INDUSTRY INSIDERS BLOW THE WHISTLE

Overcharging for insurance does managing agency no service

Why would anyone care how much money is extracted from flat owners by the exorbitant mark-ups in their insurance premiums? After all it's someone else's money and it is taken like candy from a baby. Particularly since most tenants do not even realise it is happening.

At the risk of sounding moralistic, I for one feel that managing agents should earn their money. They should not seek to profiteer from mark-ups to the detriment of providing a service. The real problem is that the vagaries of the insurance market allow landlords and agents to manipulate matters to get the income they want. I have come across some brokers who will "make" the premium whatever the agent wants it to be. As long as the insurers get a share, they are happy to add on whatever figure is desired by the landlord or agent.

This must be wrong in anybody's eyes. If nothing else, it cannot be right when this cost is passed on to tenants to pick up. One simple solution would be to require the building's insurance summary to disclose the amount of commission that is being paid, and to whom. Why should tenants be ripped off when there is no need?

For a very long time, commissions have been the best way to make money out of owning residential ground rents. In some cases, this is even being factored in when sale prices for ground rents are calculated. There is an argument that high levels of commission are needed to compensate for the work undertaken in dealing with the policy and the handling of claims. But this is a complete red herring. Invariably, the freeholder will try and keep the commission and not pass it on to the agent. This means the agent has to handle the insurance matters within their normal fee.

The alternative is that managing agents improve the professionalism of their service, in which case tenants would be prepared to pay a fair price for a fair job. However, this means managing agents not seeking to do the minimum amount they can get away with. It will take an almighty shake-up to clean up the sector and improve standards.

The government has produced reams of legislation for residential property, but none of it tackles the root problem, and it remains easy to do things badly and rip people off. Handing insurance regulation to the FSA tackled the wrong part of the problem, as it has no intention of enforcing transparency.

What is needed is for the amounts of commission to be exposed, and to give leaseholders the right to choose to insure themselves, or to obtain quotes that must be matched by the managing agent. Isn't it about time the industry started behaving responsibly and looked after its stakeholders?

Roger Southam Managing Director
Chainbow Managing Agents
Estates Gazette 10 June 2006

Insurance charge abuse caused by 'cosy cabal'

The editor rightly draws attention to the scandalous abuse that is made of leaseholders' money in the insurance of their interests in residential apartments. Sadly, this is merely the tip of the iceberg. Large letting agents such as ourselves are uniquely positioned to call attention to the cosy cabal that exists between block managers and freeholders. Out of ignorance or greed, their actions extend far further than the pocketing of insurance premium commissions. A short list includes:

- widespread ignorance of the consultative requirements of the consumer protection legislation in place;

- block management levies of "administration" and other charges which are not payable under either the lease terms or the Commonhold and Leasehold Reform Act;

- hiding behind PO box numbers and failing to respond to correspondence;

- going to leaseholders' lenders and coercing them to pay trumped up "administration" and other charges – the ignorance of the lenders as to the legal position of the leaseholders means that these are normally paid without reference to the borrower by adding to the outstanding mortgage balance;

- the large developers knowingly selling on freeholds in recently developed blocks to "cowboy" landlords.

The list goes on and on.

Leaseholders are uniquely ignorant of the consumer power at their disposal, particularly the statutory reforms made available in the Commonhold and Leasehold Reform Act. The situation is made no better by the failure of the lettings agency industry to come together to exercise its professional responsibilities (wake up, ARLA!). And LEASE, while providing an excellent source of one-on-one advice to leaseholders, needs to be able to provide packaged solutions recurrent problems it experiences across its phone lines – a sort of "frequently asked questions". These measures alone would act to publicise (and shame?) the freeholders and block managers who, through incompetence and/or greed, are giving leasehold consumers such a rough ride.

Michael Toogood Managing Director
Square Mile Property Management
Estates Gazette 17 June 2006

THE Leaseholder

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

www.carl.org.uk

SUMMER 2006 ISSUE 18

REGULATORS MUST TACKLE INSURANCE SCAM

Recent articles in both the Mail on Sunday and the Estates Gazette have highlighted the outrageous overcharging for buildings insurance by landlords and managing agents. It is not unusual for leaseholders to be charged four or five times the amount of the premium actually paid to the insurance company. Whistleblowers in the industry are speaking out (see page 4).

CARL calls on the Financial Services Authority and the Office of Fair Trading to bring this insurance swindle to a swift end. They have the power to do so, and this is precisely where the new cooperation agreement between the FSA and the OFT should come into play. We expect those landlords, managing agents and insurance companies found guilty of malpractice to be removed from the industry (together with the accountants who certify artificially inflated insurance premiums in the service charge accounts). We also expect leaseholders to be compensated in full for the amounts that they have been overcharged.

