

Cynulliad Cenedlaethol Cymru
Ymgynghoriad ar y Bil arfaethedig
ynghylch Cartrefi Symudol (Cymru):
Ymatebion

Gorffennaf 2012

National Assembly for Wales
Consultation on the Proposed
Mobile Homes (Wales) Bill:
Responses

July 2012

Peter Black AC/AM



Cynulliad Cenedlaethol Cymru yw'r corff sy'n cael ei ethol yn ddemocrataidd i gynrychioli buddiannau Cymru a'i phobl, i ddeddfu ar gyfer Cymru ac i ddwyn Llywodraeth Cymru i gyfrif.

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Foreword/Rhagair

Hoffwn ddiolch i bawb sydd wedi neilltuo amser i ymateb i'r ymgynghoriad hwn. Bydd y canlyniadau yn ddefnyddiol iawn wrth imi ddrafftio fy Mil.

Rydym wedi cael nifer o ymatebion a gyhoeddwyd mewn tair rhan. Yn yr achosion lle mae pobl sydd wedi cyflwyno tystiolaeth ysgrifenedig wedi gofyn inni beidio â datgelu eu henwau a lle mae'r ymatebion yn cynnwys gwybodaeth sensitif, rydym wedi golygu'r ymatebion i warchod hunaniaeth. Felly, mae'r deunydd sy'n cael ei gyhoeddi yn gofnod anhysbys, gan fwyaf, o'r materion y mae nifer o bobl yn eu hystyried yn broblemau.

Fy mwriad yw cyflwyno fy Mil i'r Cynulliad tua diwedd mis Hydref 2012 ac, unwaith eto, hoffwn ddiolch i bawb sydd wedi cyfrannu at y gwaith o baratoi'r Bil hwn.

I would like to thank everyone who has taken the time to respond to this consultation, the results of which will be very helpful in the drafting of my Bill.

We have received many responses which have been published in three parts. Where those who have submitted written evidence have asked for their names to be withheld and where responses contain sensitive information, we have redacted the responses to protect identities. Therefore, the material being published gives a substantially anonymised record of matters where many consider there are problems.

It is my intention to introduce my Bill into the Assembly towards the end of October 2012, and again I would like to thank everyone who has contributed in the preparation of this Bill.

Peter Black AC/AM

Bil Arfaethedig Cartrefi Symudol (Cymru)

**Ymatebion i'r Ymgynghoriad
Gorffennaf 2012 (Rhan 3)**

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Proposed Mobile Homes (Wales) Bill

**Consultation Responses
July 2012 (Part 3)**

**Bil Arfaethedig Cartrefi
Symudol (Cymru)**

**Proposed Mobile Homes
(Wales) Bill**

Ymatebion i'r Ymgynghoriad

Consultation Responses

*Saesneg yn unig / only available in English

MHM = Ymatebion gan grwpiau/sefydliadau eraill.

*MHM1	Cymdeithas Preswylwyr Rockbridge Park	Rockbridge Park Residents Association
*MHM2	Cymdeithas Preswylwyr Parc Caerwnon	Caerwnon Park Residents Association
*MHM3	Cymdeithas Preswylwyr Parc Bryn Gynog	Bryn Gynog Park Residents Association
*MHM4	Cymdeithas Tir a Busnesau Cefn Gwlad	Country Land & Business Association
*MHM5	Llais Defnyddwyr Cymru, sylwadau awdurdodau lleol	Consumer Focus Wales, Local Authority Views
*MHM6	Llais Defnyddwyr Cymru	Consumer Focus Wales
*MHM7	QualitySolicitors	QualitySolicitors
*MHM8	Cymdeithas Preswylwyr Willow Park	Willow Park Residents Association
*MHM9	Dinas a Sir Abertawe	The City and County of Swansea
*MHM10	Y Tribiwnlys Eiddo Preswyl	The Residential Property Tribunal
*MHM11	Darren Millar AC	Darren Millar AM
*MHM12	Cymdeithas Parciau Gwyliau a Pharciau Cartrefi Prydain	British Holiday and Home Parks Association Wales
*MHM13	Cymdeithas Preswylwyr Norton Manor Park	Norton Manor Park Residents Association
*MHM14	Comisiynydd Pobl Hŷn Cymru	Older People's Commissioner for Wales
*MHM15	Gwasanaeth Diogelu'r Cyhoedd Bro Morgannwg	Vale of Glamorgan Public Protection Service
*MHM16	Cyngor Sir Ceredigion	Ceredigion County Council
*MHM17	Sefydliad Tai Siartredig Cymru	Chartered Institute of Housing Cymru
*MHM18	Y Cyngor Carafanau Cenedlaethol	The National Caravan Council
*MHM19	Shelter Cymru	Shelter Cymru

*MHM20	Y Gwasanaeth Cyngori	The Independent Park Home Advisory Service
*MHM21	Cyngor Bwrdeistref Sirol Rhondda Cynon Taf	Rhondda Cynon Taf County Borough Council
*MHM22	Cymdeithas Genedlaethol Preswylwyr Cartrefi mewn Parciau	National Association for Park Home Residents
*MHM23	Mark Williams MP	Mark Williams MP

**National Assembly for Wales
Peter Black AM - Proposed Mobile Home (Wales) Bill
Consultation Response: MHM1 - Rockbridge Park Residents Association**

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25th June 2012

Mr. Peter Black AM
Legislation Office
National Assembly For Wales,
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Ref: Mobile Homes (Wales) Bill

Dear Mr Black,

I am the chairman of the Residents Association on Rockbridge Park and I am happy to respond to your Bill. I would also like to congratulate you your team and anyone who has had a hand in its formation.

I have been asked for advice on many occasions about some of the problems your Bill will help to rectify. I would like to offer one suggestion over and above what you have done. Residents Associations can, and do have a very marked affect for good on park life in general. Unfortunately, because of the nature of the U.P.O's where they operate, they will discourage by threat any proposal for them to be created on their parks.

Would it be possible to make this an "offence" to actively oppose their creation. Perhaps the RPT could be utilised to prevent this from occurring?

Once again many thanks for your hard work,

Kind regards,

D.J.Bromage
(Chairman Rockbridge Residents Association)

Q1 - The Residential Property Tribunal:

Reasoning:

I am happy for this tribunal to adjudicate with some slight reservation.

The tribunal members MUST have first class knowledge of the particular rules, laws and day to day circumstances that often occur within the industry. Whilst I have every respect for solicitors in the normal course of law, my experience is that not many have particular knowledge of the Park Home industry. A mere swatting up on these circumstances would not be enough to give confidence to park home residents that they can deliver a fair and proper judgment. I am firmly of the opinion that at least one of the members of the R.P.T. should have hands on experience of the type of problems experienced by residents at the hands of the U.P.O.

Q2 - Q3 - Q4 - Sale Blocking - Law Reform - Meeting of Parties:

Reasoning:

One of the most galling and heart rending situations about Park Home Life, is that occasionally we have to watch or hear of U.P.O.'s (Unscrupulous Park Owners) taking advantage of elderly and vulnerable people. They are particularly open to being bullied and or coerced into taking decisions because they are forced into them.

There is always a hidden agenda when this happens and is almost always profit generated. The proposed purchaser is entitled to take over the existing Written Agreement which. This means that the park owner cannot raise the site fees on the property other than through the R.P.I. Much better for him/her to site a new home and not to have this restriction.

The routine is to hold up giving permission for any new buyer until the elderly person gives in and sells to the U.P.O at next to nothing prices. This results in the U.P.O buying older properties for as little as five or six hundred pounds when on the open market they may achieve tens of thousands. ***"The Sale Has Been Blocked"*** and significant financial loss and potential subsequent hardship is what an elderly person now faces. When a U.P.O. Veto's the sale on the basis of unsuitability of the proposed purchaser the same result occurs.

The opportunity for U.P.O.'s to operate like this MUST be taken away. The ONLY way to do this is to take away their opportunity to influence any potential buyer from the purchase. The U.P.O. will always say that they must have some control over who lives on the park and to some extent we would all agree. The social cohesion and well being of residents must be safeguarded.

Where the disagreement comes is the false assumption that this control can only be achieved by a meeting with the buyer and the Park owner. I believe this to be utterly false. We are all subject to the "Park Rules". These rules are stated from the outset. We and the Park Owner are also subject to the "Site License Conditions". Surely it is not beyond the wit of Council and or the R.P.T. (Residential Property Tribunal) to state clearly the conditions of purchase required, and to apply rulings which govern these requirements without the "meeting/interview" with the park owner. However, I believe that the Written Statement should be the primary tool mechanism to deal with this ongoing issue.

If the logic is that it is important that the park owner has to interview to ensure that only the "right sort of people" come onto the park, then it is even more important for existing residents who must live with the purchaser. If this logic is to hold water - then surely residents should also have the same right of interview perhaps through a Qualifying Residents Association. ***None or Both.***

If it is considered nonsense for the residents to interview then the same logic holds true for the Park Owner. All requirements should be covered by the Park and or Licencing rules. This negates the need for the "interview" and potential for a veto or the opportunity for negative or damaging comments from U.P.O.'s. which generally leads to the sale falling through.

Therefore I would recommend with considerable enthusiasm that you through the appropriate law reform:

Remove entirely the right of a Park Owner to veto a prospective purchaser.

Q5 - Q6 - Q7 - Q8 - Q9 - Licensing:

Reasoning:

The Current Licensing system as it stands now is woefully unfit for purpose and is in desperate need of reform

Licensing is of vital importance to the Park Site Owners business. It is a clear statement that he/she has satisfied the local authority that they are suitable people to deal with the day to day life of the residents on their park, some of whom are elderly and may even be infirm. They run parks for profit and this is fair and proper but they must not profiteer unscrupulously off vulnerable elderly people and the license is a vital mechanism to monitor this. These licenses must be displayed on a public notice board on the park and show the limit and type of residencies licenced. They should also refer to the particular properties involved. By being sure that right and proper people only get a licence then it follows that the incidents of unfair dealing by UPO's will diminish.

Site visits by local officials should be encouraged. To often U.P.O.s appear to believe that once granted, the license gives them carte blanche to profiteer. These visits should be made on an ad hoc basis and should occur at least twice during a five year basis. They should be funded through the cost of Licensing and or substantial fines levied on U.P.O's for breaking their Licensing requirements.

I firmly believe that if you regard the license as a measure of the suitability of the people who run a park, then it must not be a simple one off issue. It is important that offending U.P.O.'s are dealt with severely. I therefore contend that these Licenses should be renewed and paid for on an ANNUAL basis. The same effort must apply to vetting the suitability of owners as occurred in the first year and should only be granted for periods of one year.

In the matter of advice from the Welsh Government I think it prudent that a standard form be used for inspection and frequency. This should be carried out with regard to the requirements set out by the Welsh Government. This level of standards for sites should be set out and adhered to. The frequency of visits should be at the very least two visits per five year period, more if there are breaches in standards expected of them. Site owners do make a very good living from these parks and should be held responsible for the good upkeep and condition of them. These standards will require thought and a common sense approach.

Q10 - Q11 - Fees for Licensing:

Reasoning:

Q 10 refers to the way fees should be determined. I agree that a combination of the size of the site and the amount of pitches contained on it should be adopted. This would provide a clear guide to the development of the park. Whilst this may not seem relevant at first glance, showing the way that the site owner is operating, i.e. are there more new homes being placed on the park or is the park owner just replacing older ones. This will indicate the type of development being used.

I believe that an annual fee should be charged for each renewal of licence. There are too many examples of licensing to mention them all, however, if we wish to run a car on the highway, it must be road taxed at a considerable figure to each individual similarly if we wish to watch TV we must pay the licence fee. It follows then that site owners licences are at least as important and they should pay their license fee annually.

Q12 - Q13 - Fit and Proper Person:

Reasoning:

I am firmly of the opinion that anyone who has considerable influence over the lives of peoples home and lifestyle should have been proved "Fit and Proper" before a license is even considered, further, any other person who is in a position to act on the behalf of the licence holder must be similarly evaluated. If I as an individual am asked to be "Father Christmas" for children - I am expected to be checked by using the CRB test. If nursing in a residential home, many qualifications and checks are required. Where vulnerable people are involved in other walks of life stringent checks are mandatory, surely the same test should be applied in this case.

I do agree that the standards used for HMO's may well fit the profile in general but I think special attention should be paid to the unique case of Park Home Sites in respect of their style, construction and operation. It is not just one house being dealt with but an entire "estate".

The background of individuals wishing to acquire a Park Home License should be taken into consideration. Perhaps their financial status should be referenced as if they are not able to maintain the park for a financial point, there may be a requirement for the local council to step in at considerable cost.

Q14 - Q15 - 16 - 17 - 18 - 19 Breaches of Licence and Conditions and Fines:

Reasoning:

We are now at the heart of any and all rulings which you decide to put in place. If there is no punitive action to consider, what's to stop the UPO from totally ignoring any site and licence conditions of operation placed upon him/her by the local authority. This authority must be given the powers to act in cases where the rules are breached. The ability to remove licences must be a prime mechanism to ensure compliance. This is another area where the RPT should be used.

The inclusion of substantial fines will also serve to persuade UPO's either to "toe the line" or remove themselves from the business. I do agree that the use of "Fixed Penalty Notices" is a very satisfactory way of dealing with minor offences, however, I also believe that these should be recorded and be a matter of consideration each time the license comes up for review. The size of the fines for major breaches should be prohibitive. £20,000 is a substantial figure but does not represent a huge threat to a UPO who is used to dealing in the hundreds of thousands. RPT,s need to be given the necessary authority to impose all rulings other than criminal in all cases. They need to have the teeth to create the needed regard from the UPO.

Local Authorities should have the power to serve enforcement notices and if necessary carry out the work required as a result of such notice. For too long it has been the practice of UPO's to ignore all but the profit making side of their operation leaving residents to "get on with it". This should result in a judgment of (a) a significant breach where fines may be levied or (b) a minor breach and the appropriate action taken and recorded for licencing consideration when due.

At a certain point, having regard to the total and nature of recorded breaches, there may well be a case for an authority to consider that enough patience and leeway has been given. In which case they may decide that a revocation of license is necessary to safeguard the interests of the resident. Where this is done, the period may be set for whatever the severity of the breach suggests. Or it may be a permanent revocation where criminality occurs.

Under the conditions as suggested in the foregoing paragraph, there may well be a case for the Park Home Owners to take over the management of the park. This has worked on some parks where there is a private Site Owner. The same rules must apply and this should only be considered where an active and well run qualifying Residents Association is in force. There must also be a source of reference open for them to the local authority for help and guidance.

However, often where UPO's are concerned, Resident Associations are "not permitted". In these cases, this would need further consideration. A Residents Association should be formed and assisted initially to operate successfully

Q20 - Written Agreement & Site Rules:

Reasoning:

The Written Agreement is possibly the most important of all the documentation available to residents and is passed on when the homes is sold on. I agree that it should contain definite reference to site rules. It should as outlined before contain details of what criteria a new resident should fulfil and in so doing, negate the need for the “interview” by the UPO with a hidden agenda.

I agree that there should be a Standard Written Agreement drawn up by the local authority paying due attention to very local variation. These agreements should be lodged with the local authority with certified copies issued to each resident.

I further agree that any changes to these agreements must be subject to the authority of the Residential Property Tribunal. These changes should be the subject of a meeting with the Residents Association who should be given the opportunity to offer comment and guidance where necessary. Proper notice should be given either directly or through the Residents Association of any changes. A period of 28 days is the usually accepted period.

Q21 - Damages and Compensation:

Reasoning:

I totally agree that where breaches of the written agreement occur, then compensation and or damages should be awarded. In other walks of life, where breaches of agreements occur substantial compensation is often awarded by the courts. This must be of utmost importance where “sale blocking” has happened.

I agree that this responsibility should be given to the (RPT). Due regard should be paid to the record of the site owner where fines, fixed penalty notices or compensation is evident.

Q22 - Q23 Pitch Fees:

Reasoning:

Pitch fees should be regulated. The annual increase in line with the RPI/CPI represents a satisfactory method. I would prefer the CPI rate since this is generally considered the measure by which the government uses for inflation targeting.

The only other comment I would wish to make is the opportunity for site U.P.O.'s to increase the pitch fee relative to work he decides to do which he refers to as “improvements” when in fact the work represents maintenance, however this is covered in question 24.

National Assembly for Wales
Peter Black AM - Proposed Mobile Homes (Wales) Bill
Consultation Response: MHM2 - Caerwnon Park Residents Association

Dear Sir/Madam,

I am the secretary to Caerwnon Park Residents Association in Builth Wells and we, as a committee, have met Peter on the park to discuss his proposed bill and this is our response to his proposals.

1. Yes. Reason: Cost and time efficiency
2. Yes. We have had cases of constructive obstruction.i.e. You cannot sell until those slabs are removed.
3. Yes. Remove right of veto. As long as the buyer meets the park criteria and the seller complies with sale rules i.e. Passing on the park rules and agreement.
4. No. There should not be a tripartate meeting. Reason: Park Owner could stall for time, also it could be used to intimidate or misinform.
5. Very weak, not enough powers and more regular inspections needed.
6. Unannounced regular intervals. Charge for licences and inspections and more powers to the licencing officer. Speak to residents to gain overall impression.
7. Yes
8. Spacing, maintenance, amenities, number of homes. Yes to guidance.
9. 5 years and for new Park Owners a much shorter probationary period i.e. 2 years.
10. Yes. Combination of all these factors.
11. Yes
12. Yes. Anything is an improvement on the present.
13. Any previous County Court Judgements and references from Professionals i.e. Doctor, Magistrate, Solicitor.
14. It should be unlimited.
15. Yes. For any breach of the site licence.
16. Yes. Especially in emergency situations.
17. For persistent breaches of site licence.
18. This would definitely be as a last resort.
19. Yes. With cooperation of the majority of residents and local authority help.
20. The Park Owner should give 28 days notice and if there is a residents association he should consult with them, if there is no ass. he should hold an open meeting with residents.
21. Yes. With additional powers of enforcement.
22. Yes. A complete review is needed, much unfairness in system at moment.
23. Yes. C.P.I and not R.P.I. Should be used. Rents should be standardized across a park, there is a difference on our park of over £50 per month between older units and new ones.
24. Yes.
25. Yes.
26. Yes. It is a private home inside and the interior is nothing to do with the park owner.
27. A breach of site licence and reasonable objections from neighbours.

In addition to Peters' proposals for legislation we would like to add two more

suggestions.

1. In the case of increases in utility charges there should be a 28 day notice period as there is for the pitch fee increase.
2. For uninhabited properties i.e. Homes for sale but still owned (maybe owner deceased and relatives selling but not occupying) there should not be any other charges for utilities other than standing charges. On our park those homes without water meters are still charged a quarterly water charge even though no water has been consumed.
3. All residents should have a choice to have water meters installed. Majority use of water meters would encourage park owners to sort out any leaks.

We do hope this response is helpful and we wish Peter all the best for its success.

Yours sincerely

Susan Richardson
Secretary. Caerwnon Park Residents Association.

**National Assembly for Wales
Peter Black AM - Proposed Mobile Homes (Wales) Bill
Consultation Response: MHM3 - Bryn Gynog Park Residents Association**

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16th June 2012

Response to Consultation Document on Mobile Homes

Submitted by Bryn Gynog Park Residents Association

My name is Alastair Collins chairman of Bryn Gynog Park residents association. We have a committee consisting of a secretary, treasurer, vice-chairman and three other committee members duly elected by the residents association at the Annual General meeting in March 2012. The Association has a total of forty three homes as members out of a total number of fifty three home on the park, of which three are unoccupied at the present time leaving a total of seven who prefer not to be members.

Bryn Gynog Park is on the outskirts of Conwy North Wales.set in a valley with a total of fifty three home all residential.

The age of the residents on the park range from fifty years up to ninety years, quite a few of the residents find the consultation document to much to handle and would not be prepared to answer the questions or reluctant to be involved. We have talked to most of the members of the residents association at various times and the committee have a mandate to answer on their behalf.



Alastair Collins Chairman

Bryn Gynog Park residents Association

Answer 1

We agree that the Residential Property Tribunal should have jurisdiction to deal with all disputes relating to this Bill, aside from criminal prosecutions.

The reasons for using (RPT) is that homeowners would be encouraged to use this service rather than having to go to court, mainly because the cost of RPT is a lot cheaper option and usually no costs would be awarded. Many home owners have never been into a court throughout their life and would rather carry on putting up with the problems than going to court RPT is more suited to home owners.

Answer 2

We have no experience of sale blocking on this park. However the Ownership of the park has just changed to Wyldecrest and we could see this as a possible problem in the future.

Answer 3

We definitely agree that the law should be reformed to prevent sale blocking.

Our option is to completely remove the right to veto a prospective purchaser

Answer 4

We agree that there should be a meeting involving all parties prior to the sale/purchase. The reasons being that the written agreement needs to be signed over to the purchaser, the Park owner needs be satisfied that the purchaser meets all the requirements of the park rules age and maybe restrictions on pets etc. This then takes the responsibilities off the persons selling the home and back to the Park Owner..

Answer 5

We think that the current licensing system for residential parks is totally inadequate.

We have wrote to the Local Authority many times over a period of four may be five years and they never take any action against the Park Owner. On the few occasions that they have replied to letters which is not very often they say it is not a licensing issue. even when we no it is.

Answer 6

The Local Authority should inspect sites Annually or when complaints arise that are reported to the Local Authority.
They should be financed by charging the Park Owner for a Licence.

Answer 7

The Welsh Government should issue **Full and detailed** guidance on the Licensing of Mobile Homes on residential parks.

A good place to start would be that the Local Authority read, understand and except the Model Standards 2008 for Caravan Sites in Wales. All too often they will not except that the model standards are there to be used and all too often ignored.

The Model Standards should be used for existing sites as well as new ones. However due to the terrain and boundaries we except that all the requirements Cannot be fulfilled.

The Model Standards need to define more clearly the requirements in particular the following items. Removing the word "Should" and be replaced with "Must" would improve the situation of finding a way around things.

5. Lighting Model Standards 2008 refers.

This states the following.

Roads, communal footpaths and pavements must be adequately lit between dusk and dawn to allow safe movements of pedestrians and vehicles around the site during the hours of darkness.

What it fails to do is define the spacing and illumination levels as a requirement.

7. Maintenance of Common Areas, including Grass, Vegetation and Trees Model standards 2008 refers.

This is clearly defined but always neglected or non existent.

Empty pitches are always left with debris strewn around and soon becomes the Park Owners Tip. Roads are never swept ,moss never removed and trees neglected grass areas not cut as often as they should be.

This is a perfect application for **Fixed Penalty Notices**.

9. Electrical Installations Model Standards 2008 refers.

This is a subject close to our hearts. We constantly suffer from poor voltage on the Park as low as 146volts in the winter months, this is well outside the guide lines issued under the Electricity supply quality and continuity regulations.

ESQCR because this regulation is not directly referred to in the model standards we are constantly told this does not apply by the Park owner. If you care to read this regulation you will find that it is relevant legislation and a statutory requirement. So it is **Important** that this is included in the licensing of residential caravan parks where the Park Owners provides the electrical network on the Park as a unlicensed network distributor.
(ie sells electricity to park residents).

The test certificate for the electrical installation should be renewed on a three yearly maximum period, and when any alteration is made to the network operated by the park owner. The test certificate should be available on the Park notice board for inspection and a copy lodged with the licensing authority for inspection by Park home owners.

All other paragraphs under item 9 should remain in the model standards

10. Water Supply Model Standards 2008 refers. (part)

Due to our Park having serious problems with water supplies, and does not meet all reasonable demands, a additional paragraph needs to be added stating the actual **Minimum Pressure** at each home at all times of demand as per any domestic dwelling house.

Work on water supplies should be certificated so that only qualified persons can carry out the work instead of anyone that the Park Owner deems can carry out the work.

All other paragraphs under item 10 should remain in the model standards.

15. Notices and Information Model Standards 2008 refers.

This is another paragraph which is never enforced and lends it self to **Fixed Penalty Notices. Notice.**

The mandatory notices are never kept up to date and always incomplete On the park notice board.

We think that all notices that should be displayed on the park notice board should be available at the Local Authority offices for inspection by the home owners by appointment.

All recent utility bills should be displayed on the Park notice board for inspection by the residents. This should be enforced by Fixed penalty notices.

16. Flooding Model Standards 2008 refers.

Although we have a river running through the park we have never seen a risk assessment for flooding. We consider this to be another use of **Fixed Penalty Notices**.

17. Or 18 Requirement to comply with Regulatory Reform (Fire Safety Order 2006) Model Standards 2008 refers.

During the last five years on our site we have had two serious fires in park homes one of which was a fatal incident, both homes were destroyed.

We have never seen any Fire risk assessments for the Park.
This is another use for **Fixed Penalty Notices**.

All Notices and information that should be displayed on the Park notice board, A copy of these documents should be lodged with the Local Authority for inspection by appointment to the residents.

Annex to Model Standards 2008 for Caravan Sites in Wales.

All the items in the Annex need to be looked at and clearly defined. The Park Owners will find a get out clause for everything.

Answer 8.

All the Model Standards should be strictly enforced in the Licensing Conditions There should be FULL guidance issued by the Welsh Government.

Answer 9.

The Site Licence should be for a maximum of twelve months.
Local Authorities should be able to grant licences for shorter periods if deemed a requirement.

Answer 10.

The fee for mobile home site licensing should be referenced to the number of pitches or the cost to the local authority .

Answer 11.

A regular annual charge for ongoing administrative charges should be applied. If the Park Owner complies with all the requirements of the Licence this should

be minimal.
So good Park Owners would benefit.

Answer 12.

We agree that site operators must pass a fit and proper person test before being granted a licence.

At the present time anyone can request a licence and be issued with one. Without some form of investigation any person can be issued with a licence we have seen this on so many occasions in the past.

In big companies the licence may be issued to one person within the company who applies for all the licences for all the parks owned by that company however a manager or director is allocated a certain number of parks to manage.

Not only the licence holder but any person that is part of the management team operating each individual park should be approved. When Parks are sold to new owners the existing trading company is still used to enable them to use the same licence. When a park changes ownership the licence should be renewed under the new management otherwise they can continue trading on the existing licence.

Answer 13

Apart from criminal convictions. The other considerations should be,
Have financial resources to be able to run and maintain the Park.
Proven ability to run a Park, just like the requirements for any trade carrying out work on Electric, Water and Gas on the Park.
Demonstrate they have adequate training in Duty and Care for the residents.
Demonstrate they have adequate training in Health and Safety Matters.
Maybe all employees that work on the park should have a CRB check.

Answer 14.

The maximum fine for operating a site without a licence, or breaching a licence condition should be significantly increased to £50,000. The reasoning behind this amount is if the work required to maintain the licence would cost say £25,000 if the fine was less than this they would just not do the work and pay the fine. This does not help the residents or the Local Authority.

Answer 15.

Local authorities should be able to issue fixed penalty notices see our answer to question 15 to 18 ideal for fixed penalty notices, there should be a fixed

penalty for each item not a collective fine for all minor infringements.

Answer 16.

Local Authorities should have the powers to serve enforcement notices. And to carry out work in default of breaches of licence conditions. And recharge all costs for the work plus all administration costs. This option is available in the Model Standards 2008 but never enforced. The Local Authority should enforce a time scale for the completion of the works.

This may be the only way the work will get done.

Answer 17.

A site licence should be revoked after three serious breaches of the site licence. Should a fatal incident occur where the blame is attributed the Park Owner the licence should be revoked.

Answer 18.

We do not envisage any problems with the Local Authority taking over the management of mobile home sites. The Pitch Fees could be collected by the Local Authority to reimburse them for the cost of running the site.

Answer 19.

Not sure how this would work successfully. No other comment.

Answer 20.

This is two questions in one and should be treated separately.

Changes to written agreements.

Should the need arise to change the written agreement home owners must be consulted in writing of the proposed change by the Park Owner to every home that is affected by the changes. Home owners must be given ample time to collect information and advice on the proposed changes which could take some time to collate, therefore a minimum of three months should be granted to the home owners before committing to the changes.

Site Rules.

Any changes in site rules should be in written form to each home owner and not as present where the new rules are posted on the site notice board. Many residents elderly and not so elderly never pass by the notice board or even read any notices posted. The consultation period should again be three months before implementing any new site rules, the present period of one month is far too short when you are trying to obtain information regarding the

change.

Any site rule changes should only be made when 60% of the home owners agree to the change.

Answer 21.

Yes the RPT should have the power to award damages and compensation to the home owners for breaches in the written agreement or any requirements imposed in this Bill.

The home owner may have suffered a great deal over a period of time before any enforcing action was taken.

It is important that any RPT that is found in favour of the home owner is followed through to completion and through the courts if necessary.

Will the RPT see this through the courts to the conclusion.

Answer 22.

We agree with all the points made in the consultation document.

We also feel that the CPI would be a much fairer way of Pitch Fee increases because the majority of home owners are on pensions that are of course governed by CPI.

Answer 23.

Quite often there are other items added to the pitch fee these should not appear with the pitch fee it should be a stand alone item.

Park Owners should send a letter stating that they propose a pitch fee review so that home owners can decide if they agree to the review. In practice this does not work they just send a demand for the new pitch fee with a date it will become due.

All other items that are added to the pitch fee should be removed from the pitch fee and itemised on separate notifications.

The pitch fee review should contain a list of items in detail that is covered by the pitch fee.

Answer 24.

This is a very important question and is totally abused by many Park Owners.

Having spoken to many residents on other parks during our campaigns everyone says the same things, nothing gets done unless they constantly Complain and even then sometimes they are never resolved.

We agree that the site operator's maintenance and repair obligations would benefit from clarification.

In order to clarify what goes on now we need to write a few very brief lines to explain.

Maintenance

Our park suffers badly from the lack of repair and maintenance, the absolute minimum of maintenance is carried out and then to a very poor standard. The total maintenance carried out is usually grass cutting on the flat areas, the awkward time consuming grass banks are usually left these are close to mobile homes on the park and can be significant fire risk during very dry spells. No attention is given to the maintenance of trees, roads walls or hedges within the site.

As far as the water, drainage and electricity installations that are the Park Owners responsibility no maintenance is ever carried out.

Winter Maintenance

During the winter of 2010/2011 we had constant frosts and snow falls of up to ten inches on the park. After the heavy snowfall due to the terrain of the site three hills made it impossible to move any cars off the park, no bottled gas was delivered and we were fortunate that we did not require the emergency services this situation was finally resolved on the Christmas eve by persons unknown carrying out snow clearance with a Quad bike and snowplough then gritted afterwards. The Park Owner claims that he might be sued if he grits the park. Not the ideal solution for elderly people.

Could something be written in regarding Winter Snow removal and Gritting.

Repairs.

Repairs are carried out when things get serious like multiple bursts in the water supplies and then only after constant requests to the park owner or we involve the local authority.

We have bursts still ongoing for two years and the park owner claims he cannot locate them. The problem is that the same people that cut the grass also try to locate and repair the leaks, that is why all work needs to be certificated. When the bursts are repaired in tarmac areas they are never reinstated with tarmac and just left with stone fill another case of poor workmanship. The residents on our park have had to pay an increase of £14 per month in order to cover the costs of wasted water and the park owners negligence to maintain and repair the system.

The electricity supply is so poor that boilers and washing machines shut down due to poor voltage, microwave turntables will not turn. The park owner keeps saying that the system needs an upgrade but nothing gets done. No one can

resolve this problem for us it has been ongoing since 2008 that is why we need this resolving as soon as possible. This brings us nicely on to improvements.

Improvements.

As you will have read above we have serious water and electricity problems.

The park owner is claiming that water and electricity needs to be improved and as such would be an improvement that of course would cost the residents but fails to accept that he is not compliant with ESQCR legislation and selling electricity at under the stated voltage.

The reason that we have poor water and electricity supplies is the part of the park that is affected by these problems was a holiday home site all the holiday homes were removed and replaced with new residential park homes without any infrastructure taking place we are now expected to foot the bill for the park owners mismanagement of the site when sighting residential homes even though substantial amounts of profit have been made from selling new homes.

At the end of the works we will only get 240volts and that is the requirements now. Under legislation ESQCR the voltage should be 240 + or - the percentage.

This will give you some food for thought as we don't consider this to be improvements just lack of infrastructure in the first place.

So the difference between infrastructure, repairs and improvements need to be clearly defined.

Perhaps some thought should be given for excluding utilities from improvements.

Answer 25.

We agree there should be a standard format that must be followed when a site operator is proposing improvements.

This should include all details and costs of the proposal to the residents and ample time for the residents to investigate and respond.

Answer 26.

We agree that home owners should be able to make alterations and improvements to the interior of their homes.

Home owners like to keep their homes up to date this would not reflect in any way on the look of the park. Considering that almost all homes are owned by residents we don't see that a park owners should have any control of

something that does not belong to them.

Answer 27.

A fair and reasonable reason for refusing permission to alter a mobile home externally would be.

Any alterations that are infringement of the Model Standards 2008.
Infringements of the licence conditions.
Infringements of planning conditions.

One needs to remember that the Government green deal becomes available this year and home owners may wish to take up this offer so this needs to be clarified in the new Bill.

Several people have discussed if solar panels would be a cost effective way to go but nobody has ever seen them on a mobile home. Approval of fitting solar panels should be a option made available to home owners along with feed in tariffs for the electricity supplies.

Answer 28.

Yes the RPT should have to agree to all requests by the site operator, including emergencies.

Our reason is that the home owner gets a fair deal with the RPT and can tell their side of the story. At present all manner of excuses are made by Park Owners to re-site homes mainly for financial gain.

Answer 29.

The rules of succession and inheritance in Wales should be modernised. The proposals that (DCLG) for England satisfies the requirements very well and should be adopted for Wales.

Answer 30.

The Park owner would try to pass on the financial impact to the park residents but we note that you have covered this eventuality under pitch fees. We have no doubt that Park Owners will strongly object to the financial impact on them and will be inventing all sorts of ways to load everything on to the home owners. They always seem to forget that pitch fees are collected from everyone.

Answer 31.

There will be additional costs incurred by the Local Authority and the Park owners by this Bill. However there must be changes to protect the home owners that have suffered too long and ripped off by out of date legislation that is not fit for purpose.

Additional item.

Residents Associations should be recognised if they are a fully qualifying Residents association that meets all the existing requirements.

A excellent publication has been issued by British Holiday & Home Parks Association and National Caravan Council. A Practical Guide to the safety management of electrical installations and distribution on parks.



Country Land & Business Association response to the Consultation on the Proposed Mobile Homes (Wales) Bill 2012

The CLA represents over 35,000 members in England and Wales. Our members both live and work in rural areas; they operate a wide range of businesses including agricultural, tourism and commercial ventures – at the last count the CLA represents some 250 different types of rural businesses.

The quality of the countryside is of vital importance to our members. The three main drivers - economic, social and environmental - rely on landowners and managers for their success, and thus the CLA has a special focus on such matters.

The rural economy makes an important contribution to the national economy: land-based businesses, within the rural economy, provide the environmental and recreational benefits in the countryside that are valued by the population as a whole. The best security for rural areas is a successful and sustainable rural economy.

We have pleasure in setting out our response to the consultation below.

While we in the CLA have great sympathy with victims of the minority of unscrupulous park owners who make it difficult for residents to exercise some of their legal rights, we represent members who are the majority of responsible park operators. For both them and all rural business owners in Wales it is imperative that no more than the bare necessity of red tape is introduced to their business as any additional bureaucracy will add cost and hardship to businesses, many of who are already struggling.

CLA Wales understands that this industry has already been extensively examined and regulated within the last decade - and we feel the resulting legislation and the 20-page Park Agreement adopted by the British Holiday and Home Parks Association and National Park Homes Council adequately clarifies the relationship and obligations of park operator and resident.

CLA Wales is particularly concerned about the existing proposals to remove park owners' rights to *veto* a prospective purchaser (or put the onus on them to apply to a Residential Property Tribunal ("RPT") regarding this point). For example, at present, if somebody expressed an interest in purchasing a home on the park, and the owners were aware that they had been evicted from a council-owned property for anti-social behaviour, they would say that they were unsuitable as a prospective resident. However, were the new proposals adopted, they would have no right to *veto* them, and would be reluctant or unable to apply to a RPT in case they lost, incurring significant costs, and possibly also facing action for damages for the lost sale. The net result would be that neighbouring residents would be stuck with a new neighbour who was likely to interfere with their quiet enjoyment, and the park owner would be stuck with a new resident that they'd known from the outset wouldn't fit in, but were then expected to try to 'police' by using the terms of the Park Agreement.

It is an acknowledged fact that many people choose to move onto residential parks because they have additional safeguards to their quiet enjoyment to those which they would have if they lived on a standard housing estate. They know that the park owner does vet their

prospective neighbours and that he is unlikely to accept a resident who is likely to present a problem to either the park owner or existing residents. Further, in instances of anti-social behaviour etc., the park owner can intervene at a far earlier stage than the local authority Environmental Health teams.

With regard to suggestions regarding an overhaul of the existing licensing régime, we are not confident that Local Authorities have the specialist knowledge or resources to implement the proposals.

Thought should also be given as to what will happen to residents if licences are for fixed periods and are then revoked. In many instances residents own their own home, and merely pay a ground rent/pitch fee for the land on which it stands. Were a park licence to be revoked, these people would have homes worth tens of thousands of pounds, and nowhere to site them unless planning policy were relaxed so that each of them could then purchase private pieces of land and site their homes on those.

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National Assembly for Wales

Peter Black AM - Proposed Mobile Homes (Wales) Bill

Consultation Response: MHM5 - Consumer Focus Wales, Local Authority Views

Local authority views gathered at a consultation event on the future of the site licensing and enforcement regime in Wales

**A response to the Mobile Homes (Wales) Bill
consultation paper**

11 June 2012

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The Consumer Focus Wales Park Homes Project

Following a thorough scoping exercise and in-depth desk research, we commissioned IFF Research to undertake telephone interviews with mobile home owners across Wales. In total, 263 residents and eight residents' association committee members took part in detailed telephone interviews about their experiences of living on a mobile home site.¹

Consumer Focus Wales also published an open consultation paper for the mobile homes industry and invited trade bodies and site operators to respond. We wrote to every site operator in Wales to tell them about our consultation exercise and we met with the two major trade bodies in person to discuss their ideas in more detail.

Engagement with local authorities

To gather information about the site licensing and inspection regime, we also spoke to all twenty two local authorities in Wales using an online survey to gather data and their views on the current licensing regime. We followed this up with in-depth interviews with six local authorities.

Following the publication of the consultation on the new Mobile Homes Bill for Wales, we wrote to private sector housing and licensing departments in Wales, as well as the WLGA and the Housing Technical Panel, and invited them to a meeting on 11th June 2012 to discuss the proposals for the future of the regime in Wales in detail.

Peter Black AM agreed to attend as the key speaker and he presented his consultation paper for discussion. The aim of the day was to discuss ideas about reforming the inspection and licensing regime, expanding and strengthening local authority enforcement options, and ways of paying for a new, more effective system.

Relevant research findings

Our research with residents found that a quarter of respondents are generally dissatisfied with life on their site. Just under two thirds of people we spoke to had experienced a problem in the last five years.

Perhaps most relevant in terms of licensing, we found that almost a third of interviewees reported problems with site maintenance, security or safety standards, and 81% of these residents felt that these issues were having a negative impact on their quality of life.

¹ All residents who took part were interviewed between 8 December 2011 and 1 March 2012 and were from a wide mix of mobile home sites located across Wales. In total we interviewed home owners on two thirds of residential sites in Wales. Participants were identified in two ways. Firstly, we encouraged residents to make contact and share their experiences through a range of sources including trusted intermediaries such as voluntary and third sector organisations, advice agencies, the media and campaign groups. We spoke to 100 residents using this approach. Secondly, we used a commercial sample provider, targeting postcodes where mobile home sites were located, calling these contacts and asking them if they would be willing to take part. We spoke to 163 residents through this route.

Key findings

Dispute resolution

- New legislation should make it absolutely clear where dispute resolution lies.
- Local authorities must retain the ability to prosecute through the courts.

Sale blocking

- New legislation should be accompanied by mobile homes information packs and supported by an awareness raising campaign for home owners and site operators.
- Sellers should be able to provide information that proves that the local authority has deemed the property to be compliant with the site licence.
- Consideration should be given to how to compensate mobile home owners who are forced to move off a site through no fault or choice of their own.

A new inspection regime

- Local authorities should have the power to inspect sites unannounced.
- New guidance setting out the nature of inspections in a risk-based regime should be issued.
- Model standards should be updated alongside new legislation.
- Local authorities should work with site operators and planning departments to agree a timescale and an action plan to pull failing sites up to standard.

Issuing a site licence

- Licence holders should be legally required to notify the licensing authority of any criminal convictions or any change in circumstances.
- Local authorities should be able to grant licences for shorter periods if necessary.

Charging for a site licence

- Licensing fees should be based on the number of units on site with a national fee set by regulation.
- The licence fee formula should be reviewed every five years alongside the model standards.
- The licence fee should be payable at the point of licence renewal with no annual charge.

The fit and proper person test

- Fit and proper person test should be pro-active and include a CRB check.
- Site managers should undergo a fit and proper person test.
- All directors of a company should undergo fit and proper person tests.

Penalties and enforcement

- New legislation should clarify where responsibility for enforcement lies.
- New legislation should increase the maximum fines for operating without a licence and for breaching licence conditions.
- Fixed penalty notices should be introduced, alongside a range of other enforcement notices.
- Local authorities should have powers to serve and charge for a range of enforcement notices.
- Local authorities should be given more freedom to carry out work in default if necessary following breaches of licence conditions.
- Local authorities should be given more powers to revoke a licence, especially in the event of a change of circumstances to an operator's fit and proper status.

Improving national consistency

- Local authorities must put in place more effective communications networks to share information about licensed site operators and managers.

Consultation questions

This paper draws on the discussions of our consultation day with local authorities. It is a reflection of their opinions and ideas, and does not necessarily reflect Consumer Focus Wales policy. Responses are anonymous, but a list of delegates is included in an annex to this paper. Below, we have answered the relevant questions asked in the consultation which were addressed during the day.

1. Do you agree that the Residential Property Tribunal should have jurisdiction to deal with all disputes relating to this Bill, aside from criminal prosecutions? Please give your reasons.

Delegates told us that they agreed that home owners should go to the Residential Property Tribunal for dispute resolution. However, they expressed concern about jurisdiction over site licensing passing to the Tribunal.

Delegates were clear that new legislation should be very clear where a dispute should be resolved or an appeal is made or prosecution is made: in the courts or by the RPT. It was agreed that there could be a role for both but that local authorities must retain the right to take site owners to court.

For example, the Housing Act specifies that any dispute over a notice or a dispute over enforcement or a refusal to issue a licence is dealt with by the RPT. But absolute offences still go to the courts and that must not change.

New legislation should make it absolutely clear where dispute resolution lies.

Local authorities must retain the ability to prosecute through the courts.

3. Should the law be reformed to prevent sale blocking or is it necessary for site operators to have this power? If the law should be changed, which of the suggested alternatives outlined above do you prefer? Please give your reasons.

While acknowledging that the blocking of sales is not covered by the 1960 Act which governs site licensing, we discussed sale blocking with delegates. We asked about putting the onus on the vendor to pass on site rules and relevant information.

We also discussed the need for an awareness raising campaign when new legislation comes in. Site owners and the wider industry are telling us that they want to maintain control over who moves onto that site, but Consumer Focus Wales (CFW) don't believe that they need that because they will have site rules and a contract and if a buyer doesn't comply with those rules then they have recourse for eviction.

New legislation should be accompanied by mobile homes information packs and supported by an awareness raising campaign for home owners and site operators.

Local authority officers asked what would happen if a pitch was non-compliant with the site licence. It was suggested that part of the process should involve the local authority being satisfied that the unit remains within site licence rules:

“The only concern [we’d have] is the way some transactions have taken place in the past. We’ve had a resident that has bought a unit [which] we found non-compliant because it was made of two separate units built together. He bought it and doesn’t know where the previous owner is ... We wouldn’t want that to happen again without the local authority

being aware. Non-compliance to a site licence ... should be part of the information that's passed on. Maybe the seller could provide information that proves that the local authority has deemed the property to be compliant with the site licence."

(Local authority officer, consultation event, June 2012)

On delegate suggested that potential buyers could be encouraged to contact local authorities to find out further information about a pitch or site before purchasing. They confirmed that they had never been contacted by someone moving onto a site.

Sellers should be able to provide information that proves that the local authority has deemed the property to be compliant with the site licence.

We also talked about compensation payments to be paid to those residents who are forced to move because a unit or a site does not comply with site licence conditions. If the licence conditions require the licence holder to do something with space, the resident who is selling the unit should receive adequate compensation.

Consideration should be given to how to compensate mobile home owners who are forced to move off a site through no fault or choice of their own.

5. What are your views on the current licensing system for mobile home sites? What could be improved?

We asked delegates about the inspection regime. Consumer Focus Wales has suggested a five year licence with a full inspection every two and half years. When there's a breach, officers should go back more often and could charge the park owners for the inspection. We believe there should be statutory guidelines for how frequently inspections should occur and how much to charge. Our priority is to ensure national consistency.

Responsibility for enforcement

We asked what officers would change about the licensing system if they had the choice.

"[Enforcement is] a bit woolly ... We'd like to see a new set of robust conditions, enforceable, made clear which were our responsibilities."

(Local authority officer, consultation event, June 2012)

Fire concerns were raised by several delegates, who said they were often unsure about what was the responsibility of local authorities and what was the responsibility of the Fire Service to enforce. One officer explained that it was difficult, with boundary and separation distances between caravans, for example, to determine what was fire related and what was related to model standards.²

New legislation should clarify where responsibility for enforcement lies.

Unannounced inspections

Delegates pointed out that the 1960 Act requires local authorities to give twenty four hours' notice to inspect a site.³ This was similar to the Housing Act which was described as "abysmal" by one delegate who explained that a local authority housing officer can't go into a rented accommodation to carry out an inspection without giving 24 hours notice to the owner. But this means that if a tenant makes a complaint about a landlord, the landlord knows, and of course, the state of the property is not going to be a true reflection when the officer arrives to inspect and any problems have been all cleared away.

² Model standards 2008 for Caravan Sites in Wales

³ Caravan Sites and Control of Development Act 1960, Section 26, 1(d)

Local authorities should have the power to inspect sites unannounced.

7. Should the Welsh Government issue guidance on the frequency and nature of such inspections?

A risk-based inspection regime

One delegate told us that his authority has a system where they risk assess each site dependent on number of factors with a sliding scale on how often they visit. It has been successful, with four categories.

Delegates explained that a risk-based inspection regime runs along the same lines as food hygiene inspections. The important thing is that following an inspection, a risk assessment is updated. At the end of an assessment, if a site is rated high risk, the local authority should have protocol and an action plan to deal with a high risk site.

There are four categories of risk which are used to prioritise intervention frequency. This means that if there are issues with the site, officers will return more frequently to check they are rectified.

We asked how long that would usually take. They explained that it depends on the issue and its importance. If it is a minor breach, officers will get them to fill in a pro-forma and they will check on it at the next inspection.

“We do try to have a trust compliance approach because you have different officers who have different levels of expertise and if you were to do everything you’d be there forever.”

(Local authority officer, consultation event, June 2012)

New guidance setting out the nature of inspections in a risk-based regime should be issued.

8. What are your views on what should be included in licence conditions? Should there be guidance on this issued by the Welsh Government?

We asked delegates about licence conditions and whether model standards⁴ should be replaced with a standard national site licence. Delegates argued that model standards should remain, with a degree of flexibility for differing local and historic conditions.

Reviewing model standards

It was agreed that these should be reviewed by the Government regularly. One delegate pointed out that Welsh Government should avoid clashing any review with the five year renewal of the site licences.

“The old [model standards] – some of them are so out of date.”

(Local authority officer, consultation event, June 2012)

One delegate gave the example of the models standards for an electrical supply. He told us that the definition of „adequate“ is not measurable and explained that older mobile homes tend to have a lower voltage/current which may be „adequate“ coming onto the site but is not adequate when it reaches the mobile home.

“An electricity network of adequate capacity must be installed on the site to meet safely all reasonable demands of the caravans and other facilities and services within it.”

(Model standards 2008 for Caravan Sites in Wales)⁵

⁴ Model standards 2008 for Caravan Sites in Wales

⁵ Model standards 2008 for Caravan Sites in Wales, The Standards, 9(i)

Model standards should be updated alongside new legislation.

Finally, we talked about transitional arrangements for pulling mobile home sites up to scratch, if new standards are introduced. One delegate referenced a site in his local authority area which now has a ten to fifteen year plan agreed with the local authority. He argued that this is the only sensible approach.

Another delegate talked about the problems on those sites where operators had exceeded their planning permission for a number of units. He recommended that planning departments are involved in the design of any new licensing system because of the issue of how many units are actually on a site.

Local authorities should work with site operators and planning departments to agree a timescale and an action plan to pull failing sites up to standard.

9. How long should each licence normally last, and should local authorities be able to grant licences for shorter periods if necessary?

We asked about the duration of a renewable site licence. It was noted that the longer the period of the licence, the more there will be people with any new convictions slipping through. One delegate observed that site licence holders should be required to notify the local authority of any change in circumstance, if it's within the five years, and be required to submit new declarations. It should be an offence in failing to declare that.

