

Speech to ARCO

Stephen Lewis, Law Commissioner for Commercial and Common Law

Cholmondeley Room, House of Lords, 2 November, 2 pm.

Ladies and gentlemen, the New Zealand Business Ministry produces a 40-page guide entitled "Thinking of living in a retirement village?"

When this landed on my desk in January, I must confess I wondered if my colleagues were trying to tell me something.

But then I visited Grove Place, near Southampton, and I liked it so much that quite frankly I didn't want to leave. Richard Davis may not have to wait too long before he has a former Law Commissioner for Commercial and Common Law among his residents...

On a more serious note, I'm going to do three things today. I'll briefly introduce myself, the Law Commission, and the project. Then I'll tell you what I like

about the new ARCO Code. And I'll conclude by explaining why you all need to respond to our consultation paper on event fees, which came out last week.

So, for those of you who haven't met me yet, I'm Stephen Lewis, and, as I said, I'm the Law Commissioner for Commercial and Common Law. My role at the Law Commission is to lead law reform in this field. The Law Commission's role, as set out by statute, is to keep the law under constant review, identify defects and modernise it.

We've been asked to consider reform of the law as it applies to what we call "event fees". "Event fees" is our umbrella term for fees like deferred membership fees, deferred service charges and transfer fees. All these fees are payable by a leaseholder when a defined event happens, such as the resale of the property. And the amount of the fee is usually based on the property's value.

When we began the project, the existing law and best practice around event fees was in a shambolic state. There was neither adequate protection for consumers,

nor adequate certainty for reputable operators. You the operators had no idea whether event fees would stand up to legal challenge, even if they were charged in a fair and transparent way. On the consumer side, it was quite possible for a buyer to go much too far down the road to purchasing a retirement property, before they finally discovered that a substantial event fee would be payable on resale.

We discovered this when we did our mystery shop. Although, I have to say, ARCO members on the whole came out of our investigations rather well. The biggest problems were elsewhere in the specialist housing sector. But although you deserve to give yourselves a pat on the back, we still identified some problems, even in retirement villages.

This brings me on to what I like about the new ARCO Code.

Well, to start with, I am glad that you're proactive about assessment of ARCO members. You don't sit around waiting for things to go wrong.

But focusing on the detail of the Code, I like the way it sets out detailed requirements for what people need to be told before they pay any deposit to reserve a property in a retirement village. Some of these requirements reflect the existing law.

Paragraph 4.1 of the Code says:

We will ensure that the information provided on our retirement communities... in our marketing, advertising and sales materials... complies with all relevant advertising codes of practice, and with relevant legislation.

Now, we think that when an advertisement gives the price of a property, it should also state the event fees that apply to the property. In our view, the code of practice used by the Advertising Standards Authority requires this. So do the Consumer Protection Regulations. But if you comply with paragraph 4.1 of the

ARCO Code, you'll be complying with the existing law. The same can't be said for all the codes of practice we've looked at.

Your Code also states that you will provide information about event fees during viewings of a site or any property. Again, we think this is already required by law.

And sometimes your Code goes beyond what the law requires. Like when you say that you will (and I quote):

Provide realistic worked examples...

of the financial impact of event fees. Worked examples are one of the key proposals in our consultation paper. So you're ahead of the game on that one.

But this brings me on to my final point. How should the worked examples look?

What information should they include? This is just one of the many questions in

our consultation paper. We want your input on this, and on other proposals we make that go beyond the present ARCO Code. Questions like:

Should everyone do what Retirement Villages Group does, and give people a choice to pay the event fee up front instead of on resale? And if so, how should this be calculated?

What about sub-let fees? Now, I know many of you may not allow subletting. But if sub-letting is allowed, it isn't fair that people should have to pay the same fee when they sub-let as they would have to pay when they sell. We welcome suggestions on what a fair and reasonable fee on sub-letting would be.

Finally, we want to strengthen *all* the codes of practice in the specialist housing sector. We want to give legal backing to the provisions they contain regarding event fees. This would include such provisions when they appear in the ARCO Code. Under this proposal, if the provisions about event fees in a code of practice were breached, a court would be likely to find that an event fee was

unfair. So the resident would not have to pay the fee. However, we think that this should not apply if the money is held on trust in a sinking fund.

There are many more ideas in the consultation paper. I hope I've said enough to give you a brief glimpse. Please do respond. You can find the paper and a response form on the Law Commission website – or alternatively Michael Voges will be able to provide you with an electronic copy.

Thank you all for inviting me here to speak today. I'm grateful to Michael Voges in particular for his great assistance throughout the project so far. And on behalf of the public at large, I'm grateful to all of you for striving to raise standards in retirement villages. It's no wonder I'm tempted to live in one.

Thank you.