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NEWS

FPRA
FEDERATION OF PRIVATE RESIDENTS' ASSOCIATIONS

HAVE YOUR SAY – ON RTM

BY THE EDITOR

Your views on the Right to Manage are now sought by the Law Commission.

The Law Commission has published its provisional proposals to make the RTM process simpler, quicker and more accessible, particularly for leaseholders. The consultation document says: 'Your views will be carefully considered when we decide on our final recommendations.'

As members of FPRA, you can either respond independently, or send us your views and they will be incorporated into the Federation's response. The consultation closes on 30 April 2019 The consultation paper, summary and online response form are available on: www.lawcom.gov.uk/project/right-to-manage.

RTM allows leaseholders of flats to form an RTM company and take over the management of their building from their landlord. If leaseholders gain the RTM, they become responsible for management functions relating to services, repairs, maintenance and insurance. RTM is a 'no-fault' right, which leaseholders can exercise without having to prove mis-management by their landlord.

WHAT ARE THE CURRENT PROBLEMS WITH RTM?

Stakeholders have told the Commission that the current problems with RTM are:

Too technical – Small errors in complying with the procedural requirements can lead to significant delays, and even prevent leaseholders acquiring the RTM.

Too slow – There are often delays in RTM companies receiving information necessary for them to manage the building effectively, such as the insurance history.

Too restrictive – RTM is currently unavailable to owners of leasehold houses, those who want estate-wide RTM, and those whose building has more than 25 per cent non-residential space.

Too uncertain – RTM companies often don't know the extent of the management functions they have become responsible for, particularly in relation to shared property like gardens and car parks.

Too expensive – The leaseholders have to pay most of the landlord's costs.

HOW CAN THESE PROBLEMS BE SOLVED?

The Law Commission's provisional proposals are intended to make RTM:

More accessible

By relaxing the qualifying criteria, so that leasehold houses, and buildings with more than 25 per cent non-residential space qualify for the right;

By permitting multi-building RTM on estates; and

By requiring each party to bear its own costs of any tribunal action, and exploring options for the landlord's non-litigation costs.

Simpler

By reducing the number of notices that leaseholders must serve; and

By giving the tribunal the power to waive minor procedural mistakes made by the RTM company when claiming the RTM.

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INSIDE THIS ISSUE

LEASEHOLD SHOULD END

Leasehold should be abolished, FPRA has told the Law Commission in response to their consultation on *Leasehold home ownership: buying your freehold or extending your lease*.

Professor Nick Hopkins, addressing the Federation AGM in November, spoke of the importance of bodies like FPRA communicating their viewpoint, and assured us our points would be carefully taken into consideration.

Our submission included points made by our members. Thank you to everyone who contributed.

This is what the Federation has said: Leasehold has been effectively brought to an end in Scotland. The law for England and Wales should be brought up to date on the same or similar lines.

Change needs to be simple, easy to understand, and easy to apply. Legislation needs to wipe away numerous separate and superimposed Acts. The Government needs to tell all leaseholders of the new changes when finalised, and this needs to be part of the basic process of purchasing a home in the first place, so that buying the freehold/extending the lease is the norm.

FPRA has concerns about the mass of consultations from different bodies and organisations, in that – while change is desperately needed – we could end up with a mess of uncoordinated and possibly conflicting legislation. Another worry is that most legislation is designed for a separate and independent freeholder whereas in reality the leaseholders have often acquired their freehold and there is a more cooperative situation which could be hindered by legislation and rules and not helped.

The current 'leasehold' situation is antiquated and bears no relation to current situation that people are buying their own homes when they buy 'leasehold' but are in thrall for years, decades and generations to a separate landowner to whom they must pay thousands of pounds, and who has decision-making rights over their homes. There is no reasonable argument for this to continue in modern times.

The law commission identified the key areas of 'wasting asset' and 'lack of autonomy' which clearly show the unreasonableness of the leasehold set up.

