LETTERS TO THE EDITOR

Dear Sir
As a chartered accountant I personally am horrified at the abject disregard by my Institute for its responsibilities in respect of leasehold trust accounts. I have submitted complaints about two accounting firms – Cohen Arnold and Westbury – and discovered that the procedures of the Institute of Chartered Accountants in England and Wales (ICAEW) made it as difficult as possible to obtain any form of satisfaction. In addition, it was hugely time-consuming in terms of professional cost.

Many do not realise that the ICEAW, in conjunction with other accountancy bodies, imposes accounting and other standards on companies way beyond those required by statute. This is as a result of pressure from institutional shareholders, who probably number less than a hundred in the UK. Notwithstanding this, the ICAEW appears to wholly disregard the outrageous misbehaviour of landlords and their managing agents, failing entirely to bring professional parties associated with or supportive of such miscreants to account.

In conclusion, I agree wholeheartedly with your statement: 'The time is long overdue when accountants can no longer regulate themselves'. Please feel free to contact me regarding the total ineffectiveness of the other industry body, ARMA (the Association of Residential Managing Agents).

Stuart MacWhirter, FCA
London

Dear Sir
Although in our block, we generally have a good working relationship with our managing agents, a recent error by the agents could NOT have been detected by the accountants carrying out the service charge audit. The cost of repairing £10,000 worth of damage caused by water leaking from an unoccupied flat was paid by the agents from the service charge account. The cheque from the insurance company following a successful claim was paid into the freeholder's rent account!

The mistake was noticed by the residents association and corrected by the managing agents. Which raises the question: what useful function do the auditors perform, other than to check the agent's arithmetic?

Richard Williams
London

Dear Sir
The leasehold system is another example of rip-off England. How can anyone be willing to pay so much to buy the right to occupy, contribute every year to high maintenance charges, watch the property lose value as time passes, and in the end not own the property at all?
The answer is simple: there is no other choice in England for those unable to afford freehold properties. So we are stuck with the absurd leasehold system, which hardly exists in other countries. Shame on successive governments who have allowed this to continue.

Juan Fernandez
Brighton

The campaign for the abolition of Nigel Wilkins

Estates Gazette, 24 November 2007

Nigel Wilkins makes the point that the leasehold valuation tribunal website lists 33 forfeiture decisions so far this year in the London area alone …
… On another, but allied, matter can I mention that the first meeting of the "campaign for the abolition of Nigel Wilkins" will be held at Claridge's bar on 12 December at 6pm. All are welcome.
David Glass (Landlord)

Estates Gazette, 19 January 2008

I would hope that the proposal from David Glass to establish the "campaign for the abolition of Nigel Wilkins" was purely tongue in cheek. However, Glass did reveal the unsavoury side of ground rent landlords, whose role is entirely parasitic. They contribute nothing, but expect to gain everything. Outside of England and Wales, they hardly exist at all – the vast majority of civilised countries getting along very nicely without them.
Nigel Wilkins (Chair, CARL)

THE Leaseholder

C.A.R.L
Campaign for the abolition of residential leasehold

www.carl.org.uk

SPRING 2008 ISSUE 23

SECRET COMMONHOLD CONSULTATIONS

**** Exclusive ****

Secret consultations have been taking place for some time between the government and its friends in the property industry through the Commonhold Consultative Working Group. This group is dominated by developers and others with everything to gain from obstructing commonhold tenure and keeping millions of 'homeowners' trapped in the leasehold system.

Organisations representing those who would benefit from commonhold tenure (including existing and potential homeowners) have been specifically excluded from this consultation process. CARL is not alone in being concerned about this. The Federation of Private Residents Associations has likewise expressed its concerns about being excluded from the consultation process.

Charles Stewart, the civil servant at the Ministry of Justice responsible for commonhold, would not provide the editor of *The Leaseholder* with details of the membership of this secretive 'consultative' group, nor any information about its deliberations – despite the Freedom of Information Act.

It is now fully apparent that the government, because of its close links with the property industry, does not want commonhold to succeed, and that it is perfectly happy to alienate the country's three million plus leaseholders in the process. It will inevitably be punished in the ballot box at the next general election.

