

## **REGULAR STATEMENTS OF ACCOUNT AND DESIGNATED CLIENT ACCOUNTS**

### **RESPONSE**

1. This consultation paper acknowledges that those clauses of the Commonhold and Leasehold Reform Act 2002 that deal with service charge accounts are unworkable. This feature is also true of most other aspects this inadequate piece of legislation, which needs to be replaced by a new Act of Parliament that not only gives justice to leaseholders, but also brings the law on property tenure in this country into the twenty-first century - rather than remaining stuck in the middle ages as it is at present.
2. Specifically, the Commonhold and Leasehold Reform Act has failed in its key objectives of : -
  - (a) making commonhold an effective alternative to residential leasehold. Since the Act was passed more than 250,000 new leasehold homes have been registered, but only a dozen or so commonhold developments.
  - (b) giving leaseholders more control over their own affairs. Just over 100 'right to manage' companies are currently active in managing blocks of flats, compared with well over 100,000 blocks still in the hands of absentee landlords who operate in their own interests, and not in the interests of the leaseholders who have to pay the bills.
3. This attempt to change primary legislation passed by parliament only five years ago is an excellent illustration of how the government is prepared to change the law when it doesn't suit the landlord interests, but is totally unprepared to do so when its legislation fails to address the misery faced by large numbers of home owners in this country.
4. The overall aim of this consultation paper is supposedly to tackle fraud in the leasehold sector, a problem that both Labour and Conservative governments have been fully aware of for decades. However, the proposals contained in this paper fail to address that serious problem, which causes immense distress to many thousands of leaseholders. It is now obvious that the government does not care about this issue, and considers fraud against leaseholders to be perfectly acceptable. This attitude is reflected by the continuing neglect by the law enforcement agencies of serious criminal offences being committed against leaseholders by landlords and their agents.
5. The best way to combat fraud against leaseholders is to scrap the system of leasehold tenure altogether and transfer the ownership and control of blocks of flats to those who have invested their personal resources in them. In that way those who pay for the construction and maintenance of their homes will have full control over how their money is spent. Few countries in the world, apart from England and Wales, allow the exploitative residential leasehold system to persist, with neighbouring Scotland and Ireland working hard to eliminate this odious system of property tenure.

6. Relying on accountants to act as the leaseholders' guardians is seriously mistaken. All of the largest frauds in recent years (including BCCI, Maxwell and Barings) have taken place either with the direct collusion of, or breathtaking negligence by, leading firms of accountants. The ease with which fraud can be committed in the leasehold sector has rendered it as a magnet to criminal and unscrupulous elements, who arrive from around the world to take advantage of Britain's leaseholders.
7. Anyone, whatever the length and breadth of their criminal record, is able to operate as a landlord or managing agent in this country. Accountants have no record in checking the excesses of corrupt landlords and managing agents; on the contrary, accountants have given a veneer of respectability to that corruption.
8. The accountants certifying service charge accounts will still be appointed by, and therefore dependent for their appointment on landlords. This is a serious conflict of interest, and renders it highly unlikely that the accountants will raise any concerns about the contents of service charge accounts, for fear of losing lucrative fee income. Accountants undertaking this work do not owe a duty of care to the leaseholders who have to pay their fees.
9. Several accounting firms have been fined by their own professional bodies for signing defective service charge certificates, yet are still qualifying accountants under section 28 and remain able to continue with this work. Some of the largest accountants in this field, Spofforths, Victor Boorman, Stenhouse Hager and Westbury (advisers to the Association of Residential Managing Agents) were fined after signing, in total, thousands of defective service charge accounts. Many other qualifying accountants have similarly signed defective accounts, but were not disciplined by their friends and colleagues in the accountancy trade associations.
10. Numerous forfeiture actions, in which leaseholders have been dispossessed of their homes, have gone through the courts based on these defective accounts. Neither the law enforcement bodies, nor the accountancy trade associations, have taken any steps to rectify these monstrous injustices.
11. It is now more than five years ago that the government "consulted" on proposals to improve the quality of residential leasehold management. It has not even bothered to publish a summary of the responses received, in breach of its own consultation guidelines, let alone address the considerable problems in this area. What is required to address fraud in the property management business is a strong whistleblowing culture and a dedicated team of anti-fraud officers. The funds for the latter can be provided by transferring resources from the ineffective local authority tenancy relations service, which in any case faces a serious conflict of interest since local authorities are themselves among the largest landlords in the country. Enforcement by local authorities is exceptionally rare, and most local authorities do not as a matter of principle prosecute landlords who break the law over service charge accounts.

12. The manner in which service charge contributions are to be held also weakens the current provisions. Section 42 requires these funds to be held in trust by the landlord, or the payee named in the lease. These are not to be held in client money accounts by the managing agent, since this only protects the landlord against the failure of the managing agent; it does not protect the leaseholders against the failure of the landlord. In that event the liquidator would be able to access these client funds in order to meet the obligations of the landlord, rather than the service charge obligations.
13. The use of client accounts also takes away the obligation by the landlord to open the necessary bank account(s). Many landlords with dubious histories or those wishing to hide their true identities will find this extremely helpful, since managing agents largely ignore anti-money laundering obligations when taking on a new client - and the banks handling these funds would be completely unaware of the true identity of the underlying clients.
14. These proposals also weaken the requirement in the legislation to maintain separate designated accounts. We would expect, as a minimum, that each block should have a separate designated trust account.
15. We are surprised that there is no bond, or insurance scheme, designed to protect the service charge contributions made by leaseholders. CARL supports the introduction of such a scheme, funded by the landlords, since this would serve as a protection against malpractice by the landlords.
16. CARL is the only national and democratic organisation representing leaseholders in both the public and private sectors. Leaseholders are the victims of the fraud that the government identifies as the key problem being addressed by this consultation. It is therefore surprising that the government only engages in discussions with the property industry, which is responsible for this fraudulent behaviour, rather than the victims this fraud.

CAMPAIGN FOR THE ABOLITION OF RESIDENTIAL LEASEHOLD  
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