

## Written evidence to the Communities, Equality and Local Government November 2012

### 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.

### Overview

Consumer Focus Wales welcomes the opportunity to submit written evidence to the Communities, Equality and Local Government Committee to inform their scrutiny of the Regulated Mobile Home Sites (Wales) Bill.

We strongly support many of the proposals in this Bill. In particular, we are pleased to see that the Bill will:

- Remove the need for approval from a site operator for the sale of a mobile home. We strongly support this
- Place a duty on local authorities to secure the effective implementation of the new licensing regime and most importantly, to *enforce* site licence conditions
- Introduce a range of enforcement options, including improvement notices and fixed penalties
- Introduce a fit and proper person test for site owners and managers

However, we would like to highlight some key areas of concern. For example:

- We are concerned that the Bill does not make it sufficiently clear how site standards are to be improved, whether by new licence conditions, guidance from Welsh Ministers, or via the new Code of Practice
- We are concerned that the Bill does not separate the site licence from the fit and proper person test. We believe that this will be important in ensuring the continued business viability of many sites
- We are disappointed to see that the requirement for local authorities to have regard to the desirability of exercising powers of collaboration does not go

further. We do not believe that this provision will secure genuine collaborative working and information sharing between local authorities

- We are very concerned that the Explanatory Memorandum states that “the Residential Property Tribunal will have jurisdiction over all disputes related to this Bill, aside from criminal prosecutions”. It is crucial that the Bill clarifies whether applications to terminate written agreements will continue to be heard in the courts

Crucially, much of the detail of the new licensing regime is lacking. While we recognise that some of this detail will be provided through regulation, we are concerned that, for example, the procedures for the proposed fit and proper person test described here are extremely vague. It is also unclear in some parts of the Bill where responsibilities for enforcement lie. With this in mind, the detail of our response, including more background on our key concerns, is below.

### **Is there a need for a Bill to amend the arrangements for licensing and make provision for the management and operation of regulated mobile home sites in Wales?**

In 2011, Consumer Focus Wales began a comprehensive and detailed piece of research into the problems facing mobile home owners across Wales, which resulted in more than 250 in-depth interviews with residents and a published report listed almost 100 recommendations for change.

During our research, we also spoke to residents’ association representatives, consulted with the caravan industry and site operators, and surveyed every local authority in Wales as part of the project. Our work has resulted in a robust examination of a multi-million pound industry and our findings demonstrate a real need for a new residential site licensing regime, and reform of the management and operation of these sites in Wales.

Nearly two thirds of residents who took part in our research told us that they had experienced at least one problem on their site in the past five years. We found that a quarter of respondents were dissatisfied with life on their site with an eighth of residents telling us that they were very dissatisfied.

We heard over and over again from residents about their unhappiness about living with poorly maintained common areas and their frustration at their site operator’s inaction or their local authority’s inability to help.

A clear majority of respondents who reported a problem to their local authority said that the response from the authority was ineffective. Many of them told us that this was because either the local authority was unwilling to take action, they lacked the time or resources to deal with the problem, or that the local authority was simply not interested.

With this in mind, Consumer Focus Wales strongly believes that there is a clear and desperate need for wholesale reform of the licensing and management of regulated mobile homes sites.

**In your view, will the licensing and enforcement regime established by the Bill be suitable? If not, how does the Bill need to change?**

During the course of our research, Consumer Focus Wales found overwhelming support for wholesale reform of the caravan site licensing regime. We know that mobile home owners are often elderly, on a low fixed income, and vulnerable, due to their status as home owners on someone else's land. Yet time and time again residents told us about their frustration at a system which has neither the resources nor the powers to help them. With this in mind, we have outlined our concerns about the Bill as it currently stands and submitted some recommendations below.

**Part 2, Section 4: Collaborative discharge of functions**

We are concerned that simply requiring local authorities to have regard to the desirability of exercising powers of collaboration does not go far enough and will not secure genuine collaborative working and information sharing between local authorities.

We believe that Section 4 should establish a formal network of local authority leads on regulated site licensing. This network should be required to meet regularly and engage in effective communication, including the sharing of information about the detail of fit and proper person tests and site licence breaches. We would recommend the formalisation of regular meetings and clear communication networks to ensure the effective sharing of best practice.

With only 92 sites in Wales, and seventeen local authority areas responsible for five sites or fewer, we strongly recommend that the Bill *requires* local authorities to work together effectively in the implementation and enforcement of the new licensing regime.

This is because, while we agree that local authorities should retain their separate licensing, inspection and enforcement regimes, more effective regional working should be strongly encouraged and organised by a formal network of local authority leads 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 have talked about our findings and our recommendations for change in this area in Chapter 4 of our policy report, 'Park Life'.

**Recommendation**

Part 2, Section 4 should be amended to establish a formal network of local authority leads on regulated site licensing.

