)

Do consultees agree that:

statutory reform should ensure that event fees are fully assessable for fairness under unfair terms legislation (as set out in the Consumer Rights Act 2015)?

Yes:	No:	Other: X

We wish to clarify before responding to specific questions that we do not consider the Consumer Rights Act 2015 legislation as the most effective way for leaseholders to challenge event fees or charges. Even if positive changes are made leaseholders are unlikely to avail themselves of this legislation due to its complexity and costs of representation. It is potentially a lawyers' gravy train.

for the purposes of unfair terms legislation, an event fee term should be treated:

(a) as if it were a contract term?

Yes:	No:	Other: X

(b) as if it were a term of a contract made between the landlord and tenant when the current tenant first became bound by the term?

Yes:	No:	Other: X
This may be difficult in practice. We have formed no opinion on this as yet. The law appertaining to privity of contract and privity of estate and the transmission of covenants is complex. It will require legislation to bring English Law into line with European (DCFR) principles. Transparency of the terms at each transfer of lease remains critical.		

this should apply to event fee terms on the next sale of the lease after the reform comes into effect, irrespective of when the lease was first granted?

Yes:	No:	Other: X
As above		

We welcome views on whether similar principles should apply more generally to all covenants in residential leases.

Yes:	No:	Other: X
As above		

QUESTION 3: THE GREY LIST

(Consultation Paper, para 11.37)

Schedule 2 to the Consumer Rights Act 2015 sets out an "indicative and non-exhaustive" list of terms, which may be regarded as unfair (the "grey list"). Do consultees agree that:

the Secretary of State should exercise the power in section 63(3) of the Consumer Rights Act 2015 to add a term covering event fees to the grey list?

Yes: X	No:	Other:
We repeat our cautionary comment that we do not consider the Consumer Rights Act 2015 legislation as the most effective way for leaseholders to challenge event fees or charges. Even if positive changes are made		

leaseholders are unlikely to avail themselves of this legislation due to its complexity and costs of representation.

Almost every other item in the 'grey list' begins with *'a term which has the object ….'* so it would need to include a different type of term if it was to specifically refer to 'event fees' or 'event charges'.

In our opinion, payments that relate to the provision of administration services can already be challenged under Landlord and Tenant legislation.

The addition to the grey list should be confined to event fees where the person claiming the fee fails to comply with the relevant provisions of an approved code of practice?

Yes: X	No:	Other:

In our view it is the premium charges of the type that require a payment to the landlord for which no service is provided that need to be covered by the grey list. It is always going to be difficult to prove such charges to be unfair in quantum as the argument that they go to the 'price' is persuasive. So the Codes of Practice need to give particular attention to the process that brings the terms to the attention of the buyer.

The addition to the grey list could be: -

"Fees in residential long leases that contravene best practice as set out in recognised codes of practice."

QUESTION 4: A STATUTORY TRUST FOR SINKING FUND EVENT FEES

(Consultation Paper, para 11.52)

Do consultees agree that where the lease requires event fees to be used exclusively for the maintenance, repair or improvement of the development, the fees should be subject to a statutory trust?

Yes:	No:	Other: X
Deferred contributions to funds set aside for major works are not currently defined as event fees, so the question is academic. Under current legislation registered housing providers are not necessarily required to hold service charge monies in a statutory trust in the same way as private companies and this anomaly should be addressed**.**		

QUESTION 5: DEFINITION OF EVENT FEES

(Consultation Paper, para 11.59)

Do consultees agree that:

an event fee term should be defined as a term in a residential lease which imposes an obligation for the tenant to pay a fee on, or in connection with the happening of a defined event where:

(c) the event is that title to the lease changes hands, a change in the occupancy of the property; or some other event which creates a third party interest in the lease; and

(d) the fee is fixed or calculated in accordance with a formula.

