

OPEN LETTER TO HOUSING MINISTER

YVETTE COOPER

I find your department's actions very puzzling. At a time when Revenue & Customs is seeking to reduce red tape through the Administrative Burdens initiative, the government is introducing additional legislation that will cause waste and delays.

The abuses, scams and sharp practices throughout the property industry, and particularly within the residential sector, need addressing urgently. But if you examine measures already introduced and those in the pipeline, there is not much evidence of initiatives that will actually reduce costs for the average person.

There are a number of issues affecting both landlords and tenants that warrant attention. These range from insurance commissions through to legislation governing houses for multiple occupation. But throughout, it appears that the policy U-turns and ill-conceived legislation and regulation are incapable of providing the necessary solutions.

While welcoming the government's realisation that the Tenancy Deposit Scheme will not be an effective tool to address problems within the industry, it must be realised that there are good landlords and bad landlords, just as there are responsible tenants and downright irresponsible ones.

The trouble with schemes such as TDS is that they create bureaucracy needlessly and at extra cost. Bad landlords will ignore legislation and tenants, who are less able to protect themselves, will often not have the knowledge, ability or means to pursue recompense.

Equally, responsible landlords will be penalised by tenants who leave owing rent and having caused damage. The easy solution would be to make inventories and photographic schedules compulsory, which would give a degree of certainty and protection to both sides. At the moment, this is only a recommendation.

One only has to look at the FSA general insurance regulations to see how the good get tied down needlessly and the bad continue regardless. There are still unregulated companies handling insurance and stealing huge commissions. This could be easily solved by making payments transparent and by showing on the building insurance summary a breakdown of the premium, including the commission payments, so it is clear who gets what. Transparency would heighten public awareness of the excesses and abuses of the system and cause an outcry.

Removal of the compulsory home condition report element from HIPs typifies the vagueness of legislation within the property sector. HIPs were clearly never going to solve gazumping because purchasers only lose out as a result of a seller's greed or an agent's malpractice. Neither were HIPs likely to speed up the sale process, as the speed of transaction is primarily down to the solicitors or mortgage companies involved and the low price, high volume work that they take on. Now that home condition reports will not be required under HIPs, the packs become nothing but a needless burden and an additional cost to homeowners.

The legislation governing landlords' licences for Homes in Multiple Occupation again does half a job. It gives local authorities no clear guidance for implementation and leads to wide variations in approach and requirements between authorities.

The amount of legislation and regulation that is in place is unbelievable, and only serves to add burdens to the responsible. It offers little protection to those who really need it.

Furthermore, unrelated Acts will negate measures designed to benefit the industry. For example, who would want to embark on a "right to manage", given the onerous burdens placed on directors that could come into effect through the Companies Bill?

A holistic view needs to be taken to consolidate the plethora of legislation, to help the responsible majority and mitigate costs to the person on the street.

It would make life a lot simpler if the government could rid itself of the notion that unclear or vague regulation is in some way helpful. Such regulation only leads to a wide variance of implementation and creates uncertainty. Clear legislation and regulation would make requirements a whole lot cheaper to handle, and would give consistency and improved standards across the market.

Roger Southam
Managing Director
Chainbow Managing Agents

Estates Gazette 12 August 2006

Roger Southam will be speaking at our annual conference on 11 November (see front page)

TRIBUNAL PUSHES UP COST OF FREEHOLDS

The government's commitment to reduce the cost for leaseholders wishing to buy their freehold now lies in complete tatters.

Last month's decision by the Lands Tribunal to fix the discount rate used in valuing freehold reversions at 5 per cent for leasehold flats and 4.75 per cent for leasehold houses, will push up the cost to any leaseholders wishing to buy their freehold ('Earl of Cadogan v Sportelli and others'). Until last year the discount rate commonly used in valuing freeholds was set at 6 per cent.

Changes in the discount rate used in valuing the freehold may seem obscure, but even small changes can make a huge difference in the price of acquiring the freehold – running into thousands of pounds per flat. This increase will affect all leasehold properties, irrespec-

tive of location and irrespective of the length of the lease. Even flat owners with more than 80 years remaining on their leases will have to pay more than double the price for their freehold as a result of this decision.

