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YSP Podcast Transcript: Episode 105. Fixing the UK's broken housing market - with Sarah Blandy

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Intro: Welcome to Your Strata Property. The podcast for property owners looking for reliable, accurate, and bite-sized information from an experienced and authoritative source. To access previous episodes and useful strata tips, go to www.yourstrataproperty.com.au.

Amanda Farmer: Hello and welcome. I'm Amanda Farmer and this is Your Strata Property. Sarah Blandy is Professor of Law at the University of Sheffield. Sarah's research focuses on the socio-legal aspects of property law, including tenure and rights, collective and individual property rights, multi-owned property, regulation of conduct, dispute resolution and access to justice

Sarah is the co-director of the Free Law Legal Advice Clinic and enjoys working with student volunteers and making good use of her previous experience as a legal practitioner. Today, I'm absolutely honoured to welcome Professor Sarah Blandy, welcome Sarah.

Sarah Blandy: Thank you, Amanda, it's great to talk to you again. We met in Perth in September, is that right?

Amanda Farmer: Yes, absolutely.

Sarah Blandy: At a conference. So it's lovely to be connecting with you again.

Amanda Farmer: A few months ago now, it was a conference which I think you coordinated there, Sarah, or moderated for Curtin University, property law teachers from around the globe and it was really exciting for me to be invited there to attend a one-day roundtable where we discussed all things multi-owned property.

Sarah Blandy: It was a great roundtable, wasn't it? It was a fantastic mix of academics, practitioners like you, we had some judges there, it was really good I felt.

Amanda Farmer: Yes. Now you're coming to me from, shall I say, chilly England? Is it a bit cold over there this time of the year?

Sarah Blandy: Yes, bit of snow lying outside as we speak, yes.

Amanda Farmer: Oh wow. How exciting. We think, anyway.

Sarah Blandy: Well, it's not exciting for us.

Amanda Farmer: Yes, that's right.

Sarah Blandy: Yes.

Amanda Farmer: Yes, well, summertime here, of course, so a little bit different but it's wonderful to be able to make these connections and to have you come and chat to us about, you, of course, don't call it strata title in England but how your multi-owned properties work over there and I was going to get started by asking you, Sarah, what is the equivalent of strata title in the UK if there is one? And are you able to give us a brief intro to how it works?

Sarah Blandy: I can do that, yes. Now, we're talking about the jurisdiction of England and Wales because Scotland is very different and I know nothing about Scottish property law. But we can call it the UK as long as lawyers amongst us know that we're really talking about England and Wales.

Amanda Farmer: Yes, good to know.



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Sarah Blandy: So we have no standardised version, equivalent to strata title. It's very much open to the property developer and property owners to set up the system that they think will fit best. And what that usually means is that the freehold of the whole site, and we're talking about a site that might be an apartment block, a large community, you know, a whole range of different kinds of multi-owned properties, but the usual system is that the freehold of the whole site is owned by one person, usually a company. And then leasehold titles, long leaseholds, are carved out of that freehold title, the people who live in separate dwellings or units.

So when I say long leasehold, they're often 99 years, 999 years, I mean these people are owners. But they have a slightly lesser legal title because they're leaseholders. And I guess the closest equivalent to strata title is where the leaseholders collectively are members of the company that owns the freehold of the whole site.

Amanda Farmer: Right.

Sarah Blandy: So they wear 2 hats at the same time. Like your strata owners, they are both the managers and the owners of the whole site but they also own on leasehold their particular unit.

Amanda Farmer: And how often does that kind of arrangement happen?

Sarah Blandy: Well, it's increasing. We are having more apartment blocks in particular built in England now and I think last last year, about 27% of residential property transactions in England and Wales were on leasehold.

Amanda Farmer: Okay.

Sarah Blandy: So that's every quarter. And in London, 60% of transactions were on leasehold and it's becoming more common because they can break down their statistics into transactions for new build properties and that was 46% of new built transactions were leasehold. So it's very much a growing sector.

Amanda Farmer: And is that specifically a leasehold where the leaseholders are owners of the company that has the freehold?

Sarah Blandy: That's very difficult to discover.

Amanda Farmer: Right.