Licence holders should be legally required to notify the licensing authority of any criminal convictions or any change in circumstances.

One delegate suggested that there be an option to issue an interim licence, rather than issuing on a longer term, if there are concerns about management issues and problems on an interim basis. Like a provisional licence, you could issue an interim licence, which gets reviewed more closely and regularly. It would be similar to a school on special measures.

Local authorities should be able to grant licences for shorter periods if necessary.

10. How should the fees for mobile home site licensing be determined? Should the fee be calculated by reference to the number of pitches, the total area of the site, the cost of inspections to the local authority or a combination of all or any of these factors?

The cost of licensing fees

We asked delegates how much the licensing fee should cost. One delegate explained that with HMOs, the cost in his local authority starts at £300-400 with 3-4 people sharing, then goes up from there. Another delegate said that fees in her area started at £550. However, the fees do not pay for the team, nowhere near. If the fees were to cover the costs of licensing, they would charge thousands of pounds.

One delegate suggested a graduated scale depending on how many units are on a site. He estimated that with salaries and the amount of time spent on a site, local authorities would probably need to charge around £700 over a five year period.

It was agreed however that further modelling work needed to be done to calculate more approximate costs including time taken to undertake inspections and administrative work associated with this.

We asked whether local authorities would appreciate having a nationally set fee. They told us that they have freedom to set their own HMO licensing fees, but they aren't allowed to make a profit. They agreed that a national fee would ensure consistency.

“A national set fee would be better than having each local authority work it out.”

(Local authority officer, consultation event, June 2012)

One delegate explained that they have a set fee for all HMOs in his area, but it didn't seem to work because of differences in size. Another one agreed that basing the fee on the number of units on the site is a lot more workable than the size of the site.

“I think the strong view is that the fee regime should be based on the number of units. I am happy with this.”

(Peter Black AM, sponsor of the Mobile Homes Wales Bill)

Licensing fees should be based on the number of units on site and a national fee set by regulation.

Reviewing licensing fees

We asked about reviewing licensing fees. Consumer Focus Wales suggested setting fees through regulation, as opposed to putting them in the Bill, and we asked how often they should be reviewed. Delegates told us that because there are not huge numbers of mobile homes in Wales it should be put up for review every five years at the same time as the model standards.

The licence fee formula should be reviewed every five years alongside the model standards.

11. Should there be a regular annual charge to cover on-going administrative costs borne by local authorities during the licence period?

We asked delegates whether it would be easier to divide the fee into payments, one every five years or, five payments with one every year. Local authorities told us that they are used to staggering the licensing approach so it's consistent over the year. They would prefer to have a one-off payment every time the licence is renewed.

The licence fee should be payable at the point of licence renewal with no annual charge.

12. Do you agree that site operators must pass a fit and proper person test before being granted a licence (with the local authority undertaking relevant checks) and that this should be based on the standard introduced for Houses in Multiple Occupation under the Housing Act 2004? Please give your reasons.

We asked local authorities about a pro-active fit and proper person test and whether they found that landlords declare if they have criminal convictions.

Delegates told us that much of the time, whether someone is falsely self-declaring on their fit and proper person test, finding out the truth is often down to good professional relationships between local authority departments.

“We've had one person who had a criminal conviction with DWP and housing benefit for massive fraud. But we know people in housing benefit so we knew about it. The other people – I don't suppose you know what you don't know.”

(Local authority officer, consultation event, June 2012)

We asked whether there were headline things about the HMO system that they would change to make day-to-day life easier. They told us that it's easy enough to work within

each local authority but that it is much more difficult to ensure that cross-boundary landlords meet fit and proper person criteria.

Another delegate told us that while local authorities are conscious of the „reducing burden on business“ agenda, there are a number of companies which own more than one site in Wales – which is more evidence that it’s not such a big burden because the operator would only have to go through the check once, and local authorities should share that information.

Local authorities must put in place more effective communications networks to share information about licensed site operators and managers.

Introducing a criminal record check

One delegate told us that he agrees that a check would be a good thing, especially when companies work widely, a local authority need only carry out the check once and then it can be replicated. It adds to the emphasis on being a fit and proper person if [local authorities] have to proactively do something about it and it adds to the weight of any subsequent enforcement action.

“With HMO licensing we’re talking huge numbers of properties. To actually do an individual check on each and everyone is unrealistic and stifles the whole process. We’re talking 92 residential and mixed sites and I don’t think that’s unrealistic.”

(Local authority officer, consultation event, June 2012)

A pro-active fit and proper person test

We raised the issue of a pro-active test and asked local authorities whether they would agree with making the test more rigorous. Consumer Focus Wales recommends that the test should include an Enhanced Disclosure CRB Check, as opposed to a basic disclosure from Disclosure Scotland, or equivalent certification (as suggested in the consultation paper) which would only contain details of any unspent convictions.

We believe that this distinction is really important. A basic check, as proposed in the consultation paper, will only reveal to the local authority any unspent convictions. An enhanced check not only contains details of all spent and unspent convictions, cautions, reprimands and final warnings from the Police National Computer, but also includes a check of police records held locally, and for positions working with children and vulnerable adults, information held by the Independent Safeguarding Authority.

“Self declaration is a bit of a cop out in regards to HMO licensing ... We work off a self declaration and it’s sometimes only by chance that we find out that someone has a relevant conviction in another local authority area.”

(Local authority officer, consultation event, June 2012)

Fit and proper person test should be pro-active and include a CRB check.

One delegate raised concerns around sites owned by companies and run by site managers, and cited one case where the company involved had a head office in Devon, but a site licence for a site in Swansea. They employ a site manager, but that manager may change. It was suggested that the person with whom the park home owners have dealings should also be a fit and proper person.

Site managers should undergo a fit and proper person test.

Another delegate explained that site operators tend to set up holding companies; and providing that the site is over 400 square metres in size, the responsibility then becomes

Local authority views gathered at a consultation event on the future of the site licensing and enforcement regime in Wales: A Consumer Focus Wales response to the MHW Bill

diluted. Having a named individual allows you to target one person and deal with each site individually rather than the company as a whole.

“I accept that a fit and proper person test will not always be infallible, but it’s important to have one there to give assurance and to give the authorities someone to test as part of the licensing regime.”

(Peter Black AM, sponsor of the Mobile Homes Wales Bill)

However, it was also raised that dealing solely with one person means that in the event of a prosecution, unless all directors are looked at, they might go on to start another company. One delegate argued that the individual named should be the person with financial responsibility, as targeting the local manager is probably missing the point.

“It’s the companies that are the issue, not individuals.”

(Local authority officer, consultation event, June 2012)

It was suggested that ensuring all directors undergo a test could raise the profile of what local authorities are trying to do with companies and will mean there won’t be scapegoats for directors of companies.

We briefly discussed investigating friends and work colleagues, so you could designate someone as the fit and proper person and investigate the people around them if need be, as long as they have some direct involvement with the organisation/business. It was agreed that the Bill should make directors of a company jointly liable for prosecutions.

All directors of a company should undergo fit and proper person tests.

14. What are your views on increasing the maximum fine for operating a site without a licence or breaching a licence condition?

“It might act as more of a deterrent. You’ve got to remember that this Act is ... almost fifty years old. So those fines back then would have been a lot but in real terms now they are quite menial.”

(Local authority officer, consultation event, June 2012)

Delegates told us that for a serious breach of licence conditions on a site that’s got more than a hundred units, with maybe a 1000 people who could be put at risk, then the penalty should fit the crime. One delegate suggested that the fine should be set at a percentage of turnover.

New legislation should increase the maximum fines for operating without a licence and for breaching licence conditions.

15. Should local authorities be able to issue fixed penalty notices and, if so, for what types of infringement? Please give your reasons.

“Not displaying the site licence, it may be trivial, but it’s still a breach – a fixed penalty notice would be ideal for this. Maybe they are taking your notes but never get round to sorting it out. Issue the penalty notice [could] get them to take action.”

(Local authority officer, consultation event, June 2012)

Delegates agreed that a notice for a small failure or a low risk breach is a good idea but pointed out that the amount would be reduced if an appeal was opened or if they paid within a certain amount of time. It was explained that local authorities have different views on debt recovery charges and whether or not to charge for licensing inspections or improvement notices.

Another delegate estimated fixed penalty notices should be for around £150-£200, which would cover the costs of issuing administration and enforcement. On notices they put timescales on them. With a fixed penalty, after the serving of a formal notice there will be a prosecution.

One delegate highlighted the fact that a fixed penalty notice is just a fine, not an encouragement to do better, just a “don’t do it again”, whereas an improvement notice gives them an opportunity to put it right. It was also mentioned that officers are able to issue a notice for a time period of up to a year, but if improvements are not made, it affects people’s lives. Inspectors would have to follow up sooner, for example, they would have to revisit after a couple of months, not a year.

Fixed penalty notices should be introduced, alongside a range of other enforcement notices.

16. Should local authorities have powers to serve enforcement notices, and to carry out work in default if necessary following breaches of licence conditions? Please give your reasons.

Consumer Focus Wales explained that our research findings strongly suggested the need for a greater range for enforcement powers; at the moment, the system allows for prosecution or nothing. There was general agreement that local authorities would welcome a whole range of enforcement notices.

“Our hands are tied to prosecution, or to pushing them in the right direction by threatening to take them to court. Prosecution doesn’t change or help ... It’s supposed to be a punishment but it’s not.”

(Local authority officer, consultation event, June 2012)

Delegates observed that in Wales, few sites have been taken to court for breach of the site licence. It was costly and slow. In terms of penalties, there should be an interim before prosecution. If somebody continues to break the law by breaching conditions, delegates explained that taking someone to court isn’t in the public interest.

“Surely the name is important: an improvement notice. You want them to improve. Enforcement notices are the same as improvement notices ... We need various notices, including prohibition notices. If you spot something that needs to be resolved with immediate effect with specific compliance, you should be able to tell them to stop doing it until the work is done.”

(Local authority officer, consultation event, June 2012)

Another delegate suggested that more local authorities should start charging for statutory notices perhaps with different degrees of notices, from hazard awareness for minor offences to emergency remedial action, prohibition or demolition.⁶ Discretion should remain with local authorities for charges for persistent infringement. If the same problems are there the second year after improvement notice with non-compliance, then prosecute them, but there does need to be an interim solution.

Delegates told us that when charging for enforcing or improvement notices, local authorities are able to recuperate charges and this goes back to the licensing department. There’s a provision that’s made for recovery charges which can be done in two ways. Either they log it as a long charge or use a debtor service to recover those charges. The only one you can’t charge for is hazard awareness which is an advisory

⁶ Delegates listed five notices - positive awareness notice; improvement notice; prohibition order; emergency prohibition order; and emergency remedial action order.

notice. The potential to charge for each of these notices depends on each local authority and their policies and how they recoup their charges.

One delegate explained that if a debt was put on as a local land charge, the local authority could register a charge against that property and to recover their costs they'd sell the property on.

Local authorities should have powers to serve and charge for a range of enforcement notices.

Carrying out work in default

We asked about whether more powers for local authorities to carry out repairs would be helpful. Delegates told us that currently, the only steps they can take normally are under health and safety legislation and are not effective. The powers they have are limited, and they weren't sure how many authorities would prosecute to deal with a situation.

Local authorities should be given more freedom to carry out work in default if necessary following breaches of licence conditions.

17. Under what circumstances should a site licence be revoked?

We asked about the circumstances in which a site licence should be revoked. Local authorities were keen to point out that local authorities are very reluctant to issue management orders. They asked what would happen to the residents if a licence was revoked.

They did agree though that it was important to have the ability to threaten to revoke, as a deterrent to site owners, whether you go down that route or not. One delegate told us that if a site operator has a legitimate site licence, but something happens that impinges on his fit and proper person status, then the local authority would want the opportunity to do something, to consider the revocation of the licence.

“For example, you have a licence holder who is convicted of massive fraud – leaving them as the responsible site owner with all those people living on the site would not be the right thing to do. With the effect on people living on site you wouldn't want to leave them there. So what are the solutions? You would have to look at revocation as they could be no longer considered as fit and proper.”

(Local authority officer, consultation event, June 2012)

Local authorities should be given more powers to revoke a licence, especially in the event of a change of circumstances to an operator's fit and proper status.

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Annex 1: Attendees

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Sian Hobson	Caerphilly Council
David Lloyd Roberts	Ceredigion Council
Sue Evans	Powys Council
Nigel Williams	Powys Council
Paula Livingstone	Swansea Council
Stephen Bulpitt	Torfaen Council
Julian Love	Vale of Glamorgan Council
Simon Wilkinson	Enforcement Policy Officer, WLGA
Peter Black AM	Assembly Member, South Wales West
Liz Newton	National Assembly support staff
Liz Withers	Consumer Focus Wales
Lowri Jackson	Consumer Focus Wales
Lisa Hawkins	Consumer Focus Investigations

**Llais Defnyddwyr
Cymru**

Cyngor Newydd Defnyddwyr Cymru



**Consumer Focus
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**Consumer Focus
Wales**

The new Consumer Council for Wales

National Assembly for Wales

Peter Black AM - Proposed Mobile Homes (Wales) Bill

Consultation Response: MHM6 - Consumer Focus Wales

Consumer Focus Wales Response to the Mobile Homes (Wales) Bill consultation

July 2012

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About us

Consumer Focus Wales is the independent statutory organisation campaigning for a fair deal for consumers. We are the voice of the consumer and work to secure a fair deal on their behalf.

In campaigning on behalf of consumers we aim to influence change and shape policy to better reflect their needs. We do this in an informed way owing to the evidence we gather through research and our unique knowledge of consumer issues.

We have a duty to be the voice of vulnerable consumers, particularly those on low incomes, people with disabilities, people living in rural areas and older people.

In addition, we also seek to identify where other consumers may be disproportionately disadvantaged by a particular consumer issue or policy.

Summary

Mobile homes are timber framed bungalows built in residential sites and used by their owners all year round as their primary residence. They are often known as “park homes” and tend to be largely retirement properties which are often a popular choice for older people on a low fixed income wishing to downsize.

However, this means that many people living in mobile homes are particularly vulnerable due not only to their age and low income, but also their inability to effectively represent themselves, out of lack of confidence and, in many cases, fear.

Under the Mobile Homes Act 1983, mobile home owners are entitled to a “quiet enjoyment of the mobile home together with the pitch” and site operators have a responsibility to ensure that sites are maintained “in a clean and tidy condition”.¹ However, difficulties are often caused because, uniquely, mobile home owners own their own home, while the site operator owns the land.²

Consumer Focus has found that some unscrupulous site operators have been able to use the current legislation to refuse to approve a sale by the mobile home owner and deter potential buyers moving onto the site, which can result in considerable financial loss for the mobile home owner.³

This ability to block a sale has led to some mobile home owners selling their homes to an unscrupulous site operator for a fraction of its market value. We have spoken to home owners who have lost six figure sums because of this practice: one home owner told us how she received just £2,000 from her site operator for her home, which was valued at £110,000. Another couple paid £150,000 for a brand new home, which they sold back to their site operator within two years for just £35,000, following allegations of sale blocking.

Under the Caravan Sites and Control of Development Act 1960, caravan sites, including residential mobile home sites, must be licensed by a local authority. Local authorities have the power to attach conditions to the site licence.⁴ In 2008, the Welsh Government issued Model Standards which can be used to set licence conditions.⁵

In the course of our research, we have found examples of significant failures to manage sites properly as there is currently no requirement on local authorities to enforce licence conditions; a lack of clarity within licence conditions which makes challenging them extremely difficult; and the local authority has no power to charge for site licences. We believe these issues inflict considerable damage on the reputation of the entire mobile homes industry.

1 The Mobile Homes Act 1983 (Amendment of Schedule 1) (Wales) Order 2007, Sch. 1, Part 1 (11) and (22d)

2 In this response, we have referred to mobile home “residents” or “owners” and site “operators” to distinguish between two different groups of people.

3 The 1983 Act specifies that “the [mobile home owner] shall be entitled to sell the mobile home, and to assign the agreement, to a person approved of by the [site operator], whose approval shall not be unreasonably withheld,” Mobile Homes Act 1983 (Amendment of Schedule 1) (Wales) Order 2007, Sch. 1, Part 1, paragraph 8 (1)

4 The Caravan Sites and Control of Development Act 1960, Part 1, Section 5

5 Model standards 2008 for Caravan Sites in Wales, Caravan Sites and Control of Development Act 1960 – Section 5 (6)

Key findings

“We have neighbours ... [who are] so unhappy and frustrated and anxious to sell up and leave ... [yet] they simply cannot face the trauma and ... disappointment and financial loss [caused] by sale blocking ... It is the pervasive atmosphere of injustice and consequent impotence that undermines a person so badly.

“We ourselves feel insecure and angry, and know very well how this affects the wellbeing and also the health of so many others, particularly those less able than we are to stand up for themselves ... The current destructive regime ... has never been so bad.”

(Mobile home owner, female, 61 to 65)

Consumer Focus Wales welcomes the opportunity to respond to this consultation on the Mobile Homes (Wales) Bill. We believe that this Bill offers an exciting opportunity to better protect and support vulnerable mobile home owners in Wales and we hope that if passed, this new legislation will place Wales at the forefront of good practice in the UK.

We strongly support the proposals outlined in the consultation paper. We have been working on for some time now on identifying the problems of mobile homes residents and finding the solutions to improve people’s lives. Below is a summary of what we support and where we would recommend further change:

- Consumer Focus Wales strongly supports the reform of the sales approval process for buying a mobile home. We support the removal of the site operator’s veto.
- We support proposals for a more robust site licensing regime with greater powers for licensing authorities.
- We support the introduction of a licence fee for site operators.
- We strongly support proposals for a pro-active fit and proper person test for licence holders. We further recommend that this test include a CRB check.
- We support proposals to give local authorities the powers to serve a range of enforcement notices following breaches of licence conditions. We recommend a comprehensive and detailed list of notices be contained within the Bill.

- We recommend that one local authority takes the lead on mobile homes in Wales and is funded by a top-slice of the new licensing fee to manage a website and a central information line on behalf of the other local authorities.
- We recommend that a formal Wales-wide network of mobile homes coordinators be established within a new framework of regular meetings and communication links to ensure the effective sharing of best practice.
- We recommend that the Bill should allow for the threat of unlimited fines in the event of a serious breach of licence conditions.
- Multi-agency working should be encouraged and established at a local level to protect home owners from intimidation and harassment.

- Clear guidance, training and information should be produced and distributed to local authorities, home owners and site operators on all aspects of how this new legislation will affect their rights and responsibilities.

Please see page 39 for a full breakdown of the areas which we specifically support and where we feel these proposals need to go further.

This response draws on a major piece of research carried out by Consumer Focus Wales in conjunction with Consumer Focus Investigations. Further detail about this project can be found on page 6 of this response.

Our full response is detailed below.

The Consumer Focus Wales Park Homes Project

In early 2011, several park homes related cases were brought to the attention of Consumer Focus Wales (the statutory watchdog in Wales) and Consumer Focus Investigations (the team which leads investigations into consumer issues and is based in Cardiff) through our work planning consultation with individual consumers, the Consumer Focus Extra Help Unit (the team which deals with vulnerable consumers and cases where the consumer has been disconnected or has been threatened with disconnection) and an Assembly Member at the National Assembly for Wales.

Following a thorough scoping exercise and in-depth desk research, we commissioned IFF Research to undertake telephone interviews with mobile home owners across Wales. In total, 263 residents and eight residents' association committee members took part in detailed telephone interviews about their experiences of living on a mobile home site. All residents who took part were interviewed between 8 December 2011 and 1 March 2012 and were from a wide mix of mobile home sites located across Wales. In total we interviewed home owners on two thirds of residential sites in Wales.⁶

Participants were identified in two ways. Firstly, we encouraged residents to make contact and share their experiences through a range of sources including trusted intermediaries such as voluntary and third sector organisations, advice agencies, the media and campaign groups. We spoke to 100 residents using this approach.

Secondly, we used a commercial sample provider, targeting postcodes where mobile home sites were located, calling these contacts and asking them if they would be willing to take part. We spoke to 163 residents through this route.

To gather information about the site licensing and inspection regime, we also spoke to all twenty two local authorities in Wales using an online survey to gather data and their views on the current licensing regime.

We followed this up with in-depth interviews with six local authorities and a conference to which we invited representatives from every local authority to discuss proposals for a new licensing, inspection and enforcement regime.⁷

Consumer Focus Wales also published an open consultation paper for the mobile homes industry and invited trade bodies and site operators to respond. We wrote to every site operator in Wales to tell them about our consultation exercise and we met with the two major trade bodies in person to discuss their ideas in more detail.

Our response draws on the evidence we have gathered from this activity.

⁶ 58 of the 92 sites across Wales.

⁷ Consumer Focus Wales will be submitting a summary of these discussions as part of the Mobile Homes (Wales) Bill consultation process.

Consultation questions

1. Do you agree that the Residential Property Tribunal should have jurisdiction to deal with all disputes relating to this Bill, aside from criminal prosecutions? Please give your reasons.

The proposed Mobile Homes Bill is seeking to amend legislation in two distinct areas: caravan site licensing law and mobile homes law. This is covered at present by two separate Acts: the Caravan Sites and Control of Development Act 1960 (the 1960 Act) and the Mobile Homes Act 1983 (the 1983 Act). Jurisdiction over disputes under the 1983 Act already lies with the Residential Property Tribunal in Wales.

Consumer Focus Wales believes that it must be a priority that local authorities are afforded as many tools as possible in order to more effectively enforce site licence conditions.

We agree that local authorities should be given the option of using the Residential Property Tribunal if they wish, especially for site licensing appeals (in the event that a site operator is found to have breached a licence condition by the local authority, but does not agree with this finding) and approvals (in the event that the local authority refuses a licence). However, when consulted during our research, local authorities told us that they believe it is crucial that they remain able to prosecute criminal behaviour through the courts system.

Applications for termination (eviction) by the site operator on the grounds of breach of terms of the written agreement by the mobile home owner must also remain a matter for the courts, not the Residential Property Tribunal.

We **agree** with proposals in the consultation paper to give the Residential Property Tribunal jurisdiction over disputes relating to this Bill.

We **recommend** that local authorities should retain the ability to prosecute through the courts if they think it appropriate.

We **recommend** that applications for termination of the written agreement must remain under the jurisdiction of the courts.

2. Do you have any experience of a sale being prevented, or if you are a site operator have you ever objected to a sale and why?

“[The government needs to] give us more rights. We have no rights at the moment and have to spend a lot of money to take [site owners] to court ... The legislation says the owner is not allowed to block sales, but our site owner still does. Three times [he has been] taken to court, but he still demands the potential purchaser [should] go ... to be vetted ... so that he can sell his own park homes to the purchasers.”

(Mobile home owner, female, 55 to 60)

During the course of our research, Consumer Focus Wales has come across numerous stories of blocked sales, with, in many cases, substantial financial and emotional damage

incurred. We were extremely concerned to find that 41% of residents we interviewed as part of our research did not agree that people on their site could buy or sell homes freely.⁸

During the course of our research, residents told us that some site operators had employed a number of unscrupulous tactics to block a sale, including interviewing and rejecting potential buyers; giving buyers misleading information about the home or site; attempting to scare or intimidate buyers; and trying to sell his or her own properties to potential buyers. 71% of residents we spoke to who reported a problem with sale blocking were still waiting to sell their property.

“Sometimes you feel that [your home] is not yours. You don’t know whether you’re allowed to sell to this person or that one. It depends on the owner, and whether he’ll let them on the site.”

(Mobile home owner, male, 71 to 75)

We have come across some heartbreaking stories of sale blocking in our research. The majority of park home owners we spoke to were elderly, and often retired, or living on a low income.⁹ Many residents are sold an idyllic lifestyle and only realised the reality once they have already paid for their home.

On the worst sites, they are then trapped, because site operators, in using their veto, are able to repeatedly block a free sale. Finally, distressed residents are forced to give in and sell to their site operator for a tiny fraction of the market value of the property. 76% of our interviewees who had experienced sale blocking told us that this had resulted in a negative impact on their quality of life.

We strongly believe that all loopholes should be closed in order to abolish this practice once and for all. Mobile home owners have told us again and again of living in fear and feeling insecure, of knowing that they are unable to make free decisions about where they live and to whom they can sell their home. In some cases, we have seen residents become seriously ill with the worry; the desperation to move on means that in the end, they will agree to anything the site operator suggests.

“Seeing all our friends and neighbours going through it, through the stress of it all, it’s a community that was taken from us. It just got too much. It was going on so long; I lost interest in my home ... we got £2000 and we moved [away]. The [local authority] re-housed us but that community? You can never replace it.”

(Former home owner, female, 50-55)¹⁰

Case study: sale blocking

A home owner moved into residential care and agreed that her mobile home be put up for sale. Her daughter notified the site operator in writing and the home was marketed through a local estate agent for the asking price of £38,999.

Several possible buyers visited, accompanied by the estate agents, and a couple willing to pay the asking price came forward. However, they had a dog, which was against park rules, and the site operator refused to accept the couple.

Several other interested parties were blocked on these grounds. Residents still living on the park have confirmed that the site operator has allowed at least four other purchasers to bring a dog on site after buying a home directly from the site operator.

⁸ Unpublished Consumer Focus Wales research on park homes in Wales, 2012

⁹ 83% of interviewees were aged 61 or older, unpublished Consumer Focus Wales research on park homes in Wales, 2012

¹⁰ This former resident from a park in south Wales estimates that her home would have been worth between £90,000 and £110,000 had she been able to sell it on the open market.

Ongoing costs for running the mobile home continued to mount, at £273 a month. The sellers dropped the asking price to £25,000 and notified the site operator of the new price. Shortly afterwards, they received a telephone call from the site operator asking what they would accept as an absolute lowest price. After some pushing, a figure of £20,000 was given. They did not hear from the site operator about this again.

Not long afterwards, the estate agent referred a buyer who met the site rule requirements and offered £18,000. A final price of £20,000 was agreed. The estate agent wrote to the site operator to ask for his agreement, but the site operator refused, arguing the home was in reality worth at least £40,000 and could not be sold for as little as £20,000.

According to the seller, it became apparent that the site operator was concerned at receiving a reduced amount of sales commission at ten per cent. During a telephone conversation in which he was alleged to have been abusive towards the sellers, the site operator agreed to a sale for £20,000 if he received £5000 (25%), not the £2000 (10%) commission to which he was entitled. The sellers finally agreed.

Some days later, the site operator contacted the seller to complain that the potential buyer had not contacted him. He was now threatening to remove the mobile home from the site, action for which he would charge the sellers. Instead, he offered to buy the home from them for £10,000.

At this stage, with the original occupier in a residential home in full time care, and the sellers at their wits' end, a sale was agreed, with the site operator agreeing to pay the estate agents' fees. They agreed to meet a week later to exchange. The site operator was almost two hours late, arrived with a black eye and proceeded to behave in an "intimidating and abusive" manner. He accused them of calling the police, swore at them and finally told them that he had changed his mind, that the home was now "rotten and would have to be repaired", and implied that it was only worth £3000.

The seller describes that at this point, she became tearful and worried for her husband's health (he had recently suffered a heart attack). Finally, the site operator gave them a cheque for £10,000 and reneged on the agreement to pay the estate agent fees. The affair now closed, the sellers went home.

Two weeks later, the sellers met up with several residents still living on site, who explained that within an hour of their leaving, a new resident had moved into the home, having purchased from the site operator for £20,000.

It transpired that this buyer was the same person referred from the estate agent who the site operator claimed had not contacted him. However, the police have confirmed that the site operator cannot be proved to have acted illegally and so no further action can be taken.

"We are certain that some dirty deal was done ... Mobile homes legislation [should] be amended ... to give occupiers more protection when trying to sell their homes.

"My husband and I [are] quite strong characters ... yet we found this situation almost impossible to resolve fairly and satisfactorily. The sad fact is that my mother has been cheated out of money by such an unscrupulous site owner."

(Daughter of the mobile home owner in this case study)

3. Should the law be reformed to prevent sale blocking or is it necessary for site operators to have this power? If the law should be changed, which of the suggested alternatives outlined above do you prefer? Please give your reasons.

Consumer Focus Wales strongly recommends that the site operator's veto on incoming residents be removed.¹¹ Our research found that 94% of residents who had experienced sale blocking did not agree that the site operator should retain any veto over sales.¹²

We **agree** with the preferred option that the right to veto a prospective purchaser should be removed.

Good practice police guidance, following a successful prosecution by West Mercia police in England, argues that the veto on mobile home sales has attracted rogue site operators into the industry who can make huge profits by buying the mobile home at a greatly reduced cost and reselling at a huge profit.¹³

"Site owners and managers shouldn't be allowed to be so vicious. If there's a man in the house, he won't [behave so badly], otherwise he will try to frighten [women] to death. He has tried to run me down ... [we] shouldn't have to [go to the] police or solicitors."

(Mobile home owner, female, over 80)

More than one in ten residents we interviewed told us that they had experienced intimidation or abusive behaviour on the part of their site operator or manager.¹⁴ We found that problems included verbal abuse, including threats and bullying. These residents reported pressure to leave the site or sell their home and a small number reported physical violence or damage to property. 93% of these residents felt that these issues were having a negative impact on their quality of life.

These findings tell us that the most unscrupulous site operators and managers are unafraid to break the law in order to harass and scare a vulnerable, overwhelmingly elderly group of people, because there is huge financial gain to be made.

Disputes over alleged sale blocking already fall under the jurisdiction of the Residential Property Tribunal (RPT) and from our work in this area, we know that sales are still lost even though the RPT in England has so far consistently found in favour of residents in sale blocking cases.¹⁵

Case study: the Residential Property Tribunal and sale blocking

In April 2012, the Residential Property Tribunal in England was asked to determine whether the site operator has unreasonably withheld consent to a sale; whether there has been a breach of the right to quiet enjoyment or a wrongful moving of the pitch and, if so, what should happen".

The site operator (the Respondent) was alleged to have pressurised the home owners (the Applicants) into moving their home within the site, failed to reinstate the park home with a brick skirt, and then done everything to block the sale of the park home.

The Applicants claim that a number of potential sales fell through because of things said

¹¹ "The occupier shall be entitled to sell the mobile home, and to assign the agreement, to a person approved of by the [site] owner, whose approval shall not be unreasonably withheld", Mobile Homes Act 1983 (Amendment of Schedule 1) (Wales) Order 2007, Sch. 1, Part 1, paragraph 8 (1)

¹² Unpublished Consumer Focus Wales research on park homes in Wales, 2012

¹³ Criminality within the Park Home Industry – Best Practice Guidance, A/DCI Colquhoun, West Mercia Constabulary

¹⁴ 11% of all respondents, unpublished Consumer Focus Wales research on park homes in Wales, 2012

¹⁵ Cases in England are published at <http://www.residential-property.judiciary.gov.uk/>

to potential buyers by the site operator. He denied this, but admitted he had answered questions from potential purchasers.

The estate agent involved in the sale submitted written evidence which confirmed that they had received four offers, at least two of which fell through after the potential buyers spoke to the site operator.

The Tribunal found that, in all, the Applicants had received nine offers for their home, of between £32,000 and £50,000, eight of which fell through. The ninth offer was accepted at £32,000 and the site operator agreed to the sale.

The Tribunal decided that the site operator had failed to consent to or provide a sufficient reason for not consenting to the sale of the park home on at least two occasions and was ordered to pay £8,000 in compensation (the difference between the first price offered by a potential purchaser and the final agreed sale price).

He was also found in breach of express and/or implied terms of the pitch agreement as to quiet enjoyment and/or by moving the park home without the court's approval and was ordered to pay £5,000 in compensation.

We therefore agree with the preferred option for reform: that the right of site operators to veto a prospective purchaser is removed entirely. We support the consultation paper's suggestion of conditions of ownership in which potential purchasers should agree to the terms of the written agreement attached to the pitch.¹⁶

We agree that the veto should be replaced by conditions of ownership.

There is already a standard written agreement, which dates from 2007 and is laid down by Welsh Government regulations.¹⁷ This written agreement should be updated to include a clause of adherence to the site rules which would specify any restrictions on occupation of the home. Regulations should allow for the site rules to be part of the written agreement and attached as an annex of the same document. We strongly recommend that these site rules should be agreed through robust consultation between the site operator and residents and lodged with the licensing authority.

We agree that the written agreement should include a clause of adherence to the site rules, which should be an annex to the main written agreement document.

We recommend that site rules be agreed through consultation between the site operator and residents and lodged with the licensing authority.

We believe that fair and robust approved site rules and the standard written agreement will protect the site operator as these rules will lay down exactly who should be permitted to move onto the site. Site operators would continue to be safeguarded in this system as any breach of the site rules or the written agreement, including the non-payment of pitch fees, would allow a site operator to apply to court for an eviction order.

It should be the responsibility of the seller (whether that be an outgoing mobile home owner or a site operator) to make potential purchasers aware that they will need to fit the criteria in the site rules and agree to the terms of the written agreement attached to the pitch. As long as a seller can prove that they made the purchaser aware of these conditions of sale, responsibility should lie with the purchaser to comply with these conditions. Disputes should be addressed by the Residential Property Tribunal.

However, key to the success of this proposal will be an awareness raising campaign, including the publication of a readily available mobile home information pack. This should

¹⁶ The written statement must be given to a buyer to consider at least 28 days before any sale under the Housing Act 2004, Chapter 3, 206:1(3)a

¹⁷ The Mobile Homes (Written Statement) (Wales) Regulations 2007

be distributed to estate agents, solicitors, and other relevant organisations (especially in the voluntary and community sector) and promoted to residents and site operators.

We are keen to see Welsh Government provide this guidance for residents about their rights as well as a clear explanation of their responsibilities as home owners; their site operator's responsibilities, including advice about how site operators should consult with residents when required; and the differences in the jurisdiction of local authorities and the Residential Property Tribunal. Residents should be encouraged to seek advice from local authorities and resident bodies where appropriate before buying their home.

We also know that many purchasers fail to obtain any legal advice before buying a mobile home and we firmly believe that the mobile home information pack should encourage potential mobile home buyers to seek specialist legal advice before making any decision.

We recommend that a mobile home information pack be produced and widely distributed to home owners, site operators and other relevant parties, as well as being promoted amongst potential buyers.

Given the severity in nature of some of the experiences of which we have evidence, we believe there is a necessity for the site operator veto to be removed and for an offence to be created of indirect sale blocking.¹⁸ Such an offence should include the intimidation and harassment of sellers and potential buyers.

This is important because, while removing the right to veto would be a massive step in the right direction, we also know that unscrupulous site operators are using a variety of methods to block sales. We have seen several residents lose a sale because the site operator has deliberately obstructed or hindered the work of estate agents or has intimidated potential buyers.

We recommend the creation of a criminal offence of indirect sale blocking.

4. Do you agree that there should be a meeting involving all parties prior to the sale/purchase? Please give your reasons.

We strongly disagree that the Bill should introduce a meeting involving all parties prior to any sale.

During our research, almost a third of respondents who had experienced sale blocking told us that their site operator had attempted to scare or intimidate potential buyers.¹⁹ Unfortunately, we believe that this meeting could provide unscrupulous site operators with yet another opportunity to behave in an intimidating or threatening manner towards the potential purchaser, seller, or both.

The recent Department for Communities and Local Government (DCLG) consultation by the UK Government on reforms to mobile home law in England agreed with this point:

“In our view this would unnecessarily formalise a process which is not, in fact, a necessary part of the sales process. We also have significant concerns as to whether in practice it would make any difference to how a site operator may conduct himself. If an unscrupulous site operator is prepared to mislead a prospective purchaser, then it seems likely that he would be willing to do so in front of a witness.”

¹⁸ The National Assembly for Wales has the powers to create criminal offences to enforce a regulatory regime in areas which have been devolved to it by the UK Parliament, in this case, housing. The offence would be a criminal offence within a regulatory regime. Such an offence could be enforced by local authority officers or police officers. The RPTS would have no role in enforcing criminal offences (legal advice obtained by Consumer Focus Wales, May 2012)

¹⁹ 29% of these residents, unpublished Consumer Focus Wales research on park homes in Wales, 2012

To give the Bill the best chance possible of eliminating this criminal behaviour, we firmly recommend the removal of the site operator's direct involvement in the sales process.

We do not agree that there should be a meeting involving all parties prior to any sale.

5. What are your views on the current licensing system for mobile home sites? What could be improved?

Consumer Focus Wales firmly believes that the site licensing regime in Wales needs a complete overhaul. We also know that many local authorities do not keep full or accurate records of the sites they are licensing. We also found that monitoring of sites across the country is patchy.

The new system must be proactive, not reactive. Mobile home owners are often elderly, on a low fixed income, and vulnerable, due to their unique status as home owners on someone else's land. The new system should strive to take the onus for action off residents and place the responsibility for monitoring standards with the local authority.

We agree that the Bill should introduce a new licensing system for mobile home sites.

Our findings show that local authorities overwhelmingly agree that the current regime fails to make provision for effective enforcement. They argue that prosecution through the courts, currently the only enforcement option open to licensing departments, is limited in its effectiveness as penalties are not severe enough and many local authorities are unwilling to risk the resources required for a court case.

"In other areas of our work we're able to serve an enforcement notice, explain [any] failings and what the site operator would have to do to rectify those issues.

"If they [don't comply] ... we can either step in and do the work in default ... and recharge them, or we still have that prosecution route ... that is a good process for resolving issues.

"But with the licensing regime as it stands, we don't have that option ... it is a cumbersome system ... if there were ... a series of ... intermediary notices ... I think that would be helpful."

(Local authority, south Wales)

Local authorities told us that the principal barrier to enforcement is the lack of resources and enforcement options. We also found during our research that there is a big variation in the knowledge and expertise of different local authorities.

The more proactive local authorities report using an informal approach to enforcement, in which they seek to negotiate with site operators and mediate between owners and residents, but this is by no means common across the whole of Wales. Others do not regularly inspect and have little to no understanding of the specifics of caravan site licensing.

Consumer Focus Wales would like the Bill to tackle these problems of inconsistency and this lack of expertise across different local authorities in Wales. The number of sites varies wildly between local authorities: some only have one site and no formal inspection regime in place and others have up to fourteen sites with a well organised approach to inspection and informal enforcement, using a risk-based approach.

²⁰ Available at www.communities.gov.uk. ISBN: 9781 4098 34373.

Consumer Focus Wales recommends a formal arrangement in which one local authority takes the lead on coordinating and sharing information across Wales and is funded by a top-slice of the new licensing fee to manage a website and a central information line on mobile homes licensing matters on behalf of the other local authorities.

The central website should publish as much information as possible on all sites across Wales, including site licences, inspection reports, and details of any breaches, alongside, for example, consumer information and advice and details of how to take a case to the Residential Property Tribunal. This information should also be available by telephone or post on request, as we recognise that many park home residents may not have easy access to the internet.

We **recommend** that one local authority takes the lead on mobile homes in Wales and is funded by a top-slice of the new licensing fee to manage a website and a central information line on behalf of the other local authorities.

We also believe that each local authority should put in place a mobile homes coordinator, giving one member of the licensing staff responsibility for coordinating a multi-agency approach in each local authority, collaborating effectively with other local authorities (both regionally and nationally) and ensuring that national protocols on site inspection and enforcement are followed and kept up-to-date. We would recommend the formalisation of regular meetings and clear communication networks to ensure the effective sharing of best practice.

Local authorities should retain their separate licensing, inspection and enforcement regimes, although more regional working should be strongly encouraged and organised by the mobile homes coordinators across Wales. We strongly believe that a more collaborative approach would have the huge advantage of concentrating expertise and helping to ensure national consistency and transparency for the new licensing regime.

We **recommend** that a formal Wales-wide network of mobile homes coordinators be established within a new framework of regular meetings and communication links to ensure the effective sharing of best practice.

The Bill should provide for the development of statutory guidance and effective training to local authorities to improve information sharing, consistency of standards and enabling more effective intervention in mobile home problems.

We also strongly recommend that for those areas not covered by this new legislation, better training and guidance on criminal behaviour on mobile home sites should be rolled out across police authorities to ensure that the victims of harassment, intimidation and violence are properly supported.

“I think things have moved on a lot in fifty years. I think now residential caravans are often used as premises by people who are on welfare benefits and as you know there are huge changes being made to the benefit system.

“So I can see all sorts of problems and I think there should be a multi-agency approach to this, and I think the legislation should reflect that as well.”

(Local authority, west Wales)

Case study: a multi-agency approach

In one local authority area in Wales, the police service, the local authority licensing, planning and Trading Standards teams, the local Assembly Member and Consumer Focus Wales have been working on a pilot multi-agency approach to solving the

problems at one problematic park home site utilising the legal framework provided by the Community Safety Partnership. The project began in December 2011 and forms part of a wider development of the existing neighbourhood policing arrangements in the county to incorporate neighbourhood management principles into every agency's procedures.

The problems on this one site were numerous. One group of residents were unhappy with their site operator. Other residents were unhappy with the first group of residents making what they considered "a fuss". Several residents had accused the site operator of bullying tactics.

There was also an ongoing dispute about the water supply to the park and several outstanding water infrastructure bills which were the subject of a bitter argument between the site operator and several of the residents. Residents were complaining to the police, and at one point, a suspected arson attack occurred.

The local police service decided to use their neighbourhood policing team to establish a multi-agency way of working to discuss and agree a common response to reports by residents of incidents at this park home site. They involved local authority teams and Consumer Focus Wales in planning a neighbourhood management approach utilising a neighbourhood agreement.

This approach is often used to promote positive neighbourhood behaviour in the social housing sector. The agreements set out, in the form of a non-legally binding contract, the mutual rights, responsibilities and expectations between residents, landlords and other service providers (in this case, the site operator).

"Neighbour agreements can be an effective tool in promoting positive behaviour ... Benefits [can include] a reduction in complaints over time; ... greater tenant and resident satisfaction; ... and improved community cohesion."

(Respect and Housing Management – Using Good Neighbour Agreements, 2006)²¹

The police asked an independent voluntary organisation to manage the process. A community consultation was carried out by the voluntary organisation and meetings were held to which the site operator and all residents were invited and asked to voice their concerns. During the project, the community policing team upped their presence on the site and talked to the site operator about new ways of communicating with residents.

The police asked an independent voluntary organisation to manage the process in order to promote resident confidence in the system and avoid any stigmas that naturally come from being seen to be "talking to the police". A community consultation was carried out by the voluntary organisation and meetings were held to which the site operator and all residents were invited and asked to voice their concerns. During the project, the community policing team upped their presence on the site and talked to the site operator about new ways of communicating with residents.

As of June 2012, no complaints had been lodged with the police for six months (since the beginning of the project). In the end, residents decided that a formal, signed neighbourhood agreement itself was not needed, but that the process of drawing it up and the mediation that had occurred had been very helpful.

The police have told us the site operator's behaviour has changed; he has, in their analysis, become more conciliatory, and has, for example, agreed to install a site notice board for residents to help ensure better communication.

The local Assembly Member has told us that they have received reports from residents

21 226A: Respect and Housing Management – Using Good Neighbour Agreements, research summary 226, Department for Communities and Local Government and the Home Office, 2006

that the site operator has dropped his demands for payment of the disputed water bills.

Consumer Focus Wales is keen to see this approach followed by other police and local authority teams in the future where there is a park home site with similar problems. The inclusion of the voluntary sector is, we believe, especially important, because these agreements must focus on building trust and establishing good lines of communication.

We found that the simple act of listening to residents, of engaging with the site operator, and of demonstrating a willingness to take action worked wonders for the relationships between residents and their site operator in this particular case.

We are pleased to note that, for example, a new partnership has been formed between Welsh and English police forces in a bid to cut cross-border crime. Operation Cross is intended to encourage Gwent and Dyfed Powys forces in Wales to work more closely with Gloucestershire and West Mercia forces in England to share information and be on hand to offer assistance when necessary. This is the sort of partnership working which we would encourage other Welsh police forces to adopt.

We **recommend** that multi-agency working be encouraged and established across police forces, local authorities and the voluntary sector to protect residents from intimidation and harassment.

6. How often should local authorities inspect sites and how should these inspections be financed?

Consumer Focus Wales believes that a duty to inspect residential caravan sites and enforce their licence conditions should be placed upon local authorities.

During our research, we found that almost two thirds of our interviewees have experienced problems on their site in the last five years and just under a third of respondents reported problems with site maintenance, security or safety standards.²²

Again, we would emphasise the need for consistency in the new inspection and enforcement regime for local authorities in Wales. We believe that this principle of a national approach should be established in the new legislation with the detail of a new inspection regime set down in regulations and training and guidance provided for local authorities.

We **agree** that there should be a duty on local authorities to carry out periodic inspections to ensure licence conditions are being complied with.

We **recommend** that these inspections take place at least twice in every five year licence period, with more inspections if needed or wanted.

We propose that sites should be inspected at least twice in a five year licence period, with the power to undertake more frequent inspections if there are breaches in site licence conditions during a routine inspection, or if the local authority chooses to be more proactive. Local authorities should have the powers to serve legal notices requiring specific works to be carried out within a timeframe.

We **agree** that local authorities should have the powers to serve legal notices requiring specific works to be carried out within a timeframe.

If a breach has taken place, site inspections should take place every six months until the problems have been rectified, and thereafter inspections should be annual, until the licence comes up for renewal, or until there is a complaint about the site.

²² Unpublished Consumer Focus Wales research on park homes in Wales, 2012

We also found during our research on park homes that resident experiences of local authorities taking action was very patchy. In 28% of the cases we were told about during our research, the resident reported the matter to their local authority. This was found to be ineffective in 70% of cases.

These residents reported maintenance issues (43%), water issues (29%), and intimidation concerns (24%) to their local authority. However, a substantial number of these respondents told us that they perceived that local authorities were not interested (38%) or were unwilling to take action against the site operator (32%).²³ In most cases, however, we are aware that this could be an issue of perception; local authorities tell us that in many cases reported to them, the problems do not fall within their remit, and even if they did, they don't have the powers to actually address the problem.

We believe that routine inspections, that is, at least two visits during a five year licence period, should be financed through existing resources (which will be increased by the introduction of a five yearly site licence fee). However, the Bill should include the right for local authorities to charge for additional inspections related to compliance.

All inspections should be unannounced (unless, in certain circumstances, the visit is a routine follow up inspection). Local authorities should have the right to charge for inspections carried out on the basis of a complaint, should the complaint be upheld by a breach in licence conditions.

We **recommend** that all inspections should be unannounced.

We **recommend** that site inspections should take place every six months until the problems have been rectified, and thereafter inspections should be annual, until the licence comes up for renewal, or until there is a complaint about the site.

We **recommend** that the Bill include the right for local authorities to charge for additional inspections related to compliance.

The frequency of inspections should directly relate to compliance. If there are several ongoing problems, the local authority will need to inspect more frequently, but if a site operator is meeting the licence conditions, then inspections will be straightforward.

Again, this follows a risk based approach and fits with what consumers tell us they want. Our research on regulation found that where businesses are openly disregarding their responsibilities and putting consumers at risk, firm and speedy action should be taken.

“[A] softly, softly [approach to enforcement] won't work. They think that they can get away with things again and again.”

(Focus group participant, March 2011)

We **recommend** that the new inspection and enforcement regime should follow a risk-based approach, in which sites which are found to be at high risk of breaching their licence conditions are given a higher priority for inspection and follow-up action.

Rented mobile homes (those which are owned by the site operator) should also be inspected during a visit.

Case study: rented mobile homes

In this park, the site rules prohibit residents from sub-letting or renting out their properties. The person living in the unit must be the person named on the written agreement. However, the site operator has begun to rent out older units which have been left behind by departed home owners. Some of these tenants do not meet the site rules, which state

²³ Unpublished Consumer Focus Wales research on park homes in Wales, 2012

that park residents must be over a certain age and able to prove that they are financially secure.

Their contract terms and conditions differ hugely in some cases. Residents on the park report that the units being let out are very old and structurally unsound, some with collapsing roofs and damp throughout.

Not only is the site operator breaking his own site rules by not ensuring that new residents meet existing criteria, but he could be providing unsuitable and potentially dangerous accommodation to vulnerable people. Because of this, it is important that these properties are inspected to ensure that they are meeting minimum required standards.

We recommend that rented mobile homes (those which are owned by the site operator) should be inspected during a visit.

We also recommend that local authorities use other legislation during their inspection regime, including public health and housing legislation. There should be a requirement for licensing officers inspecting mobile home sites to speak to residents during the inspection. This may need liaison between different local authority teams.

Copies of inspection reports should be made available to residents. A copy should be sent automatically to any qualified residents' association and made available online on the central Wales-wide website.²⁴

This will be important to help provide information to potential residents and it will act as a deterrent to the site operator. A copy of the site licence with any attached unresolved enforcement notices should be publically available for people to view before choosing to live on the site.

These documents must be available on request from the local authority by phone or by post without being subject to a formal information request. Recent Consumer Focus Wales research on regulation found that consumers want more readily accessible information about businesses that are found to be in breach of regulations: they want businesses with a complete disregard for regulations to be named and shamed.²⁵

In another recent piece of Consumer Focus Wales work on food hygiene, 92% of people in Wales told us they thought they should be able to access the reasons behind a food hygiene rating score more easily than through an FOI request to the local authority.²⁶ We believe that this principle applies equally to the reasons behind caravan site inspection reports.

Making this information freely available would help to improve communication and build trust between residents and local authorities and demonstrate transparency and openness by ensuring residents know that local authority officers are taking action where appropriate.

