

# THINK TWICE BEFORE YOU DOWNSIZE

Rosie Murry-West

Downsizing your property and moving to a retirement flat may leave your family with a huge financial headache thanks to complicated leases and hard-to-shift second-hand flats.

New figures calculated for the *Sunday Telegraph* show that it takes nearly three times as long to sell a retirement property as it does for an ordinary home. In the interim, relatives will be left paying maintenance costs and other fees when a family member dies or moves into a care home.

“There are all sorts of issues and fees,” said Joe Oldman, policy officer at Age UK. “There are really common problems with leasehold contracts and people need to take very good advice before moving into these communities.” He added that in some cases it made sense for older people to stay put and make changes to their existing property.

More than 200,000 people live in retirement developments, which are becoming increasingly popular as the UK population ages. However, the properties often require hefty refurbishment before they are attractive to a new buyer, while the leases can be very restrictive, making them hard to sell.

Figures from MoveWithUs, which sells large volumes of property for builders who have taken on homes in part-exchange as well as carrying out probate sales, show that it takes on average 87 days for it to sell this property, whereas it takes 236 days to sell a property in a retirement community. On the open market, the average property takes 148 days to sell, still well below the retirement property figure. The average second-hand value of a retirement property is just over £105,000, MoveWithUs said. Brand new retirement homes frequently cost far more than this.

Unlike the majority of family homes, most retirement properties are sold leasehold – usually with a lease lasting more than 100 years in the first instance. However, some leases are restrictive, and include exit or transfer fees. This means that if an owner or his or her dependants sells, or even rents out, a flat, they must pay up to 5 per cent of an apartment’s value in some cases. If the flat does not sell quickly, letting soon becomes expensive because of these fees.

The Office of Fair Trading (OFT) is currently investigating these exit fees. It will not name the firms that it is investigating, although sources indicated that it is now focusing on the larger firms in the retirement market.

“The OFT is in negotiation with these firms about charges that the OFT considers the firms should make to the way they enforce exit fee lease terms and what future leases should include,” a spokesman said. Fairhold, which is registered on the Irish stock exchange, is known to be one of those under investigation. It owns many of the freeholds for former McCarthy and Stone properties. It has levied transfer fees of 1 per cent.

There are understood to be 26 firms under investigation concerning the fees. The issue is not whether the fees are legal, but whether they are disclosed openly when flats are sold on. McCarthy and Stone itself has abolished transfer fee charges. “We do not enforce exit fees as part of our lease agreement,” a spokesman said. “A 1 per cent contribution upon the sale of an apartment goes toward future repairs and maintenance within the scheme.”

The OFT has not yet concluded its investigation, which has been running since 2010. Age UK produced a report saying that it has dealt with hundreds of cases relating to service charges in retirement properties, as well as tens of cases related to transfer fees.

The charity’s report highlighted the problems for families due to the fees. “Those inheriting a flat may find it impossible to sell in the current climate but still have to pay a fee,” Age UK said. “If they sub-let, the transfer fee is payable, although it may cancel out any rental income. If the tenant leaves, so that the leaseholder has to let the property to a new tenant, the fee is payable again.”

Age UK believes that transfer fees should be abolished. Mr Oldman said that customers should be very careful before buying a retirement flat and they should make sure that they get suitable expert advice.

“People should weigh things up very carefully,” he said.

*Sunday Telegraph*, 8 July 2012

# Leaseholder



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## LEASEHOLD SCANDAL EXPOSED

**Most of you will have seen Channel 4’s recent Dispatches programme exposing the leasehold system for what it really is – a nightmare of corruption and organised crime perpetuated against the country’s five million leaseholders. The programme demonstrated that the abuse of leaseholders is systemic and endemic across all types of landlords in the public and private sectors. CARL cooperated with the producers of the programme providing extensive background information.**

Amongst the swindles, the programme described how a large number of local authorities have struck “sweetheart deals” with contractors, allowing them to share in the profits from building work paid for by leaseholders. Housing minister Grant Shapps responded to the Channel 4 findings by saying that those responsible for making the lives of leaseholders such a misery should be “shamed” for their behaviour.

Following extensive investigations, CARL can today name and shame the Mr Big who has been shielding criminal landlords from exposure and prosecution. He holds a position of power and is a close associate of David Cameron. He has stood firmly in the way of any legal reforms that would help leaseholders, and has resisted all pressure to ensure that existing leasehold law is enforced against offenders. His name is Grant Shapps.