The cosy alliance between the New Labour leadership and the Conservative landed aristocracy has left leaseholders out in the cold. Labour's decision to force leaseholders to pay the landlord 'marriage value' when buying their freeholds – in complete contrast with what it said when in opposition – was a huge gift for landlords. The landlord currently leading the fight against leasehold home owners is the Earl of Cadogan, who owns much of Chelsea and is worth an estimated £1.6 billion. He is also patron of the Kensington and Chelsea Conservative Association.

Meanwhile, the Duke of Westminster's Grosvenor Estates – another beneficiary of the Lands Tribunal's largesse – has just revalued upwards its freehold investments by 21 per cent to £2.2 billion.

Tribunal decisions have now completely distorted the market, pushing up the value of freehold reversions well beyond the price that any rational investor would actually pay for such an asset. Their decisions also take no account of the fact that the landlord has contributed nothing either towards the original construction of the leasehold property, nor towards its maintenance, nor towards acquiring the land on which it stands – indeed often profiteering out of all three transactions. Yet at the end of the lease the landlord acquires the entire property at the expense of the leaseholder.

ANNUAL CONFERENCE

Saturday 11 November at 2:30 pm

Lecture Theatre, Kensington Library, Hornton Street, London W8

This is the big event of the year for all leaseholders. The key topics at this year's annual meeting will be: malpractice by managing agents, overcharging on buildings insurance, and the rising cost of buying the freehold.

Speakers

Peter Southam – Chainbow Managing Agents
Tim O'Keeffe – Buy Your Freehold Ltd

Peter Rochford – Southeast Leaseholders, Commonholders and Homeowners Association

A brief AGM will follow with the usual election of officers and reports. After the meeting we will move on to a nearby pub for an informal social. This is an ideal opportunity to meet and discuss common issues with the speakers, members of the committee and other leaseholders.

TRIBUNALS RAISE THE STAKES

The costs involved in taking a service charge dispute to the leasehold valuation tribunal usually far exceed the service charge savings achieved. The tribunals are also becoming increasingly reluctant to make section 20C orders, allowing landlords to recover their legal costs from leaseholders through the service charge account.

The rules allowing landlords to recover their legal costs via the service charges – when there are no comparable circumstances in which the leaseholders can recover their costs from the landlord – breaches the European Convention on Human Rights. This Convention requires a “fair trial” in any legal dispute, including an “equality of arms” between the parties in dispute. This costs advantage for landlords actually encourages them to outspend leaseholders on representation, in order to stand a better chance of winning the dispute. Incredibly, it is not unusual for

landlords to be represented by QCs in the tribunal – even where leaseholders are not represented at all. The tribunals are also showing a preparedness to award punitive costs against leaseholders. Tribunals can award costs of up to £500 against parties considered to have acted unreasonably in the course of proceedings. This has been used oppressively by a number of tribunals, particularly where several leaseholders in a block have been in dispute with their landlord. Since there is only one landlord involved in a tribunal case, and often numerous leaseholders, costs awards running into tens of thousands of pounds can be awarded against groups of leaseholders. This happened in a case where a group of leaseholders simply signed a petition objecting to major works on their block by the local authority, and in another case where a group of leaseholders had the temerity to insist on seeing copies of non-existent service

charges invoices. Curiously, the landlord’s accountant managed to certify the service charge accounts without sight of any of these invoices.

Another breach of the European Convention on Human Rights is the way in which the tribunals are constituted. No attempt is made to ensure that there is a balance between landlord and leaseholder interests in the membership of these tribunals.

It is also becoming a common experience for leaseholders to find that, even when the tribunal finds in their favour, they are unable to obtain a refund of overpaid service charges since the landlord company has been placed into liquidation. This has included circumstances in which the directors of the landlord company have refurbished their own flats out of the service charge funds.

Keep up Fight Against Exploitation

The Estates Gazette, RICS and others are to be complimented for lifting the lid on the hot topic of insurance exploitation once again. The reported response from the FSA is nonsense.

By statute, it is obliged to act on these matters. It was a live issue with the General Insurance Standards Council, with whom I was in correspondence. The FSA must realise that it is yet another, and huge, form of mis-selling.

