THE
# Leaseholder

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

www.carl.org.uk

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## Labour split over forfeiture

*Housing Minister: Keith Hill*

Housing minister Keith Hill has rejected CARL's plea to introduce an amendment into the current Housing Bill abolishing forfeiture, the weapon of mass destruction that bullying landlords use to intimidate leaseholders into paying excessive (and often fraudulent) service charge demands. This leaves the field free for the opposition parties to try and win the leaseholder vote at the next general election.

Mr Hill says that he wishes to await the outcome of the Law Commission's current consultation on forfeiture before taking any action. However the Law Commission, which proposes to extend forfeiture to those leases that do not even include a forfeiture provision, has displayed a fundamental misunderstanding of the issues at stake.

A lease is the only contract in English law that permits one party (the landlord) to recover more (and in many cases considerably more) than he or she is owed by the other party (the leaseholder). Leaseholders do not have the equivalent right to force the landlord to forfeit the freehold when he or she is in breach of covenant.

The Commission argues that other European countries also have forfeiture provisions in tenancy agreements. Whilst that is true, other European countries do not have long residential leaseholds involving the payment of a premium often equivalent to the full freehold value of the property.

The Commission claims that reliance cannot be placed on the European Convention on Human Rights to oppose forfeiture, since a lease is a contract between two private parties. It is incredible that the Commission does not realise that many leaseholders have a public sector landlord, whether it be the doughty Duchy of Cornwall or a lowly local authority. Nor is there any good reason why private sector leaseholders should be placed at a disadvantage to public sector leaseholders.

A number of backbench Labour MPs fully support CARL's campaign to abolish forfeiture. Shona McIsaac, MP for Cleethorpes, has written to Keith Hill, urging him to abolish forfeiture. She said: "I don't believe it has any place in modern housing legislation." In the House of Commons debate over forfeiture on 13 March 2002, a number of Labour MPs, including Brian Iddon, David Lepper and Brian Sedgemore, voted for its abolition. Most Liberal Democrat MPs also voted to scrap forfeiture.

## MEMBERS SOCIAL

Following our successful social earlier in the year, we have decided to hold another. Meet other leaseholders. Discuss common issues and relax!

Join us on Saturday 24 July, upstairs at 'The Plough' in Museum Street, London WC1 (opposite the British Museum), starting at 5pm.

**COMMENT**

## *Don't hold your breath*

The government promised to publish the commencement order introducing commonhold tenure into English law in spring this year. Well, the sun is now high in the sky and there is still no sign of the promised commencement order. Remember, the Commonhold and Leasehold Reform Act received the royal assent as long ago as May 2002.

But this is no great loss. Commonhold tenure will remain just a theoretical possibility, out of reach to the vast majority of leaseholders. This is because every party with an interest in a block of flats must agree to the transfer to commonhold, including all leaseholders, their mortgage lenders and the landlord.

The previous Conservative government planned to introduce commonhold tenure just before the 1997 general election. Labour's then housing spokesman Nick Raynsford criticised its proposals in no uncertain terms. Writing in the Evening Standard on 3 December 1996 he said that under the Conservatives' proposals "it would be very difficult for existing leaseholders to transfer to commonhold. The scheme is essentially a voluntary one, which will depend on the agreement of all parties – including the landowner. This gives a veto to landowners, and will unquestionably be used to prevent leaseholders from converting to commonhold unless they buy the freehold first."

Labour's commonhold proposals are identical in this respect to those of the Conservatives, since leaseholders will only be able to transfer to commonhold with the agreement of the landlord. Commenting on Labour's proposals in the Financial Times on 2 September 2000, Nick Raynsford, who was by then Labour housing minister, admitted: "I accept that requiring the consent of all leaseholders may make it difficult for existing leaseholders to convert to commonhold."

On its own admission, when it comes to commonhold, all Labour has done is to waste the last eight years.

# THE SUNDERLAND TWO

Two Sunderland pensioners, Alan and Veronica Gray, recently thwarted attempts by their freeholder to forfeit the lease on their house. The freeholder, Tiamiyu Bello, claimed that Mr Gray was in breach of a covenant in his lease by building an extension to his house 28 years ago. He demanded £2,000 from the pensioners to compensate for their failure to notify the freeholder of the alterations to their home.

The judge ruled against the landlord's claim on the basis that the work done by the Grays fell outside the time limit set by the statute of limitation, which in the case of land is twelve years. However, the Grays only managed to defeat their landlord because of a rare charitable act by the Law Society, whose Sunderland branch funded much of the legal costs. These costs should now be recovered from the landlord, since he lost the case.

Landlord Bello, who owns 200 freeholds in the Sunderland area, is far from alone in pursuing such aggressive techniques against leaseholders. It is a disgrace that the law permits landlords to behave in such a way, and that the government is so complacent to do anything about it. The freehold of the Grays' house was earlier valued by a leasehold valuation tribunal at just £80.

