LETTERS TO THE EDITOR

Dear Sir

Inequality such as exists between landlord and leaseholder rights would not be tolerated between any other groups in civil society. The leaseholder's obligation to pay so much money with so little accountability in return is completely unjustifiable.

Jonathan Ayres
London

Dear Sir

My freeholder and her managing agent have made my life a living hell. Outrageous bills, total lack of maintenance, aggression, threats of forfeiture, stress, making me feel like I don't own the flat.

Sue Dilloway
Brighton

Dear Sir

We face the usual issues: absentee landlord who marks up building insurance, is in breach of maintenance obligations under the lease, refuses to supply documentation, and when challenged, becomes abusive and threatens legal action for non-payment. This all means that leaseholders have to pay solicitors' bills to receive the minimum levels of cooperation, which is their right under common law.

Sue Laing
Manchester

Dear Sir

I have lived in a new development of 56 flats built in 1999. We each pay the landlord over £700 a year, plus buildings insurance. No painting has been done since we moved in, and the grounds are overgrown, vandalised and unkempt. Repairs are never done. Our landlord company has pocketed hundreds of thousands of pounds of leaseholders' money in the course of the past nine years. I wrote to my MP, Jon Cruddas, but he didn't reply to my letter.

'Concerned leaseholder'
Dagenham

From the Estates Gazette

Dear Sir

The benefits of holding a reversionary interest in a real and non-expropriatory "no-Act" world should be highly attractive to many groups of investors. It is common ground that the deferment rate must not be confused with the Bank of England's official bank rate, which fluctuates frequently and yet only directly influences short-term borrowing and lending.

The bank rate has only a tenuous link to "nominal" long-term rates and a still lesser link with long-term "real" rates. The yields on these long-term rates were used to determine the "real risk-free rate" – one of the three elements of the deferment rate.

The Lands Tribunal was perhaps " recklessly conservative" in the tenants' favour in selecting 2.25% for its real risk-free rate, basing it on a five-year rolling average for a 10-year rate and mitigated by the subsequently unfounded concerns that long-term yields were being depressed by a perceived "pensions panic".

It is important to have at least a basic grasp of these underlying financial issues before launching into criticism of the necessarily complex, and thorough, Sportelli deferment rate decisions, since these matters had formerly been widely misunderstood by valuers.

Martin Ward
Accountant

Dear Sir

As an economist by training and a banker by profession, I fully understand the calculation of the reversionary rate implicit in the Sportelli judgment. However, I do not see how this particular rate, or indeed any other, is relevant in Martin Ward's non-expropriatory world.

The entire cost of the original development of residential leasehold property, in addition to its continuing repair and maintenance, is borne by the leaseholder. The freehold interest contributes nothing, and often makes a substantial profit both on the original sale of the lease and through the insurance and other service charge scams in operation.

It is the leaseholder who faces expropriation of his or her property either during or at the end of the lease. There is no financial contribution made by the freeholder that would merit compensation.

Nigel Wilkins
Chair, CARL

THE Leaseholder
C.A.R.L Campaign for the abolition of residential leasehold
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HELLO...IT'S GORDON HERE

According to recent press reports, Gordon Brown is telephoning voters personally in order to get to know what the electorate is thinking. If he calls you, make sure you don't miss this golden opportunity to remind him of Labour's promise to end the feudal system of land tenure that we all continue to endure.

Labour presented commonhold tenure as the replacement for the leasehold system. This promise was contained in a Labour Party document 'An End to Feudalism', published just before Labour came to power over ten years ago.

Now look at what has happened in practice. Six years after commonhold was introduced, there are still only fourteen new commonhold developments and less than a hundred commonhold flats have been registered. By contrast more than half a million leasehold flats have been built since Labour came to office. This government has overseen a bigger expansion in the leasehold system than at any time since William the Conqueror introduced the system to England in the Middle Ages.

You could also remind the prime minister that the 'right to manage' has proved a complete flop. The government claimed it would help leaseholders who are unable either to buy their freeholds or switch to commonhold. So far just over a hundred blocks have been able to exercise this right to free themselves from shoddy and disreputable management by their landlords.

