

## IT'S GRIM UP NORTH

I always enjoy a visit to my friend Gladys at her retirement home by the sea in Scarborough. Ninety-four years old, and still as bright as a button.

Imagine my surprise when I saw her up a ladder brandishing a paint brush, as she added a coat of emulsion to the ceiling above the stairs in the common parts of the building. I admonished her: "Careful Gladys. You could have a fall!"

Gladys was philosophical: "The landlord has gone bankrupt, but our generation are good at times of crisis. Look at how we got through the Blitz. We seem to be going back to those days."

I sank into a Parker Knoll as Gladys came in from the kitchen with a freshly brewed pot of Earl Grey. "How could the landlord possibly go bankrupt? They charge so much!", I exclaimed, reaching towards the custard creams.

Gladys angrily replied: "The money doesn't go on management or repairs. The landlord spends it all going to nightclubs with his girlfriends. He's got a fleet of cars and a yacht as well."

I remembered another old lady I had struck up an offbeat friendship with. She'd lived in a derelict van outside my house before she passed away. Perhaps Gladys could live there?

*We couldn't afford Alan Bennett to write this piece for us, so the editor imagined it himself.*

## A monopoly industry

The property management industry is one that seeks to maximise profit opportunities from captive 'customers' – typical of monopoly industries protected from competition and consumer choice. Leaseholders who live in blocks of flats over which they have no control are subject to local monopolies, from which the escape route is costly and difficult. Many leaseholders are also afraid to dispute service charges and expose poor management through fear that it will affect the value of their homes and their ability to sell. This has already happened in the case of leasehold retirement homes.

The route to self-management can prove tortuous. If the landlord chooses to put up a fight, pursuing the 'right to manage' can become extremely complex and costly. Many blocks give up the struggle in the face of resistance by well-funded landlords. An article in the Estates Gazette on 2 April ("Complicated manoeuvres", page 105) considers recent legal cases. Inevitably landlords may seek to argue that the notice from the leaseholders is defective, and will also seek to recoup the maximum amount from the service charge account. Landlords are good at laying down the law to leaseholders, even though they don't abide by it themselves.

## Complacent industry bodies

It took the Royal Institution of Chartered Surveyors several months to expel Ian McGarry after he pleaded guilty to his role in a £49 million mortgage fraud. He was sentenced to seven years in prison. McGarry, a fellow of the Institution, was employed by a subsidiary of the now defunct Erinaceous group. One of the firm's directors was the LibDem peer Lord Razzall, who has persistently refused an interview with the editor of the Leaseholder.

The RICS has shown itself to be more interested in protecting the interest of its own members ahead of the interests of their victims. This is the same with other trade bodies in the industry including ARMA and ARHM.

All three have codes of conduct for their members to observe, but there is no enforcement and leaseholders raising complaints risk facing threats of libel actions. One development that will have dramatic implications for landlords and managing agents is the recent implementation of the Bribery Act. This legislation requires all firms to ensure that they have procedures in place to prevent their employees from indulging in corrupt practices. The property industry is light years away from achieving that target.

## SERVICE CHARGES: SPECIAL INVESTIGATION LAUNCHED

The serious problems leaseholders have faced for many years may at last start to be addressed now that the Greater London Authority has launched a special investigation into service charges. This inevitably means that leasehold will become a key issue in next year's London elections. More information about this investigation (and how you can help) can be found on page 2.

Everyone knows the leasehold system of tenure is fundamentally flawed, and that it is only kept going by the power that the landlords hold over government policy – whichever party is in office. Perhaps we can do for the landlords what the phone tapping scandal did for Rupert Murdoch and the power he used to wield over elected governments.

Leaseholders pay the full freehold price for a home they do not own, they pay the entire bill for repairs and maintenance, and too many endure endless abuse from their landlords and managing agents. The landlord contributes nothing either to the original construction or the repair and maintenance of the building, and indeed has every incentive and opportunity to overcharge leaseholders and also to provide poor value for money.

Most leaseholders are defenceless against this widespread malpractice, with local authorities not prepared to take enforcement action against criminal landlords or rogue managing agents. The leasehold valuation tribunals are completely inaccessible to the vast majority of leaseholders, but represent home ground for most landlords who can fund their litigation directly from the leaseholders.

