LIBERAL DEMOCRATS SUPPORT LEASEHOLD REFORM

In the run up to the next general election, CARL plans to publish a series of articles by leading politicians setting out what the political parties plan to do on the leasehold front. The first article in the series appears below, and was written by Sarah Teather MP, the Liberal Democrat shadow housing minister.

"A Liberal Democrat government would legislate to strengthen the protections available for leaseholders, and give them the right to quick and independent arbitration over the cost of capital works and other service charges. It is particularly distressing when leaseholders are hit with very large repair bills over which they have no control. These bills can often run into tens of thousands of pounds, with far too many councils and private freeholders failing to take their responsibilities seriously.

The Labour Party had promised to phase out leasehold as far back as 1995. However, the Commonhold and Leasehold Reform Act 2002 has been a huge disappointment, with very few leaseholders able to take up the opportunity to move to commonhold.

ke it much easier for leaseholders to transfer to the new commonhold tenure. Under current rules, every party with an interest in a block of flats, including all leaseholders, their mortgage lenders and the landlord must agree to the transfer to commonhold. We would allow the transfer to commonhold with a 75% or more majority of leaseholders, and without the consent of the landlord.

Enfranchisement, where leaseholders purchase the freehold, would also be easier under a Liberal Democrat government. The existing rules require the leaseholders to pay the freeholder half the 'marriage value' - the difference between a freehold with vacant possession and a freehold with a long lease. We would abolish this payment.

We would also like to see the government tackling forfeiture, by which a freeholder can force a leaseholder out of their home often for minor breaches of contract - such as building an extension without landlord approval or refusal to pay excessive service charges. Forfeiture has no place in modern housing legislation. It would be abolished by the Liberal Democrats and replaced by sanctions similar to those available to mortgage lenders. The leaseholder would pay only the money owed as a result of any breach of the lease, and not lose the entire value of his or her home.

The Liberal Democrats are also calling on the government to investigate the remaining abuses over insurance premiums and service charges faced by leaseholders.

We take the problems faced by leaseholders extremely seriously, and agree very strongly that they have been let down by the Labour government. The Liberal Democrats will continue to fight for greater protection for leaseholders."

It's all Wright for some

In response to a parliamentary question about the problems that leaseholders are experiencing, Iain Wright MP, who was junior housing minister prior to Gordon Brown's recent government reshuffle, made the absurd claim that "leaseholders already have access to a wide range of protections and rights."

It subsequently emerged in the course of the MPs expenses scandal that taxpayers not only paid the service charges on Mr Wright's London flat, but that we also picked up the bill for his share in the legal costs of acquiring the freehold of the building. Mr Wright shares the taxpayer funded flat with fellow MP, Tom Watson.

The expenses scandal also revealed that many other MPs had their service charge bills paid for by the taxpayer. Is it any wonder then that our legislators are so oblivious of the excessive costs demanded for the poor management endured by most leaseholders?

The parliamentary question also asked whether the new Tenant Services Authority would be able to offer any assistance to protect leaseholders. Mr Wright said that the authority "has no responsibility in respect of leaseholders who own 100% of the interest in their homes". Since no leaseholder owns 100% of the interest in their homes, we can obviously live in hopes.

ADAM SMITH: THE WEALTH OF NATIONS (1776)

"The landlords, like all other men, love to reap where they never sowed, and demand a rent even for its natural produce."

"The rent of land, considered as the price paid for the use of the land, is naturally a monopoly price. It is not at all proportioned to what the landlord may have laid out upon the improvement of the land."

Leaseholder

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

www.carl.org.uk

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LEASEHOLD MOVES UP THE AGENDA

There was a two-hour debate on leasehold reform in the House of Commons on 26 June. Government minister Rosie Winterton was clearly unprepared for the sharp attacks, not just from Conservative and Liberal Democrat MPs, but also from her fellow Labour MPs. In a lacklustre performance at the despatch box, Ms Winterton stumbled over much of her prepared speech, and then relied on a steady flow of notes passed from civil servants to help her answer the questions raised.

The debate was initiated by Jacqui Lait, Conservative MP for Beckenham, who introduced a private member's bill to provide additional rights for leaseholders facing large demands for major works. She found support from Robert Neill (Con), Simon Hughes (LibDem), Willie Rennie (LibDem), Barry Gardiner (Lab) and Andrew Dismore (Lab).

