A COMMONSENSE ALTERNATIVE TO LEASEHOLDS

Sebastian O'Kelly, Mail on Sunday, 11 December 2011

It is a singular curiosity of English civil law that the notion of leasehold has survived here and in Wales – yet been rooted out just about everywhere else where the English legal system has held sway. It is what brought Ireland to civil unrest in the 1880s, when the London government first began unpicking these relics of feudalism.

Doing away with leasehold was a heated issue before the First World War, as all the benefit a tenant makes to the land – building a large house in Belgravia, say – reverts to the freeholder once the lease is up. The system has been tinkered with ever since, with expensive quangos and a regulatory system.

But it is not a happy state of affairs. In September, residents won a staggering £1million in a Leasehold Valuation Tribunal action at St George Wharf opposite Parliament. Two weeks ago, residents at the riverside Charter Quay in Kingston, Surrey, won £150,000. At the latter, the tribunal condemned the freeholder and managing agents – both part of tycoon Vincent Tchenguiz's family companies – for loading fees and doling out contracts to other companies his family controlled at excessive rates.

'The residents were being systematically plundered,' says Melissa Briggs, a campaigner for pensioners in retirement flats who has founded the Leasehold Knowledge Partnership. This is a good practice accreditation scheme for leasehold managing agents.

There are three million leaseholders in the UK, with many more likely as our enlarged population becomes used to living in apartment blocks. There is no reason why these should not be commonhold properties – as is routine in the rest of the world – rather than leasehold.

Developers have been encouraged to build commonhold schemes since 2004, with the Commonhold And Leasehold Reform Act of two years before. But only a dozen have been built. Why? Feeble arguments such as 'English solicitors understand only leasehold' have been offered as an explanation.

The truth is leasehold suits developers as they can flog a property twice: once on lease to an individual buyer and then the freehold to a property company. Vacuuming up freeholds, moving in rapacious managing agents and then loading charges on to hapless leaseholders has proved to be a goldmine for unscrupulous operators.

Commonhold means residents of a block own the common parts and the freehold. It doesn't mean there won't be disputes, or a need for managing agents. But it does mean they won't be in the position of permanent disadvantage we still see with leasehold.

TYCOON PUSHES UP LEASEHOLDERS' FEES BY TRADING WITH CONNECTED FIRMS

Victoria Ward, Daily Telegraph, 3 December 2011

Residents at a luxury Thames development were overcharged by £150,000 when their landlord outsourced services to companies belonging to a family trust, a tribunal has ruled. Vincent Tchenguiz was ordered to repay leaseholders after it emerged that his companies traded with each other on financially favourable terms, pushing up residents' service charges and creating "onerous" break clauses in contracts. The Leasehold Valuation Tribunal (LVT) found that many of the companies used to provide services such as insurance, intercom and CCTV at Charter Quay in Kingston, Surrey, were part of the Tchenguiz Family Trust.

Iranian-born Mr Tchenguiz, who is based in Mayfair, Central London, heads a business empire valued at £4.5 billion and famously owns a yacht named "Veni, Vidi, Vici" (I came, I saw, I conquered). In 2008, he and his brother, Robert, were listed as Britain's 78th richest men.

The tribunal found that many companies connected to the Kingston development in 2008 and 2009 were "owned or controlled by the Tchenguiz family". It was managed by County Estate Management, a Tchenguiz company, which signed two 14-year contracts for intercom and CCTV with Interphone ltd, another Tchenguiz company, in 2007 and 2008.

County Estate's property manager admitted she did not read, negotiate or seek alternatives to the contracts before signing them but did not know that Interphone was a Tchenguiz company. Another Tchenguiz company that acted as landlord, Charter Quay Ltd, allowed another family-owned company, Estate and Management, to charge an "excessive" 23.5 per cent commission for insurance. Tribunal Chairman Adrian Jack said: "The result of entering these contracts has been extremely damaging financially, because the break clauses are so onerous."

Read the full article at: www.telegraph.co.uk

Leaseholder

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

www.carl.org.uk

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LEASEHOLDERS OVERCHARGED BY £700 MILLION – AND STILL COUNTING

In his keynote speech at CARL's annual conference Bob Suvan sent out a powerful challenge to the property management industry. He estimates that leaseholders are being overcharged by around £700 million a year on service charges – and the true figure could be as much as £1 billion.