The 'wasting asset' point is significant as it is wholly unreasonable. Two flats – one freehold and one leasehold – can be sold for similar amounts and the leasehold flat requires tens of thousands of pounds of extra payment over years to keep the lease. For example, a leaseholder who 'bought' their flat many years ago, has paid thousands of pounds in service charges, major works including getting the road tarmacked and street lights installed, and still had to pay £80,000 recently to extend the lease. The whole 'wasting asset' scenario must be addressed for home owners.

The lack of autonomy point is significant and the law should be changed to give leaseholder more rights about what happens to the buildings they live in and the gardens they use, in any event and particularly because leaseholders pay service charges and costs of works. At the moment we work on 'good will' with the landlord about maintenance etc. But it requires a significant amount of residents' association work that costs money in terms of time, and inappropriate maintenance works are still carried out and have to be challenged. In areas such as development of the gardens etc, we have had to go to law to stop unreasonable development.

At the moment the law requires 66 per cent of flats in any one building to be owned by leaseholders before they can get enfranchisement.

Any change in the law needs to address this situation so that any leaseholder can get enfranchisement.

This comes down to the basics of rights to own property, and home ownership. If some flats in a block of flats are owned by individuals, and others are retained by a single company or organisation and rented out, the individual owners should NOT be penalised in terms of asset value and decision-making on what happens to the building, no matter the ratio between individual owned flats and company owned flats.

If the 66 per cent rule is not changed (or leasehold abolished completely) leaseholders who own a flat in a block that is less than 66 per cent owned by leaseholders may find that any change in the law to the rightful benefit of current leaseholders would not apply to them. And that is not reasonable.

FPRA has told the Commission we would welcome the opportunity of working further with them to develop these proposals.

(Our full submission is available to read on our website)

The latest Law Commission consultation paper is *Reinvigorating Common Hold: The Alternative to Leasehold Ownership*. Responses are invited until the closing date of 10 March 2019.

The Law Commission is holding a series of events on this and *Leasehold Home Ownership: Exercising the Right to Manage* and leaseholders are invited.

Details of how to apply for a place are available on our website and on the Law Commission's website www.lawcom.gov.uk where there are full details of all their consultations.

IN ADDITION...

The Government has announced a new Housing Complaints Resolution Service.

The consultation *Strengthening consumer redress in the housing market* received more than 1,200 responses. In turn, the Government proposes:

- a Housing Complaints Resolution Service, a new single-point of access to redress that housing consumers can use
- a New Homes Ombudsman for buyers of new build homes
- to bring forward legislation to close the gaps in redress services for consumers including to require all private landlords to sign up to a redress scheme; and
- a Redress Reform Working Group with the housing redress sector to develop the proposals outlined in the response over the coming months.

(Full details are on the Ministry of Housing, Communities and Local Government website.)

BUSY START TO 2019

There has been a busy start to 2019 as FPRA Chairman Bob Smytherman met with the new interim chair of the Leasehold Advisory Service (LEASE) within a few days of the announcement of the appointment.

Wanda Goldwag will lead LEASE, the body that provides impartial advice to people in leasehold properties and park homes. The FPRA has a long track record of working closely with LEASE to support leaseholders with good quality, impartial advice.

Wanda will work with the organisation's Chief Executive, Anthony Essien, and its staff for a period of up to 18 months. She is also currently Chair of the Office for Legal Complaints, the board which controls the legal ombudsman service for England and Wales, and she brings extensive leadership experience and an in-depth knowledge of the legal advice sector to her new role.

Bob Smytherman said: 'It was a pleasure to be one of the first to meet with Wanda during her first week in the role and share ideas on how we can best work together to support leaseholders and build on our established relationship of the two organisations over the next 18 months. This is a key time for the leasehold sector as we expect the Law Commission to come forward with recommendations during this time.'

