SERVICE CHARGES PUT HOMEBUYERS AT RISK

By Ruth Lythe

SOARING service charges could leave thousands of families seduced by government-backed property schemes at risk of losing their homes. A Money Mail investigation has uncovered how buyers of new-build homes are at the mercy of ruthless property management firms that hike service charges for the upkeep of shared areas at blocks of flats.

This can leave buyers struggling to cope with monthly bills and hinder them from saving up to buy a bigger stake in their property. In some instances, people have seen their charges, typically around £900 a year, leap by 600% in just 18 months.

In the worst cases, managing agents can repossess the homes of buyers who fail to pay the charges. Bob Smytherman, chairman of campaign group the Federation of Private Residents, says: 'People may be signing up to these schemes in good faith, believing they can afford their mortgage and the service charge set out in their contract when they buy.

'But because the service charge industry is completely unregulated, they could easily find themselves tipped over the edge if these charges suddenly increase and their mortgage payments rise.'

Over the past decade various governments have launched schemes to help struggling families on to the housing ladder. Money Mail inquired about a number of properties sold under the latest scheme 'NewBuy' and was told the service charges averaged around £900 a year.

With each of the three developments run by builders Bellway, Barratts and Linden Homes, we were warned these charges might rise. But campaigners say some unscrupulous managing agents use service charges as a licence to print money. Complaints to the independent Leaseholders' Advisory Service jumped 46% over the past two years.

Money Mail readers have told how charges by their managing agent leapt by up to 600% in 18 months. If homeowners want to challenge these kinds of hikes, their only recourse is to appeal to the Leasehold Valuation Tribunal, where they can end up battling lawyers hired by the managing agents.

Young families who have bought flats sold under government-backed schemes and who own tiny stakes in their properties often have no option but to put up with these hikes.

Many cannot move because they are in negative equity. They put down only small deposits and have seen house prices, particularly on new-builds, plunge in the past 18 months.

Many have also struggled to find a new mortgage loan because lenders are demanding larger deposits. Instead, they will have to go on their lender's standard variable rate.

Matt Griffith, spokesman with first-time buyers campaign group Priced Out, says: 'A lot of those who bought into these government schemes are facing negative equity and higher mortgage costs. They are stuck, and have very little defence against things like excessive service charges.' Homeowners who fail to pay service charges on time may also incur interest and other fees, although these should be set out in their contract.

Daily Mail, March 2012

MILLIONS OF PUBLIC MONEY WASTED IN ISLINGTON

Fears are growing that millions of pounds of public money may have been wasted on building work, after a leasehold valuation tribunal slashed the bill for one estate by 70 per cent. Islington council was overcharged by £1 million for work on just two blocks on the Tremlett Grove estate in Archway, according to the tribunal. As a result the charges the council passed on to the 14 leaseholders who took the case the tribunal have dropped by around £16,000 apiece.

Some of the work on the building was done as part of the Decent Homes Programme designed to improve council housing. If councils have been overcharged on other parts of the programme, millions of pounds of taxpayers' money could have been wssted.

See Islington Leaseholders Association (www.ila.org.uk)

Leaseholder

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

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COMMONHOLD AND LEASEHOLD: TEN YEARS ON

TEN years have elapsed since the Commonhold and Leasehold Reform Act received the Royal Assent in 2002. At the time, CARL was already campaigning to get a better deal for the country's 3 million leaseholders. As the planned legislation was being debated in Parliament, we consistently warned that it would achieve little for the country's long suffering leaseholders. The government of the day ignored us and chose instead to listen to the powerful landlord lobby – thereby scuppering any prospect of replacing leasehold with a more sensible and fairer system of tenure.

Prior to the Parliamentary debates taking place, CARL had issued a press release in January 2001 highlighting the limitations of the proposed legislation. If anything, the situation has got worse than before the legislation was passed, with more and more people being forced into even more problematic forms of leasehold tenure – including shared ownership. Landlords were left free to carry on abusing leaseholders unhindered.