We also know he is not acting alone. Many of his collaborators can easily be identified from the list of wealthy Conservative Party donors. Others can be located at town halls up and down the land. Asil Nadir was not the only crook to donate money to the Conservatives, while corruption in local government procurement is now legendary.

The police have some serious questions to answer, not just about their failure to investigate fraud in the property management sector, but also by their refusal to pursue fraud and corruption more generally. All too often they dismiss fraud perpetuated by landlords against leaseholders as merely a “civil matter”. It is not.

Research by the University of Portsmouth, in collaboration with the law firm Eversheds and accountants PKF, has estimated that fraud costs the UK economy as much as £73 billion a year. That is a huge multiple of the cost of house burglaries.

The study also found that only 1.5 per cent of all fraud is reported to the police, while just 0.4 per cent of cases are actually prosecuted. This is not the track record to be expected of a highly paid, highly trained police force; it is what might be expected from a group of work experience trainees.

## ANNUAL CONFERENCE

Saturday 29 September at 2:15 pm

Lecture Theatre, Kensington Library, Hornton Street, London W8

(nearest tube station: Kensington High Street)

We have as usual an interesting line-up of speakers. The focus will be on what you can do to advance the demise of the leasehold system. A brief AGM will follow, and this will include reports and the election of officers. After the meeting we will move on to a nearby pub for an informal social. This is the ideal opportunity to meet and discuss common issues with the speakers, members of the committee and other leaseholders.

# MANAGING AGENT CONVICTED OF FRAUD

The recent jailing of managing agent Simon van Houten, who was employed by Rendall & Rittner, has come as a complete surprise. Obviously not because we had thought that managing agents were scrupulously honest, but because we all assumed they could steal leaseholders' money with impunity and get away with it. The story is newsworthy, not because of the rarity of the crime, but because of the rarity with which such a crime is prosecuted by the police.

Van Houten received a thirty month jail sentence for stealing £122,000 in service charges. He set up a bogus company to bill the leaseholders for work that was never done, but was instead used to fund his extravagant lifestyle. He also lied about his qualifications. In view of the amounts he had stolen, let's hope he is charged for board and lodging whilst in prison.

Despite this fraud, Rendall and Rittner still enjoy authorised status at the Financial Services Authority, together with membership of RICS and ARMA – according to their website. We need a full investigation into how these so-called professional bodies cover up serious misconduct – including fraud – by their members. All too often trade bodies simply act as facilitators of collusive and corrupt behaviour.

And who won this year's inaugural Property Manager of the Year prize organised by the trade magazine *Property Week*? Why Rendall & Rittner of course. Among the judges was Trevor Moross, a director of LEASE. Red faces all round.

## Church militant

The Church of England has emerged as yet another powerful landlord which has decided to turn to the courts to help it to exploit leaseholders. The Church Commissioners have won a case against two leaseholders, enabling church to forfeit their homes for non-payment of service charges without a full court or tribunal hearing. This decision claws back much of the benefits gained by leaseholders under the Commonhold and Leasehold Reform Act 2002 (“Church Commissioners for England v Koyale Enterprises Limited and one other”).

“Lay not up for yourselves treasures upon earth, where moth and rust doth corrupt, and where thieves break through and steal”. (Matthew, Ch6, v19)

## Cooperative home ownership

Jonathan Reynolds, the Labour Co-op MP for Hyde and Stalybridge, is continuing his campaign to promote cooperative housing tenure.

Last October he introduced a private members bill, the Co-operative Housing Tenure Bill, calling for legislation to make co-operative tenure a recognised form of ownership in English property law – thereby making it easier for housing co-ops to start up and to organise themselves. Just before the summer recess he was able to secure a debate to draw further attention to the issue.

## LIBDEM THINK-TANK SLAMS LEASEHOLD

The LibDem think-tank CentreForum has produced a report that is highly critical of the leasehold system and the leasehold valuation tribunals. The authors interviewed the Chair of CARL in the course of the preparation of their report.

However the press coverage focused largely on the report's call for independent regulation of the sector, rather than the more fundamental proposals contained in the report. Regulation will only provide a partial solution to the problems faced by leaseholders.