Bob Suvan felt that leaseholders might be justified in seeing most managing agents as "somewhere between a second hand car salesman and the devil". He said that there is no regulation in the sector with any real "bite" capable of maintaining standards in the property management industry.

Not even repeat offenders are penalised, allowing landlords and managing agents to continue in the business of overcharging leaseholders without interference. There has never been any "banning" of companies or individuals from the property management industry, however appallingly they behave. Bob said that because the leasehold valuation tribunal is a court and not a regulator, the onus is placed on the leaseholders to argue their case unsupported by any competent authority.

Professional bodies and trade associations offer little help either. The Association of Residential Managing Agents (ARMA) "co-resides" with one of the largest offenders in the industry. The Royal Institution of Chartered Surveyors (RICS) only "recommends" the use of its Code of Practice; it places no obligation on its members actually to comply with it.

Bob Suvan represents BlocNet, which is a firm of managing agents. CARL welcomes those in the industry who are prepared to blow the whistle on the misconduct and malpractice perpetuated against leaseholders.

The leading examples of malpractice against leaseholders that Bob described in his presentation included the following:

- Many landlords and managing agents expect "kick-backs" from contractors for each job awarded. There seems to be an unwritten law that contractors cannot do business unless they pay bribes to the managing agent.

- Large referral fees are paid on insurance – as much as 40% of the premium. Larger landlords have their own insurance broker, who is paid simply for shuffling papers from one side of the desk to the other.

- Companies in the same group as the landlord or managing agent carry out work at non-competitive rates, providing poor service and inferior products. The leaseholders end up being forced to pay for the use of uncompetitive suppliers.

- There have been lots of examples were there are charges levied but no service provided in return. Often invoices are duplicated and even falsified.

You can make a difference by joining CARL, enabling us to speak from a position of even greater strength. Return the enclosed membership form together with your subscription. See what CARL campaigns for overleaf.

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.

ANNUAL CONFERENCE SUCCESS

CARL's latest annual conference – held last September in Kensington Central Library – has proved very effective in drawing publicity to leasehold problems. Managing agent **Bob Suvan** gave a frank account of how leaseholders are being exploited by landlords and managing agents (see front page). We welcome such openness from someone in the industry prepared to acknowledge what is actually happening to leaseholders. Three new members were elected to the Committee: Harry Spillman, Terry Sweeney and Julian Shersby.

Paul Watling from the Greater London Council talked about the enquiry that is now being undertaken by the London Assembly into service charges. See the front page of the previous issue of the Leaseholder for more details. Over half a million households in London have to pay service charges, and most of these are leaseholders living in flats. This enquiry does imply recognition at a political level of the scale of the problems that many households face, even though it is being conducted rather belatedly.

Louis Charlebois spoke as an ardent supporter of commonhold tenure, with the first time buyer particularly in mind. His premise is that most people neither need, nor deserve, a landlord. In his presentation Louis described how commonhold might not only replace the leasehold system but could at the same time help to solve the housing crisis.

The property industry prefers the current situation since building for leasehold is much more profitable. The property can be sold twice over by the developer: once when it sells the lease, and again when it sells the freehold – usually to an unscrupulous investor.

Louis described how new commonhold homes could be built without a grant – and avoid the massive housing subsidies being paid at present. He has worked on property tenure issues in both Canada and Australia, two countries that have successfully developed effective alternatives to the leasehold system. In Canada, commonhold properties have been built on a 5% deposit and this has involved negligible risk, even though the government has been providing guarantees to the mortgage lenders.

A major obstacle is that housing associations are thinking of their own interests, and living off government grants. These associations do not want to hear about commonhold tenure because this involves immediate ownership for the home buyer and takes their role out of the picture.

The shared ownership con

CARL is increasingly concerned about the growth in so-called shared ownership housing developments. Such schemes promise to offer affordable homes, but in practice do nothing of the sort. Under most of these schemes, however much money the purchasers invest, they will never own their own home.

Buyers start by buying a share in the lease on a home, paying rent on the remaining share of the home. They also pay for the maintenance of the property, including the common parts of the building if it is flat. The housing association usually contributes nothing.