Case study: resident perceptions of ineffective local authorities

Consumer Focus Wales has found that 38% of respondents who told us that reporting a grievance to their local authority was ineffective believed that this was because local authorities were not interested. 32% of these residents claimed that the local authority was simply unwilling to take action against the site operator.

²⁴ See pp. 14-15 of this response

²⁵ Unpublished Consumer Focus Wales research for the Local Better Regulation Office on consumer perceptions of local and national regulatory services, March 2011

²⁶ Consumer Focus Wales response to the Welsh Government consultation on proposals for a Food Hygiene Rating (Wales) Bill, July 2012, available at <http://www.consumerfocus.org.uk/wales/>

This is a selection of comments made by residents when asked why, in addressing a specific problem, they found the local authority ineffective at helping to resolve it:

“They are ignorant of the situation facing [people] living in park homes.”

(Mobile home owner, female, 71 to 75)

“I sent them letters and they just ignored them.”

(Mobile home owner, male, 61 to 65)

“They are also afraid of the site owner, so they keep away.”

(Mobile home owner, male, 76 to 80)

“They might talk to the ... manager, but it never results in anything. The last time the local authority advised that the issue was raised twice with the site manager, [and] if he didn't do anything, they would step in, but they never did.”

(Mobile home owner, female, 55 to 60)

“It is private land and they don't want to be involved. All they say is „speak to the site owner“.”

(Mobile home owner, female, 71 to 75)

Even if local authority inaction is a perception, and not actually the case, it demonstrates an acute unhappiness with the work of local authority inspection teams. Sharing this information openly with residents can only serve to improve relations.

We **recommend** that inspection reports and enforcement notices are made readily available to download or ask for by phone or post without a formal request.

We **recommend** that there be a requirement for licensing officers inspecting mobile home sites to speak to residents during the inspection.

7. Should the Welsh Government issue guidance on the frequency and nature of such inspections?

Consumer Focus Wales has noted good practice examples in several local authorities in Wales where licensing officers are already using a risk assessment rating system to classify caravan sites. High risk caravan sites are inspected more frequently and licensing officers are able to keep a closer eye on their progress.

With this in mind, we strongly recommend that statutory guidance, and effective training, agreed in consultation with licensing departments, outline the detail of new inspection and enforcement processes for all local authorities. This would ensure a consistency in inspection regimes across Wales.

We **recommend** that statutory guidance, agreed in consultation with licensing departments, and effective training, outline the detail of new inspection and enforcement processes for all local authorities.

8. What are your views on what should be included in licence conditions? Should there be guidance on this issued by the Welsh Government?

“We need to look at the model standards or any other form of guidance which may be attached to the legislation, and that needs to be brought in to line with current expectations and current standards.”

(Local authority, south Wales)

Consumer Focus Wales strongly believes that the current set of model standards²⁷ must be updated, in consultation with local authorities, residents and site operators, to be made more robust, clear and enforceable. The Bill should allow for the detail of this consultation to be set out in regulations.

Under the suggestions in this consultation paper, new model standards, drawn up nationally by the Welsh Government, will lay the basis for new site licences, which will be issued, with specific conditions for each site (if appropriate), by each local authority.

We agree that national model standards should lay the basis for local site licences.

New model standards should be drawn up by Welsh Government in consultation with health and safety experts, local authority officers, residents and site operators, and should include measurable conditions for good water, electricity, and if applicable, mains gas supply. This is vital: reliable and efficient electricity and water services are basic necessities for a good quality of life. These standards should be reviewed every five years, in statutory consultation with site operators, residents and local authorities.

We recommend that the current set of model standards be updated, in consultation with local authorities, residents and site operators, and should continue to be updated at least every five years.

The current legislation allows that ~~in~~ deciding what (if any) conditions to attach to a site licence, a local authority shall have regard to [these] standards". While we know that most, if not all, local authorities already do this, we believe that new legislation should ensure that all local authorities use updated model standards as a basis for new site licences with the power to attach specific conditions as required.

We agree that it should be a condition of each site licence that all applicable model standards are adhered to.

We also strongly recommend that new model standards should give more weight given to the standard of maintenance of common areas,²⁸ especially the way the site looks. Almost a third of residents we interviewed did not agree that their site was attractive.

Furthermore, our research showed that many residents feel unhappy with site maintenance, security or safety standards. Of those residents who expressed concern on this issue, 87% reported poorly maintained roads or pathways, 68% reported inadequate street or road lighting and 62% reported poorly maintained communal gardens, lawns or trees. 81% of these respondents felt that these issues were having a negative impact on their quality of life; resident associations reported reduced mobility for elderly residents and a heightened risk of accidents.²⁹

"[There are] broken slabs and asphalt ruts. It is just not conducive to anyone who is walking with a walking stick or a scooter. The roadways, the gullies are dropped so it's easy for someone to trip and fall. We have a lady who is listed as blind and she walks the road. If she had to go to the opposite side with the gulley, she will be in danger. I fell this past year and all he has done is put a cone over it."

(Resident association committee member, female, north Wales)

We recommend that new model standards give more weight given to the maintenance and safety standards of common areas of park home sites.

²⁷ Model Standards 2008 for Caravan Sites in Wales

²⁸ Model Standards 2008 for Caravan Sites in Wales, paragraph 7

²⁹ Unpublished Consumer Focus Wales research on park homes in Wales, 2012

Case study: site maintenance and safety standards

Below is an extract from a letter we received as evidence during our project:

“I have lived on [this] park for nearly thirteen years. In this time, very little – in fact, nothing – is done for park maintenance. Grass cutting [and] keeping the park tidy has been done by my husband because we have been embarrassed by the state of it. He has just been diagnosed with cancer and due to his health, he hasn’t done it recently. [The] result [is that the] park is overgrown already ... It won’t be done unless another resident does it, bearing in mind that these are elderly pensioners and many have health issues.

“[The] pathways are uneven, breaking up with weeds growing out and covered in moss [which becomes] very slippery when wet. [It’s] overgrown. [There is] poor lighting. One lamp post has been installed by the car park which does not light the pathways. Two ornamental coach lamps give a little more light, but only if my husband changes the light bulbs.

“Water pressure is extremely low. Leaks [are] only seen to after extreme pressure and argument, which upset everyone and caused bad feeling. My pitch constantly floods in heavy rain. Manhole covers [are] rotting and in a dangerous condition, and nothing [has been] done. One resident has fallen over one outside his gate.

“Sub-letting is allowed by one home owner who doesn’t even live here and never has. This unit has recently been vandalised and has been let out for several years to all and sundry because of this, when the park rules clearly state ... that sub-letting is not allowed. The [site] owner only abides by the rules when it suits him.

“We pay ... for electricity but [we] never see any official documentation from the provider of the proof of cost. We are also unable to shop around like everyone else to get cheaper prices.

“The rent increases every year [by] RPI and without fail, the owner arrives a couple of weeks before with a note telling us of the fact and makes a half hearted attempt to trim the hedges and tidy up. It’s the only time he does it and if it wasn’t so annoying, it would be so obviously comical ... rent increases are supposed to cover park maintenance.

“More worrying, health and safety doesn’t exist. Elderly people occupy these parks and are put at risk. Even in all the icy winters, we have had to buy the salt, provide the bin to put it in, and spread it around the pathways – yes, by my husband!

“I think local councils should monitor and penalise slack [site] owners ... Our owner does nothing to keep this park tidy, let alone maintain it ... If you charged [site] owners for their licence, they would most likely pass it on to residents via ground rent. One idea would be fines for breaches of the licence. And more power to local authorities. A fit and proper person test would be a good idea.

“I would like to thank all involved for the opportunity to have a voice as this industry seems to have no control. Vulnerable people are being ripped off and bullied. In this day and age, it’s not fair, and needs to be stopped.”

(Mobile home owner, female, south Wales)

We believe that updated model standards should require official site rules, agreed in consultation between residents and their site operator to be lodged with the local authority. To drive transparency and openness on mobile home sites, there should be a requirement in the model standards to display the site licence alongside the standard

written agreement (which should include the site rules as an annex), as well as any current billing paperwork from utility companies.

Our research has showed that around a fifth of residents we spoke to had experienced problems with their electricity and water supplies. Almost two thirds of these residents had concerns around electricity costs and billing, of whom three quarters had no access to the main electricity bill from the supplier.³⁰

Incidentally, we are also aware that some site operators are charging the wrong rate of VAT on bills and adding unjustifiable administration charges. Putting documentation from utility suppliers on display as part of new model standards would be a straightforward way of helping to enforce existing regulatory rules on the resale of energy and water.³¹

We **recommend** that new model standards require the site operator to display the site licence, the standard written agreement for the site (including the site rules), and current energy and utility billing paperwork in a public place.

We believe that when a local authority decides to revisit or update any licence conditions specific to a site, they should consult residents on that site in the process of drawing up changes. Welsh Government guidance and training for local authorities on their responsibilities relating to this new legislation should include advice on what constitutes consultation with residents. In addition, Welsh Government should produce a guide for site operators setting out their responsibilities under the new regime.

We **recommend** that Welsh Government should produce guidance and training for local authorities and site operators setting out new responsibilities arising from this legislation. This should include what constitutes consultation with residents.

We **recommend** that when a local authority decides to revisit or update any licence conditions specific to a site, they should consult residents on that site in the process of drawing up changes.

9. How long should each licence normally last, and should local authorities be able to grant licences for shorter periods if necessary?

Consumer Focus Wales recommends a maximum of five years for the fixed licence period. This Bill should specify that licence periods should not exceed five years, but that local authorities should issue shorter licences if they feel it is appropriate.

We **agree** that licences should be issued for a fixed period.

We **agree** that local authorities should be granted the power to issue licences for shorter periods if they so wish.

We **recommend** a maximum licence period of five years.

We **recommend** that site operators be required to apply for a new licence upon a change of site ownership.

10. How should the fees for mobile home site licensing be determined? Should the fee be calculated by reference to the number of pitches, the total area of the site, the cost of inspections to the local authority or a combination of all or any of these factors?

Consumer Focus Wales strongly recommends that local authorities be given the power to charge for site licences, with that money used to enforce and inspect sites on a regular

³⁰ Unpublished Consumer Focus Wales research on park homes in Wales, 2012

³¹ The resale of gas and electricity: guidance for resellers, Ofgem, updated 2005

basis. We recommend that a requirement to pay the fee should be a condition of the licence.

We **agree** that local authorities should be allowed to charge site operators for licensing mobile home sites.

"[The current licensing regime is] outdated. It doesn't enable us to charge a fee. Whereas most other things that we enforce we charge a fee ... We [could] employ an officer who can look at these issues properly and dedicate the time it deserves ... with dwindling resources, we're finding it more and more difficult. It is constant fire fighting, whereas we should have someone dedicated to this to make sure there is constant compliance."

(Local authority, west Wales)

Following consultation with local authorities, we recommend that the site licence fee be determined by the number of pitches allocated to a site in its planning permission. This staggered approach would be fairer than a set ceiling, because some sites have only a handful of pitches, while others are large.

The amount payable per number of pitches should be set out in secondary legislation which would help to ensure transparency and consistency across Wales in the way that site licence fees are calculated. This should be adhered to by all local authorities in Wales.

The fee should be subject to regular review. We would suggest that this happens at the same time as model standards are reviewed – i.e. every five years.

We **recommend** that the site licence fee be determined by the number of pitches allocated to a site in its planning permission and is regularly reviewed.

11. Should there be a regular annual charge to cover on-going administrative costs borne by local authorities during the licence period?

Following consultation with local authorities, Consumer Focus Wales recommends a one-off licence fee payable upon renewal of the site licence every five years. Chasing the collection of any annual charge from reluctant site operators could cause local authorities unnecessary work and use up valuable resources.

We **do not agree** that there should be a regular annual charge during the licence period.

12. Do you agree that site operators must pass a fit and proper person test before being granted a licence (with the local authority undertaking relevant checks) and that this should be based on the standard introduced for Houses in Multiple Occupation under the Housing Act 2004? Please give your reasons.

Consumer Focus Wales agrees that the Bill should introduce a fit and proper person test for all site operators (and managers, where one is present on the site). The aim of introducing a fit and proper person test would be a reduction in criminal behaviour by rogue site operators.

We **agree** that the Bill should introduce a fit and proper person test for site operators.

We believe that there should be a statutory definition of a "fit and proper" person, tailored to the mobile homes industry within the Bill, and the Bill should establish provision for

detailed guidance, regulations and training issued to authorities with responsibility for operating this test.

The fit and proper person test should consider offences involving fraud, dishonesty, violence or drugs, unlawful discrimination, breaches of law relating to housing and letting, breaches of law relating to public health, and any failure to act in relation to antisocial behaviour. Including unlawful discrimination as a factor in a fit and proper person test would help to ensure that vulnerable residents with disabilities or long term health conditions are not penalised if for some reason they have to leave the site for a period of time: for example, if they are hospitalised.

We know that a fit and proper person test will not solve all the problems associated with the criminal element of the mobile homes industry, but we do believe that a thorough fit and proper person test would give local authorities the ability to exclude the worst offenders. It may even possibly deter the rogue element (if properly enforced) from buying new sites and would allow authorities to investigate allegations of harassment and intimidation more easily.

We believe that in the event of losing a licence, or failing a fit and proper person test, some site operators might be tempted to transfer the licence into a family member's name, or the name of another Board member, in the case of corporate ownership. This could potentially mean that the original licence holder, despite having lost his/her licence for serious reasons, remains involved in the running of the site. We therefore agree that all owners of the site should be joint licence holders and we further recommend that in the event of corporate ownership, which applies to more than a third of sites in Wales³², all Directors of the company should undergo the test.

We agree that the test should apply to all owners of a site as joint licence holders.

The new system should be proactive, not reactive, as we know that many mobile home owners are elderly and many are living on low fixed incomes. We believe that there is a real danger that the criminal element of the industry would not self-declare any convictions or relevant information, and given the uniquely vulnerable demographic living on park home sites, we are concerned that there is a real risk that rogue site operators could slip through the net with potentially devastating consequences.

We agree that the fit and proper person test should be proactive and that local authorities should be required to undertake enquiries to satisfy themselves that the applicant is a fit and proper person to hold a site licence.

We do not agree that it should be based on the standard introduced for Houses in Multiple Occupation under the Housing Act 2004 which is based on self-disclosure.

Our research also found that local authorities supported the introduction of a fit and proper person test, with one licensing department telling us that:

“It would be really useful if local authorities could ask a person to provide a CRB certificate, or to ask them pertinent questions around fraud, dishonesty, previous contraventions and so assess whether they are a suitable person to be managing that site.”

(Local authority, south Wales)

Given that 83% of the residents we interviewed across Wales were aged 61 or older, we also believe that any fit and proper person test should include an Enhanced Disclosure CRB Check, as opposed to a basic disclosure from Disclosure Scotland, or equivalent certification (as suggested in the consultation paper) which would only contain details of

³² Unpublished Consumer Focus Wales research on park homes in Wales, 2012

any unspent convictions. The local authority should take this Enhanced Disclosure CRB Check into account when deciding whether to award a site licence.

We believe that this distinction is really important. A basic check, as proposed in the consultation paper, will only reveal to the local authority any unspent convictions. An enhanced check not only contains details of *all* spent and unspent convictions, cautions, reprimands and final warnings from the Police National Computer, but also includes a check of police records held locally, and for positions working with children and vulnerable adults, information held by the Independent Safeguarding Authority.

Asking site operators to provide only a basic check does not go far enough. We believe that park home residents, who are often elderly, on a low fixed income, and reliant on their site operator for energy and utilities (not to mention their unique home owner status on someone else's land), deserve to be protected. We know that this approach is supported by the National Caravan Council, the UK trade body for the residential park home industry:

“[The fit and proper person test should] cover park/business owners and park managers, their competence to run a park and include a CRB check.”

(NCC written submission to the UK Select Committee Park Homes Inquiry)³³

We **do not agree** that applicants should provide only a basic disclosure from Disclosure Scotland, or equivalent certification.

We **recommend** that applicants be required to undergo an Enhanced Disclosure CRB Check instead.

The Bill should allow for any site operator or manager found by the Residential Property Tribunal to be interfering with sales to cease to be a fit and proper person and for an appropriate person or agency to act in their place.

The Tribunal should be required to notify the relevant local authority of this decision so that the local authority is able to take action. In extreme cases, the local authorities should be have the power to issue Management Orders for mobile home sites, and the power to nominate approved bodies to take over a site.

We **agree** that appeals against any refusal to grant a licence should go to the Residential Property Tribunal.

We **recommend** that the Tribunal should be required to notify the relevant local authority of this decision so that the local authority is able to take action.

13. Apart from criminal convictions, what should be taken into consideration when deciding whether the proposed licence holder is a fit and proper person?

We know from our research that some local authorities are looking for reasons to withhold licences from known families, but there is nothing they can do if an applicant meets the basic criteria of obtaining planning permission.

Local authorities should also use our proposed new mobile home coordinators network to ensure that information about rogue site operators and any enforcement action, including prosecution, is shared between licensing departments for the purposes of ensuring that site operators remain fit and proper persons to operate a site.

³³ House of Commons Communities and Local Government Committee Park Homes Inquiry, Written Evidence—Volume V, p23, recommendation 37

This is important, because although local authority and WLGA networks do exist, the responsibility for various aspects of this work lies with different teams. We spoke to every local authority in Wales as part of our research and park homes lay within the responsibility of teams including, to name but a few, Public Protection, Legal and Regulatory Services; Housing; Environmental Health; Public Health; and Trading Standards. No forum currently exists where park homes and licensing teams can come together to work strategically on the way forward for site licensing and we think that this is a big gap which needs to be filled.

We **recommend** that a mobile home coordinators network works to ensure that information about rogue site operators and any enforcement action is shared.

14. What are your views on increasing the maximum fine for operating a site without a licence or breaching a licence condition?

Consumer Focus Wales strongly recommends that the Bill give local authorities the ability to award stronger economic penalties for breaches of a site licence.

Following consultation with industry bodies, we believe that there is an excellent case for creating the either way offence for serious breaches of a site licence which would allow for unlimited fines.

While we recognise that a fine of £20,000 would be a vast improvement on the current limit of £2,500, we also know that some of the most unscrupulous site operators may not be deterred by a five figure sum.

We **agree** that fines for operating a mobile home without a licence, or breaching a licence condition, should be increased.

We **do not agree** that these fines should be set at a maximum of £20,000.

We **recommend** that the Bill should allow for the threat of unlimited fines through the creation of an either way offence.

“The only solution ... is to have a maximum fine of £250,000. After all ... some of these park operators, through their dealings ... make £100,000 on the sale of a new home ... Make it really big. It is a simple way of dealing with it, because it hits their pocket. They can jump up and down all day but, if the fine comes in, that will concentrate their mind.

“The other thing, and the reason I make such a high figure as a suggestion, is when do judges ever really impose maximum sentences? If you look at horrendous road accidents or heinous crimes with a knife or a gun, judges rarely go for the maximum. £250,000 is a high figure ... I just feel it is the only answer and the only way to concentrate their minds. If it drives them out of the business, great stuff.”

(Richard Grigg, site operator, England)³⁴

We recognise, as Mr Grigg points out, above, that most cases will not result in substantial fines, but we believe it is important that the option, and more importantly, the threat, exists. It is important that the threat to rogue site operators is real and that local authorities feel that they have the support and resources to take action where this is appropriate.

Fines for site licence breaches should only be issued after the local authority has given the site operator an opportunity for improvement. However, if breaches are serious, then action should be taken as a priority. The current system is not fit for purpose, and the

³⁴ Taken from Mr Grigg's Oral Evidence to the Communities and Local Government Committee: Park Homes, Monday 5 March 2012, published as HC 1865 i

threat of, and evidence of intent to issue a heavy fine must be a vital part of the enforcement regime.

15. Should local authorities be able to issue fixed penalty notices and, if so, for what types of infringement? Please give your reasons.

Consumer Focus Wales believes that local authorities should be given the power to issue fixed penalty notices for minor breach of the site licences.

Fixed penalty notices are either accepted or rejected by the individual to whom it relates (in this case, the licence holder). Where a site is owned by a corporate body, we agree that Directors should also be held personally liable. If rejected, the case continues as a criminal offence to be prosecuted in the magistrates' court. Any appeal against a fixed penalty notice would have to go to the magistrates' court.

Following consultation with local authorities, we recognise that not all licensing departments may choose to use these powers, but we believe that it is important that the tools are in place should local authorities decide to use them.

We **agree** that local authorities should have the power to issue fixed penalty notices for minor breaches of licence conditions.

16. Should local authorities have powers to serve enforcement notices, and to carry out work in default if necessary following breaches of licence conditions? Please give your reasons.

Consumer Focus Wales strongly supports the introduction of a range of enforcement powers including enforcement notices, including improvement orders, prohibition orders, emergency prohibition orders and emergency remedial action orders. This approach would fall in line with local government enforcement in other areas such as alcohol licensing or food safety.

We **agree** with giving local authorities the powers to serve a range of enforcement notices following breaches of licence conditions.

We know from our work with local authorities that they would welcome the introduction of a range of enforcement notices for site licensing. Many local authorities observed that prosecution does not improve standards, but serves only to punish site operators, although they tell us that they still want to retain prosecution as an option for the worst cases.

“As the [1960] Act stands, we can only prosecute for non-compliance of the site conditions, but it doesn't actually solve the problem ... we can't give him a notice and tell him to do these works ... [it] doesn't help the residents because they would still [be in the same position].”

(Local authority, mid Wales)

We do recommend that in the first instance, the local authority works with site operators resolve problems before they become serious. There should be a staggered approach to enforcing the new regime; this legislation should not be about punishing site operators, but working with them to ensure that standards are improved across Wales.

However, where a site operator is clearly breaching the conditions of their licence, action should be taken to ensure they are aware of the seriousness of the situation. Site licence holders need to realise that breaching these conditions is not acceptable and local authorities need to demonstrate that they mean business.

In practice, the site operator should receive formal notice in writing after an inspection about the issues that have been identified and the remedial action that is expected (including a specific time period within which action must be taken and the penalties of not doing so). Regulations should set out the detail of the penalty options available to the local authority. Where a site is owned by a corporate body, we agree that Directors should also be held personally liable.

We also agree that where there are serious breaches, the Bill should give local authorities the power to carry out necessary works on mobile home sites and automatically claim the costs back without going through the courts system. We agree that where a site operator wilfully obstructs entry to the site for the purposes of inspection or enforcement, the subsequent fine should be substantially increased.

We **agree** that local authorities be given the power to carry out necessary works on mobile home sites.

We **recommend** that local authorities be given the power to automatically claim the costs of remedial work back without going through the courts system.

We **agree** that where a site operator wilfully obstructs entry to the site for the purposes of inspection or enforcement, the subsequent fine should be substantially increased.

17. Under what circumstances should a site licence be revoked?

Consumer Focus Wales believes that while it is unlikely that local authorities will want to use this power, the Bill should certainly give licensing authorities greater powers to withhold and revoke licences.

The site licence should be revoked in the event of serious mismanagement and/or criminal conviction, especially in the event of harassment or intimidation towards residents, i.e. the failure of the fit and proper person test.

We **agree** that local authorities should be able to revoke a licence in prescribed circumstances.

We **recommend** that a site licence be revoked in the event of serious mismanagement and/or criminal conviction for a relevant crime.

18. What are your views on local authorities being able to take over the management of mobile home sites, and do you envisage any practical difficulties?

Local authorities should be given the power to issue Management Orders for mobile home sites and the power to nominate approved bodies to take over a site. Regulations should allow for amendments to the rules on approved bodies.

We recognise that there is a risk attached to a licence being revoked. If a mobile home site is no longer able to operate, residents would need to be re-housed. We recommend that registered social landlords be given the authority to take over mobile home sites.

However, this course of action should only ever be followed in very extreme cases and must involve consultation with residents. We hope that with a wider range of enforcement options open to local authorities, most problems will be resolved a long time before this situation arises.

We **agree** that local authorities should be given the power to issue Management Orders for mobile home sites and the power to nominate approved bodies to take over a site.

We **recommend** that registered social landlords also be given the authority to take over mobile home sites in the event of a Management Order issued by the local authority.

19. Should mobile home owners be able to take over the management of a site and how should this work in practice?

We also recommend that residents be given the ability to take over the management of a site, although we recognise that some residents will not want this responsibility. However, we know of one site in Wales where this has happened. Residents should also be given the power to appoint someone to run the site for them.

We **agree** that mobile home owners should be able to take over the management of a site, or appoint somebody to run the site, if they wish to do so.

20. How should site operators consult with home owners when proposing changes to written agreements or site rules?

As outlined above, there is already a standard written agreement, which dates from 2007 and is laid down by Welsh Government regulations.³⁵ These are called the “implied terms” of the contract between park home resident and site operator and cannot be overridden or changed by a site operator.

This written agreement should be updated to include a clause of adherence to the site rules which would specify any restrictions on occupation of the home. Regulations should allow for the site rules to be part of the written agreement and attached as an annex of the same document.

We **agree** that there should be a standard written agreement for each site.

We **agree** that all written agreements must include a reference to the site rules.

We recommend that consultation on changes to the “express terms” of individual written agreements or the site rules should be in an accessible written format, distributed to all residents, and should allow at least 60 days for responses, suggestions and objections. Clear guidance should be given to site operators on how they consult with residents. The detail of this consultation should be set out in regulations.

The site operator should be able, if challenged, to prove to residents and to the Residential Property Tribunal that he or she took those responses into account when deciding on a course of action. If a challenge is made to the Residential Property Tribunal, the site operator should not be able to take action until the case has been heard. Regulations should set out clear timelines for appeals and for action.

Site rules should not be changed at will, and may include, but should not be limited to provisions restricting the age of residents on site, the keeping of pets, whether children should be allowed to live on site, and agreements to keep private areas in good order.

Site rules should only be reviewed with the input of residents and any qualified resident association on the site. Guidance should be provided to site operators explaining how these decisions should be communicated and the documents should be lodged with the local authority. This is to stop site operators from unilaterally changing the terms by which residents may move onto the site and therefore interfering in or blocking a sale.

We **agree** that residents and qualifying resident associations must be consulted on proposals to change site rules.

³⁵ The Mobile Homes (Written Statement) (Wales) Regulations 2007

We **agree** that all standard written agreements and site rules must be deposited with the local authority, and made available for inspection alongside the site licence.

We **recommend** that clear guidance, based on regulations, should be given to site operators on how they consult with residents over changes to the express terms in written agreements and the site rules.

We are aware of cases in which site rules state, for example, that the site operator reserves the right to alter any of the details without prior notice³⁶. The Office of Fair Trading (OFT) has already identified similar provisions in caravan site agreements and rules to be potentially unfair. We agree that disagreements over changes to site rules should go to the Residential Property Tribunal.

We **agree** that disagreements over changes to site rules should go to the Residential Property Tribunal.

We recommend that the window for changes approved by the Residential Property Tribunal in written agreements should apply to resident sales as well as new agreements between site operators and park home buyers.

There should be no distinction between the rights and protections enjoyed by a home owner who has purchased directly from the site operator and home owner who has bought directly from another resident and consequently has had their written statement assigned to them.

A home owner who has had their written statement assigned to them should be able to delete, vary, or add an express term within the first six months of taking ownership. Equally the site operator should also be able to ask the tribunal to alter the written statement within six months should they wish to do so.

Having this mechanism available to both parties should encourage greater confidence in the buying and selling process as both potential purchasers and site operators will have a clearly defined route for making changes to written statements.

We **recommend** that the window for changes approved by the Residential Property Tribunal in written agreements should apply to resident sales as well as new agreements between site operators and park home buyers.

21. Should the RPT have the power to award damages and compensation for breaches of the written agreement or any requirement imposed by this Bill? Please give your reasons.

The Residential Property Tribunal already has the ability to award damages. However, Consumer Focus Wales believes that it is vital that the Tribunal is actively encouraged to award damages where appropriate, especially in sale blocking cases.

In one recent case in England, the Tribunal ordered the site operator to pay £5000 for breaching the resident's quiet enjoyment and £8000 for failing to consent to potential purchasers.³⁶ This is a promising development.

However, to date, the Tribunal in England has not prevented loss of sales and is not routinely awarding damages. In some cases, the process remains intimidating because some site operators are still bringing along barristers to hearings. Other residents tell us that some site operators are refusing to acknowledge the rulings, and that to obtain enforcement, residents still have to go through the courts process.

³⁶ Case reference CAM/12UC/PHC/2012/0001, April 2012

The Bill should include provision for guidelines to be issued to the Residential Property Tribunal in Wales to encourage them, in appropriate circumstances, to award damages. We agree that refusal to comply with a Tribunal decision should be a serious breach of the licence conditions and punishable by prosecution.

The local authority should be able to revoke the licence in the event of non-compliance with a Tribunal decision, if they feel this course is appropriate. We also agree that any non-compliance should also be taken into account when considering whether the site operator remains a fit and proper person.

We **agree** that where a home owner is awarded damages by the RPT, non-compliance with this decision should be treated as a breach of the site licence by the local authority.

We **recommend** that guidelines be issued to the RPT to encourage them, in appropriate circumstances, to award damages.

22. Should pitch fees be regulated and if so how?

Pitch fees are currently regulated by the 1983 Act. The fee can only be changed with the agreement of the resident and are, in most cases, reviewed annually, when the site operator is legally allowed to increase the amount in line with the retail price index. However, during our research, more than a third of residents we spoke to told us that they do not consider their pitch fees fair and reasonable.³⁷

Consumer Focus Wales recognises that many mobile home owners are on a low fixed income and strongly recommends that if a site operator wishes to increase the pitch fee beyond a percentage based on the retail prices index, he or she should be required to consult with residents in a written format, distributed to all residents, and should allow at least 60 days for responses, suggestions and objections.

The site operator should be able, if challenged, to prove to residents and to the Residential Property Tribunal that he or she took those responses into account when deciding on a course of action. If a challenge is made to the Residential Property Tribunal, the site operator should not be able to take action until the case has been heard. Regulations should set out clear timelines for appeals and for action.

We agree that the site operator should be required to state any inflation rate on the review notice and explain clearly how he/she came to calculate the new amount. We also agree that site operators must be prevented from using legislative changes to increase the pitch fee, unless those legislative changes can be directly proven to affect the management or maintenance costs of the site. We agree with proposals to deter unlicensed site operators by instituting a pitch fee repayment system.

We **agree** that the site operator should be required to state any inflation rate on the review notice and explain clearly how he/she came to calculate the new amount.

We **agree** with proposals to require all pitch fees that have been paid to an unlicensed site operator to be repaid to the home owner.

23. Do you have any other comments that specifically relate to pitch fees?

Consumer Focus Wales is very concerned that the proposed introduction of a licence fee could have an adverse effect on residents as we know that many site operators are simply planning to pass on the cost of this fee in steep pitch fee rises.

We also know from our research that few mobile home owners are aware of the legislation which says that the pitch fee can only be changed ~~with~~ the agreement of the

³⁷ Unpublished Consumer Focus Wales research on park homes in Wales, 2012

occupier” or following a decision by the Residential Property Tribunal.³⁸ Many are also unaware that there are rules setting out exactly what the site operator is allowed to consider when calculating a rise.

Current legislation allows site operators to take into account *the effect of any enactment ... which has come into force since the last review date*.³⁹ We are concerned that this will give unscrupulous site operators the legal ability to use this new legislation as an excuse to drastically increase pitch fees, even beyond the real terms cost of paying a licence fee.

Consumer Focus Wales recommends that new legislation takes this into account and we strongly agree that site operators must be prohibited from using the new Mobile Homes Bill when determining pitch fee rises in the future.

We **agree** that site operators should not be permitted to pass on to home owners any of the costs that are a direct result of the Bill, including site licence fees.

24. Do you agree that the site operator’s maintenance and repairing obligations would benefit from clarification?

Current legislation allows site operators to pass on the costs of *improvements*” to residents through a pitch fee increase.⁴⁰ The meaning of improvements or the method of consultation is not made clear. The site operator’s obligation to keep the site in repair and well maintained should be clarified⁴¹ and the costs of doing so should not be included in any pitch fee review.

Consumer Focus Wales therefore agrees that the site operator’s maintenance and repairing obligations would benefit from clarification. We firmly believe that without either consultation with residents, or, alternatively, a Tribunal decision, the site operator should not have the ability to recover costs from *improvement works*”.

Case study: site maintenance and repairs

In this park, which has private water supply from a nearby reservoir, a site operator replaced a number of water pipes and installed a number of individual meters, without, it is claimed, any formal consultation with residents, and went on to demand a sum of money from residents for this work. A number of residents opposed the charges.

It is claimed that the site operator had spoken informally to some residents, asking them if they wanted to be connected to the mains supply and have water meters installed. Some residents agreed as they believed that they would be connected to the mains directly and would be charged only for the water they used. Nothing was put in writing and no charge was specified.

At one point, the site operator is alleged to have turned off the water supply to residents until they agreed to pay the charges. The local authority and a local Assembly Member became involved in the case: however, a licensing officer, in correspondence with the Assembly Member noted that:

“[The site owner] has advised me that ... there has been no further need to temporarily turn off the water supply to residents ... We will be monitoring the situation and will call for further action should it become necessary ... Any disputes in relation to [how residents are charged for utilities] are civil matters, I’m afraid.”

38 The Mobile Homes Act 1983 (Amendment of Schedule 1) (Wales) Order 2007, paragraph 16

39 The Mobile Homes Act 1983 (Amendment of Schedule 1) (Wales) Order 2007, paragraph 18(1)c

40 The Mobile Homes Act 1983 (Amendment of Schedule 1) (Wales) Order 2007, paragraph 18(1)a

41 The Mobile Homes Act 1983 (Amendment of Schedule 1) (Wales) Order 2007, paragraph 22

(Licensing officer, mid Wales)

Following this, it became apparent that residents had not been connected directly to the mains, but the site operator had instead replaced pipes that were in need of maintenance. Residents remained connected to the reservoir, with this private supply being topped up with mains water when it runs low. Many residents ended up paying the charges following alleged intimidation.

The problem now is whether the work is classed as maintenance, repair or improvement. Residents argue that if the pipes were simply replaced, that should be maintenance work and would be covered by the pitch fee. New meters would, however, probably classed as improvement work, and if this is the case, a written consultation should have taken place before they were installed.

The case remains unresolved, although we have heard from the Assembly Member that residents are no longer receiving demands for money after a process of mediation. If the site operator wanted to pursue the case, it would have to go to the Residential Property Tribunal to decide.

Below is an extract from a letter we received from a resident on this park who has been affected by this situation, demonstrating the lack of faith residents have in the decision making process, especially the abilities of the local authority.

“My husband and I have lived [here] since 2005, and along with other residents, have been forced to endure the intimidation and bullying tactics of [the site owner]. Unfortunately, many people are afraid to speak out against him because he is liable to make life very difficult for them, particularly if they should wish to sell their home.

“The health and welfare of park home residents is being put at risk by the woefully inadequate lack of legislation governing these parks and the people that own and run them, and the reluctance of the licensing agencies to protect us ... Far from showing impartiality, any dialogue ... with the licensing agency results in a seemingly pre-arranged set of excuses given for the park owner’s behaviour.”

(Mobile home owner, female, mid Wales)

We also agree that local authorities should be given the power to carry out any repair work in default, if it becomes necessary, with all costs recharged to the site operator. There should be a timeframe for undertaking this work set out in regulations.

We **agree** that the site operator’s maintenance and repairing obligations would benefit from clarification.

We **agree** that local authorities should be given the power to carry out all repair work in default with costs recharged to the site operator.

25. Should there be a standard consultation format that must be followed when a site operator is proposing improvements?

The Bill should set out the process by which site operators consult with residents over proposed improvements. We know from our research that some site operators are using, at best, a loose interpretation of consultation when deciding to carry out work.

We recommend that consultations on improvements to the site should be in a written format, distributed to all residents, and should allow at least 30 days for responses, suggestions and objections. The site operator should be able, if challenged, to prove to residents and to the Residential Property Tribunal that he or she took those responses

into account when deciding on a course of action. Guidance must be issued to site operators on the means of consultation.

We **agree** that the Bill should set out the process by which site operators consult with residents over proposed improvements.

We **recommend** that guidance should be issued to site operators, based on regulations, about how consultations on improvements to the site should be carried out.

We agree that once costs of improvements have been recovered, the additional cost should be removed from the pitch fee. Again, the pitch fee review notice should make all aspects of the pitch fee calculation as clear as possible. Guidance should be issued to explain to site operators the best way to do this.

We firmly believe that any proposal to allow costs of improvements to be spread over a number of years should be carefully considered and detailed guidance issued to site operators as we believe there is a risk that unscrupulous operators could take advantage of this rule for financial gain.

We **agree** that once costs of improvements have been recovered, the additional cost should be removed from the pitch fee.

We **recommend** that detailed guidance should be issued to site operators about the best way to recover costs for improvements over a number of years.

26. Do you agree that home owners should be able to make alterations and improvements inside their home without requiring the consent of the site operator? Please give your reasons.

Mobile home owners should be able to make alterations and improvements inside their home without requiring the consent of the site operator, unless, if, by making that alteration, the mobile home owner would be putting the site operator at risk of breaching site licence conditions. Regulations should allow for guidance to be provided to residents about seeking help from local authorities if they are unsure whether a breach has occurred.

To enable residents to make internal changes and improvements without the consent of the site operator, site rules should not be able to prevent external contractors from entering site without the prior permission of the site operator.

We **recommend** that mobile home owners should be able to make alterations and improvements inside their home without requiring the consent of the site operator.

We **recommend** that site operators be prohibited from preventing external contractors from entering site without the prior permission of the site operator.

27. What would you deem to be a fair and reasonable reason for refusing permission to alter a mobile home externally?

The only fair and reasonable reason for refusing permission to alter a mobile home externally is if by making that alteration, the mobile home owner would be putting the site operator at risk of breaching site licence conditions.

The Residential Property Tribunal already has jurisdiction over disputes relating to external alterations. However, a presumption that external works should be approved unless there are strong grounds for refusal would help residents trying to improve the appearance and energy efficiency of their home. We agree that site operators should not

be allowed to charge the home owner for this approval process. If residents are unclear about this process, they should be able to ask the local authority for advice.

External improvements involving the insulation and cladding of homes can result in substantial costs savings to a resident. A recent study conducted by SSE Plc and Alba Building Sciences Limited reported that the energy use of some park homes was halved after installing external wall, floor and roof insulation measures.⁴²

“Research has shown that large numbers of park homes are occupied by older people, often on fixed incomes, using expensive off-gas fuels. In addition, most park homes are very poorly insulated structures.”

(DECC/National Energy Action research, 2011)⁴³

Fuel poverty affects one in four households in Wales. Incidence is even higher in areas off the mains gas network, which includes the majority of park home sites. It is defined as where a household would need to spend more than 10% of its income to achieve an adequate level of warmth and is caused by a combination of three factors: low incomes, energy prices and the energy efficiency of homes.

“On average, park home owners pay 20% of their income on fuel to keep warm, with many at risk of hypothermia. External wall insulation on park homes can reduce fuel usage by over 50% and would take large numbers of owners out of fuel poverty.”

(National Energy Action, 2009)⁴⁴

Park homes residents are more likely to be living with a low fixed income and therefore affected by high energy price rises. Furthermore, we know that the method of building park homes allows heat to escape through the walls roof and floor much more quickly than in other homes. 95% of homes in occupation were built before 2005, and yet until 2005, insulation standards weren't included in the British Standard for park homes.⁴⁵

Our research found that a quarter of residents we spoke to who had energy problems find it very difficult to pay their energy bills. More than a third said they find it difficult to heat their home in winter.⁴⁶ We know that those who are particularly vulnerable, such as people with poor health or older people may be more susceptible to the worst health consequences of living in cold homes.

In 2009, a DECC/NEA report found that a trial of external wall insulation for park homes in England resulted in reduced heating costs for the 94 park home owners involved in the trial and improved living standards for park homes residents.⁴⁷

We **recommend** that external works should be automatically approved unless the RPT decides against an alteration on the grounds of a breach of the site licence.

We **agree** that site operators should not be allowed to charge the home owner for this approval process.

We **recommend** that new legislation makes clear the meaning of “a comparable [pitch] fee” when determining a new pitch fee in the event of a permanent move.

⁴² Innovative energy efficiency trial cuts costs and carbon for Park Homes, Alba Building Sciences Ltd, National Energy Action, SSE, April 2012, more information available at www.sse.com/PressReleases2012/ParkHomesEnergyEfficiency/

⁴³ External Wall Insulation for Park Homes, DECC Ref: 2.5.2, Final Report May 2011

⁴⁴ Park homes insulation project, NEA, 2009, more information available at www.nea.org.uk/park-homes-insulation-project/

⁴⁵ External Wall Insulation for Park Homes, DECC Ref: 2.5.2, Final Report May 2011

⁴⁶ Unpublished Consumer Focus Wales research on park homes in Wales, 2012

⁴⁷ External Wall Insulation for Park Homes, DECC Ref: 2.5.2, Final Report May 2011

28. Should the Residential Property Tribunal have to agree to all re-siting requests proposed by the site operator, including in emergencies? Please give your reasons.

Consumer Focus Wales agrees with proposals that the Residential Property Tribunal should have to agree to all re-siting requests proposed by the site operator, including for emergency and essential repair work.

We **agree** that the RPT should have to agree to all re-siting requests proposed by the site operator, including for emergency and essential repair work.

29. Do you believe the rules on succession and inheritance in Wales should be modernised, and do you have any comments on the above proposals?

Consumer Focus Wales agrees with these proposals to modernise the succession and inheritance rules for mobile homes. The written agreement for a pitch should apply to joint owners of the mobile home.

We also agree that surviving partners or family members of a sole owner who live in the home as their permanent residence should be able to succeed to the written agreement. However, safeguards should be put in place so that if, for example, the owner of the home has no intention of that person becoming the owner of the home, the new rules should not inadvertently put the resident in the position of becoming the owner of the home.

We also agree that in the event of the death of a home owner, with no clear entitlement to succeed, the person who inherits the home should be able to take up residence in the mobile home, as long as they comply with site rules, or gift the home to another family member.

However, we also recommend that individuals who have inherited a mobile home but are either ineligible to live in the home or who do not want to live in the home, are not obliged to pay the pitch fees and other associated costs for the first six months after a home passes into that individual's ownership. We agree that disputes over succession and inheritance would be heard by the Residential Property Tribunal.

We **agree** with proposals within this document to modernise the succession and inheritance rules for mobile homes.

We **recommend** that individuals who have inherited a mobile home but are either ineligible to live in the home or who do not want to live in the home, are not obliged to pay the pitch fees and other associated costs for the first six months after a home passes into that individual's ownership.

We **agree** that disputes over succession and inheritance would be heard by the Residential Property Tribunal.

30. What do you consider would be the financial impact of the proposed Bill on yourself, your organisation or your business?

None.

31. Do you consider that there would be a disproportionate financial impact upon any particular groups affected by this Bill?

We do not believe that this Bill would place any disproportionate financial impact upon any particular groups. While we recognise that site operators would be required to pay a site licence fee as a result of the proposals for in this Bill, Consumer Focus Wales believes that the proposals outlined in this paper will result in a more effectively regulated mobile homes industry from which rogue site operators will be discouraged.

The reputational damage of these criminals cannot be underestimated and we believe that good site operators will be happy to acknowledge the importance of an adequately resourced licensing, inspection and enforcement regime.

Conclusions

Our research confirms the importance of introducing new legislation for park homes residents in Wales. 41% of interviewees do not feel they can buy or sell freely on their site and 62% of interviewees have experienced a problem in the last five years.⁴⁸

Consumer Focus Wales believe that many of the ideas proposed in this paper are a positive step forward in protecting and safeguarding park home owners. Below we have listed where we agree with the Bill's proposals. Where we would recommend further additions, we have made our suggestions in bold.

Buying and selling mobile homes

- We also agree that the right to veto a prospective purchaser should be removed and replaced by conditions of ownership. We do not agree that there should be a meeting involving all parties prior to any sale.
- We agree that the written agreement should include a clause of adherence to the site rules, which should be an annex to the main written agreement document.
- **We recommend that site rules be agreed through consultation between the site operator and residents and lodged with the licensing authority.**
- **We recommend that a mobile home information pack be produced and widely distributed to home owners, site operators and other relevant parties.**
- **We recommend the creation of a criminal offence of indirect sale blocking.**

Licensing

- We agree that the Bill should introduce a new licensing system for mobile home sites.
- **We recommend that one local authority takes the lead on mobile homes in Wales and is funded by a top-slice of the new licensing fee to manage a website and a central information line on behalf of the other local authorities.**
- **We recommend that a formal Wales-wide network of mobile homes coordinators be established within a new framework of regular meetings and communication links to ensure the effective sharing of best practice.**
- **We recommend that multi-agency working be encouraged and established across police forces, local authorities and the voluntary sector to protect residents from intimidation and harassment.**
- We agree that there should be a duty on local authorities to carry out periodic inspections to ensure licence conditions are being complied with.
- **We recommend that these inspections take place at least twice in every five year licence period, with more inspections if needed or wanted.**
- **We recommend that all inspections should be unannounced.**
- **We recommend that site inspections should take place every six months until the problems have been rectified, and thereafter inspections should be annual, until the licence comes up for renewal, or until there is a complaint about the site.**

⁴⁸ Unpublished Consumer Focus Wales research on park homes in Wales, 2012

- **We recommend that the Bill include the right for local authorities to charge for additional inspections related to compliance.**
- We agree that local authorities should have the powers to serve legal notices requiring specific works to be carried out within a timeframe.
- **We recommend that the new inspection and enforcement regime should follow a risk-based approach, in which sites which are found to be at high risk of breaching their licence conditions are given a higher priority for inspection and follow-up action.**
- **We recommend that rented mobile homes (those which are owned by the site operator) should be inspected during a visit.**
- **We recommend that there be a requirement for licensing officers inspecting mobile home sites to speak to residents during the inspection.**
- **We recommend that inspection reports and enforcement notices are made readily available to download or ask for by phone or post without a formal request.**
- **We recommend that statutory guidance, agreed in consultation with licensing departments, outline the detail of new inspection and enforcement processes for all local authorities.**
- We agree that national model standards should lay the basis for local site licences and that it should be a condition of each site licence that all applicable model standards are adhered to.
- **We recommend that the current set of model standards be updated, in consultation with local authorities, residents and site operators, and should continue to be updated at least every five years.**
- **We recommend that new model standards give more weight given to the maintenance and safety standards of common areas of park home sites.**
- **We recommend that new model standards require the site operator to display the site licence, the standard written agreement for the site (including the site rules), and current energy and utility billing paperwork in a public place.**
- **We recommend that Welsh Government should produce guidance and training for local authorities and site operators setting out new responsibilities arising from this legislation. We recommend that when a local authority decides to revisit or update any licence conditions specific to a site, they should consult residents on that site in the process of drawing up changes.**
- **We agree that licences should be issued for a fixed period, but that local authorities should be granted the power to issue licences for shorter periods if they so wish.**
- **We recommend a maximum licence period of five years.**
- **We recommend that site operators be required to apply for a new licence upon a change of site ownership.**

Fees for licensing

- We agree that local authorities should be allowed to charge site operators for licensing mobile home sites. We do not agree that there should be a regular annual charge during the licence period.
- **We recommend that the site licence fee be determined by the number of pitches allocated to a site in its planning permission and is regularly reviewed.**

Fit and proper person

- We agree that the Bill should introduce a fit and proper person test for site operators and we agree that the test should apply to all owners of a site as joint licence holders.
- We agree that the fit and proper person test should be proactive and that local authorities should be required to undertake enquiries to satisfy themselves that the applicant is a fit and proper person to hold a site licence.
- We do not agree that it should be based on the standard introduced for Houses in Multiple Occupation under the Housing Act 2004 which is based on self-disclosure, and neither do we agree that applicants should provide only a basic disclosure from Disclosure Scotland, or equivalent certification.
- We agree that appeals against any refusal to grant a licence should go to the Residential Property Tribunal.
- **We recommend that the Tribunal should be required to notify the relevant local authority of this decision so that the local authority is able to take action.**
- **We recommend that applicants be required to undergo an Enhanced Disclosure CRB Check instead.**
- **We recommend that the mobile home coordinator network works together to ensure that information about rogue site operators and enforcement action is shared.**

Breaches of licence conditions and fines

- We agree that fines for operating a mobile home without a licence, or breaching a licence condition, should be increased. We do not agree that these fines should be set at a maximum of £20,000.
- **We recommend that the Bill should allow for the threat of unlimited fines through the creation of an either way offence.**
- We agree that local authorities should have the power to issue fixed penalty notices for minor breaches of licence conditions.
- We agree with giving local authorities the powers to serve a range of enforcement notices following breaches of licence conditions.
- We agree that local authorities be given the power to carry out necessary works on mobile home sites and that where a site operator wilfully obstructs entry to the site for the purposes of inspection or enforcement, the subsequent fine should be substantially increased.
- **We recommend that local authorities be given the power to automatically claim the costs of remedial work back without going through the courts.**
- We agree that local authorities should be able to revoke a licence in prescribed circumstances.
- **We recommend that a site licence be revoked in the event of serious mismanagement and/or criminal conviction for a relevant crime.**
- We agree that local authorities should be given the power to issue Management Orders for mobile home sites and the power to nominate approved bodies to take over a site. We also agree that mobile home owners should be able to take over the management of a site, or appoint somebody to run the site, if they wish to do so.
- **We recommend that registered social landlords also be given the authority to take over mobile home sites in the event of a Management Order issued by the local authority.**

Written agreements and site rules

- We agree that there should be a standard written agreement for each site and we agree that all written agreements must include a reference to the site rules. We agree that residents and qualifying resident associations must be consulted on proposals to change site rules.
- **We recommend that clear guidance, based on regulations, should be given to site operators on how they consult with residents over changes to the express terms in written agreements and the site rules.**
- We agree that all standard written agreements and site rules must be deposited with the local authority, and made available for inspection alongside the site licence. We agree that disagreements over changes to site rules should go to the Residential Property Tribunal.
- **We recommend that the window for changes approved by the Residential Property Tribunal in written agreements should apply to resident sales as well as new agreements between site operators and park home buyers.**

Damages and compensation

- We agree that where a home owner is awarded damages by the RPT, non-compliance with this decision should be treated as a breach of the site licence by the local authority.
- **We recommend that guidelines be issued to the RPT to encourage them, in appropriate circumstances, to award damages.**

Pitch fees

- We agree that the site operator should be required to state any inflation rate on the review notice and explain clearly how he/she came to calculate the new amount.
- We agree with proposals to require all pitch fees that have been paid to an unlicensed site operator to be repaid to the home owner.
- We agree that site operators should not be permitted to pass on to home owners any of the costs that are a direct result of the Bill, including site licence fees.