Corruption and malpractice in the leasehold sector are systemic and widespread. CARL estimates that this adds around 40% to the average service charge bill paid by leaseholders. One recent industry survey estimated that leaseholders are overcharged £700 million a year. That's around £500 each – and this is probably an underestimate

These are typical examples of methods of over-charging by landlords and managing agents :

- Falsification of invoices exaggerating the cost of work carried out.
- Backhanders paid by contractors to win contracts from landlords and managing agents.
- Discounts paid to landlords below contract prices not passed on to leaseholders.
- Shortfalls in the work undertaken below that set out in the specification.
- Reserve funds misused by landlords.
- Huge mark-ups added to building insurance, through commissions and 'grossing up'.
- Contracts awarded by the landlord on an uncompetitive basis to related companies.
- Charging a management fee for deliberate mismanagement.
- The employment of corrupt accountants and lawyers to provide a false sense of respectability.

Since service charge funds must be held in trust, any misuse by landlords and managing agents constitutes theft. There was an interesting study carried out by detective Peter Savage of Sussex Police in 1999 describing most of these abusive techniques in some detail. These techniques are all well-known and well-tried throughout the industry, but very few in the business have shown the professional integrity to come forward and identify those responsible. Are there any other scams and swindles that we might have missed? Let us know about any others you have come across.

How to solve the problem? Give leaseholders control over their own homes rather than to exploitative third parties who simply pass the bills on to leaseholders – usually after taking a generous "cut" for themselves.

## ANNUAL CONFERENCE

Saturday 24 September at 2:15 pm

Lecture Theatre, Kensington Library, Hornton Street, London W8  
(nearest tube station: Kensington High Street)

We have as usual an interesting line-up of speakers and panelists. MPs and members of the London Assembly have been invited. We will be focusing on the service charge investigation being conducted by the Greater London Authority. Its findings should have widespread implications not just for leaseholders in London, but across the country as a whole. If you are unable to attend in person but have a question that you would like asked at the meeting please send that question to us in advance (info@carl.org.uk). A brief AGM will follow, and this will include reports and the election of officers. After the meeting we will move on to a nearby pub for an informal social. This is the ideal opportunity to meet and discuss common issues with the speakers, members of the committee and other leaseholders.

## Service Charges Investigation

The Greater London Authority is conducting a review of service charges in London: how they are calculated, charged and administered by landlords, and paid for by London's leaseholders. Steve O'Connell, a member of the London Assembly, is to lead the project. The staff member responsible for the investigation is Paul Watling and he can be contacted at: paul.watling@london.gov.uk

The background papers for the review estimate that service charges are payable by the leaseholders and tenants of 850,000 flats in London, a significant proportion of householders in the capital. This gives us considerable clout in next year's London elections.

CARL's concern is that the remit of this investigation is too narrow. In particular, by focusing on service charges the review ignores the other major aspect of the problem – the exploitation of leaseholders through the transfer of the value of their home to the freeholder as the lease progressively shortens. The investigation also ignores the scope for promoting alternative forms of tenure including commonhold and cooperative ownership, both of which give full ownership and control to those who buy their flats.

One interesting question is why the GLA delayed looking at an issue that has created serious problems for so long for so many Londoners. It was more than ten years ago that the editor of the Leaseholder had a meeting with Trevor Phillips, who was then the leader of the GLA, together with Eric Ollerenshaw and Baroness Hamwee, both former members of the London Assembly. If you live in London raise your concerns about the leasehold system with your Assembly member. These are listed on the GLA's website ([www.london.gov.uk](http://www.london.gov.uk)).

## Leasehold Retirement Homes

A Daily Mail Special Investigation published on 11 May asked "Would you trust someone like Vincent Tchenguiz to look after your retirement home?"

To most people the answer is obvious. And yet, there is no legislation on the statute book – nor any regulator powerful enough – to stop him. It is well beyond the time that this situation was changed. Iranian-born Vincent Tchenguiz, and his brother Robert, were recently arrested in dawn raids by the Serious Fraud Office as part of its investigation into the collapse of Icelandic bank Kaupthing.

While Tchenguiz lives an extravagant life-style, with a multi-million town house, a Rolls-Royce and a yacht, many residents living in his retirement homes say they have experienced overcharging, shoddy maintenance and contracts awarded to related companies where conflicts of interest are at stake.

Embarrassingly for the present government, Tchenguiz has donated large sums of money to the Conservative Party. Indeed the inaction of housing minister Grant Shapps on leasehold exploitation may be explained by the large number of supporters the Conservatives retain amongst the landlord classes (including the Duke of Westminster, the Earl of Cadogan and the Marquess of Salisbury).

## OFT proves ineffective

The Office of Fair Trading's investigation into the retirement leasehold sector is now into its third year, and has yet to achieve any concrete results. In January 2009 the OFT announced that McCarthy & Stone had agreed not to enforce exit fees on their leases. However this proved to be a hollow victory since McCarthy & Stone had long since sold most of its retirement freeholds. The OFT then extended its investigation to 26 landlords and developers, but later cut this back to only five. This just goes to show that regulators can't sort out the problem of leasehold abuse. Fundamental legislative change is required.

