A grassroots campaign taking action against mammoth fuel bills and working towards an affordable, sustainable and democratic energy system

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Strengthening leaseholder protections over charges and services: consultation

Response from Fuel Poverty Action

We are very glad to see your attention to the appalling injustices now being suffered by leaseholders. It is beyond our capacity to respond to your proposals as a whole but we wanted to make some specific points. Concrete examples can be seen in our earlier consultation response here, and in other responses on heat networks from 2016 - 2025, on our website here. We are aware that a few of these issues are now being addressed, but many are not.

The cost of heating is a major part of the service charges in many developments, and the inadequacy and unreliability of many heat networks is enough to leave many leaseholders cold, contributing also to damp. Heat networks are often regarded as a separate issue, to be dealt with, for instance, by the new legislation and the coming regulations. We note that they are barely mentioned in your consultation (the same is true of the critical issue of cladding, which we cannot approach here).

But heat networks are not separable from the buildings' infrastructure, and the payment and contractual systems for the heating are entirely entwined with those of the building as a whole. This often includes a labyrinth of disputed responsibilities divided between freeholders, developers, local authorities, heat providers, and managing agents.

We believe it is essential at each point of your considerations to see how proposals apply to, impact, or are affected by heat networks.

A case in point is the danger of residents losing their homes because of the high cost of heat, either through eviction of tenants or forfeiture of leases. The new heat network legislation has postponed dealing with this issue because, they say, changing this intolerable injustice “may require legislative change”. We do not find this delay acceptable: it should *immediately* be made clear to social housing providers and to private landlords and freeholders that eviction threats for heat charge arrears are neither expected nor acceptable and that every possible step will be taken to ensure they are never used, even in advance of legislation. But in the meantime, the legislative change on this issue must be worked out in the context of leaseholder protections. There appears to be a danger of leaseholders losing certain rights through decoupling heat from other charges/rent. This must be dealt with, if necessary by legislation.

We want to raise a few points in response to your specific questions:

2.2 **New standardised service charge demand form**
'*We also propose that the annual budget be provided to leaseholders as part of the initial service charge demand form, setting out planned expenditure for the year ahead. This would break down what service charge money is intended to be spent on into standardised cost headings to identify items of expenditure and more easily allow for comparison with previous years, or even between buildings.'*
These provisions must specify that the costs of heat networks should be included and broken down into their components.

2.4 Extended rights to obtain information on request

'*While leaseholders currently have the right to ask for a summary of costs, and then to inspect any documents related to this summary, these provisions are limited and can prevent leaseholders from inspecting documents which they should be entitled to.'*

We hear a lot about this situation where landlords are refusing to justify the calculation of the heat charges or state the gas price being paid. Any provisions here need careful provision for enforcement of residents’ rights.

2.5 Scope of the new proposals for renters

We are glad to see your proposal that all protections should be extended to social housing renters, who are presently disadvantaged by not having access to information available to leaseholders.

Section 3.1 *'we are seeking views on making use of a reserve fund mandatory in both new and existing leases'.*
It is staggering this is not already in place. The lack of reserve funds leaves residents liable for huge costs, both on heating and building fabric, including fire safety.

Table 1. Information leaseholders are entitled to receive

Category of information: Building and site management

This table needs to have these added:

- Details of any engineering reports for mechanical & electrical systems in the building
- Details of any engineering reports on efficiency or latent defects on the building heating and cooling systems.
- Design and Operations & Maintenance information (drawings, specifications and the like) for the mechanical & electrical systems)

On invoices for repair work they must clearly address in a commentary, as to whether or not the defect that has occurred is due to be paid by a construction contractor who is liable under the original contracts or whether it is a random failure or a failure due to incorrect maintenance.

Question 40
'Do you agree with the proposal to give leaseholders the right to request to retrieve documents relating to matters for up to six years?' [Yes/No]

No, this should be 12 years as the developer/freeholder may have recourse to make a claim against contractors and designers under collateral warranties up to that time. In order for the residents to force the landlord to pursue that, before the freeholder doesn't bother and just puts the cost on the service charge/ sinking fund.

Leaseholders must not bear large historical capital remediation costs over coming decades, just as they must not bear the cost of recladding their buildings when they were not responsible for the flammable materials chosen. (Some face both.)

Question 54
Do you think that managing agents and landlords should also have to declare conflicts of interests with the insurance broker and insurer? [Yes/No]

This also extends to the cause of massive increases in the building insurance due to endemic defects.

And it extends beyond insurance to other aspects, eg choices of contractors. A common complaint is that developers choose contractors not on the basis of best value for residents, but for their own reasons. Residents of New Festival Quarter, a Bellway development in Poplar, ask, “While Bellway were freeholder they appointed their preferred DH maintenance company 'Watkins'. The contract appears to be 225% higher than works carried out outside of Bellway being freeholder. Were Watkins paying Bellway a kickback (from leaseholder money) to Bellway for this contract?” Even if this is not the case, the fact remains that there is no transparency or control to prevent it.

As well as actual conflicts of interest there is a critical disconnect between the people who make decisions about work and costs and people who desperately need things to be done well and cheaply. in relation to Managing agents, freeholders, and developers have no interest - financial or otherwise. For instance, residents have no confidence in their procurement of gas and other fuels. Managing agents do not necessarily even ensure that the gas for communal heating is VAT rated at the correct 5% not 20%! Nor do they have any interest in whether boilers are functioning well, or whether heat is being lost through pipes. The whole system is not designed to minimise costs to end users, and when energy prices rise, as they have been rising, the results are simply disastrous. This is a fatal flaw of the leasehold system. But some steps can and should be taken to specify both transparency and controls, with mechanisms to support residents in challenging those in control, and serious compensation for what goes wrong.

Finally, business models based on an assumption that network operators can, when they want to, force leaseholders to provide huge capital sums for repair, replacement or extension of heat networks should be proscribed by regulation. On the ground we find this is one of the most hated aspects of District Heating. It would of course help if people were TOLD when considering buying a lease that they may be subject to additional levies of tens of thousands of pounds. But such a system -- as far as we know, unique to the UK -- should not be allowed to exist in the first place. The sums involved are too big and leaseholders, already under pressure from soaring ground rents and other often exploitative practices, cannot afford them. Even the distinction between repair and improvement or extension is not well maintained in practice.

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