**Part 2, Section 6: Applications for licences**

We are concerned that the Bill does not make it sufficiently clear whether site operators will be required to apply for a new licence under the draft Bill, or whether they are exempt if they are already licence holders under the Caravan Sites and Control of Development Act 1960 (the 1960 Act). We believe that this should be clarified, and made clear that all site owners in Wales operating a regulated site should be required to apply for a new licence as part of a new regime.

We are pleased to see that an application for a site licence will require applicants to provide the name of both site owner and manager, as well as a standard written statement for the site, a set of standard site rules, and evidence of consultation with residents on these two documents.

We are also pleased to see that the Bill allows for local authorities to set a licence application fee as we believe that providing local authorities with the necessary resources to carry out new functions will be crucial to the success of the new regime.

We support the proposal for a nationally agreed fee structure, set by regulations, and, 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.

We also agree that the Bill should require Welsh Ministers to set, by regulation, the detail of the proposed fit and proper person test, because we recognise that restricting local authorities to only one type of check, or only one set of standards, could be considered short-sighted. We will be recommending that Welsh Ministers include an enhanced CRB check and a Police National Database check as part of these regulations.

We have talked about our findings and our recommendations for change in this area in Chapter 4 of our policy report, 'Park Life'.

### **Recommendation**

Part 2, Section 6 should be amended to ensure that all site owners are required to apply for a new licence under the terms of new legislation.

### **Part 2, Section 7: Grant or refusal of licence**

We are concerned that some rogue site operators, who may have had a licence revoked in another part of the country, could reapply for a licence in Wales without failing the fit and proper person test.

We therefore believe that the Bill should specify that an applicant should not have not had a site licence revoked, or indeed, have failed a fit and proper person test (as outlined in Section 9 of this Bill) in the previous five years.

We have talked about our findings and our recommendations for change in this area in Chapter 4 of our policy report, 'Park Life'.

### **Recommendation**

Part 2, Section 7 should be amended to ensure that the local authority is able to refuse to grant a licence to an applicant who has had a site licence revoked, or has failed a fit and proper person test (as outlined in Section 9 of this Bill) in the previous five years.

## **Part 2, Section 8: Tests as to suitability for the stationing of mobile homes**

As we highlight later in our response, we are concerned that there are a large number of regulation and order-making powers which will be the responsibility of Welsh Ministers after the Bill becomes law.

For example, we are concerned that the Bill requires Ministers to make regulations which set standards for the stationing of a number of mobile homes. We believe that this function could be carried out by the local planning authority without the need for a new set of regulations. However, this *must* be done in collaboration with the licensing authority and we would urge active consultation between different departments. This is another example of where a formal network of leads would facilitate joint working (please see our comments on Part 2, Section 4 of the Bill).

### **Recommendation**

Part 2, Section 8 should be amended to give the responsibility for determining whether a site is reasonably suitable for the stationing of a number of mobile homes to the local planning authority in collaboration with the licensing authority.

## **Part 2, Section 10: Licence conditions**

When we spoke to residents, we found that 62 per cent of respondents had experienced at least one problem on their site in the past five years but by far the most pressing concern for residents we talked to was the issue of site maintenance, security or safety standards. 40 per cent of respondents told us that they had experienced problems in this area and almost two fifths of residents we interviewed did not agree that their site was attractive.

We welcome a requirement on licence holders to abide by the statutory implied terms of the 1983 Act because this will enable local authorities to take action on behalf of residents where previously they have been unable to help. However, we would strongly recommend that the Bill is amended to ensure that not only do site owners have to enforce site rules, but also to abide by the rules themselves.

This is because our research showed that some site operators are not abiding by their own rules: in cases we have seen, some site operators are allowing underage residents to move onto the park, or allowing new home owners to bring dogs to live on the park, or renting out properties, when in all of these cases, residents who own their own home would be breaking the rules if they were to sell to someone who does not meet the rules.

### **Recommendation**

Part 2, Section 10 (1) (b) should be amended to reflect the following change:  
“to abide by and enforce any rules of the kind referred to in section 6(3)(b) above”

We welcome a requirement on licence holders to display the licence, the standard written statement and the site rules in a public place. We would further recommend

that added to this list be copies of the main electricity and water bills (and mains gas<sup>1</sup> if applicable) for the site (if the bills are paid through the site operator).

When Consumer Focus Wales asked residents about their energy supply, a majority of respondents who had experienced problems with their electricity told us that they had concerns around the costs and billing. One of the biggest problems we have found is that almost all these respondents told us that they pay their electricity bills through their site operator or manager upon receipt of an individual bill.

This can result in a lack of transparency over how electricity bills are calculated. Many residents have told us that they are totally unaware of how their electricity bills are calculated. Others have told us that they are not given the unit cost, only the amount of units they have used, and a clear majority of residents who pay through their site operator or manager told us that their site operator never makes the main electricity bill available for residents to see. Residents also told us that they are worried about the cost of their electricity. A significant number told us that they considered their electricity charges to be unreasonable.