Sarah Blandy: Because when you see it as a land transaction, it will be the freehold title changed hands or the leasehold property changed hands. It won't tell you who is the freeholder. You can do it in a kind of roundabout way by searching the company's house and the names of the companies, kind of give you a clue but it's very hard to keep up with that year by year. I think a lot of developers now actually want to build the properties and get rid of them. So they are very keen on transferring the freehold to the company that's made up of the leaseholders. So I think it's probably an increasing sector, yes.

Amanda Farmer: And how then is the building managed? Where do the rules come from? Is that in the terms of the lease, do you have legislation?

Sarah Blandy: There's no legislation, it's very much a kind of free market I guess. You construct the lease as you wish, so all the rules are contained in the lease but if you have a company that's managing, they will also have that company documents and those will set out how many meetings there must be a year, what the quorum is, how you're going to elect officers, the usual sort of company rules which are also pretty minimal in this country.

So the actual obligational pay, what we call a service charge-

Amanda Farmer: Yes, like levies.



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Sarah Blandy: You call it a contribution onus, contribution?

Amanda Farmer: Yes, yes.

Sarah Blandy: Yes, okay. So that's all in the lease. The problem is that there's no standardised form of a lease and they're very hard to change the wording. And people don't understand what they're letting themselves into when they buy and the leases can be very poorly drafted, they're very long, complex documents and there are all sorts of difficulties that arise because of the poor drafting of leases.

Amanda Farmer: So, listeners might be getting the impression that it's kind of a free for all over there in England and Wales when it comes to multi-owned properties and with that in mind that everybody ... maybe buildings are falling down, maybe there is disputes, maybe there is a lot of conflicts, it's chaos. Is that what's actually happening on the ground? Is it all working pretty smoothly or have we got some troubles?

Sarah Blandy: I think it's interesting to find out about places that work well because there certainly are plenty of sites that work extremely well. I think that's very interesting, it's something I'm interested in researching, why do things work well. But there certainly are a lot of disputes on the other hand and I think the government is finally waking up to the fact that something's got to be done about this.

There's been a huge amount of legislation over the ... somebody counted 200, tinkering reforms but those are mainly directed rebalancing the sort of power between if you like the traditional leasehold sector where the freeholder is an external company who may or may not but really does have the power to exploit the leaseholders. So the leaseholders are given rights, sequentially and communicatively to try and to address that balance. And the same provisions apply to where the leaseholders are managing the sites themselves but the issue of the problems from non-standardisation, from unregulated property managers, from poorly drafted leases, those apply, particularly, I think to self-managed leasehold properties.

And finally, we had a white paper, government white paper in the summer called Fixing Britain's Broken Housing Market in which there is a prompt to do something about leaseholds and commonhold but we could talk about that later, yes.

Amanda Farmer: Oh, happy to talk about it now. What is commonhold?

Sarah Blandy: Commonhold was introduced by the Commonhold and Leaseholder Act 2002 and it's a version of freehold. And it's very similar, I suppose, to strata title except that I think your system with strata title is so embedded in your Torrens land registration system.

Amanda Farmer: Yes.

Sarah Blandy: And our land registration system is defective, I would say, in comparison to Torrens, so we're never going to achieve exactly the same form of strata title as you have. But commonhold was close and it was designed to allow residents who owned a unit to own them on freehold title rather the leasehold and for them to automatically be members of the Commonhold Association which would own the whole site.

So we did away with the leasehold and freehold problems but commonhold was found to have its own difficulties. And as I said, the Act came in 2002 and so far, I think, fewer than 20 commonholds have been developed in this country.

Amanda Farmer: So when it came in, it was directed towards new builds? So a developer could build a building and decide it was going to be commonhold under this new Act?

Sarah Blandy: That's right, that's right. And there was provision for conversion from leasehold but it had to be absolutely unanimous decision and that's very hard when you've got an external freeholder who wants to hold on to that part. The other

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problems with commonhold which became very quickly apparent was that why would developers and their lawyers use commonhold which was not tried and tested when they're creating a leasehold they could just dust off the lease template from the shelf and use that. Lenders were very very reluctant to lend and in particular, there's no provision as to what happens to their security if, I mean, this is unlikely to happen but if the Commonhold Association itself had to be dissolved. So there is a big hole in the legislation there. So very hard to get a mortgage on commonhold property.