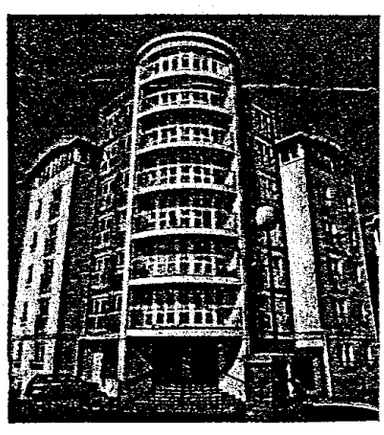
Since the introduction of commonhold tenure nearly six years ago, only a handful of commonhold flats have been built. By contrast, more than 250,000 new leasehold flats have been sold to home-buyers and buy-to-let landlords. Not one leaseholder has been able to transfer to commonhold tenure.

CARL would expect all new developments of blocks of flats to be commonhold, and for the law to allow leaseholders to transfer to commonhold tenure at a price that reflects the absence of any contribution from the freeholder towards either the construction or the maintenance of the leaseholders' homes.

COMMONHOLD SHOULD BE THE NORM

With housebuilding on a scale now required and scheduled, there is no good reason why all new developments of flats, houses and amenities should not be developed with an obligation for commonhold title.
This should have been effective from 1 January. Once done, the residue of existing leasehold could be addressed with appropriate fair compensation.
Commonhold title would allow developers to be paid up front, transparently, without the pernicious opportunity for exploitation that leasehold grants, whether managing agency, insurances or through lease extensions.
The harsh impact of the Sportelli judgements serve only to divert attention from the main issues. Residential leasehold does not belong to the 21st century. The system is a throwback to the dark ages.

Alan Ingram, Consultant, Fair Property Ownership, 59 Vaughan Lodge, Fair Acres, Bromley, Kent BR2 9BN



WHAT WE WANT IN THE HOUSING BILL

The Housing and Regeneration Bill is currently being debated in parliament. It contains key provisions regulating public sector landlords, including the establishment of a new regulator to be called Oftenant. CARL has written to all the MPs debating the Bill at the committee stage pressing them to introduce the following amendments to the Bill : -

- extend in the role of the housing regulator to regulate not just public sector landlords, but to regulate all landlords – including those in the private sector, and whatever the length of tenure.
- transfer responsibility for prosecutions under landlord and tenant law from local authorities to the new regulator – local authorities have proved completely ineffectual in pursuing landlords who break the law.
- extend in the jurisdiction of the independent housing ombudsman scheme to cover all landlord and tenant disputes, in addition to housing associations and those landlords who choose to join the scheme – at present only 2 per cent of private sector tenants are covered by the ombudsman.
- abolish forfeiture, not just because it breaches Article 1 of the European Convention on Human Rights, but more particularly because it is routinely abused by landlords who threaten forfeiture to enable them to steal from leaseholders.
- make commonhold tenure compulsory for all new developments of blocks of flats.

There were two disappointing developments in the House of Commons debate, and we will try to get these decision reversed in the House of Lords. Firstly, the government allowed an amendment preventing those purchasing shared leasehold homes in rural areas from ever acquiring their freeholds. This amendment was proposed by the Commission for Rural Communities, a government quango. Secondly, the government rejected an amendment by Lembit Opik MP, the LibDem housing spokesman, to impose a code of practice on residential property management. In the course of the debate, junior housing minister Iain Wright MP made the bogus claim that the RICS residential service charge code had proved effective in improving the management of leasehold properties. Few chartered surveyors observe its provisions, let alone the vast majority of unqualified and unscrupulous managing agents.

Annual General Meeting

CARL's latest AGM was very well attended, and the speakers prompted a lively debate on issues of topical concern to leaseholders. The meeting provided an excellent opportunity for members to increase their knowledge of the issues and to network with each other.

Anita Shields gave a presentation on her work as an auditor reviewing the service charges demanded from its leaseholders by the London Borough of Southwark. She had previously featured in the BBC 1 television programme *Inside Out* (see 'The Leaseholder', Autumn 2007).

Anita focused on the deliberate obstruction of the auditing process she was conducting, as well as the 'filtering' of the information provided to her during her work. Specific problems she identified were the absence of independent authorisation of the cleaners' working hours, and the lack of transparency in the allocation of costs to individual leaseholders.

Tim O'Keeffe spoke about the impact of the 'Sportelli' decision by the Court of Appeal on the price that leaseholders will have to pay for their freeholds and lease extensions. The Court upheld the earlier decision by the Lands Tribunal in favour of the landlord interests to reduce the deferment rate, when valuing freehold reversions, down to 5% in the case of flats and 4.75% for leasehold houses.

