Leaseholder

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

www.carl.org.uk

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LABOUR LOSES LEASEHOLD VOTE

The government has decided to delay the publication of its long-promised consultation paper on the failure of commonhold tenure to replace residential leasehold. In a parliamentary answer to Grant Shapps MP, opposition spokesman on housing, law minister Bridget Prentice said that the government had better priorities than concern itself with the problems faced by the country's three million leaseholders.

If the government continues to neglect leaseholders in this cavalier fashion, it will find that the vast majority of leaseholders have better priorities than to vote for it at the next general election. This leaves a key opportunity for the Conservatives and the Liberal Democrats to win votes at the expense of Labour in key marginal constituencies in London, along the south coast and in the north-west.

Writing in 'An End to Feudalism' published by the Labour Party in 1995, Nick Raynsford MP and Frank Dobson MP claimed that Labour would replace the feudal leasehold system with commonhold. However since Labour came to power twelve years ago only 120 commonhold flats have been registered at the Land Registry. By contrast during the same period more than half a million new leasehold flats have been built.

No commercial developer would choose to sell flats on a commonhold basis, since there is far more money to be made by retaining the freehold and ripping off leaseholders. It also remains impossible for existing leaseholders to transfer to commonhold, since this requires a 100% Soviet style vote to achieve it.

When the government introduced commonhold tenure, it deliberately neutered its own proposals to ensure that existing leaseholders would not benefit from commonhold. This was done to appease the landlord interests with whom New Labour chose to identify. Commonhold would have given flat buyers full ownership and control over their homes and the common parts of their blocks, without the interference of an external landlord.

CARL has already exposed the secretive commonholdconsultation group set up by the Ministry of Justice (see The Leaseholder, Spring 2008). The department brought together representatives of the construction industry, property managers, the law profession and the advice industry, all of whom would have a lot to lose if the leasehold system was replaced by commonhold. Leasehold representatives were specifically excluded from taking part, and the Ministry refused to let CARL see the minutes of this secretive group.

ANNUAL CONFERENCE

CARL had another successful annual conference just before Christmas. Last year was the tenth anniversary of the founding of CARL. Our keynote speaker, Shabnam Ali-Khan from the Leasehold Advisory Service, spoke about the key issues that arise in service charge disputes. In the panel session, three members of CARL described their own experiences in disputes with their landlords. See the detailed report on page 2.

ANNUAL CONFERENCE REPORT

The keynote speaker at our latest annual conference was Shabnam Ali-Khan, senior legal adviser at the Leasehold Advisory Service (LEASE). The slides from her presentation can be found on our website (www.carl.org.uk <http://www.carl.org.uk/>).

One particular case that attracted considerable attention was 'Continental Property Ventures Inc v Mr Jeremy and Mrs Philippa White'. This case centred on whether the landlord was able to claim service charges for major works, when the cost of those works was much higher than they needed to be because of historic neglect by the landlord. The leasehold valuation tribunal ruled in the leaseholders' favour, and the Lands Tribunal dismissed the subsequent appeal by the landlord.

At the meeting, we also had a panel of speakers who are members of CARL who had experienced difficult legal battles with their landlords:

Alistair Barr spoke about the battle he and his fellow leaseholders had with their landlord over the purchase of their freehold. The Sportelli judgment (see page 3) had increased the cost of the purchase, and the legal battle cost the leaseholders in his block approximately £400,000 in costs. So much for the government's promise to reduce the cost to leaseholders of buying their freeholds!

Dermott McKibbin and his fellow leaseholders fought their landlord, Lewisham council, over excessive service charges. They won on a number of issues, in particular achieving a reduction in the management fee from 34% to 18%. Dermott's experience of the LVT process has ked him to conclude that there is no equality of arms at the LVT, with leaseholders placed at a significant disadvantage against powerful and well-resourced landlords.

Rachel Mawhood related her experiences of the legal complexities of dealing with the both the LVT and the Lands Tribunal. The landlord, Sinclair Gardens, was seeking a variation in the lease to enable it to collect additional money from the leaseholders. It won its case before the LVT, but the Lands Tribunal largely overturned this decision. Rachel was highly critical of the fact that that leaseholders had to acquire a large amount of legal knowledge in a very short space of time in order to handle their tribunal cases.

Southwark council shamed

Ofcom, the broadcasting watchdog, upheld only a minor aspect of the complaints raised by the London Borough of Southwark against the BBC, whose Inside Out programme on 17 October 2007 was highly critical of the council's aggressive approach towards its leaseholders.

Anita Shields, who was appointed to audit Southwark's service charge accounts, criticised the council on the Inside Out programme. CARL members who attended our annual meeting in 2007 at Kensington Library will recall that she was our keynote speaker at that gathering. A copy of her presentation is on our

website (www.carl.org.uk).

In its complaint to Ofcom, Southwark council claimed that those leaseholders unable to afford its demands for major works – amounting to tens of thousands of pounds for each leaseholder – would pay nothing. In fact, those leaseholders unable to pay would have a charge placed over their homes for the major works, with interest continuing to accumulate until the bill is finally settled in full.