Yes:	No:	Other: X
We do not like the term “Event Fees’. Consultation with elderly leaseholders confirms they find this confusing. There needs to be a distinction between payments for services which may be wholly or in part ‘administration charges’ and premium charges which are one-off payments to a landlord for which no service or benefit is required or given in return.		

the definition should not include fees which:

(e) fall within the definition of administration charges in schedule 11 to the Commonhold and Leasehold Reform Act 2002?

(f) must be used exclusively for the maintenance, repair or improvement of the development and which are subject to the proposed statutory trust?

Yes:	No:	Other:
This can only be determined by reference to the lease. An event fee would be wholly or partly an administration charge where the lease states or implies that the event fee is payable in return for a service, such as ‘the provision of information or documents’ or ‘applications for approvals’, which is also the natural meaning of the term ‘fee’. It should be noted that in order to try to justify ‘event fees’ (most commonly called transfer fees in leases) some landlords have argued that some or all of the fee is for administration in respect of the transfer or in some cases in lieu of higher management fees (which would also be fees payable for the provision of a service). The extract from the McCarthy & Stone lease in paragraph 3.9 of the consultation paper says ‘In another example, the term is labelled as a “transfer fee”. It then		

quotes from clause 10.4 of a typical M&S lease as follows: -

10.4 Not to agree to assign underlet dispose of or to make any other material change in occupation or otherwise part with possession of the premises without first having given at least 28 days prior written notice to the Landlord… and… at completion of any such transaction… to pay to the Landlord a transfer fee of 1% of the gross sale price or unencumbered open market value … whichever shall be the greater sum.'

When we referred to these McCarthy & Stone leases we noted that the extract quoted in the consultation paper has inexplicably excluded the middle part of the clause, which is crucial to its meaning because it identifies the service to be given in return for the 1% fee.

The redacted words read *'…so that the landlord can endeavour to ascertain whether the assignee under lessee or occupier (as appropriate) is capable of maintaining an independent and active lifestyle…'.*

This clarifies that McCarthy & Stone intended the fee in question to be payable in return for the service of obtaining an approval which means it would fall under the definition of an administration charge in Schedule 11 ('application for an approval') and can therefore be challenged at a Tribunal.

Note: The argument that an administration charge may be a fixed charge is not a defence as the Tribunal has jurisdiction to consider the reasonableness of both. It is only the remedy that differs.

As part of the investigation by the Office of Fair Trading (OFT) Hanover confirmed that in all but one of the sample leases reviewed by the OFT, the transfer fee is charged in respect of services undertaken by the landlord (referred to as an 'administration' transfer fee) and is therefore subject to a test of reasonableness under the Commonhold and Leasehold Reform Act 2002 and can be challenged in the Leasehold Valuation Tribunal if they are excessive. As such, where the lease entitled Hanover to an 'administration' transfer fee, stated to cover Hanover's costs, of 'up to' or 'not exceeding' a certain amount (such as a percentage of the sale price or open market value), or to a fixed percentage of the sale price or open market value, Hanover only collected a fee that reflected justified and reasonable administration costs.

This clarifies that Hanover leases intended transfer fees to be payable in respect of a service and that in anticipation of a transfer fee being challenged as excessive Hanover limited transfer fees to a level that might be reasonable to cover their costs.

We agree that one-off payments which are contributions to reserve funds for building maintenance should not be included in the definition of event fees or event charges although it should be noted at present these monies are not

subject to statutory trust (see 14.5 above).

QUESTION 6: PROPOSALS RELATING TO CODES OF PRACTICE

(Consultation Paper, para 12.13)

Do consultees agree that the codes of practice applying to developers, operators, managing agents and estate agents should be strengthened to ensure that event fees are brought to the attention of prospective purchasers at an early stage?

Yes: X	No:	Other:
Yes, but in practical terms we are unsure how this might be achieved. The proposal at '3' above to add event fees to the grey list could provide the means to enforce the code, although in practice we think other forms of redress are preferable. Many operators of retirement villages claim event fees/charges but the code produced by their trade body ARCO is not government approved and therefore its contents are not admissible in evidence at a court or tribunal. Addition to the grey list may enable redress through CPR's as well as the CRA 2015.		

