LETTER TO EDITOR OF ESTATES GAZETTE

Dear Sir
Martin Ward is entirely correct that there is no other country in the civilised world where one private individual can legally be deprived of his or her property for the benefit of another without adequate compensation. This is because virtually no other civilised country has residential leasehold tenure.

It is the leaseholder – not the freeholder – who is being dispossessed by legislation. Take for example, forfeiture. Under the Commonhold and Leasehold Reform Act, if it can be proved that more than £350 is owing in ground rent or service charges, the freeholder can forfeit the lease without compensation and keep the entire market value of that lease. The leaseholder is then homeless but liable for mortgage payments.

Looking at the respective financial contributions, the freeholder at the outset sells a long lease at a price that includes the full value of the land and the buildings as well as a substantial profit. This is paid by the leaseholder. Again, as the lease continues, it is the leaseholder, not the freeholder who pays for repairs and maintenance.

At the end of the lease, the freeholder is able to recover the entire investment that the leaseholder has made. So, despite having contributed to neither the construction nor the maintenance of the building, the freeholder is able to take everything. If the lease has less than 80 years to run, the leaseholder has to pay considerably more than the market value of the freehold reversion to buy the freehold or even extend the lease.

The only other European country in which the leasehold system remains on any scale is in Ireland. There, the Landlord and Tenant (Ground Rents) Act 1978 abolished the right of landlords to create leases for homes. Leaseholders may buy out a freehold interest by paying the capitalised ground rent if the lease has more than 15 years to run. If the lease has less than 15 years to run, compensation is also related to market value. Bearing in mind the financial contribution of both parties, the Irish method seems far more equitable than that in England Wales.

Nigel Wilkins
Chair
CARL

Dear Sir
The leasehold "enfranchisement" topic is attracting valuable debate. Nigel Wilkins' letter relied on the red herring of forfeiture, which, most landlords agree, can be unfair, but where there have been no instances in the past few years following the useful safety valves introduced by the 2002 Commonhold and Leasehold Reform Act.

His letter went on to make claims that ignore the simple economics of all such lease transactions.

In the beginning, instead of an outright sale at a slightly higher price, a freeholder offers a lease of, say, 99 years, during which period the lessee has full and exclusive enjoyment and use, together with the normal corresponding maintenance responsibilities, and then hands the property back at the end of the agreed term. Such transactions are fairly agreed and transparent for all involved.

Martin Ward
Accountant

Dear Sir
Martin Ward claims that the Commonhold and Leasehold Reform Act has put an end to forfeiture actions. Not so. The Leasehold Valuation Tribunal website lists no fewer than thirty-three forfeiture decisions so far this year in the London area alone.
Much more extensive is the continuing use of forfeiture threats, most of which result in leaseholders acceding to landlord demands – whether these are reasonable or not.
Equally misleading is his suggestion that residential leases are entered into freely and fairly. With more than 99 per cent of flats in England and Wales offered for sale on a leasehold basis, consumers are effectively being denied the alternative choices of tenure (cooperative, condominium, commonhold) available in other jurisdictions. There would be few willing purchasers of leases if these other, superior forms of tenure were realistically made available in England and Wales.
Nigel Wilkins
Chair
CARL

THE Leaseholder
C.A.R.L
Campaign for the abolition of residential leasehold
www.carl.org.uk
AUTUMN 2007 ISSUE 22

CONSULTATION REVEALS FRAUD WEAKNESSES

As the government conducts yet another pointless consultation exercise over how landlords should account for service charge money, the Institute of Chartered Accountants stands accused of covering up serious malpractice by accountants who audit leasehold accounts (see page 2).

This latest consultation has been prompted by the government's admission that the sections of the Commonhold and Leasehold Reform Act covering service charge accounts are unworkable. The government should have the honesty to admit that the entire piece of legislation is completely unworkable and needs to be substantially reformed – not only to give justice to leaseholders, but also to bring the law on property tenure in this country from the middle ages and into the twenty-first century.