The report takes the view that in the longer term leaseholders should be given greater direct control over their own homes through the expansion of commonhold ownership, which allows individuals to own their homes in perpetuity whilst collectively controlling the management of the building. It is impossible for existing leasehold properties to convert to commonhold because this move requires unanimous support, and developers of new blocks prefer to build leasehold properties rather than commonhold because it allows them to sell both the leasehold and freehold interest.

CentreForum would like to see all new blocks of flats sold on a commonhold basis, with legislation preventing further leasehold developments. The unanimity requirement for converting existing leasehold properties should also be relaxed to a qualified majority of leaseholders to facilitate the growth of commonhold.

## WHAT IS CARL CAMPAIGNING FOR?

- All new residential developments to be either commonhold, cooperative or freehold – with no more leasehold homes. Leasehold hardly exists elsewhere in the world. Our neighbours, Scotland and Ireland, both have legislation in place preventing new residential leases from being sold.
- Let existing leaseholders transfer to commonhold at a fair price – reflecting the fact that leaseholders pay in full for the construction and maintenance of their homes. The freeholders contribute nothing at all.
- End forfeiture – since it amounts to confiscation – and replace the leasehold valuation tribunals by a regulator to prosecute corrupt landlords and managing agents. All disputes should be transferred to the independent housing ombudsman.

*JOIN US TODAY AND HELP ACHIEVE OUR GOALS*

## Ireland bans new leasehold flats

Residential leasehold tenure hardly exists outside of England and Wales, and those countries where it persists are doing their best to rid themselves of this scourge. Our neighbours Scotland and Ireland have legislation in place to free all remaining leaseholders from tyranny.

Ireland passed legislation preventing the sale of any new leasehold houses as long ago as 1978, while existing leaseholders can buy out their freeholder at a price determined by a simple formula. This price will never be more than one-eighth of the market price. Compare that with here, where leaseholders usually have to pay more than 100 per cent of the market price to a freeholder who has contributed nothing to the construction or the maintenance of their homes.

Now Ireland has gone a stage further, in legislative moves that will prevent developers from selling flats on a leasehold basis. The Multi Unit Development Act has now taken effect. This means that the developers of blocks of flats must transfer legal ownership of the common parts of the building to the owners' management company prior to the disposal of any units in the development. The management company is to be set up at the expense of the developer. This arrangement would form a useful model for us to follow in moving the tenure of new blocks of flats from leasehold to commonhold.

## The shared ownership con

A study by Cambridge University commissioned by Thames Valley Housing has revealed that shared ownership schemes are not functioning very well, leaving many buyers unable to move on or to increase their stake in the property. Reselling a shared ownership property is proving difficult, while “staircasing” upwards to acquire an increased share in the property has become unrealistic because of high property values.

Very few shared ownership homes are resold because of restrictions placed on who can qualify to purchase a shared ownership home. Although buyers are theoretically able to increase their share of the property, there are many obstacles in the way, such as the cost of the valuation each time an

additional portion is acquired. Another issue is income, with purchasers expected to bear the entire cost of the maintenance of the property, despite owning just a portion of it.

What the report does not point out is that most shared properties are owned under leasehold tenure, so “full” ownership only means ownership of a lease with the housing association still the landlord in full possession of the freehold.

## Admin fees hit leaseholders

In case you didn't know already, freeholders and their agents massively overcharge leaseholders for the simplest paperwork. Emma Lunn has published an article in *The Guardian* reporting her findings (Money Guardian, Saturday 7 July 2012).

After being ripped off over the years on service charges, there is a final sting in the tail when a leaseholder decides to sell up, in the form of hefty fees for the arguably minimal paperwork the agents are asked to complete. When Ms Lunn sold her flat, she was shocked to find that, in order for the sale to complete, she had to pay the freeholder and managing agent almost £700 – more than she had paid her conveyancer for all the legal work involved in selling her flat. She realised that if she refused to pay any of the charges, she wouldn't have been able to sell the flat.

The fees charged often bear no relation to the work involved. So how much does this paperwork really cost? If you buy an ex-council flat your freeholder is likely to be a local authority, many of which display their charges online. Newcastle City Council, for example, charges £75 for a leasehold inquiry pack.

What can leaseholders do if they think the admin charges levied during a sale are unreasonable? Assuming a direct complaint to the managing agent fails, in theory they can take their case to the Leasehold Valuation Tribunal quoting the Commonhold and Leasehold Reform Act which says administration charges must be “reasonable”. But in practice this can be a long, expensive process and most will regard it as simply not worth the hassle.