As an individual consumer with a direct relationship with a supplier, it is more straightforward. The bill is received directly from the supplier, and consumers are able to see what they have paid for and how much they have paid.

On a mobile home site, residents are often limited to the information made available to them by the site operator and while residents are entitled to see a copy of the main electricity or gas bill under existing Ofgem rules, we are aware of many cases where site operators refuse to share the bill. In this situation, the only recourse for the resident is to apply to the courts for a copy. If it were a site licence condition that these bills have to be displayed, the local authority would be able to enforce this instead.

We have talked about our findings and our recommendations for change in the area of energy and fuel poverty in Chapter 5 of our policy report, 'Park Life'.

### **Recommendation**

Part 2, Section 10 (1) (c) should be amended to add in the following amendment:

“(iv) any relevant utility bills, including for gas, electricity, water, sewerage or other services supplied by the owner to pitches or to mobile homes”

We welcome the inclusion of a condition requiring a licence holder to refrain from committing any act prohibited by section 3 of the 1968 Act because this will enable local authorities to take action against the site operator for a breach of the licence (which under Part 2, Section 3 of this Bill, they will be required to do).

However, we are concerned that the Bill does not require local authorities to include further conditions appropriate for regulating the management, use and occupation of a regulated site. We found during our research that there is a big variation in the knowledge and expertise of different local authorities and our worry is that some

<sup>1</sup> We found that most sites in Wales are off the mains gas grid

<sup>2</sup> Extract taken from oral evidence given to the C LG Select Committee Inquiry on Park Homes,

local authorities will not proactively set high standards for the management of sites if it is optional.

While we recognise that the Bill allows for Welsh Ministers to issue guidance on these licence conditions (and it is not clear whether this guidance is intended to replace the 2008 Model Standards) we are very concerned that this section on licence conditions is not sufficiently robust and will not deliver improved site standards, something we know is extremely important to mobile home residents.

### **Recommendation**

Part 2, Section 10 (2) should be amended to ensure that local authorities are required to set appropriate standards for the best practice management of regulated sites following guidance from Welsh Ministers.

Finally, we have seen a number of cases where local authorities have inadvertently, through setting site licence conditions which are the responsibility of the site operator, have made it possible for an unscrupulous site operator to pursue the eviction of residents through the courts.

These cases have invariably been lost by the resident, who does not have the money, the legal knowledge, or the self-confidence to fight an expensive court case, and therefore finds himself suddenly homeless. Many of these cases have involved elderly residents, who do not have the resources to start their lives again, and are therefore especially vulnerable.

We would like the Bill to ensure that licence conditions cannot affect a home owner's right to sell their property by introducing a requirement for local authorities to undertake a formal impact assessment in order to consider any unintended consequences for residents when establishing new site licence conditions.

### **Recommendation**

Part 2, Section 10 should be amended to prevent local authorities from setting licence conditions which affect a home owner's right to sell their property by introducing a formal impact assessment procedure.

We have talked about our findings and our recommendations for change in this area in Chapter 4 of our policy report, 'Park Life'.

### **Part 2, Section 11: Licences – general requirements and duration**

Consumer Focus Wales believes that while the site licence should be tied to the land indefinitely, a renewable fit and proper person test should be undertaken every five years as part of the conditions of holding a valid licence.

This arrangement would not only permit the movement of fit and proper person certificate holders from one site to another and would allow greater flexibility, but would also help to ensure stability for the business and encourage investment in the site because of the separation between site licence and fit and proper person certificate.

A time-limited licence is problematic because business strategies usually run for more than five years, as do financial plans, and it is probable that banks would be

reluctant to lend money to a business that could be shut down every five years. In addition, residents on a mobile home site have indefinite security of tenure which begs the question: what happens to home owners if the site licence is revoked?

There are also other impacts on residents: the value of their homes might be affected if a licence is revoked, and their ability to sell might be reduced if a prospective purchaser thinks that the site might not continue to be licensed.

However, separating the licence (tied to the site itself) from the fit and proper person test (tied to the owner/s and manager/s) would reflect the difference between the site licence conditions, which should govern the facilities, equipment and safety standards of a site, and the fit and proper person test, which looks at the professional abilities and background of the site licence holder.

As a licensing regime, this would broadly reflect alcohol licensing where a personal licence is separate from the licence that authorises the premises to be used for the supply of alcohol. For this reason, we believe that while the fit and proper person test should be undertaken every five years, the licence should simply be reviewed, not terminated at the end of a specified or determined period of up to five years.

We have talked about our findings and our recommendations for change in this area in Chapter 4 of our policy report, 'Park Life'.

### **Recommendation**

Part 2, Section 11 (5)(b) should be amended to reflect the following change:

“unless terminated by subsection (9) or revoked under section 13, continues in force indefinitely, with a review of the licence conditions taking place at least every 5 years”

Part 2, Section 11 (6) (a) and (b) should be deleted.

