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Consultation on Residential Leases: Fees on Transfer of Title, Change of Occupancy and Other Events

Background Paper 3 Mystery Shopping Report

**50
YEARS**

October 2015

Report on a research project to investigate how information about transfer fees and other costs is provided to potential buyers before offers are made.

Introduction

I was asked to undertake a limited exercise to investigate the purchase of six retirement properties. The object was to consider how, if at all, information about transfer fees and other costs was broached to the client.

This report sets out this experience and aims to consider it in the context of an elderly person looking for a retirement property for him or herself. For this purpose, I presented myself as acting on behalf of a family member who would take over the decision making once a short list of properties had been established for him.

I recorded what information was offered spontaneously and what was forthcoming after agreed prompts.

While this survey does not have the scope to be a statistical exercise, it did attempt to spread its investigations geographically; to look at a range of developers and price options; and to consider properties offered at different stages of development. The first four properties were built by different developers and were sold in different ways. The remaining two were by the same developer and sold through the same agent but had different transfer charges.

All properties were in retirement blocks or villages and offered accommodation with communal facilities to people aged over 55. Buyers tend to be independent, although the average age of residents was in the late seventies rather than the mid fifties.

I visited properties in London, the Midlands, the South West, the South East and the East. One was a new build, on sale direct from the developer, one was off plan from another developer and the remaining four were resale properties between one and ten years old by varying developers and offered for sale through local estate agents.

I visited these properties in the first quarter of 2015. I had no specialist or experiential knowledge of retirement properties beforehand. In each case I said that my chief concern was to understand the financial implications of buying into the retirement community. This report focuses specifically on transfer charges (under a number of names) which are fees payable when the resident sells their property.

For each of the site visits I have considered the presentation of information under the following headings:

- the experience of visiting the property;

- the information given to me verbally on the visit (noted down at the time);
- the sales material given me to take away;
- information supplied after the visit, usually at my request.

Registered leases are on public record, so we were able to check the accuracy of information supplied.

I have only made passing reference to websites here, as I assess the information supplied by the developer or managing agent on their website in a separate document.

Property 1: extra care housing on sale direct from the developer:

The developer provides high-end accommodation and services in largely self sufficient retirement villages.

By marketing their flats in the retirement village to people above 55 years of age, the intention is to gather a community where the average age is younger than in traditional care situations and where residents will grow old in homes that they do not consider to be old people's homes. In practice, residents are older and across all their properties, the average age is 78 years.

At the village I visited, Phase One of the village had been completed and there were some leaseholders resident. There was an on site marketing and sales suite.

My Visit

The village was a self contained complex with a well staffed marketing suite on site. At the time I went, the first phase of the village was newly completed and only partially occupied.

I was shown around by a full time member of the sales team. He was well informed about the concepts that underlie the company's retirement villages and well able to represent the brand and to draw on experience and statistics at other, fully established villages.

The emphasis of the tour was on the luxury nature of the accommodation and facilities, emphasising that the company was selling a way of life that would-be residents needed to understand and buy into. I was offered coffee and lunch in the bar, which I accepted.

We discussed charges made to residents both during their residency and on reselling the property.

On reselling the property, the sales person said that the development company would sell the property. He did not mention the charges until I specifically asked about them, though

he did mention that you could sell through a local estate agent. He then said, *We have a waiting list so it makes sense to use us.*

Rather alarmingly he also said, *Any involvement in property, you're never going to lose money.* He added that people need to know they are taking care of their capital.

There are two charges payable to the developer on the resale of the property, which will add up to a total of between three percent and eighteen percent of the achieved resale value of the property. The exact figure depends on how long the resident has lived in the property and what options they have selected. The sales person was mostly clear about these charges.

However, one of the charges is supposed to be a charge for reselling the apartment, and it varies according to what option a resident selects. For the cheapest option a resident can select, the sales person was not quite clear about whether the charge would add one or two percent to the total percentage fee payable. In fact it adds two percent.

He offered a list of expenses that the charges on resale cover but could not tell me whether this money was ring fenced. This list is also available on the website.

Material presented on visit

A wide range of specific information was included in the back pocket of the brochure, including:

1. A note on the fee payable on resale which was to pay for reselling the property.
2. A note on the other fee payable on resale, including a worked example - this included a list of costs that the fee was supposed to cover, with proposed figures. They included resurfacing roadways, reroofing, rewiring, renewing the kitchen and renewing the swimming pool. It was very unclear what the second largest contingency figure was for – it appeared to be to do with provision of services but was described in a generic way that gave no clue as to how the money would be spent.

Follow up questions

I asked by email if it would be possible to see the lease for a two bedroom flat. My email was swiftly acknowledged and the lease supplied.

Summary:

The sales person was well informed, articulate and helpful. He was very willing to discuss both the charges payable on resale.

The company outlined the charges clearly in their sales material, although there remains some confusion about the percentage charge payable for reselling the property if you select the cheapest option.

The total charges payable on resale can be high, at up to eighteen percent. Although the sales person did not introduce the subject, there was plenty of opportunity to learn about it in the sales literature. This literature gave examples of uses the money might be put to and projected costs for these projects. From the lease, it appears that this money is not ring fenced, however.

