The Competition and Markets Authority (CMA) announced on Friday afternoon that their investigation into the escalating ground rent saga had reached some “very disturbing” conclusions, and that housebuilders had been unfairly taking advantage of their bargaining power in property transactions, to the detriment of residential purchasers.


This is likely to be a very positive development for conveyancing professionals and their PI insurers, who have so far borne the brunt of consumer complaints about the situations they have found themselves in.

By way of brief background, the practise of selling new build houses on a leasehold (rather than the more traditional freehold) basis – and then retaining the right as landlord to charge onerous fees as ground rent or service charges – has been used extensively over recent years by residential housebuilders as a generative additional income stream. But this much-criticised sideline has often resulted in purchasing homeowners becoming trapped, as the lease provisions are sometimes so onerous that their properties effectively become unsellable.

The CMA’s report – which was commissioned back in June last year – is highly critical of house sales being undertaken on a leasehold basis, and appears to conclude that they view onerous ground rent provisions in residential transactions as ‘unfair contract terms’ which are therefore unenforceable. In an interview on Radio 5 Live on Friday, George Lusty of the CMA confirmed that affected purchasers may well be entitled to refunds from those to whom onerous fees have already been paid. He said “if we can attack and challenge these unfair ground rent terms, then they’re invalid – all the money that was collected on them isn’t valid and that has to be paid back”.

Without wishing to get carried away, this does appear to signal a radical move from government towards banning leasehold house sales, and bringing the current saga to a conclusion by holding housebuilders to account. A welcome side effect of such a radical move would be to divert the focus of attention away from conveyancers, who so far have been the target of consumers’ claims, the argument being that they ought to have advised their clients about the onerous provisions before contracts were exchanged. If we do reach a point (and we are not there yet) where all onerous charges need to be repaid, conveyancers will be spared future claims. And there may even be the possibility - albeit remote - of recovering sums that may have been paid out on claims to date.

So if you do have claims in this area that are ongoing or pending, you would be well advised not to settle them whilst this situation continues to develop.

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