

THE Leaseholder



www.carl.org.uk

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LABOUR'S £25 BILLION PRESENT FOR LANDLORDS

A recent Lands Tribunal decision has exposed as a complete sham the government's claim to have reduced the cost and complexity for leaseholders buying their freeholds.

The decision – in favour of the Earl of Cadogan, who owns much of Chelsea – has increased the cost of freehold reversions, by lowering the discount rate used in their valuation. This means a gain for freeholders running into billions – all at the expense of leasehold home-owners.

The decision also ensures endless arguments in the tribunals over the correct discount rate to apply. Controversially, the tribunal took no account of the fact that the rate of inflation has fallen in line with interest rates.

The accounts still don't add up

Back in 1999 a partner at accountants Westbury Schotness was fined £250 (plus £400 costs) by his professional body for signing defective service charge accountcertificates. These accounts were used in forfeiture notices issued by solicitors Malthouse Chevalier, who also acted for landlord Harold Bebbington – highlighted in the Evening Standard's "nightmare landlords" campaign.

Well before this decision, Labour's hypocrisy over 'marriage value' had already provided landlords with a £25 billion windfall. When in opposition Labour promised to delete 'marriage value' payments from the cost of buying a freehold (*An End to Feudalism, 1995*). When in office its legislation guaranteed that the landlord should be paid half the 'marriage value' if the lease has less than 80 years to run – already the case for more than one-third of residential leases.

It is time for the government to conduct a full review of the excessive costs involved for leaseholders merely seeking to gain control over their own homes from third parties. When purchasing a long lease, the leaseholder has already

paid for the freehold interest in full, since there is virtually no difference in the market price of a long lease with a share in the freehold and one without. Moreover, the freeholder has contributed neither to the original development, nor to the repair and maintenance of the flat or the common parts of the building.

- Commonhold tenure became a reality on 27 September 2004. In the succeeding twelve months only five commonhold developments have been listed at the Land Registry, and there have been no transfers from the leasehold system. This is a long way short of the government's claim that there would be around 6,500 commonhold flats created each year.

Not so remarkable perhaps, unless you knew that Westbury were the honorary accountants to ARMA (Association of Residential Managing Agents), which claims to set industry standards. Westbury also received a three page letter from its professional body explaining how to go about verifying service charge accounts in future.

The content of this letter fell on deaf ears. In a ruling seen by *The Leaseholder*, a prosecuting authority has slated accounts recently signed by Westbury, since they fail to comply with section 21 of the Landlord and Tenant Act 1985. Managing agents at the block concerned are Gross Fine, who also happen to be members of ARMA. (Cont on page 2)

ANNUAL CONFERENCE

Saturday 12 November at 2:00 pm

Lecture Theatre, Kensington Library

The key topics at this year's conference will be unfair contract terms in leases and the insurance of blocks of flats. As before, we have lined up an interesting set of speakers for you.

The formal AGM will consist of the usual election of officers and reports. After the meeting, we will move on to a nearby pub – an ideal opportunity to get to know other leaseholders.

Kensington Library is located just off Hornton Street, next door to Kensington Town Hall, and just off Kensington High Street, London W8.

MEDIA SPLASH

The *Financial Mail* on Sunday featured the headline story in our previous newsletter about landlords overcharging for block insurance.



COMPARE AND CONTRAST

Financial Times (7 September 2005) :

"Erinaceous, the commercial and residential property group, lifted both sales and profits sharply in the first half-year on the back of the acquisition late last year of Hercules Property Services. Neil Bellis, chief executive, said the integration and consolidation of Hercules had gone better and quicker than expected."

Leasehold Valuation Tribunal decision (6 April 2005) :

"The appointment of David Glass Associates as managing agent was not the subject of any competitive tendering process or selection by merit; it was part of the corporate strategy of the Hercules Group, as explained by the chairman in his reports to shareholders. DGA's fees and charges were not a matter for scrutiny by the landlord but a source of profit for the Hercules Group. In the judgment of the tribunal the quality of the management provided by DGA to the tenants was generally very poor. Contractors were selected largely for the administrative convenience of DGA rather than on the basis of providing quick, efficient and economical service. Supervision of repair and maintenance contracts was perfunctory at best, non-existent at worst. In the judgment of the tribunal DGA generally had very little idea whether the charges made by contractors were reasonable and very little interest in finding out.