In the ODPM Accounting Standards Consultation, there was a whole section on insurance exploitation. Wake up government, insurance industry and the property industry.

Barry Gardiner MP, now a minister, was formerly chairman of the All Party Parliamentary Group for Commonhold and Leasehold Reform. He and many others in both houses have raised this and many other issues concerning the exploitation of leaseholders. Many are pensioners, many others are on low or modest incomes. Shame on the industry. Perhaps the Commons Treasury Select Committee will step in and prevent such abuse.

In 1984, I negotiated with the directors of a large residential landlord and a settlement was agreed going back to 1974 on fees and insurance. Their insurance manager was recognised as an expert and the whole process was transparent. The freehold changed in 1998 and, ever since, under the new landlord, transparency has gone out of the window and premiums have risen sharply.

Alan Ingram
Member of the CARL Committee
Estates Gazette, 22 July 2006

Meet Alan at our annual conference on 11 November (see front page)

MEMBERSHIP

The Leaseholder aims to keep leaseholders up-to-date with legal developments, as well as spearheading our campaign to abolish the discredited medieval leasehold system.

Join CARL so that we can speak from a position of even greater strength. Please return the enclosed membership form together with your subscription. Existing members should already have received your membership cards.

Help us extend the campaign to end the misery caused by the leasehold system. Let us know if you want more copies of *The Leaseholder* to distribute to your neighbours. Write to your MP about the problems you are experiencing and tell him or her about CARL. Committee members are always ready to discuss your leasehold problems with MPs in Westminster.

LETTERS TO THE EDITOR

New Labour or Feudal Labour?

I am incensed by the power medieval feudal landlords still have in England today. It sickens me that after nine years of a Labour government we have gone only a small part of the way in the area of leasehold reform. This is not as far as is fair for a just and modern Britain.

I still have to pay a third party freeholder, who appointed one of the more notorious managing agents, exploitative fees and ‘ground rent’ for my flat. To get our freehold, we would have to pay the landlord’s legal fees, pay the ‘marriage value’ (retained by New Labour - why?), and I assume have to settle any outstanding service charge ‘arrears’ (they have done nothing but bill us for sending out bills twice a year, and call it ‘management fees!’). The costs would be prohibitive.

I have waited for Labour to give us commonhold ownership. Why have you stopped short of this? Who or what is getting in your way?

Jim Dyson
Streatham

Keep up the good work

Carry on with the excellent work you are doing to help leaseholders deal with landlords and agents who cause so much distress and misery to those unfortunate enough to live in leasehold property.

Mike Hoyland
Basingstoke

Tribunal lottery

My experience of applying to a Leasehold Valuation Tribunal has taught me that it is time-consuming, expensive, vexatious, and its determinations can be bizarre and unjust. My tribunal’s preliminary hearing first of all stripped out a large number of complaints to leave only those to which it had jurisdiction – leaving it largely emasculated.

The new law requiring a landlord to state in the statutory notice the reasons for proposed major works is, according to the LVT, satisfied by the separate provision of a works schedule, even though that document does not actually state the landlord’s reasons for undertaking the work. My landlord had simply given evidence that he had a duty to maintain the property in good order.

So there you have it. According to my LVT the landlord does not

actually need to go into any detail, but can just roll out that simple mantra for whatever works may be proposed! It makes one wonder why Parliament bothered to change the law at all.

Mary Byers
London SE11

LVT caves in to landlord bullies

We eventually got a decision from the LVT two years ago that our service charges were unreasonable and we could appoint our own manager.

Our landlord appealed against the decision, but this failed. The landlord then refused to hand over accounts, reserve funds, keys and leases to our new agents, despite many requests to do so. The LVT was asked for help, but it offered no assistance. Eventually our new agent applied to the LVT to be discharged since this was an unworkable situation, and had cost his company considerable time and money. As a result, management of our block reverts to the landlord.

It is a JOKE that the LVT removed our agent, handing power back to a landlord who stole our money, offering us only their sympathies. We do not know where to go, as hell is about to return.

John O’Connell
Brighton