QUESTION 7: SPONSORSHIP OF THE EVENT FEE PROVISIONS

(Consultation Paper, para 12.14)

We welcome views on which organisations should take responsibility for implementing new code provisions dealing with event fees.

The Association of Retirement Housing Managers (ARHM), Royal Institution of Chartered Surveyors (RICS), National House Building Council (NHBC), Associated

Retirement Community Operators (ARCO) and Association of **Residential** Managing Agents (ARMA).

QUESTION 8: USE OF EVENT FEES OUTSIDE OF SPECIALIST HOUSING

(Consultation Paper, para 12.15)

We welcome evidence on the use of event fees in residential leases outside specialist housing for older people. If possible, please provide specific examples of the term used, together with a description of the property.

We have no knowledge of these types of fee outside the retirement sector.

QUESTION 9: GOVERNMENT APPROVAL OF THE EVENT FEE PROVISIONS

(Consultation Paper, para 12.16)

Do consultees agree that the event fee provisions applying to all those with a right to receive event fees should be approved by the Department for Communities and Local Government under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993?

Yes: X	No:	Other:
We assume this is in relation to the industry codes of practice referenced in '3' above. As this legislation sets out what might be included in any approved code of practice this might be helpful. We note that s.87(3) gives the power to approve part of a code of practice. This would avoid delays in waiting until the whole code was presented for re-approval.		

QUESTION 10: EVENT FEES ON SUB-LETTING

(Consultation Paper, paras 12.19 to 12.21)

Do consultees agree that on sub-letting event fees should not be charged on a percentage of the open market value?

Yes: X	No:	Other:
Yes, although it must also be considered what the sub-let fees are for, as this is relevant as to whether they might be fair, reasonable and proportionate to the cost. It also must be considered whether the fees should be payable only once for sub-letting or on each occasion that there is a different tenant.		

We welcome consultees' suggestions on fair and proportionate ways to calculate sub-let fees (such as flat fees or a percentage of the rent).

The fee charged should reflect the cost of the administration required. In most cases it is difficult to see how the Landlord incurs any costs. The cost is generally incurred by the Managing Agent who needs to be notified of the occupier from time to time for health and safety and security reasons. As we have mentioned above, an event fee is payable in return for a service and the landlord may need to demand a reasonable fee on the first and additionally each occasion of a sub-letting. However, as your definition of event fee includes an event charge, which is just a premium payable to the landlord for no service in return, we do not consider that an event charge should be made when sub-letting takes place. If it is agreed that an event fee is payable in return for a service it merely has to be reasonable to satisfy existing Landlord and Tenant legislation and in order for this

to be the case it is more likely that a flat fee would be regarded as reasonable than a percentage of the rent (which bears no relation to the costs of administration).

Should the codes of practice prescribe a maximum amount that may be charged on sub-letting?

Yes:	No: X	Other:
We do not think this is necessary. The reasonableness of the charge should be determined by the amount of work required to comply with the lease. This may vary. Some long lease flats are licenced for multiple occupancy for example. This may require additional administration. It may be difficult to agree a fixed, flat fee.		

QUESTION 11: EVENT FEES IN UNEXPECTED CIRCUMSTANCES

(Consultation Paper, para 12.24)

Do consultees agree that event fees should only be charged on sale or sub-letting?

Yes:	No:	Other: X
Whenever the manager of the estate is required by the lease, statute or good practice to perform an administrative task it is right that the manager should receive a reasonable fee in compensation for the work involved unless the management agreement specifies that the work is already incorporated in the management fee. Such fees will usually come under the definition of administration charges and a tribunal can determine the reasonableness.		

QUESTION 12: A CHOICE TO PAY FEES UP FRONT

(Consultation Paper, paras 12.30 and 12.31)

Where the event fee is calculated as a percentage of the sale price, it can be difficult for prospective purchasers to estimate their future liability upon resale. Should prospective purchasers be given an alternative payment option, so that they can know the amount of the fee at the time of purchase?