Since it is a leasehold property, as the buyers subscribe more money to "staircase up" their share, the value of the lease declines as it gets shorter. There is no escape route via enfranchisement (purchasing the freehold), since this is not allowed. In addition restrictions are placed on selling the property on the open market. Normally it has to be sold back to the housing association, which is unlikely to pay a competitive market price.

The original valuations of shared homes are often inflated above market values, despite claims that the surveyors conducting the valuations are independent. Housing associations selling these homes have a vested interest in ensuring these valuations are as high as possible – the huge salaries of their chief executives, middle managers and consultants require it.

COUNCIL LEASEHOLDERS CORNER

Means of the leaseholders to be taken into account

A new tribunal decision has extended the meaning of reasonableness when applied to service charges. In the tribunal's view the reasonableness test should take into account the financial impact of service charges on the leaseholders, and whether that impact could be eased by the phasing of major works over a longer period.

It is astonishing that the legal process has taken so long to interpret the concept of reasonableness in this manner, decades after the relevant legislation took effect. In the meantime, tens of thousands of leaseholders have been driven from their homes by excessive (and often fraudulent) service charge demands.

Perhaps future tribunals, when considering the reasonableness test, should look at whether it might be reasonable for the freeholder to contribute towards the maintenance of the building. It is the freeholder who collects the proceeds of lease extensions and ultimately collects the entire value of the property from the leaseholder.

Council opens the windows

Crawley Council has admitted that it tried to overcharge dozens of leaseholders for replacing their windows. The admission came only a week after the Council had initially defended the estimates for the work as "competitive". Such overcharging of leaseholders by both public authorities and private landlords is extremely common.

One resident was furious at being given a £3,000 estimate for four windows – even though he had been told by a local company that the job should cost only £1,500. The Council now admits there were "some errors" in their estimates, and some windows did not actually need actually replacing. The Council has also admitted it overstated quotes for minor repairs provided to over 300 leaseholders.

One of the leaseholders affected said: "I don't think there was any mistake. The council have been too greedy and they've been found out. We were being forced to pay over the odds with no reasonably explanation." CARL calls for the resignation of the Council's cabinet member for housing, Councillor Lee Gilroy.

Rare win for local council

In a rare win for a local council against its own leaseholders, the London Borough of Newham was able to obtain dispensation from the service charge consultation procedures – with which it had not fully complied. Although the Council had actually completed the four stage consultation process, it had carried out the first two stages in the wrong order.

The leasehold valuation tribunal originally refused to grant the Council dispensation, which covered works on a number of tower blocks. However, on appeal the Council was able to persuade the upper tribunal that its breach of the consultation procedures was not very significant and had not caused the leaseholders any prejudice.

Local authorities have in the past lost a large number of tribunal cases where they have failed to consult their leaseholders over major works. On the other hand the tribunals have shown a bias in the opposite direction when it comes to private landlords, who have won around nine out of ten of all cases involving consultation procedures.

MANAGEMENT CHARGES AN EXORBITANT RIP-OFF

Reprinted from the South Wales Echo

I recently conducted a survey into service charges in Cardiff Bay and was very shocked at the responses, with people reporting management charges as high as £325 a month. Leaseholders living in blocks of flats reported a great deal of dissatisfaction with the charges, described by some people as "exorbitant" and "a rip-off". Complaints included facilities being paid for but not working and not being repaired quickly enough, steep increases in management charges year on year, and lack of clarity on what the money is being owed for. A number of people complained that their leases have been varied by the developers so that companies which mass-purchase flats can rent them out for holiday-makers and hen parties. The residents bought their flats in good faith but now their dream has turned sour, faced with exorbitant service charges for a poor service, as well as noise and disturbance.

On the other hand, I found examples of good practice – blocks of flats managed by the residents themselves, with their management committee providing a good service and a clear explanation of how their money is being spent. But there is a clear need to change the Commonhold and Leasehold Reform Act. The law should be amended to make the purchase of the freehold of such flats simpler and more straightforward. The current situation simply isn't good enough, and the sooner something is done to provide a good service to leaseholders the better.

Liz Musa

Plaid Cymru.