

# THE Leaseholder



NEWSLETTER FROM CARL [www.carl.org.uk](http://www.carl.org.uk)

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## Commonhold – all spin and no substance

The government is about to achieve a remarkable feat on the housing front. It will shortly be introducing the regulations governing commonhold property ownership, two years after passing legislation effectively killing off all prospect of commonhold tenure becoming a reality. The government has already admitted that there will be little commonhold development despite the demand from home owners.

Commonhold ownership would give flat owners a form of property tenure as close to freehold as could be achieved. Flats would be owned in perpetuity, just like freehold, while flat owners would also own the common parts of the building on a mutual basis. There would be no third party landlord, lacking a direct interest in the property and motivated by a desire to exploit the leaseholders.

CARL sees commonhold ownership as crucial to resolving most of the problems that flat owners currently experience. The inferior leasehold system has been abandoned in virtually every other part of the globe, including Scotland.

Although commonhold tenure may operate under different names in different countries – condominium ownership in the United States, strata title in Australia, cooperative ownership in Europe – commonhold is by far the most successful form of shared property ownership.

The Labour Party's publication *An End to Feudalism*, issued just before the 1997 general election and written by Nick Raynsford and Frank Dobson, said: "Labour will

## FORFEITURE – THE LATEST

Shona McIsaac is one of a number of MPs who support our campaign to abolish forfeiture (see back page). She has written to housing minister Keith Hill arguing that draconian forfeiture provisions have no place in modern housing legislation.

Write to your MP to get him/her to support the abolition of forfeiture. Point out that the latest proposals from the Law Commission to try and soften the blow of forfeiture – by simply renaming it "termination of tenancy" – do not address the problem. Deprivation of someone's home for a breach of the lease is not just disproportionate (and therefore in breach of Article 1 of the European Convention on Human Rights); it also constitutes a breach of Article 3 since it constitutes

inhumane and degrading treatment. The government failed to seek legal advice whether the forfeiture provisions in the Commonhold and Leasehold Reform Act actually comply with the European Convention.

The right to forfeit or terminate a tenancy is particularly inappropriate in a jurisdiction where any individual, whatever the length of his/her criminal record, can own the roof over someone else's home. The Law Commission claims that it is an independent body; in fact its five commissioners are appointed by an unelected government minister who sits in the House of Lords.

introduce legislation creating the commonhold tenure. Our proposal is that this should apply where new tenancies are created and where existing leaseholders wish to transfer from their current status. In such cases the support of a majority of the leaseholders will be required to effect the transfer."

However, the government has fallen a long way short of this objective. Its Commonhold and Leasehold Reform Act does not make commonhold compulsory for new developments; nor does it enable leaseholders to transfer to commonhold on a simple democratic majority basis. Instead, the government now insists that such a transfer can only take place if each and every party with an interest in a block agrees, guaranteeing that minority rule prevails – and commonhold remains out of reach.

### MEMBERS SOCIAL

**Come to our first ever  
'members social.'**

**We have organised the social  
so that leaseholders can  
meet each other;  
discuss common issues;  
and relax!**

**Join us on**

**Saturday 6 March,  
upstairs at  
'The Plough'  
in Museum Street,  
London WC1,  
starting at 5 pm.**

## HOUSING TRIBUNALS

Our previous edition of *The Leaseholder* exposed the inherent bias in the composition of the leasehold valuation tribunal panels. Whereas employment tribunals make a consistent effort to ensure that their members include a fair balance between employer and employee representatives - to ensure that there is no appearance of bias - no conscious effort of this kind is made with housing tribunals. The result is that landlord interests predominate over tenant leaseholder interest.

Most housing panel members are chartered surveyors, and even the "lay" member on many panels is a chartered surveyor. The problem with this is that chartered surveyors receive the bulk of their work from landlords - even though tenants and leaseholders usually end up paying the bills. It is doubtful whether this complies with Article 6 of the European Convention on Human Rights, which guarantees the right to a fair trial.

This is a time when the impartiality of our system of justice is coming under increasing scrutiny and the lack of balance in housing tribunals is a major cause of concern.

Also the the question whether we need such tribunals at all remains unanswered. The creation of an independent housing regulator and a parallel housing ombudsman scheme would handle most outstanding landlord and tenant disputes much more efficiently and much more effectively.

## ONE LAW FOR THE LANDLORDS

Three senior appeal court judges agreed that a lower court's decision to stop the retrial of landlord Nicholas van Hoogstraten for manslaughter "thwarts the interest of justice". However, they also agreed that there was nothing they could do given the present state of the law, and recommended that the law be changed. Hoogstraten was released from prison in December after serving one year of a 10-year sentence for the manslaughter of landlord associate.