It clear that there were regular and numerous complaints from a number of tenants. There is no evidence that any of the tenants' complaints were the subject of any proper investigation by DGA. The response (if any) to complaints generally amounted to denials, often accompanied by a threat to sue and the imposition of arrears management charges. In the judgment of the tribunal, DGA were guilty of numerous breaches of the RICS Residential Management Code. The style of management advocated by the Code is very different from that adopted by DGA. It is evident that the abrasive management methods adopted by DGA with the assistance of their solicitors [Brethertons] did have the effect of stifling a considerable number of justified complaints, as will be seen in the findings of the tribunal."

The accounts still don't add up

(Cont from page 1)

In a little publicised announcement in the summer, the government said it has decided to abandon proposals to tighten up service charge accounting standards. A Freedom of Information request from CARL has revealed that officials in John Prescott's office met

representatives of ARMA to discuss service charge accounting issues on nine occasions between December 2001 and July 2005.

At Jefferson House in Knightsbridge, accountants Pridie Brewster certified that the service charge costs (including planned major works) were sufficiently supported by the documents provided by the managing agents Martin Russell Jones. Contrast this with the judgment of the leasehold valuation tribunal on the same costs: "The tribunal was frustrated by the lack of detail in the specification. Works were not clearly identified, were not measured where they clearly could have been, and there was some element of duplication. The reports provided to the tribunal were a "wish list" for refurbishment of the subject property. The Tribunal would normally expect alternative proposals to be costed." The tribunal's determination cut the major works bill by nearly two-thirds

The Institute of Chartered Accountants informed the editor of *The Leaseholder* that "in the event that a court or tribunal decided that expenditure was not sufficiently supported, and an Institute member firm had reported otherwise, that could give rise to disciplinary considerations." Why then has the Institute taken no action following complaints raised against Pridie Brewster?

In an unpublicised decision by the Institute earlier this year – and seen by *The Leaseholder* – accountants Sproull & Co were cautioned (and ordered to pay £750 costs) for failing to comply with the correct procedures when carrying out an audit at Canary Riverside in London. Astonishingly, just three months before the Institute's decision, an LVT determination at the block dismissed complaints raised with the Institute against Sproull & Co as a "red herring", and allowed the accountant's fees to be included in the service charges in full. Since the tribunal ruled out approximately £500,000 in other charges certified by Sproull & Co, the Institute also has to complete its investigation into this firm.

MEMBERSHIP

We hope that you find the information in *The Leaseholder* useful. We would like all of our readers to join CARL, so that we can campaign from a position of even greater strength. Please return the enclosed form together with your membership subscription. Existing members should already have received their membership cards.

Help us extend the campaign to end the misery caused by the leasehold system. You can do this in two ways. Give your neighbours copies of *The Leaseholder*. Let us know how many extra copies you need and these will be sent to you straight away. Write to your MP about the problems you are experiencing and let him/her know about CARL – committee members are always ready to meet MPs in Westminster.

Likewise, please 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.

Useful tribunal decisions

- Leaseholders living in a mansion block in Buckingham Gate, London SW1 had their service charges reduced by more than £100,000 because of the "historic neglect" of the building by the landlord. The tribunal took the view that this neglect had caused a sharp increase in the cost of repairing the building.
- A landlord's demand for £5,000 for granting retrospective approval of structural alterations to a flat was reduced to just £50, while £750 in costs were awarded against the landlord (ref: LON/00AY/LAC/2004/009).
- A tribunal halved the cost to the leaseholders of the building insurance policy at 132 Glengall Road, London NW6. The managing agents, David Glass Associates, have now been found to have over-charged on insurance at a string of properties (ref: LON/00AE/LSC/2004/0129).
- Costs charged by Ashcorn Estates/Remus Management for conducting a health and safety assessment at 7 North Pole Road, London W10, were disallowed. The tribunal considered that such an assessment was part and parcel of the normal job of managing a property and not chargeable as an

extra item (ref: LON/00AW/LSL/2004/0036).

- In the Lands tribunal, an appeal by a landlord against an earlier LVT decision on fees charged for supervising repair work failed. The Lands Tribunal agreed with the LVT that charging fees representing 28% of the total works amounted to "a degree of over-charging that was wholly unacceptable, not least because of the deficiencies in the service provided." The fees were charged by managing agents Antlows and chartered surveyors Ord, Carmell and Kritzler. See www.landtribunal.gov.uk/decisions.do

Joined up government?