The FSA claims that it is not an "economic regulator". That is a somewhat unfortunate choice of phraseology, which we assume means that the FSA feels it cannot intervene in pricing issues. Yet, if the FSA is to carry out its responsibilities under the EU's Unfair Contract Terms Directive, it will inevitably have to rule on overcharging where the market mechanism is defective – as is clearly the case for the insurance of leasehold blocks.

The Royal Institution of Chartered Surveyors (RICS) has announced that it will conduct an investigation into block insurance. This will inevitably prove to be a complete whitewash, since RICS prefers to protect its own members rather than the consumer interest. The failure of its self-regulatory processes were exposed in a report by Professor Sir Bryan Carsberg, who found to his "surprise" – though not to CARL's – that "RICS does not take action against members' serious professional incompetence" (see The Leaseholder, No 17). It is therefore extremely curious that the Treasury and the FSA should decide to recognise RICS as a designated professional body for regulatory purposes.

Under the headline Landlords' £1bn Insurance Sting, Jo Thornhill wrote in the Mail on Sunday (28 May) that "unscrupulous landlords are overcharging leasehold flat owners – many of them elderly and vulnerable – by as much as £1 billion for buildings insurance. Leaseholders all over the country are being cheated out of large sums of cash as a result of being hoodwinked into paying excessive insurance premiums." Peter Rochford, who spoke at our AGM a couple of years ago, was quoted extensively in the article.

The Mail story can be found at http://www.thisismoney.co.uk/mortgages/buy-tolet/article.html?in_article_id=409465&in_page_id=56

On the Razzall

One of the more bizarre developments in this insurance saga concerns the activities of Lib Dem peer Lord Razzall, who has raised questions in parliament about the scandal. Lord Razzall is also a highly paid part-time director of the Erinaceous group of companies, which owns David Glass Associates, and a number of other firms that are well-known to our members. At the time of going to press, Lord Razzall had failed to answer any of the questions put to him by CARL about the overcharging of leaseholders by Erinaceous companies – as exposed in a number of tribunal cases. Other directors of Erinaceous include Lord Poole, former adviser to John Major, and Nigel Turnbull, who wrote a report on raising the standards of corporate governance!

Networking

We will be holding our next social for members on **Saturday 22 July.** This is an ideal opportunity for leaseholders to meet and discuss common issues.

Join us at The Britannia in Allen Street London W8 (on the south side of Kensington High Street) starting at **5:00pm**

LANDLORD CANNOT CHARGE FOR NEGLECT

Should leaseholders pay excessive service charges for repairs caused by the landlord's neglect of the fabric of the building? The answer is a resounding "no", according to a recent ruling from the Lands Tribunal.

Judge Michael Rich threw out an appeal by a landlord against an earlier Leasehold Valuation Tribunal decision (reported in The Leaseholder, No 16). Judge Rich held that service charges demanded for repairs caused by a landlord's breach of its repairing obligations could not be considered as costs reasonably incurred.

This combination of neglect of building maintenance combined with excessive service charges is a common and distressing experience for all-too-many leaseholders. At present the only option for leaseholders trapped in this situation is through the difficult and costly maze of the tribunal system. Only a change in property tenure combined with effective regulation of landlords will resolve these problems effectively.

The full decision on this case, 'Continental Property Ventures v Mr and Mrs White', can be found on the Lands Tribunal website (www.landstribunal.gov.uk), under ref: LRX/60/2005.

Unfair terms in lease extentions

A series of prominent cases now coming before the Lands Tribunal will determine how much leaseholders have to pay for their freeholds or lease extensions. The verdicts are expected in September.

Leading the fight for the landlords is the Earl of Cadogan. With a 'meagre' fortune of only £1.6 billion, he is obviously desperate for every penny he can lay his hands on. He is also patron of the Conservative Association in Kensington and Chelsea, where most of his tenants actually live.

Of course, very few leaseholders can afford to challenge their landlord's valuation or the oppressive conditions imposed in a new lease. The huge cost of taking proceedings though the leasehold valuation tribunal is far too prohibitive for the majority of leaseholders. Many unscrupulous landlords are inserting new ground rent terms that escalate as the lease shortens. One example that we have come across of oppressive lease terms started with an annual ground rent of £150 in 1995, and rising by 7 per cent a year thereafter. At that rate of increase the ground rent would rise to a staggering £439,923 at the expiry of the lease in 2113.

Camden Council Overcharges

Landlord neglect also featured in another tribunal case involving the London Borough of Camden and service charges imposed on residents on its Kingsland estate. As a result of the poor quality of repair work undertaken in 1993, the council was obliged to make a number of concessions in the course of the hearing, saving the leaseholders around £100,000 on a total bill of £576,000.

In spite of this, the tribunal permitted the council to recover £50,000 in costs relating to the tribunal hearing. This is yet another example of leaseholders being stung with punitive costs, even though their grievance was found to be justified. Claims made by Siobhan McGrath, president of the tribunal service, that leasehold valuation tribunals do not award costs and offer affordable solutions to landlord and tenant disputes clearly need to be taken with a rather large pinch of salt.