Amanda Farmer: So this white paper that you mentioned that has come out about trying to fix this, does that make some helpful suggestions that you think it's going in the right direction, what's going to come of that?

Sarah Blandy: No, it's pretty vague and there is an in principle promised consult which they are now doing. I see more promising perhaps is that the Law Commission has included leasehold and commonhold reform in their current program. So they will be investigating how these legal gaps can be filled. And they would probably come up with a draft bill which the government may or may not adopt and put through parliament.

Amanda Farmer: And I imagine that England and Wales is ... it's so hard to compare isn't? Like you said, we have this Torrens system, we're much, much younger, we don't have this history that you have there when it comes to land holdings and you're so steeped in that, aren't you? I imagine if the government looks to other jurisdictions like Australia or even like the U.S. and in Singapore, how much guidance can they really gain? When you read this white paper, does it make reference to what others are doing and what we might be able to learn or adopt from those other jurisdictions?

Sarah Blandy: Not really. There was a lot of excitement when the 2002 Act was passed and I think that was drafted with quite a high degree of input from Americans. I'm not so sure that they really kind of asked you, they should have done because the strata titles work or it can work. I mean the big advantage I think of the commonhold system, as it ought to work, is the standardisation of documents. So it's very clear what people are buying into, what their obligations will be.

Amanda Farmer: Yes, what happens with disputes? Is there a centralised place? We have the tribunal and a specialist tribunal for strata and community scheme disputes. Is there a place like that in England where people go when they've got a problem when it comes to maybe interpretation of documents or just a problem with their neighbour, why do they go?

Sarah Blandy: Problems with neighbours, less easy to sort out. Disputes about the amount that you're being charged, whether it's reasonable, whether that repay was actually necessary, disputes about don't like the property manager, want to have a different one appointed, disputes about what is this clause in the lease mean, applications to have the lease reworded, those would all go to our property tribunal. And they've not been set up for very long but their expertise is increasing, the more cases they hear, I think the sound of the judgements and the more precedents they've got to call on and examples of similar cases. So that, I think, works reasonably well. At least there is a forum there.

Amanda Farmer: Yes, absolutely. And for a sector that sounds like similar to Australia that is growing and growing, it's important that those institutions are in place and working well and developing that body of case law that not only lawyers but also owners, residents, other people interacting with those types of properties can look to and rely on and try and get some certainty.

Sarah Blandy: Yes, yes. It was interesting when you mentioned about the lengthy history and there are campaigning bodies who will describe the leasehold system as futile.

Amanda Farmer: Yes. And these freeholders, if you like, who are they? Are they wealthy individuals or just people who have inherited buildings, are they superannuation funds or maybe a mixture of all the above?

Sarah Blandy: There is a big range, as you said, a mixture of all of the above. There are some ... people; a small family company that's owned that building since it was built in the 1920s, they are very personally attached to that building, they feel it's theirs, even though they don't live in it. And they're probably the most difficult to deal with. But you also have investment companies that own

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vast portfolio of freeholds and they're treating them just like share certificates. That's not a building to them, that's a source of income. And they buy and sell the freehold titles as you would sell shares. They have no real interest in that particular building.

Amanda Farmer: Which makes it very difficult.

Sarah Blandy: Very difficult, yes. One problem I should mention which I think you may have a kind of better solution to this is the property managers, who, at the moment, completely unregulated. So I could set myself up as a property manager tomorrow and offered my advice and my so-called expertise, anybody can do that. And that's another issue which has been really kind of bubbling over for many years now. We also have a consultation exercise going on at present, the government is consulting whether there is a need to better regulate property managers... or to regulate them at all, actually, property managers. And I think once a property manager has been appointed, very difficult to get rid of them.

Amanda Farmer: Oh really? That's interesting.

Sarah Blandy: Yes.