## CARL's Annual General Meeting



*Kevin Cahill, keynote speaker, Anna Brownlow, committee member, and Nigel Wilkins, chairman.*

Our AGM last November was both lively and interesting. The keynote speaker was Kevin Cahill, the author of *Who Owns Britain*, a detailed account of the country's leading landlords.

Kevin shared our frustrations with the state of land law in Britain. He felt that the complexity of the law is totally unnecessary, and deliberately designed to ensure that those who do not own land suffer discrimination. Although there may be "rights", these can only be exercised through complex legal processes that are difficult for most people to access because of the prohibitive cost of legal advice.

## Are You Covered?

We know that landlords often over-charge leaseholders for building insurance. This issue was discussed by one of our members who spoke at our recent AGM. Leasehold valuation tribunals have not been consistently helpful in exposing the insurance scams to which leaseholders are subject. Leaseholders will find the decision by the tribunal in 'Curtis v Lakeside Developments Ltd' in March 2003 illuminating.

The leasehold applicant in this case was able to obtain insurance quotes much lower than the insurance charges imposed by the landlord, including one from the same insurance company used by the agents DGA.

Kevin argued that there should be equity between the parties, with basic rights accessible to all. Three members of CARL gave an account of their gruelling experiences of fighting difficult landlords and the personal and financial costs. They spoke about the day-to-day aggravation of dealing with rogue landlords and agents, the ease with which landlords can get away with service charge scams, the cost and complexity of mounting a case before the LVT, and the obstacles still in the way of achieving enfranchisement. Their courage and determination impressed us all.

The tribunal were concerned that the insurance valuation "had not been carried out by an independent valuer," and that "Simmonds and Partners, the valuers, Deacon Insurance Brokers and DGA were all part of the Hercules Group."

The tribunal also reduced the management charges imposed, accepting the evidence of the leaseholders that DGA did not answer correspondence. The tribunal also noted that this conclusion was "supported by the correspondence from Mr David Glass which indicates that he was having difficulty in obtaining information from his agents DGA (formerly known as David Glass Associates)."

## Membership News

### Calling volunteers

Our AGM led to many CARL members volunteering to help us run the campaign. As well as membership initiatives and support for our political work, volunteers are now working on up-grading and up-dating our website. It is hoped to have the new look site up and running very soon on [www.carl.org.uk](http://www.carl.org.uk)

### Membership Sub-Group

We are taking various initiatives in CARL to improve the services we offer members and our contact with you. We have formed a 'Membership Sub-Group' composed of CARL committee members and volunteers. Our first initiatives have been to issue membership cards and to organise a members' social - others will follow so watch this space!

## New Membership Cards



Membership Card

Expires: end /0

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Email: [charlotte@carl.org.uk](mailto:charlotte@carl.org.uk)  
Website: [www.carl.org.uk](http://www.carl.org.uk)

Members with current subscriptions should have received their membership cards in the last few weeks. We have introduced the cards by popular demand. They will serve to confirm the receipt of your cheque and also to remind you when your subscription needs to be renewed.

**Do you run a residents association and issue a newsletter? If so please feel free to reprint any of the items printed in *The Leaseholder* but please send us a copy of your newsletter.**

Help us to extend our campaign by giving your neighbours copies of *The Leaseholder*. We can send you extra copies on request

### Guardian Letter 24 Jan 2004

The subsidies that our largest landowners receive on their agricultural interests look like petty cash when compared with the scale of the public subsidies they receive on their property interests in urban areas.

The combination of restrictive planning laws and the outmoded leasehold system gives them a massive subsidy. Because of the vagaries of the law, landlords are able to sell long leases to homeowners at a price equivalent to their full freehold value. Then at the end of the lease, the landlord recovers the full value of the leaseholder's investment. The Commonhold and Leasehold Reform Act, which was passed two years ago, will have no effect on this fundamental inequity. Existing leaseholders living in blocks of flats have no chance of switching to the superior commonhold form of ownership. This arises because such a transfer requires the agreement of all those with an interest in the block - including the landlord.

**Nigel Wilkins**

Chairman, Campaign for the Abolition of Residential Leasehold

### Cowboy builders

Trading standards officers from Surrey Council recently exposed the methods used by cowboy workmen to defraud householders. However, the real scandal is the failure - until now - of trading standards officers to do anything about this problem, which has been going on for much longer and on a more extensive scale than is generally appreciated.

CARL is aware of complex building maintenance frauds conducted by landlords and managing agents against leaseholders living in blocks of flats. We have come across numerous examples of service charges being demanded for bogus or shoddy repairs to the common parts of such properties.

The only route open to leaseholders to seek recompense for such swindles is through costly court or tribunal proceedings. It is therefore hardly surprising that most frauds perpetuated against leasehold homeowners remain unpunished.