The declared aim of this latest consultation paper is to tackle fraud in the leasehold sector. The ease with which fraud can be committed in the sector has rendered it as a magnet to criminal and unscrupulous elements, who arrive from all corners of the globe to take advantage of Britain's leaseholders. Anyone, whatever the length and breadth of their criminal record can be a landlord or managing agent in this country.

Relying on accountants appointed by the landlords to tackle this fraud is seriously mistaken. All of the largest frauds in recent years (including BCCI, Maxwell and Barings, Enron) took place either with the breathtaking negligence of, or the direct collusion by, leading firms of accountants.

Several accountancy firms have been fined by their own professional bodies for signing defective service charge certificates; surprisingly they are still qualified to continue carrying out service charge audits. Some of the largest accountants in this field, Spofforths, Victor Boorman, Stenhouse Hager and Westbury were fined after signing, in total, thousands of defective service charge accounts.

Government consultations on leasehold issues have a chequered history. Two years ago, civil servant David Plant admitted to the editor of *The Leaseholder* that John Prescott's department had ignored Cabinet Office guidelines when conducting these consultations (see *The Leaseholder* Summer 2005). Little wonder that the government is in such a mess over leasehold reform.

ANNUAL CONFERENCE

Saturday 24 November at 2:00 pm
Lecture Theatre, Kensington Library, Hornton Street, London W8
(nearest tube station: Kensington High Street)

We have an interesting line-up of speakers to discuss service charges and enfranchisement – including plenty of time to answer your questions. A brief AGM will follow with the election of officers and their reports. After the meeting we will move on to a nearby pub for an informal social. This is an ideal opportunity to meet and discuss common issues with the speakers, members of the committee and other leaseholders.

ACCOUNTANTS COVER UP MALPRACTICE

A firm of chartered accountants has been found guilty by its own Institute of signing unqualified service charge audit certificates at Oslo Court, a block of flats in north-west London, when the firm had not in fact carried out any audits in accordance with the Institute's own guidelines.

Despite the seriousness of this malpractice, the accountants Westbury only received a "caution" from the Institute. This is even more surprising since the firm has a long history of malpractice in service charge accounting. Back in 1999, Richard Ward, then a partner in the firm, was fined for signing defective service charge certificates. He was also provided with extensive advice by his Institute over how to conduct these audits in future. Even more embarrassing is that Westbury served as advisers to the Association of Residential Managing Agents (ARMA).

It is totally unacceptable that a member of the accountancy profession should be found guilty of signing such misleading audits and yet be able to continue undertaking this work. Leaseholders rightly have no confidence in the ability of accountants to check that they have not been defrauded by their landlords or managing agents.

In another decision on chartered accountants Cohen Arnold, the Institute of Chartered Accountants decided not to discipline the firm for signing defective service charge accounts. In defence of their member firm the Institute wrongly claimed that (a) there is no guidance in relation to carrying out such assignments and (b) there is no mandatory format for the accounts.

The Institute's own publication *Audit News* in October 1998 contained an article advising accountants how to carry out service charge audit work. Its author, Tim Watson, confirmed to the editor of *The Leaseholder* that his article "indicated the [Institute's] intention to make some guidance available to member firms in respect of landlord and tenant work". *Audit News* is circulated to all audit firms registered with the Institute.

The mandatory format for service charge accounts is contained in section 21 of the Landlord and Tenant Act 1985. This sets out precisely how service charge accounts are to be presented and verified, in a manner that most non-accountants would understand.

This Institute of Chartered Accountants put up a concerted fight against the complainant in these cases, in a desperate effort to defend the misconduct of its member firms. The time is long overdue when accountants can no longer regulate themselves.

Inside Out

BBC 1's *Inside Out* television programme recently featured the growing scandal over the massive service charge demands issued to leaseholders by the London Borough of Southwark. Most other London boroughs are pursuing the same ruthless strategy, which will ultimately force large numbers of council leaseholders to abandon their homes.