Although the tribunal was critical of the council's management fee, which was calculated as a percentage of the total works, curiously it did not find the fee unreasonable. The tribunal felt that the council ought to calculate its management charge as a fixed fee per flat in accordance with the RICS residential property management code.

The Great Estates Humbled

The so-called Great Estates, which own huge swathes of central London, have been on a charm offensive – trying to show that they alone have been responsible for maintaining the high standard of commercial and residential property in central London.

Following an exhibition at The Building Centre in London's West End, praising the 'achievements' of London's biggest landlords, no doubt we can expect more sycophantic displays in the future.

What the spin doctors employed by the Great Estates fail to point out is that it is the tenants and leaseholders occupying these properties who bear the full cost of maintaining the buildings 'owned' by their masters.

The 'Great' Estates merely cream off the capital gains from rising property values.

This can be seen from the way in which the Grosvenor Estate, owned by the Duke of Westminster, has accumulated capital over the years. When the grandfather of the present Duke of Westminster died in 1955, he left an estate valued at just £10.7 million. Fifty years later the present Duke of Westminster is worth an estimated £6.6 billion, representing an after-tax annual compound return of 13.7 per cent.

Two questions need to be answered by the Great Estates. Why are Paris, Rome and Amsterdam such charming cities, without property ownership concentrated in the hands of just a few aristocratic families? Would the vibrant cities of North America still look like colonial outposts if the British aristocracy had owned the land?

MEMBERSHIP

The Leaseholder *aims to keep leaseholders up-to-date with the latest legal developments, as well as spearheading the campaign to abolish the discredited medieval leasehold system. We want all our readers to join CARL, so that we can speak from a position of greater strength.*

Please return the enclosed membership form together with your subscription. Existing members should already have received their membership cards. Likewise, let us know if you no longer wish to receive our newsletter on a regular basis. You can always read the newsletters on our website at www.carl.org.uk.

Help us extend the campaign to end the misery caused by the leasehold system. Write to your MP about the problems you are experiencing and tell him/her about CARL. Committee members are always ready to discuss leasehold issues with MPs in Westminster.

LAW COMMISSION SHOULD THINK AGAIN

The Law Commission has published a consultation paper on dispute resolution in the housing sector. It proposes that the government should retain the present muddled structure of courts, tribunals and ombudsmen. Just as unhelpful is the Commission's proposal to replace the present confusing structure of housing advice services with another equally consumer unfriendly structure called 'triage plus'.

Householders deserve something better than being patronised by fancy sounding advisory services. What is needed is a single regulator to replace the ineffectual and conflicted local authorities in enforcing the law against criminal and corrupt landlords, together with a single ombudsman service to adjudicate in housing disputes.

Not only would all this be far more accessible to tenants and leaseholders than the present system, it would also cost much less to run. The legal costs racked up by parties before the leasehold valuation tribunal are, in the majority of cases, far in excess of the amounts in dispute.

The Law Commission has also published a draft bill proposing a single form of tenancy, replacing the present complex structure in both the private and social housing sectors. These proposals will not apply to long residential leases – just what the landlords ordered.

The Commission also claims that it is in the process of drafting a bill that will abolish forfeiture. In practice, all this bill will do is to replace the word 'forfeiture' with the expression 'termination of tenancy'. It makes little difference what the legal procedure is called, the effect is the same: loss of the home, and all the capital invested in it.

Raising The Roof

The Land Registry refused to register a lease issued by a landlord over the surface of the roof and airspace above a block of flats. The case was heard by the Adjudicator to HM Land Registry ('Kintyre Ltd v Romeomarch Property Management Ltd').

The Adjudicator ruled that the roof space was required for the proper management of the roof, and proper management would not be possible were the landlord applicant to build flats or place mobile masts on it. Complicating the issue further was the fact that the new lease covering the roof was granted shortly after leaseholders in the block had issued a notice on the landlord seeking to purchase the freehold of the building under the 1993 Leasehold Reform, Housing and Urban Development Act.

The Adjudicator ruled that, had the lease over the roof space existed prior to the leaseholders' notice, it would have been liable to acquisition under the 1993 Act. The lease was therefore void.

Carry On Consulting

According to a ministerial announcement on 14 June, the government plans to do nothing about the failure of commonhold tenure to get off the starting block. Less than ten commonhold developments have been registered in the past two years, compared with hundreds of new leasehold bocks.

Instead of rectifying the mistakes in its own legislation, the government is to conduct yet another consultation exercise on the subject later in the year. Clearly protecting the profits of landowners and developers through the leasehold system has a far higher priority in Mr Blair's agenda than ensuring that 2.5 million households are able to enjoy a more secure and stable form of tenure.