

LEASEHOLD REFORM

The Right to Manage

- This is the centrepiece of the leasehold sections of the Commonhold and Leasehold Reform Bill from the Government's perspective, and the area which causes the BPF greatest concern. The Federation's concern is to ensure that it functions effectively. The Federation believes that there are a number of practical obstacles and uncertainties remain to be resolved.

Application

- We believe that the Right to Manage would be more acceptable to owners of mixed-use buildings if it applied only to the residential elements, and the commercial parts were excluded. Most leaseholders exercising the right to manage will do so because they wish to gain greater control over their homes, that is, the residential element. Requiring them to take on the commercial elements in a mixed-use building adds an unnecessary complication. It will also intensify the concerns of the landlord, since the bulk of the value of the investment, and the majority of the income generated from it, will be derived from the commercial parts, which will no longer be under his stewardship. If this is not acceptable, we believe that it would be logical and sensible to include the ability for the landlord to require a leaseback of the commercial elements, to mirror the position in relation to the Right to Enfranchise in mixed-use buildings.

Quality of Management

- There appears to be no indication of a requirement that whoever takes over the management should be competent to do so. BPF Members are concerned that there should be some assurance of quality control, since the RTM Company would become responsible for the stewardship of the landlord's investment. There should, at the very least, be an explicit reference in the Bill to those exercising the claim having to acknowledge formally that they are aware of the responsibilities, obligations and standards required by the RICS Management Code for Service Charge Properties.
- It has been argued that, since there has never been a requirement on a landlord to demonstrate competence to manage, it is inequitable to demand this of an RTM company. The BPF contends that this runs counter to the desire to improve management standards in leasehold property generally. As it is not necessary to demonstrate that the landlord is at fault before claiming the right, there should be some reassurance for all parties that the quality of management will not deteriorate. Furthermore, ensuring that RTM companies are able to exercise their functions properly will reduce the likelihood of their performing badly and bringing the right to manage into disrepute.
- We question whether the remedies for poor management by the RTM company are adequate. If the RTM company fails to meet the required standards, the landlord is entitled to apply to the LVT to seek the appointment of a new manager, but not to seek to have the management returned to him. Since this is a right which could be exercised without having to prove that the landlord's management was at fault, it should be possible

for him to seek the return of management responsibilities if the RTM company failed, subject to the leaseholders' producing evidence as to why he should not be entrusted with the management once more.

- Ultimately, the Bill suffers from the fact that the Government has been unable to reach decisions on the regulation of managing agents, which it raised in the November 1998 consultation paper. We understand that it is not thought appropriate for Government to enshrine a course of action in legislation (ie, the use of professional managing agents to manage properties) when Government still has to act to provide the wherewithal to ensure that the recommended course is sound. The BPF believes that regulation of managing agents would greatly improve the quality and professionalism of residential block management. The absence of proposals for regulation weakens the overall package.

The Extent of Management

- Allowing the RTM company to grant approvals under the lease goes beyond management. It gives the RTM company the power to take decisions, for example on improvements or alterations, which could potentially affect the landlord's reversionary value. It also appears to give the Leasehold Valuation Tribunals the right to override a lease in determining an objection raised to the granting of such an approval.
- There is no apparent redress for the landlord against the RTM company if it fails to report a breach or enforce a transferred tenant covenant. Any provisions are meaningless without a sanction.

Transfer of Existing Contracts

- We believe that Clauses 89 and 90 of the Bill, which deal with the transfer of existing contracts to the RTM company, are naïve and unlikely to work in practice. Some of our members who have discussed these provisions with their contractors report that the contractor might be willing to work for a corporate landlord underpinned by substantial resources, they might be less willing to take on contracts from a small resident-owned company limited by guarantee. There does not appear to be any apparent sanction against contractors who failed to serve notices in relation to contracts on their sub-contractors.
- We understand that the expectation is that the RTM company will decide whether or not to determine the contract. It would then be for contractor to decide whether to accept the loss of the contract. The question remains as from whom the contractor seeks compensation for that loss: the landlord with whom he had entered into the contract or the RTM company which ended it.

Collective Enfranchisement of Flats and Lease Extensions

- One of the Government's aims in its proposals is to introduce greater standardisation of enfranchisement and extension procedures and process. The Federation supports this goal. However, having considered the detail of what is proposed, we are left with

the disturbing impression that the proposals to standardise have been introduced where they will benefit the tenant, rather than achieve a better balance of interests.

The Valuation Date (Clauses 123 and 131)

- The BPF supports the proposal to fix the valuation date, but would prefer it to be fixed as the date of the landlord's counter-notice, the point when the second party becomes engaged in the process, rather than the date of the service of the tenants' notice. The Bill sets a limit on the participation period in a collective enfranchisement of six months: this means in effect that the landlord cannot expect to receive his money in any shorter time. The delay will almost certainly result in a loss to the landlord.
- In the case of lease extensions, it is impossible to value the lease until one knew on what terms the new lease would be granted.