Property 2: A retirement housing property on sale off plan from the developer

The boom in building specialist housing means that there are many opportunities to buy *off plan*, that is, to put down a deposit on an apartment that is still being built and to pay the balance when the building is complete. This was one such property.

My Visit

As the development is still at late stage of construction, I was able to see the building from the outside, but not to view any of the apartments. I met the sales person in a local hotel and she presented the possibilities over coffee.

The development is aimed at over 55s and offers privately leased apartments with some communal areas and facilities. There are no carers living in, but there is an organiser who supports social activity on site and outside it.

When I asked about service charges, the sales person told me they were not allowed to give the price out at that stage, but did give me an estimate.

Nothing was said about transfer charges. When I asked, she said she understood that there was a one percent charge though this was not actually laid down. I understood that there were no other charges.

As we were leaving, I asked if I could see a copy of the lease. She said, apologetically, that she did not have one. She said she would try to get hold of one.

Material presented on visit

Among other materials, there was a paper which summarised the costs.

As well as summaries of other costs such as service charge, there was a note on the sinking fund which explained the need for funds to pay for major refurbishment over time. It indicated that there would be a charge payable on resale as a contribution to the sinking fund.

The level of annual contribution is based upon a detailed estimate prepared by an independent surveyor who calculates the lifespan of each major component of the building as well as its likely cost of renewal or replacement. This estimate is reviewed and updated on a regular basis.

Each apartment's contribution will be calculated and billed annually. However, payment will be deferred until such time as the property is re-sold or is a change of residency.

Follow up Questions

I rang to chase up about the lease. The sales person said she had enquired about it but still did not have a copy herself. She said it was not generally available until a client had actually reserved. This required a deposit of £1000. She said that *Solicitors don't like giving them out. Our solicitor will talk to your solicitor when you have made the deposit.*

I asked about transfer charges. She said that these would be 1% of the sale price achieved. However, the literature does not mention this. From the literature available, I understood that exit charges were based on the assessed needs of the sinking fund (see above) and appeared to be variable.

When I challenged her exit fee of 1%, the sales person said she was going on what she had worked with before. I asked if it was ring fenced for this development and she said, *As far as I know it is.*

Summary

While no leases have at the time of writing been registered for this development because it is new, a lease from the same developer at another site has two separate transfer charges. There is both a transfer fee of 1%, which is not ring fenced, and a sinking fund fee of 1% which is ring fenced for the provision of services and upkeep of the site. The latter fee seems different to the annually-calculated maintenance fund contributions discussed above (payment of which is deferred until sale). It was not clear to me what deferred fees would be payable.

There has been some effort to explain and account for charges against anticipated expenditure in the literature. Careful reading suggests that transfer charges will rise to cover anticipated costs. In other words, they are open ended. This stands in contrast to what the sales person said.

The sales person was selling apartments off plan with no definite figures as to immediate and future charges and she clearly stated the only transfer charge was a 1% fee. This was incorrect.

The overall impression was that this is very early days for this company and that, even if intentions are good, experience is lacking.

Property 3: A retirement housing property resold via a local estate agent

This was advertised through a local estate agent. I understood from the agent that they market a lot of retirement property managed by the same retirement housing management company.

The development was completed fifteen years ago , and contains 44 retirement flats for occupation by people of 55 and over. Residents share communal facilities. These are: a lounge, communal laundry and guest suite and garden. All residents are covered by a 24 hour community alarm service.

My Visit

I was told there was a manager on site Monday to Friday between 9am and 5pm; however, she was not there when I visited between 11am and noon on a Friday. There is also a janitor.

It was easy to arrange a viewing and the experience differed very little from viewing any ordinary property. However the agent who showed me round appeared to be seriously under briefed on many aspects of the property. There was no attempt to discuss the implications of living with shared facilities and I was not shown either the lounge or the guest accommodation. When I asked, the negotiator was uncertain and said it would be better to see it when the manager was around - she was not on site at the time. I think he did not know the layout of the whole building.

After discussion of the service charge, I asked if there were any other charges I should be aware of. I was categorically told there were no other charges. This was wrong. A lease from this development reveals that there is a 1% transfer fee and 1% contingency fee.

The agent did not know the remaining life of the lease *off hand*. I asked to see a copy of the lease.

Materials Presented

I was not sent any particulars prior to viewing. I asked for them after the viewing and received them immediately. They included several details but no information on any charges that might apply once living there or on resale.

Follow Up Questions

I rang the estate agent's office and again asked for a copy of the lease, and details of any other charges I thought might have been overlooked. Was there, for example, any ground rent to pay? While I received answers to the specific questions I asked, there was no response to my request for a copy of the lease and no information about any charges payable on resale.

A fortnight later, I rang and again asked to see the lease. The estate agent said, *That's usually held by the solicitor*. The estate agent said there were *no nasty covenants or anything*. *When you have agreed a price your solicitor will want to ask for the lease*.