### The Big Con

A few weeks ago, Tony Blair announced his "Big Conversation" with the British public. CARL responded to all the consultation papers issued by the housing minister covering the detailed regulations that will apply under the Commonhold and Leasehold Reform Act. Yet no summary of the responses was published by the government, and the basis on which the regulations were issued under the Act was never made public.

Is it any surprise that, as a result, we have a half-baked piece of legislation that leaves the country's two million leaseholders stuck with an inferior form of property tenure, and a complex set of regulations causing landlords and managing agents increasing concern

# Left homeless for £25

Unscrupulous freeholders are using an outdated law to seize home-owners' properties, says Jane Barry

**L**EASEHOLDERS believe that their home belongs to them. It is a shock when this proves not to be the case. Joan Payne's freeholder claimed she owed £25 in ground rent. He took possession of her Hastings studio flat, using the landlord's right to forfeit her lease. This is a uniquely savage penalty inflicted only on leaseholders. Unlike a repossession, where a debtor must sell his property to repay his debt, but keeps any money left over, forfeiture leaves a leaseholder with nothing. To recover a trivial debt, Payne's landlord took a property worth £60,000.

Freeholders need some sanction to compel tenants to pay service charges and keep other covenants in their leases, but few would dispute that forfeiture is unjust. In what other situation would you have to use your entire asset to pay off a small debt?

Lawyer Darnian Greenish, who chaired the British Property

Upfront leaseholder who was threatened with forfeiture after refusing to pay his £17,000 share of a £330,000 bill for major works that had no breakdown of costs. He took Upfront to the Leasehold Valuation Tribunal — forfeiture cannot take place if service charges are being disputed.

Neither Upfront nor Sulc was available for comment, but Payne's lawyer David Collins of Meneers, has represented five leaseholders in forfeiture cases involving Sulc. He says: "For every one who stands up for their rights, I'm concerned there are three or four who will walk away."

Yet neither the police nor Hastings borough council will act. Leasehold issues must be pursued through the civil courts. The Government's leasehold reforms aim to curb rogue freeholders by insisting that landlords demand ground rents before taking action for late payment; by forcing them to prove to a court or LVT that the lease has been breached (at present, a landlord can exact forfeiture without going to court) and by outlawing forfeiture for debts of less than £500. But these measures do not come in until the spring, and they are a far cry from the Government's original intention to scrap forfeiture. It will still be a threat and, as Darnian Greenish says: "It frightens the hell out of people."

Noëlie Rawé was threatened with forfeiture by her freeholder Steel Services Ltd, after she refused to pay a £14,400 bill for major works that offered no detail of costs. During the past year, she and other tenants have fought these service charges through the courts and the LVT, and sees the threat of losing her £250,000 Knightsbridge flat as an intimidatory tactic. "When I got a letter like that, I was very very frightened," she says. CKFT Solicitors, on behalf of Steel Services Ltd, would not comment.

David Hewett, of the Association of Residential Managing Agents, which considers forfeiture "unfair and wrong", believes enforced sale would be more just. "The leaseholder pays the service charge arrears and the building society, but keeps what remains," he says. Lawyer Greenish agrees that it is a fairer solution.

The National Council of Mortgage Lenders would also like a change — at the moment some lenders pay the landlord's demands if forfeiture is threatened rather than lose the security for their loan. "Enforced sale sounds a good solution," says an NCML spokesman. "Lenders would retain their security in the property that's the fundamental point."

For the Government, however, abolishing forfeiture is still a "long-term" goal. A spokesman says: "While the concept of replacing forfeiture may seem a relatively simple one, legally and practically the matter is more complex. The Law Commission is at present working up the details of proposals on the termination of tenancies in general, which are likely to be relevant here."

But Shona McIsaac says: "We can wait for ever for the Law Commission. My view is that this should be implemented now."



Joan Payne: freeholder took possession of her £50,000 property over a £25 debt

Pictures by Max Jourdan



Peter Rochford: threatened with forfeiture by his freeholder, Upfront UK Ltd, after he refused to pay £17,000 of a £330,000 bill that had no breakdown of the costs

Federation's working party on the issue, agrees. "It's a very severe penalty. I can't think of anything equivalent that's as tough as that."

Shona McIsaac, MP for Cleethorpes, who is urging housing minister Keith Hill to abolish forfeiture, says: "I don't believe it has any place in modern housing legislation." To add insult to injury, the leaseholder must pay the freeholder's costs and continue paying the mortgage, even though they no longer own the property.

Payne's freeholder is Upfront UK Ltd, fronted by Hastings landlord Marcel Sulc. Payne had paid her ground rent. "But I paid again, and a third time. He wouldn't cash the cheques." With her flat padlocked against her, she was forced to fight a 10-month legal battle with Upfront, finally winning her property back, with damages and costs, in March 2002. Peter Rochford is another