In the programme, Cllr Paul Bates accused Southwark council of issuing service charge bills that were a "complete work of fiction" and then followed these up with summonses against the leaseholders. The council was also accused of dramatically overcharging for building work and management fees.

In order to meet the mounting criticism, the council appointed an independent auditor Anita Shields to review the service charge accounts prepared by the council. In the programme, Ms Shields accused the council of providing no transparency over service charges, by not providing her with essential documents and of filtering information before it reached her. She gave examples of work not being properly verified before being charged to leaseholders.

Southwark council dismissed Ms Shields, claiming that she had gone beyond her terms of reference. That leaves the burden on Southwark to justify its service charges.

The Abolish Leasehold petition is now in the top five in the housing section on the Prime Minister's petition site – out of a total of almost 300 petitions in that section. We still need even more signatures for it to have a real impact. If you have not already signed the petition, please do so without delay. If you have already signed, please try and persuade your friends, relatives and neighbours to do so now. This is the link : - http://petitions.pm.gov.uk/UnfairLeasehold/

MEMBERSHIP

***The Leaseholder* aims to keep leaseholders up-to-date with legal developments, as well as spearheading our campaign to abolish the discredited medieval leasehold system. Join CARL so that we can speak from a position of even greater strength. Please return the enclosed membership form and your subscription. Existing members should have already received your membership cards.**

Help extend the campaign to end the misery caused by the leasehold system. Let us know if you want more copies of *The Leaseholder* for your neighbours. Write to your MP about your leasehold problems and tell him/her about CARL. Committee members are ready to discuss your issues with MPs in Westminster.

RICS FALLS DOWN ON THE JOB

We have all known for a long time that leaseholders are routinely ripped off over buildings insurance, often being charged a multiple of the competitive insurance premium. The cost and complexity of challenging these excessive charges via the leasehold valuation tribunal have deterred all but the most determined from proving this point.

Last year the Royal Institution of Chartered Surveyors claimed to have begun an investigation by appointing Roger Southam to look into the matter. Roger was the keynote speaker at CARL's AGM last year. However, after more than a year of inaction by the RICS, Mr Southam has now accused it of failing to act on its word by preventing him from carrying out a proper investigation.

Two things need to be done. Firstly, RICS should be stripped of its status as a designated professional body, since it lacks the professionalism to play any role in regulating its own members. RICS is more interested in enabling its members to exploit leaseholders than it is in representing professional standards.

Secondly, the Financial Services Authority should be required to protect the interests of the consumer (that is the leaseholders) rather that the customer (that is the landlords) of these insurance policies. In fact, the Financial Services and Markets Act already requires the FSA to protect consumers. However, its rulebook departed from this requirement by only extending its protection to the immediate customers of financial services.

Reluctant regulators

The housing minister, Yvette Cooper, announced in October that a new housing regulator (The Office for Tenants and Social Landlords) will be set up as part of the reforms in the forthcoming Housing and Regeneration Bill. This new regulator is one of the proposals by Professor Martin Cave contained in his report, "Every Tenant Matters".

Although Professor Cave thought that local authorities should be brought within the scope of the new regulator, the government is currently wavering on this issue. CARL takes the view that, not only should local authorities be brought within the scope of this new regulator, but also that this regulator should cover all tenants and leaseholders in both the public and private sectors.

More specifically, the prosecuting role of local authorities under landlord and tenant legislation should be transferred to the new regulator. Local authorities have a lamentable record in failing to prosecute private sector landlords. As landlords themselves they are subject to a major conflict of interest in undertaking this work – they can hardly be expected to prosecute themselves!

Another issue concerns the role of the independent housing ombudsman, whose statutory scope is limited to housing associations and those (few) landlords who voluntarily submit to its jurisdiction. CARL takes the view that all landlords (public and private) should be required to allow disputes with tenants to be dealt with by the ombudsman, rather than the costly and intimidating leasehold valuation tribunal.