### Enfranchisement becomes more difficult

On the face of it, the Commonhold and Leasehold Reform Act appears to make it easier for leaseholders living in blocks of flats to acquire their freeholds. After all, the new rules now require a 50 per cent majority to proceed with enfranchisement, rather than the two-thirds majority required under the 1993 legislation.

However, leading property lawyers take the view that the new rules proposed are so complex that even fewer leaseholders will be able to enfranchise than ever before. Among the critics is solicitor Alan Edwards, who is a member of the executive committee of the Labour Housing Group.

Mr Edwards' criticisms are threefold :

- The requirement to set up a "right to enfranchise" company takes away the flexibility that leaseholders now have in choosing the vehicle though which they can buy the freehold.

- Valuation of the freehold will prove extremely difficult to assess, especially in blocks where leases are of varying lengths and there is uncertainty over who will participate. Yet this information must be included in the invitation to participate. Likewise the expected professional costs involved will be difficult to assess, without knowing whether the landlord will contest the application.

- The invitation to participate must be served on all lessees. The absence of proof of service on just one lessee will frustrate the whole enfranchisement process, even if 50% of leaseholders are in favour.

These absurd aspects of the legislation have yet to be implemented. Let's hope they never are.

# Leasehold, freehold and commonhold

*From Mr Nigel Wilkins*

Sir, One of the causes of the difficulties in building housing at higher densities - and thereby to combat environmental and transport problems - results from our outdated laws on property tenure.

Many potential homeowners are deterred from purchasing flats because these are usually owned on a leasehold basis, with the freeholds often controlled by remote and unscrupulous property companies.

The Government has recently missed an important opportunity to bring our tenure laws up to date. Although its Commonhold and Leasehold Reform Act will shortly introduce commonhold tenure, which is a fairer system of ownership, leasehold will in practise remain the prevailing form of flat ownership.

Existing leaseholders will only be able to transfer to commonhold tenure if each and every party with an interest in a block of flats agrees to the transfer, including the landlord.

The Government itself takes the view that very few such transfers will take place.

Moreover, there is no compulsion on developers to build new flats on a commonhold basis.

Leasehold will inevitably prove more lucrative to developers than commonhold, since with leasehold they can retain the freehold interest even after selling off all the flats.

Yours faithfully
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April 15.

**THE TIMES, 17 APRIL 2004**

# MEMBERSHIP

CARL is leading the campaign to end the corruption, exploitation and misery of the leasehold system. Our membership is growing steadily.

We urge all our readers to join CARL, using the enclosed form. Existing members should already have received their membership cards. Help us to extend our campaign even further by giving your neighbours copies of The Leaseholder. Let us know how many extra copies you need, and these will be sent to you right away.

Send your subscriptions to: CARL, PO Box 26369, London N8 7ZL

**Do you run a residents association? If you want us to send extra copies of The Leaseholder to distribute, let us know. If you want to reprint any of the articles, feel free to do so.**

# NEWS..NEWS..NEWS

## Regulation tightens

Managing agents that "provide" insurance services, as part of their role in the managing leasehold properties, are soon to be regulated by the Financial Services Authority (FSA). CARL fully supports this move as an important step in the right direction, and hopes that the government will not back down in the face of the pressure being placed on it by the property industry.

Insurance is one particular area where leaseholders are routinely ripped off, with mark-ups on insurance of over 200 per cent above competitive rates not uncommon. CARL would also like to see the trust funds in which service charge contributions are supposed to be retained subject to regulation by the FSA.

The property industry's approach to regulation lacks consistency. While the Royal Institution of Chartered Surveyors (RICS) opposes the extension of the FSA's remit over insurance, it fully supports measures to introduce the regulation and licensing of estate agents – many of whom belong to the RICS.

And if estate agents are to be subject to regulation, why not their close relatives the managing agents. Like estate agents, managing agents are no strangers to fraud and malpractice. It would also help if managing agents were required to owe a duty of care to those who pay their fees – the leaseholders – rather than to their landlord clients, who usually contribute nothing towards repairs and maintenance.

## New legislation leads to higher service charges

The regulations introduced under the new legislation have added to the amount of red tape in managing blocks of flats, without noticeably adding to the protections of leaseholders' rights. This particularly applies to the consultation procedures over major works.

One of the largest firms of property managers, Solitaire Group plc, reported a 25 per cent increase in operating profits last year. The firm said that it has increased its staff numbers to comply with the requirements imposed on all property management companies by the Commonhold and Leasehold Reform Act 2002. It went on to say: "Our management fees have been increased to reflect the extra costs resulting from the Act. The impact of this increase in revenue will be seen partially in 2004 and fully in 2005."