Yes: X	No:	Other:

If it is for a service to be performed on resale or a change of occupant by sub-letting, the fee should be determined by the cost of administrative work involved. This can only be calculated at the time of the actual event. It may be just a few years from the original purchase date or it may be several decades afterwards, when hourly rates and overheads will have substantially changed through inflation.

If the event payment is not an actual fee paid to the manager for work but a premium payment back to the landlord for no services, then it is probably not subject to a test of fairness of the quantum as it goes to the price. In this case it makes sense to give the purchaser the option.

There is nothing intrinsically wrong in offering to take a percentage of the price and offer to defer its payment to the end of the term. This is very common in car finance deals, which offer a balloon payment. Most purchasers see this as part of the price they have to pay.

A purchaser that is on a fixed income may see deferment as a beneficial option.

We welcome consultees' suggestions on which alternative payment options might be attractive, and how they should be presented.

We can see no objection to multiple payment options to suit individual requirements as long as they are properly disclosed and easily understood. A deferred payment may suit many people.

A problem can arise when the first owner who purchased from the developer comes to assign to a new owner who may like the property, want to buy it but may prefer to pay the whole price up front, possibly from the proceeds of sale of a previous property.

Consideration should be given to giving a new owner the opportunity to 'opt out' of the deferred payment in return for an upfront fee.

QUESTION 13: DISCLOSURE REQUIREMENTS WHEN THE LANDLORD SELLS THE PROPERTY DIRECTLY

(Consultation Paper, para 12.52)

Do consultees agree that where the landlord sells the property directly:

An advertisement which mentions the price of the property should also mention the event fee?

Yes: X	No:	Other:
The Developer should be distinguished from the freeholder. The Developer		

may not be a freeholder. It could be a head lessee for example. An advertisement should ideally disclose all charges and fees that are material to the purchase decision, whether they are fees, deferred premium payments, service charges and ground rent. If it does not detail all the fees it should at the very least state prominently that the lease is subject to fees and charges etc.

When prospective purchasers first visit the property they should receive a disclosure document?

Yes: X	No:	Other:
This should disclose all the details material to the purchase decision.		

Where the property is sold off-plan, the disclosure document should be supplied on a visit to the site or sales presentation, or at the first significant interaction with sales staff?

Yes: X	No:	Other:
It should accompany all other sales information and be prominently displayed.		

The disclosure document should:

(g) set out in the same place all the event fees applying to the property (including sinking fund fees subject to a statutory trust); and

(h) illustrate their effect, explain alternative options and give contact details for advice organisations?

Yes: X	No:	Other:

The code should specify how illustrative examples are calculated. In particular it should:

(i) require that the example is based on a price which is fairly representative for that development; and

(j) standardise the intervals and the range of likely house price increases, so that they extend to an adequate number of years (for example, 15 years)?

Yes: X	No:	Other:

the event fee should be mentioned in face-to-face discussions?

Yes: X	No:	Other:
The sales person should take time to explain every document in the sales		

information pack, especially the document that explains the various fees and charges.

It would be good practice for the seller to ask the purchaser to sign a form confirming that the information has been explained.

This could avoid disputes later, perhaps when the property is inherited by an owner's children and they call into question the fairness of the deferred payments!

It is worthy of note that when the public outcry about 'exit fees' first arose, it was predominantly from sons and daughters who thought they were inheriting an unencumbered asset only to find it was subject to on-going charges and fees.

QUESTION 14: INVOLVEMENT OF MANAGING AGENTS IN THE SALE

(Consultation Paper, paras 12.60 and 12.61)

Do consultees agree that where a property with an event fee is sold through managing agents, the managing agent should:

comply with requirements on advertising,

supply copies of the disclosure document at an early stage; and

hold face-to-face discussions with prospective purchasers?

Yes: X	No:	Other:

We think that, under the current law, breaches of the rules on event fees by the managing agents would be treated as breaches by the landlord.

Do consultees agree that:

this interpretation is correct?