Abolition of the Residence Test (Clauses 117 and 127)

- The BPF strongly opposes the abolition of some form of residence qualification. The rights of enfranchisement and lease extension were granted to those who lived in flats in order to give them greater control over their own homes. The Federation continues to believe that this link should be maintained.
- We are not convinced that the existing law offers adequate protection against predatory speculative purchasers. We are also concerned that, if there is no residence or occupancy requirement, the right to participate in a collective enfranchisement or to obtain a lease is extended to include investors in a building. We question whether there is a legitimate justification in giving one investor the right to acquire compulsorily the investment of another.
- We believe that, at the very least, there should be a requirement that any leaseholder participating in a collective enfranchisement should have held the lease for at least 2 years, to coincide with the requirement proposed for lease extensions. Anyone claiming either right should have occupied the premises for at least 12 months during the course of their ownership, to ensure that this remains a right granted primarily to those who live in the properties, rather than third-party investors.
- The BPF welcomes the proposals to introduce a statutory right for all leaseholders to be invited to participate in a collective enfranchisement. It is not clear what sanction exists if the RTE company fails to comply with the requirements of the right to participate (Clause 120).

Marriage Value (Clauses 124-25 and 132-33)

- We welcome the Government's recognition that marriage value is a valid concept in the calculation of the purchase price of the freehold or an extended lease. We support the proposal to divide marriage value equally between freeholder and leaseholder.

- The BPF was one of the earliest proponents of the solution that marriage value should be split equally between the landlord and the leaseholders, and that the marriage value of leases with more than a specified period unexpired should be regarded as unrealisable. The intention was to promote a formula which would speed up the process without having an undue effect of the valuation.
- The Federation is extremely disappointed that the Government had decided to reduce the threshold beyond which marriage value should be disregarded from 90 years to 80 years. Marriage value is noticeable and measurable between 80 and 90 years. Reducing the threshold deprives the landlord of real value, and consequently gives a corresponding windfall gain to the tenant. Capping values at a level where marriage value is not negligible may have unwarranted effects on the values of other leases.

Leasehold Houses (Clauses 135-138)

- The new Bill incorporates Clauses which were tabled at the previous report stage to extend the proposals for easing the process of enfranchisement and lease extension in relation to leasehold houses.
- The arguments presented earlier against the abolition of the residence test and the marriage value threshold apply with even greater force to the situation with regard to leasehold houses.
- If the Government's aim is to standardise procedures between houses and flats, it has missed an opportunity in not standardising the timescales for the procedure following the admission of a claim for enfranchisement. At present, the tenant of a leasehold house can submit the claim, have it accepted, and then allow matters to drift almost indefinitely. It would give the landlord greater certainty if there were a six-month limitation on any claim, after which, the process would need to be re-started from the beginning.

Other Provisions About Leases

Service Charges, Administration Charges etc

- The Federation welcomes the extension of the definition of service charges to cover improvements. This resolves a longstanding difficulty with inadequately drafted leases.
- The draft Bill proposed to extend the requirement in section 20 of the Landlord and Tenant Act 1985 for consultation of service charge payers for major works contracts to cover all service contracts of 12 months or more. Following concerns raised regarding the administrative burden in relation to smaller contracts and the potential for delay in renewals (particularly for insurance contracts), the Bill now extends the requirement to long-term agreements for a term of more than 12 months (Clause 139). We believe that this overcomes most of the anticipated problems.

Statements of Account (Clauses 148-49)

- The BPF supports the proposals to require landlords to issue a statement of account to all service charge payers.

Separate Accounts (Clause 151)

- The requirement to hold service charge funds from individual properties or groups of properties in separate accounts could prove excessively difficult and costly for managers to operate effectively. The Federation is aware that leaseholder representative groups have argued strongly for this and have accepted that the extra cost should fall on the leaseholders. However, it may not be possible for the manager to pass on the cost of, say, employing an extra member of staff to cope with the increased volume of work.
- Some of our agent members have one as far as to suggest that it could jeopardise the use of bulk payment systems or electronic banking, which would in turn have cost implications for both managers and tenants.
- We agree that client monies should always be protected by being placed in an appropriate designated client account.

Ground Rent

- The BPF has no objection to the principle of this proposal. However, we are concerned that it will present some practical difficulties. Most notably, it will be difficult to operate effectively without the landlord receiving proper notice of assignment of the lease. This happens frequently, particularly in relation to 999 year leases.
- The Federation has previously proposed that it should not be possible to initiate forfeiture proceedings before a minimum level of debt has accrued or the payment has been overdue for a minimum period.

Forfeiture of leases of dwellings

- Forfeiture remains an important management tool for leasehold property, as it is often the only effective sanction a manager has over a recalcitrant or unco-operative leaseholder. For this reason, the BPF wishes to ensure that it is preserved until replaced with a mechanism which is more appropriate to modern-day property management. It is also the reason why we are so concerned to ensure that any abuse of forfeiture is curbed.
- The Federation has no objection to the proposals on forfeiture, although we do not believe that they represent as complete or as effective a proposal for the modernisation of the forfeiture process as was proposed in the BPF response to the November 1998 consultation paper. We understand that the Law Commission is currently working on proposals for a revision of the law on forfeiture and the termination of tenancies.

Leasehold Valuation Tribunals

- The BPF welcomes the Government's proposals to amend and enhance the powers and procedures of the Leasehold Valuation Tribunals. The Federation has consistently argued that leasehold reform will not work unless there is an adequate method for quick and effective dispute resolution. The LVTs are the obvious candidate for this role. We have argued for many of the proposals in the Bill, and believe that, when combined with the administrative reforms proposed following the five-yearly review of their work, they will go a long way to resolving the difficulties which have beset the Tribunals in recent years.

For further information, please contact **Richard Lambert** at the British Property Federation

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