### **Part 2, Section 12: Variation of licences**

During the course of our research, we have found that some site operators are using, at best, a loose interpretation of consultation when deciding to carry out work or suggesting changes to contractual terms. Consumer Focus Wales believes that the Bill should set out the way in which site operators should consult with residents over any proposed changes, including, but not limited to, changes to written statements, pitch fees, site rules, and site improvement works.

We recognise that the current wording of the Bill requires consultation on any changes to the site rules with all occupiers on the site, as well as any qualifying residents' association and we welcome this commitment.

However, it is unclear as to *who* will be carrying out the consultation i.e. the site owner, or the local authority, as well as *how* the consultation will be carried out. The current wording implies that it will be the responsibility of the local authority to vary the terms of the site rules and does not make reference to whether the site operator is, under any circumstances, able to vary them.

We would seek clarification on whether the site operator is able to seek to amend the site rules under any circumstances, and if so, how he or she would go about doing



so. In either case, we recommend that guidance should be issued on how consultation should be carried out.

We also think that the local authority should have to demonstrate that they have taken the results of their consultation into account when amending site rules. Finally we are concerned that the Bill allows for changes to be made if “it *appears* to the authority that a majority of the occupiers agree” which we think, as a decision making tool, is too vague. We believe that this subsection should be reworded to clarify responsibilities and processes.

We have talked about our findings and our recommendations for change in this area in Chapter 4 of our policy report, ‘Park Life’.

### **Recommendation**

Part 2, Section 12 (3) should be amended to clarify roles, responsibilities and procedures in the variation of the site rules referred to in Section 11 (2) (b).

### **Part 2, Section 13: Revocation of licences**

Currently, local authorities are only able to ask a court to revoke a site licence after the licence holder has been convicted for failing to comply with a licence condition on at least three separate occasions.

We therefore welcome the decision to ensure that revocation of the site licence by the local authority will no longer require prosecution through the courts because we believe that this will make it easier for local authorities to take action in the event of serious mismanagement, repeated breaches of licence conditions or the failure of a fit and proper person test.

We have talked about our findings and our recommendations for change in this area in Chapter 4 of our policy report, ‘Park Life’.

### **Part 2, Section 14: Register of licences**

We are pleased to see that local authorities will be required to maintain a publicly available list of site licences. However, we would like the Bill to ensure that not only is the list made available for inspection, but copies of all the individual site licences, as we do not believe that this is currently made clear.

This is because during our research, Consumer Focus Wales found that many purchasers fail to obtain any legal advice, carry out a survey, or even do any research about the site or the site operator before buying a mobile home. One estimate puts the percentage of prospective buyers of park homes who take legal advice at less than one per cent.

We have found that the implications of not doing this preparation work can be huge: residents who are unaware of the terms and conditions of the contract they are signing, or unaware of defects with the unit they are buying, can find themselves, sometimes years down the line, embroiled in a lengthy and expensive court case, even, in some instances, at risk of losing their home.

We firmly believe that potential mobile home buyers should be strongly encouraged to seek specialist legal advice and conduct a survey of their prospective home before

making any decisions or spending any money. Making site licences readily available so prospective purchasers can find out more about a site will be a vital part of raising awareness and encouraging purchasers to make better consumer decisions.

We have talked about our findings and our recommendations for change in this area in Chapter 6 of our policy report, 'Park Life'.

### **Recommendation**

Part 2, Section 14 (2) (b) should be amended to clarify that not only should the list – the “register” – of regulated site licences be made available, but so should copies of all the individual site licences.

### **Part 2, Section 18: Execution of works by the licensing authority**

We welcome the proposal to give local authorities the power to serve notice in writing requiring a licence holder to carry out works to comply with a site licence condition. We know from our work with local authorities that they would welcome the introduction of a range of enforcement tools, including notices for site licensing. Many local authorities observed that prosecution does not improve standards, but serves only to punish site operators.

Furthermore, our research showed us that in the most extreme cases of badly managed sites, it can take months or even years to get the site operator to carry out repairs, if he or she ever does. We therefore welcome the proposal to give local authorities the power (as a last resort) to carry out any work to ensure compliance with licence conditions.

However, it remains unclear in the Bill how local authorities will recover costs from the licence holder. We believe that if this process is not made as straightforward as possible, local authorities will not use the power to undertake work. We would welcome more detail on how local authorities will be able to claim back costs owed for works on a regulated site.

We have talked about our findings and our recommendations for change in this area in Chapter 4 of our policy report, 'Park Life'.

### **Recommendation**

Part 2, Section 18 should be amended to set out the process by which local authorities will be able to claim back costs which are reasonably incurred in carrying out necessary works.

### **Part 2, Section 20: Exercise of powers under sections 13 and 19**

We welcome the decision to give qualifying residents' associations the right to ask their local authority to consider revoking a licence, or appointing an interim manager. We believe that the Bill should require local authorities to share that decision with the qualifying residents' association and state clearly the reasons for that decision, especially in the event that the local authority decides not to use their powers under sections 13 and 19.