Labour also promised to make the process of enfranchisement – that is, buying the freehold – cheaper and easier for leaseholders. In practice, leaseholders are now paying more than four times what they would have paid for their freeholds only a decade ago, and disputes over valuation are even reaching the House of Lords.

We await government action to tackle the widespread corruption in the construction and property management business, including bid rigging and other malpractices identified recently by the Office of Fair Trading. Not only has such malpractice hit taxpayers extremely hard, by pushing up the cost of large public sector projects, including schools, roads and housing, this has also hit leaseholders who have little control over what they are being charged by landlords for repairs and maintenance.

The Labour Party should be about fairness, if nothing else. Yet the effect of its policies in the leasehold sector has been to enrich landlords beyond their wildest dreams, in a manner that the Conservatives would never have got away with. Leaseholders are paying a high price for such largesse.

Extending the role of the new housing regulator ('Oftenant') into the private sector would do a lot to redress the balance in favour of both private sector tenants and leaseholders. As presently proposed, the remit of the new regulator will be restricted to tenants of local authorities and housing associations.

All of these urgent reforms outlined above could easily be introduced by adding further amendments to the Housing and Regeneration Bill, which is currently being debated in parliament. This does not require drafting fresh legislation.

Why wait for Gordon to call you? Why not write to him direct to set out the problems that leaseholders are experiencing and how he could help resolve these problems. You know his address, and he knows he will need to act fast to keep that address.

LANDLORDS WHO WON'T CONSULT

The Lands Tribunal has reversed a decision by the leasehold valuation tribunal to allow Camden Council to by-pass the consultation process for major works chargeable to leaseholders under a long-term agreement. Landlords are normally required to consult leaseholders over major works and long-term contracts under section 20 of the Landlord and Tenant Act of 1985.

Camden succeeded in gaining a dispensation from this consultation process from the LVT. However, the leaseholders then appealed to the Lands Tribunal, which overturned the decision of the LVT. Judge Huskisson ruled that if the council had been allowed not to consult, its leaseholders would have had no realistic way of challenging the huge bills that are in the pipeline. His judgment said : "The LVT reached a decision which was, with respect, plainly wrong. Such a vague and open-ended dispensation for future agreements cannot properly be granted."

The LVT had originally agreed to the dispensation from consultation, even though Camden admitted that it had not set up any of the partnering or framework agreements for which it was seeking exemption from the consultation requirements. Attempts last year by eight London boroughs to avoid the consultation process over long term procurement contracts also failed (see 'The Leaseholder', Spring 2007).

In the private sector the record on consultation has not been so good, with the LVT granting more than 80 per cent of the dispensations requested by landlords. In most cases, the LVT has ruled in favour of the landlord on the most superficial grounds. This has resulted in renewed criticism of bias by the tribunal, whose members come largely from the property industry.

Thames Gateway to go feudal

The giant property company Land Securities is planning sell all 10,000 properties at its proposed Ebbsfleet Valley development on a leasehold basis. The scheme is being built around the planned new international rail station.

CARL strongly opposes the sale of new leasehold properties in this manner. Developers realise that they can make far more money out of purchasers through selling on a leasehold basis than on a freehold or commonhold basis. Arguments by developers that this is done in order to maintain common standards across a whole area are pure fiction.

Shared Ownership

Most of the shared ownership schemes on offer to those who cannot afford to buy their homes outright are in fact simply tenancy schemes where the purchaser buys a lease over that portion of the property he or she 'owns', and pays rent the portion that he or she does not.

The fundamental flaw in this form of 'ownership' was brought home in the recent case 'Richardson v Midland Heart Ltd'. Mrs Richardson fell into arrears of rent, enabling the landlord to seek possession of the shared ownership property. The second consequence was that the landlord was then entitled to seize the whole of the tenant's capital investment in the property.

The householder was not the owner of a half share in the property. All the householder owned was a lease and nothing else. Once the lease had gone, then so too did the householder's entire stake in the property.

Erinaceous gets flattened

An article in 'The Observer' by Nick Mathiason on 25 May provided an update about developments in the Erinaceous property management group, which is now in administration. Liberal Democrat peer Lord Razzall was among the company's directors.