Repairs, maintenance and site improvements

- We agree that the site operator's maintenance and repairing obligations would benefit from clarification. We agree that local authorities should be given the power to carry out all repair work in default with costs recharged to the site operator.
- We agree that the Bill should set out the process by which site operators consult with residents over proposed improvements. We agree that once costs of improvements have been recovered, the additional cost should be removed from the pitch fee.
- **We recommend that guidance should be issued to site operators, based on regulations, about how consultations on improvements to the site should be carried out.**
- **We recommend that detailed guidance should be issued to site operators about the best way to recover costs for improvements over a number of years.**

Mobile home alterations and re-siting

- We agree that site operators should not be allowed to charge the home owner for the approval process for external alterations. We agree that the RPT should have

to agree to all re-siting requests proposed by the site operator, including for emergency and essential repair work.

- **We recommend that mobile home owners should be able to make alterations and improvements inside their home without requiring the consent of the site operator.**
- **We recommend that site operators be prohibited from preventing external contractors from entering site without the prior permission of the site operator.**
- **We recommend that external works should be automatically approved unless the RPT decides against an alteration on the grounds of a breach of the site licence.**
- **We recommend that new legislation makes clear the meaning of “a comparable [pitch] fee” when determining a new pitch fee in the event of a permanent move.**

Succession

- We agree with proposals within this document to modernise the succession and inheritance rules for mobile homes. We agree that disputes over succession and inheritance would be heard by the Residential Property Tribunal.
- **We recommend that individuals who have inherited a mobile home but are either ineligible to live in the home or who do not want to live in the home, are not obliged to pay the pitch fees and other associated costs for the first six months after a home passes into that individual’s ownership.**

The Residential Property Tribunal

- We agree with proposals in the consultation paper to give the Residential Property Tribunal jurisdiction over most disputes relating to this Bill.
- **However, we recommend that local authorities should retain the ability to prosecute through the courts if they think it appropriate. We also recommend that applications for termination of the written agreement must remain under the jurisdiction of the courts.**

For more information, please contact:

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Further recommendations

1. The Bill should allow for the membership of qualified resident associations to be held confidentially.

A well organised resident association can be a strong representative voice in discussions with a site operator. Site operators should be made aware of the rights of a qualified resident association to consultation and information.

Our research found that 54% of residents we spoke to do not have a residents' association on site. Of these residents, a quarter reported that there was no association due to intimidation or fear of reprisals from the site operator or manager. We believe that our findings indicate that a significant number of residents in Wales would like to have an association on their sites, but are prevented or discouraged from doing so by the attitude of their site operator.

Under the Implied Terms of the Mobile Homes Act 1983, a qualifying resident association needs to publish a publicly available list of members. It has been reported that this process of identification can be a barrier to residents joining an association, due to fear of intimidation or harassment.

We recommend that resident associations should be able, if they wish, to lodge confidential membership lists with an independent solicitor, instead of with the site operator. This will ensure that a resident association can prove, if challenged, that it has achieved qualified status, but this will also protect the names of the members. However, the contact details of committee members should be publicly available.

We **recommend** that guidance be provided to site operators to make them aware of the rights of a qualified resident association to consultation and information.

We **recommend** that resident associations should be able, if they wish, to lodge confidential membership lists with an independent solicitor, instead of with the site operator.

2. The Bill should put in place a mechanism to ensure that local authorities are audited in respect of their responsibilities in this area.

Consumer Focus Wales believes that this is essential to ensure transparency and accountability on the part of local authorities which should report periodically to the Welsh Government on the number of inspections they have carried out, the number of breaches found, and any action taken. Clear guidance and training should be issued to local authorities about their responsibilities under the new legislation.

We **recommend** that all local authorities are monitored and evaluated regularly. This will be vital to ensure that data is collected and readily available to residents and site operators because we found during our research that there is a big variation in the knowledge and expertise of different local authorities. Good data collection and evaluation will make it easier to formulate new policy and measure outcomes in the future.

**Llais Defnyddwyr
Cymru**

Cyngor Newydd Defnyddwyr Cymru



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Wales**

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National Assembly for Wales
Peter Black AM - Proposed Mobile Homes (Wales) Bill
Consultation Response: MHM7 - Quality Solicitors

Mr Aled Roberts AM.,
18, High Street,
Johnstown,
Wrexham,
LL14 2SN

11 July 2012

Dear Aled,

re: Park Homes Bill

Thank you for your time on 6 July 2012. As promised I am writing to you with my responses to the proposals set out by Peter Black in his Consultation Paper.

The Paper acknowledges that only a 'minority of operators' do not meet required standards, but proposes to impose additional costs and expenses with less control of their Parks on **all** Park Owners.

It is important to acknowledge that the Mobile Homes Act imposes strict requirements on all Park Owners and provides a security of tenure for residents which is not available elsewhere in the private residential rental market. Assured Shorthold Tenancies only offer short term security but the Park Owner accepts the longer security of residents prescribed by the Mobile Homes Act.

A fact that is often overlooked is that the resident is only renting the pitch from the Park Owner and does not own the pitch himself. He only owns the Park Home located upon the pitch. The current restrictions imposed by the Mobile Homes Act and the individual Park Rules are therefore an essential safeguard for the Park Owner in his quest to maintain his property for his own benefit and for that of the other residents on the Park. Amending the current provisions in the manner proposed will seriously undermine the ability of the Park Owner to fulfil these requirements leading, in the longer term, to a deterioration in the quality of Home Parks and the living standards of residents. A reduction in the profit to the Park Owners, by an increase in costs and administration, will inevitably lead to a reduction in the ability of Park Owners to improve Home Parks.

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Buying & selling

Removal of the veto could severely impact on the lifestyle of the existing residents by giving effective freedom to dispose of a Park Home to anybody. The Park could suffer from the introduction of persons whom the Park Owner would otherwise refuse permission to reside. The existing residents could suffer a reduction in the value of their Homes unless control is maintained.

If 'deemed consent' were introduced, what factors would the Residential Property Tribunal (RPT) have to consider to describe somebody as 'unsuitable'. That person or persons would also be in effective occupation of the Home by the time the issue was heard by the RPT, making their removal even more sensitive and unlikely.

County Court proceedings are currently available for aggrieved parties and the transfer of power to an RPT is unnecessary. The decisions of the RPT are not binding on another RPT which is likely to increase uncertainty for both residents and Park Owners seeking to enforce their rights.

Licensing

There is a current licensing regime in existence and administered by local authorities. It is suggested that the existing licensing be made more effective rather than introducing unnecessary and costly new procedures.

Fees for Licences

The proposal simply adds to the cost of the Park Owner, reducing the funds available to provide improved services and amenities to the Park. Over a period of time this is likely to result in a deteriorating standard throughout the industry. Many parks may be forced to close resulting in a loss of pitches for Park Homes.

Fit & Proper Person

The logic seems to be confused as existing Park Owners could not be forced out of their Parks unless they are compensated for their loss. New Park Owners already have to run the Park in accordance with the Site Licence and the provisions of The Mobile Homes Act. Their background is irrelevant if they operate the Park in accordance with the Site Licence and the Act. Is it intended to extend this requirement to private landlords?

Breaches of Licences/Fines

Local authorities already have powers to remove Site Licences. The level of fines may require further consideration, but large fines may have an adverse effect on the ability of the Park Owner to improve standards on the Park. If the Park Owner cannot operate his business at a profit he is likely to dispose of the Park or close it. Disposal may not

be possible if the proposed changes to legislation are perceived as draconian and not conducive to operating an effective and profitable business.

Management by local authorities is not regarded as being practical. The costs would be increased and any mortgagee is likely to 'step in' and seek a sale under its mortgage powers.

Written Agreements & Site Rules

Site Rules must be fair and reasonable and protect both the interests of the Park Owner and the residents. The Park Home is however sited on land owned by the Park Owner and residents should always be obliged to comply with any fair and reasonable Site Rules imposed by the Park Owner.

Damages & Compensation

The Paper only appears to envisage the Park Owner breaking the Site Rules or Written Agreement. Why is there no proposal to allow the award of damages or compensation against a resident in breach? His breach is equally likely to affect other residents on the Park.

Pitch Fees

They should remain linked to RPI as they are more closely affiliated to the housing costs included in that assessment. I am not aware of any other business that has its charges so fixed by law. Private landlords are not so restricted on the rent they may charge.

The proposal for Park Owners not to be able to pass on fees connected with the proposed changes to legislation is unacceptable. If the changes are designed to improve the rights of residents then surely those residents should also bear the costs.

Repairs

If the Park Owner is unable to meet the cost of repairs how is the local authority to meet these costs?

All residents will probably agree that they would like to see improvements on their Park. However they are less willing to meet the cost of those improvements when their site rent is increased as a result. Park Owners are already having difficulty in collected RPI increases let alone improvement increases. If the cost is spread over a period of years then once again the Park Owner will be less likely to incur that cost and not carry out the improvements as he will have to bear the bulk of the cost in the initial years.

Alterations

External alterations are often problematic. The Park owner has to ensure that the alterations do not cause a breach of the Site Licence by taking the Park Home outside

the definition of a caravan under the 1960 Act. The current restriction is similar to covenants imposed by builders on new housing estates and designed to protect the value and amenity of other properties on the estate. If this right were to be removed then the Park Owner will lose effective control over his land to his detriment and that of other residents on the park.

If a proposed external alteration were referred to an RPT by the Park Owner it is likely that the alteration will already have been made. Is the RPT likely to order its removal in those circumstances?

Succession

It must always be remembered that although the Home is owned by the resident, the pitch upon which is sited belongs to the Park Owner. In the same way that local authorities control rights of occupancy following the death of the tenant, there should be equal protection for the Park Owner.

I trust this letter will be considered as part of the consultation process. The ability of residents to complain about Park Owners is far more available through various organisations, such as Consumer Focus Wales, than for Park Owners who have no such outlet. The impression therefore that problems in the Park Home industry are caused only by Park Owners is likely to be one sided and incorrect. Any changes in legislation should therefore be balanced and not 'skewed' in favour of one group to the detriment of another. The proposals, as they stand, are in my opinion focused entirely on the benefit to residents to the detriment of the Park Owners.

Yours sincerely,

Paul Andrews
QualitySolicitors GMA

**National Assembly for Wales
Peter Black AM - Proposed Mobile Homes (Wales) Bill
Consultation Response: MHM8 - Willow Park Residents Association**



THE QUALIFIED WILLOW PARK RESIDENTS" ASSOCIATION

Postal Address: 16 Willow Park Holly Leaf, Gladstone Way, Mancot, Deeside CH5 2TX
Email: wpra@talktalk.net Office Telephone: 01244 815 928

Mr Peter Black AM

National Assembly for Wales

Cardiff Bay

Cardiff

CF99 1NA

15th July 2012

Dear Mr. Black,

SUBJECT: IMPORTANT ISSUES FOR PARK HOME ACT WALES

Members of the "Willow Park Residents Association", Gladstone Way, Mancot, Deeside CH5 2TX would very much like to meet with you sometime during the

"Summer Recess" from the Welsh Assembly, concerning our questions over the „Proposed“ Mobile Homes (Wales) Bill.

Hopefully, you will have been able to peruse our replies to the Consultation Questions and will no doubt have noticed there are a couple of very important

„Issues“ not included and we feel they need to be raised in this Bill. Meeting face to face with you, we hope to gain some assurances in our honest and sincere concerns. Considering these „rules/conditions“ will be what we as „Park Home Residents“ will live with for the rest of our lives we feel very strongly that direction from actual „Residents“ is of the utmost importance in this matter!

To help you understand us, we are still being operated as Mobile Living Ltd our former park name, with all four year round parks being purchased by Wyldecrest in February 2012. We are not entirely sure of the manner of business we will face with the new owners. However we are being very watchful, noting MANY changes in administration thus far and what appears to be „scare mongering“ about the „sales process and procedures“ and listening to news articles like this from the National Press.

„Wyldecrest Parks“ is owned by a man called Mr. Alfie Best who was recently asked to appear before the “Communities & Local Government Select Committee” in England. One of the many questions asked was regarding an assault on a resident at „Scaterdells Park“, Hertfordshire. Mr. Best apologized and said it was a misunderstanding. This was also printed in an article in the National Press.

Meeting with you face to face, we can get confirmation that you are ‘fighting’ for what is indeed needed for Park Home Living today and in the future for Welsh Parks!!

Most sincerely,

Miss M. MacNally

Chairperson Willow Park Residents Association

1. THE RESIDENTIAL PROPERTY TRIBUNAL - 1. MOST DEFINITELY THE RPT should have jurisdiction to deal with ALL disputes relating to this Bill. REASONS WHY
a) less formal environment than court b) continuity if all were dealt with at the RPT level c) more encouraging to use this instead of the 'courts' (less fearful to older residents) d) we are told more timely than the court system e) can be more hands on than the court itself could be

2. Not applicable to any residents in attendance at our meeting.

3. The law should be reformed to prevent sale blocking as it is NOT NECESSARY for site owners/operators to have this power. If a site owner needs to block sales they should only be for the opportunity to change the plans/detailed outline of the site given to the council. Therefore they would have to seek permission from the Councils Planning Department. Details of the changes would have to be approved and provided to the licencing Department and an official block could be used once ALL interested parties are notified personally of the Planning Change and confirmed Sales Block. In this process the Park Owners would then have to purchase at a 'fair market value' any homes in that area slated for planning change.

4. A meeting between the prospective purchasers and the current home owner along with the Park Representative should ALWAYS take place TOGETHER! This confirms that nothing derogatory is said about the home (to try and STOP the sale) and ALL details of the purchase given to the new buyer is correctly portrayed by the site representative. Any details not correct are then effectively addressed at this time. IF not then it would go to a RPT for settlement. Decisions made here should be enforced by these instructions as deemed on the day.

5, 6, 7, 8, 9 - Where do we start??? Having worked with the Council Licencing Department and trying to get answers to MANY questions regarding the Specifications necessary for a licence we have MANY suggestions! From the start of the QRA on Willow Park through to now we have uncovered many shortfalls. (Three plus years) We also attend the Welsh Tenants Federation and came up with some interesting suggestions that relate to this as well. Let us try to explain - A governing body - who has the answers sorted - needs to be appointed to set the standards and specifications for the Licence to keep it the same for ALL PARKS in WALES!! Suggestion here to follow through on the idea - The Welsh Government sets the Licencing Requirements. This to include all requirements and the specifications for each category required. If the Specifications are not set for the council to use HOW on earth can they issue a Licence??(Which is the current situation.) Councils follow through with the requirements necessary for inspections of parks, including electrics, water, sewerage, health and safety, fire and water services etc. The Park pays a licence fee every three years of £3,000.00 funded from their own monies, NOT Ground Rents!! The inspections take place by the Local Council every year, and if the site is not up to the specifications required in the Licence the owner is heavily fined again from his/her own costs - NOT Ground Rent monies. These fines should be substantial to keep the park owners in line with the requirements. All services will have their necessary times for checks that can be either additional or incorporated with the Council checks. Making sure that site visits are not always planned to give the owners time to make sure that necessary adjustments are made to have things look good for the inspection. Maybe a SPOT CHECK if you get the drift - otherwise they fake the over preparedness to be a usual manner for the Park to be kept. The Government can also make a check on the Council as well on some of the parks in their knowledge have been owned by a UPO or has had licence issues in the past. The licence fees and penalty fees should be

set high enough to cover the visits for inspections on parks. Licencing Departments should be able to use their scope of judgement for a circumstance for a shorter licence time frame. 5, 6, 7, 8, 9 - Where do we start??? Having worked with the Council Licencing Department and trying to get answers to MANY questions regarding the Specifications necessary for a licence we have MANY suggestions! From the start of the QRA on Willow Park through to now we have uncovered many shortfalls. (Three plus years) We also attend the Welsh Tenants Federation and came up with some interesting suggestions that relate to this as well. Let us try to explain - A governing body - who has the answers sorted - needs to be appointed to set the standards and specifications for the Licence to keep it the same for ALL PARKS in WALES!! Suggestion here to follow through on the idea - The Welsh Government sets the Licencing Requirements. This to include all requirements and the specifications for each category required. If the Specifications are not set for the council to use HOW on earth can they issue a Licence??(Which is the current situation.) Councils follow through with the requirements necessary for inspections of parks, including electrics, water, sewerage, health and safety, fire and water services etc. The Park pays a licence fee every three years of £3,000.00 funded from their own monies, NOT Ground Rents!! The inspections take place by the Local Council every year, and if the site is not up to the specifications required in the Licence the owner is heavily fined again from his/her own costs - NOT Ground Rent monies. These fines should be substantial to keep the park owners in line with the requirements. All services will have their necessary times for checks that can be either additional or incorporated with the Council checks. Making sure that site visits are not always planned to give the owners time to make sure that necessary adjustments are made to have things look good for the inspection. Maybe a SPOT CHECK if you get the drift - otherwise they fake the over preparedness to be a usual manner for the Park to be kept. The Government can also make a check on the Council as well on some of the parks in their knowledge have been owned by a UPO or has had licence issues in the past. The licence fees and penalty fees should be set high enough to cover the visits for inspections on parks. Licencing Departments should be able to use their scope of judgement for a circumstance for a shorter licence time frame.

Summary 5 to 9 - 1. Current system TERRIBLE!! Entire system should be improved!! 2. Inspections should take place yearly with finance from the Park Owners OWN Pocket NOT THE GROUND RENT!! 3. The Welsh Government should issue the terms for a licence (3 years we think) and the specifications for each category requirements to 'earn' the licence.(This will eliminate the 'adequate' lighting and the 'enough' supply - which reads differently in each individual person! It would also make it so that the lighting requirement would be standard in each park for example. NOT according to Joe Bloggs at the Lighting Standards Board, or the parks electrician. IF THE Welsh Government set the standards and specifications they would all be the same and no excuse not to be!! 4. All details deemed requirements from the 1960 standards along with the specifications for each category should be included to protect each resident. It appears to cover all areas of siting, licence issues for measurements and so forth. 5. The Welsh Government should be at the head of this - governed licence requirement - doing spot checks on the council licencing Department to ensure correct policy is being adhered to and no one is getting a back hander income!!

10 and 11 - the cost of the licence should be determined by the overall costs for the Licence. Numbers of sites and size of the Park will have effect on the overall cost so needs to be considered when setting the licence fee. Licence Fees and non-compliance charges/fines should NOT come from the sites Ground Rent. It should come directly from the site owner themselves. The administration costs for the councils costs to inspect the site and confirm compliance should be met by the licence fee charge. We suggest this is renewed every three years.

12 and 13 - Yes the site owners and managers should have a fit and proper persons test administrated by Council. This should also include warnings given by police as well as any police stops that did not go further in case these may show how they will handle things that take place on a Park Home site. This will help to weed out the UPO's, will help protect the well being of all park residents, and help stop harrassment of park residents. The attitude and personality of the owner/managers is very important in considerations for reliability to clients as we are in a separate neiche when it comes to Park Residents. Formal Warnings by police and Bankrupcy's should also be taken into consideration as we do not want to be on a park that goes bankrupt and have to sell up and move - OR heaven forbid WALK AWAY!!!!

14 - In the past we are not aware of ANY fines being out there to give to Park Owners for breaching a licence condition. Our park has been allowed to carry on as they were and NOT be fined for any breached condition. The council seems to turn a blind eye on this allowing the park owner to do as he/she pleases. They are allowed to harrass and bully the residents into all sorts. Many do the maintenance on the Park owned trees as the park owner did not. Residents just put up with the way things were as they did not want to upset the apple cart. LARGE enough fines to STOP the breaching of licence regulations and park owners obligations to Residents should be set to make sure that it is better to do as required than not. Even when the park owner was sued for an accident he still did not do the repairs on this park, so the fine MUST be large enough to validate the park owners to do as required.

15 - Yes fixed penalty notices are a MUST. Infringements on the regulations of the licence, otherwise the regulations and the council/government all the way to the top where the BILL is set are made a fool of if the penatlies are not set and enforced. ALL infringements - set fees for this as well. Make it the same fee - notice for first and then set same fee no matter the size of infringement or you get into the major and minor and who decides again! Reason is to make sure that the park owner does as the regulated licence requires!!!! They have not been regulated in the past - the regulations were there and NO real incentive to follow them, unless you were a real HONEST and sincere park owner who wanted the best for your residents. THE UPO's will get caught out if this is done correctly!!

17. Council should be given a large scope to fine heavily when regulations are not carried out. This would stop the issues of the past with UPO's. Keeps the GOOD owners in good fair as now and the BAD will have to shape up or get out!! The council would just be doing its job correctly for the residents benefit.FINELY!!!

18. and 19 - Councils should be prepared to take over management if the owner does not shape up and get the park in order according to the licence. Management company would have to be employed by council most likely and they follow the licence regulations that is all. NO issues, money coming in will cover running costs of course so until the UPO got their act together it would be in the hands of the Council. Park home owners could take over a site - buying out from the Park Owner, however, in our sites case it would not be feasible as there are too many problems with sewers/drains/electrics/water for it to be possible. Residents would be taking on old and run down park facilities that are necessary to be repaired to stop the faults that happen daily. So for residents to take over it would have to be a better park facility than ours here now!

20 - MOST DEFINITELY !!! - HOWEVER it should be obvious that site owners should have to notify each resident by post addressed to them so that ALL residents are informed of the proposed changes. NOT just put a notice on the main office board and hope that most of the residents do NOT see it and they can just bring the change into affect. WHAT IS NEEDED ON ALL PARKS IS - CONSULTATION - CO-OPERATION - COMMUNICATION !!!! full stop !!

21 - YES ! -The RPT is acting as the decision maker for issues therefore it should be able to impose any decision, monetary award, regulation to be imposed as required to settle the rift that is being brought to their attention for settlement. Reason - is basically that - issue brought in front of them needs to be sorted - the RPT has been brought forward as the new method of settlement - so the full power of the decision and carrying through has to be given to them to make the RPT power complete or WHY is it in place to make the decisions!??

22. and 23 - Pitch fees - They most definitely have to have some sort of regulations!! Think of it - seniors on a park home site - trying their best to be able to stay self sufficient - however the cost of the pitch fee rises EVERY YEAR with the RPI and the RPI increase is higher than the pension increase ! You are looking at a large group of people that are going to have to look to the Council to house them and help them to be able to live for the rest of their lives because the Pitch Fee is out of control. There must be some STOP on the level it can increase to!! Otherwise if it can be afforded a flat will be cheaper to live in instead of your own home ??? Do the math !! Suggest to use the CPI instead of the RPI for calculations. Pitch Fees need to be transparent!! We are given a price but have NO idea what exactly the money is going for. We need to see the broken down figures for what we are paying!!! THIS IS NEEDED ON ALL PARKS !!! Some suggestions to regulate the cost of ground rent was payment amount would be made by the size of your site and not just the home itself being a single or a double home. Some older sites have large and small grounds around the home.

24 -YES MOST DEFINITELY !!! Our thoughts above about the SPECIFICATIONS necessary for the different areas of legislation require details and currently they are not given in the councils licence listing or report. So these need more clarity so that it does not leave any question of the obligations and the requirements to attain and maintain a licence and requirements for themselves for residents safety and enjoyable living.

25. YES - common sense to begin with! Notification to ALL residents by personally addressed post, followed by consultation meeting as/if necessary. The 1960 Act with specifications and comply with the Health and Safety regulations. Park owners must listen to the residents and use the afore mentioned - Consultation - Co-operation and Communication!!

26 - Yes we should - WE OWN IT!!! So why should we be stopped doing anything to the inside of our homes - BRICKS AND MORTAR are not stopped for the inside changes so why should we be - Are we second class citizens ??? Reasons as stated already!!

27. - The changes are regulated by the councils take on the 1960 Act. So certainly these should be taken into the equation when requesting change on the outside. We do not want someone building where they would be looking directly into someones home/bedroom etc, or too close with fire hazard being created. Those Health and Safety issues and again using Common Sense.

28 - Yes it would be best as then it will be lodged with reasons and all matters detailed. UNLESS it could be done with the council Planning Department. They are the ones that get the design/set up of the site to agree the 'PLAN' when setting up the site. Should they not be the ones to agree or disagree to a change for re-siting. If the home will be returned to the original site they only need to submit the details at a meeting of the Planner, Park Owner and the Resident. All matters then are put out on the floor and the Planner decides feasible or not. If a dispute arises from this meeting then it would go to the RPT for decision. EMERGENCIES are a different kettle of fish! They would have to be done as soon as possible and may have to move before a planning meeting is set up - and could be held. So in this case the 3 x C's come into place again. All details between the resident and the site owner should be open and honest and hopefully no issue so that the emergency can be sorted and the resident who was re-sited can be happy with the changed site, as sometimes the return may not be able to happen. The specific rules need to be written so that it would be clear in case of an emergency and no time to meet the planner. This might be able to be detailed with the specific regulation regarding this to allow for no need for the RPT - however it should also be open for the resident and or the owner to take it to the RPT when needed.

29. - Residents will hopefully have a WILL that will state the turn over of the home to family or friends. This will be how the site owner will have to allow change over of the home without any cost whatsoever to the new owner of the home. Name changed on the agreement and 'bob's your uncle!' IF and ONLY IF the person is too young should the owner then be allowed to RENT until such time as they deem necessary. The park owner would have a meeting with the new tenants and the home owner just to confirm that park rules are confirmed for them to regulate themselves with for their living in the home as a rented home. This would happen with each new tenant as well with no animosity from any park owner or other tenant, as it would be well advised in the rules of the parks over all of Wales. This would allow to keep the age rule and also allow someone who now has a home to be able to keep it and rent. Your thoughts on proposed change to modernise the current inherit regulations sound firm if there is no will.

30 - there should be no change in the financial impact on the proposed bill. As we have stated above to make the regulations for licence have impact on the site owners we felt that they should be funding the licence fee and the fines from their own pockets and not the ground rents. THIS IS THE ONLY WAY to make the impact on them stand and make a difference to those UPO's!

31. - NO we do not feel there would be any disproportionate financial impact on any groups affected by these changes. Council would have their funding covered by the licence fee and the fines if any would be additional to cover the UPO's aggravation to the council!!

Submitted by the WILLOW PARK RESIDENTS ASSOCIATION - To Mr Peter Black
AM by email and confirmed in post. Letter included in email and post signed copy
request.

Propose Mobile Homes (Wales) Bill - Consultation

Response from The City & County of Swansea

Summary

The Council welcomes the proposals for amendments to the legislation relating to mobile homes in Wales. The current legislation is, in many ways, outdated and lacks satisfactory enforcement powers. The licensing regime is something we have used with houses in multiple occupation (HMOs) since changes in the Housing Act 2004 took effect in 2006. We see how licensing could have benefits for mobile homes and welcome the additional controls that would be placed upon licence holders, which in turn would give greater satisfaction for residents of mobile home sites.

Specific Questions and Comments

Q1 Do you agree that the Residential Property Tribunal should have jurisdiction to deal with all disputes relating to this Bill, aside from criminal prosecutions? Please give your reasons.

Yes, the Residential Property Tribunal (RPT) should have jurisdiction to deal with disputes relating to mobile homes, but it is important that offences under the Bill should be criminal offences and should be pursued through the court system.

The RPT, providing it is properly resourced, has the ability to adjudicate on disputes within a relatively short timescale and in a more informal manner than the court system which may encourage residents with issues to seek proper settlement.

The RPT for Wales already has a role in housing matters, but unlike the RPT in England, does not publish any of its decisions under the Housing Act 2004 online. This would assist everyone involved, not just local authorities, in being aware of and understand decisions and, whilst the decisions are not case law, would benefit future enforcement and determinations in the future.

Q2 Do you have any experience of a sale being prevented, or if you are a site operator have you ever objected to a sale and why?

We are aware of two cases of sales being prevented. In both cases the site operator wanted to replace older units with new ones and blamed the site licence conditions.

Q3 Should the law be reformed to prevent sale blocking or is it necessary for site operators to have this power? If the law should be

changed, which of the suggested alternatives outlined above do you prefer? Please give your reasons.

In each of the cases referred to in response to Q2 the site operators blocked the sale and offered an extremely low price for the unit. The legislation needs to be changed to prevent unscrupulous site operators from deliberately preventing a sale. We would support the proposal to remove the veto and include the ability for application to the RPT to resolve specific disputes relating to site rules.

Q4 Do you agree that there should be a meeting between all parties prior to the sale/purchase? Please give your reasons.

We agree with the proposal. It is essential to try to reach an amicable resolution to prevent further action becoming necessary.

Q5 What are your views on the current licensing system for mobile home sites? What could be improved?

The current system for enforcement of site licence conditions is cumbersome and not effective. The reporting of breaches of licence conditions to the Magistrates Court only serves as evidence for an eventual possible revocation of the licence and does not necessarily result in improvements at the site. The introduction of a range of enforcement notices which the local authority could serve in cases of breaches of licence conditions, along with the ability to carry out work in default and reclaim costs incurred should the licence holder fail to comply with the notice would be a positive step forward.

Presently there is no limit of time on a licence. Introducing a specific 'life' for a licence would ensure an element of statutory review on conditions.

There is currently no check or balance on who the licence holder can be and in practice these are often companies remote from the actual day to day activities on site affecting the daily lives of residents.

Q6 How often should local authorities inspect sites and how should these inspections be financed?

We inspect sites annually on a routine basis with visits in response to queries as necessary. An annual inspection would seem the maximum frequency required and this may be extended if the site is broadly compliant. The licence fee should cover the costs of statutory inspections.

Q7 Should the Welsh Government issue guidance on the frequency and nature of such inspections?

National guidance would be of benefit to aid consistency across Wales.

Q8 What are your views on what should be included in licence conditions? Should there be guidance on this issued by the Welsh Government?

Licence conditions should relate to health and safety, fire precautions, responsibilities of licence operator and any managers, maintenance and appearance of site, supply of services including electricity and gas where provided and impact on neighbourhood/surrounding area. National guidance would be of benefit to aid consistency across Wales.

Q9 How long should each licence normally last and should local authorities be able to grant licences for shorter periods if necessary?

A licence should normally last for five years maximum with the ability for a local authority to grant a licence for a shorter period in specific circumstances e.g. where there have been previous infringements, where the management is new or not proven etc.

Q10 How should the fees for mobile home site licensing be determined? Should the fee be calculated by reference to the number of pitches, the total area of the site, the cost of inspections to the local authority or a combination of all or any of these factors?

A simple methodology would be best based on the time taken for inspections and administration of the licence application and its enforcement with an incremental scale of charges based on the number of units on a site with the higher fees being paid by operators with more units.

Q11 Should there be a regular annual charge to cover on-going administrative costs borne by local authorities during the licence period?

No, this should be taken into account in the licence fee which should be paid in full on application. Instalments or annual charges can be an ongoing administrative burden in themselves with the actual cost of raising an invoice sometimes being the equivalent of the fee to be paid. There is no guarantee that an annual charge will be paid which may be a failure to comply with licence conditions, but would seem to detract from the real purpose of a licensing regime.

If the conditions on a site during the five years of a licence lead to additional involvement including inspections on the part of the local authority it may be appropriate when the application to re-license the site is made, to grant a licence for less than five years.

Q12 Do you agree that site operators must pass a fit and proper person test before being granted a licence (with the local authority undertaking relevant checks) and that this should be based on the

standard introduced for Houses in Multiple Occupation under the Housing Act 2004? Please give your reasons.

Yes we agree with the fit and proper person test. Whilst CRB checks are not a legal requirement of an HMO licence application many local authorities do use them, specifically utilising Disclosure Scotland. The costs of this are levied to the applicant via the licence fee. Self-declarations are not fool-proof and whilst it is an offence to provide false or misleading information in an application we suspect that some relevant misdemeanours are not declared. A fit and proper person test is an accepted method of trying to ensure that a person holding a licence is suitable to do so and will not act in a manner which is detrimental or threatening to the residents.

Q13 Apart from criminal convictions, what should be taken into consideration when deciding whether the proposed licence holder is a fit and proper person?

Experience of holding a similar licence in the same or neighbouring local authority area; number/level of enforcement notices served and whether there has been compliance with these; referrals to the Residential Property Tribunal and the results of these including complying with any order for compensation or damages made by the RPT. All this would rely on sharing of data between authorities and the RPT.

Q14 What are your views on increasing the maximum fine for operating a site without a licence, or breaching a licence condition?

Yes we agree with increasing the maximum fine in these cases.

Q15 Should local authorities be able to issue fixed penalty notices and if so, for what type of infringements. Please give your reasons.

Fixed penalty fines may be appropriate for offences which can easily be remedied e.g. failure to display name and contact details of licence holder, but they are normally used in other areas where there is an assumption that the contravention will not happen again. There is no element of encouraging improvement except for the expectation that the licence holder will not be caught again. They should not be used for serious breaches.

If the fine is not paid there is the need for additional enforcement and debt recovery.

Q16 Should local authorities have powers to serve enforcement notices and to carry out work in default if necessary following breaches of licence conditions? Please give your reasons.

Yes, the introduction of a range of enforcement notices, similar to those provided by the Housing Act 2004, Part 1 along with the ability to carry out work in default and reclaim costs from the site operator would be welcomed.

Enforcement notices requiring an improvement to a site aim to move things forward and to make conditions better. This can only be a positive step. Prohibition notices, where the use of something or a specific practice must cease aim to safeguard health and safety. Different methods or working must then be implemented: again resulting in improvement to the site and living conditions.

The ability for a local authority to carry out work in default would ensure that improvements are made even if the site operator is reluctant or refuses to do work, subject to appeal of the enforcement notice in the RPT.

The local authority should also be able to instigate legal proceedings in the Magistrates Court for anyone failing to comply with an enforcement notice.

Q17 Under what circumstances should a site licence be revoked?

For serious failure to comply with the licence conditions or for repeated breaches of the licence conditions or where the licence holder is no longer considered to be a fit and proper person. It is anticipated that revocation would be reserved for only the most serious cases as improvements should be possible via the use of enforcement notices.

Q18 What are your views on local authorities being able to take over the management of mobile home sites and do you envisage practical difficulties?

This may become necessary in extreme cases, but is not a prospect that local authorities would relish. The necessary skills and experience would probably not be found within the local authority and the costs involved may well be prohibitive as it is likely that work would be required at any site where conditions lead to a licence being revoked. This would also be a heavy time resource. It is likely that this would have to be explored on a regional or national basis with suitable contractors being determined through a tendering process.

Q19 Should mobile home owners be able to take over the management of a site and how would this work in practice?

It may be possible for a residents' association to take over the management of a site, but this would have to be legislated for and the association would have to abide by regulation.

Q20 How should site operators consult with home owners when proposing changes to written agreements or site rules?

Site operators should consult in writing with all home owners and any residents' association. It may, in practice, be helpful if this was backed up by face to face meetings, but that could not be regulated.

Q21 Should the RPT have the power to award damages and compensation for breaches of the written agreement or any requirement imposed by this Bill? Please give your reasons.

Yes the RPT would be an appropriate body for awarding damages and compensation as they already have a similar role in other areas of housing law including Rent Repayment Orders.

Should a site operator not comply with an order of the RPT that should not be considered a breach of licence conditions as the local authority could not enforce the order, but this should be taken into account when considering fit and proper person status. Again, this would rely upon the decision of the RPT to be available to the local authority.

Q22 Should pitch fees be regulated and, if so, how?

Yes, so that increases are justifiable and are not increased unduly or by too large an amount. The increases and reasons should be put in writing to home owners. It would be helpful if there was a minimum time period during each increase in pitch fees.

Q23 Do you have any other comments that specifically relate to pitch fees?

There would have to be a specific mechanism for pitch fees for unlicensed sites being repaid to home owners. We have some experience of the RPT awarding Rent Repayment Orders to HMO tenants in similar circumstances. The tenants can make an application if the landlord has been convicted of failing to license the HMO. This system seems to work well.

Despite the proposals that costs the site operator incurs directly as a result of the Bill should not be passed on to home owners, it is likely that they will seek to recover the cost of site licences in some way.

Q24 Do you agree that the site operator's maintenance and repairing obligations would benefit from clarification?

Yes, we agree with this.

Q25 Should there be a standard consultation format that must be followed when a site operator is proposing improvements?

Yes. Some improvements may be as a result of licence conditions or enforcement notices. The local authority must take a practical approach to improvements which may only be achievable over a long period of time e.g. spacing between homes.

Q26 Do you agree that home owners should be able to make alterations and improvements inside their home without requiring the consent of the site operator? Please give your reasons.

Yes as long as these did not contravene the licence conditions (e.g. gas safety) or any of the site rules.

Q27 What would you deem fair and reasonable reason for refusing permission to alter a mobile home externally?

Should the alteration encroach on the separation distance between homes in contravention of the licence conditions; if the alteration were a safety hazard or if it affected the look or amenity of the site in contravention of the licence conditions or site rules; if the alteration caused a nuisance to neighbours or if the alteration meant that the home no longer qualified as a mobile home.

Q28 Should the Residential Property Tribunal have to agree to all re-siting requests proposed by the site operator, including in emergencies? Please give your reasons.

If a home needed to be re-sited in an emergency it would not be appropriate for the site operator to have to make a request to the RPT e.g. in cases of possible land slip, fire or explosion or flooding.

If a referral is to be made to the RPT then they must be allowed to properly consider each application and should not be fettered in that decision.

Q29 Do you believe the rules on succession and inheritance in Wales should be modernised and do you have any comments on the above proposals?

Yes, we support the proposals proposed by the DCLG. The rules on succession are currently very complicated and difficult for families to resolve at what is already a very stressful time.

Q30 What do you consider would be the financial impact of the proposed Bill on yourself, your organisation or your business?

The local authority only has four licensed residential mobile home sites which are inspected annually. A new licensing regime would necessitate liaison with site operators, processing of an application including a fit and proper person check and inspection in accordance with new licence conditions and subsequent grant of a licence. It is anticipated that there would be a nationally agreed application form across Wales and a standard set of licence conditions, which could be added to for specific issues at an individual site.

The administration of the scheme would sit neatly alongside our existing procedures and those for HMO licensing. An element of training would be necessary for officers and there would be some support/advice necessary for site operators and home owners. It is hoped that the Welsh Government would implement an information campaign and produce guidance literature.

The scheme would have to be self-financing and the level of licence fee would have to account for this. We currently have one officer dealing with the licensed site in Swansea on a part-time basis.

Q31 Do you consider that there would be a disproportionate financial impact upon any particular groups affected by this Bill?

Site operators will say that they have to pay a fee for a licence they already have and inspections which are already carried out. It is unlikely that the licence fee will be unduly demanding, but it is anticipated that they will try to pass this fee on to home owners in some way.

Response of the Residential Property Tribunal to the consultation on the Mobile Homes (Wales) Bill

Introduction to the RPT – purpose and independence

The purpose of the Residential Property Tribunal is to provide an accessible, effective and relatively informal service to the people of Wales. It is entirely independent of Government though sponsored by the Housing Directorate of the Welsh Government.

The role of the Residential Property Tribunal is to adjudicate fairly and impartially the applications which it is to determine. Amongst other matters such applications include disputes over rent, leases of houses and flats and also disputes between landlords and local housing authorities about licensing or the condition of property.

General issues

The proposed bill covers a large number of issues where it is mooted that disputes would be referred to the Residential Property Tribunal. The Tribunal has a wide range of jurisdictions, including those conferred by the Housing Act 2004, and its members have expert knowledge and experience of determining property related disputes. Thus, it is appropriate that recourse would be to the Tribunal.

However, if the measures referred to were to be enacted this would potentially have a considerable impact on the work of the Tribunal and change the way in which the business would be run.

Specific question responses

This response is directed to those measures where the Tribunal would be likely to, or should be, involved. We have not addressed measures which would be outside the Tribunal's proposed jurisdiction.

1. The Role of the Residential Property Tribunal

After considerable consultation most disputes relating to Mobile Homes under existing legislation were transferred to the Residential Property Tribunal earlier this year. The underlying reasons for the transfer were to provide a more cost effective, informal and quicker access to justice in dispute resolution.

It would, therefore, seem appropriate that the Tribunal should be the first instance venue for dealing with disputes under the proposed bill (other than criminal matters). Also, a number of the measures proposed are similar to those provided for under the Housing Act 2004 and are likely to involve similar issues if in a different context.

Should all the wide ranging proposals put forward be included in the bill consideration will have to be given to resources. Over recent years costs to the Tribunal have increased and there already exists considerable pressure on the budget, members time and staff resources. Training members in new jurisdictions will also have to be considered.

Staff and resources (including translation services) will have to be made available to produce application forms and guidance for the public. Consideration will also need to be given for fees payable on applications.

2. Buying and selling Mobile Homes

Whilst we note the preferred option would be to remove the Site Owners "veto" we believe that a better option is that the purchaser is deemed to be approved unless, on an application by the site owner within a set time limit, the Residential Property Tribunal declares them unsuitable.

This puts the onus on the site owner to raise substantive issues regarding the potential buyer. The Tribunal already has powers to dismiss vexatious applications and to award costs so there is a safeguard against spurious applications. We would also suggest that the fee for such an application should be realistic and sufficient to require a site owner to fully consider their position before making one.

In our view a compulsory meeting between all three parties as proposed may well be difficult to enforce.

3. Licensing/Fit and Proper Person Test

We consider that disputes relating to the granting/refusal of a site license, conditions imposed on the Licensee, and in relation to whether the site owner is a fit and proper person should come to the Tribunal.

We believe that the criteria for considering whether a person is a „fit and proper" person must be clear and transparent and applied consistently across Wales by all Local Authorities. We agree that the test should apply to the person having „control" of the site as well as the owner by analogy with Houses in Multiple Occupation under the 2004 Act.

We agree that appeals relating to a decision to vary or revoke a site license should be heard by the Residential Property Tribunal again in a similar fashion to the 2004 Act.

If the Local Authority were to be given powers in relation to enforcement notices or Management Orders then we would assume there would be a right of appeal to the Residential Property Tribunal. Consideration should be given as to whether, in the case of a Management Order, the Local Authority

should have to obtain prior approval of the Tribunal before taking such action, given that such action will materially interfere with the rights of the site owner.

4. Written Agreements/Site Rules/Breach of the Written Agreement

The Residential Property Tribunal has considerable experience in the field of landlord and tenant. We know that there are good landlords and bad landlords and good and bad tenants.

We consider that any legislation in relation to breach of the Written Agreement should balance the rights and obligations of both parties to it.

When a tribunal exercises any power under the regulations which govern it or interprets any regulation it seeks to give effect to the overriding objective of dealing fairly and justly with applications which it is to determine. This means that the Tribunal, in any determination, must be fair to both sides.

Should, therefore, the power to award compensation or damages as proposed apply equally to site owners and homes owners? Would this extend to breaches of the site rules or just the Written Agreement?

The award of damages or compensation would be a new departure for the Residential Property Tribunal but, if the power is to exist, it is right that it rests in the Tribunal dealing with the dispute. Subject to the right of appeal, we agree that the failure to comply with such an award should be a breach of the site license by the owner. If the power were to extend to owners of Park Homes, consideration would need to be given to what sanction would exist if they failed to comply.

5. Alterations/Re-siting

We agree that Park Home owners should have the right to alter the exterior elevation of their home with the consent of the site owner and a right to appeal to the Tribunal if they consider that consent to have been refused unreasonably.

With regard to re-siting, whilst we agree that in the case of essential repairs consent of the Tribunal should be necessary, we believe it would be disproportionate to require consent in an emergency. We accept that the interpretation of „emergency“ may be open to question.

6. Succession

We believe that the law on succession needs to be clarified in a similar way to that in relation to protected tenancies. The proposals put forward by the Department of Communities and Local Government and repeated in the consultation document appear to clarify both parties rights on succession.

7. Costs

Clearly if all the proposals set out in the bills consultation document were to become law, this would place a heavy burden on the Residential Property Tribunal to deal with cases in a proportionate and expeditious fashion. A Tribunal of Lawyer, Surveyor and Lay Person costs over £1,000 per day leaving aside the cost of a venue, travel and the office staff.

To date, the Tribunal has received no valid applications under the existing legislation so it is difficult to judge the likely impact of the proposed bill. The complete proposal is a major piece of legislation with some proposals likely to be more frequently used than others. The effect of changing the law in relation to the site owners veto on the sale of a home may go a long way to reducing disputes which would otherwise come to the Tribunal.

It must, however, be accepted that if the law is used by the Local Authorities of Wales and enforced, then appeals to the Tribunal will follow. Funding will, therefore, have to be put in place to cover the administrative work and the extra members sitting days that will inevitably follow. Training will have to be provided to members on the new legislation and to the office staff.

On a wider front, the Tribunal is considering the option of mediation and it may well be that disputes under the Bill may be helpfully resolved in this way, in some cases, with a significant reduction in cost.

Conclusion

It is appropriate that the Tribunal should deal with disputes under the proposed bill. Tribunal members already have expert knowledge and experience in determining property related applications. The Tribunal is an independent decision making body which deals justly and without bias to either side.

Should the proposals contained within the bill come to fruition, this would impact on the capacity of the Tribunal to respond without additional resources. An increase in workload would require additional funding to cover the operation of more tribunals; extra administrative costs and the recruitment and training of other members.

Darren Millar AM / AC

Shadow Minister for Health
Gweinidog yr Wrthblaid dros Iechyd

National Assembly for Wales

Peter Black AM - Proposed Mobile Homes (Wales) Bill
Consultation Response: MHM11 - Darren Millar AM

Welsh Conservative Member for Clwyd West
Aelod y Ceidwadwyr Cymreig dros Orllewin Clwyd

Ref: DM

19 July 2012

Legislation Office
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

Dear Sir/Madam,

Re: Mobile Homes (Wales) Bill

I welcome the opportunity to contribute to the consultation on the above Bill.

I note that there are on-going consultations in both England and Scotland on legislative approaches to mobile homes which include proposals to strengthen the licensing regime for holiday caravan parks to provide greater protection for caravan owners and local residents living near to holiday caravan parks.

It is important that the opportunity presented by the Mobile Homes (Wales) Bill should also be taken to improve the licensing regime for holiday caravan parks here in Wales, especially given the evidence that there are a growing number of people residing in holiday caravans as their main home.

I would be most grateful if these issues could be considered as the Bill develops.

Many thanks,

Yours sincerely,

Darren Millar AM

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parciau, gan gynnwys carafannau,
cabanau, portiblai, parciau cartref,
petyll a phob math o leodd
bunan-dlarpar.*

*The representative body of the
parks industry including
caravans, chalets, lodges,
park homes, tents and all types
of self catering accommodation.*



**BRITISH HOLIDAY
& HOME PARKS
ASSOCIATION LTD
CYMRU/WALES**

Noble Court, Redstone Road,
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20 July 2012

Response of the British Holiday & Home Parks Association WALES to the Consultation on the proposed Mobile Homes (Wales) Bill

20 July 2012

BH&HPA

1. The British Holiday & Home Parks Association (BH&HPA) is the UK's national representative body of the parks industry. Across the UK, BH&HPA members own and manage 2,893 holiday, touring, residential and mixed-use caravan parks accommodating 383,366 pitches¹. These include 980 parks accommodating 48,307 residential pitches.
2. In Wales, BH&HPA members own and manage 415 parks² providing 52,794 pitches for caravan holiday home and lodges, touring caravans, motorhomes, tents and residential park homes. Members own and operate 36 residential parks with 1,513 pitches for residential park homes in Wales.

Majority of parks are managed well

3. We would emphasize the perspective provided by Mr Black³ in February „...the majority of park home sites are run well and legally.“ We note Mr Black's observation that it is a „minority of site operators“ making it „difficult for park home owners to exercise their legal rights.“ In the same debate, the Minister for Housing, Huw Lewis, having noted the 'more dubious practices' of some park operators went on to say: "This is not to say that this kind of activity is universal, as there are reputable professional site owners and managers who act responsibly with the interests of site residents at heart."