Tim estimated that, as a result, the increase in the cost to leaseholders of buying the freehold or extending a lease would typically be in the region of 10% to 50%. In some cases, the scale of the increase faced by leaseholders could exceed 2,000%. The landlord beneficiary in the Sportelli decision is the Earl of Cadogan, the multi-billionaire landlord who owns large chunks of Chelsea.

Copies of the presentations given by Anita Shields and Tim O'Keeffe are available on the CARL website (www.carl.org.uk).

Home ownership statistics

The government's publication 'Housing Statistics 2007' claims that 70 per cent of households in the UK are owner occupiers. This is highly misleading, since the figure includes not only those households who own the freeholds of their homes, it also includes the three million or so who merely own a leasehold interest in their home. Deducting leaseholders from the data reduces the percentage of home owners down to 55 per cent, which is broadly in line with our European neighbours.

The trend is also deteriorating, with the number of genuine new owner occupiers progressively declining. This arises because around 40% of new homes are currently leasehold flats, and a growing proportion of new home buyers are purchasing on a shared leasehold basis.

MEMBERSHIP

Join CARL and help us extend the campaign to end the misery caused by the leasehold system. Please return the enclosed membership form together with your subscription. Existing members should have already received membership cards.

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.

LEASEHOLD RIP-OFFS

- Leaseholders with homes managed by North Lincolnshire Homes face bills of up to £6,600 each to repair their roofs. However, quotes received from other builders by the leaseholders indicate that competitive prices are less than one-half of these demands.

- Work undertaken on social housing by building contractors Kier for the London Borough of Harrow has come in for increasing criticism, and is being reviewed by the council's scrutiny committee. Councillor Susan Hall, who is responsible for environmental services, described the work undertaken so far as a "shambles" at a meeting of the Tenants and Leaseholders Consultative Forum.

- How much does it cost to change a lightbulb? Birmingham City Council charges leaseholders living in the north of the city £138 to change a lightbulb, and a staggering £211.60 to do the same one minute job in the south of the city. This is inclusive of a 10 per cent "administration" charge.

- The Gateshead Housing Company, which maintains homes on behalf of Gateshead council, charged leaseholders in one of its blocks £411.08 to replace a single brick and one square metre of pointing, and £870.68 to replace the lid on an upstairs waste chute.

New regulations

New regulations that took effect from 1 October 2007 require all landlords and managing agents to serve a summary of leaseholders' rights and obligations with any service charge demand, including reminders and including administration charges. Payment can be withheld if no such summary is provided, and any clauses in the lease relating to non-payment or late payment will have no effect during the period that the leaseholder withholds payment.
The detailed regulations are contained in the following documents : -

- The Service Charges (Summary of Rights and Obligations, and Transitional Provision) Regulation 2007.
- Administration Charges (Summary of Rights and Obligations and Transitional Provision) Regulation 2007.

These documents can be accessed on www.opsi.gov.uk, under 'legislation' and then go to 'UK Statutory Instruments'.

Now we need some similar regulations for landlords, reminding them (a) that their right to demand service charges is restricted to work actually done to a reasonable standard, and (b) of their obligation to undertake repairs.

Book review

Flat Owners Guide

Paul Walentowicz and Charles Robinson

Published by Shelter

This publication, now into its fourth edition incorporating the latest changes introduced by the Commonhold and Leasehold Reform Act 2002, offers a comprehensive summary of leasehold law. The book is a good starting point for leaseholders wishing to understand how the law affects their home. However, it is worth emphasising that this publication is just a *summary*, and any leaseholders contemplating legal action against a landlord would need to refer both to the numerous statutes and to the extensive case law in this area – a demanding exercise.

In some respects the advice offered can be too encouraging for leaseholders seeking to assert their rights. Where the law requires the landlord to provide information to leaseholders or to consult them, the guide says that the landlord "must" comply with these legal obligations. In fact, there is no such compulsion on the landlord to comply because of the absence of enforcement by the authorities, and the landlord can only be held to account by the leaseholders themselves pursuing costly and difficult proceedings through the courts or tribunals.

There are also a few mistakes in the book. To be fully compliant with landlord and tenant law, the example of service charge accounts provided would need to include the amount still standing to the credit of the leaseholders at the end of the service charge period – an important piece of information for most leaseholders.