CARL had issued a press release in January 2001 highlighting the limitations of the proposed legislation, prior to the Parliamentary debates taking place. We warned that – if introduced – the legislation would fall short in a number of key areas:

1. Leaseholders will still be in possession of a wasting asset and will have to pay the landlord a windfall profit in order to enfranchise
2. Commonhold – the new form of property tenure – will remain a distant and unattainable goal for most existing leaseholders
3. Even if leaseholders exercise the right to manage, landlords will still effectively be in control of the building
4. The complicated and bureaucratic body of company law will be used to govern commonhold associations and right to manage companies
5. Challenging excessive service charges will still involve the costly and lengthy tribunal proceedings
6. Landlords will still be able to hide their true identities behind offshore companies
7. No measures are proposed to ensure service charge funds paid by leaseholders are held securely
8. The activities of managing agents will remain unregulated
9. The problems of leaseholders with defective leases will remain
10. Those who own ex-local authority flats will not be able to exercise the right to manage

A decade on and there are still barely 150 commonhold homes registered with the Land Registry. As long as leasehold tenure remains an option for new developments, developers will never sell new blocks on commonhold tenure. Leasehold gives them two bites of the cherry. They can sell long leases at full freehold value, whilst retaining the freehold for later sale to an unscrupulous investor who can profit out of service charge scams and lease extensions.

It is impossible for existing leaseholders to switch over to commonhold tenure because of the unanimity requirement in the legislation. All parties with an interest in the block, including all the leaseholders, their lenders and the landlord, would have to agree to the transfer. Democracy is not a consideration.

As Labour MP Barry Gardiner said during the parliamentary debate over the Commhold and Leasehold Reform Act: *"By their insistence on unanimity, the government have at once held out commonhold as the panacea for the ills of leasehold tenure, and simultaneously made it unattainable for all existing leaseholders. It is a quite staggering achievement to neuter one's own bill before it ever gets on the statute book, but that is quite simply what this ensures."* (Hansard: 8 January 2002).

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LONDON ASSEMBLY PUBLISHES REPORT
Its weak recommendations should be challenged

The **London Assembly** has now published the results of its survey of service charges paid by leaseholders in the capital. Although the survey covered just London, leaseholders across the country will recognise the serious problems facing leaseholders identified in the report.

The full report – appropriately called "Highly Charged" – can be found at: http://www.london.gov.uk/who-runs-london/the-london-assembly/publications/housing-planning.

Steve O'Connell, the Assembly member who led the work in preparing the report, said: *"There needs to be a cultural change in the approach to managing service charges. Problems have dogged the service charges regime for many years … it's an archaic and opaque system and many leaseholders are tearing their hair out with frustration. Some people would like to see leasehold done away with altogether, but failing that we must make sure that the system we have is as fair as possible."*

However the report completely downplays both the scale and the impact of the problem. London's 500,000-plus leaseholders are paying rather more than half a billion pounds in service charges each year as claimed in the report. We would estimate the figure to be more than twice that amount.

By suggesting that leaseholders are "tearing their hair out with frustration", Mr O'Connell demonstrates both his mastery of understatement and lack of understanding of the problem. Many leaseholders are driven to despair and depression, with large numbers forced into excessive debt – and all-too-often the loss of their homes.

The report acknowledges that it is unlikely there will be any changes to leasehold law anytime soon. In fact, not one MP contacted by CARL has taken up the challenge to introduce a Ten Minute Rule Bill preventing developers from selling new leasehold homes in future.

The report also fails to admit that existing landlord and tenant law is not being enforced by the authorities. All too many leaseholders have been the victims of serious crimes by their landlords.

These offences range from failure to supply service charge accounts and documents (including insurance policies) right through to fraudulent service charge demands pursued with threats. Throughout the term of office of CARL's first Chair, Stella Evans, her landlord was in prison for the theft of service charges at her block – the only landlord we are aware of going to prison for such a common offence.

Local councils consistently fail to prosecute landlords even when clear-cut breaches of landlord and tenant law are referred to them. The fact is that the Assembly lacks the courage to criticise the consistent failure of London boroughs to act in protecting the victims of crime, when those victims are leaseholders and tenants.

Likewise the report contains no recommendation that the Metropolitan Police, for which the Greater London Authority is responsible, should prosecute fraudulent and corrupt landlords and managing agents, of whom there are many operating in London. Misuse of service charges supposedly held in trust is widespread. This is not monitored effectively by RICS, ARMA or the ARHM in the case of their members, and not monitored at all in the case of other managing agents.