¹ BH&HPA database, June 2012

² BH&HPA database June 2012

³ Welsh Assembly: Debate seeking the Assembly's Agreement to introduce the Member-proposed Bill on Park Homes (Peter Black) 1 February 2012.

Summary of BH&HPA response

4. BH&HPA's response to the Consultation on the Proposed Mobile Homes Bill:
- calls for urgent targeted enforcement by the police and local authorities against the minority who cause such misery and damage to the industry's reputation, this without unfairly penalising decent park owners who work well with their customers
 - notes, that in the absence of effective enforcement, the behaviours of those who ignore the law today are unlikely to be changed by new law
 - expresses deep concern at the scant detail offered in the proposals and the absence of consideration of their economic impact
 - notes it would be a retrograde step if honest, decent and diligent park owners were driven out of the industry by unworkable red tape feeling they had no option but to sell their parks to the highest bidder. There is a great risk that inappropriate legislation could exacerbate rather than remedy the problems. The mood is changing amongst good park owners, an increasing number of whom are known to be considering selling their parks to buyers with available funds
 - calls for proper information to park home owners, without which any legislation will fail to meet its objectives
 - expresses deep concern that whilst clear in the ambition with regard to holiday (and touring) parks, that the Bill should „not change the law in these areas“, the inevitable impacts on holiday and touring parks have not been given consideration
 - underlines that changes to the private sales process should protect the interests of purchasers (and **not** create an obligation on park owners to evict those who, in innocence, buy in breach of park rules)
 - emphasizes that time-limited site licences would cause the complete collapse in the economics of park businesses. The **review** of site licence conditions should not be transposed into an end date, with renewal provisions in the legislation
 - questions why in the absence of any clarity on costs, the consultation nevertheless proposes that all costs should fall on park business with none shared with consumers in whose benefit the reform is framed
 - seeks to ensure that good park business is not obliged to fund local authorities' enforcement work against rogues – the 'polluter pays' principle should apply so that those rogues who cause the costs, meet those costs
 - whilst supporting the principle of fit and proper **personal** licences, expresses concern that no practical means to achieve such a regime has been identified
 - seeks ongoing, constructive dialogue on the detail of the proposals to avoid unintended consequences to the detriment of park (residential, holiday and touring) businesses and their customers.

The Residential Property Tribunal

1. Do you agree that the Residential Property Tribunal should have jurisdiction to deal with all disputes relating to this Bill, aside from criminal prosecutions? Please give your reasons.

5. Yes.

6. Cases between park owners and park home owners should continue to be heard by the Residential Property Tribunal (RPT) as required under the Mobile Homes Act 1983 (as amended).

7. However, we do **not** support transfer to the RPT of cases between local authorities and park owners. No change should be made unless or until a fully reasoned case for change has been made. Consumer Focus tells us that Local Authorities share this view and feel that the Courts remain the most appropriate setting to hear cases between local authorities and parks.

Buying and selling mobile homes

2. Do you have any experience of a sale being prevented, or if you are a site operator have you ever objected to a sale and why?

Park Rules

8. The main reasons for which park owners decline to approve a park home purchaser are the instances where the purchaser would be unable to meet the Park Rules. For example:
 - where the Park Rules indicate a retirement park for people over 50, approval for a younger purchaser or a family with children is declined
 - where there is a 'no pets' rule, approval is not given where a buyer seeks a home for themselves and the family pets.
9. In both of these examples, the park owner's role serves the interest of the resident community, protecting the nature of the park which home owners sought when they made their purchase.
10. If legislation is to be introduced, there need to be protections so the nature of the park is preserved. We therefore welcome the proposal for a meeting between all parties prior to the purchase.

Sale blocking

11. We would consider 'sale blocking' to be unlawful activity through, for example, park owners':
 - refusal, or delay of, approval of a purchaser
 - preventing a home owner from putting the home on the open market for sale
 - intervention in the sales process which leads the home owner to sell to the park owner for a sum below its true market value or, in the worst case, to abandon the home.
12. The consultation document recognises that such acts, which are already unlawful, are perpetrated by „a minority of site owners“. Therefore, effective enforcement should be the priority.

Role of the RPT

13. Since its introduction in March 2011, cases brought before the Residential Property Tribunal (RTP) in England, and subsequently published, have indicated the problems fall into two categories:
 - the park owner fails to deal with the request to approve a purchaser within the 28-day timescale prescribed
 - the park owner obstructs the sale through unreasonable refusal, attaching conditions and otherwise intervening unlawfully in the sale.
14. Reports from BH&HPA members indicate that the vast majority of private sales on parks, and the accompanying assignment of the agreement, routinely proceed without any cause for concern for park owners, park home sellers or purchasers.

15. In 2002, there were park homes sold by assignment on 4% of pitches per annum⁴. Given Government's estimated 85,000 park homes, and taking the 4% figure, this indicates there are typically 3,400 sales by assignments per annum. That only eight cases on the point have been published by the RPT in its first 10 months' operation suggests further consideration should be given to the scale of this problem and a proportionate response to it.

3. Should the law be reformed to prevent sale blocking or is it necessary for site operators to have this power? If the law should be changed, which of the suggested alternatives outlined above do you prefer? Please give your reasons.

16. The RPT has not yet had sufficient time in operation in Wales. More time is needed for home owners to become aware of its role and availability and for park owners to recognise the powers of the Tribunal which, if used fully, are already sufficient to make illegal activity unprofitable. The RPT is starting to make fuller use its powers. A January Determination awarded a home owner £8,000 damages, in addition to £5,000 compensation for other breaches⁵.

17. Legislative reform alone will not solve the problems created by rogue park operators who defy today's law and so will presumably also ignore any new law, unless their criminal activity is targeted by the police.

Meeting between all parties (i.e. the seller, the prospective purchaser and the site operator) prior to the purchase

18. We would endorse the consultation's proposal to include 'a meeting between all parties (i.e. the seller, the prospective purchaser and the site operator) prior to the purchase being agreed. This meeting would be limited to discussions about the site rules and the written agreement.'

19. Of the options proposed prior to that meeting:

Remove the right to veto a prospective purchaser

20. Without suitable protections to ensure Park Rules are adhered to and the buyer understands the rights and obligations which come with the purchase, simply removing the park owner from the process would disadvantage the seller, the community resident on the park and the park business.

21. It is reasonable for the park owner to be able to establish, in the interests of the community of home owners on the park, and for good park management:

- the identity of the buyer
- their understanding of (and ability to meet) the on-going cost of park home ownership (pitch fee, utilities charges, maintenance of the home etc.)
- their understanding of and ability to comply with any Park Rules (relating to age, pets, children etc.)

⁴ Economics of the Park Homes Industry ODPM 2002

⁵ Residential Property Tribunal case no. CAM/12UC/PHC/2012/0001

- that there is no evidence of an individual's or family member's criminal record or other anti-social behaviour.
22. We are advised by park owners that park home purchasers frequently have no previous experience of park homes and their contact with the park owner helps ensure an informed purchase, for example that they:
- can review the Written Statement that would be assigned to them with their purchase, including making them aware of the Implied Terms, outlining their rights and responsibilities
 - understand their financial obligations in terms of future payment of the pitch fee, commission on resale and utilities' charges etc.
 - are aware of, and can comply with, any requirements of the Park Rules (for example relating to age, pets, children, maintenance of the home etc.).
23. It is not uncommon for park owners to meet prospective purchasers who are unaware of all of the above.
24. Maria Battle of Consumer Focus, in evidence to the Communities and Local Government Select Committee, Q135⁶, 12 March 2012, stated: „We are recommending that there be a level playing field for site operators, park home owners and local authorities, and that the process should be abolished. There is already a right of redress for the park site operator. There are park rules about age, no pets, etc. There is also a written agreement. If all else fails, they have the right to go to the county court to evict a resident if they think he might be in breach of the rules or agreement. Then the onus is on the park site operator rather than, as the law stands, particularly vulnerable adults.“
25. However, it is essential purchasers have access to all necessary information to enable them to make an informed decision about their park home purchase. BH&HPA would strongly resist Consumer Focus' route to achieve 'a level playing field for site operators, park home owners and local authorities' through the eviction of a naïve or uninformed purchaser; that eviction could also lose the consumer much of the value of their investment. Despite the calls for 'buyer beware' to apply, it is not a responsible proposal.
26. Seeds of discontent would be sown across all parks if Government were to create, even by default, the obligation on park owners to take legal action where a purchaser buys a park home without full knowledge of the nature of park home living. It would be Government abdicating its responsibility to park home purchasers. For example:
- if in innocence a purchaser brought a much-loved dog onto a park with a 'no dogs' park rule, would it be fair to ask the park owner, Tribunal and Court to deprive them of their companion or their home ... or would it be fair to neighbouring home owners who had chosen a pet-free environment that they should remain?
 - if in innocence a purchaser brought their children onto a retirement park, would it be fair to ask the park owner, Tribunal and Court to deprive them of their home ... or would it be fair to neighbouring home owners who had chosen a peaceful retirement environment that they should remain?

⁶ House of Commons Communities and Local Government Select Committee HC 177-II Incorporating HC 1865-i-iv, Session 2010-12. 20 June 2012

27. The RPT and the Courts should be the last resort for all park owners and park home owners; Consumer Focus' approach to this would seem at odds with a consensual approach to park operation and does nothing to protect the interests of consumers - purchasers of park homes.
28. Good park owners endeavour to ensure a buyer has the information necessary for their purchase so they can understand the legal relationship that will be assigned to them. A departing home owner has **no** interest in the future of the park; their focus, naturally, is upon securing a sale at the best price they can achieve.
29. For example, to understand the rights and responsibilities of park home ownership, it is essential a purchaser is provided with a copy of the Written Statement that will be assigned to them including an up-to-date set of the Implied Terms. The law requires that the Written Statement is provided 28 days before commitment to purchase for sales **by a park owner**, but there are no similar provisions for sales **by a home owner**.
30. Why not? ***The same timescales should apply whether the park home is purchased from a park, or from a private seller.***
31. Procedures would need to be laid out to protect park home purchasers and park businesses.
32. For example, without the park owner's involvement at an appropriate point in the sales process:
 - how could the situation be managed if, on the day of assignment, the park owner realised that a family buying a home on an 'over 50's only' park had two small children?
 - who would prepare the assignment documentation? In practice this is done by the park owner today; the form of assignment cannot be completed without names and addresses
 - who would read meters, prepare and deliver final accounts (such as for pitch fees, electricity and water) to the seller?
33. It should be noted that restrictions on assignment of long residential leases are quite common. These would range from the standard wording providing that assignment shall take place only '*with the consent of the landlord/management company such consent not to be unreasonably withheld*' to a requirement to show the prospective assignee's ability to pay into service charge accounts and a requirement for the prospective assignee to give a direct covenant to the landlord to comply with the lease covenants. These are common provisions encountered throughout large cities across the UK.
34. Similarly, many residential leases of sheltered accommodation provide for an age restriction and it is up to the landlord to police that upon assignment.
35. The Association considers „remove the right to veto a prospective purchaser“ to be a blunt instrument which offers neither a practical or fair solution.
36. The vulnerability of many park home owners as consumers has been recognised; that same recognition should apply to park home purchasers.

The purchaser would be deemed to be approved unless, on application of the site operator, the Residential Property Tribunal declares him unsuitable;

37. Greater detail is necessary to allow for proper comment on this proposal. We assume that this could only follow the ‘meeting between all parties (i.e. the seller, the prospective purchaser and the site operator)’.
38. Therefore detailed issues to be addressed include:
- the timing of that meeting
 - timescales to allow the park owner to carry out even the most basic of checks as to the identity, right to live in the UK, and conform with the Park Rules etc of the purchaser
 - timescales for application to the RPT where the park owner feels that approval should be denied
 - protections to ensure the prospective purchaser has been provided with all documentation relevant to that purchase
 - timescales to allow the purchaser to review that documentation
 - timescales for the park owner to deliver final accounts (such as for pitch fees, electricity and water) to the seller before they depart.
39. If a home owner’s notification of the proposed assignment was to be accompanied by details to include the name, address and date of birth of the purchaser then it might be possible to establish a system of ‘deemed approval’, but further consultation on the practicalities would be essential to avoid serious and unintended consequences. The recommendation of the Westminster CLG Select Committee Park Homes Inquiry might also be pertinent here. They recommend that: *‘all purchasers must confirm in writing to the seller and the site owner that they have received and read the written statement and site rules.’*⁷

The approval requirement remains in place, but the home owner could refer their case to the Residential Property Tribunal in the event of a refusal or where there is evidence of abuse.

40. This suggestion effectively describes the status quo and, on most parks, works effectively.
41. However, where the RPT finds abuse by a park owner, the Tribunal should be urged to use all powers available to them to provide compensation to the seller and a disincentive for further abuse.

Issues to be taken into consideration in legislative drafting

42. In many cases (we hear around 50% on some parks), it is the park owner who introduces the purchaser to the private park home seller. It cannot be that a park owner who finds a buyer for a home owner would fall foul of any law.
43. Provision should be made for the circumstances where a purchaser contacts the park owner (which would be a sensible step to take). Sometimes, purchasers consider several homes on

⁷ <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmcomloc/177/17708.htm>, Paragraph 82

the park, both new and second-hand, the law should not punish the innocent if a purchaser chooses one home and not another.

44. In law, the park owner is entitled to receive a commission on the sale of the park home at a rate not exceeding 10% of the sale price. If the park owner's involvement were to be limited, it would be essential not to make it too easy, and too tempting, for the vendor and purchaser to commit fraud by under-declaring the amount paid to reduce the commission payable, to which the park owner has legal right and, without which, the economics of the business would be jeopardised.
45. The park owner needs sufficient opportunity to deliver final accounts (such as for pitch fees, electricity and water) to the seller. If the park owner were to be presented with the sale as a fait accompli it would be harder, if not impossible, to deal with final meter readings and preparing the necessary invoicing etc.

4. Do you agree that there should be a meeting involving all parties prior to the sale/ purchase? Please give your reasons.

46. Yes.
47. As above (para. 21.), it is reasonable for the park owner to be able to establish, in the interests of the community of home owners on the park, and for good park management:
- the identity of the buyer
 - their understanding of (and ability to meet) the on-going cost of park home ownership (pitch fee, utilities charges, maintenance of the home etc.)
 - their understanding of and ability to comply with any Park Rules (relating to age, pets, children etc.)
 - that there is no evidence of an individual's or family member's criminal record or other anti-social behaviour.
48. We are advised by park owners that park home purchasers frequently have no previous experience of park homes and their contact with the park owner helps ensure an informed purchase, for example that they:
- can review the Written Statement that would be assigned to them with their purchase, including making them aware of the Implied Terms, outlining their rights and responsibilities
 - understand their financial obligations in terms of future payment of the pitch fee, commission on resale and utilities' charges etc.
 - are aware of, and can comply with, any requirements of the Park Rules (for example relating to age, pets, children, maintenance of the home etc.).
49. It is not uncommon for park owners to meet prospective purchasers who are unaware of these.

50. The proposal that a meeting should take place involving all parties prior to a sale/ purchase is welcomed. It is already good practice among park operators to invite park home sellers to meetings with purchasers thus ensuring transparency. However, it will be important that such a meeting should not be mandatory. We would note:
- this may be unfeasible for a range of reasons including time, cost and distance
 - the parties may jointly agree to waive the option of a meeting
 - where the seller (or their representative) is unavailable, say in a care home, this should not preclude a meeting between the buyer and the park owner.
51. If the proposal to 'remove the right to veto a prospective purchaser' was to be introduced the safeguard of a meeting between all parties would be a necessary condition to ensure transparency.

Licensing

5. What are your views on the current licensing system for mobile home sites? What could be improved?

52. The current system of site licensing for residential parks cannot, and should not, be viewed in isolation. The same licensing system has been operated by local authorities for 52 years to regulate all parks: holiday, touring, residential and mixed parks.
53. Any changes to site licensing will inevitably impact across parks of all types.
54. There are 415 parks in Wales owned or managed by the BH&HPA membership⁸ providing 52,794 pitches for caravan holiday home and lodges, touring caravans, motorhomes, tents and residential park homes.
55. Of these:
- 27 are exclusively residential parks with no holiday/touring pitches
 - 377 are 'holiday only' parks (static caravans and/or touring with no residential pitches)
 - However, amongst these 'holiday only' businesses, 16 parks have two or three residential pitches. The residential pitches will almost certainly accommodate park staff/wardens'/managers' accommodation and will not be 'protected pitches'. Tenure arrangements will usually be governed by the contract of employment.
 - Nine parks are 'mixed parks' with a combination of holiday, touring and residential pitches.

It is important to note these figures are not for the total population of parks in Wales, only those holding BH&HPA membership

Holiday and touring park business

56. The consultation's ambition with regard to holiday (and touring) parks is clearly stated, that the Bill should „not change the law in these areas“. However, by default, there will be impacts on holiday and touring parks and these matters require full and proper consideration.
57. We are concerned that:
- consequences for holiday and touring park business have not been fully considered
 - there has been a failure to engage in good time with the industry
 - the consultation includes no economic impact assessment.
58. Wales' holiday and touring park industry generates a turnover and visitor spend, each year, in excess of £727 million, and supports 10,645 direct and indirect jobs.⁹ The overwhelming majority of Wales's park businesses are SMEs and/or micro-businesses. Edwina Hart AM, Minister for Business, Enterprise, Technology and Science, set up the Micro-Business Task and Finish Group. Their report, January 2012, led to the Minister's pledge to „lobby for change and implement positive action to minimise regulation“.

⁸ BH&HPA database June 2012

⁹ Economic Impact Assessment of the Holiday Park industry in Wales. Visit Wales and BH&HPA September 2011

59. The principles of better regulation apply. These holiday businesses, most frequently a husband-and-wife operation, should not be drawn into a regulatory net designed to rid residential parks of the handful of notorious, criminal park owners who cause such misery.
60. Parks' licensing has served parks well for over fifty years and the reasons for its establishment hold good. Specifically, through exercising their powers to attach conditions to a site licence, local authorities control the amenity of the park and ensure appropriate facilities and service provision for customers of the park in the interest of hygiene, health and safety etc. The system has been successful in ensuring the necessary flexibility over time, against the rigidity of planning consent which does not change.
61. The dual control of caravan parks has stood the test of time since 1960; it has been held out as a model of good regulation.
62. Reference is made to preparatory work which has been progressed with park home residents, residents' representatives and Consumer Focus. There has been no corresponding work with park businesses. Inevitably, this means an absence of balance in the proposals, and in relation to site licensing without consideration of parks which include holiday and touring pitches.
63. It should be possible to exclude parks which exclusively offer holiday and/or touring pitches from changes to site licensing by limiting the application of these changes to 'protected sites/pitches' as defined by the 1968 Act.
64. However, the changes will be implemented by the same local authorities and the same members of staff who license holiday and touring parks. It is therefore inconceivable that there would be no impact on these businesses.
65. These parks make an invaluable contribution to the domestic tourism economy; there is no justification for them to be burdened with additional cost and administrative workload. Holiday and touring park operators have every incentive to ensure their parks remain in a good state of repair etc. Market forces ensure this as customers are free to choose where they take their holidays.

Mixed parks

66. Some parks will be say, 50:50 residential and holiday/touring pitches. In some cases residential park homes exist in a discrete area of the park with a separate licence, while other site licences may cover a combination of different types of pitches.
67. Where holiday/touring and residential pitches are covered by the same site licence, there is no justification for any changes impacting directly or indirectly on the holiday/touring aspects of the business.

Holiday/Touring park staff pitches

68. Some holiday/touring parks host only 1% - 2% residential pitches providing accommodation for holiday/touring park managers or staff.

69. Where there is a tiny handful of pitches (one, two, three up to 10+, dependent on the size of the holiday business) with permission for residential use, for staff or warden accommodation on a holiday park, it would be absurd that such a 'mixed site' (possibly with hundreds of holiday pitches) should be treated as residential within a revised site licensing regime.
70. The VAT (Land Exemption) Order 2012 came into force on 30 March 2012 to confirm the residential status (and therefore exempt from VAT) of pitch fees for warden/staff pitches on holiday parks.
71. Proportionality, clarity and practicality are prerequisites of legislation to be brought forward, particularly in 2012. It is essential that tourism businesses, and the tourism aspects of mixed parks are not burdened with unjustified red tape.

6. How often should local authorities inspect sites, and how should these inspections be financed?

72. The frequency of site inspections must *not* be prescribed in law.
73. The Regulators Compliance Code¹⁰ ‘... stresses the need for regulators to adopt a positive and proactive approach towards ensuring compliance’. According to the Hampton Principles¹¹, ‘Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources in the areas that need them most.’
74. Parks are typically established businesses where little changes year on year. Some park owners have had no contact from their local authority in connection with site licensing for many years, nor have they or their customers had any need of it. It would be ludicrous for local authorities to now undertake unnecessary inspections with an arbitrary legal frequency.
75. In most cases, ‘routine’ inspections are unwarranted and to put in place any regime which would require unnecessary inspections at arbitrary intervals would be unduly burdensome and would fly in the face of the principles of better regulation.
76. Local authorities should conduct a risk assessment: parks which generate complaints or where there are genuine concerns should be inspected frequently (perhaps every three months, only an assessment of the particular circumstances could establish the frequency necessary).
77. Parks which generate no concerns would require only a cursory check, perhaps every five years or upon change of ownership.
78. As such, we contend that the principle that the ‘polluter pays’ should apply in site licensing. At-fault businesses should rightly pay for local authorities’ work in enforcement, good business should not be penalised for the faults of others.

¹⁰The Regulators Compliance Code, Statutory Code of Practice for Regulators. Better Regulation Executive, Department for Business, Enterprise and Regulatory Reform. December 2007

¹¹ Reducing Administrative Burdens: Effective Inspection and Enforcement, Philip Hampton, March 2005.

79. Further, if without justification, there were to be an annual charge, provision should be made that this, and any increases over time, would be recoverable from park home owners through the pitch fee review process.

7. Should the Welsh Government issue guidance on the frequency and nature of such inspections?

80. The proposed measures would have to be very carefully drafted to include suitable safeguards to ensure local authorities' *proportionate* response and an appropriate interpretation of 'enforcement' in connection with site licensing.

81. If the law creates a financial incentive for local authorities to undertake unnecessary inspection work, then good businesses and their customers would inevitably be unnecessarily burdened by increased costs and red tape.

82. Guidance on site licensing already exists in the form of the Model Standards, but a reiteration of the principles of better regulation specifically applied to site licensing work would be welcomed.

83. The development of such guidance should be undertaken in consultation with industry.

84. Given the stated objectives, there may be the opportunity to improve licensing work and reduce costs, through the Primary Authority Scheme, being implemented through the Enterprise and Regulatory Reform Bill, published on 25 May 2012. It is too early to tell, but surely this is an important opportunity and an avenue which should be explored?

8. What are your views on what should be included in licence conditions?

85. Parks' site licensing regime is rooted in the Caravan Sites and Control of Development Act 1960. This has served the caravan sector well for over 50 years and the reasons for it being established in the first place hold good.

86. While planning consent provides a rigid permission for the park's establishment, local authorities can, through exercising their powers by attaching conditions to a site licence, address the health and safety and amenity needs of park customers, following Model Standards as a guide but *not* as a rigid prescription.

Should there be guidance on this issued by the Welsh Government?

87. Government guidance would benefit the effective delivery of site licensing. The development of such guidance should be progressed through consultation with the industry and park home owners to provide a practical guide that addresses the central issues in enforcement work.

88. Work has already been done; the explanatory notes to the Model Standards 2008¹² were produced following extensive consultation with stakeholders.

¹² Model Standards 2008 for Caravan Sites in Wales: Caravan Sites and Control of Development Act 1960 – Section 5. Annex to Model Standards 2008 for Caravan Sites in Wales: Explanatory Notes

9. How long should each licence normally last, and should local authorities be able to grant licences for shorter periods if necessary?

89. A site licence should **not** have a finite duration. Such a change would completely undermine the economics of the business.
90. It may be reviewed with such frequency as a risk assessment determines, but should not simply cease to exist with the passage of time:
- who would invest in a park business if the right to trade could simply expire?
 - what bank would provide funding to such a park business?
 - who would enjoy security of tenure – or be able to sell - in their park home if the park's permission to trade could simply expire?
91. The question does not address another proposal in the narrative. The majority of park owners have committed no civil or criminal wrong. Why should they be obliged to reapply for their site licences? Why bring this burden to those businesses?
92. We have grave concerns about the practicality of the proposal, as well as the cost and administrative burden that would be placed on park owners who, in the main, are decent, conscientious individuals.
93. Rather than a finite duration, local authorities should retain their powers to **review** site licence conditions at intervals determined by a risk assessment. The **review** of site licence conditions should not be transposed into an end date, with renewal provisions in the legislation.

Fees for licensing

10. **How should the fees for mobile home site licensing be determined? Should the fee be calculated by reference to the number of pitches, the total area of the site, the cost of inspections to the local authority or a combination of all or any of these factors?**
94. The question assumes that a fee should be levied for local authorities' site licensing. What is the justification where there are no issues arising on a park which causes no costs to the local authority? A well-run park will have enjoyed a site licence in place perhaps for decades causing no concerns for customers, and no work for the local authority.
95. We contend that the principle that the 'polluter pays' should apply in site licensing. At-fault businesses should rightly pay for local authorities' work in enforcement, good business should not be penalised for the faults of others.
96. If the Welsh Assembly were to judge that local authorities should be able to charge for licensing parks, it would be essential that:
- good park owners would not pay for the work to ensure licence compliance by rogue park operators
 - all site licence charges are on a cost-recovery basis and ring-fenced
 - charging regimes are transparent
 - any future increases justified according to these criteria
 - any fees would be proportionate to the number of protected residential **pitches** and the work required by the local authority in administering the park's site licence
 - a park should **not** be penalised for providing larger areas for residents' gardens or recreational space, by dint of a larger area to the number of pitches
 - any fees should reflect the targeting of local authority enforcement – it would be unjust for a park to pay the same rate for five-yearly inspections as one requiring six-monthly checks
 - holiday and touring parks and pitches should not be included within a framework to address 'protected' parks and pitches.
97. Our underlying concern is that most parks are well run and require minimal attention from the local authority. Why should decent park owners, and the park home owners on their parks, be required to foot the bill for local authorities' work in policing the rogues? Why should home owners on rogues' parks be required to pay for the site licensing necessary to protect them?
98. Adopting a 'polluter pays' approach, whereby the rogue is charged directly for the enforcement costs they cause – and without the ability to pass on the cost to his/her customers – would:
- provide a stronger deterrent against park management failures
 - give a stronger incentive to local authority staff to act, and,
 - be fair and proportionate.
99. Where is the incentive to take action for the local authority who can charge what they like essentially, whether or not they take action and/or provide good service?
100. If they had the ability to charge their costs in enforcement against the rogues, and their costs could not be passed on to the unfortunate home owners on their parks, the local authority, the home owners and good parks would not lose out – the 'polluter' would pay.

Holiday/Touring and Mixed Parks

101. There has been no consultation on, or justification for changes or charging for site licensing for:
- touring parks and pitches
 - holiday parks and pitches
 - holiday and touring parks with warden/staff residential pitches

Mixed parks

102. For mixed parks, any justification for change and charging would only apply to the residential pitches on these parks.
103. Therefore, two separate site licences would be necessary, leaving holiday and touring pitches exactly as they were with no charge, with a separate site licence for the residential pitches as a park-within-a-park.
104. In the interest of fairness, the local authority should **not** be allowed to take any holiday and touring pitches into their calculation of any charges for residential site licensing.
- 11. Should there be a regular annual charge to cover on-going administrative costs borne by local authorities during the licence period?**
105. There is no justification for an annual charge:
- park businesses are typically established businesses where little changes year on year
 - some park owners have had no contact from their local authority in connection with site licensing for many years, nor have they or their customers had any need of it
 - if without justification, there were to be an annual charge, provision should be made that this, and any increases over time, would be recoverable from park home owners through the pitch fee review process.
106. The principles of better regulation suggest inspection and enforcement should be targeted where it is needed, rather than the consumer and industry funding, and the local authority undertaking, needless work.

Fit and proper person

12. Do you agree that site operators must pass a fit and proper person test before being granted a licence (with the local authority undertaking relevant checks) and that this should be based on the standard introduced for Houses in Multiple Occupation under the Housing Act 2004? Please give your reasons.

107. No. The Association has long supported the principle of a 'fit and proper' licensing regime as measures are necessary to prevent those who abuse park home owners from continuing to purchase and manage parks. However, this support is given with the caveat that a workable solution must be identified that is practical and sufficient to deter the rogues. The HMO regime would not achieve this.
108. The consultation document notes *„the fit and proper person test applied to HMO licence holders is not effective and can be evaded.“* We would agree and add that rogue park operators are likely to find routes to evade a 'fit and proper' test; not least because many have complex family and business structures, where responsibilities and ownership is passed between partners/family members.
109. It should also be noted that HMOs are not akin to residential parks. In the former, a property is occupied by more than one household and more than two people; bedsits, shared houses or self-contained flats are rented from a landlord. Residential parks offer pitches to park home **owners**. Home owners pay a pitch fee to the park owner. The key difference is that, if the landlord of an HMO loses his 'fit and proper' person status, and hence his licence to operate, it is an option for tenants to seek accommodation elsewhere. On residential parks, the home owner on a park which is 'unlicensed' would have nowhere else to go. In most cases park home owners' total life savings are invested in their park homes. This places tenants and park home owners in completely different sets of circumstances.
110. Although responding in the context of Wales, it would be remiss of us if we were not to take account of the considerable work which has been progressed in England on 'fit and proper' person licensing regimes, much of which was carried out when park home law in Wales fell within the jurisdiction of the Westminster government. Following consultation in England and Wales, the last Labour government decided in favour of a 'fit and proper' person requirement as part of site licensing, but it was unable to offer a practical route to achieve this.
111. Giving evidence to the session of the CLG Select Committee¹³ 16 April 2012 the English Housing Minister summed up the reasons this work was not delivered:
„**Grant Shapps**: ... I want to assure the Committee I have thought long and hard about the fit and proper. If I thought that it would have any impact at all, I would include it, even though it is probably regulatory and therefore difficult to justify. The difficulty is, if you start to sit down and imagine setting up this database, who do you want to run it? Are we going to have a quango? Is the Department going to run it? How is it going to operate? Who are you going to disqualify? What happens when you disqualify someone? If somebody with 35 sites was initially fit and proper and they are suddenly found no longer to be fit and proper, what happens to those sites? Do they come into local authority control? What does the local authority know

¹³ Communities and Local Government Select Committee UNCORRECTED TRANSCRIPT OF ORAL EVIDENCE To be published as HC 1865-iv

about running these? You just end up in this huge mess and I don't think it is the way to sort out this sector."

112. BH&HPA would echo Mr Shapps' concerns.
113. No fit and proper scheme has been proposed which would remove criminal and incompetent park owners, or discourage other such rogues from entering the industry. This can only be achieved by enforcement of abuses, thereby creating sufficient deterrent for their repeat.
114. Whilst local authority environmental health departments (to differing degrees) have the expertise and proximity in order to administer a site licence addressing the physical infrastructure of a park, they have neither expertise in parks' legal and financial matters, nor are they best placed to assess the proposed 'fit and proper person' criteria.
115. Any fit and proper regime would need to separate the park infrastructure etc issues of a **site** licence, from the management issues of a **personal** licence.
116. We believe that the proposal to delegate responsibility to individual local authorities to judge the fitness or otherwise of an individual park owner/manager would:
 - create duplication and greatly increase the costs of administration across different local authorities, instead of considerable economies of scale and cost savings that could be achieved through one central body undertaking this work across the Wales
 - create duplication of training requirements across different local authorities and reduce the expertise achieved, instead of the considerable advantages and cost savings that could be achieved through one central body developing this expertise for application across Wales
 - create a loophole whereby a rogue park owner could take a calculated risk to conduct business in an unscrupulous way on some parks and in a fit and proper way on others in different local authority areas
 - create a postcode lottery as to the level of protection enjoyed by park home owners
 - distort competition across the industry with different criteria being applied in different local authority areas
 - be unable to take account of earlier decisions in other areas regarding an individual park owner/manager and therefore perpetuate any unscrupulous behaviour.
117. We do not believe that the HMO licence-holder conditions would present any real barrier to the known rogues in the sector; it is difficult to propose criteria that could not, in some way, be circumvented.
118. It cannot be the case that legislation is framed so that an individual is judged unfit to hold a site licence in one local authority area, yet is able to continue with unscrupulous or criminal conduct on another park a few miles away across a county line.
119. Therefore, we urge consideration of the establishment of a central body at national level to:
 - compile a register of parks and those responsible for their management
 - licence those individuals through the consistent application of 'fit and proper person' criteria, providing one **personal** licence for that individual across all parks owned and managed
 - make that individual responsible for the conduct of any staff or family members involved in the park business

- collate and record information, including on any Court or Tribunal actions, relevant to that licensing work
- serve as a central point of contact for those with concerns as to the fitness of park management practices.

120. Whilst the licensing of the physical aspects of the park could rightly remain within the responsibility of each individual local authority as at present, the **personal** licensing of individuals to manage those parks should be undertaken centrally, not least on grounds of cost and consistency. Importantly, without such centralisation the reform will not achieve its objectives. For example, if an individual owns and manages say, six parks, one central licence should suffice as to that individual's fitness to manage those parks (whilst the physical attributes of each park should continue to be monitored and enforced by each local authority, having regard to the Model Standards).
121. Without much greater attention to, and delivery of, detail as to how this might work in practice BH&HPA would be unable to support this proposal notwithstanding our firm belief that measures are necessary to prevent those who abuse home owners from continuing to purchase and manage parks.
122. BH&HPA is always very willing to cooperate with the police and local authorities in ensuring that any park operator engaging in criminal activity is brought to justice. (We have been proactive in bringing cases to the attention of the police, trading standards and other local authority departments).

13. Apart from criminal convictions, what should be taken into consideration when deciding whether the proposed licence holder is a fit and proper person?

123. Criteria for judging 'fit and proper person' status should be:
- objective, fair, transparent, proportionate and clearly defined
 - separate the park infrastructure etc issues of a **site** licence, from the management issues of a **personal** licence
 - consistently applied across the industry
 - start with the assumption that an individual is 'fit and proper' unless there is evidence to the contrary
 - and where an individual has been shown to fail to meet fit and proper criteria, the consequence in terms of revocation of the site licence should be applied across **all** parks within the individual's control and any parks that individual seeks to manage in the future.
124. In addition to the convictions listed in the consultation document, we would add a specific reference to any convictions for an offence under the Protection from Harassment Act 1997.
125. Spent convictions should be taken into account in the case of serious crime.
126. However, considerable care is necessary to ensure criteria are proportionate. Breaches/offences may be absolute and while 'guilty' the park owner, despite due diligence, may not have contributed to the offence. For example:
- despite the park owner's best efforts, a resident's actions place the park owner in breach of his site licence conditions.

- a Fire Point vandalised after the park owners' inspection, just a short time before the environmental health officer visited the park.

127. The criteria need further attention and guidance should be provided about the relative weight that should be applied to findings in the civil courts, tribunals or indeed those public and private organisations administering 'applicable codes of practice' as suggested by the consultation document. There are questions of degree that should be considered. The spectrum of offences would include from errors of omission to the commission of serious crime. In the worst cases offences could include an element of fraud and/or harassment; alternatively the offence may have been one of administrative oversight or innocent naivety.
128. To deny someone the ability to trade would be to deny them their livelihood. Therefore the legal requirements to meet the principles of natural justice would be considerable. Legal challenge under Human Rights legislation would be anticipated. We would question whether RPT would be able to provide the level of legal scrutiny required.
129. There then come the questions of consistent, fair and transparent interpretation application. The cost to local authorities of staff training prior to the introduction of the proposed regime has not been monetised but would be considerable. These costs would be enormously reduced if this training were required for a handful of staff within a centralised Welsh licensing body, rather than within each of the local authorities.
130. There is a risk that less diligent local authorities could rely on park owners' own declarations to establish their fitness to hold a site licence. The awarding authority should not be permitted to rely on self-declarations which would play into the hands of unscrupulous park owners. This is another argument for a centralised licensing body, separating **personal** licences from **site** licensing.
131. The proposals do not start from the point where an individual is considered to be 'fit and proper' in the absence of any evidence to the contrary. Instead, the proposed reform requires that a bureaucratic burden should be placed on this majority of competent and professional business people to prove their competence etc. No justification is given for this approach which contradicts the principles of better regulation and would create an unnecessary cost burden on a park business and the state. Grandfather rights should apply.

Breaches of licence conditions and fines

14. What are your views on increasing the maximum fine for operating a site without a licence, or breaching a licence condition?

132. The current regime for fines is not proving an effective deterrent to rogue park operators.
133. However, magistrates *do* treat breach of site licence conditions as serious health and safety matters and the standard fine for breach is c. £500 per charge. Where a prosecution is brought there is often more than one charge and fines become more significant, especially where there is a history of breaches of site licence conditions.
134. Any fines can only be chargeable following proper process and conviction through the Courts; an appeal system must also be in place to ensure fairness.
135. We would also add the proviso that fines must be proportionate to the gravity of the offence. We would urge this be addressed through guidance to magistrates.

15. Should local authorities be able to issue fixed penalty notices and, if so, for what types of infringement? Please give your reasons.

136. No, as this would not be an appropriate sanction for site licence infringements:
- how could it address the core issues of concern on the park?
 - for some, paying a fixed penalty would be cheaper than achieving compliance
 - are local authority enforcement staff competent to determine any such issues on site?
 - what safeguards/appeals mechanisms are proposed?

16. Should local authorities have powers to serve enforcement notices, and to carry out work in default if necessary following breaches of licence conditions? Please give your reasons.

137. Yes.
138. We would observe that this should be accompanied by a formal notice regime; this is a shortcoming in the present legislation.
139. Local authorities should be prohibited from going straight to prosecution and should serve a notice of remedy instead; in practice, local authorities always serve an informal notice by letter.
140. It is also important to address local authorities' cost recovery. Pursuing the 'polluter pays' principle, local authorities should be able to recover their reasonable costs and this must be legislated for. Such legislation should include a requirement for local authorities' costs and expenses to be 'reasonable' and transparently presented.
141. In the interests of natural justice, there should also be a mechanism for challenge or appeal.

142. It should also be established that local authorities should not be able to reclaim costs from park owners where their costs have been incurred as a result of unjustified, vexatious complaints, possibly from residents or due to local authority incompetence.
143. Local authorities should require authority from a Court before being able to do works either in default or in an emergency. However, there should also be a way for local authorities to act straightaway in response to immediate danger to the health and safety of individuals.
144. Local authorities should be able to recover their reasonable costs in doing works in default, including administrative expenses, from the site operator.

17. Under what circumstances should a site licence be revoked?

145. Licence revocation must be a last resort; full proposals as to how the local authority would deal with the aftermath are necessary. Our response to Question 18 is also relevant.
146. Important matters for consideration include:
- if a site licence holder is no longer fit and proper in one local authority area, this must inevitably affect their status in other jurisdictions
 - the need for full cooperation between local authorities to coordinate action – possibly across several local authorities and multiple parks
 - the necessary interim management orders would need to be prepared across all parks in the licence holder's ownership.

18. What are your views on local authorities being able to take over the management of mobile home sites, and do you envisage any practical difficulties?

147. In extreme circumstances local authorities may have to take steps to manage such parks themselves which gives rise to the follow concerns:
- what would happen where the park owner lives on the park? An order to restrict the park owner's right to enter the park may be difficult to achieve in these typical circumstances; human rights issues would surely apply if enforcement meant making that individual homeless.
 - residential parks which are mortgaged (many are); failure to pay the mortgage interest would result in the park going into administration or some similar insolvency procedure. The effect of any management order may be to force the sale of the park. This may be challenged as it could contravene park owners' human rights.
 - the banks, or other financial institutions which finance investment in park business, would have a clear interest in the operation of such powers and should be consulted if these proposals are to be pursued (for example, where a park is in the ownership of a group, one park may serve as security to raise finance for investment in another. Therefore, the forced management of one park could jeopardise the gearing of the business and interests of home owners on other parks.)
 - it would not promote a thriving parks sector if the upshot of these new powers were to be even a temporary withdrawal of lenders from the market place through lack of confidence in the sector.
 - a park operating under such an order may lose its attractiveness to purchasers so constraining the abilities of park home owners to sell their homes

- the long-term development plans for the park may include that the park owner would seek to make an offer to purchase park homes, perhaps letting them to private tenants for a period of time until he is able to make planned changes to the lay-out of the park. Could the park owner negotiate and offer a price that the business (subject to local authority management) would pay for the park home? How far would local authorities' powers extend?
- there should be a duty on local authorities to identify other parks in the same ownership or management, to allow for their proper monitoring and action by their host local authority. This would most simply be achieved through a national licensing body holding a suitable register
- once local authority management is established, they would probably be entitled to possession of the site. The rights of other interested parties, for example, caravan holiday home owners or a franchisee managing, say, a shop on the park, would also need to be taken into account.
- there is a strong likelihood that parks subject to management orders would go into administration and be offered for sale. Local authorities may then be left managing 'unsellable' parks.
- many residential parks employ staff whose roles include administration and park maintenance. Presumably their employment rights would be protected in the circumstances of local authority management?
- considerable capital investment is necessary to update and renew a park infrastructure. We would question whether there would be the will or the ability to find and invest further capital in the infrastructure.
- many residential parks are part of a larger mixed park development including areas of pitches for touring caravans and tents and/or holiday caravans. It may be necessary to pass through the holiday areas of the business to reach the residential park– or vice versa. In the circumstances of forced management, what would be the status of the holiday part of the park and, indeed, who would take responsibility for access route(s)?
- how would local authorities find a suitable manager? While, in theory, it may be possible, until it is tested and, most importantly costed, then there can be no certainty.
- in government research in 2002¹⁴ and in the conclusions following the consultation on commission, it was established that park business cannot survive on pitch fees alone. Park home sales and commission would inevitably be compromised on a park under alternative management. Therefore we foresee the likelihood of an imbalance between realistic management charges and probable revenues to the park. In any case, it is likely that a park that is already returning a margin, is unlikely to require the appointment of a manager in the first place.
- if the management charges that would be levied were prohibitively high, then the whole notion would be a non-starter.

148. There could be an extremely complicated interface between the local authority/park manager and the park owner. If a manager is not authorised to effect sales does this mean the park owner can do so? (Sales would undoubtedly be at a premium; a park with a manager appointed would be blighted.) Or, does it mean literally no sales on that park which would be very damaging for the health of the business as well as the value of home owners' investment in their park home?

¹⁴ 'Economics of the Park Homes Industry' Office of the Deputy Prime Minister 2002.

149. That local authorities have powers to issue management orders and take over the management of parks may be reasonable; however, there would be many complexities in successfully delivering this proposal and we have little confidence that this would be a particularly useful power and would rarely be used. There must also be careful consideration of park owners' legal rights in this context, given the likelihood of legal challenge under human rights legislation.

19. Should mobile home owners be able to take over the management of a site, and how should this work in practice?

150. This proposal would probably not be a practical option. The many serious issues raised in response to Question 18. also apply here.
151. Is the proposal that the park's management could be taken over by:
- one individual park home owner, or,
 - several park home owners – if so in what proportion
 - or, with all park home owners' agreement?
152. We believe that whilst a small but vociferous minority of home owners may wish to take an active involvement in the management of the park, the majority do not.
153. Experience shows that the motivation of some home owners is not driven by consideration of the overall needs of all residents or the park as a whole, but rather by their individual position and, on occasion, their relationship with the park owner (which may have soured for some reason and not necessarily through any fault on the part of the park owner).
154. Some will have a personal 'axe to grind' and attitudes to the future of the park will differ depending on whether a home owner plans to reside there for many years or wishes to sell and leave in the short term.
155. For individual home owners to be able to bring an application to manage the park (or a series of applications) is not a recipe for harmonious or effective park management.
156. What would be the criteria which would allow home owners to apply to manage the park?
157. This is an area which must be addressed if proposals for park home owners to manage parks are to have any reasonable chance of success. Concerns include:
- what checks and balances would be proposed to ensure the fitness of any groups of home owners to run the management contract?
 - what protections would there be for the passive majority of park home owners on the 'managed' park?
 - what would be the model for the legal entity that might be required to employ the manager/ management contract?
 - what would be the legal obligations on those individuals awarding the contract?
158. Government research has confirmed that the majority of park home owners are on below-average income and many already rely on housing benefit – where would the money come from? A 'failing' park is likely to be one with historically low income (probably stemming from

poor management missing opportunities to review the pitch fee and a lack of new park home sales) which the park owner/manager is unlikely to be able to uplift because of the restrictive criteria for pitch fee review imposed by the Implied Terms.

Written agreements and site rules

20. How should site operators consult with home owners when proposing changes to written agreements or site rules?

159. Agreements between park owners and with park home owners are individual and it is therefore essential that park owners engage with home owners on a case-by-case basis as well as, where appropriate, with the qualifying residents' association (Implied Term 28).
160. The Express Terms of the industry model Written Statement have included a requirement for the park owner to consult with park home owners in relation to changes in Park Rules since 1975.
161. In the most recent industry model Written Statement it appears as follows:

„Site owner“s obligations

2. The site owner agrees with you as follows:

...

(c) The site owner must not change the park rules except in accordance with the procedure set out below. Any changes to the park rules will not affect anything to which you are entitled under these Express Terms or the Implied Terms in the Annex to Part 2 of this agreement.

The procedure for amending the park rules is:

(i) the site owner must give you 28 days“ notice in writing of any proposed changes by sending these to you at the mobile home;

(ii) if within those 28 days occupiers representing at least one-third of the mobile homes on the site send the site owner a request in writing to call a meeting to discuss the proposals then (unless the site owner withdraws the proposals) the site owner will arrange a meeting which all occupiers may attend in order to consider the proposals in detail. At that meeting the occupiers shall vote upon the site owner“s proposals and voting will be on the basis of one vote per home, the majority to be determined by a simple majority of those occupiers voting;

(iii) if no such request is delivered to the site owner within the 28 day period specified in sub-paragraph 2 (c)(i) above, then a majority of the occupiers shall be deemed to have accepted the proposed rule changes, and the amended park rules shall come into force immediately once the 28 day period ends.“

162. Consultation with any qualifying residents' association is enshrined in the Implied Terms at paragraph 22 as follows:

(f) consult a qualifying residents' association, if there is one, about all matters which relate to the operation and management of, or improvements to, the protected site and may affect the occupiers either directly or indirectly.

163. Park Rules can be challenged before the RPT under section 4, Mobile Homes Act 1983.

Damages and compensation

21. Should the RPT have the power to award damages and compensation for breaches of the written agreement or any requirement imposed by this Bill? Please give your reasons.

164. Yes.
165. Importantly, it should be clear in legislation that the ability to claim for compensation and/or damages is available both to park owners and to park home owners.
166. RPT decisions handed down in England ¹⁵ already indicate that RPTs consider this an appropriate role for them.

Pitch fees

22. Should pitch fees be regulated and, if so, how?

167. Pitch fees are regulated through the Implied Terms in the Written Statement. Implied Terms 16 – 20 and 22(b) apply to all agreements under the Mobile Homes Act 1983.
168. Implied Term 22(b)) requires that documentary evidence is provided, by the park owner free of charge if requested, in support and explanation of any new pitch fee and any other charges.
169. BH&HPA supports transparency in the pitch fee review process.

23. Do you have any other comments that specifically relate to pitch fees?

170. Proposals included in the consultation paper, but not the subject of questions include:
Making CPI, rather than RPI, the measure of inflation to be used in pitch fee reviews.

171. Addressing the Communities and Local Government Select Committee on 16 April, Housing Minister Mr Grant Shapps commented (Q510):

‘Grant Shapps: I know the old CPI/RPI argument goes round a lot. I had a look today; the difference is 0.3% right now. There is always an assumption that there is going to be a gap between RPI and CPI and it is always going to be the way round that it is at the moment. I do not think that is necessarily the case. Again, the vast amount of this consultation is on the side of park home owners, who I think are getting a really raw deal at the moment, but I do want to make sure that this is a sustainable business. Once we have driven the Mr Bigs out of the market and made an honest, decent business to be in for everyone, I still want them to be able to make enough money to make the business work. ... For the whole model to be sustainable and a good quality way of life, you need sites that are profitable to run and therefore can be maintained well enough. I

¹⁵ LON/00AR/PHC/2011/005 England-v-Sawyer December 2011, and CHI/00HN/PHE/2011/011 Donald Jones-v-Sines Park Homes Limited December 2011

think RPI gives them the ability to do that. It also fits in with other areas of housing where we use RPI as well. In social housing, for example, uprating, which was worked out under the previous administration, is done on an RPI-plus basis. So it fits in with the housing story as well from that perspective.”

172. We would agree with Mr Shapps’s analysis, noting in particular that the use of RPI is consistent with other areas of housing and that there is an element of ‘swings and roundabouts’ in the choice of index.
173. If there was a change to CPI which meant the index exceeded RPI, would the industry face calls for a return to RPI? It is equitable to all parties to retain the status quo with RPI.

‘site operators will not be permitted to pass on to home owners any of the costs that are a direct result of this Bill.’