Wanda said: 'There are clearly some problems in the leasehold sector, from rising ground rents, to issues with bad management, to the awful troubles with cladding in tower blocks. Some of these problems may require legislation to solve them. However, Brexit is taking up time and energy in Government, so we may not see legislative changes for some time. This is understandable. But we can still make progress.

'I want to make sure we remain relevant and one of the ways we will do this is a project called Open Door which I've initiated. This will involve us publishing data from the last five years on all the subjects we have advised on, and on the topics that are downloaded most on our website. This will help the Government and others in the leasehold sector see the trends and problem areas that need focus. We intend to publish the data from now on every quarter.

'Together, I believe we can solve many of the problems that leaseholders have.'

Minister for Housing and Homelessness, Heather Wheeler MP, who appointed Wanda, said: 'The Government is working hard to reform leasehold practices and ensure that the reality of home ownership can live up to the dream for those who purchase a leasehold home.'

FPRA has already had discussions with the CEO and staff from LEASE about providing new resources that will support our members and we will update members as these ideas develop.

Bob will also be representing the FPRA at a roundtable meeting with the Secretary of State at the House of Commons shortly and will update members in the next newsletter.

AWARD

FPRA is delighted to hear that it has been voted Best Leaseholder Legal Advice Specialists 2019 by SME News. SME relates to Small and Medium-Sized Businesses.

HEAT NETWORKS

Fergus McEwan, Senior Enforcement Officer at the Office for Product Safety and Standards (Department for Business, Energy and Industrial Strategy) explains the Heat Network (Metering and Billing) Regulations 2014.

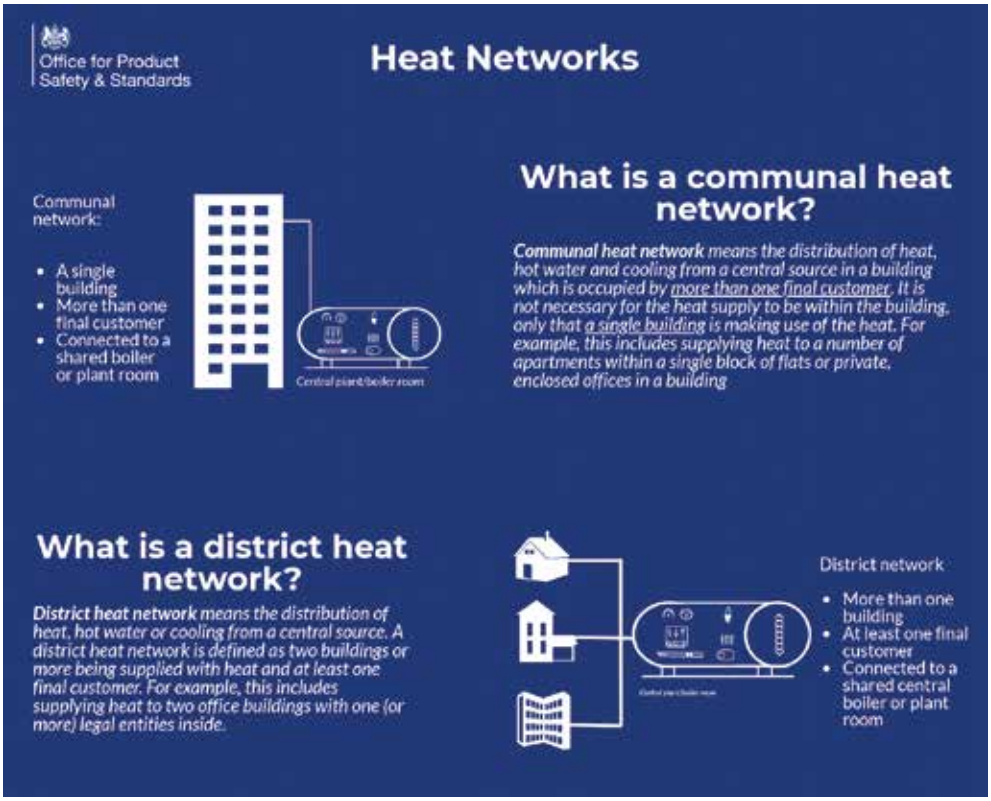
Heat networks are shared heating systems which provide a more energy efficient alternative to domestic boiler heating systems. They incorporate systems where water is heated or chilled at a central source (such as a boiler or plant room) and then channelled to customers through a pipe network for heating, cooling or hot water use. There are two types of heat network. Communal networks serve a single building containing multiple customers, such as a block of flats or offices. District networks serve multiple buildings, such as a housing estate or university campus.