Barry Gardiner made the point that the consultation procedures over major works actually give leaseholders few rights over how their money is spent: "To have a right but no means of enforcing that right is to have no right at all." That could be said of all the so-called rights that leaseholders have – from the right to see accounting documents and insurance policies, through to the right not to be harassed by landlords.

Jacqui Lait drove the point home even harder: "The minister really needs to consider what is happening in the real world, as opposed to what is happening in the legislative world. Many leaseholders experience a total disregard for any of the rights that she is reading out; she must bear in mind what she is reading out is not what happens to leaseholders."

The government's negative reaction to any sensible attempts to protect leaseholders will count heavily against it in the next general election, since most of the country's three million leaseholders live in marginal constituencies in London, along the south coast, and in the north-west. CARL's campaign will be moving up a gear ahead of the next election, widely expected in May next year.

The Big Debate

The Sunday Observer's 'Question of the Week' in its Cash section on Sunday 14 June featured a debate on whether it is time for our existing leasehold laws to be abolished. Nigel Wilkins, chair of CARL, argued in favour of the motion, while Ben Young, chief executive of RLHA Group argued against. A copy of the debate, together with the correspondence published the following week, is inserted into this newsletter.

You can watch the House of Commons leasehold debate on the following link. The debate starts at 1 hour 52 mins into the tape:

http://www.parliamentlive.tv/Main/Player.aspx?meetingId=4291

You can also read the debate in Hansard:

http://services.parliament.uk/hansard/Commons/bydate/20090626/mainchamberdebates/part005.html

ARE LVTs REASONABLE?

Do Leasehold Valuation Tribunals make the law up as they go along? If you look at LVT decisions on identical issues, you may be excused for concluding that they do.

Take the question of buildings insurance, where leaseholders are being systematically overcharged. The two cases below both involve the managing agent BLR billing the leaseholders for insurance premiums approximately twice as much as the competitive quotes obtained by the leaseholders themselves. BLR relied in their defence on the decision in 'Berrycroft Management Ltd v Sinclair Gardens Investments Ltd' (1997).

- In the case '10A Bromar Road, London SE5', decision dated 2 October 2008, the LVT panel said that the insurance premiums were excessive. In its ruling the tribunal said: "Simply expressed, the basic rule is that when spending the money of third parties a landlord should act as a prudent man of business would if he was paying the money personally, ie he is acting as a trustee. The Berrycroft case is authority that he does not have to use the cheapest quote, as other factors, such as the risks covered, and the quality of the insurer should be considered. That proposition is a long way from the situation in this case, where the same insurance company would insure the same property for the same risks for less than 50% of the premium charged."

- In the case '6 Bounds Green Road, London N11', decision dated 3 February 2009, the tribunal considered the insurance premiums were reasonable, even though the leaseholders had obtained competitive insurance quotes that were less than half the premiums charged by the landlord. The landlord made no challenge at all to the quotes obtained by the leaseholders. The panel said: "The respondent is not acting unreasonably in insuring the premises as part of the landlord's portfolio [of properties], when the premiums were tested for competitiveness each year." In view of the vast difference between the quotes obtained by the leaseholders and the premium charged by the landlord, the landlord can hardly have tested these policies for competitiveness. The panel members in this case were Mr JC Avery and Mr A Engel.

Many decisions taken by the LVTs reflect not just the amateurism of panel members, but also their bias. No attempt is made in the appointment of LVT members to ensure that there is a balance in representation between landlord interests, leaseholder interests and independent representatives. By contrast, employment tribunals are typically made up of an employer representative, a trade union representative, and an independent chairman.

Nine out of ten decisions taken by LVTs on requests by landlords for dispensation from the consultation procedures over major works are decided in favour of the landlord and against the leaseholders. Few leaseholders challenge landlord applications for dispensation, because of their fear of being stung with thousands of pounds in legal costs awarded by the LVT in favour of the landlord. In any event, whether or not the leaseholders challenge such requests for dispensation from the consultation procedures should have no bearing on the rigour of the panel's consideration of the application.

Bogus auditor let off

Yet another accountant has been caught signing service charge accounts when not qualified to do so. John Vincent Leach of 19a Lake Avenue, Bromley signed audit certificates on 85 company and service charge accounts over a period of more than ten years, even though he was not registered as an auditor. Secion 28 of the Landlord and Tenant Act of 1985 requires the certificate to be signed by a qualified accountant who is also a registered auditor.

In spite of the severity of the offence, the Institute of Chartered Accountants has allowed Leach to continue to practice as a chartered accountant, nor did it force him to repay the fees he had charged for carrying out 'audit' work. All he suffered was a reprimand and an order to pay the costs of the disciplinary hearing to his Institute.