174. We agree that, as stipulated in the Implied Terms, the park owner should be able to have regard to the „effect of any enactment which has come into force since the last review date“ when determining the amount of the new pitch fee. We further support that ‘site operators... [should] ... only be able to use legislative changes as a reason for increasing the pitch fee where these directly affect the management or maintenance costs of the site.’
175. However we cannot agree, or see any fairness in the suggestion, that park owners would „not be permitted to pass on to home owners any of the costs that are a direct result of this Bill“.
176. The reforms proposed in the consultation seek to address the injustices perpetrated by a minority of park owners in the sector; that it is a minority has been recognised by all.
177. The principle beneficiaries of the proposed legislative changes are held to be park home owners.
178. What is the rationale that good businesses should meet the costs without any means to recoup them?
179. We would also return to our ‘Polluter Pays’ theme. There should only be additional costs for those park owners who flout the law and abuse park home owners.
180. It is an even greater concern that no economic impact assessment accompanies these proposals. Given this, it will be impossible for park owners to make even an educated guess as to the potential impacts on their businesses.

Repairs maintenance and site improvements

24. Do you agree that the site operator's maintenance and repairing obligations would benefit from clarification?

181. This question is reproduced from the English consultation¹⁶. This document included the assertion that: „Prior to the changes introduced in 2006 it was possible for site operators to recharge the cost of repairs through an increase in the pitch fee, if the repairs were beneficial to the home owners, for example work to upgrade roads. Since then only “improvements” can be recovered through pitch fee increases and then only after consultation with home owners. However, some site operators still add repair costs to pitch fees.“
182. BH&HPA does not accept this statement.
183. Prior to the changes introduced in 2006, Courts ensured that repairs were not treated as improvements i.e. on a ‘like for like’ basis. Where expenditure was not a ‘like for like’ expenditure and resulted in an improvement (the Express Term said ‘benefit’), the costs would be allowed, subject to reasonableness. The 2006 changes reflected the attitude usually adopted by the Courts.
184. The vexing question is ‘what is a repair’?
185. For example, typically a dispute will arise over work which is done to an electrical system perhaps to replace an old system with a new one or to upgrade an old system to new standards. The issues here include:
- the home owner has an electricity supply before the work as well as after it
 - the new supply is a 60 amp supply as opposed to the old one which was 20 amp which means home owners can use power showers, dishwashers etc.
 - the new system offers greater consistency of supply across all park homes
 - the new system has enhanced safety features
 - installation of underground as opposed to overhead cabling provides an environmental benefit and improves the visual amenity.
186. Courts have regarded the installation of such a new/upgraded supply as being partly an improvement and have approved an element of the expenditure to be ‘improvement expenditure’ say 50/50 or 60/40.
187. It is not clear whether works of this nature would qualify as repairs (and so be disregarded) or improvements (and so be taken into account). Similar considerations arise in relation to road resurfacing/upgrade, surface water improvements etc.
188. The English consultation also proposes a definition of park operators’ repairing obligations and improvements:

¹⁶ Department for Communities and Local Government „A better deal for Mobile Home Owners“ April 2012

2.32 „We propose to correct this by clarifying the site operator’s obligation is to keep the site in repair by maintaining and keeping in repair:

- (a) the base on which the home is stationed;
- (b) any pipes, conduits, wires, structures, tanks or other equipment provided by the site operator in connection with the provision of water, electricity or gas or for the supply of sanitary facilities to the site, pitch or mobile home;
- (c) all parts of the site that are under the control of the site operator and not within the repairing liability of a home owner, including access ways, street furniture and lighting, boundary fences, buildings in common use, drains and the drainage system and any open spaces or facilities in common use and to keep the same in a clean and tidy condition;
- (d) any out house to which the pitch agreement relates;
- (e) any trees, hedges or shrubs on the site and in the pitch (which have not been planted by the home owner or a predecessor in title or assignee), and ensuring that the supply of gas, electricity or water to a pitch, out house or the home is maintained to a satisfactory standard (if the site operator is responsible for the supply).

2.33 We could also, to avoid any future confusion, make it absolutely clear that costs relating to the above cannot be included in a pitch fee review, and, therefore, home owners are not obliged to pay any sum attributable to repairs.

We propose to define an improvement as anything done to the site (including its facilities and amenities) which increases the services available to the home owners, and which the home owners have been consulted about (see below) but excluding:

- Anything which is required to be done under a site licence or through enforcement action under that site licence or
- Something that is the responsibility of the site operator to maintain and keep in repair under the site operator’s repairing liabilities.

189. Following previous reforms, Implied Term 17 has fought shy of trying to define an improvement, let alone an improvement to an existing service. The opportunity could now be taken to lay down some principles. In the interests of all, these principles should encourage improvement and avoid any discouragement which over time would be against the interests of park home owners.

190. There should be the flexibility to take account of repairs of an exceptional nature, or repairs to a park where a previous owner has allowed the park to fall into disrepair. Park home owners will themselves be beneficiaries of such repairs in terms of the enhanced value of their park homes on a much improved park.

Extent of park owner’s responsibility

191. We also noted:

- there should be clarity (2.32(b)) that the park owner’s responsibility in the provision of water, gas and electricity extends up to and includes the stop tap or meter (any ambiguity with regard to the utilities infrastructure of the park home would invite problems)

- it must be clear at 2.32(d) that 'out house' does not include e.g. a home owner's shed on the pitch.

192. In responding to the question, we would emphasize that consultation has not addressed integral and adjacent issues that were consulted upon by the Department for Communities and Local Government.

25. Should there be a standard consultation format that must be followed when a site operator is proposing improvements?

193. Arrangements for consultation with park home owners and qualifying residents' associations are included in Implied Terms 18.(1)(a)(ii) and 22.(e) and (f).

194. We have seen no alternative proposals, but a model document which had the flexibility to take account of different situations could serve in guidance.

Mobile home alterations and re-siting

26. Do you agree that home owners should be able to make alterations and improvements inside their home without requiring the consent of the site operator? Please give your reasons.

195. Yes, in principle.

196. It will be essential to expressly include the provisos that:

- the structure shall continue to comply with the definition of caravan
- the works do not compromise the safety of utilities to the pitch or the park, and,
- are consistent with the capacity of the park's infrastructure.

197. If parks' otherwise adequate infrastructure, say the electricity supply, would not support the installation of, for example, a whirlpool bath, dishwasher and tumble drier in the park home then, in the interests of the other park home owners resident on the park, these should not be installed if it would compromise others' consistent supply of electricity.

27. What would you deem to be a fair and reasonable reason for refusing permission to alter a mobile home externally?

198. Permission for park home owners' to carry out external improvements to their homes should not be withheld unreasonably by the park owner.

199. However a balance must be struck between home owners' requests to make reasonable changes, park owners' need to remain within the law and the interests of all park home owners in the community on the park.

200. Circumstances in which park owners may reasonably refuse permission could include proposed alterations that would:

- compromise park owners' compliance with site licence conditions
- require planning permission
- compromise the mobility of the park home
- impact upon the amenity of the pitch and/or the park
- be or become a nuisance to or cause annoyance, inconvenience or disturbance to neighbours, the park owner or anyone who uses the park
- cause damage to any property belonging to the park owner or anyone else.

201. If measures were to be proposed in this regard, they should include that, where the park owner has withheld permission, the park homeowner should not undertake work unless or until they have applied for and obtained the approval of the RPT.

28. Should the Residential Property Tribunal have to agree to all re-siting requests proposed by the site operator, including in emergencies? Please give your reasons.

202. We are not aware of failures in the present arrangements.

203. The proposal is that the consent to the RPT should be obtained for all movements of park homes. We cannot see why a move cannot be carried out by agreement of the parties (and

subject to Implied Term 10). Where there is such amicable agreement, is it really necessary to make an application to the RPT? Otherwise we agree that in order to move a home, an application should be made to the RPT.

204. However, we are concerned that in cases of immediate danger, the RPT may be unable to react promptly enough to deal with a real emergency. It could arise that a park owner, having assessed the situation, feels compelled to act speedily such as over a weekend. The law should not penalise park owners in such cases; we would ask Government to note that in other circumstances park owners have been criticised for inaction in cases of emergency.
205. Notwithstanding that rogue operators pay scant attention to the law, any proposed changes should be consistent with the present rules under Implied Term 10.
206. We would also comment on the proposal that „If a permanent move is approved by the RPT, the home owner would receive a new agreement at a comparable fee to the original pitch.“
207. We would add that the agreement should be comparable with, and on the same terms as, the old pitch agreement.
208. However, we would urge extreme caution in the drafting of this measure; poor drafting could deliver a ‘rogues charter’. Rogue park operators could use the opportunity of a ‘new agreement’ to exploit the relatively naïve park home owner.

Succession

29. Do you believe the rules on succession and inheritance in Wales should be modernised, and do you have any comments on the above proposals?

209. We agree that succession to the agreement is an area which gives rise to disputes.
210. A potential difficulty arises because the present succession rights under Section 3 of the Mobile Homes Act 1983 are limited in all cases to circumstances where the occupier „dies at a time when he is occupying the mobile home as his only or main residence...“. That matter could be resolved through an amendment in Section 3 so that it reads: „dies. ~~at a time when he is occupying the mobile home as his only or main residence...~~“
211. There is potential for unfairness in the current situation. Removing these words would resolve the issues where someone else occupying the home as a surviving spouse or member of the family would then be able to succeed to the agreement even where, for example the co-owner, such as their spouse, has been living in a care home for many months.
212. In the absence of compelling reasons to the contrary, the limited reform removing the residence requirement *only* may be the safest option to avoid disputes. In a case before the English Residential Property Tribunal, the point was explored demonstrating the complexities and the potential for unfairness in the present arrangements¹⁷.
213. It is open to park owners in all cases to take action to terminate the agreement (e.g. on grounds of non-residence); if the park owner has not taken this route then it should be forfeited upon the death of the park home owner.
214. We agree in principle that family beneficiaries (as defined in the Mobile Homes Act 1983) should be entitled to live in the home. Any matters of dispute should be resolved through the RPT.
215. It will be necessary to ensure appropriate safeguards are in place to protect park owners' interests. Such entitlement should only be available in 'genuine' cases. There must be appropriate sanctions in place to prevent abuse of the rules, including that this should not become a vehicle for the avoidance of the legitimate commission payment to park owners.
216. The law must include that where another member of the family is 'gifted' the home, there should be no financial gain to the beneficiary and the provision of evidence of the family relationship to the park owner should be a requirement.

¹⁷ Case number MAN/30UM/PHC/2011/0001 Mr Graham Fenwick v. Starglade Park Developments March 2012

Costs associated with the Bill

30. What do you consider would be the financial impact of the proposed Bill on yourself, your organisation or your business?

217. Without clarity and detail as to what is proposed, it is impossible to quantify the economic impact on park business.
218. Issues of potential concern would include:
- increased administration costs such as in the interface with the local authority
 - reduction of asset value of the business
 - lenders' withdrawal from the residential parks market (for example in response to the time-limited site licensing proposal).
219. Entirely new charges, which have not been sought by the parks industry, the majority of whom run good businesses, should not be levied on park operators.
220. Home owners are held out as the main beneficiaries of proposals for local authorities' additional site licensing powers and changes to the Mobile Homes Act 1983. Indeed preparatory work has been mainly with Consumer Focus Wales, therefore if there are to be changes home owners should be prepared to accept their share of the costs of these.
221. It would be inequitable and unjustifiable all good park owners were obliged to meet the costs of addressing the activities of a minority of rogues.

Subsequent fee increases

222. What controls would be proposed to ensure any subsequent increases are proportionate?
223. Would 'any enactment' in Implied Term 18.(1)(c) include any local authority cost increases following the initial introduction of fees?
224. Consider a local authority which on a cost-recovery basis increased its annual site licensing fees to take account of their increased costs to inspect, engage and then enforce against a rogue residential park operator who had purchased in the local area? On whom should these costs fall? There is only one fair and reasonable response; the 'polluter' who is the cause of those costs.

31. Do you consider that there would be a disproportionate financial impact upon any particular groups affected by this?

225. If legislation were to prevent park owners from passing any costs associated with new legislation then clearly they would be the only stakeholder being required to meet increased costs. This is clearly inequitable and unfair for the majority of decent park owners, not least park owners with holiday and touring park interests.

Conclusion

226. We would reiterate that in the absence of effective enforcement, new law will not change the behaviour of those who ignore today's law.
227. BH&HPA seeks ongoing, constructive dialogue on the detail of the proposals to seek a solution which will address the abuses, whilst avoiding unintended consequences to the detriment of park businesses (residential, holiday and touring) and their customers.

CONSULTATION ON THE PROPOSED MOBILE HOMES
(WALES) BILL 2012

All consultation questions

1. Do you agree that the Residential Property Tribunal should have jurisdiction to deal with all disputes relating to this Bill, aside from criminal prosecutions? Please give your reasons.

A: Yes, as it is a residential tribunal and should therefore have the expertise to deal with residential property, as Park homes are.

2. Do you have any experience of a sale being prevented, or if you are a site operator have you ever objected to a sale and why?

A: Yes, definitely. Some residents on this Park have experienced this.

3. Should the law be reformed to prevent sale blocking or is it necessary for site operators to have this power? If the law should be changed, which of the suggested alternatives outlined above do you prefer? Please give your reasons.

A: Yes, please see above. Any issues of not keeping the Park Home maintained etc., could be dealt with by reference to The Residential Property Tribunal.

4. Do you agree that there should be a meeting involving all parties prior to the sale/purchase? Please give your reasons.

A: No, this is not routinely done in 'bricks and mortar' sales/purchases. The requirement should only be that Park Rules are met e.g. with reference to age, if that is part of the Rules

5. What are your views on the current licensing system for mobile home sites? What could be improved?

A: At present there are no conditions of holding a site licence, and this is not acceptable. There should be Inspections of all sites every 12 months when there should be reviews of licenses.

6. How often should local authorities inspect sites, and how should these inspections be financed?

A: Every 12 months. Financing should be included in the license fee.

7. Should the Welsh Government issue guidance on the frequency and nature of such inspections?

A: Yes.

8. What are your views on what should be included in licence conditions? Should there be guidance on this issued by the Welsh Government?

A: Maintenance, Health and Safety issues, fit and proper person. One of the conditions should be that every Park Home has a Tenancy Agreement, and this should have to be issued within 21 days of

purchase of a park Home, whether it be a sale by the site owner, or a private sale.

9. How long should each licence normally last, and should local authorities be able to grant licences for shorter periods if necessary?

A: 12 monthly, renewable. Licenses should be issued for shorter periods if there have been complaints against the site owner (there would have to be some kind of minimum to these complaints, and they should probably be in writing by the Home Owner, or the Residents Association, if there is one).

- 10 How should the fees for mobile home site licensing be determined? Should the fee be calculated by reference to the number of pitches, the total area of the site, the cost of inspections to the local authority or a combination of all or any of these factors?

A: They should be standardised for all site owners. They should be quite expensive to obtain, in view of the responsibility attached to such licenses.

11. Should there be a regular annual charge to cover on-going administrative costs borne by local authorities during the licence period?

A: Yes, and this should be borne by the site owner.

12. Do you agree that site operators must pass a fit and proper person test before being granted a licence (with the local authority undertaking relevant checks) and that this should be based on the standard introduced for Houses in Multiple Occupation under the Housing Act 2004? Please give your reasons.

A: Yes, absolutely.

13. Apart from criminal convictions, what should be taken into consideration when deciding whether the proposed licence holder is a fit and proper person?

A: Complaints of bullying, intimidation, sale blocking, site maintenance, issuing notices and proper procedure with reference to water supplies, maintenance and other issues.

14. What are your views on increasing the maximum fine for operating a site without a licence, or breaching a licence condition?

A: It should reflect the seriousness of any given breach of the license, and the Park Rules. It should be prohibitive in monetary terms, so as to make it a clear and effective sanction.

15. Should local authorities be able to issue fixed penalty notices and, if so, for what types of infringement? Please give your reasons.

A: Yes, for breach of license and Park Rules. This might ensure that breaches are dealt with in a timely and effective way. However, again, they should be prohibitive, so as to ensure compliance.

16. Should local authorities have powers to serve enforcement notices, and to carry out work in default if necessary following breaches of licence conditions? Please give your reasons.

A: Yes. This would be necessary to ensure the adherence to the site license as well as the Park Rules. Otherwise, sites could fall into disrepair, and become not

only unpleasant, but unsafe, and vital services might be affected.

17. Under what circumstances should a site licence be revoked?

A: Breach of license conditions or Park Rules.

18. What are your views on local authorities being able to take over the management of mobile home sites, and do you envisage any practical difficulties?

A: In severe cases on non-compliance by a site owner, this could be necessary for the protection and safety of residents.

19. Should mobile home owners be able to take over the management of a site, and how should this work in practice?

A: Good idea in principle, but would need expert advice etc.

20. How should site operators consult with home owners when proposing changes to written agreements or site rules?

A: In writing, and with an invitation to all Park Home owners who are affected, being asked to respond within a time scale, with their comments. For large scale changes, a meeting could be held by the site owner, for residents to attend, to state their views.

21. Should the RPT have the power to award damages and compensation for breaches of the written agreement or any requirement imposed by this Bill? Please give your reasons.

A: Yes, definitely, as with the civil law which relates to 'bricks and mortar'.

22. Should pitch fees be regulated and, if so, how?

A: The RPI index, with a maximum level in any one year.

23. Do you have any other comments that specifically relate to pitch fees?

A: The pitch fee should be clearly stated in the Agreement, and should include ALL services that are included, and state separate amounts for each service. It should also state how the pitch fee can be increased, and on what basis (e.g. RPI).

24. Do you agree that the site operator's maintenance and repairing obligations would benefit from clarification?

A: Yes, definitely. It should be clear to everyone what these obligations are.

25. Should there be a standard consultation format that must be followed when a site operator is proposing improvements?

A: Yes, then all people involved, know what to expect

26. Do you agree that home owners should be able to make alterations and improvements inside their home without requiring the consent of the site operator? Please give your reasons.

A: Yes, as with 'bricks and mortar' owners. Park Home owners, by definition, own their own homes.

27. What would you deem to be a fair and reasonable reason for refusing permission to alter a mobile home externally?

A: Breaking the law i.e. building additions, so that it reduces the legal distance between homes, Leaving a home to fall into bad disrepair, or it does not fit in with the look of other Park Homes, safety.

28. Should the Residential Property Tribunal have to agree to all re-siting requests proposed by the site operator, including in emergencies? Please give your reasons.

No. They should only agree (if not an emergency) when upon consideration of all the facts, as well as the views of the Park home owner. In emergencies, they should agree, but the site owner should have to prove the gravity of the emergency.

29. Do you believe the rules on succession and inheritance in Wales should be modernised, and do you have any comments on the above proposals?

A: Yes, definitely. Anyone living with a person who dies, or goes into a nursing or care home, should be able to pass the right to live in the home to their partner, or other, living in the home at the time. Also, it should be able to be left to relatives etc., who should have the right to live in the home (as is the case with bricks and mortar homes), as long as they adhere to Park Rules i.e. for example, age restrictions.

30. What do you consider would be the financial impact of the proposed Bill on yourself, your organisation or your business? 31. Do you consider that there would be a disproportionate

31. financial impact upon any particular groups affected by this Bill?



National Assembly for Wales
Peter Black AM - Proposed Mobile Homes (Wales) Bill
Consultation Response: MHM14 - Older People's
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19th July 2012

RE: Proposed Mobile Homes (Wales) Bill

I write in response to the current consultation on the forthcoming Mobile Homes (Wales) Bill. I would like to express my support for the overall aims of the Bill which I believe offer an opportunity to better protect and support vulnerable mobile home owners in Wales.

The Commission is aware that park homes are used largely as retirement properties and that these are often a popular choice for older people on a low, fixed income, wishing to downsize. I am however, extremely concerned with the growing body of evidence highlighting the lack of effective protection for mobile home owners and the significant negative impacts that the poor practices of certain site operators are having on the lives of people who live in these homes.

Recent research by Consumer Focus Wales found widespread evidence of substantial financial and emotional distress incurred by site owners blocking an owner's sale of their home without justifiable reason. This situation has emerged because of arrangements whereby mobile home owners own their own home, while the site operator owns the land. Consumer Focus found that some unscrupulous site operators have been able to use the current legislation to refuse to approve a sale by the mobile home owner and deter potential buyers moving onto the site, resulting in considerable financial loss for the mobile home owner. This ability to block a sale has led to some mobile home owners selling their homes to a site operator for a fraction of its market value.

Other problems all too commonly experienced by residents of park homes include site owners neglecting their sites and failing to make adequate

repairs, charging excessive pitch fees, breaching site rules and stopping owners, from improving their homes. A recent inquiry by the UK Communities and Local Government Committee found that a quarter of park home residents had experienced problems with maintenance, security or safety standards; and that residents had experienced intimidation by site owners or managers at a significant number of sites in the UK.

The impacts of these practices on residents are understandably significant. Many owners are living in fear, feeling insecure, and knowing that they are unable to make free decisions about where they live and to whom they can sell their home. It is clear that people living in mobile homes are potentially vulnerable due not only to their age and low income, but also their lack of voice, choice and control over their own homes.

In light of this, the Commission supports the overall aims of the Mobile Homes (Wales) Bill to regulate more fairly the process by which residential caravans and mobile homes are managed and sold in Wales. We have not commented on the detailed proposals within the Bill, although we would expect that guidance and information is produced and distributed to local authorities, home owners and site operators to clearly set out how this new legislation will affect their rights and responsibilities.

Overall, I hope that the Bill will help create a situation in Wales where site operators can run a good business, offering a decent service to residents, and residents can live peacefully in their homes knowing that the law protects them from abuse.

Yours sincerely

A handwritten signature in black ink that reads "Sarah Rochira". The signature is written in a cursive, flowing style.

Sarah Rochira

Older People's Commissioner for Wales

Vale of Glamorgan Public Protection Service response to Consultation on the proposed Mobile Home (Wales) Bill.

This response is made on behalf of the Council's Public Protection Service that deals with the licensing of Mobile Home sites under the Caravan Sites and Control of Development 1960 within the Vale of Glamorgan.

The Council currently have five residential caravan sites in their Area. These range from three sites with 50 or less units and two sites with over 100 units. One of the smaller sites is also licensed as a holiday's site with over two hundred units. The Council also have twelve caravan sites of which seven are holiday sites and five touring sites.

The Council have for the last 10 years introduced a more pro-active approach to the licensing of all caravan sites by carrying out annual inspections and updating site licence conditions as appropriate. As part of this process the Council introduce a local performance indicator for the annual inspections of all caravan sites as part of the Departments Service plan which is reported annually to the appropriate scrutiny committee.

As a result of the proactive approach the Council has taken successful prosecution action against one site owner in relation to three offence in 2004/05 and have served breach of condition notice on this and one other site. This approach has been successful in improving the standards and conditions on the sites within the Vale of Glamorgan.

While the Council's Public Protection Service would support the general strengthening and improvements to the legislation governing mobile home sites, the control and inspection of other types of caravan sites is just as important if not more onerous on the local authority as residential sites.

The following responses are made by the Council officers in relation to the specific question contained in the consultation document.

Consultation on the Proposed Mobile Homes (Wales) Bill

All consultation questions:

1. Do you agree that the Residential Property Tribunal should have jurisdiction to deal with all disputes relating to this Bill, aside from criminal prosecutions? Please give your reasons.

The Council view is that the Residential Property Tribunal (RPT) should continue to deal with disputes between the site operators and mobile home owners as well as appeals against enforcement action taken by the local authority. Any offences relating to issues of non compliance should remain with the magistrates' court. The system should be consistent with how the Housing Act 2004 legislation operates.

There is though some concern about whether the existing RPT in Wales is currently in a position to deal with such cases. Also from the Council's experience under the Housing Act 2004 there is currently a lack of consistency and transparency about their decisions compared to the English RPT. Decisions on cases are made available in England on their website, but not in Wales

2. Do you have any experience of a sale being prevented, or if you are a site operator have you ever objected to a sale and why?

The Council has been involved with sites where improvements are required to comply with site licence conditions and site operators have objected to sales where the mobile homes do not comply with the site licence conditions. In such cases site operators often offer the home owner relatively low sums of money to purchase the home. While under the existing Mobile Homes Act the home owner can legally challenge refusals and valuations, the home owner is often elderly or vulnerable, so is reluctant to take such action. The Council have always attempted to assist and advise home owners in this position and particularly when they are vulnerable have supported them in finding alternative accommodation. It is acknowledged that such sale blocking can occur to the detriment of the home owner, but on some occasions where there are issues with the existing mobile home this ability to prevent sale is important.

3. Should the law be reformed to prevent sale blocking or is it necessary for site operators to have this power? If the law should be changed, which of the suggested alternatives outlined above do you prefer? Please give your reasons.

From the Council 's officers experience on some smaller or less well controlled sites the sale and purchase of homes can occur without the involvement of solicitors' or legal advice or contact with the local authority.

As mentioned in the response to question 2 there are circumstances where the site operator may need to object to the sale of a home. The complete removal of the veto would also affect the Council current site licence conditions as on site where mobile homes do not comply with the condition the Council often specifies that the areas of non-compliance are addressed on the sale or assignment of the homes.

As home owners are often reluctant to take the matter to a court under the current legislation, the Council would recommend that the second option be considered where the site operator can apply to the RPT to prevent the sale of a home. It would then be necessary for the site operator to make a sound and reasonable case for any refusal.

4. Do you agree that there should be a meeting involving all parties prior to the sale/purchase? Please give your reasons.

From the Council officers experience of most sites this already happens in majority of cases, but particularly if there are any issues with specific site rules or the mobile home this meeting is essential. If option two as mentioned in response to question 3 is introduced it would then be for the site operator to apply to the RPT if there is a dispute over the sale of the home.

5. What are your views on the current licensing system for mobile home sites? What could be improved?

The Council officers currently regularly inspect licensed site to ensure compliance with site licence condition which have included service of breach of condition notices and prosecutions. The legislation has been effective in helping to secure improvements to poorly maintained or managed sites, but not directly involved with dispute between park home owners and site operators.

As this inspection and monitoring has involved regular site inspections and visit the current licensing system does not allow the Council to recover any of its costs, unless prosecutions are taken. The ability for the Council to charge for the licensing and inspection of site should be introduced. The licensing system also needs to include provision about the suitability of the person owning and managing site, i.e. fit and proper person's requirement. Having regard to the significant amount of money site operator can make from the sale of a unit on the sites the level of fines for non compliance are not a sufficient deterrent.

6. How often should local authorities inspect sites, and how should these inspections be financed?

The Council currently aims to inspect all licensed caravan site on an annual basis, but is considering introducing a risk assessment based on confidence in management and broad compliance with conditions to enable the inspection to be reduced to once every

two years on these lower risk sites. Any proposal requiring inspection duration should allow a risk based approach with a minimum of inspections every two years.

The cost of routine inspection should be incorporated into the licence fee rather than an annual fee. Alternatively if the legislation introduces the ability to serve improvement or non-compliance notices that the Council should be able to charge the site operator for the costs of taking this enforcement action. This system currently operates under the Housing Act 2004 Legislation.

7. Should the Welsh Government issue guidance on the frequency and nature of such inspections?

As explained in response to question 6 above Council officers would recommend the introduction of risk based approach to determine frequency of inspection. In addition the WG could introduce a performance indicator relating to inspection of licensed sites in accordance with the risk assessment. The introduction of a local performance indicator within the local authority has ensured the inspections performance is monitored.

8. What are your views on what should be included in licence conditions? Should there be guidance on this issued by the Welsh Government?

The current model site licence conditions have been effectively used by the Council to assist in gradually improve sites, but being less specific does allow for variation to take in to account specific issues or circumstance of individual sites.

Further clarification on existing model site licence conditions and areas where there is non-compliance would be useful, but as many site operators may also operate outside Wales the national model standards should remain.

The Council officer would recommend additional guidance on the following areas:

- Construction of extensions, conservatories and porches to existing units
- Construction of areas of decking around existing units
- Construction and size of storage containers and sheds adjacent and between two units

9. How long should each licence normally last, and should local authorities be able to grant licences for shorter periods if necessary?

As with HMO licensing the Council officers would recommend that licenses are issued for maximum of 5 years, but allow the local authorities to issue licences for shorter periods if necessary or justified.

10. How should the fees for mobile home site licensing be determined? Should the fee be calculated by reference to the number of pitches, the total area of the site, the cost of

inspections to the local authority or a combination of all or any of these factors?

The Council officers would recommend that the level of the fees should be determined by the estimated cost in officer time to administer the issuing of the licence and plan site inspections throughout licence period. As part of this process the local authority will then need to consider the number of units on the site to assist in determining the licence fee. The level of the fee can then be divided up depending on the number of units i.e. <20, ,21 to <50, 51 to 100, > 101.

A fee would also then be required for the renewal of the licence or when issuing changes or variations to existing licences.

11. Should there be a regular annual charge to cover on-going administrative costs borne by local authorities during the licence period?

The Council officer view is that any fee for inspection and administration should be included in the initial or renewal licence fee rather than on an annual basis. If additional inspection and enforcement is required due to issues of non-compliance the separate charges for enforcement action can be made as described in the response to question 6 above.

12. Do you agree that site operators must pass a fit and proper person test before being granted a licence (with the local authority undertaking relevant checks) and that this should be based on the standard introduced for Houses in Multiple Occupation under the Housing Act 2004? Please give your reasons.

The Council officers would support the introduction of appropriate fit and proper person tests for site operators and site managers as this is a clear omission from the current licensing legislation. As part of an application or renewal all relevant parties name on the licence as the site operator and or manager must provide a current basic CRB or scot disclosure rather than relying on self declaration.

As with the Housing Act 2004 requirement an offence involving fraud, dishonesty, violence, drugs or sexual offences listed in Schedule 3 to the Sexual Offences Act and unlawful discrimination on grounds of sex, colour, race, ethnic, or national origins or disability in connection with a business must be included. Non-compliance with Housing Act 2004 Legislation would not appropriate.

There should also be a requirement to notify the local authority of any changes is circumstance that may make them no a longer fit and proper person.

13. Apart from criminal convictions, what should be taken into consideration when deciding whether the proposed licence holder is a fit and proper person?

Previous refusal or revocation of site licence and history of non-compliance with site licence conditions resulting in service of notices and prosecutions. Prosecution for harassment or illegal eviction or based on directions or judgements made by the RPT in determining dispute between park home owners and operators.

<p>14. What are your views on increasing the maximum fine for operating a site without a licence, or breaching a licence condition?</p> <p>Having regard to the nature of these residential sites most operators are unlikely to be running an unlicensed site. It is recommended that the fine levels are significantly increased to at least level 5 on the standard scale (£20.000)</p>
<p>15. Should local authorities be able to issue fixed penalty notices and, if so, for what types of infringement? Please give your reasons.</p> <p>It is the Council officer's view that the issuing of fixed penalty notice for issues of non-compliance would not be appropriate or effective in dealing with non-compliance by site operators. The use of appropriate enforcement or improvement notices as mentioned in response to question 6 would be more effective.</p>
<p>16. Should local authorities have powers to serve enforcement notices, and to carry out work in default if necessary following breaches of licence conditions? Please give your reasons.</p> <p>The existing legislation has been used by the Council to issue breach of condition notices and the ability to serve such similar notices should therefore be maintained under any new legislation. The option to carry out any work in default can also be a useful deterrent for the local authority; this should only be a power available to the Council not a requirement.</p>
<p>17. Under what circumstances should a site licence be revoked?</p> <p>The Council officers view is that licences should be revoke where the site operators is no longer deemed to be fit and proper or where there are serious or significant multiple breaches of the site licence condition or enforcement notices.</p>
<p>18. What are your views on local authorities being able to take over the management of mobile home sites, and do you envisage any practical difficulties?</p> <p>The Council officers would be very concerned about the implication to the local authority caused by the introduction of this power, but understands that with the additional enforcement powers in particular the fit and proper person requirements there may be rare circumstance when the licence will need to be revoked. Most local authorities would not have the resources or practical experience required to take over the management of sites.</p> <p>As an alternative the local authority could have the power to appoint another person or organisation to take over the management of the site. It will be necessary for the WG to develop an arrangement with some of the large experienced site management companies to be able to offer management services to the local authorities.</p>
<p>19. Should mobile home owners be able to take over the management of a site, and how should this work in practice?</p> <p>From the Officer experience of existing sites and having regard to the nature of residents of most mobile home sites this power would be rarely used and inappropriate.</p>

<p>As residents may also have a self interest if managing the site this could create a conflict of interest. Most residents would also not have the appropriate experience required to manage such sites.</p>
<p>20. How should site operators consult with home owners when proposing changes to written agreements or site rules?</p> <p>The Council officer would recommend that all site rules changes must be displayed on the site and information packs provided for all residents explaining in detail any changes and how that may affect them as residents.</p>
<p>21. Should the RPT have the power to award damages and compensation for breaches of the written agreement or any requirement imposed by this Bill? Please give your reasons.</p> <p>Council officers can't see that there would be any problem or issue with the RPT having jurisdiction in relation to site rules and disputes between site operators and home owners, but would not want the RPT to extend its jurisdiction to site licensing issues as this power should remain with the local authority as the enforcement body and the Magistrates' Court for prosecutions. It is important that enforcement of site rules and site licence conditions are kept separate to avoid confusion.</p>
<p>22. Should pitch fees be regulated and, if so, how?</p> <p>As the Council officers involved with licensing of sites have no experience or jurisdiction in relation to pitch fees there are no comments.</p>
<p>23. Do you have any other comments that specifically relate to pitch fees?</p> <p>None, see response to question 22 above</p>
<p>24. Do you agree that the site operator's maintenance and repairing obligations would benefit from clarification?</p> <p>It is important that all parties including the local authority are clear about their responsibilities for maintaining and repairing the site and homes located on the site.</p> <p>Officers have experience problems in determining whether enforcement was necessary when dealing with drainage defects that were identified on a particular site.</p>
<p>25. Should there be a standard consultation format that must be followed when a site operator is proposing improvements?</p> <p>Council officers are not aware of any issues or problem in this area. It is though essential that full consultation is carried out with all residents who may be affected by</p>

<p>any changes or improvement to the site.</p>
<p>26. Do you agree that home owners should be able to make alterations and improvements inside their home without requiring the consent of the site operator? Please give your reasons.</p> <p>From Council officers experience any internal changes that may affect structural nature of the unit or the safe escape in the event of a fire so should require the consent of the site operator. The Council officers have experience of residents who have made internal alteration to the internal lay out and construction that have affected the safety and integrity of the unit. Any internal alterations with out approval should be limited to decorative or replacement like for like works only.</p>
<p>27. What would you deem to be a fair and reasonable reason for refusing permission to alter a mobile home externally?</p> <p>Any works that extend the size of the unit into separation space that could breach the site licence conditions or would affect the structural integrity or fire resistance of the unit's structure.</p>
<p>28. Should the Residential Property Tribunal have to agree to all re-siting requests proposed by the site operator, including in emergencies? Please give your reasons.</p> <p>In the event of a fire, floods and collapse of ground where there is a significant risk to the safety of the residents or the unit it may be necessary for site owners to move units without approval or consent of the RPT, in all other circumstance it would be necessary for the site operator to justify why any units should be relocated.</p>
<p>29. Do you believe the rules on succession and inheritance in Wales should be modernised, and do you have any comments on the above proposals?</p> <p>The officers are unable to comment on this particular aspect of the consultation.</p>
<p>30. What do you consider would be the financial impact of the proposed Bill on yourself, your organisation or your business?</p> <p>As the Council officers already carry out regular site inspections of sites there would only be the limited impact of introducing new licences and carrying out the necessary fit and proper person checks.</p>
<p>31. Do you consider that there would be a disproportionate financial impact upon any particular groups affected by this Bill?</p> <p>Operators of the smaller site are likely to be proportionally more affected than the larger site owners, but it is likely the site operators will ultimately pass any additional cost of the new licensing regime to the park home owners.</p>

Consultation on the Proposed Park Homes (Wales) Bill

Response of Ceredigion County Council

This response has been prepared by Service Managers of the Trading Standards and Licensing and Public Health Protection teams of the Department of Environmental Services and Housing of Ceredigion County Council. Some of the Managers have substantial experience in this field and have had significant input into this project, having had face to face discussions with Consumer Focus Wales and with Peter Black A.M. as well as providing evidence to Consumer Focus Wales of examples where consumers have suffered from the unscrupulous activities of some site owners. Time has not permitted this consultation document to be presented to a Member Consultation Panel therefore the views expressed are solely those of the Council's officers.

1. Do you agree that the Residential Property Tribunal should have jurisdiction to deal with all disputes relating to this Bill, aside from criminal prosecutions? Please give your reasons.

Yes, as there is already a mechanism for dealing with appeals and tribunals through the RPT it would make sense that this system is used. However, in Wales the RPT does not publish its decisions under the Housing Act 2004, therefore the sharing of determinations is not maximised in order to inform future enforcement. There could also be concerns in relation to the capacity of the RPT to deal with a potential increased demand on their services.

2. Do you have any experience of a sale being prevented, or if you are a site operator have you ever objected to a sale and why?

Ceredigion County Council's Trading Standards Service has received complaints of this nature, when the site owner blocks the sale of the mobile home and the consumer ends up selling the mobile home to the site owner for a substantially decreased price. This practice restricts consumer choice and the Office of Fair Trading (OFT) guidance on unfair terms in holiday caravan agreements objects to this practice being used as it is construed as a potentially unfair term in consumer contracts. However, the site owner should be entitled to vet the new owners so as to avoid unsuitable caravan owners, and possibly even be entitled to first refusal providing that the price is a fair one. Additionally, park owners should not be able to restrict access to the site unless it is for justifiable reasons such as health and safety issues. Residents should not be forced to use only certain contractors that the park owners approve.

3. Should the law be reformed to prevent sale blocking or is it necessary for site operators to have this power? If the law should be changed, which of the suggested alternatives outlined above do you prefer? Please give your reasons.

Yes. We agree with the preferred option that the right to veto a prospective purchaser should be removed. We agree that the written agreement should include a clause of adherence to the site rules, which should be an annex to the main written agreement document. We recommend that site rules be agreed through consultation between the site operator and residents and lodged with the licensing authority. We recommend that a mobile home information pack be produced and widely distributed to home owners, site operators and other relevant parties, as well as being promoted amongst potential buyers.

4. Do you agree that there should be a meeting involving all parties prior to the sale/purchase? Please give your reasons.

We do not agree that there should be a meeting involving all parties prior to any sale.

5. What are your views on the current licensing system for mobile home sites? What could be improved?

The current system of licensing and enforcement of licence conditions is cumbersome and ineffective with referral to the magistrates court for breach of licence conditions does not necessarily result in improvements made to the site, and the legislation does not allow us to service notices to this effect. Furthermore, there is no ability to carry out works in default and to reclaim costs incurred to this effect if the licence holder fails to comply with notices of improvement. The commitment in the Bill towards the introduction of a new licensing regime is welcomed. It is felt that account could be taken of the 2008 Welsh Model Conditions. These conditions currently only apply to new sites or substantially redeveloped sites but could be extended to all residential sites.

6. How often should local authorities inspect sites, and how should these inspections be financed?

The introduction of the issuing of licences for a fixed period is welcomed. Under HMO legislation, licences are issued for a maximum 5 year period with conditions if deemed necessary relating to the standards and management on the site. Inspections to determine licence conditions compliance are carried out in accordance with the agreed timescale for compliance with the conditions. Inspections of HMOS are also carried out on a risk rated basis, and such a risk rating could be applied to park homes based on standards and confidence in management of the site and licence holders. Discretion could also be allowed to issue a licence for a shorter period where circumstances require. Inspections should be financed through the introduction of a site licence fee to include annual renewal based on the principle of cost recovery.

7. Should the Welsh Government issue guidance on the frequency and nature of such inspections?

In order to assist in consistency of approach then it could be beneficial to develop such guidance. Nevertheless, Authorities are accustomed to applying a risk management matrix to guide inspection frequency for many disciplines in public protection, therefore such a risk based approach would be easily adopted by Authorities similar in principle to those already applied for example in Trading Standards, Housing, Food and Safety.

8. What are your views on what should be included in licence conditions? Should there be guidance on this issued by the Welsh Government?

Licence conditions could include arrangements related to standards on the site – provision of lighting, park home standards, as well as management issues such as maintenance of common parts, waste storage and collection, display of notices, etc. Many site owners don't give written terms and rarely update the resident of any changes that are made and sometimes refuse to consult with residents. If possible, licensing conditions stating that terms/condition/agreements must be provided in writing to the residents would be most beneficial. Licence conditions should take account of the 2008 Model Conditions regardless of whether sites are new or substantially redeveloped. If a Welsh common standard is deemed the best way forward, then Welsh Government guidance would be appropriate.

9. How long should each licence normally last, and should local authorities be able to grant licences for shorter periods if necessary?

As indicated above, it has been found that 5 years for HMO licences is a reasonable period and it is agreed that discretion could also be allowed to issue a licence for a shorter period where circumstances require e.g. due to concerns over management arrangements or whilst changes are being made to the site such as expansion/alteration. A Site Licensing Scheme should also require that new park homes must comply with licensing requirements prior to any occupation as this provides an incentive to ensure compliance with spacing, amenities and general standards on the site.

10. How should the fees for mobile home site licensing be determined? Should the fee be calculated by reference to the number of pitches, the total area of the site, the cost of inspections to the local authority or a combination of all or any of these factors?

Fee setting arrangements should be as simple and clear as possible to avoid disparity. It is believed that the fee should be based on the number of pitches and cost of inspection to the local authority on a full cost recovery calculation. In order to ensure consistency in charging rates across Wales, guidance on rechargeable costs would be welcomed. We would recommend that because the number of pitches impacts on the profit element of the site then it follows that the more pitches on a site, then the greater the licensing fee.

11. Should there be a regular annual charge to cover on-going administrative costs borne by local authorities during the licence period?

This would add to the administrative burden of the licensing authority, therefore a one off 5 year fee would be preferred to cover the on-going costs of inspecting the site.

12. Do you agree that site operators must pass a fit and proper person test before being granted a licence (with the local authority undertaking relevant checks) and that this should be based on the standard introduced for Houses in Multiple Occupation under the Housing Act 2004? Please give your reasons.

Yes. Local authorities are accustomed to carrying out these checks for HMO licence holders and managers and a signed declaration is submitted. The discretion to apply further CRB checks is also encouraged where appropriate.

13. Apart from criminal convictions, what should be taken into consideration when deciding whether the proposed licence holder is a fit and proper person?

Any adverse decisions taken by the RPT could also be taken into account as well as any records held by the Authority where a licence has been refused, had a licence refused or breached conditions of a licence for any property/premises in relation to any licensing scheme in operation. Account could be taken of official warnings or simple cautions, etc.

14. What are your views on increasing the maximum fine for operating a site without a licence, or breaching a licence condition?

We agree with this proposal. Some park homes sites are large and run by national companies, therefore an uplift of maximum fine level would seem a reasonable option.

15. Should local authorities be able to issue fixed penalty notices and, if so, for what types of infringement? Please give your reasons.

We agree that local authorities should have the power to issue fixed penalty notices for minor breaches of licence conditions.

16. Should local authorities have powers to serve enforcement notices, and to carry out work in default if necessary following breaches of licence conditions? Please give your reasons.

Yes. Local Authorities are accustomed to taking such action and such powers would be welcomed in dealing with problems that have occurred on such sites. The ability to carry out work in default and reclaim costs incurred should the licence holder fail to comply with the notice would be a positive step forward.

17. Under what circumstances should a site licence be revoked?

This option is available within the Housing Act for dealing with licensed HMOs, and provisions are laid down stating certain circumstances. In these circumstances for park home sites, this should be considered where there have been serious breaches to the licence conditions, where the licence holder is no longer a fit and proper person, or if there is a change of ownership (a review and re-issue of licence may be appropriate in these circumstances), and where there is a serious risk posed to the health and safety of the residents.

18. What are your views on local authorities being able to take over the management of mobile home sites, and do you envisage any practical difficulties?

Having had experience of running Interim Management Order for 3 HMOs, this poses a significant burden on an enforcement team, and it is debatable whether staff would have the expertise to manage a park home site, and potentially would find difficulty finding the expertise locally to manage such a site.

19. Should mobile home owners be able to take over the management of a site, and how should this work in practice?

This would depend on them meeting the criteria relating to „fit and proper“ person and be deemed competent to manage and run the site. Agreement for such an arrangement would also have to be agreed by other park home owners.

20. How should site operators consult with home owners when proposing changes to written agreements or site rules?

It is hoped that this would be covered within the terms of agreement already in place between the site owner and park home owner. If the majority of residents are in disagreement then the decision could be referred to the RPT.

21. Should the RPT have the power to award damages and compensation for breaches of the written agreement or any requirement imposed by this Bill? Please give your reasons.

We agree that where a home owner is awarded damages by the RPT, non-compliance with this decision should be treated as a breach of the site licence by the local authority.

We also recommend that guidelines be issued to the RPT to encourage them, in appropriate circumstances, to award damages.

22. Should pitch fees be regulated and, if so, how?

We agree that the site operator should be required to state any inflation rate on the review notice and explain clearly how he/she came to calculate the new amount.

23. Do you have any other comments that specifically relate to pitch fees?

We agree that site operators should not be permitted to pass on to home owners any of the costs that are a direct result of the Bill, including site licence fees.

24. Do you agree that the site operator's maintenance and repairing obligations would benefit from clarification?

Yes

25. Should there be a standard consultation format that must be followed when a site operator is proposing improvements?

Yes

26. Do you agree that home owners should be able to make alterations and improvements inside their home without requiring the consent of the site operator? Please give your reasons.

No

27. What would you deem to be a fair and reasonable reason for refusing permission to alter a mobile home externally?

We recommend that external works should be automatically approved unless the RPT decides against an alteration on the grounds of a breach of the site licence. We agree that site operators should not be allowed to charge the home owner for this approval process. We recommend that new legislation makes clear the meaning of "a comparable [pitch] fee" when determining a new pitch fee in the event of a permanent move.

28. Should the Residential Property Tribunal have to agree to all re-siting requests proposed by the site operator, including in emergencies? Please give your reasons.

We agree that the RPT should have to agree to all re-siting requests proposed by the site operator, including for emergency and essential repair work.

29. Do you believe the rules on succession and inheritance in Wales should be modernised, and do you have any comments on the above proposals?

We agree with proposals within this document to modernise the succession and inheritance rules for mobile homes. We recommend that individuals who have inherited a mobile home but are either ineligible to live in the home or who do not want to live in the home, are not obliged to pay the pitch fees and other associated costs for the first six months after a home passes into that individual's ownership. We agree that disputes over succession and inheritance would be heard by the Residential Property Tribunal.

30. What do you consider would be the financial impact of the proposed Bill on yourself, your organisation or your business?

Considerable without the benefit of a licence fee to offset the costs of inspection and administration.

31. Do you consider that there would be a disproportionate financial impact upon any particular groups affected by this Bill?

We do not believe that this Bill would place any disproportionate financial impact upon any particular groups. While we recognise that site operators would be required to pay a site licence fee as a result of the proposals for in this Bill, Consumer Focus Wales believes that the proposals outlined in this paper will result in a more effectively regulated mobile homes industry from which rogue site operators will be discouraged.

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20th July 2002

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Mobile Homes (Wales)

Bill Consultation

A response by the

Chartered Institute of Housing Cymru

20th July 2012

The Chartered Institute of Housing is the only professional organisation representing all those working in housing. Its purpose is to maximise the contribution that housing professionals make to the well being of communities.

In Wales, we aim to provide a professional and impartial voice for housing across all sectors to emphasise the particular context of housing in Wales and to work with organisations to identify housing solutions.

For further information on this response please contact Julie Nicholas, Policy & Public Affairs Manager, at the above address or email: julie.nicholas@cih.org

Introduction

CIH welcomes the opportunity to respond to this consultation. CIH is the professional body for people working in housing and communities, with over 22,000 members across the UK and Asian Pacific. Our mission is to maximise the contribution that our members make to the well being of communities.

Our response is informed by feedback from our members, our knowledge of the sector and our expertise from our policy and practice team and specialist teams.

CIH believes that households residing in mobile homes in Wales should be able to freely enjoy their homes within a safe environment, receive a good quality management service that is reasonably priced, live free from intimidation and harassment, be consulted on changes to services, charges and facilities at the site and be protected from financial loss resulting from the unscrupulous practices of some site managers.

We also recognise that the number of older persons living in mobile homes is much higher than in the general population, and that this population is therefore more vulnerable with regards to age, health and mobility needs, relating to two of the protected characteristics under the Equality Act 2010; age and disability.

We recognise the support for this Member's Bill under paragraph 4.123 of the **Homes for Wales** White Paper 2012, and we both share and endorse this view.

Summary of Response

We broadly support the introduction of the Mobile Homes (Wales) Bill recognising the following key issues:

- Current practice in some Mobile Homes sites is unacceptable, with anecdotal evidence of serious harassment, intimidation and financial exploitation of vulnerable residents and owners by unscrupulous site owners and managers.
- The regulation and monitoring of park homes is not currently fit for purpose, and disincentives for poor practice are limited.
- Residents of mobile home sites are much more likely to be vulnerable persons than those in the general population, on the basis of age and disability.

Our other key points are:

- Reform of the sales approval process, through the removal of the site operator's veto, as well as the implementation of a national licensing and monitoring framework, will greatly reduce the incentive for poor site management behaviour.
- A proper licensing and monitoring framework, including the right to issue significantly increased penalties for poor management, with a right of redress through the Residential Property Tribunal (RPT), will go some way to address issues of exploitation and the unequal balance of power between the owner/resident and site managers.
- Increased resident and owner consultation and involvement should improve on-site services, support occupancy sustainability for residents and increase good business practices.