Yes:	No:	Other: X
Generally yes, but not where leaseholders have exercised Right to Manage and the RTM company has appointed a managing agent. Managing agents are bound to follow the codes of practice and belong to a redress scheme so it is arguable they are jointly liable with the landlord. One difficulty is that the managing agents (who may be members of a recognised trade body and wish to comply with the code of practice) may be instructed by the landlord to take a different course of action and if they refuse they could be dismissed as the landlord's managing agent.		

this should continue to be the law?

Yes:	No:	Other: X
It would be preferable if the party responsible for taking the action on a day-to-day basis is the party that is liable for the breach. The party liable for a driving offence is the actual driver of the car at the time, not necessarily the owner of the car.		

QUESTION 15: WHERE THE PROPERTY IS SOLD BY THE LEASEHOLDER'S ESTATE AGENT

(Consultation Paper, paras 12.72 to 12.74)

Do consultees agree that landlords should establish an online database to provide information to estate agents about the event fees?

Yes:	No:	Other: X

Yes, in principle, although we recognise that this database would be quite costly to set up and maintain.

It should not necessarily be the landlord. It would be better done by the developer or the party that draws up the actual lease.

The Land Registry database could easily be adapted for this purpose. (See below)

Alternatively, would it be sufficient for estate agents to contact managing agents for this information?

Yes:	No: X	Other:

It should be an obligation of the Estate Agent as they have the responsibility under CPR's.

Estate agents should make it their business to know the different event fees and charges payable to different landlords. It should be noted that these fees may vary according to the lease for each block or estate, which is why it is good practice to refer to the actual lease for the property being sold.

We welcome other suggestions as to how estate agents can be provided with information about event fees for a property swiftly and in an accessible format.

Alternatively the information is already in the property leases and leases are already available to download from the land registry. Most Estate Agents have access to this and could acquire the information easily. If the Land Registry "Prescribed Clauses' for leases was required to include in the 'prescribed statements' a disclosure of all event fees and charges this would ensure the information was easily obtained without trolling through pages of the lease. Estate Agents get a good agency fee for their services and this would place very little additional burden on them and would enable them to comply fully with their obligations under CPR's.

QUESTION 16: CODES APPLYING TO ESTATE AGENTS

(Consultation Paper, paras 12.81 and 12.82)

Do consultees agree that codes which apply to estate agents should reflect similar principles with regard to event fees?

Yes: X	No:	Other:

In particular:

Should every advertisement which mentions the price of a property subject to event fees also mention the event fee?

Yes: X	No:	Other:
Ideally yes, or at least a prominently displayed ‘wealth warning’ that such such fees and charges may apply.		

Should the estate agent supply a copy of the disclosure document when a prospective purchaser views a property which is subject to an event fee?

Yes: X	No:	Other:
The same level of disclosure should apply as is recommended at the time of first purchase from the developer.		

When selling specialist housing, should estate agents encourage prospective purchasers to talk directly to the agent or manager responsible for the property?

Yes: X	No:	Other:
But at am early stage. However this should not be a means of the estate agent avoiding its responsibility under CPR’s by delegating it to the manager.		

QUESTION 17: CONVEYANCING PROTOCOLS

(Consultation Paper, para 12.86)

Do consultees agree that it should be standard procedure for conveyancers to talk through event fees with their clients?

Yes: X	No:	Other:
That is their duty. But its often too late then as the buyer is already emotionally committed to the purchase.		

QUESTION 18: UNDERTAKINGS TO EXISTING TENANTS

(Consultation Paper, paras 12.93 and 12.94)

Do consultees agree that landlords should expressly agree with existing tenants that:

event fees will only be applied on sale or subletting;

Yes: X	No:	Other:
Yes, although not necessarily in all instances of subletting. Landlords should only seek contributions to sinking funds on the first occasion of subletting and event fees should be restricted to a reasonable fee for any administration services.		

on subletting, event fees will not be calculated as a percentage of the open market value of the property;

Yes:	No: X	Other:
Event fees on subletting should not be based on the property value at all if they relate to a service or administration cost.		