Heat networks are very popular in northern Europe but currently supply only around 2% of homes and offices in the UK. However, the Government is promoting this technology as an important contributor towards its carbon-cutting targets. The sector was largely unregulated until the publication of the Heat Network Regulations, which seek to establish some uniformity among operators in the way they bill customers (i.e. according to their actual consumption of heat) while also giving customers an incentive to reduce their consumption. The Regulations are also being used to create the first detailed picture of heat networks in operation throughout the UK.

The Regulations are enforced by the Office for Product Safety & Standards (OPSS), part of the Department for Business, Energy & Industrial Strategy. They place duties on heat suppliers, defined as anyone who supplies and charges for the supply of heating, cooling and/or hot water to customers through a heat network. In a domestic setting, customers are those with the exclusive use of a bedroom, bathroom and kitchen within their home. In a non-domestic setting, customers are those with the exclusive use of a partitioned space. Heat suppliers must: inform OPSS of the details of their networks; install heat meters to measure customers' consumption (where it is cost-effective and technically feasible to do so), and; use those meters to bill customers by actual consumption.

Heat suppliers should inform OPSS of their existing networks as soon as possible, using the official 'notification template'. This asks for information such as the number of buildings and customers on those networks as well as, for metered networks, the amount of heat generated and supplied. New heat networks should be identified on or before the date they become active. A fresh notification form must be completed within every four-year period thereafter. Heat suppliers will in future be required to use a cost-effectiveness tool to determine whether or not they should install heat meters. The cost-effectiveness tool will be released following a planned consultation. Where the tool gives a positive response, heat suppliers will be expected to install meters and begin billing customers by actual consumption as soon as the meters have been installed. Where the tool gives a negative response, heat suppliers will be required to re-use the tool every four years thereafter.

The Regulations apply across the UK and are enforced by OPSS on behalf of the devolved Governments. The enforcement approach taken by OPSS is always to help heat suppliers achieve compliance, although there are criminal penalties for wilful non-compliance. The 'notification template' is available at **www.gov.uk/guidance/heat-networks**. This webpage contains guidance on the types of heat networks considered to be inside and outside the scope of the Regulations. It also contains a list of FAQs and a 'heat estimator' tool to help with heat generation and supply calculations. The email address to which completed notification forms should be sent is **heatnotifications@beis.gov.uk**.



ALTERATIONS OR ALTERCATIONS

Committee member Shaun O'Sullivan reminds members of the need to seek consent to alterations.

It's so easy to fall into the trap of assuming that, having spent hard-earned cash on buying a flat, you can do just what you want with it – ripping out bathrooms and kitchens, replacing windows and even knocking down internal walls. However, undertaking such work without the consent of your landlord can be a recipe for disaster and dispute – and even, in extreme cases, forfeiture of your lease.

'So why do I need consent to alter my own home?' I hear you ask. The answer lies at the very heart of leasehold tenure. None of us ever actually owns our flats; ownership rests with the freeholder or ground landlord who has granted a lease for a certain number of years. But, ultimately and technically, the flat will eventually revert to the freeholder – whether that be a developer, an offshore landlord or a group of leaseholders who have enfranchised.

Thus, ownership of the fabric of the flat, and its fixtures and fittings, remains with the freeholder who – perhaps not unreasonably – will want to consider any proposal to undertake alterations to that flat, and particularly so if any proposal will have an impact on that part of the property which has not been demised to the leaseholder.