Curiously, the Institute claimed that there were "powerful and unique" factors in mitigation. The tribunal took into account the defendant's "long unblemished" career, even though his professional misconduct stretched over a period of more than a decade. The Institute also claimed that no third party had suffered any loss. Without seeing the results of a complete re-working his 'audits' by a fully qualified auditor, this statement is merely an unsupportable assertion.

The incompetence of the Institute is demonstrated by the fact that this malpractice was allowed to continue for more than a decade before being detected. There are many other long-standing cases of malpractice that continued for many years until members of the public – not qualified as accountants – reported the matter to the Institute.

This case demonstrates once again the complete inadequacy of self-regulation, and the desire of the Institute of Chartered Accountants to protect unprofessional members of its organisation against the consequences of their actions, rather than protecting the public against the consequences of misconduct by their unprofessional members.

The BBC Radio 4 programme 'You and Yours' recently had an item about overcharging on insurance policies. One of the participants in the programme was Roger Southam, who was the keynote speaker at our AGM three years ago. This is the link to the programme :

http://www.bbc.co.uk/iplayer/episode/b00kcrg6/You_and_Yours_21_05_2009/

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. We are extremely reliant on our members to spread the word about CARL's campaign. We need your help to distribute copies of the Leaseholder to your neighbours, work colleagues, libraries and local MPs. Contact us for further copies of the Leaseholder, by e-mailing us on info@carl.org.uk.

OFT taken for a ride

We reported in our previous issue ('Leaseholder', Spring 2009) that the Office of Fair Trading had obtained the agreement of McCarthy & Stone to remove the clause in their leases requiring leaseholders who sell their homes to pay the firm a 1 per cent levy on the purchase price. McCarthy & Stone is one of the largest firms operating in the retirement home business.

The bureaucrats of the OFT have, however, been completely outwitted by McCarthy & Stone, since the firm has transferred most of its freeholds into the hands of two other companies – Peverel and Fairhold. These two firms, and indeed any other firm operating this unfair practice, can safely ignore the OFT's strictures, which only apply to McCarthy & Stone. Meanwhile McCarthy & Stone continue making good money from "managing" retirement homes.

Until the OFT is prepared to outlaw unfair contract practices across the board, protecting the interests of all consumers who are disadvantaged, it will continue to be made to look foolish by firms that simply switch corporate identities to suit their interests and thwart the OFT. The OFT's press office has chosen not to respond to CARL's questions on this issue. However, we understand that the person at the OFT looking at this unfair practice is Ian Levey, and her e-mail address is:
ian.levey@oft.gsi.gov.uk

Separately, the OFT has recently produced a highly critical report about property managers in Scotland. Scottish property managers, commonly known as 'factors', are responsible for maintaining tenement blocks and other residential properties with a shared common space.

The OFT found in its survey that one in three flat residents in Scotland were not happy with the performance of their property manager. Since flats are owned on a freehold basis in Scotland, flat owners have the freedom to choose their own managing agents. This negative assessment is therefore very worrying.

Perhaps the OFT should be required to undertake a review of managing agents south of the border. In contrast with Scotland, most of us living in flats do not have a choice over who manages our properties. The landlord takes this decision.

Demanding money by menace

Following the story in our previous newsletter ("LVT cannot protect vulnerable leaseholders", Leaseholder, Spring 2009), CARL wrote to the then housing minister Margaret Beckett to ask what action the government was planning to take against landlords who issue leaseholders with "threatening demands" that "could be considered to have been made with menaces".

We received a response from Ian Fuell, an official in Ms Beckett's department. He was able to confirm that the government would be taking no action whatsoever against such landlords, who are thus free to continue operating as they please. Ms Beckett was removed as housing minister in Gordon Brown's cabinet reshuffle.

Help with legal fees

If your home insurance policy offers cover for legal costs, you may be able to make use of the legal advice provided through your insurance company. If you are a member of a trade union, you may also have access to free legal advice. We are interested in hearing from leaseholders who have followed either of these routes.

Queen's speech

With the government's legislative programme for the next session due to be announced in the Queen's speech in November, CARL wants to see the following proposals included:

- Stop new leasehold homes being built, by requiring all new developments to be either freehold or commonhold.
- Reverse the Sportelli judgment, allowing leaseholders buy their freeholds to fair valuations.
- Extend the roles of the Tenant Services Authority and the Housing Ombudsman to include the leasehold sector.