### **Recommendation**

Part 2, Section 20 should be amended to require local authorities to share the decision on any request made under Section 20 and state clearly the reasons for that decision.

### **Part 2, Section 21: Power of entry of officers (etc.) of site licensing authorities**

We believe that local authorities should be given the power to undertake unannounced inspections as a matter of course. During the course of our research, local authority officers explained that they currently have to give twenty four hours' notice before an inspection, which can result in a false impression of the safety and maintenance standards on a site, and they supported introducing unannounced inspections.

For this reason we are disappointed to see that the Bill gives right of entry to officers only if twenty four hours' notice has been given to the owner. We strongly believe that local authority officers should be able to inspect sites unannounced as this will ensure an accurate picture of the standards on site and would be an approach in line with enforcement powers in other areas of local regulation (for example, in the area of food safety).

We have talked about our findings and our recommendations for change in this area in Chapter 4 of our policy report, 'Park Life'.

### **Recommendation**

Part 2, Section 21 (1) should be amended to allow for unannounced site inspections.

We are also disappointed to see that the maximum fine, on summary conviction, for wilfully obstructing an officer from entering a site will be only £2,500 (level 4 on the standard scale). We know that the most unscrupulous site operators will not be deterred by this relatively small level of fine and we strongly believe that the Bill should create an 'either way' offence in this case, which would allow for an unlimited fine of a figure decided by Crown Court.

Independent legal advice obtained by Consumer Focus Wales confirms that the National Assembly has the power to set unlimited fines under Schedule 5 (2) (1) (b) which allows an Assembly Measure to create a criminal offence whereby the maximum sentence for conviction on indictment is two years. This means that the National Assembly can create 'either way' offences (these are offences triable in *either* the magistrates' court or in the Crown Court) and Section 32 (1) of the Criminal Law Act 1977 states that where a person is convicted on indictment of any offence he shall be liable to an unlimited fine.

Consumer Focus Wales strongly urges the Committee to ensure that the threat to rogue site operators is real and that local authorities know they have the support and resources to take action if they need to. We therefore recommend that in those cases where a site operator has wilfully obstructed an officer from entering onto a regulated site, there should be the very real threat of unlimited fines.

We have talked about our findings and our recommendations for change in this area in Chapter 4 of our policy report, 'Park Life'.

### **Recommendation**

Part 2, Section 21 (6) should be amended to allow for unlimited fines.

#### **Part 2, Section 22: Offences in relation to licensing of regulated sites**

For the reasons listed above, we strongly recommend that offences under this Bill, including operating without a licence, stationing more homes than authorised, or breaching a site licence condition, should be punishable by the real threat of unlimited fines.

We recognise that the Bill currently allows for both a summary conviction and conviction on indictment (an 'either way' offence), but we strongly believe that the preferred option should be conviction on indictment. We think it is important that the threat to rogue site operators is real and that local authorities know they have the support and resources to take action if they need to.

*'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 ... I just feel it is the only answer and the only way to concentrate their minds. If it drives them out of the business, [that's] great stuff.'*

(Site operator, England)<sup>2</sup>

We strongly believe that the current enforcement system is not fit for purpose, and the threat of, and evidence of intent to issue a heavy fine should be a vital part of the new regime. As you can read above, many good site operators support higher fines as a deterrent to unscrupulous behaviour, and they recognise that this can only be a good thing in driving out the rogue operators.

We have talked about our findings and our recommendations for change in this area in Chapter 4 of our policy report, 'Park Life'.

#### **Part 2, Section 23: Fixed penalties**

Consumer Focus Wales welcomes the move to give local authorities the power to issue fixed penalty notices for a breach of site licence conditions. However, we would caution that fixed penalties should only be used for minor breaches of a licence as part of a graduated enforcement approach, alongside other enforcement tools such as improvement notices. In the case of a serious breach of a site licence, local authorities should be encouraged to prosecute through the courts.

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<sup>2</sup> Extract taken from oral evidence given to the C LG Select Committee Inquiry on Park Homes, Monday 5 March 2012, Ev10, Q62

## **Are the Bill's proposals in relation to a fit and proper person test for site owners and operators appropriate, and what will the implications be?**

During our research, a huge number of residents told us that they wanted local authorities to be able to run some kind of check on the site operator to ensure that he or she was a suitable person to hold a site licence with the responsibilities that entailed. Many felt that they had signed over their lives to somebody who did not deserve to be in a position of authority. We also asked local authorities about this, and they agreed that having a more detailed knowledge of site licence holders would help them protect mobile home residents.

Consumer Focus Wales believes that the fit and proper person test for mobile home site licensing should be proactive. We believe that without this there is a real danger that any criminal element of the industry would not self-declare any convictions or relevant information, and given the vulnerable nature of many residents on mobile home sites, we are concerned that there is a real risk that rogue site operators could slip through the net with potentially devastating consequences.