Amanda Farmer: We certainly do have here in New South Wales a system where we have property managers who are trained, they do need to do a course. It is a very short course at the moment but we do have a system of being registered and being licensed and we do have compliance mechanisms and continuing education and things like that. There's definitely more work to do here on that side and this is quite a big year for education and training in this sector and trying to improve the qualifications of our strata managers because they have such an important job to do. We talk about it a lot on the podcast what the pressures are on strata managers and how broad their knowledge, their expertise needs to be. Not necessarily needing to know how to do everything but needing to know when they need to refer to another expert, who it is they need to be directing their owners to fix a problem and being able to juggle any number of balls in the air at the one time, I really admire our strata managers, the level of work that they have to do.

So it's kind of scary to think that there are property managers over there in England and Wales who don't have that system of checks and perhaps a requirement for education at least at a minimum level that we have here. So it'd be good to see that moving along.

Sarah Blandy: Yes, I mean I'm quite hopeful that that will come in because it is a huge problem. No training, no registration at all. It's absolutely, as you say, it's such an important job and it requires a huge set of skills, doesn't it? But quite unbelievable that they're not regulated in any way. And often the developer of a site will have a subsidiary company or some link with a property manager, they will appoint the property manager during the phase before they transfer the freehold to the company that's made up of the leaseholders and of course, the contract carries on. And that's the difficulty for the leaseholders that they can then not change their property manager.

Amanda Farmer: Yes. We have definitely had that problem here in the past and thank you, you reminded me that you raised up what I wanted to come back to about the difficulty of ending the management contracts and we've had quite a lot of litigation here in New South Wales on that point over the last 15 odd years and we have had legislative intervention there to make sure that that can't happen into the future and particularly with our newest form of the Strata Schemes Management Act here in New South Wales we now have maximum terms for strata management contracts which are a maximum 3 years.

And then it needs to go back to a general meeting, so a meeting of all the owners to decide whether they want to renew that contract or appoint a new manager. So it just keeps owners engaged in that process and understanding that they can try somebody different if their current manager is not working or make that current manager is kept on their toes and keeps providing a high level of service. So I think that's something really positive that we've done here in New South Wales, definitely.

Sarah Blandy: Well, I think we should probably take advice from you. I mean, we're so far behind really.

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Amanda Farmer: Yes, it's fascinating, I mean we look to England of course as very established, may I say, sophisticated and a world leader and when we get into this side of the property sector, it's interesting to see that Australia perhaps is a little bit ahead in that respect and England's got some work to do.

Sarah Blandy: That's very much the impression I got from that roundtable at Curtin University.

Amanda Farmer: Yes, and such is the benefit of those forums, isn't it? Getting people from around the world to share-

Sarah Blandy: It is.

Amanda Farmer: Where they're at. It's very different to ... particularly, when people like myself and Mark Atkinson, a lawyer from WA was there as well, we're talking about what we're actually seeing on the ground, day to day, talking to owners working with buildings and I know the academics in the room were very happy, interested to receive that feedback which must be hard to get from time to time when you're ... you know, you get stuck in the same circles and in the same head space if you like and we make the same mistakes as lawyers, it's wonderful to get out and mix with the broader sector and on an international level, even.

Sarah Blandy: Exactly. Yes. So you mentioned that I'm the Co-Director of the Law Clinic at Sheffield. We have a lot of these problems coming to the Law Clinic. So you really see issues that people are suffering with, the disputes, the difficulties, the problems, that's very interesting for me, I think it does keep my feet on the ground, absolutely.

Amanda Farmer: Very important work.

Sarah Blandy: And just from the international level. I was in Paris for another roundtable and that was really interesting for me because they have a system of civil law, it's all codified so I was struggling to explain to them the freehold and leasehold system. You know, so it's France, Portugal, Italy, Belgium was represented there and somebody from the French part of Canada as well.

Amanda Farmer: Oh great.

Sarah Blandy: And it just seems that same problem, people trying different solutions but we should really all be learning from each other, shouldn't we?

Amanda Farmer: Yes, absolutely. Was Australia represented at this Paris conference?

Sarah Blandy: No, no, because I think I was the only person there from a common law jurisdiction.

Amanda Farmer: Well, next time, you know where you find me.

Sarah Blandy: I absolutely will.

Amanda Farmer: Happy to take a trip across to Paris to talk strata.

Sarah Blandy: Unfortunately, it's not my project.

Amanda Farmer: You can drop a name, you can drop a name.