Except where purchasers are given illustrations on the effect of the fee calculated as a percentage of the sale price, the fee should only be levied as a percentage of the lower of the purchase price or the sale price?

Yes: X	No:	Other:
If the event fee is in reality a deferred premium to the price then the critical point is that it should be transparent and the buyer should know it is part of the price deferred. One assumes most buyers would like it fixed as a percentage of the buying price so the total price is known.		

Should landlords write to current tenants who are subject to event fees, to explain the effect of the undertakings they have given?

Yes: X	No:	Other:

QUESTION 19: REJECTING AN OUTRIGHT BAN

(Consultation Paper, para 10.37)

Do consultees agree that event fees should not be banned completely?

Yes: X	No:	Other:
Event fees as currently defined should not and could not be banned completely as they may be wholly or in part an administration charge payable in return for a service provided by the landlord. Event premium charges or deferred price payments could be banned, especially in respect of the drafting of all new leases, as they are a payment to a landlord for which no service is provided. The developer could simply increase the initial sale price rather than demanding event charges which are payable at an unknown time in the future. However, if we understand the feedback correctly a large number of buyers actually like the deferred price option. To assist in transparency it would be better of each flat was marketed at the real price, with the option to pay that price in full or take up a deferred payment option but so that any deferred payment is subtracted from the sale price and terms are set out showing what the additional cost is for the deferment, which may, for example, be an interest cost at x% over bank rate form the number of years the payment is deferred.		

QUESTION 20: NO ASSESSMENT AGAINST COSTS REASONABLY INCURRED UNDER SECTION 19 OF THE LANDLORD AND TENANT ACT 1985

(Consultation Paper, para 10.44)

Do consultees agree that there should not be reform to bring event fees within the ambit of section 19 of the Landlord and Tenant Act 1985?

Yes:	No:	Other: X
It is difficult to answer this question while using the Law Commission definition of ‘event fees’ which may be solely a payment to the landlord for which no service is provided and in this respect it needs to be separated from any administration fees which are already covered by Landlord and Tenant		

legislation. In theory Section 19 of the Landlord and Tenant Act 1985 could be amended so that it covered 'event charges' but how would any test of reasonableness be applied to a charge that is merely a deferred profit to the landlord and *a fixed rather than variable charge that is* not payable in respect of relevant costs incurred by the landlord.

QUESTION 21: NOT EXTENDING CONTROLS ON ADMINISTRATION CHARGES

(Consultation Paper, para 10.48)

Do consultees agree that the controls on administration charges set out in the Commonhold and Leasehold Reform Act 2002, schedule 11 should not be extended to include selling services?

Yes:	No: X	Other:

No, the definition of an administration charge should be amended to clarify that it will include any services charged to individual leaseholders that would not be covered by the management fees payable as part of the service charge. It should be expressly stated in the Act that the definition should cover all of the types of services referred to in leases in relation to sale or transfer, such as advice to potential purchasers and any other service that would involve more than just the provision of information or documents and dealing with applications for approvals.

QUESTION 22: NOT EXTENDING CONTROLS ON CHARGES FOR GRANTING CONSENT

(Consultation Paper, para 10.51)

Do consultees agree that section 19 of the Landlord and Tenant Act 1927 should not be amended to cover event fees?

Yes: X	No:	Other:
1927 legislation should not be relied upon to address the event fees/charges issue.		

QUESTION 23: EFFECT ON CONSUMER CONFIDENCE

(Consultation Paper, paras 13.7 and 13.8)

Do consultees agree that our proposals will increase consumer confidence in the specialist housing market?

Yes: X	No:	Other:
Yes, if they are effective and if they receive enough publicity for potential buyers to be aware of them.		

If so, what effect might this have on the market?

Yes:	No:	Other: X
The market remains dominated by estates developed by McCarthy & Stone, with over 50,000 units potentially subject to the event fee defined in the leases as a transfer fee. We consider that the only realistic option to address the quantum of this fee is to pursue cases through the tribunals using CLRA Schedule 11. Confidence may be restored to the new sales of retirement properties as a result of the undertakings given to the OFT and the LC proposals but until or unless buyers have confidence when buying previously occupied properties		

the impact on the market as a whole will be minimal.