Way back in 1998 the government published a consultation paper on leasehold reform with a ministerial forward that claimed the notion of leasehold "is totally unsuited to society of the 20th, let alone the 21st century ... The government believes the leasehold system is fundamentally flawed." Legislation was passed by parliament, and last September the commencement order finally made the new commonhold tenure a reality.

But what is this? Last month's announcement of the details of the government's new HomeBuy scheme

allowing people who can't afford a whole house to buy an equity share in one said: "Homes will be purchased on a leasehold or equity loan model. Our aim is to take the best elements of current legal models and move towards greater consistency."

Reprinted from Private Eye, 16 September

Unfair contract terms

John Denham MP recently held a meeting with the Office of Fair Trading (OFT) to press them to take action against unfair contract terms in leases. The Chair of CARL, who was also at the meeting, has written to the OFT highlighting the principal unfair contract terms in our leases. These unfair terms include forfeiture, the ability of the landlord to pass on its legal fees and arbitrary administrative fees to leaseholders, the landlord's insurance monopoly, and the absence of an effective complaints system.

The OFT has just published its latest guidance on unfair contract terms in leases – this can be found on www.of.gov.uk/News/Press+releases/2005/169-05.htm

LETTERS TO THE EDITOR

New laws too complex

Dear Sir

I support the proposal of the estate agents' ombudsman, to extend his role to deal with complaints about property management (*The Leaseholder*, No 14). Given the inadequacy of the government's right to manage initiatives, leaseholders desperately need a single complaints body, to which landlords and other property businesses are required to belong. This could easily be funded by landlords and managing agents, and replace the expensive and exhausting leasehold valuation tribunal system. More than this, a realistic and fair reform of the law is needed so that leaseholders are fully able to take over management of their properties, and genuinely protected from abuse.

Clare Hillyard, London N4

Dear Sir

The procedures to dispute service charges are overly legalistic. They appear deliberately designed to deter an ordinary people from asserting those minimal rights they currently have.

Ivor David, Hounslow

Dear Sir

The government is responsible for the mess that exists over leasehold law. They are unwilling to do anything that would really help leaseholders, and in contrast simply make things more complicated. They never listen to us, and I can see an even bigger mess in the future with all the 'low cost' leasehold starter homes that Mr Pescott wants to build.

*John Tierney, Secretary
Manchester Leaseholders
Association*

Insurance scam

Dear Sir

Many thanks for your latest newsletter. I was particularly interested in the insurance scam to which I am sure I am being subjected. I have been in dispute with my landlords over service charges for more than nine years. It is the wording and nature of my lease that we are disputing. They are claiming that my lease has 'typing errors'. The facts are that my lease does NOT suit them and they are trying to get money out of me illegally. I have been threatened with court action, and have received letters telling me to pay up and then charging me £50 plus VAT for each letter they write. This must be the most lucrative form of creative writing since Harry Potter!

Pat Walker, Ealing

More transparency needed

Dear Sir

I think what you are doing is great. The biggest problem we face is the lack of transparent information. Summary accounts are next to useless for leaseholders, and the whole process of finding out what you are actually paying for is ridiculous. It's the only situation I know I know where someone can ask you to pay for something, without telling you exactly what you are paying for. I already get your newsletter, and will now join CARL.

Kevin Kuper, London W8

Dear Sir

Having read the articles in CARL's newsletters, I totally agree that things are not right in respect of the relationship between leaseholder and landlord. However, the greatest obstacles concern "honesty" and "transparency". It is these qualities that appear to be out of fashion among landlords and managing agents.

Maria Peto, Beckenham

Never again

Dear Sir

Never again in my life do I intend to get caught up in the leasehold mess. It seems strange that we aren't ACTIVELY ENCOURAGED to live in flats in this densely populated country of ours, and it is completely ironic that the laid back Aussies with lots of open space have been pro-active enough to develop a much better system of flat ownership than ours.

Cheryl Smith, Sussex

Poets corner

You may have read of the recent controversy about the coded political messages contained in the works of William Shakespeare. He did not seek to obscure his hostility to the feudal system of land tenure, as can be seen from one of his sonnets :

Shall I compare thee to
a Summers day?
Thou art more lovely and
more temperate
Rough winds do shake the
darling buds of Maie
And Summers lease hath
all too short a date