During our research, we asked residents about their relationship with their site operator, and where applicable, their site manager. Many residents had a low opinion of their site manager. Around a third of those with a site manager on site disagreed that he or she was either approachable or honest and two fifths of these residents told us that they did not think that their site manager was prompt to address any issues.

The situation became starker when residents were asked about their site owner. 39 per cent disagreed that their site owner was approachable; 33 per cent disagreed that their site operator was honest; and almost half did not think that their site operator was prompt to address any issues. With this in mind, we have outlined our concerns and submitted some recommendations below.

We have talked about our findings and our recommendations for change in this area in Chapter 4 of our policy report, 'Park Life'.

### **Part 2, Section 9: Tests for fitness etc. and satisfactory management arrangements**

We are pleased to see that the Bill will require *all* site owners and managers to undergo a fit and proper person test, and that it will enable the local authority to take into account the actions of any person associated or formerly associated with the applicant.

However, as discussed above, under Part 2, Section 11, we believe that the fit and proper person test should be renewable and undertaken every five years (or sooner if the local authority receives relevant information to warrant action) as part of the conditions of holding a valid licence, which should be reviewed, not renewed, at the same time.

#### **Recommendation**

Part 2, Section 9 should be amended to require a new fit and proper person test to be carried out at least every five years (or sooner if appropriate).

However, we are concerned that the detail of this test remains vague. It is unclear how the local authority will obtain the evidence to show that an applicant fails this test. While we recognise that it is not always appropriate to name specific processes on the face of the Bill, we would welcome more detail about how local authorities will gather this evidence when deciding if an applicant is a fit and proper person: for example, we would welcome a commitment to carrying out a full enhanced background check on all applicants.

Knowing how and what information is being used to determine an applicant's fit and proper person status will be vital when holding local authorities to account on the delivery of their responsibilities under any new regime.

We have talked about our findings and our recommendations for change in this area in Chapter 4 of our policy report, 'Park Life'.

### **Recommendation**

Part 2, Section 9 should be amended to clarify how exactly a local authority is expected to carry out a fit and proper person test.

For example, when considering whether an applicant has a "sufficient level of competence" to be involved in the management of a site (sub-section 5) we would recommend that a requirement of the fit and proper person test for regulated site licence holders should be to hold an accredited qualification.

We believe that this could contribute towards a more professional mobile homes industry with an improved training and qualifications structure. We recommend that an accredited national Welsh qualification be developed for residential site management (in collaboration between the Welsh Government and the industry) which could either be offered online or as a low cost day training course at Government approved training providers and adult learning colleges.

We believe that a nationally accredited Welsh qualification as part of the fit and proper person test would help to ensure that licence holders, including both site owners and managers, become fully aware of mobile homes and site licensing law and the wider social responsibilities around managing a site.

A more professional mobile home sector would not only better protect vulnerable consumers, but proactively encourage site managers and operators to learn more about the laws and regulations governing their work. Most importantly, it would go some way towards ridding the sector of the most unscrupulous site operators.

This is important because Consumer Focus Wales has found that many residents are unhappy, not because their site operator is behaving in a criminal way, but because in some cases, site owners and managers simply do not fully understand their obligations and responsibilities.

We believe that site operators would certainly benefit from specific training and education about their new requirements as part of any new regime. This should be made available alongside ongoing advice and guidance from local authorities as part of a more effective licensing regime.

In an example from another industry, it is a requirement of the Licensing Act 2003 that individuals who wish to supply, or to authorise the supply of alcohol, must undergo an accredited qualification before applying for a personal licence.

We have talked about our findings and our recommendations for change in this area in Chapter 6 of our policy report, 'Park Life'.

### **Recommendation**

Part 2, Section 9 (5) should be amended to require applicants to hold an accredited national Welsh qualification as part of the fit and proper person test.

### **Are the amendments to the contractual relationship between mobile home owners and site owners which would result from the Bill appropriate? If not, how does the Bill need to change?**

Our research uncovered substantial evidence of sale blocking. We found that the existing legislation offers huge potential for financial gain; for example, a site operator who obtains an older mobile home from a departing resident, demolishes it and replaces it with a brand new unit can make a six figure sum in just one successful sale blocking incident.

We have seen cases in which mobile home residents have sold their homes to an unscrupulous site operator for a fraction of its market value. For example, 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. In many cases we have seen, this often represented the life savings, or the only financial asset of the elderly residents involved, who do not have the resources to start their lives again, and are made especially vulnerable.

In Wales, our research found that 41 per cent of respondents did not feel that people on their site were able to sell their homes freely and without interference if they chose to leave. We found that many victims of sale blocking were extremely reluctant to speak to us, citing fear of reprisal.

Chapter 1 of our policy report, 'Park Life', gives more detail about the evidence of sale blocking we uncovered, and provides detailed case studies showing the effect of this veto on the lives of thousands of residents in Wales.

Furthermore, a number of residents told us that they thought their contractual terms were unjust: a fifth of respondents told us that they didn't think their written statement was fair and reasonable and a third did not think their pitch fees were fair and reasonable. With this in mind, we have outlined our concerns and submitted some recommendations below.