One company in the Erinaceous group is already being investigated by the Serious Fraud Office, and now details have emerged of allegations of over-charging in property maintenance contracts by other firms in the group. Property insurance is one particular area highlighted, with allegations that CPM, another Erinaceous firm, had overcharged leaseholders on building insurance at blocks in Middlesbrough and in Darwen, Lancashire.

Nick Mathiason noted that the word 'erinaceous' means 'hedgehog like', and in common with many hedgehogs the firm has been completely flattened.

LUDICROUS LEASEHOLD

Could there be a more decisive condemnation of the leasehold system than the comment made in 'The Independent' by Peter Haler, who retired last year as the chief executive of the Leasehold Advisory Service (LEASE) : "The whole nature of leasehold is wrong. The idea that you buy a flat, you mortgage yourself up to the eyeballs, but then it's your landlord who makes all the decisions about your property - it's ludicrous."

MEMBERSHIP

Join CARL and help us extend the campaign to end the misery caused by the leasehold system. Please return the enclosed membership form together with your subscription. Existing members should have already received membership cards.

Let us know if you want more copies of *The Leaseholder* for your neighbours. Write to your MP about your leasehold problems and tell him/her about CARL. Committee members are ready to discuss your issues with MPs in Westminster.

Petition to No. 10

The government has displayed its continuing contempt for leaseholders in this country by rejecting the petition on the Prime Minister's website proposing that the leasehold system should be abolished and replaced by commonhold ownership.

The government's response claims that the introduction of commonhold was designed to increase housing choice. In the six years since commonhold tenure was introduced less than one hundred commohold flats have been built, compared with more than 300,000 leasehold flats. Choice for the consumer has actually declined. It is only the landlord and/or developer who has any real choice over which type of tenure to build.

The government argues perversely that increasing the number of commonhold properties – for example through imposing a ban on new leasehold developments – would not increase choice.

The response also argues that the "rights" of those who do not want to transfer to commonhold should be preserved. It is difficult to see how the minority would lose any rights in this transfer process. Moreover, why should a minority of just one in a large block of flats overrule the wishes of the vast majority?

On one point the government's response to the petition is correct. Leaseholders are required to pay a premium when they buy the freehold, and this is well above the market price of that freehold, and even further above any reasonable level of compensation that the landlord deserves for its minimal contribution towards the construction and maintenance of the property.

Insurance Covered

The editor of 'The Leaseholder' asked the managing agents of the block where he lives to show him the building's insurance policy. Bradshaw Property Associates eventually supplied a Norwich Union policy with much of the detail blanked out, including the premium, the sum insured, and all the properties insured. This document provided no evidence that his block was actually insured.

The most senior law officer at Kensington and Chelsea council has now clarified the law on this point. Ms G Edila, LLB, LLM, wrote : "… there is a duty on your landlord to provide a copy of the insurance policy containing your flat. My interpretation of this duty is that provision of an edited copy would not suffice. Failure to comply with this duty is a criminal offence under paragraph 6 of Schedule 1 to the 1985 Act. I do not consider that the Data Protection Act overrides this duty on landlords to provide a copy, eg allowing them to provide an edited copy."

On a separate matter, the Financial Services Authority has published a consultation paper on transparency in the provision of insurance. In the paper the FSA describes a technique called 'grossing up'. This is where one party obtains competitively priced insurance from an insurance company, but then passes on a sharply higher premium to the party that has to foot the bill.

Holiday Homes

Leaseholders of holiday homes cannot dispute service charges imposed by a landlord under the Landlord and Tenant Act 1985, according to a recent ruling by the Lands Tribunal ('King v Udlaw Ltd'). The tribunal ruled that a holiday home was not a "dwelling" for the purposes of the 1985 Act, since it was not to be used for permanent residential accommodation. This decision contradicted that taken by the Court of Appeal in 'Oakfern Properties Ltd v Ruddy', which determined that in order to be regarded as a dwelling for the purposes of the 1985 Act the premises did not have to be the tenant's home.