The recommendations made by the report mainly consist of changes to the way in which the LVTs operate – whilst not tackling the root cause of why disputes arise in the first place (see box). The London Assembly has given us until 15 June to make further comments on the report – we would encourage you all to do so.

LONDON ASSEMBLY'S KEY RECOMMENDATIONS:

- The leasehold valuation tribunal should address the disadvantages faced by leaseholders seeking to conduct their own cases
- The government should consider making mediation compulsory as a first step in the dispute resolution process
- The government should review whether the barriers to achieving right to manage should be reduced
- The LVT should "consider" suitable redress options for leaseholders if its decisions are not complied with by landlords

WHAT IS CARL CAMPAIGNING FOR?

- All new residential developments to be either commonhold or freehold – no more leasehold homes. Leasehold hardly exists elsewhere in the world. Our neighbours, Scotland and Ireland, both have legislation in place preventing new residential leases from being sold.
- Let existing leaseholders transfer to commonhold at a fair price – reflecting the fact that leaseholders pay in full for the construction and maintenance of their homes. The freeholders contribute nothing at all.
- End forfeiture – since it amounts to confiscation – and replace the leasehold valuation tribunals by a regulator with teeth. All disputes should be transferred to the independent housing ombudsman.

Are LVTs fit for purpose?

The leasehold valuation tribunals have proved completely ineffectual in bringing an end to the abuses in the leasehold sector. This is hardly surprising. All too often leaseholders find themselves up against landlords well represented by lawyers, whose fees are usually paid for by the leaseholders through their service charges. Leaseholders are in effect required to fund the landlord to fight them.

Unlike the employment tribunals no effort is made to balance the representation on the tribunals between the two interests involved. Most appointments are made to chartered surveyors, some of whom themselves have a poor track record of property management. No representatives from leaseholder groups have ever been appointed – ensuring that the bias towards the landlord interests is maintained.

CARL takes the view that leasehold disputes should be settled by an independent ombudsman scheme, funded by the industry. That would provide an incentive for the industry to clean up its act.

Fraud in property management

The National Fraud Authority has just published its latest annual fraud survey. Procurement fraud is a particular area of focus for the report. Examples include price fixing, bid rigging, cover pricing, false/duplicated/double invoicing, overpayments, false payments, altarered payment details and diverted payments (often involving bribes and 'kickbacks'), and the delivery of inferior or sub-standard substitute products and services.

These practices are all very common in the property management business. More than 40% of respondents to a survey by the Chartered Institute of Purchasing and Supply (CIPS) reported that spending on construction is at greatest risk from procurement fraud.

It is worth noting that there is an informative article on the CARLEX website about the insurance swindles being perpetuated against leaseholders ('So you thought you knew about leasehold insurance commissions'): www.carlex.co

The shared ownership con

Our previous edition of the *Leaseholder* (Winter No 34) attacked the abuses experienced by those "buying" shared ownership homes. There was an article recently highlighting the problems faced in the sector in the *Independent on Sunday*, written by Laura Shannon ('Future home dreams shattered in the traps of shared ownership', 1 April). This can be found at: http://www.independent.co.uk/life-style/house-and-home/

What is presented as a low-cost method of buying a new home turns out to be nothing of the sort. Buyers soon end up in negative equity because of the inflated valuations at which they are sold, rents have increased steadily on the share of the property still in the hands of the housing association, and buyers face excessive service charges. These financial demands prevent "staircasing" upwards through buying a large share. In any event, however large a share you actually buy, you are still a leaseholder.

Cooperative ownership boost

Labour MP Jonathan Reynolds will be introducing the Cooperative Housing Tenure Bill in the House of Commons on 11 October. The Bill calls for legislation for cooperative tenure to be recognised as a distinct form of tenure in English property law, making it easier for housing co-ops to start and to organise themselves.

This move certainly needs our full support, since its aim is to ensure that home owners are not subject to the vagaries and exploitation by absentee landlords through the leasehold system. It also avoids many of the complexities of commonhold tenure.