Summary

I was not informed about any charges payable on resale, and when I asked about any other charges besides service charge and ground rent, I was categorically told that there were none. However, according to a lease from this development, there is a 1% contingency fee and 1% transfer fee.

Property 4: A retirement housing property resold via a local estate agent

This was a one bedroom apartment in a recently built block of sheltered housing and the owners had lived there for about 18 months.

My Visit

I was shown around the flat by the estate agent and the current resident.

There was discussion of service charges and ground rent, although there was some confusion over both of these. However, the contingency fee (1% of proceeds of sale of the apartment, payable to the developer, not the service company, on resale) had not been mentioned, so I asked the agent specifically on the way out. He was not sure as to whether there was one, but thought not. I asked him to check.

Materials presented on visit

There was a normal prospectus describing the flat but apart from specifying *over 55's* there were no details of any special terms or charges payable once living there or on resale.

Follow Up

A woman from the estate agent phoned me after the visit to gauge my interest, not the man who had shown me round. I asked her about the fee which might be payable on resale. She was surprised to hear of such a thing but said she would check. She has not got back to me.

Summary

- The agent appeared to be top of his brief and I would have assumed (wrongly) that he had informed me of all the costs associated with such a property.
- He was unaware there might be any form of transfer charge. Perhaps this is not surprising as the transfer charge is a payment that has nothing to do with the agent. If the resident was aware of it, it would not be in her interest to mention it.

- In buying such an apartment, there is no interface with the company providing the service except through speaking to the manager (if they happen to be around) or through the internet.
- If a prospective buyer does speak to the manager, they may be more focused on how he does his day to day job and how he interacts with the residents than on talking about details of the contract.

Property 5: A one bedroom flat, in a retirement complex with resident manager, on the market through a local estate agent. Built 2008.

Compared with –

Property 6: A two bedroom flat in a nearby retirement complex with the same developer and management company as Property 5, but built in 2005. On sale through the same estate agent.

This was a combination of visits arranged by the estate agent when I enquired about one particular property.

My Visit

The same agent showed me round both properties.

At Property 5, I also met the manager and spoke to her at some length. We discussed the charges payable once living there and she was very informative.

The manager was not available at the second, older, flat (Property 6).

Having been shown both properties, I stressed to the agent that I was anxious to know all the charges that attached to each property. There had been no mention of a transfer or contingency charge. I asked the agent directly and he said, *No. None.* As an afterthought, he said, *Oh, unless [the developer] - not these guys [ie the service company] - I think they may take 10% of what it sells for. I'll check. It's not like that on [the first development] but they may have added it in here.* He said he would check the position for both. This really reflects the lack of information the estate agent had.

Materials presented on visit

There was a normal prospectus describing each flat. There was no mention of any charges payable once living there or on resale.

Follow up

When the estate agent did not get back to me about the transfer charges, I rang to ask. On the line, he told me that there was a 10% transfer fee on Property 6 and none at all on Property 5. According to the leases, he was wrong about both properties. There is in fact a 1% transfer fee (not ring fenced for anything in particular) and a 1% contingency fee (ring fenced for service provision and upkeep of the buildings) on both Property 5 and Property 6.

I also asked how long the leases had to run. He did not know, but said he would find out.

I asked him to confirm what he had told me in an email when he had had a chance to look at the lease. I have not heard back from him.

Summary

- It is quite easy to be confused by the fact that charges will be made by both the service company and the developer. It was necessary to check both websites to understand what might be charged, since the estate agent did not have a handle on it.
- It was really helpful to happen upon the opportunity to speak at length to the service manager. She was very much better informed than the estate agent, but she did not mention the transfer charges.
- The estate agent was not well informed, though he seemed competent. Some of his verbal information was wrong. The mention of a 10% transfer charge on Property 6 was delivered almost a throwaway line when I pressed him at the end of my visit. It was also incorrect, actually overestimating the amount of the charge. However, the statement may indicate that he had sold other properties in the past which did have a 10% charge (in a report focused on sheltered housing, the Office of Fair Trading indicated that charges of this level could be found.) He also incorrectly told me that there were no transfer charges on Property 5.

Summary points arising from the six site trips

1. It is important to remember that purchasers are likely to be elderly and in a heightened state of stress when making the purchase of a retirement home. In some situations this may lead to a *head in the sand* approach to the small print, especially if the offering seems to provide an easy and attractive solution.
2. It should not be assumed that all (especially elderly) purchasers are comfortable of finding vital information on the internet.
3. Particularly in the case of new builds, the business is marketing led. It is vital that salesmen represent the financial demands accurately and comprehensively. In the

case of Property 2, for example, the sales person had not been provided with the information and, rather than have no answer, extrapolated from what she believed to be the case at other developments. This turned out to be different from the published guidelines.

4. In the case of the estate agent at Property 3, there was shockingly little information. I believe that I was seriously misled into believing there was no transfer charge. It took some determined research on the internet to discover its existence.
5. Where the developer, selling agent and management are all the same company, it is relatively easy to say that communication must be clearer and fuller. Where the developer, management company and selling agent are separate, there is a higher risk of poor communication. Estate agents do not generally check the terms of leases of property they are selling.