Consultation questions and CIH responses.

All consultation questions

1. Do you agree that the Residential Property Tribunal should have jurisdiction to deal with all disputes relating to this Bill, aside from criminal prosecutions? Please give your reasons.

The Residential Property Tribunal (formerly known as the Rent Assessment Panel for Wales) is an independent statutory body set up under the Rent Act 1965. The Tribunal's main responsibilities are to set up Rent Assessment Committees and Rent Tribunals to consider appeals over rent levels and to fix an appropriate rent where there are disputes between landlords and tenants in the Private Rented Sector. The Tribunal also sets up Leasehold Valuation Tribunals to settle certain disputes between leaseholders and freeholders.

The Committees are independent of both central and local government. There is no appeal against a committee's decision except on a point of law.

There is no charge for a committee decision.

CIH Cymru considers the Residential Property Tribunal to be an appropriate, independent body to deal with all disputes relating to this Bill, aside from criminal prosecutions and support the recommendation.

2. Do you have any experience of a sale being prevented, or if you are a site operator have you ever objected to a sale and why?

CIH does not have experience of sales being prevented. However colleagues at Consumer Focus Wales have evidence of numerous cases of blocked sales, negatively impacting on the financial and emotional well being of residents.

We would refer you to the comprehensive response to this Bill by Consumer Focus Wales, July 2012.

3. Should the law be reformed to prevent sale blocking or is it necessary for site operators to have this power? If the law should be changed, which of the suggested alternatives outlined above do you prefer? Please give your reasons.

CIH agrees that the practice of sale-blocking by site managers/owners should be stopped, and we support the first option to 'remove the right to veto a prospective purchaser', with the addition of the site-rules clause as a condition of ownership including resident eligibility requirements. This is for a number of reasons:

- It will provide financial protection of vulnerable residents who wish to sell their property from unscrupulous site owners and managers.
- It will address current power imbalance between residents and site owner/managers with regards to the sales process.
- It will act as a disincentive to further unscrupulous site managers/owners from entering the market.
- It will protect other residents who chose to live at the site, on the basis of the eligibility specification in the site-rules, from changes to the site-rules without consultation.

4. Do you agree that there should be a meeting involving all parties prior to the sale/purchase? Please give your reasons.

CIH has concerns that a mandatory pre-sales meeting with the site owner/manager will not address issues relating to intimidation and financial exploitation of vulnerable mobile home owners by unscrupulous site owners/managers. As such we have concerns with this recommendation.

5. What are your views on the current licensing system for mobile home sites? What could be improved?

CIH believes that the current system is not fit for purpose and requires a new approach to protect vulnerable residents.

6. How often should local authorities inspect sites, and how should these inspections be financed?

CIH suggest that a minimum of one full site inspection with a published report detailing the findings for the period of the license period, if the license is to mirror that of HMO licensing and last for up to 5 years. We would expect follow up monitoring visits to ensure compliance and progress with any recommendations in the inspection report, and further full inspections to be completed during the license period on the basis of a risk assessment.

Inspection reports should be publically available, and preferably published on the Local Authority web-site. Licensing Authorities should therefore be able to access site reports for owners/managers in other areas to inform the inspection and risk assessment process and share information with colleagues in other authorities on the basis of risk, where required.

We would also suggest that Welsh Government is mindful of the additional burden on resources for Local Authorities, and consider further resource allocations to undertake these additional responsibilities.

7. Should the Welsh Government issue guidance on the frequency and nature of such inspections?

CIH believe that the Welsh Government should issue guidance on both the frequency and nature of such inspections to ensure a consistent methodology is used across Wales, and to avoid a postcode lottery regarding the frequency and quality of the inspection processes.

CIH also recommend that the inspection methodology should include a requirement to consult with residents on their views.

8. What are your views on what should be included in licence conditions? Should there be guidance on this issued by the Welsh Government?

CIH believe that Welsh Government should issue guidance on license conditions, creating a set of minimum, measurable standards that are monitored properly; to include services, supplies, health and safety, security, facilities and resident involvement and consultation requirements.

9. How long should each licence normally last, and should local authorities be able to grant licences for shorter periods if necessary?

CIH would expect a license period to mirror that of HMO licensing for a period of 5 years. However where risks or poor standards have been identified the licensing authority should retain the right to reduce the licensing period as required.

10. How should the fees for mobile home site licensing be determined? Should the fee be calculated by reference to the number of pitches, the total area of the site, the cost of inspections to the local authority or a combination of all or any of these factors?

CIH Cymru believes that Local Authorities should be able to charge for the licensing of mobile home sites. We suggest consultation with Local Authorities to determine how this charge is best calculated.

11. Should there be a regular annual charge to cover on-going administrative costs borne by local authorities during the licence period?

CIH is concerned that additional duties are being placed on Local Authorities without additional resources being made available. However the administration of an annual charge would be another burden on the Local Authority. We would therefore suggest

that a license charge payable to the Local Authority to help resource the inspection and monitoring of the new process would be more appropriate.

12. Do you agree that site operators must pass a fit and proper person test before being granted a licence (with the local authority undertaking relevant checks) and that this should be based on the standard introduced for Houses in Multiple Occupation under the Housing Act 2004?

Yes, CIH agrees that a fit and proper person test should form part of the license application process, to include a CRB check on applicants.

13. Apart from criminal convictions, what should be taken into consideration when deciding whether the proposed licence holder is a fit and proper person?

CIH recommend an Enhanced CRB check is required and would also suggest the inclusion of whether a person has been refused a license or had a license withdrawn previously should be included in the test.

We would also suggest consideration is given to including civil orders made against an individual that may not be included in a CRB check, such as Anti Social Behaviour Orders.

We would suggest that the grounds of unlawful discrimination are updated to include the all of protected characteristics defined under the Equality Act, including age.

14. What are your views on increasing the maximum fine for operating a site without a licence, or breaching a licence condition?

CIH Cymru supports an increase on the maximum fine for operating a site without a license or breaching a license condition.

15. Should local authorities be able to issue fixed penalty notices and, if so, for what types of infringement? Please give your reasons.

CIH Cymru agrees that local Authorities should be able to issue fixed penalty notices for minor breaches of license conditions.

16. Should local authorities have powers to serve enforcement notices, and to carry out work in default if necessary following breaches of licence conditions? Please give your reasons.

We agree that Local Authorities should have powers to serve enforcement notices to carry out work if necessary, following breach of license condition on the grounds of risk management and to address the health and safety needs of vulnerable residents.

17. Under what circumstances should a site licence be revoked?

CIH Cymru believes that a site license should be revoked in the event of a person failing a fit and proper person test, following criminal conviction or civil order pertaining to harassment and intimidation. We also think that a license should be revoked in the case of serious mismanagement.

18. What are your views on local authorities being able to take over the management of mobile home sites, and do you envisage any practical difficulties?

Where a license is revoked, CIH Cymru believes that it is important that the Local Authority is able to manage risk to residents by transferring management to themselves or an appropriate body. An appropriate body could be, for example, a Registered Social Landlord.

19. Should mobile home owners be able to take over the management of a site, and how should this work in practice?

CIH Cymru supports this proposal.

20. How should site operators consult with home owners when proposing changes to written agreements or site rules?

Site owners should consult with both residents and owners on changes to written agreements and site rules.

The consultation methodology should be inclusive, include resident associations and address barriers that effect persons with protected characteristics such as visual impairment.

There should be a requirement to evidence the consultation, how the consultation responses were considered and how the final outcomes an decisions reflect the consultation responses.

Notice periods to implement changes to rules and agreements should be defined.

21. Should the RPT have the power to award damages and compensation for breaches of the written agreement or any requirement imposed by this Bill? Please give your reasons.

CIH Cymru agrees that the RPT should have the power to award damages and compensation for breaches of the written agreement or requirements of the Bill. We also agree that non-compliance with such awards should be considered as non-compliance with the site license requirements.

22. Should pitch fees be regulated and, if so, how?

CIH Cymru agree that the site operator should be required to state any inflation rate on the review notice and explain clearly how the new charge has been calculated. Owners and residents should be consulted on increased charges and the consultation should be evidenced and available for scrutiny at inspection.

We also agree that pitch fees paid to an unlicensed operator should be refunded in full to the payee, as a deterrent.

23. Do you have any other comments that specifically relate to pitch fees?

CIH Cymru is concerned that the costs of implementing the new Bill for site owners/managers will be passed in full to the owners/residents, we therefore support the proposal that the law is clarify to prevent legislative changes being used as a reason for increasing pitch fees.

24. Do you agree that the site operator's maintenance and repairing obligations would benefit from clarification?

Yes, CIH Cymru believe that this would be of benefit, and that this would help to prevent site owners/managers from passing on the cost of repairs through site fees, as opposed to the cost of improvements that can legitimately be passed on through site fees.

25. Should there be a standard consultation format that must be followed when a site operator is proposing improvements?

Yes, CIH recommend that a standard consultation format is followed and that the consultation is inclusive and evidences how responses were incorporated into the final decision.

26. Do you agree that home owners should be able to make alterations and improvements inside their home without requiring the consent of the site operator? Please give your reasons.

Yes, CIH Cymru agrees that home owners should be able to make alterations and improvements inside their home without requiring the consent of the site operator.

27. What would you deem to be a fair and reasonable reason for refusing permission to alter a mobile home externally?

CIH Cymru believes that non-compliance with the site rules is a fair and acceptable reason for refusing permission to alter a mobile home externally. We would also suggest that neighbouring residents are consulted on any proposals to change the exterior of a home before permission is given to the owner or occupier.

28. Should the Residential Property Tribunal have to agree to all re-siting requests proposed by the site operator, including in emergencies? Please give your reasons.

CIH Cymru agrees that the RPT should agree to all re-siting requests proposed by the site operator, including in emergencies.

29. Do you believe the rules on succession and inheritance in Wales should be modernised, and do you have any comments on the above proposals?

CIH Cymru supports the proposal that anyone residing in a mobile home as their permanent place of residence should have right of succession to the written agreement.

We also support the proposal that a new owner, who has inherited the mobile home, and is eligible to live on the site under the terms of the site rules should have the right to occupy the pitch, or gift this right to another family member who meets the eligibility criteria within the site rules.

We support the proposal that disputes should be referred to the RPT.

30. What do you consider would be the financial impact of the proposed Bill on yourself, your organisation or your business?

None

31. Do you consider that there would be a disproportionate financial impact upon any particular groups affected by this Bill?

CIH Cymru has concerns regarding the resource and financial impact of the Bill requirements on the Local Authority responsible for the accreditation, regulation,

inspection and management of the sites, and their owners/managers. We believe that additional resources should be made available, for example through accreditation fees, to these Local Authorities to meet these resource requirements.

CIH Cymru considers the additional requirements for site owners/managers to be reasonable; we would expect that good site owners/managers are already undertaking the majority of these requirements and budgeting for them within their current business planning arrangements.



CONSULTATION RESPONSE ON THE PROPOSED MOBILE HOMES (WALES) BILL

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Date: 20th July 2012

The NCC is the trade association representing the collective interests of the tourer, motor home, and holiday and residential park industries. The industry has a turnover approaching £6 billion, employs in excess of 90,000 people and serves over 1 million caravanners and over 85,000 residential park home households. Our members include over 90% of the UK manufacturers of tourers, motorhomes and holiday homes and residential park homes along with the leading park owners, dealers, and suppliers and service providers.

We would like to stress that with similar consultation exercises having taken place in England and taking place in Scotland, it is vital all outcomes are considered together and then consistently applied. We do recognise each devolved Government's right to 'go its own way' but it would not be helpful to good park owners, who have interests in two or more of the countries, if there were differences in regulations and their application.

The NCC has made significant contributions to discussions about and consultations on, changes to legislation to reform residential park homes over many years. Whilst the legal framework for local authorities and the police to enforce the law exists:

- the ambitions of rogue operators remain unchallenged
- current deterrents are insufficient
- there is a lack of clarity on who is responsible for what
- resources are stretched and knowledge is limited and inconsistently applied
- there is an apparent lack of will to take action to enforce the law

At the heart of this issue is a lack of awareness, understanding and knowledge on all sides. Police and local authority personnel are stretched and expertise is limited with the result that

the regulations that do exist are not enforced. Governments must provide support for the consultation outcomes to be rigorously applied.

Sellers, who would have bought their home many years ago, did so in an environment which does not exist today; today's purchasers are no less better informed and are attracted by an enviable, sustainable and affordable lifestyle. There is a role for all involved in the industry to ensure that sellers and purchasers have all the facts in advance and have access to independent advice prior to purchase.

Any change must be complimented and supported by an education programme that ensures all parties (purchasers, sellers, park owners and the police and local authorities):

- are more aware and knowledgeable of their rights and responsibilities
- are able to share information with each other and are not isolated
- are part of a multi-agency approach to resolving the problems caused by a tiny minority
- see resources in place, the law enforced and the deterrents applied

All parties recognise that only a small number of rogue operators are causing harm. Any legislative changes being proposed are essentially required to close the enforcement gap which many would argue has been allowed to widen over many years through lack of understanding, resource and commitment to existing obligations on local authorities. But to be effective, any new regime will cost money and need to be self-funding, proportionate and fair so there is considerable danger that any proposals will impact on good park operators.

Without question the activities of a minority of park operators impact severely on the integrity of the industry and cause misery to far too many home owners. It should be noted, however, that in closing this gap it will be at the expense of those park operators who adhere to the existing legislation and who manage professionally run businesses. They should not subsidise the cost of eradicating unscrupulous behaviour or be penalised in any way.

Lastly, whilst we appreciate the consultation has stated that holiday parks will not be affected by the proposed changes to site licensing regulations in Wales, and this Bill is solely about The Mobile Homes Act (Wales), it must be recognised that there are mixed use parks in Wales. There are also holiday parks which have one or two residential pitches on them to provide accommodation for park managers.

We do not believe the impact of the proposed site licensing changes has been either fully understood or considered. For example:

- What is the likely economic impact on the continued viability of a park business, if as proposed, they bear all the costs?
- Some mixed use parks may exist on one Site Licence. How will the new regulations apply to them?
- Where permitted residential accommodation exists on holiday parks for park managers, how will the proposed residential site licensing regime apply to them?
- If licences are time-bound, how would the security of tenure for residents continue to be protected? How could home owners sell their home when the business could close down overnight?
- Would a bank provide finance to a prospective purchaser when their right to 'do business' might be taken away from them?

We would welcome the opportunity to contribute to the discussions so that the final Bill is fully informed and does not penalise those who should be outside the final scope of this legislation, whether they own/operate a residential or a holiday park. New policies and new legislation must reflect the issues and be effective and consistent.

RESIDENTIAL PROPERTY TRIBUNAL

1. Do you agree that the Residential Property Tribunal should have jurisdiction to deal with all disputes relating to this Bill, aside from criminal prosecutions? Please give your reasons.

- 1. Yes. The Residential Property Tribunal (RPT) is an independent service for settling disputes involving private rented and leasehold property. It is gaining knowledge and expertise in Residential Park Home legislation. However, some issues that arise, for example obtaining permission to move a home to carry out emergency work or to rectify a licence breach may require a swift/immediate decision. They could be more easily resolved without the involvement of the RPT, especially if the local authority has initiated it in the first place, as they are likely to be in a better position to deal with the issue.*
- 2. If this is the decision that is made, as we put forward in England, we would welcome the opportunity to be involved in any training programme to share our knowledge and expertise, particularly in relation to the construction of residential park homes which is carried out by our members.*

BUYING AND SELLING MOBILE HOMES

2. Do you have any experience of a sale being prevented, or if you are a site operator have you ever objected to a sale and why?

- 3. The NCC is a member of the All Party Parliamentary Group on Mobile Homes. Through our lobby work and in discussions with Government, we have been made aware of reports from representatives of national residents associations and constituent MPs, highlighting such instances. In addition we take note of the RPT reports we are sent.*

3. Should the law be reformed to prevent sale blocking or is it necessary for site operators to have this power? If the law should be changed, which of the suggested alternatives outlined above do you prefer? Please give your reasons.

- 4. Sale blocking behaviour impacts on the integrity of the industry and on professional park operators who have invested in their business.*
- 5. Under the present legislation, the park owner has 28 days from receiving a request from an occupier (the seller) to give or to refuse consent to the assignment of that occupier's Written Statement to the prospective new occupier (the purchaser). If the park owner fails to give approval within the 28 days, the onus is currently on the seller to apply to the RPT to determine that the park owner has unreasonably withheld consent.*
- 6. We would suggest this burden is reversed and a seller's checklist* introduced so that if, following the checklist received from the seller, the park owner considers the purchaser may be unsuitable, rather than refusing consent to the seller, they should have a limited time within which to apply to the RPT for a determination that they may lawfully refuse permission to the prospective purchaser.*

**To ensure the purchaser has access to the relevant information required to inform their decision, a standard checklist listing what information has been assembled (some of it mandatory) can be supplied by the seller as part of the process. The purchaser and seller*

would both sign, once the seller has accepted the purchaser's offer to buy the home. This is similar to a bricks and mortar sale where the seller provides an 'information pack'.

7. If any application is without merit commission might be forfeited. A better deterrent though, would be for the RPT to be able to fine a park owner, if in their opinion the application had been made frivolously, vexatiously or without merit. To act as a sufficient deterrent, this sum should be greater than commission payable on the sale and failure to pay would be enforceable by court action which could also lead to the loss of the licence to operate.

4. Do you agree that there should be a meeting involving all parties prior to the sale/purchase? Please give your reasons.

8. We recognise the need to simplify the transaction and to remove opportunities for park owners to block it for their own purposes. However, this must be balanced with an acknowledgement of the land rights of the park owner and their responsibility to others on the park to maintain a safe, secure and pleasant environment in which to live.
9. We also need to consider that with an assignment the park owner is wholly beholden on the private seller telling their buyer precisely what the up to date site rules are, asking their questions and giving them a copy of their written statement. Nor is there a 28 day rule here.
10. Whatever is introduced, we would strongly recommend that the purchaser is encouraged to seek appropriate advice in advance of the transaction, including the opportunity to speak to or meet with both the seller and park owner. There are immense benefits to be gained from a visit to the park and to have a clear understanding of the processes involved and the responsibilities of all parties.
11. As with England, if it was suggested, we would support a move to request the site licence and park rules to be submitted to the Local Authority (LA).

LICENSING

5. What are your views on the current licensing system for mobile home sites? What could be improved?

12. At present, an application for a site licence is only made when you are ready to station the homes on the park. This should be done when the planning permission and building control are applied for and given and the awarding of a site licence fall out of that process – please also see Q9(33).
13. We believe LA's are currently under resourced and the knowledgebase in this area of licensing could be improved. The key outcomes must be regular inspections and enforcement.
14. The Department for Communities and Local Government in England has recently carried out a consultation exercise in which they propose significant changes to the regime to modernise and improve the current system of site licensing which has been largely unchanged since 1960.
15. Licensing is a valid form of registration to ensure that the planning and rights to occupy land is adhered to and not abused.
16. There are benefits to ensuring all parks are covered by an effective licensing regime. The priority at this time must be to eradicate unlawful and unscrupulous behaviour in the residential park home sector.

17. *We don't believe a national 'body' is necessary but a pan UK national database and guidelines would be of benefit to all concerned and secure a greater level of consistency and co-ordination across boundaries. It must be recognised that park owners operate across boundaries and there should be a mechanism in place to alert neighbouring authorities in instances where a site licence is revoked, and the reasons why, to enable them to take appropriate action. If a licence was revoked in England, the authorities would want to know of it in Wales.*
18. *In the case of Wales, there could be a regional coordinating authority who take the lead in respect of residential park home licensing as some authorities may not have sufficient park homes in their area to justify individual responsibility or raise sufficient funding*
19. *Lastly, whilst we appreciate it is stated that holiday parks will not be affected by the proposed changes to site licensing regulations in Wales, and this Bill is solely about The Mobile Homes Act (Wales), it must be recognised that there are mixed use parks in Wales. There are also holiday parks which have one or two residential pitches on them to provide accommodation for park managers.*
20. *We do not believe the impact of the proposed site licensing changes has been either fully understood or considered. For example:*
 - a) *Some mixed use parks may exist on one Site Licence. How will the new regulations apply to them?*
 - b) *Where permitted residential accommodation exists on holiday parks for park managers, how will the proposed residential site licensing regime apply to them?*

6. How often should local authorities inspect sites, and how should these inspections be financed?

21. *The funding model adopted will determine the nature and frequency of any park inspection.*
22. *Those park operators' who have maintained professional and exemplary businesses, should not subsidise the costs of reforms or measures to ensure local authorities carry out the necessary enforcement action against those operators that choose to ignore current legislation.*
23. *Park/Site inspections should be an exception rather than the rule and arise from failure to remedy notified breaches of the licence or on the transfer of ownership, applications to extend or amend the licence or on the submission of significant redevelopment plans.*

Financing the system - New licences, transfers and amendments

24. *Given the number of residential parks in Wales, it is difficult to envisage how a sustaining self-funding model could be developed to ensure local authorities have the funding and resource to allow the service to function without levying some form of fee on all park owners. So, the service offered must be seen as a benefit to park owners and what they receive in return must be clearly identified*
25. *Any costs imposed in relation to these should be fair and reasonable for the size of park. All costs should be published and open to inspection by the Audit Commission.*
26. *Charges are made in full for new site licences and proportionate and fair additional costs for alterations – name changes, change of ownership etc.*
27. *The income must be ring-fenced and only used to fund resources and activity incurred in this area. Whatever fees are set, need be only sufficient to cover administrative costs with the LA's supervision of breaches being paid for in addition.*

28. Any new licensing regime needs to set out clearly what services will be charged for and when, and all fees must be subject to an agreed, recognisable framework which is reasonable and transparent. Notification of any fees payable should be made in advance and part of the planning and site licence process.

7. Should the Welsh Government issue guidance on the frequency and nature of such inspections?

29. Park/Site inspections should be an exception rather than the rule and arise from failure to remedy notified breaches of the licence or on the transfer of ownership, applications to extend or amend the licence or on the submission of significant redevelopment plans.

8. What are your views on what should be included in licence conditions? Should there be guidance on this issued by the Welsh Government?

30. Every park is different and the licence should reflect the nature, size and amenity provided. Any guidance issued should enable LA's to be flexible enough to meet their own local environment, conditions and requirements.

31. Guidance was issued as part of the review of the Model standards in England in 2007. Parks must know and understand what is required of them to adhere to the conditions and how the LA will respond.

32. LA's must apply the guidance consistently whilst providing for a common sense approach in individual circumstances

9. How long should each licence normally last, and should local authorities be able to grant licences for shorter periods if necessary?

33. In the Caravan Site and Control of Development Act 1960, if a park has been granted planning permission in perpetuity*, the Site Licence would follow that application and its Site Licence would also be in perpetuity. Repealing or changing it would not apply retrospectively.

34. Within this Act a deterrent already exists – an occupier of the land can have his licence revoked on the third offence. In practice, this means that if three or more offences occurred at the same time, one summons could result in revocation.

**There may be parks where the planning permission is of limited duration*

35. A site licence **must not** be time-bound

a) If they were, how would the security of tenure for residents continue to be protected?

b) How could home owners sell their home when the business, which they are not responsible for, might be closed down at the end of a defined period?

c) Would a bank provide finance to a prospective park purchaser if their right to 'do business' could be taken away from them?

36. A park owner who has met and continues to meet site licence conditions (i.e. no breaches) should not have to reapply for a licence

37. We would suggest that when an application is made to transfer a licence under new ownership, or when an application is made to extend or amend an existing licence, or a breach occurs this should lead to the site licence being reviewed and renewed accordingly.

LICENCE FEES

10. How should the fees for mobile home site licensing be determined? Should the fee be calculated by reference to the number of pitches, the total area of the site, the cost of inspections to the local authority or a combination of all or any of these factors?

38. *Given the number of residential parks in Wales, it is difficult to envisage how a sustaining self-funding model could be developed to ensure local authorities have the funding and resource to allow the service to function without levying some form of fee on all park owners. Whatever scheme is introduced it would need to ensure that the good park operators are not subsidising LA's to take action against those flouting the law.*
39. *Any new licensing regime needs to set out clearly what services will be charged for and when, (fees menu) and all fees must be subject to an agreed, recognisable framework which is reasonable and transparent.*
40. *Charges could be made in full for new site licences and proportionate and fair additional costs for alterations – name changes, change of ownership etc.*
41. *The income must be ring-fenced and only used to fund resources and activity incurred in this area – charges need only be sufficient to cover costs.*
42. *If the LA identifies and notifies a park operator of a breach and the park operator does not remedy it within the relevant timescales, and further LA intervention is necessary, the LA should be able to recover its reasonable costs. Those costs should be clearly set out in the 'fees menu' the LA prepares. If the LA serves a notice without good reason, it should not be able to recover costs. Any costs recoverable should also be limited to a test of "reasonableness".*
43. *It is not clear how such costs would actually be recovered if the park owner refused to pay, nor what process the park owner could use if he wished to challenge (i) whether he should have to pay costs at all, or (ii) the level of costs being claimed. As with other litigious situations there must be a mechanism for having the reasonableness of any costs assessed.*

11. Should there be a regular annual charge to cover on-going administrative costs borne by local authorities during the licence period?

44. *Fees related to a new licensing regime must be justified and related to specific activities undertaken. No park owner who has a history of meeting LA conditions and industry best practice should be penalised by unnecessary, on-going costs.*

FIT AND PROPER PERSON

12. Do you agree that site operators must pass a fit and proper person test before being granted a licence (with the local authority undertaking relevant checks) and that this should be based on the standard introduced for Houses in Multiple Occupation under the Housing Act 2004? Please give your reasons.

45. *Whilst we have always supported the concept of FPP, the mechanics to secure an effective regime remain a challenge. There are issues linked to land ownership rights and the management responsibilities that flow from that if the test is not passed, resource issues and consistency of application across LA areas.*

46. *In this context, a suggested 'test' for park owners and/or managers raises a number of questions:*
- a) *What 'test' will produce the desired result? From current examples of other FPP regimes it is clear that none are robust or detailed enough and require voluntary declarations which are easily circumvented. The consultation document notes similar concerns with HMO.*
 - b) *Will the results be accessible nationally? Today, park businesses operate cross authority boundaries so 'multi-agency' collaboration is essential so mechanisms should exist to alert other authorities to the reason for the revocation of a licence*
 - c) *How will interpretation and enforcement of the test be applied consistently?*

13. Apart from criminal convictions, what should be taken into consideration when deciding whether the proposed licence holder is a fit and proper person?

47. *If FPP was introduced, in addition to the comments above we believe that a 'test' cannot stand alone and would not work in practice.*
48. *There are a number of licensing models to choose from: HMO, Alcohol (Premises and Personal Licences) and Consumer Credit. None of these models currently meet the requirements of the industry and would not, as they stand, deliver the desired outcomes. Given HMO relies on voluntary declarations checking statements would have to be rigorous and might require access to other data. LA's would have to be resource rich to do this effectively.*
49. *We would not be against a framework that licenses both the park and the individuals involved providing the appropriate mechanics can be secured and it could be:*
- a) *could be accessed nationally*
 - b) *used as a 'live' database so that all licence requests and outcomes, enforcement actions are logged.*

BREACHES OF LICENCE CONDITIONS AND FINES

14. What are your views on increasing the maximum fine for operating a site without a licence, or breaching a licence condition?

50. *Current penalty levels do not act as a deterrent. The level of fine should be reflect the nature of the breach and be commensurate with current maximum penalties available in the Magistrates Court – Level 5.*

15. Should local authorities be able to issue fixed penalty notices and, if so, for what types of infringement? Please give your reasons.

51. *We are unclear what benefit there would be to this.*
52. *Park owners must be given the opportunity to understand and acknowledge any potential breach of a notice and have the opportunity to remedy the situation in advance. This would be no different to a park operator asking a home owner to remedy a breach under the written statement under the MHA (as amended). The notice should be reasonable and fair just as the judgement on the breach should be. It needs to be borne in mind that often the park owner may not be aware of the issue. In such circumstances the park owner must be given a reasonable opportunity to remedy the breach, as proposed.*

53. *Environmental Health Officers (EHOs) also need to have a common interpretation of breaches which may not be the case at present. The Chartered Institute of Environmental Health Officers published a very helpful guidance document in relation to adherence to site licence conditions and it would be helpful to have such guidance updated and circulated to all local authorities and park operators with valid site licences.*

16. Should local authorities have powers to serve enforcement notices, and to carry out work in default if necessary following breaches of licence conditions? Please give your reasons.

54. *Park owners must understand what the LA deems is in breach of the licence and that such a notice is laid out clearly and specifies the breach and what is required to remedy the breach. This would be consistent with other similar housing situations, e.g. the Landlord & Tenant Act as well as paragraph 4 of the Implied Terms to the MHA 1983, which requires the park owner to serve a breach notice on the occupier setting out details of the breach, and giving a reasonable time for it to be remedied, before proceedings may be commenced.*

55. *If the LA serves a notice on the park owner requiring him to carry out works and the park owner fails to carry out these within the specified time, the LA could apply to the RPT for an Order permitting it to carry out the works on the park, and for the LA to charge the park owner for the cost of carrying out the works. This mirrors the position in the MHA where, for example, the park owner wants to relocate a resident's home to another pitch on the site.*

56. *The only exception to the above provision should be where the LA has served a notice on the park owner who has failed to comply and the works are required to be carried out urgently to safeguard the health, safety or wellbeing of the occupiers of the park. This would be similar to the "emergency repairs" test in para 10 of the Implied Terms under the MHA.*

57. *Once the judgement has been given the LA should have to provide a written quote and give the operator 14 days to find an alternative, competent supplier. The administrative expenses would become payable only if the actual work can be done at less cost to the same standard.*

17. Under what circumstances should a site licence be revoked?

58. *In all cases, this should be for the RPT/Court to determine and breaches that could lead to this action must be clearly identified (such as sale blocking) and the park owner must have been given an opportunity to remedy the breach prior to revocation.*

18. What are your views on local authorities being able to take over the management of mobile home sites, and do you envisage any practical difficulties?

59. *This is a matter that should be referred to the RPT in Wales to determine, and then only when all other remedies have been exhausted.*

60. *The execution of an effective Management Order can only be through a body or organisation with adequate knowledge, experience and access to funding to run a residential park.*

61. *The application for and grant of a Management Order should only be in extreme circumstances and even then the potential difficulties might include:*

- a) *the length of a management order,*
- b) *the available LA expertise or resources to manage a park*
- c) *land ownership rights*

- d) *adequate funding to carry out the management order*
- e) *dealing with a resident park owner*
- f) *the reaction of a finance provider*
- g) *the provision of funds to remedy breaches*

19. Should mobile home owners be able to take over the management of a site, and how should this work in practice?

62. *As with Q18 this could be an option and there similar questions to be resolved. In addition:*
- a) *Do they want the responsibility? A majority are likely not to.*
 - b) *Do they have the knowledge and professional expertise to do this? Some may.*
 - c) *Is it one owner or a group of owners or the Qualifying Residents Association?*
 - d) *Will historic, personal grievances get in the way of the day to day management*
63. *We would seriously question whether this would be in the best interest of ALL the home owners on the park.*

WRITTEN AGREEMENTS AND SITE RULES

20. How should site operators consult with home owners when proposing changes to written agreements or site rules?

64. *The Written Agreement (Statement) is an individual agreement with the home owner. Each one is different and implied terms cannot be changed.*
65. *With regards to express terms, either party can ask for these terms to be discussed and changes can only happen in the first six months from the date the agreement is signed. Either party can take a dispute on these to the RPT.*
66. *With regard to Site (Park) Rules, there is a valid role for all with interests in the park to be involved and consulted on changes to how the park is operated and managed, and the roles and responsibilities that may directly impact on them. There is already a clearly set out process in the Written Statement for doing this if a Qualifying Residents association exists (22f)*

DAMAGES AND COMPENSATION

21. Should the RPT have the power to award damages and compensation for breaches of the written agreement or any requirement imposed by this Bill? Please give your reasons.

67. *A power already exists and the RPT has already awarded damages/compensation in such instances (one tribunal awarded £8000 for a matter involving sale blocking and £5000 for a breach of quiet enjoyment) but more clarification is still sought on how this could be applied going forward. Where the extent of damages is not obvious, guidance will be needed on the appropriate amount that the RPT should award based on (i) the type of breach committed, (ii) the seriousness of the breach, and (iii) the actual loss (if any) caused.*
68. *The right to award damages must apply equally to park owners and occupiers who breach the terms of the agreement.*

PITCH FEES

22. Should pitch fees be regulated and, if so, how?

69. *On any one park there would be a range of pitch fees being paid by residents depending on whether they bought their home from the park or on assignment. Regulating pitch fees as such, to ensure everyone pays the same, would not be possible but the rate at which they can be increased (currently legislated for RPI) and what can be included can be managed*

23. Do you have any other comments that specifically relate to pitch fees?

70. *We support transparency and an annual statement could offer a clear and straightforward means of itemising how fees are calculated. However, such a statement should be limited to providing information on costs that only directly impact on the management and operation of the park.*
71. *As recommended by the Commons Select Committee's recent report, park owners should be able to pass on appropriate site licence costs (premises and personal) to home owners – see 94..*

REPAIRS AND MAINTENANCE

24. Do you agree that the site operator's maintenance and repairing obligations would benefit from clarification?

72. *It is important that all parties understand, respect and adhere to their respective responsibilities in this area and ensure that appropriate works can be carried out as and when required.*
73. *Clarification could be sought in respect of structures added to the pitch by the home owner on acquiring the home e.g. steps, decking, hand rails, ramps etc particularly where there is uncertainty as to repairing obligations.*
74. *There needs to be a clear distinction as to what constitutes an 'improvement' (an additional benefit to residents) as opposed to a repair of an existing benefit, service or amenity. Any dispute over the interpretation of this distinction and definition should be referred to the RPT to determine.*

25. Should there be a standard consultation format that must be followed when a site operator is proposing improvements?

75. *A 'standard consultation format' might be helpful to clarify what is proposed and how it would be of benefit but we would need to see what is proposed before making further comment*

ALTERATIONS AND RESITING

26. Do you agree that home owners should be able to make alterations and improvements inside their home without requiring the consent of the site operator? Please give your reasons.

76. Home owners should have the freedom to alter their homes internally providing they do not alter them in such a way that would take them outside the statutory definition of a caravan, (mobile home) or infringe the manufacturer's structural or maintenance warranty.
77. It is only correct that the park owner is advised of any contractors carrying out work on a park home, and crossing their land. It is particularly important that the home owner notifies the park owner if electrical/plumbing works are being carried out to the home, as this may affect the wider supply to the park or other residents. The home owner must also ensure that any tradesmen carrying out internal works are suitably qualified and have appropriate insurance in order to protect themselves, other residents and the park itself in the event of loss or damage caused by the works.
78. It would be good practice to advise the park owner about the nature of the works at least 28 days advance. At the very least they could then advise on 76 as the home owner may not be aware.

27. What would you deem to be a fair and reasonable reason for refusing permission to alter a mobile home externally?

79. Both home owners and park owners must be aware of the nature of any external improvements planned; so that they are lawful and not in breach of:
- a) planning permission
 - b) site licence conditions
 - c) the definition of a caravan
 - d) the terms and conditions of the homes warranty
80. There must be a balance between the home owner's right to make appropriate changes, the park owner's right to refuse permission on the grounds that any external alterations may breach the terms of the site licence or take the home outside the statutory definition of a caravan and the possible impact on other park home owners. Quite often the home owner is unaware of the implications of the work they want to have carried out.
81. Is there a role for the LA to be involved in the event that the proposed improvement impacts on a site licence issue with the matter only escalated to the RPT in the event that matters cannot be resolved between the LA, the park owner and the home owner?.

28. Should the Residential Property Tribunal have to agree to all re-siting requests proposed by the site operator, including in emergencies? Please give your reasons.

82. The rules as presently drafted are adequate and strike the correct balance between the interests of park owners and those of residents. Enforcement of abuse of these rules is, however, lacking and there is an opportunity for local authorities to be more involved in this process, particularly where the need to move a home is due to an emergency.
83. We understand that most park owners/operators are able to reach a perfectly amicable agreement with occupiers when a move is required. In such circumstances it seems an unnecessary process and wasteful of costs to have to involve the RPT. We accept however,

that some 'home moves' create the potential for abuse or uncertainty as to the authorisation for such a move. Where there is no consensus of approval or where there is uncertainty, there should be role for the local authority to step in to authorise such a move in the first instance and for such a request and authorisation to be recorded against the park operator's site licence. This is particularly relevant if it's the LA who has asked for the home to be moved.

84. *We are not aware of any situations where the right to move a home urgently for 'essential repairs or emergency works' has been abused. However, the resident has the right to apply to the RPT to seek damages from the park owner if they believe that their home has been moved or re-sited without the proper procedure being followed, so there is already protection for residents in this situation.*
85. *By its nature, an emergency must often be dealt with quickly and even though the RPT process is quicker than the County Court, and there may be access to the RPT's emergency powers, there would still be a delay. For a major emergency, such as a severe flood or landslide caused by subsidence or a gas leak, a procedure at local level endorsed if necessary by the RPT should be available to avoid risking loss and damage to the resident's home and those of other residents on the park. We see no reason why the LA can't give permission in these cases providing the permission is relayed to all parties and the RPT.*
86. *There is a further suggestion that any request by a utility provider for a home to be moved (gas, water) an application should be made to the LA and in the case of emergency works for the request to be granted under the LA emergency powers within 24 hours of the request received.*

SUCCESSION

29. Do you believe the rules on succession and inheritance in Wales should be modernised, and do you have any comments on the above proposals?

87. *If a spouse/partner/family member is living in the home at the time of death, under Section 3 they have the right to continue to live there if they so choose.*
88. *Outside of the scenario outlined above, if they choose not to live in it and gift/pass it on to someone else in the family, or someone else inherits the home (a nominated family member or 3rd party) they should not have an automatic right to live in it. However, provided the sale (assignment) process is followed there is no reason why someone inheriting the home could not apply for approval for the agreement to be assigned to them. They would then have to be considered on their own merits in the same way as any other prospective occupier.*
89. *Equally anyone who inherits the home and has the right to sell should be able to sell the home and assign the existing agreement*

COSTS AND THIS BILL

30. What do you consider would be the financial impact of the proposed Bill on yourself, your organisation or your business?

90. *As a trade association we are responsible to our members – the park owners. Our overriding comment is that our members and good park operators should not be paying to enforce regulations that already exist.*

91. *We have not seen any economic impact study carried out by the Welsh Assembly on what level of fees would enable them to enforce the new legislation, given existing legislation is not enforced. Taking into account the number of residential parks in Wales we doubt that sufficient revenue could be raised unless the majority of our members and good park operators were penalised for the actions of the minority*

92. *If this legislation is enacted:*

- a) *Any fees levied should be proportionate and fair and recover administrative costs only.*
- b) *Any fees payable should be capable of being recovered as a reasonable cost of the business as the report from the Commons Select Committee recommends (see 94 below).*
- c) *Other costs incurred as a result of Court/RPT/LA action to remedy breaches should not be recoverable from the home owners.*

31. Do you consider that there would be a disproportionate financial impact upon any particular groups affected by this Bill?

93. *If these proposals were enacted steps should be taken to ensure that the majority of good park operators are not subsidising local authorities to take action against those flouting the law. As stated above, it is difficult to envisage how a sustaining self-funding model could be developed to ensure local authorities have the funding and resource to allow the service to function without levying some form of fee on all park owners.*

94. *The current Implied Terms 18.1.c. allows park owners to take note of the effect of any 'enactment that has come into force since the last review date'. We therefore assume that costs will be allowed to be passed onto to home owners (71/92(b)) so they would be affected.*



Response to the Consultation on the Proposed Mobile Homes (Wales) Bill

July 2012

Shelter Cymru

Shelter Cymru is the leading housing and homelessness charity in Wales and works for the prevention of homelessness and the improvement of housing conditions. Our vision is that everyone in Wales should have a decent home. We believe that a home is a fundamental right and essential to the health and well-being of people and communities.

Our values

Independence

- We work for people in housing need without fear or favour
- We will constructively challenge to ensure people are properly assisted and to improve practice and learning

Respect

- We work as equals with the people who use our services
- We will help people identify the best options to find and keep a home and take control of their own lives

Our mission

- We will improve people's lives through our advice and support services and through training, education and information work. Through our policy, research, campaigning and lobbying, we aim to help overcome the barriers that stand in the way of our vision for all people in Wales to have a decent home.

Introduction

Shelter Cymru welcomes the opportunity to respond to this consultation and we support the proposals outlined in the paper. We believe that, if passed, this legislation would provide greater protection and support for mobile home owners in Wales.

Summary

Many of the questions posed in this consultation fall outside our immediate area of operation, which is why we have not addressed every point in turn. However, there are specific proposals that we support, and the overarching aim of creating a fairer system that better protects the rights and interests of mobile home owners is very much in keeping with Shelter Cymru's values and principles.

Buying and selling mobile homes

We agree that the site operator's right to veto prospective purchasers should be removed and that it should be replaced with clauses incorporated into the written agreement between the site operator and the home owner that outline conditions of ownership.

Licensing

We agree that the Bill should introduce a new licensing system for mobile home sites and that there should be a duty on local authorities to carry out periodic inspections to ensure that licence conditions are being met.

We agree that local authorities should have powers to serve legal notices requiring that specific works be carried out within a set timeframe.

Fit and proper person

We agree that the Bill should introduce a fit and proper person test for site operators and that this should apply to all owners of a site as joint licence holders.

We agree that the fit and proper person test should be proactive and that local authorities should not rely on self-declaration but instead undertake enquiries to satisfy themselves that the applicant is a fit and proper person.

We agree that appeals against refusals to grant a licence should be determined by the Residential Property Tribunal.

Breaches of licence conditions and fines

We agree that fines for operating a mobile home site without a licence or breaching a licence condition should be increased.

We agree that local authorities should have the power to issue fixed penalty notices for minor breaches of licence conditions.

We support local authorities having powers to serve a range of enforcement notices following breaches of licence conditions and to revoke a licence in prescribed circumstances, such as serious mismanagement and/or a relevant criminal conviction.

We agree that local authorities should have powers to issue Management Orders for mobile home sites and to nominate appropriate bodies to take over. We also support mobile home owners being able to take over management or appoint someone to run the site if they wish.

Written agreements and site rules

We agree there should be standard written agreements for each site including references to site rules and that residents/residents associations must be fully consulted on any proposals to change site rules. Disagreements over changes to site rules should go to the Residential Property Tribunal.

We agree that all written agreements and site rules should be deposited with local authorities and be available for inspection alongside the site licence.

Pitch fees

We agree that site operators should be required to state any inflation rate on the review notice and explain clearly how the new amount was calculated.

All pitch fees paid to an unlicensed site operator should be repaid to the home owner.

Site operators should not be permitted to pass on to home owners any costs resulting directly from the Bill, including site licence fees.

Repairs, maintenance and site improvements

We agree that there should be greater clarity regarding the site operator's maintenance and repairing obligations and that local authorities should have powers to carry out repair work in default with costs recharged to the site operator.

Mobile home alterations and re-siting

We agree that site operators should not be permitted to charge home owners for the approval process relating to external alterations.

Succession

We support the proposals in this consultation to modernise the succession and inheritance rules for mobile homes and agree that disputes in this area should be heard by the Residential Property Tribunal.

The Residential Property Tribunal

We support the proposals to give the Residential Property Tribunal jurisdiction over most disputes relating to this Bill, with the proviso that local authorities retain the ability to prosecute through the courts if they think it appropriate.

For further information, please contact Ceri Dunstan, Communications Manager, on 01792 483021 cerid@sheltercymru.org.uk

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I P H A S



The Independent Park Home Advisory Service

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National Assembly for Wales

Peter Black AM - Proposed Mobile Homes (Wales) Bill

Consultation Response: MHM20 - The Independent Park Home Advisory Service

Our Ref: RA/61W/003
Date: 20 July 2012

By post and email

Peter Black AM
Legislation Office
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

Dear Peter Black,

PROPOSED MOBILE HOMES (WALES) BILL

This response is made on behalf of the Independent Park Homes Advisory Service (IPHAS).

IPHAS is one of three national residents associations representing the views of park home residents throughout England, Scotland and Wales in stakeholders' meetings with the government, parliament and local authorities. Our main task is to advise park home residents with problems relating to their residence on mobile home parks and to provide information on the current legislation relating to park homes. The membership of IPHAS is over six thousand homes and increasing.

The Residential Property Tribunal

Q1. Do you agree that the Residential Property Tribunal should have jurisdiction to deal with all disputes relating to this Bill, aside from criminal prosecutions? Please give your reasons.

The Residential Property Tribunal should have the jurisdiction to deal with most disputes and questions relating to this Bill and the Written Statement under the Mobile Homes Act 1983 (as amended). The RPTS should not be allowed to determine a question which would result in a termination of the agreement. This should be done only by a county court; only a county court should have the power to evict a person from the park.

Buying and selling mobile homes

Q2. Do you have any experience of a sale being prevented, or if you are a site operator have you ever objected to a sale and why?

Sale blocking is all too common on sites run by unscrupulous site owners (UPOs). It can be done by the UPO creating obstacles such as needing references, references provided being unsatisfactory, demanding answers to questions such as number of people to reside in the home, etc. Ignoring a request for approval is now more difficult because the selling resident could apply to a court or tribunal but UPOs still delay giving approval for as long as possible. The more usual method of sale blocking is to deter the buyer. The UPO would demand an interview with the prospective buyer and

Honorary Vice-President: Lord Graham of Edmonton

President: Mrs. J. A. Aylott

then tell the buyer that the home is in poor condition, it will have to be moved to another pitch in the future, the porch/extension/steps are illegal and will have to be removed, the pitch is on land which is leased, etc. Some UPOs simply and blatantly refuse to allow the sale even though this is unlawful. Often the UPO simply has to show the buyer what an unpleasant person he is and that is sufficient to make the buyer reconsider whether he wants to live on a park run by such an unpleasant park owner.

The motive to block a sale is that, when the resident can no longer stand the persistent loss of potential buyers, the UPO can purchase the home for a greatly reduced price. He can then remove the old home, site a new home on the pitch and sell it with a clear profit of up to £100,000.00.

If the home is on a pitch which the UPO does not want to acquire, then he would allow the sale to proceed but then require the incoming resident to accept a new Written Statement with a new higher pitch fee and probably extra charges. This is completely against the law but the incoming resident, faced with the possibility of not being allowed to move in, feels he has to accept.

Q3. Should the law be reformed to prevent sale blocking or is it necessary for site operators to have this power? If the law should be changed, which of the suggested alternatives outlined above do you prefer? Please give your reasons.

The law needs urgent reform to prevent sale blocking. The first option of removing the requirement to obtain the park owner's approval of the buyer would deal with the sale blocking problem but certain safeguards would be necessary to ensure that the incoming resident was aware of all his obligations and rights, that he would be able to comply with the terms of the agreement and park rules and that the park owner was given his commission.

The Mobile Homes Act 1983 states the occupier is entitled to sell the mobile home and to assign the agreement to a person approved of by the owner. Option A proposes to remove the approval requirement.

The Act goes on to state "8(2) Where the occupier sells the mobile home, and assigns the agreement, the owner shall be entitled to receive a commission on the sale..." Therefore the seller, not the buyer, is responsible for paying the commission to the owner.

Under common law, an assignment is normally in writing. There is no assignment form or procedure in the implied terms but, in the standard form of agreement used by the trade bodies BH&HPA and NPHC, an assignment form is attached as Schedule 3 to the Express terms.

As part of the first option, I suggest that the implied terms should specify that at the assignment, the seller should certify that:

- (a) a copy of the Written Statement including Express terms and Park Rules has been given to the purchaser (preferably at least 7 days in advance of the assignment),
- (b) all pitch fees and other charges have been paid, or will be paid, up to a stated date,
- (c) the commission will be/has been paid to the site owner.

In addition, the buyer should certify that:

- (d) a copy of the Written Statement including Express terms and Park Rules has been received
- (e) the buyer will be able to comply with the Express terms and Park rules.
- (f) the site owner is indemnified against any subsequent complaints about the condition of the mobile home or its price.

This certification would have the effect of removing the problems that may otherwise arise from the first option. It would also require the seller to notify the site owner of the change of ownership while paying the commission. In the event of the seller failing to comply, then he/she would be liable for legal action.

The second option would require the seller to notify the park owner of the name and address of the prospective buyer so that the owner could decide whether to object to the buyer. The UPO would still find ways to deter the buyer and so effectively there would be no change to the present system. The second option is not acceptable.

The third option would be little change to the present system where the selling resident can apply to a county court for an order approving the buyer. This procedure would have the effect of deterring the buyer from wanting to buy a home on a park where it was necessary to go to a court or tribunal to obtain one's right to sell. This third option is not acceptable.

Q4. Do you agree that there should be a meeting involving all parties prior to the sale/purchase? Please give your reasons.

There is no need for a meeting of all three parties, seller, buyer and park owner, until the date of the assignment when the three parties sign the assignment form and the park owner can collect his commission. This would also be the opportunity for the park owner to clarify any points such as when the pitch fee is to be paid, buyer has received a written statement and park rules, etc. If the certification is carried out as in the previous question, there would be no need for any meetings or contact before the assignment.