### **Schedule 1, Amendment 4 (2)**

Consumer Focus Wales strongly welcomes the removal of the need for a site operator to approve the sale of a mobile home. We believe that this change to the law will make a real difference to thousands of lives and we are delighted to see its

inclusion in the Bill. We have talked about our findings and our recommendations for change on sale blocking in Chapter 1 of our policy report, 'Park Life'.

#### **Schedule 1, Amendment 6 (2)**

We welcome the decision to prevent a site owner from passing on any costs incurred under Part 2 of the Bill.

#### **Schedule 1, Amendment 7 (2)**

Because state pensions and benefits are linked to the consumer prices index (the CPI), we suggest that it would be fairer if pitch fee increases were also linked to the CPI, given that many home owners are retired and therefore on a low fixed income. We therefore welcome the proposal to link future pitch fee changes to the CPI.

#### **Schedule 1, Amendment 9**

Currently, if a mobile home has more than one occupier, only the resident whose name appears first on the written statement is entitled to vote at meetings of a qualifying residents' association. Because we believe that this can exclude women, who are often named second on an agreement, from being able to vote as a member of a residents' association, we recommend that new legislation amend these rules to ensure that any occupier of a mobile can use the household's vote.

#### **Recommendation**

Schedule 1, Amendment 9

Paragraph 28 should be amended to reflect the following change:

“(2) When calculating the percentage of occupiers for the purpose of sub-paragraph (1)(b) above, each mobile home shall be taken to have only one occupier.”

#### **In your view, how will the Bill change the requirements on site owners/operators, and what impact will such changes have, if any?**

Consumer Focus Wales believes that effective reform of the mobile homes industry can only benefit good site owners and managers. We have seen the terrible effect of rogue site operators on the reputation of vital industry which provides affordable housing to thousands of people in Wales. With this in mind, we have outlined our concerns and submitted some recommendations below.

#### **Part 4, Section 28: Approval of codes of practice with regard to the management of regulated sites**

The Bill introduces the power for Welsh Ministers to approve a code practice with regard to the management of regulated sites in Wales. However, it is unclear what the purpose of this code of practice will be, and how it will be enforced, as a failure to comply will not make a person liable to any civil or criminal proceedings.

We are keen to see site operators provided with robust guidance on how they should practice site management (for example, the processes by which they should consult with residents over site improvements, or pitch fee rises), but we also think that they should be required to follow it.



### **Recommendation**

Part 4, Section 28 (5): should be amended to ensure that failure to comply with any code of practice is an offence.

### **Part 4, Section 29: Management regulations in respect of regulated sites**

The Bill will require Welsh Ministers to issue regulations on the management of sites. Again, it is unclear what these regulations will add to the existing ability of local authorities to set licence conditions, and the ability of Welsh Ministers to give guidance as to the form and content of these conditions (which we take to replace the 2008 Model Standards, although we would welcome clarification on this).

For example, Part 2, Section 10 (2) of the Bill allows for site licence conditions to regulate the management of the regulated site, yet Part 4, Section 29 requires Welsh Ministers to set regulations ensuring satisfactory management arrangements for the site.

We are pleased to see that the Bill allows for a duty to be placed on the manager of a site (although it is unclear what meaning 'manager' has in this context, whether site owner or an employee: we would recommend that the Bill makes provision for duties to be placed on both) in respect of the repair, maintenance, cleanliness and good order of the site, but we would welcome further detail on how the enforcement of site licence conditions by the local authority interacts with new regulations on satisfactory management arrangements.

Furthermore, it is unclear who will be responsible for enforcing these regulations: will it be the responsibility of the local authority or individual residents to bring a case against site operators under these new arrangements?

Finally, the Bill creates an offence of failing to comply with these regulations with a maximum fine of £5,000, but Consumer Focus Wales recommends that (as with breaches of a site licence) the Bill should allow for the more effective deterrent of an 'either way' offence. We believe that this is extremely important; the threat of unlimited fines must be real to deter the worst operators.

### **Recommendation**

Part 4, Section 29 should be amended to allow for unlimited fines.

### **Part 4, Section 30: Qualifying residents' associations**

We welcome proposals to allow the membership list of a residents' association to be lodged with the local authority and to remain confidential. However, we do recommend that the contact details of at least one executive member of the association (i.e. the Chair, Secretary or Treasurer) be made freely available so that the site owner and prospective mobile home buyers are able to contact that person.

### **Recommendation**

Part 4, Section 30 should be amended to allow for the contact details of at least one member of the residents' association to be publicly available.

## **Do you agree that the Residential Property Tribunal should have jurisdiction to deal with all disputes relating to this Bill, aside from criminal prosecutions?**

When Consumer Focus Wales talked to local authorities about the proposed transfer of jurisdiction over licensing matters to the Residential Property Tribunal, licensing officers told us that while they agreed that home owners should be able to go to the Tribunal for dispute resolution, they were concerned about jurisdiction over site licensing passing to the Tribunal.