Ofcom rejected the council's complaint about the comments in the programme by leaseholder David Clarke, who said he had "discovered £1.5 million worth of illegitimate charges". The factual accuracy of this comment was not in question, and it was made as background information leading to the council's decision to hire Anita Shields as auditor. The council also raised no complaints about the allegations in the programme that the major works undertaken were over-priced.

Commercial tenants abused

Landlords and managing agents have been accused of keeping £65 million in interest on service charge payments made by office tenants, in a study conducted by Loughborough University. The study lists several ways in which landlords and managing agents fall short of the standards set out in the 2006 RICS code of conduct for service charges payable by commercial tenants. The RICS, despite its claim to be a professional body, does not require its members to comply with their own code of practice.

Most managing agents still charge a management fee as a percentage of the total service charges, which in any event were found to be over-budgeted in 52% of cases. Less than one-fifth of managing agents charged tenants a fixed fee as set out in the code. A group of retailers, headed by Arcadia boss Sir Philip Green, were recently able to negotiate reductions of 13-20% in service charges at two large shopping centers in the north of England.

Great Estates rake in the money

The family that owns freeholds in London's Marylebone has received a £150 million payout, according to the Estates Gazette. The de Walden family was ranked seventh in the magazine's Rich List last year, with a £1.5 billion fortune. Over a ten-year period, the estate clawed in £80 million in capital profits from the sale of freeholds to leaseholders. The transfer of such vast sums to landlords serves to illustrate the scandalous inequity of the valuation process used in leasehold enfranchisement cases.

MEMBERSHIP

If you are not yet a member of CARL, please join us so that we can speak from a position of even greater strength. Return the enclosed membership form together with your subscription. Existing members should have already received their membership cards.

OFT slams McCarthy & Stone

The country's largest retirement home provider McCarthy & Stone has agreed to remove a term from its leases that involve charging leaseholders a 'transfer' fee of 1 per cent of the purchase price when a leasehold property is sold. The Office of Fair Trading considered that this term was in breach of the Unfair Contract Terms Regulations, which is a European Union directive from Brussels. In the financial year 2006/07 McCarthy & Stone properties had an average sale price of £190,700, while the average age of purchasers was 77, representing a highly vulnerable group of leaseholders.

Mike Haley, the OFT director of consumer protection said: "These changes will benefit thousands of elderly and potentially vulnerable residents selling their homes." If there are terms in your lease that appear equally as onerous and unreasonable, write to Mr Haley of the OFT at Fleetbank House, 2-6 Salisbury Square, London EC4Y 8JX.

Separately, a number of securitised bonds have been issued to investors by retirement home companies, with the repayments linked to the income stream from ground rents as well as from the transfer fees. These revenues were expected to generate a reliable cash flow stream throughout the term of the bond. If transfer fees cannot now be collected, this could result in a funding shortfall for investors.

The Sportelli case

The House of Lords has reached its verdict in the long-running Sportelli case ('Earl Cadogan v Sportelli', UKHL 71, 2008). The result is that leaseholders will now have to pay much more for their freeholds and for lease extensions; conversely landlords will make huge windfall gains running into the billions.

This arises because the deferment rate used in valuing freeholds is now set at 4.75% for leasehold houses and 5% for leasehold flats, much lower than the rates used previously. The lower the deferment rate used, the higher the price to be paid for the freehold. Leaseholders taking part in collective enfranchisement will also have to pay 'hope value' to compensate the landlord for not being able to make even more money out of those leaseholders in a block not participating in a collective enfranchisement.

These new deferment rates were set before the onslaught of the credit crunch, which has already seen not just a slump in the property values, but also a sharp increase in the cost of credit risk premiums. Moreover, it is widely expected that the interest rates on government gilt issues, also used in the calculation of the deferment rate, will increase as public sector borrowing rises sharply.

It is interesting to note that Ireland, the only other European country with a large number of leasehold homes, has a straightforward arbitration process enabling leaseholders to buy their freeholds. If the lease has more than 15 unexpired years to run, the leaseholder is only required to pay the capitalised value of the ground rent. No payment is needed for the value of the freehold reversion, or for marriage value. If the lease has less than 15 years to run before expiry, the leaseholder also has to pay a fraction of the market value of the property – but still nowhere near as much as the deferred value of the freehold. No landlord in Ireland has appealed to the European Court of Human Rights.

Service charges

A recent case heard in the appeal court ('Morshead Mansions v Di Marco') ruled that a company established to manage a block of flats, and in which each lessee held a share, could demand funds to manage and repair the building without these demands being regarded as service charges under section 18 of the Landlord and Tenant Act of 1985. The articles of association of the company permitted it to hold capital reserves and a sinking fund, and required the shareholders to contribute towards such funds as agreed at an AGM.

