By email only: scrutiny@parliament.uk

19th January 2024

Dear Committee

Leasehold and Freehold Reform Bill ("the Bill")

About us

We are writing in respect of the Bill. We are part of a group of companies along with Property Debt Collection Limited and PDC Conveyancing Limited, collectively known as the PDC Group. The PDC Group has a workforce of 65 members and focuses on the collection of Service Charges, Ground Rents and Buildings Insurance Premiums from leasehold and freehold property owners, lease extensions / enfranchisement and general breach of covenants.

For years the PDC Group has operated with a unique selling point of being an alternative for landlords, management companies and right to manage companies, with directly instructing Solicitors / a law firm with a difference. We pride ourselves on being a low-cost alternative and strive to provide a fairer system of recovering outstanding debts from defaulting leaseholders/freehold property owners. Cases are only passed to solicitors where absolutely necessary and as a last resort.

PDC Law was set up and licensed in 2016 by the Solicitors Regulation Authority as an alternative business structure. The PDC Group, like many others, agree there is a time for change, but believe there are a number of ramifications which have not been addressed by this proposed Bill. It would, in our view be simply wrong not to point out these scenarios to this Committee.

The Bill appears to be targeting institutional investor landlords but, many of our clients who do not fall within this category will also be caught up in the Bill. As such the following companies may not have been considered:

a. An enfranchised landlord is made up of collective leaseholders;
b. Right to manage companies are made up of leaseholders;
c. Management companies' directors are generally leaseholders; and
d. Management companies can be landlords.

This letter mainly focuses on those companies.

Service Charges

Clause 27(3) inserts into Section 21C of the 1985 Act an obligation that a landlord (of which all of the above fall within) must issue a service charge demand in a specified form.

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Clause 30(3) inserts into Section 25A of the 1985 Act that a tenant may seek damages from a landlord in the event of a non-compliant service charge demand and such damages may not exceed £5,000. It further states at S25A(8) that the landlord cannot use any monies held on trust pursuant to Section 42 LTA 1987 to pay for such damages.

It strikes us that management companies, right to enfranchise companies or right to manage companies, all of whom have been set up with the objective of allowing leaseholders/freehold property owners to take control of their developments and be involved directly in the running of the buildings, may be forced into insolvency in the event damages are awarded against them. The Committee will know these companies are not businesses, have no income outside their S42 Trust monies and their members are fellow leaseholders. They have two options; (i) raise the funds through their Memorandum and Articles of Association or (ii) declare themselves insolvent.

Litigation costs

Clause 34 inserts into S20CA into the 1985 Act a limitation that the landlord's litigation costs are not to be regarded as relevant costs when determining the amount of variable service charges.

S20CA(7) removes all contractual rights the landlord may have in respect of its litigation costs.

Clause 34(6)(b) inserts into Schedule 11 CLRA 2002 at paragraph 5B(1) that *No administration charge is payable by a tenant of a dwelling in respect of the landlord's litigation costs.*

Paragraph 5B(6) removes all contractual rights the landlord may have in respect of its litigation costs directly with the individual tenant.

Clause 35 Inserts into S30J of the 1985 Act an implied right for a tenant to claim costs from a landlord if a Tribunal or Court orders.

It is unclear to us how landlords are able to fund litigation against a defaulting leaseholder. Landlords have no ability to seek legal advice or instruct a firm to represent them in a Court / Tribunal. This is particularly important for those leaseholder owned companies who do not have professional expertise or resources and therefore are reliant on external legal advice. They face a dilemma, they can either do nothing, or risk pursuing a defaulting leaseholder with (i) their contractual right being taken away in respect of the S42 trust monies (ii) their contractual right being taken away in respect of a defaulting leaseholder (iii) the risk of damages being awarded against them for a defective service charge demand (iv) the risk of their service charges not being payable at all and (v) the implied term that a tenant is entitled to their costs against the landlord.

It would seem an unintended consequence that by seeking not to pursue a defaulting leaseholder it could in fact penalise paying leaseholders. Furthermore, it could encourage others not to pay, leading to a deficit in the service charge fund. Who then will be expected to fill that void?

Contractual costs provisions in leases serve a vital purpose. They allocate where the risk should lie in the event of default. Having a level playing field seems reasonable, both parties should be in a position to recover their costs in the event one is successful. A number of tenants not paying their charges can have an impact on the plans to maintain and repair an estate. These proposals would, if enacted, run

the risk of derailing service charge works. That risk is currently mitigated by the ability of many landlords to recover litigation costs. It is not unfair. It is an agreed allocation of risk.

Summary

We do not believe Parliament's intention is to discourage leaseholders from owning and being responsible for their buildings and developments. In fact quite the opposite, but we believe, this will be inevitable if these issues are not addressed.

Service charges are complex and their recovery is not straightforward. The Bill will place additional burdens on those seeking to recover them. It is becoming unlikely that service charges can be demanded and recovered without professional help. However, at a time when the law is becoming more detailed, it does not seem reasonable to presume that leaseholders can take on these functions without that help. When they are unable to recover their running costs from defaulting leaseholders, where are they expected to obtain the funds to commence legal proceedings to recover charges? What is the source of the funds necessary to pay the fines and damages proposed by the new Bill when, inevitably, these amateur landlords are likely to get some of the procedures wrong? The enfranchised landlords, management companies or right to manage companies appear to us to suffer these unintended consequences of this Bill.

We hope the content of this letter will be considered by the Committee. Should the Committee have any queries and/or require further information from us we will be more than happy to assist. Our contact details are: Reece Wheeldon Reece.Wheeldon@pdclaw.co.uk and Jonathan Wragg – Jonathan.Wragg@pdclaw.co.uk.

Yours faithfully

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