The government's own regulatory impact assessment of the new consultation scheme misleadingly said that the additional costs of these proposals would be "miminal".

## Unfair contract terms in tenancy agreements

In a decision that has far reaching consequences for landlords and tenants alike, the court of appeal confirmed that the current regulations covering unfair contract terms in consumer contracts apply to the grant or transfer of an interest in land. The court also decided that there was no reason why these regulations should not apply to a local council as a public body.

The Office of Fair Trading appeared as an interested party in the case, since it is the lead regulator with enforcement powers under the unfair trading regulations. The Office has published guidance on the use of unfair terms in tenancy agreements. The regulations concerned are the Unfair Terms in Consumer Contracts Regulations (Statutory Instrument 1999, No 2083) and the European Council Directive 93/13/EEC (OJ 1993 L95).

A summary of this case, 'Regina (Khatun and others) v The London Borough of Newham', was reported in the The Times Law Reports on 27 February 2004. The full judgment can be found on the Court Service's website (www.courtservice.gov.uk).

# NEWS ... NEWS ... NEWS ... NEWS ... NEWS ... NEWS ... NEWS

**Judge condemns landlord**

A landlord who obstructed the assignment of a commercial lease in Chelsea ended up paying exemplary damages to the tenant when the sale of the lease fell through. A company called Design Progression had been frustrated in its attempts to sell its lease on a shop in the Fulham Road to Kelly Hoppen, an interior designer.

Even though multiple references were supplied for the new tenant, the landlord's agent and solicitor repeatedly pressed for additional information, demanded undertakings on costs, and created further obstacles. The landlord – Thurloe Properties – is a company registered in the British Virgin Islands, operating by virtue of a power of attorney granted by an Isle of Man-based lawyer.

In his ruling, Judge Peter Smith said that the requirement to obtain a licence to assign a lease from a landlord was "regularly exploited by unscrupulous landlords for their own devices." The judge awarded Design Progression £160,250 in compensation, including £25,000 in exemplary damages "to mark the court's disapproval by a sum which will cause the defendant to consider seriously its future conduct."

Like commercial tenants, residential leaseholders face equally obstructive tactics by landlords when they seek to sell their homes.

**The pub landlord**

... or rather the pub lessee. Our story begins in 1991 when Mr Bernard Crehan leased two public houses in Staines – The Pheonix and The Cock Inn – from Inntrepreneur Pub Company. However, his leases included a beer tie requiring him to purchase most of his beer above market rate from Inntrepreneur or its "nominees". Mr Crehan claimed that his enterprise proved a failure because of the restrictive terms of his leases.

The story finally concluded a month ago when the Court of Appeal awarded Mr Crehan £131,336 in damages. The judges agreed not only that the beer tie caused the failure of his business, but that the tie also contravened article 81 of the EU Treaty on competition. This article prohibits "all agreements between undertakings ... which have as their object or effect the prevention, restriction or distortion of competition ..."

Most residential leases include similar anti-competitive ties requiring leaseholders to pay for "services" provided by the landlord and/or its nominees, thereby creating local monopolies restricting competition. Anyone want to spend the next thirteen years of their life sorting that one out?

**Landlord ousted**

Five leaseholders living in Fulham obtained a court judgment against their landlord, Ravinder Sharma, enabling them to acquire the freehold of their building. This is a surprisingly rare example of the compulsory purchase provisions of the Landlord and Tenant Act 1987 being successfully employed by leaseholders.

The judgment came as the culmination of a battle lasting over six years and has involved several appearances before the leasehold valuation tribunal, including the appointment of the leaseholders' own manager. The judge identified three matters – including forfeiture actions – that "amply demonstrate the fact that Mr Sharma is not an appropriate person to be a landlord."

If a judge takes this view, why therefore is Mr Sharma permitted to own other properties as a landlord? Since there are many other landlords who use Mr Sharma's methods, why is there no regulator in existence to disqualify all unsuitable landlords?

# Letter to the Editor

Dear Sir

I have written to the housing minister about the need for a housing ombudsman, but it was clear from his reply that he doesn't see the need for one, and won't be moved. There is no prosecuting authority for breaches in leasehold legislation – the local councils whose responsibility it is claim that the government does not supply the money. There is nowhere for leaseholders to turn to!

No prosecuting authority = no law enforcement = anarchy.

The managing agent of our flats claims to comply with the RICS Code of Management. They do not. I complained to the RICS. Their reply was that since the firm are chartered surveyors they did not have to comply with the Code because they were acting for a client – our landlord.

The 1996 Housing Act (section 87 - Leasehold Reform) requires managing agents of leasehold residential property to comply with the RICS Code. By using the RICS logo, it should be a requirement that the agent complies with the Code whether or not they are acting for a client. I think our agents are one of many chartered surveyors operating in this manner and causing leaseholders distress.

**J M**
Herts