Licensing officers agreed that there could be a role for both but they said that local authorities should retain the right to take site owners to court. We agree with this, and we support proposals to allow local authorities a range of options.

However, Consumer Focus Wales believes that, as a matter of urgency, it should be made clear whether applications for termination of an agreement by the site operator will remain a matter for the courts, because of the serious nature of evicting somebody from their home.

We are concerned that there could be some confusion over this, given that the Explanatory Memorandum states that “the RPT (the Residential Property Tribunal) will have jurisdiction over all disputes related to this Bill, aside from criminal prosecutions” (118, p28) and we would welcome further clarification, either in the Bill, or in the accompanying notes.

While we agree that in theory, the Residential Property Tribunal Service should offer a low-cost and accessible method of resolving disputes, we remain very concerned about the capacity of the Tribunal to deliver effectively in the best interests of both residents and site operators.

For example, in practice, it is currently difficult for residents to find out information about the Tribunal: they do not currently have a website, and neither do they publish cases or information for residents or site operators about how to open an application. This could help to explain why the Tribunal in Wales has seen so few cases compared to the Tribunal in England. Certainly from discussions with residents, we know that awareness of the Tribunal and its powers is currently very low in Wales.

We believe that as a matter of urgency, the Tribunal should establish transparent reporting procedures, publish a clear and accessible website with detailed guidance for residents and site operators, and ensure that through regular, mobile homes specific legal training, they are able to offer well informed Tribunal members who are able to use their expertise to take fair decisions.

Finally, we are concerned that in England, we have been told that some site operators are refusing to acknowledge the rulings of the Tribunal. We therefore recommend that refusal to comply with a Tribunal decision should be a serious breach of the licence conditions and therefore an offence under Part 2, Section 22 (3) of this Bill. Non-compliance with a Tribunal ruling, including the non-payment of any damages awarded, should also be taken into account when considering whether the site operator remains a fit and proper person under Part 2, Section 9 of this Bill.

We have given a great deal more detail about our findings in this area in Chapter 6 of our policy report, ‘Park Life’.

## **Recommendations**

Part 2, Section 9 should allow for non-compliance with a Tribunal decision to affect the fit and proper person status of a licence holder

Guidance issued by Welsh Ministers should allow for non-compliance with a Tribunal decision to be considered a breach of licence conditions

### **What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill take account of them?**

We are very concerned that the large number of regulations provided for in the Bill may present a significant barrier to the implementation of the Bill. There are fourteen regulation and order-making powers in this Bill and two sets of guidance.

While we recognise that much of the detail of this reform is not suited to the face of the Bill, we are concerned about the capacity of Welsh Ministers to enact much of the detail which lies underneath the primary legislation, particularly given the proposed Housing Bill which is due to be laid in 2013.

We will be seeking to work with Welsh Government and Assembly Members to find ways of ensuring that the effective delivery of the final Bill is not held back by the sheer volume of secondary legislation needed to enact its provisions.

### **Additional concerns not addressed within the draft Bill**

#### **Indirect sale blocking**

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. 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. Again, we have seen residents lose thousands upon thousands of pounds through this form of indirect sale blocking.

## **Recommendation**

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

#### **Access to inspection reports**

We believe that copies of local authority inspection reports should be made available to residents. A copy should be sent automatically to any qualified residents' association and made available online. 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 also be publically available for people to view before choosing to live on the site. We believe that these documents should be available on request from the local authority by phone or by post without being subject to a formal information request.

We think that 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.

We also believe, as we have highlighted above, that prospective purchasers should be strongly encouraged to seek specialist legal advice, conduct some background research and commission a survey of their prospective home before making any decisions or spending any money, and that making inspection and enforcement reports available will help them make informed consumer choices.

### **Recommendation**

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.

### **Changes to written agreements under assignment**

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 (when a home owner buys their home in a private sale from another resident, as opposed to buying from the site operator, which results in a brand new contract) 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 express terms of the written statement within six months should they wish to do so.

### **Recommendation**

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

### **Clarification of a site operator's maintenance and repair obligations**

Current legislation allows site operators to pass on the costs of "improvements" to residents through a pitch fee increase. 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 clarified and the costs of doing so should not be included in any pitch fee review.

Consumer Focus Wales believes that the site operator's maintenance and repairing obligations would benefit from clarification. We firmly believe that without effective consultation with residents, or, alternatively, a Tribunal decision, the site operator should not have the ability to recover costs from "improvement works".

### **Recommendation**

We recommend that the site operator's maintenance and repairing obligations should be further clarified by the Bill.

## **Further information**

Our full report and an executive summary document are both available to download from [www.consumerfocus.org.uk/wales](http://www.consumerfocus.org.uk/wales). Alternatively, please contact us by calling 029 2078 7100 or email [contactwales@consumerfocus.org.uk](mailto:contactwales@consumerfocus.org.uk) to request a copy.

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