See Doug Morrison's article "200,000 people live in private retirement housing. Are they being ripped off?" in Property Week, 29 July

## BUILDER CHARGES £12,000 FOR CALLS

Households facing a £1 million repair bill have been told that £12,000 of the final cost was for mobile phone calls made by council builders. Leaseholders in the 33 flats were told they each owed £29,000 for the renovation project. The final bill for the building in south-east London included £11,500 for then mobile phones used by Southwark Council's builders and a further £500 for their broadband costs. 'How do we know they weren't on sex chat lines or calling their girlfriends – are we expected to pay for that?' said one resident. Cllr Ian Wingfield, cabinet member for housing, said the bill was an estimate and he would query the mobile costs.

*The Metro, 16 July 2011*

## MEMBERSHIP

If you are not yet a member of CARL, please join us so that we can speak from a position of even greater strength. Return the enclosed membership form together with your subscription. Existing members should have already received their membership cards. If you are aware of a neighbour or colleague who is experiencing leasehold problems, let them know about CARL and pass on a copy of our newsletter. CARL is a campaigning organisation and relies on its members to bring the attention of politicians and journalists to leasehold issues. Contact us for further copies of *The Leaseholder*, by e-mailing us on [info@carl.org.uk](mailto:info@carl.org.uk).

## PROSECUTIONS OF LANDLORDS

All leaseholders and tenants are at risk because local authorities fail to prosecute criminal landlords. Local authorities routinely refuse to prosecute landlords who fail to supply service charge accounts and access to supporting invoices and documents, or to provide a copy of the buildings insurance policy.

The same issues of enforcement failures apply in the private rented sector. According to the latest English Housing Survey, almost one in three homes in the private rented sector fail the Decent Homes Standard. In spite of this, enquiries by the Chartered Institute of Environmental Health under the Freedom of Information Act revealed that four out of five local authorities have never carried out a prosecution of the landlords involved. The situation is likely to get worse with cuts in funding to local authorities, which will soon be able to discharge their duties to homeless people by using private rented accommodation.

There is nothing new in these findings. A study by the Local Authorities Coordinators of Regulatory Services (LACORS) conducted in 2007 showed that local authorities were failing to target rogue landlords. Instead they were focusing attention on licensing applications from landlords of homes in multiple applications. Rogue landlords who did not bother to register were left untroubled.

in much the same way that complaints against banks are dealt with by the financial services ombudsman. At present very few private sector landlords have joined the housing ombudsman scheme. All should be compelled to join, since the ombudsman represents a far cheaper and simpler method of resolving complaints against landlords than the cumbersome and costly leasehold valuation tribunals.

## The wealth of the landlords

This year's Sunday Times Rich List shows just now the country's largest landowners have profited at the expense of their leaseholders and tenants, most of whom are suffering from the effects of recession and inflation. The Duke of Westminster saw his wealth increase by £250 million last year to a staggering £7 billion. The Earl of Cadogan is £550 million better off at just under £3 billion. Meanwhile the Crown Estate made a record profit last year, as proposals to give the royal family a direct cut from the revenues of its £7.3 billion property portfolio. The value of the portfolio rose by just under £1 billion over the past year.

## Leasehold and colonialism

Although leaseholders in Ireland can acquire their freeholds at a fraction of the market price, the continued existence of the system has come in for further criticism. Sinn Féin has called for an end to the system of paying rent to "British colonial landlords".

Brian Hayes, Irish minister for public works, has acknowledged the system is "anachronistic and ridiculous", and is a pressing issue for individual homeowners. In 1967 the Irish government introduced a law enabling leaseholders to acquire their freeholds. If the lease has more than 15 years to run, the freehold costs no more than a simple multiple of the ground rent; if it has less than 15 years to run the valuation is related to the market price of the freehold – but subject to a maximum of one-eighth of that amount. In the 1970s another law was introduced banning the creation of new ground rent schemes for residential homes.

## Tenants rights curtailed

The government plans to deprive millions of tenants of the right to complain directly to the housing ombudsman about their landlord. Under the new rules in the Localism Bill, complaints will only be considered if these are channeled through an MP, councillor or tenant panel. The legislation will go through its final stages in the Lords when the recess ends in September. Baroness Hayter has introduced an amendment designed to overturn these new rules.

Far from restricting the right of tenants and leaseholders to raise complaints with the housing ombudsman, the government should be extending this right to raise complaints with the ombudsman so that a much wider range of complaints can be dealt with –