Sarah Blandy: I would, yes.

Amanda Farmer: Lovely. Now everybody on the podcast, Sarah, gets asked the book question. What books have had the greatest impact on you and why?

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Sarah Blandy: So what kind of book are you talking about?

Amanda Farmer: Oh, whatever book has had an impact on you. We certainly had all walks of life on the podcast and I do find that academics like to talk to me about strata title papers that they've written or read and that's fine if that's had a big impact on you, no problem.

Sarah Blandy: Okay. Well I saw the question, I'm thinking, well, shall I speak personally or shall I talk with my kind of property lawyer hat on.

Amanda Farmer: Entirely up to you.

Sarah Blandy: I think with my property law hat on, I would have to say that the book that just inspires me is ... it sounds rather boring, it's not. It's a huge land law textbook by a married couple, Kevin and Susan Gray, Gray and Gray, and it is the most wonderful book because it manages to combine sort of practical issues, telling you what the law is and also kind of thinking about the concept behind it and the philosophy behind property law. And you can just read it like a novel, it's fantastic, it's beautifully written, it's very funny. Lots of fantastic examples from their own lives as well. It's just a terrific book.

Amanda Farmer: Great.

Sarah Blandy: Not much use to you in Australia, I'm afraid.

Amanda Farmer: Well, you said, it was a huge book and listening to you talk about leasehold, freehold, commonhold, I can imagine why it is such a huge book. But nice to know that it's there and it'd be an engaging read for anyone who wants to find out more about English property law.

Sarah Blandy: They're also very international so there'll be a lot of mention of Australian cases.

Amanda Farmer: Oh great.

Sarah Blandy: Comparison with Australian legislation, it's a work of tremendous scholarship I would say. But a good read, too.

Amanda Farmer: Excellent, thank you very much for sharing that. Did you want to share anything on the personal level?

Sarah Blandy: Oh, on the personal level, I was thinking back about that and probably the book that really kind of had a huge impact on me at an early age was Female Eunuch by Germaine Greer.

Amanda Farmer: Of course.

Sarah Blandy: So I was at University, at Warwick, where Germaine Greer was teaching, English, not Law and her book was just out. I read it and thought, "Gosh," these ideas are so new and interesting and exciting.

Amanda Farmer: Yes, what an exciting time to be studying, to be at university.

Sarah Blandy: It was, it was exciting.

Amanda Farmer: Oh well now I know why we get along so well, Sarah. We're in the same space, fellow feminist.

Sarah Blandy: Absolutely. Yes, yes, from a different generation but great.

Amanda Farmer: Yes, no, well, that's kind of a little bit sad isn't it that we're still going but that's okay, we're getting there.

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Sarah Blandy: I think we are, yes.

Amanda Farmer: Yes. Now, it is late over there, I'm talking to you in the morning here in Sydney but it is quite late over there in England so I want to get you packed up and off to bed. How do our listeners find out more about you, Sarah and do you want to add anything before we wrap up?

Sarah Blandy: I don't think I want to add anything, I think it's been a great conversation and I think I've said everything I wanted to say. I suppose the best way to find out about me is to look on my webpage at the University of Sheffield, rather boring, but there you go, that obviously has my email if people want to email me, I'd be thrilled to get an email from Australia but yes, that's where you can find out more about me.

Amanda Farmer: I will make sure there is a link to that page in the show notes for this episode so that our listeners can look that up. Now, our listeners may not realise this Sarah, but there are many academics in this space here in Australia who very much look up to you and admire you and I feel just so honoured that I've been able to spend this time chatting with you and I look forward to seeing you again soon, in Australia, if not in England, if not in Paris.

Sarah Blandy: Paris I think, we'll have to go for, yes.

Amanda Farmer: Sounds great.

It's been an honour talking to you as well, Amanda, I think you're doing a great job over there.

Amanda Farmer: Thank you so much.

Outro: Thank you for listening to Your Strata Property, the podcast which consistently delivers to property owners reliable and accurate information about their strata property. You can access all the information below this episode via the show notes at www.yourstrataproperty.com.au. You can also ask questions in the comment section which Amanda will answer in her upcoming episodes. How can Amanda help you today?