This issue did not arise due to deferred payment options in retirement villages. It arose entirely because of the 1% transfer fees payable to Fairhold, which was intended to be a fee for arranging the approval of new occupiers.

This has been publicy acknowledged by John McCarthy himself, when he said in his autobiography "…when owners came to sell their flats they would have to pay a 1% transfer fee to the freeholder who would ensure that the flats were occupied by an elderly resident".

QUESTION 24: EFFECT ON LENDER CONFIDENCE

(Consultation Paper, paras 13.13 and 13.14)

Do consultees think that following our proposals, event fees which comply with the code of practice will have sufficient legal certainty to meet the standards required for secured lending?

Yes:	No: X	Other:
This is unlikely unless or until something is done to address the way transfer fees and other issues (such as wardens flat rents) affect the resale market.		

We welcome evidence on the effect which removing the current legal uncertainty over event fees may have on the volume of lending available.

QUESTION 25: SAVING THE COST OF SETTING UP EXPRESS TRUSTS TO HOLD CONTINGENCY FEES

(Consultation Paper, para 13.16)

We welcome evidence about the legal arrangements by which contingency funds are currently held. Do agents and developers incur legal and other costs in establishing express trusts?

Yes:	No:	Other: X
We cannot comment as we are an advice agency and not landlords.		

QUESTION 26: FAMILIARISATION COSTS

(Consultation Paper, paras 13.23 and 13.24)

We welcome evidence on the training currently given to estate agents about the Consumer Protection from Unfair Trading Regulations 2008 and consumer codes of practice. How far would the current proposals add to this cost?

Unknown

We welcome evidence about the number of managing agents, operators and developers who would need to familiarise themselves with the proposed changes. How is this likely to be conducted?

Incorporating changes into Codes of Practice will be a good start. The primary responsibility should be with ARHM, ARCO and RHG to educate their members as to the changes. The number of managing agents specialising in

retirement property management is believed to be about 60.

QUESTION 27: ONLINE DATABASE

(Consultation Paper, paras 13.26 and 13.27)

We welcome evidence on the costs of setting up a new online database to provide information to estate agents about the event fees.

Unknown, but not considered necessary if information can be accessed from the Land Registry.

We would also be interested in the costs of alternative ways of providing this information swiftly and in an accessible format.

The information is already in the property leases and leases are already available to download from the land registry. Most Estate Agents have access to this and could acquire the information easily.

If the Land Registry "Prescribed Clauses' for leases was required to include in the 'prescribed statements' a disclosure of all event fees and charges this would ensure the information was easily obtained without trolling through pages of the lease.

QUESTION 28: PREVENTING EVENT FEES IN CIRCUMSTANCES UNRELATED TO SALE OR SUB-LETTING

(Consultation Paper, para 13.31)

Do developers collect event fees on death, mortgaging or change of occupancy, in circumstances which do not involve a sale or sub-letting? If so, how much is collected in this way?

Yes:	No:	Other: X
It is our experience that developers/landlords do not necessarily collect event fees on death and that these are usually collected when the beneficiary sells the property. However where it became clear that the property was being transferred to a beneficiary (not a spouse) who was eligible to live or continue to live in the property then event fees are usually demanded in full.		

QUESTION 29: FACE-TO-FACE DISCUSSIONS

(Consultation Paper, paras 13.34-35)

When a retirement lease is sold through the vendor's estate agent, how far do agents and managers hold face-to-face discussions with prospective purchasers?

We have never heard of this happening and doubt that it does.

Would the provisional proposal that estate agents should encourage and facilitate such meetings add to costs?

Yes: X	No:	Other:
There would be administrative costs on both sides.		

QUESTION 30: OTHER COSTS

(Consultation Paper, para 13.36)

We welcome evidence about other costs, which may result from our provisional proposals.

No information available