The bullies unleashed

Writing in The Guardian in January, Henry Porter attacked the power that minor officials have been given to hurt and harass people. One of the examples that he cited was that of 91-year-old Ramsgate leaseholder Dorothy Hacking, who was forced to take out a second mortgage to pay service charge demands from Thanet Council to pay for unnecessary stone-cladding designed to make her home compliant with the Home Energy Conservation Act. It is hardy surprising that she died shortly afterwards.

Your Homes Newcastle

As a result of a key LVT decision, Your Homes Newcastle (YHN) will have to review service charges at all the 1,400 properties it took over from Newcastle City Council five years ago. The tribunal decided that YHN had been demanding too much money from some leaseholders. Although YHN had taken over management of Newcastle's housing stock in April 2004, it had only obtained copies of its leases in October 2007. YHN had continued until then to use a service charge collection system not in accordance with the leases. Some lessees had been issued with threatening letters, even after payment was made. The tribunal also found from the evidence that much of the work, including the caretaking, cleaning and paintwork was not of an acceptable standard, and consequently reduced the amount payable.

LVT CANNOT PROTECT VULNERABLE LEASEHOLDERS

A number of leasehold valuation tribunals have made sharp criticisms of Basicland Registrars Ltd (BLR), a firm that claims to manage between 5,000 and 6,000 leasehold flats. One particular case ('Westleigh Properties Ltd v Ms Madeleine Murphy') involved a block located in Leigh-on-Sea in Essex.

The tribunal's decision accused BLR not just of being "incompetent", but also of repeated "breach of the express terms of the lease", issuing "threatening demands", and subjecting leaseholders to "bullying". The tribunal also said that the firm had sent "unlawful demands" for "sums not due" and that these demands "could be considered to have been made with menaces."

The tribunal went on to say that other leaseholders, who were either not legally astute or were more fearful, would simply have caved in to such bullying in order to avoid expensive court action. The vast majority of leaseholders find the leasehold valuation tribunal both expensive and intimidating, whilst its panel members are drawn largely from the property industry rather than from those who have to pay service charges. Bullying landlords are protected by the very existence of the LVT. Its replacement by an effective housing regulator, with teeth, and an unbiased ombudsman system, to settle disputes, is long overdue.

You can find the full judgment in this case on the residential property service tribunal's website, under decisions by the LVT. Follow the links to service charges – eastern region – Southend on Sea – 2008. These are the principal quotes from this judgment:

- "BLR seems to believe that it is entitled to recompense for carrying on in a manner which, on the evidence, is so thoroughly lacking in the necessary care and skill as to warrant the epithet incompetent. It has also acted in continued breach of the express terms of the lease, even though a previous tribunal decision had pointed this out in 2006."
- "This tribunal considers that the issuing of threatening demands for unwarranted payment by the managing agent in this case amounts to a most cynical form of bullying, intended to scare legally less astute or more fearful leaseholders to pay up in order to avoid potentially expensive court action against them."
- "The respondent leaseholder has been subjected to unlawful demands that she pay sums not due. Arguably such demands on occasion could be considered to have been made with menaces."

Laughably, a recent government-commissioned report written by Professor Colin Jones of Heriot-Watt University considers that leasehold management is "well regulated".

Another accountant fined

Leaseholders are advised to check whether the accountant who signs the service charge certificate for their block is actually qualified to do so. Section 28 of the Landlord and Tenant Act 1985 requires the certificate to be signed by a qualified accountant who is also a qualified auditor.

Joseph Bloomberg, ACA, of Suite 109, Atlas Business Centre, Oxgate Lane, London NW2 7HJ, was fined £1,000 by the Institute of Chartered Accountants, and ordered to pay costs of £2,367, for signing service charge certificates when not qualified as an auditor. Bloomberg signed service charge accounts for over 40 blocks of flats. These blocks were not identified in this disciplinary decision, nor were the leaseholders affected by his misconduct informed of this decision by the Institute.

Astonishingly, Bloomberg was not even ordered to refund the fees he charged leaseholders for this malpractice. Bloomberg is yet another in a long line of chartered accountants disciplined for misconduct involving service charge accounts. But the complacent Institute of Chartered Accountants still let them all keep their fees. It protects its incompetent members rather than the victims of that incompetence.

Not so affordable homes

An article in The Guardian on 31 January, written by Miles Brignall, describes the mounting service charges faced by purchasers of "shared equity" leasehold homes. The article describes the experience of leaseholders living in properties in Greenford, west London, and built by Shepherd's Bush Housing Association. SBHA manages the scheme in conjunction with Ringley, a private management company.

Even though the leaseholders had previously won an LVT case limiting their service charges, they now face an annual charge in excess of £3,000 for their newly built flats. These high charges not only make a mockery of the "affordable housing" label, but also fail to ensure the provision of an appropriate standard of service.

INSURANCE IN BLOCKS OF FLATS

The Observer published a hard-hitting article on 1 March exposing the insurance scandals in blocks of flats. High time the Financial Services Authority started protecting the consumer, rather than industry malpractice. Here is the link to the article:

http://www.guardian.co.uk/money/2009/mar/01/hidden-commissions-on-renting