Site Licensing

Q5. What are your views on the current licensing system for mobile home sites? What could be improved?

The current system is inadequate. One reason is that the site licence has to fulfil two functions:

1. The licence to operate the site as a „caravan site“ as required by section 1 of the Caravan Sites and Control of Development Act 1960.

2. A licence for the site owner or manager requiring him to be competent to run a caravan site.

This means that the licence should be a two-part licence or even two licences.

The first part is quite straightforward and can be operated by the local authority that has the responsibility for ensuring that this sector of housing is properly integrated into the local environment and the necessary standards of safety and hygiene are maintained on the site.

The second part is a cause for concern. We know from experience that local authorities across the country vary in their attitudes and performance relating to park home sites. Also, that local authorities do not necessarily communicate with each other. Therefore, assuming that some form of fit and proper person test was introduced, we envisage that a UPO could be denied a licence in one county because he is not a „fit and proper person“ but the local authority in another county may not know this and issue a licence to the UPO to run a park in their county. Also different local authorities would have different views on what constitutes a „fit and proper person“. Many park owners and UPOs own parks in different counties across the country.

The second part of the licence system therefore requires a national registration scheme to be used so that the licensing requirements can be consistent and local authorities can obtain instant information on a park owner applying for a site licence in their area. This would also be cost effective in that it would reduce the need for two or more local authorities to search for information on the same park owner; the information would be held on a central register.

Q6. How often should local authorities inspect sites, and how should these inspections be financed?

I suggest that an initial inspection should be annual but the inspecting officer should then decide when the next inspection should be done. If there are a number of problems found on the site, then the officer should require the next inspection to be done in six months or three months. On a good park with no issues, the officer should recommend the next inspection to be done in two years or three years.

The inspections should be financed, partly from licence fees and partly from the rates. It should be remembered that park home residents are also ratepayers.

Q7. Should the Welsh Government issue guidance on the frequency and nature of such inspections?

Yes. If the Model Standards are to be revised, then such guidance could be incorporated into the revision.

Q8. What are your views on what should be included in licence conditions? Should there be guidance on this issued by the Welsh Government?

The Model Standards for Caravan Sites in Wales 2008 gives quite good guidance on what should be included in site licence conditions. It is up to local authorities to use this document as guidance in producing the Site Licence Conditions for each park, adding or deleting or amending as necessary to suit local conditions. It is the Site Licence Conditions which is the authoritative document and should be adhered to by the site owner. The Model Standards are merely guidance.

Q9. How long should each licence normally last, and should local authorities be able to grant licences for shorter periods if necessary?

A site licence for a park should last until the park changes hands when the new park owner should apply for a licence in his name.

The consultation document suggests that a licence should be for a fixed period. If the site licence had to be renewed periodically, e.g., every five years, this would be a disaster for all park home residents and a weapon for the UPO. A rogue park owner could threaten residents that if they did not pay any charges demanded or if they complained to the local authority about breach of site licence conditions, he would refuse to renew the site licence at the next renewal date and all the residents would be made homeless. (The 1983 Act only applies to a „protected site“, that is a site with a licence). The residents' homes would decrease significantly in value because they would only have security of tenure until the next licence renewal date. The residents' situation would be taken back to before 1983 because they would lose the security of tenure given by the Mobile Homes Act 1983.

THEREFORE I EARNESTLY PLEAD THAT THE IDEA OF A FIXED PERIOD LICENCE SHOULD BE DROPPED BECAUSE IT WOULD TAKE RESIDENTS BACK TO THE SITUATION THEY WERE IN BEFORE 1983.

Fees for site licensing

Q10. How should the fees for mobile home site licensing be determined? Should the fee be calculated by reference to the number of pitches, the total area of the site, the cost of inspections to the local authority or a combination of all or any of these factors?

The licence fees should be based on the number of pitches but increased for troublesome parks which require more inspections. If it was a standard charge for all sites the fee would be burdensome for a small park and laughable for a large park.

But many park owners will simply pass the cost of the fee onto the residents as an addition to the pitch fee so the residents will effectively be paying the licence fee.

Q11. Should there be a regular annual charge to cover on-going administrative costs borne by local authorities during the licence period?

The licence fee should be an initial application charge and an annual charge.

Fit and proper person

Q12. Do you agree that site operators must pass a fit and proper person test before being granted a licence (with the local authority undertaking relevant checks) and that this should be based on the standard introduced for Houses in Multiple Occupation under the Housing Act 2004? Please give your reasons.

Yes. The local authorities should have the power to refuse to issue a site licence, or withdraw a site licence, from an unscrupulous park owner (UPO). The only way to do this would be to apply some form of fit and proper person test similar to the test applied to people who work with children but the criteria would have to be changed to ensure that it catches the UPOs who are currently ruining the industry. This test would have no adverse effect on the good park owners. The test should be applied to the park owner and to the site operator, the person responsible for day to day management, if different. It would seem logical for the criteria for the fit and proper person test to be based on the standard used for HMOs but also including some of the activities used by UPOs.

Q13. Apart from criminal convictions, what should be taken into consideration when deciding whether the proposed licence holder is a fit and proper person?

Some useful items are listed in paragraph 12 of the DCLG consultation paper Park Home Site licensing- Improving the management of park home sites May 2009.

Breaches of licence conditions

Q14. What are your views on increasing the maximum fine for operating a site without a licence, or breaching a licence condition?

The UPOs deal with large sums of money and can make a profit of up to £100,000.00 on one sale. So a fine of about £2,000.00 would not mean much to them. Therefore, the courts should be able to impose fines of around £25,000.00 if necessary for breaching site licence conditions.

The fine for operating a site without a licence should be more severe, perhaps £50,000.00 because the residents do not have legal security of tenure on a site without a licence.

Q15. Should local authorities be able to issue fixed penalty notices and, if so, for what types of infringement? Please give your reasons.

A fixed penalty notice could be used for minor infringements such as failure to deal with drainage of standing water, failure to comply with local authority instructions, e.g. to display licence conditions or inspection certificates on the site notice board.

But most of the problems caused by UPOs are more serious.

Q16. Should local authorities have powers to serve enforcement notices, and to carry out work in default if necessary following breaches of licence conditions? Please give your reasons.

The more serious problems on parks run by UPOs are failure to repair roads and footpaths, failure to repair sewer blockage or water leaks quickly. The local authority should have the power to serve an enforcement notice and, if the work is not done quickly, to step in and do the work and charge the park owner for the work done.

Q17. Under what circumstances should a site licence be revoked?

The present rule of revocation following three prosecutions for breaches of site licence conditions should be kept. In addition, if a site owner is deemed to be not a „fit and proper person“ because of harassment or maltreatment of residents, then his licence should be revoked.

Q18. What are your views on local authorities being able to take over the management of mobile home sites, and do you envisage any practical difficulties?

In the event of the local authority revoking a site licence, the LA should then be responsible for the running of the site until such time as a new operator takes over the park. The LA could exercise their responsibility either by appointing an official to operate the park or by contracting/employing a manager to operate the park for the LA.

Q19. Should mobile home owners be able to take over the management of a site, and how should this work in practice?

Theoretically, when a park is up for sale, the residents can group together and make arrangements to buy the park just like any other buyer. This has been done already on a small number of parks. Either they form a management committee or they contract a manager or management company to run the park.

However, when a park is sold, the sale is usually kept secret and the residents do not know about it until the new operator introduces himself to the residents. The solution to this is that a park owner should be required to give notice to the residents and to the local authority of his intention to sell the park.

Written agreements and site rules

Q20. How should site operators consult with home owners when proposing changes to written agreements or site rules?

There should be no need for the site operator to propose changes to the Written Statement. The Implied Terms cannot be changed. The Express Terms can be changed by agreement within six months of making the agreement, if necessary in a court. Each Written Statement is a contract between the occupier and the park owner and may contain different express terms as agreed between them. Because it is an individual agreement, there cannot be a standard written agreement for each site.

The Express terms in existence usually include a procedure for changing the Park Rules. The owner shall give 28 days notice of any additions or amendments he proposes by supplying a copy to each resident. If within the 28 days at least one third of the occupiers object then either the proposal is deemed rejected or a meeting should be called to discuss the proposals and to vote on the proposal, the issue to be determined by a simple majority.

However this is open to abuse because of loopholes in the procedure. Some UPOs change the park rules by simply issuing a new set of rules to residents or putting them on the site notice board. Although this is not in compliance with the express terms, the residents are then unsure of where they stand and which rules are the correct ones. By the time they have taken advice the 28 days has expired and the new rules can be considered as binding. Also some park owners change the park rules surreptitiously by giving different rules to incoming residents. This means that there are different sets of rules on the same park and the residents are not sure which rules are applicable.

Any proposal to change the park rules should be notified to all residents and not just the residents association.

On many parks the park rules are misused and contain inappropriate rules. The Park Rules were only meant to govern the behaviour of residents and for the harmony of the park in general. Therefore the rules usually state that one should not create loud noise at night, pets are (or are not) allowed and similar rules. Any rule which is a restriction on residents' rights under the Act should not be in the park rules. This includes rules on to whom the home can be sold, any charges or fees. Any restriction on residents' rights under the implied terms should be in the Express terms such as age limits on potential buyers, charge for a second vehicle, or sewerage charges, administration charges, etc. This is because they are contractual terms and therefore should be part of the contract, i.e., the express terms, and not in the park rules which are only to govern the conduct of residents and visitors on the park.

Damages and Compensation

Q21. Should the RPT have the power to award damages and compensation for breaches of the written agreement or any requirement imposed by this Bill? Please give your reasons.

Yes. A common example is where a resident asks the tribunal to declare that a buyer is approved and that the park owner has withheld his approval unreasonably. Although the resident usually wins the case, the buyer is lost and the home remains unsold. The resident has lost a sale and has paid the cost of the tribunal while the park owner has lost his case but not been penalised in any way; in fact he has won in that the buyer has changed his mind. Therefore the tribunal should be able to award damages for loss of sale and compensation to the resident.

But this proposal can work both ways and a UPO may use this to threaten residents with a large claim for damages. I suggest that this proposal needs careful consideration.

Pitch fees

Q22. Should pitch fees be regulated and, if so, how?

Increases in pitch fees are regulated by Implied terms 16 to 20. However, these implied terms have many loopholes and need clarification. The main problems are the definition of improvements and the difference between improvements and maintenance; the definition of site development. Also the loophole in term 18(c) the effect of any enactment.

Q23. Do you have any other comments that specifically relate to pitch fees?

Pitch fee increases are related to the RPI but residents' pensions are increased by the CPI. It would be logical therefore for the pitch fee increases to be related to the CPI.

It is not clear what the pitch fee is for and many UPOs take advantage of this to impose a service charge for maintenance in addition to the pitch fee. The implied terms should state that the pitch fee is for the right to station a home on the park and for the park to be maintained.

Repairs, maintenance and site improvements

Q24. Do you agree that the site operator's maintenance and repairing obligations would benefit from clarification?

Yes.

Q25. Should there be a standard consultation format that must be followed when a site operator is proposing improvements?

Yes. Consultation with the occupier and/or the residents association and the consequences of lack of consultation are not clear in the implied terms. A standard format or procedure would be beneficial.

Mobile homes alterations and re-siting

Q26. Do you agree that home owners should be able to make alterations and improvements inside their home without requiring the consent of the site operator? Please give your reasons.

Yes. It should go without saying that the home owner should be able to make alterations and improvements to the interior of his own home without needing consent of the site owner but, of course, subject to the usual obligations to comply with the laws relating to electricity, gas and water installations and with the definition of mobile home.

Q27. What would you deem to be a fair and reasonable reason for refusing permission to alter a mobile home externally?

There should be no need for park owner's consent for maintenance or repair or improvement to the exterior of the home unless it makes an alteration to the home, e.g., an enlargement or extension or bay window, etc. The park owner has a degree of protection against any inappropriate alteration to a home in s6(1) of the Act which allows the park owner to take legal action against a resident whose home is having a detrimental effect on the amenity of the site.

Q28. Should the Residential Property Tribunal have to agree to all re-siting requests proposed by the site operator, including in emergencies? Please give your reasons.

Yes. It is difficult to envisage any emergency requiring the rapid re-siting of a home. If there was a faulty water pipe, sewer pipe or electrical cable under the base, then a repair could be effected by laying a length of pipe or cable bypassing the faulty pipe or cable. If the base was cracking or subsiding, this usually happens very slowly and allows plenty of time for remedial action.

Currently, the re-siting of a home is governed by implied term 10(1) which states that the home can be moved if (a) the pitch is broadly comparable OR (b) the owner needs to carry out essential or emergency works. In the discussions with DCLG prior to the introduction of these implied terms it was agreed that both (a) and (b) should be required because the only reason a home would need to be moved was if the base needed repairs. Unfortunately, a drafting error resulted in the word OR between (a) and (b) instead of AND. Some park owners have taken advantage of this error to move a home claiming that all they had to do was to convince a court that the reason for the move was reasonable (and the new pitch was comparable). Some park owners argue that a home can be moved for redevelopment of the park and this may be considered by a court as reasonable. Despite the name, a mobile home is not mobile; it is not meant to be moved around a park like a caravan just for the park owner's commercial gain in developing the park. A mobile home is only meant to be mobile from the factory to the site; it should not be moved again.

Succession

Q29. Do you believe the rules on succession and inheritance in Wales should be modernised, and do you have any comments on the above proposals?

The problem posed in the consultation document is dealt with in section 3(3) of the Mobile Homes Act 1983 which states that a family member living with the deceased at the time of death is entitled to the benefit of the agreement.

Unfortunately, this situation could be complicated by the will of the deceased. A situation could occur (and has occurred in the past) where the home was willed to another family member not living in the home while there was also a family member living with the occupier at the time of the death. One person was entitled to the home (under the will) but had no right to live in it while the other person was entitled to occupy the pitch (under the Act) but did not own the home. There is no easy answer to this problem.

Section 3(4) of the Act goes on to say that a person inheriting the home under the deceased's will is not entitled to live on the park. This seems unfair and I agree with the proposal to modernise the rules to remedy this.

Costs associated with this Bill

Q30. What do you consider would be the financial impact of the proposed Bill on yourself, your organisation or your business?

The proposed Bill should improve the resident's situation on the park and thereby increase the sale value of the home. Particularly if the result was that UPOs decided to leave the industry. The important point is that it would have little or no adverse effect on the good park owners.

Q31. Do you consider that there would be a disproportionate financial impact upon any particular groups affected by this Bill?

It would have an effect on the income of the UPO in that it would reduce his ill gotten gains.

Certain of the proposals will need further consideration but generally, I hope these proposals will deal with the Unscrupulous Park Owner.

Yours sincerely,



Alan Savory
Senior Consultant IPHAS

National Assembly for Wales

Peter Black AM - Proposed Mobile Homes (Wales) Bill

Consultation Response: MHM21 - Rhondda Cynon Taff County Borough Council

1. Do you agree that the Residential Property Tribunal should have jurisdiction to deal with all disputes relating to this Bill, aside from criminal prosecutions? Please give your reasons.

Yes - Reason: The RPT provides a more an informal way of dealing with disputes.

2. Do you have any experience of a sale being prevented, or if you are a site operator have you ever objected to a sale and why?

No

3. Should the law be reformed to prevent sale blocking or is it necessary for site operators to have this power? If the law should be changed, which of the suggested alternatives outlined above do you prefer? Please give your reasons.

The approval requirement should remain in place, but the home owner could refer their case to the Residential Property Tribunal where there is evidence of abuse. The licence holder/site operator should have an input into who occupies the pitch because they ultimately own the land upon which the caravan is located and therefore have a contractual involvement in the sale, however the site operator should not unreasonably refuse or profit from an objection.

4. Do you agree that there should be a meeting involving all parties prior to the sale/purchase? Please give your reasons.

Yes

5. What are your views on the current licensing system for mobile home sites? What could be improved?

It is suggested there is a need for greater enforcement powers in accordance in line with the Housing Act 2004 such as "improvement notice" type procedure to formalize park improvements to comply with site licence conditions.

For new sites or sites which do not meet model site licence standards eg lack of adequate roadways, services, the Local Housing Authority should be allowed to require a bond, similar to that imposed on a Housing Estate Developer, which would allow the Local Authority to carry out large scale remedial work, should the licence holder become insolvent.

6. How often should local authorities inspect sites, and how should these inspections be financed?

I would suggest inspections should be done on a "risk" basis dependant upon such matters as-

- the overall condition of the site;
- confidence in management arrangements;
- number of units on site

Site inspections can be quite time consuming and the Licence Holder, however the licence holder should not be charged for routine inspections. However, the Licence Holder should be charged for inspections following complaints in respect of non compliance of licence conditions.

7. Should the Welsh Government issue guidance on the frequency and nature of such inspections?

No, the Local Authority should have discretion to determine frequency of inspections.

8. What are your views on what should be included in licence conditions? Should there be guidance on this issued by the Welsh Government?

As per existing models standards and guidance published by Welsh Assembly Government.

9. How long should each licence normally last, and should local authorities be able to grant licences for shorter periods if necessary?

In accordance with the current HMO Licensing regime, mobile home licences should last for a maximum period of 5 Years. The Licensing Authority should have discretion to reduce the licence period, or vary the licence conditions, if they cannot justify absolute refusal.

10. How should the fees for mobile home site licensing be determined? Should the fee be calculated by reference to the number of pitches, the total area of the site, the cost of inspections to the local authority or a combination of all or any of these factors?

It is suggested that it would be fairer and easier to administer a fixed sliding scale fee based around the number of units the site is licensed for e.g. 1-20 21-50 50-100 etc. The actual fee would need to be reviewed and revised in accordance with the standard license period.

11. Should there be a regular annual charge to cover on-going administrative costs borne by local authorities during the licence period?

This could be construed as unfair insofar that well managed sites may not need any intervention during the license period, whilst others may.

12. Do you agree that site operators must pass a fit and proper person test before being granted a licence (with the local authority undertaking relevant checks) and that this should be based on the standard introduced for Houses in Multiple Occupation under the Housing Act 2004? Please give your reasons.

Yes

13. Apart from criminal convictions, what should be taken into consideration when deciding whether the proposed licence holder is a fit and proper person?

Financial solvency to carry out works to meet site licence conditions.

14. What are your views on increasing the maximum fine for operating a site without a licence, or breaching a licence condition?

Increasing the maximum fine would bring this offence into line with similar contraventions.

15. Should local authorities be able to issue fixed penalty notices and, if so, for what types of infringement? Please give your reasons.

Yes – Infringements of site licence conditions.

16. Should local authorities have powers to serve enforcement notices, and to carry out work in default if necessary following breaches of licence conditions? Please give your reasons.

Yes the local authority should have discretion to serve enforcement notices. Provision should be made to allow local authorities to recharge the licence holder or place a land charge on the site.

17. Under what circumstances should a site licence be revoked?

Revocation of a site licence should be considered if-

- the site licence conditions are consistently not being adhered to
- the licence holder is no longer a fit and proper person to hold such a licence.

18. What are your views on local authorities being able to take over the management of mobile home sites, and do you envisage any practical difficulties?

Whilst this enforcement provision is broadly welcomed as an option, particularly the provision to arrange works in default, very few Local Housing Authorities have served HMO Management Orders in practice. Anecdotal evidence would suggest Management Orders incur significant liability to the enforcement Authority; are resource intensive and more often than not there is very little prospect of the Council recovering their costs within the term of the Management Order. On this basis I query whether Housing Authorities would enforce this provision.

19. Should mobile home owners be able to take over the management of a site, and how should this work in practice?

No

20. How should site operators consult with home owners when proposing changes to written agreements or site rules?

Written notification and set time period for consultation. Consultation should be considered and if merited, the proposals changed to take account of observations. There should also be a right of appeal and independent arbitration/determination if the change to the site rules have a detrimental effect on the comfort and enjoyment of the residents

22. Should pitch fees be regulated and, if so, how?

As far as we are aware pitch fees have not been a specific issue locally. On the whole, local market forces tend to determine pitch fees.

23. Do you have any other comments that specifically relate to pitch fees?

No

24. Do you agree that the site operator's maintenance and repairing obligations would benefit from clarification?

For the sake of clarity, it may be helpful to do so.

25. Should there be a standard consultation format that must be followed when a site operator is proposing improvements?

Yes

26. Do you agree that home owners should be able to make alterations and improvements inside their home without requiring the consent of the site operator? Please give your reasons.

No - because such work could alter the usage of the unit. Alteration of the internal could also alter the structural integrity of the home and its overall mobility.

27. What would you deem to be a fair and reasonable reason for refusing permission to alter a mobile home externally?

If the alteration would conflict with site licence conditions / Planning Legislation

If the alteration would alter the structural integrity of the mobile home or prevent repair of site services or infrastructure or prevent the Home's future mobility.

28. Should the Residential Property Tribunal have to agree to all re-siting requests proposed by the site operator, including in emergencies? Please give your reasons.

The RPT should have to agree all re-siting requests proposed by the site operator except in the case of emergencies where unnecessary delay in re-siting the mobile Home would represent an imminent risk to the health and safety of the residents or members of the public.

29. Do you believe the rules on succession and inheritance in Wales should be modernised, and do you have any comments on the above proposals?

No comment

30. What do you consider would be the financial impact of the proposed Bill on yourself, your organisation or your business?

Increased staffing cost to enforce legislation

31. Do you consider that there would be a disproportionate financial impact upon any particular groups affected by this Bill?

No

Responses should be submitted by 20 July 2012 and sent to:

Legislation Office

National Assembly for Wales

Cardiff Bay

Cardiff

CF99 1NA

Tel: 02920 898120

E-mail: Legislationoffice@wales.gov.uk

Please indicate whether you are a private individual or an organisation.

Respondents are also encouraged to begin their submission with a short paragraph outlining briefly who they are, and who they represent (which may include, for example, an explanation of how the views expressed were consulted on with their members).

N.A.P.H.R. National Association for Park Home Residents

A totally voluntary service for permanent Park Home & Mobile Home Owners

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National Assembly for Wales
Cardiff Bay
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Bostal Road
Steyning
West Sussex
BN44 3PD
01903 816 247

23rd July 2012

Dear Sir/Madam

Following my telephone call to you regarding my Response to your Consultation Paper please find enclosed the correct Document to replace the one you have received.

I apologise for the error and thank you for the help in this matter.

Yours Sincerely



Brian Doick (NAPHR)

N.A.P.H.R. National Association for Park Home Residents

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N.A.P.H.R. RESPONSE TO THE PROPOSED MOBILE HOMES (WALES) BILL MAY 2012

This response is made for and on behalf of The National Association of Park Home Residents who wishes to thank the Department for inviting us to take part in the Consultation.

N.A.P.H.R. is currently one of three National Bodies and have growing Membership of some 12,500 in England-Scotland and Wales of which we ensure that our Members are kept fully informed of all aspects of Mobile Home Law and any changes in Legislation.

We welcome the opportunity to be able to make an input to the Proposal for Reforms to Park Home Legislation including Park Licensing for Wales.

We do therefore have concerns that the Rogues of the Industry are increasing and it is therefore essential that the Proposals in this Document do not create loopholes or is flawed to benefit these people and that the Conversion to Law can reflect these concerns.

We have had many concerns with Licensing for many years as Licence Conditions have not always been monitored as they should be as is well known the Rogue/Unscrupulous Park Owner have flouted any form of Authority for a long time which means that to rectify the situation the Proposed Changes must be accurate and fit for purpose.

It is further proposed that the Licensing System has to be Retrospective and enforced as failure to imply this would give the Unscrupulous Park Owner an Extension to Law breaking that he already has.

We also believe that Council run Sites should comply with Licence Conditions as applicable to other Parks in that area or their neighbouring Councils so as to be on the same level and protection to Residents as all other Parks otherwise if the Park is sold the New Owner could create immediate troubles for the Residents.

Brian Doick
President
N.A.P.H.R.

12th July 2012

N.A.P.H.R. RESPONSE TO CONSULTATION (WALES 2012)

1. Do you agree that the Residential Property Tribunal should have jurisdiction to deal with all disputes relating to this Bill, aside from criminal prosecutions? Please give your reasons.

Q 1/ Answer Yes

The Tribunal currently has the Jurisdiction to all aspects of the Mobile Homes Act 1983 apart from Eviction Orders which should go to County Courts as they hold more power to award appeals.

Further to the above it would be right that the Tribunal should have the Jurisdiction to deal with disputes as related to the proposed New Bill.

With regard to the mention in the question of Criminal Prosecutions they must remain with the Higher Courts without question.

The reason for the Tribunal System is that the cost to all parties is far cheaper than any court which enables Residents to obtain Justice without great expenditure secondly it is a less formal process which relieves pressure and fear to Residents they do not have to obtain assistance from any legal body and therefore have the right to self representation or any include the following:-third party.

2. Do you have any experience of a sale being prevented or if you are a site operator have you ever objected to a sale and why?

Q2/ Answer Yes

There are various methods of Sale Blocking as you are probably aware of which may include the following:-

(a)

Park Owners through the Agreement insisting on 1st refusal so as to attempt a Purchase at a knockdown price.

(b)

Demand that to sell your home you must complete an Application Form which has to include the Proposed Purchasers details so as to contact them to put them off the purchase and offer a deal on a new home from himself and after he has succeeded purchase the home cheaply.

(c)

The latest Block is to obtain the Purchasers details in which they have stated that they own a property in another country which they are selling the Park Owner then decides that the

Purchaser will not be living in the home as their only residence and therefore the purchase is void.

(d)

The Law is quite clear as to the occupiers right to sell however the Owners of some Sites will harass and frighten elderly occupants into selling the home to them for very little money which is thousands of pounds outside market values either to re-sell or replace for large profits further to which they claim that the home is detrimental to the Site and shall have to tell any prospective purchaser that he shall have the home removed from the Park which will completely put off the proposed purchaser.

We know the Act gives Residents the right to Civil Action against the Owners in these circumstances but elderly residents are intimidated and scared of the outcome as their home in many cases is their only asset.

(e)

Implied Term 8(1c) states that the Owner may not give his approval subject to conditions which is being ignored by the Unscrupulous Owner who is demanding that the occupant can only sell if they sign a paper that will increase the Pitch Fee for the Purchaser and he will not sign the Agreement to the Sale this is undoubtedly against Implied Terms and is a fraudulent activity.

There is insufficient clauses within the Legislation to prevent these Unlawful activities and even less deterrents.

3. Should the law be reformed to prevent sale blocking or is it necessary for site operators to have this power? If the law should be changed which of the suggested alternatives outlined above do you prefer? Please give your reasons

Q3/ Answer Yes

The Law should be changed so as to remove the Park Owner from the Sale process altogether.

Under the Mobile Home Act 1983 it states that the Park Owner has to approve the Purchaser and his approval shall not be withheld unreasonably therefore the Owner has no right to obstruct or interview any prospective purchaser unfortunately the process is seriously abused by the unscrupulous Owners.

We therefore recommend the option to remove the right to veto a prospective Purchaser which would eliminate the Site Owner from the Sale process and it should be emphasized that this must include any form of relative of the Park Owner and or Managers/Wardens/Agents/Employees or any other person that are representing the Park Owner.

We would also recommend that implied into this option should be the obligation of the seller or their agent that they are obligated to ensure that the Purchaser is fully aware of the Terms of the Agreement including Pitch Fees and any other Charges that will occur also in addition to and part of the Agreement is Park Rules and can understand and comply with the same.

It is also the Sellers legal responsibility to pay the Park Owner his Commission and should inform the Park Owner of the New Resident that has taken the Assignment and occupies the said home.

Failure to supply the correct information or to supply misleading information by the seller would make them liable to Prosecution further to the above there are still a fair number of Residents in Park Homes that have no Agreements and never have which will need addressing before a Sale can take place.

4. Do you agree that there should be a meeting involving all parties prior to the sale/purchase? Please give your reasons

Q4/ Answer No

We cannot agree with the Proposed Meeting with all the parties before the Sale as we have already removed the Park Owner from the Sale process in Q3/ above we believe that if we re-introduce the Park Owner into the Sale scene would create a loop-hole which would enable the Owner to make statements that could be detrimental to the Sale such as "I shall have to move this home next year" which would be enough for a Purchaser to think again and withdraw.

Further it has to be pointed out that if we think that limiting the discussions to Park Rules and Agreements will prevent his comments our experience tells us differently.

Further to the above the use of the Tribunal to deal with disputes with Ownership will not help a Sale people do not wish to attend any form of Court to make a purchase.

5. What are your views on the current licensing system for mobile home sites? What could be improved?

The current licensing system is inadequate as the Site Owner is issued a licence to operate the Mobile Home Park as a business whether he has any idea of Management or not it is the opinion of N.A.P.H.R. that there should be two licences one to licence the Site to be in line with the legal requirement under the Caravan Sites and Control of Development Act 1960 and the second licence to licence the Owner and or any Manager or joint Owners to operate the Park and comply with licence conditions this would enable the Local Authority to take action that could mean revoking the Management Licence without jeopardising the security of the Residents.

Further there should be a system of training that would educate Local Authority Officers of the Licensing requirements including the flexibility of Model Standards and the importance of making conditions to the Licence that reflect the requirements to suit that Park and not allow U.P.O. to demand that Model Standards should apply when they know that the Model could in affect make some-one homeless.

We should not enforce Model Standards if they are not implied to a Licence Condition which needs to be remembered they are Guide Lines not Law.

6. How often should local authorities inspect sites and how should these inspections be financed?

Q6/ The inspection of Sites should be carried out at the discretion of the Authority they should monitor the Licence Conditions and take action if required depending on the condition of and how well the Park is run but not exceeding 3 years it is further recommended Park Owners shall inform the Local Authorities when they are re-siting or replacing a home and re-inspect before the home is sold.

The concern is that the Unscrupulous Owner will have placed a new home on a small plot which he knows is wrong and then will attempt to enforce the Occupant of an older home (next door) into a situation claiming the home is in breach of Licence Conditions re-spacing between homes and file proceedings to terminate their Agreement it is therefore essential that if any home is replaced or redevelopment takes place it should be mandatory to inform the Local Authority so as to police the new sitings to ensure compliance with Site Conditions is maintained.

Finance as Q10.

7. Should Welsh Government issue guidance on the frequency and nature of such inspections?

Q7/ We believe that the Local Authorities that have power to inspect Parks should also be given the duty this could be done with an Amendment to the 1960 Caravan Sites and Control of Development Act 1960 which should be giving them Government support.

8. What are your views on what should be included in licence conditions? Should there be guidance on this issued by the Welsh Government?

Q8/ We have the view that the Government do contribute to Licence Conditions by way of Model Standards the latest being 2008 that are produced by the Secretary of State.

We at N.A.P.H.R. believe that there should be better allowances for Residents to be able to apply alterations to their homes to accommodate needs which can be required as and when people become disabled there is a definite requirement for Councils to Imply Conditions to Licences so that Residents can obtain the required aids without being charged with a notice of breach by U.P.O. there is no doubt that disability needs require addressing and should be a Licensing Issue

9. How long should each licence normally last, and should local authorities be able to grant licences for shorter periods if necessary?

Q9/ The Mobile Homes Act 1983 refers to a site with Planning Permission and a Licence as a protected site which gives Residents security of tenure therefore the Licence should be in perpetuity.

Section 4(1) of the Caravan Sites and Control of Development Act 1960 states that where land has been granted permission for use as a Caravan Site and has been so granted in terms that will expire at the end of a specified period then any licence issued to that land by virtue of the said permission shall expire and be stated so but subject to the aforesaid a site licence shall not be issued for a limited period only.

As I have stated in the answer to Q5. There should be two licences one to licence the Park therefore protecting Residents and their rights and a second one to licence the Park Operators which would enable you to take an action against the Park Operator and safeguard the occupier Shorter Licences Periods. No.

10. How should the fees for mobile home site licensing be determined? Should the fee be calculated by reference to the number of pitches the total area of the site, the cost of inspections to the local authority or a combination of all or any of these factors?

Q10/ The Licence Fee structure in our opinion is a system that will become self financing and regulated by the Local Authorities Financial Purse and Fees being charged by the Park size it would appear that the economics of this structure may not have the right guidance for Payments of Fees and would vary due to Park sizes therefore creating an imbalance of Payments.

11. Should there be a regular annual charge to cover on-going administrative costs borne by local Authorities during the licence period?

Q11/ Answer No As Unscrupulous

Park Owners will simply pass the charges on to the Residents through the Pitch Fees we cannot accept or agree that the Licence Holder could have the pleasure to recover Licence Fees through Pitch Fees every business has costings against that business and Licence Fees is one of those costs which is an overhead that he has to bear.

We fail to see how it would be right for Residents to pay for a Licence that is to run a business for somebody else.

12. Do you agree that site operators must pass a fit and proper person test before being granted a licence (with the local authority undertaking relevant checks) and that this should be based on the standard introduced for Houses in Multiple Occupation under the Housing Act 2004? Please give your reasons.

Q12/ We at NAPHR are all agreed that a fit and Proper Person is a must for owning and or running a Mobile Home Park and for many years this has not been the case. However it is imperative that the system to be set up to obtain the correct answers and information regarding a person or persons that has made an Application for a Site Licence or a Site Certificate is positive and professional.

The experience that we have gained over some 30 years as a Residents Association has shown that Unscrupulous Park Owners will use any trick they can to avoid abiding by the Law i.e.complying with the time factor to complete the laid down Conditions and use methods that will divert Authorities to think they have sold the park when they have passed it to a family member i.e. wife/son/brother/cousin etc; and nullify the Council Directive which therefore means there is a lot more people involved that need to be criminally checked upon.

We at NAPHR will support proposals that will assist the creation of 'A Fit and Proper Person' who shall be Licensed to own and/or Manage Residential Mobile Home Parks.

However we cannot see any Local Authority being able to conduct an essential search for information when Park Owners can and do have a number of Parks spread over many different Local Authority Areas.

It is therefore essential that a National Body should be sent to organize a responsible team that can conduct a procedure to obtain all relevant information appertaining to those persons that are to be responsible for the Management and/or Ownership of a Park.

At National Level a Register could be kept of all Owners with information regarding their Status Financially-Managerial or Criminal including Convictions of any descriptions.

Local Authorities should have to contact this Body both to obtain information and to inform them of any Conviction or wrongdoing that they have been involved with or informed of. This type of System would ensure that there would be no differential between the standards of enquiry into these persons.

We have to remember that a Park Owner can have an up to-date Park in one county where the Authority think he is a fit and proper person he can also have Parks in other counties where he carries out illegal acts that creates fear in people there is therefore a situation where two Authorities have different opinions and obviously is not passed between each other.It is quite apparent that a National/Central Body is essential.

To form a consistency with whatever format is applied to the Fit and Proper person and if a person is found to be unfit then that Body can see that all Parks that are under the Unfit Persons name are given some form of protection to Residents of those Parks in conjunction with the Local Authority for those areas.

To have an effective National Body to operate a consistent criteria to be applied for Fit and Proper Persons would need an Organization that has a Professional Status.

We believe that the Institution of Environmental Health Officers who play an important role in advising Government Departments on Policies and Legislation Changes within their field could be the appropriate body to fill that role.

The delegation of the above responsibility to Local Authorities could become flawed as these Authorities do not all work in the same ways as their counterparts and would probably not know or be able to obtain knowledge of any other Parks known to be owned by the Applicant throughout the country where a Central Body would the Local Authority would continue to address the Licensing of the Parks and as it is not financially viable to have all his family or staff checked as fit and proper then make the Park Owners responsible for their managers/wardens/members of their families and any other employee of which failure to comply should lead to Prosecution.

As a Park Owner can reject a Sale of Property by a Resident on the grounds that the purchaser is not acceptable to his Park then to protect Residents Rights prospective Park Owners should apply for a Fit and Proper Status before being allowed to Purchase THE Park.

13. Apart from criminal convictions what should be taken into consideration when deciding whether the proposed licence holder is a fit and proper person?

Q13/ This question is answered above in (12) but additionally the Licence Applicant should be able to prove that he understands his responsibilities under the Health and Safety Regulations and his Duty of Care which is usually ignored as not their problem which would also indicate what Management skills they may have especially for elderly people.

14. What are your views on increasing the maximum fine for operating a site without a licence or breaching a licence condition.

Q14/ Site Licences are issued under the Caravan Sites and Control of Development Act 1960 which means operating without a licence is breaking the law and a serious offence which jeopardizes the Residents security of tenure as implied in the Mobile Homes Act 1983 we would therefore be in full agreement with your proposal.

15. Should local authorities be able to issue fixed penalty notices and,if so, for what types of infringement? Please give your reasons.

15/ Answer Yes

This is an area that we would agree with as a fixed penalty attached to the time factor to rectify the breach followed by a further penalty for failure to comply could well speed up the process of rectification.

16. Should local authorities have powers to serve enforcement notices and to carry out work in default if necessary following breaches of licence conditions. Please give your reasons.

16/ Under the provisions of the Caravan Sites and Control of Development Act 1960 it is an offence if the Occupier of the land fails to comply with any condition attached to Site Licence held by him in respect of the law.

Further to which Section 9(3) states:- Where an occupier of land fails within the time limit specified in a condition attached to a Site Licence held by him to complete to the satisfaction of the Local Authority in whose area the land is situated any works required by the condition to be so completed, the Local Authority may carry out those works and may recover as a simple contract debt in any court of competent jurisdiction from that person any expenses reasonably incurred by them on their behalf

Therefore your proposal already has a Legal standing under an Act of Parliament which should be enforceable by giving the Local Authority the duty and the power to monitor and enforce condition with use of the Law.

Further to the above we agree that Local Authority should have the power to serve Enforcement Notices.

Park Owners are granted Licences under the above act and should be made to abide by the Conditions of this Licence or be forced by Law to comply or face Prosecution

17. Under what circumstances should a licence be revoked?

Q17/ The Local Authority should be able to revoke a Licence where a Licence Holder or his Manager are guilty of criminal and fraudulent activity whether against Residents or the general public or fails to comply with Licence Conditions that is a threat to the health and safety of Residents or any other persons that may require to enter the Park for whatever reason or sends malicious communications/intimidates and harasses Residents.

Further to the above it is essential that to revoke a Licence a managerial system would have to be installed to run the Park.

18. What are your views on local authorities being able to take over management of mobile home sites and do you envisage any practical difficulties?

18/ The Local Authorities could take overall responsibility of the Park but they may not have the management skills required for the task it would therefore be appropriate to make a

management order that would enable the Authority to authorise a professional person or organisation to take over the Management of the Park.

19. Should mobile home owners be able to take over management of a site and how should this work in practice?

19/ Answer No

There is every possibility that no Residents has any knowledge of Management and also would not want the responsibility.

There is also the problem of the Owner having his Licence revoked but he will still own the land which gives him the right to enter the Park when he wishes which without doubt would create a major problem for Managing Residents a problem that they could not deal with.

20. How should site operators consult with home owners when proposing changes to written agreements or site rules?

Q20/ The Written Agreements (Statement) cannot be changed by the Park Owner the Agreement is an individual Agreement between both parties and therefore any changes has to be agreed by both parties.

There is a section in the Express Terms which gives the criteria that should be followed by the Owner when proposing any changes which states "Not to add to or amend the Park Rules except in accordance with the following provisions"

- (i) The Owner shall give twenty eight days Notice of any additions or amendments he proposes either by displaying the same on the Park Notice Board or by supplying copies thereof to each Occupier.
- (ii) If within such period of twenty eight days as aforesaid at least one third of the Occupiers shall deliver to the Owner a written request that a meeting shall be called to discuss the proposals then the Owner shall either withdraw them or by giving reasonable notice convene a meeting of the Occupiers to consider the proposals in detail and to vote upon the same the issue to be determined by a simple majority of those Occupiers voting.
- (iii) If no such written request is delivered to the Owner within such twenty eight day period as aforesaid then a majority of the Occupiers shall be deemed to have accepted them and they shall come into force immediately on the expiry date of such twenty eight day period.

The above terms are open to an abuse of process under Section (1) as a notice placed on

A notice board may not be read or not even placed on the board but the Unscrupulous Owners will claim that they did put it there.

We would propose that any proposed rule changes should be notified by letter to each Home and be an Implied Term.

**21. Should the RPT have the power to award damages and compensation for breaches of the written agreement or any requirement imposed by this Bill?
Please give your reasons.**

Q21/ We believe that it is right for the RPT to award damages where appropriate the proposition states that RPT could award damages and compensation for breaches to the Written Agreement it has to be said that it may not be possible for this to apply in all cases as an award of damages would be for loss or injury and compensation is awarded for loss or as a recompense this means that breaches not come under this banner. Further to the above any requirement under the proposed bill that is breached may have to be viewed the same as above.

The proposal needs further work to identify the areas of the proposal that would affect Residents in such a way that it would warrant compensation in principle we do agree.

22. Should pitch fees be regulated and if so how?

Q22/ Pitch Fees are increasing to high levels and should be regulated and controlling the following points.

- 1/ The Pitch Fee as stated in the 1983 Act shall be reviewed annually in which the Park Owner takes as his right to increase the Fees.
- 2/ The 1983 Act also says there is a presumption that the Pitch Fee will increase by the RPI again the Park Owner claims that it is his right.
- 3/ The Park Owner sets the annual Pitch Fee as an example on the 1st January and then sells a new home on the Park and as he has a new Resident he sets the Pitch Fee at a higher rate than the rest of the Park which creates different fees than other Residents making the annual increase which is raised by a percentage figure higher for some Residents than others and they all have the same rights and amenities on the Park.
- 4/ Further to the above when an Agreement to pay through the Pitch Fee for improvements is made the figure added to the Pitch Fee is never removed and increases annually which means that you never stop paying for an improvement with a fixed costing.
- 5/ We believe that as the C.P.I. is the main UK measure of inflation for the average month to month changes in the prices of Consumer Goods and Services purchased in the UK then that should be the measure used relating to Pitch Fee increases it seems neither fair nor

reasonable for Residents to have to pay the RPI which includes payment of mortgage interest which gives the Park Owner extra payments from Residents towards his property. All of the above points would assist in controlling the ever increasing Pitch Fees which is making the affordable form of housing very unaffordable and liable to cripple the industry through greed these points are essential.

23. Do you have any comments that specifically relate to pitch fees?

23/ We have knowledge of large numbers of Residents that have charges made to them on various dates throughout the year (mainly quarterly) in addition to Pitch Fees for maintenance and repairs plus other items these charges range between £100-00 to £400-00 these charges are out-side the Pitch Fee process which makes the charges far greater. Further to the above Section 29 Implied Terms- Part 1 of Schedule 1 to the Mobile Homes Act 1983 (as amended) states:-“ Pitch Fee” means the amount which the occupier is required by the Agreement to pay to the Owner for the right to station the Mobile Home on the Pitch and for the use of the common areas of the protected site and their maintenance. The above quote must therefore clarify that the charges are not a legal payment as a said charges are already encompassed into the Pitch Fee.

We would further propose that the Park Owners should issue a statement to specify how the Pitch Fee is calculated this would ensure that Residents are not being charged for items or repairs that they are not responsible for.

24. Do you agree that the site operator's maintenance and repairing obligations would benefit from clarification?

24/ Answer definitely Yes! And Identified.

25. Should there be a standard consultation format that must be followed when a site operator is proposing improvements?

This answer is Yes but there is also a definite need to identify improvements and that they are for Residents benefit also that if the Park Owner has to consult the Residents they must have the right to refuse the said improvement and not give the Owner the right to seek approval via RPT.

26. Do you agree that home owners should be able to make alterations and improvements inside their home without requiring the consent of the site operator? Please give your reasons?

26/ We at N.A.P.H.R. believe that the Resident who is the Home Owner should never have to have permission to improve the interior of their home which they purchased and paid for I do not believe that any other industry demands that you must gain approval from a third party carry out any type of work on your own property.

27. What would you deem to be a fair and reasonable reason for refusing permission to alter a mobile home externally.

27/ A fair and reasonable refusal for external work would be any type of works that would contravene Site Licence Conditions or the Written Agreement.

In addition to your proposal the following issue needs to be addressed that any form of external insulation material should not be refused as it is Governments Policy that the Council can make Grants for this type of insulation and keep the elderly warm these materials are of a high fire safety rating but some Park Owners are refusing to allow the work to be done.

28. Should the Residential Property Tribunal have to agree to all re-siting requests proposed by the site operator including emergencies? Please give your reasons.

Q28/ Yes the RPT should have to agree to all re-sittings the reasons being for this is that U.P.O. would abuse the system and not return Homes to the original pitch to create a beneficial plot to make a financial advantage by putting a new home on the said plot. Further to the above by this move now becoming permanent and not returning to the original pitch it would enable the Park Owner to issue a new Agreement as per your proposal which we cannot agree to.

Section 1 of the Mobile Homes Act 1983 gives the right to the Home Owner to station a Home on the Park the Agreement is nothing to do with the Home which means a New Agreement is not required and the opportunity to alter the Agreement content has been averted.

There is a further problem of where the Home is moved to for these repairs when there are no spare plots secondly this could mean that the Home would have to be taken off the Park or placed in the car park all the Home Owners effects would have to be securely stored and a guarantee for the Homes security thirdly accommodation has to be found for the Resident and all costs met by the Park Owner which should be made an order by the Tribunal this order should also cover compensation for any damage to the Home caused by the move.

29. Do you believe the rules on succession and inheritance in Wales should be modernised and do you have any comments on the above proposals?

Q29/ Yes we agree the succession and inheritance rule do require updating.

The inheritance of a Park Home has to be seen the same as gifting the home to a family member as by a will it has been gifted to the Inheritor apart from the fact that the Inheritor may not be a family member therefore the person inheriting the Home should be entitled to live in it as they have become the Owners of the said property.

All the above should apply subject to the Inheritor being able to comply with Park Rules. Further to the above the Implied Terms relating to the Gift of a Mobile Home states the Owner may not require any payment to be made whether to himself or otherwise in connection with the Gift of the Mobile Home and the Assignment of the Agreement, We would propose that the above Implied Term should be amended to read after the words Gift add the words or Inheritance this would prevent the Owner from claiming an unlawful charge.

30. What do you consider would be the financial impact of the proposed Bill on yourself your organisation or your business?

Q30/ The proposals that are forwarded through the Bill are being brought about due to the failure of Local Authorities to ensure that Unscrupulous Park Owners complied with the Legislation which is laid down for them to operate and run a Mobile Home Park which also suggests that the Legislation was a failure or too weak the proposals in this Bill are being done so as to bring the Park Owners in line with the obligations that they should have been complying with for many years.

The Site Licence will be a business expense which is an overhead that all businesses have along with other business costs the Pitch Fee is a Fee that is set by Park Owners to recover for them the costs of running and maintaining the Park along with wages and a profit so unless the Government gives the Park Owner an outlet or loophole to reclaim any costs then the Residents (which is our Organisation) should obtain the rights they have been denied that they already pay for.

31. Do you consider that there would be a disproportionate financial impact upon any particular groups affected by this Bill?

Q31/ As I have stated in Q30 above there should not be any disproportionate as Residents should be getting their rights which they already pay for in their Pitch Fees.

We have to remember that due to the Commission Legislation the Park Owner already owns 10% of the Residents Property and any improvements that they make to that Home of which he makes no contribution this without doubt is disproportionate.

National Assembly for Wales
Peter Black AM - Proposed Mobile Homes (Wales) Bill
Consultation Response: MHM23 - Mark Williams MP

Mark Williams AS/MP

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20th July 2012

Dear Peter,

I am writing on behalf of a number of constituents who run caravan parks in my constituency, which cater for both residential and holiday needs.

My constituents are concerned by some of the proposals in the provisional Mobile Homes (Wales) Bill, particularly those which they feel will penalise the entire industry for the actions of a minority who are already known.

My constituents feel that it is the few who are tarnishing the reputation of the many, and that it is enforcement of the rules that is needed rather than regulatory change alone. They state that enforcement is essential, without which any new law would be ignored.

Many of my constituents who run caravan parks report that site licensing is a system which serves their business well, and that great care is necessary if the system is to be modified.

My constituents are very concerned by proposals that any site licence should last for only a 'fixed period'. They are worried that this would completely undermine financial support for their business, pointing out that it would be difficult to find investors to fund their business if the right to trade could simply expire, it would also be very difficult to get a bank to provide funding to their business, and that it would be very difficult for people to sell their park home or caravan holiday home and they would also be unable to enjoy the security of owning if there was a fixed period license system. My constituents agree that licenses should be reviewed as a Local Authority risk assessment determines, but both businesses and consumers need the security the current system provides.

My constituents are also concerned that the consultation provides no Economic Impact Assessment, yet the proposals outline that costs are borne by the park owner. They feel this is unjust, and that good businesses will be penalised for the failings of others.

As such, I would be very grateful if you could consider these points before proceeding with these proposals.

Yours sincerely,

A handwritten signature in black ink that reads "Mark Williams". The signature is written in a cursive, slightly slanted style.

Mark Williams MP

Whilst Mark Williams MP will treat as confidential any personal information which you pass on, he will normally allow staff and authorised volunteers to see it if this is needed to help and advise you. The MP may pass on all or some of this information to organisations such as the DWP, HM Revenue and Customs, the Home Office or the local council if this is necessary to help with your case. Mark Williams MP may wish to write to you from time to time to keep you informed on issues which you may find of interest. Please let him know if you do not wish to be contacted for this purpose.