Every lease will identify what element of the property has been demised and this will be defined both in the lease plan and described in quite precise terms in the body of the lease. But, in essence, and depending on which floor of the building the flat is located and its position relative to other flats, it might include half the thickness of the walls, floors and ceilings. It might, if the flat is on the top floor, include any loft space, although sometimes this is part of the property retained by the freeholder.

Irrespective of whether the loft has been demised, unless it is a conversion, the roof itself will almost certainly be part of the retained part of the property. In some cases, front doors and windows will form part of that which has been demised; in others these can be part of the retained property. But, as ever, and as is the case with most leasehold issues, the lease will provide the answer.

What can or cannot be undertaken in the way of alterations will, almost invariably, be included in the lease. Typically a lease might say: 'Not without the consent in writing of the Landlord to make or permit to be made any alteration in or interfere with construction, height, elevation, appearance of, arrangements of the Demised Premises and not to cut, alter or injure any of the walls, ceilings, floors, doors or windows or any part of the Property', (with, in this example, the 'Demised Premises' being that which has been demised to the leaseholder and the 'Property' being the whole of the freehold property.)

Some leases, in addition to the general obligation not to alter without consent, will place particular emphasis on not altering structural walls, not least because such action could have disastrous consequences for not only the demised premises but for the property overall.

Notwithstanding the need to seek and gain consent (something which you might need to demonstrate when reassigning the lease) it is the case that, so far as the demised premises is concerned, leasehold law implies that such consent (licence) cannot be unreasonably withheld. Nevertheless, any licence might well be subject to quite reasonable conditions being met. However, the freeholder will, if structural (or apparently structural) alterations are proposed, want to be satisfied of the potential implications for the property overall and would almost certainly require an independent assessment from a chartered surveyor, the cost of which would need to be borne by the leaseholder whether a licence were granted or not.

Leasehold law provides for the freeholder to charge a 'reasonable sum' for legal or other expenses 'properly incurred' in connection with the granting of consent and some freeholders will legitimately charge for any licence granted.

Of course, any alteration which would impinge on any part of the property not demised will be of particular concern to the freeholder. Although consent to breach a cavity wall in order to, say, install a boiler flue might be granted (subject, for example, to hung tile or brickwork being made good and the work being undertaken by a Gas Safe engineer), it is unlikely, notwithstanding any planning approval that might separately be required, that a proposal to install a window in a loft would be granted. And, in the case of the retained part of the property, the freeholder can reasonably refuse.

Legal Jottings

Compiled by Nikki Carr

Upper Tribunal

Another fine mess...

The Anchor Trust v Mr Leslie Waby and Others [2018] UKUT 370 (LC)

In this case, the FTT was asked to decide the reasonableness of the service charges for the for 32 retirement properties at Betterton Court in Pocklington. Leaseholders sought to recover charges levied through the service charge between 2013 - 2018 in respect of a management charge dealt with out-with the Lease framework, and sought to persuade the Tribunal that the sinking fund had been maladministered such that it ought to have accumulated more money, to the detriment of the present Leaseholders now it came to capitol works. So far, so bread-and-butter.

The FTT found that the management allowance had not been calculated in accordance with the requirements of the Lease and directed that it be recalculated via the prior (and proper) mechanism prior to 2005. It ordered that the sums overpaid be repaid to the service charge account.

The Anchor Trust appealed on two bases: firstly that the direction for reimbursement of the service charge was wrong, as it ought to be repaid to the previous Leaseholders in title or (where applicable) their estates on demand, and secondly on the basis that the management charge was, in any event, not in fact a service charge because it did not varied or may have varied according to the relevant costs, as provided for in section 18(1) of the Landlord & Tenant Act 1985.

The Leaseholders cross-appealed the FTT's decision that the sinking fund had been collected in accordance with the Lease and that the Leaseholders were liable to contribute their proportions towards the works.

The UT (Deputy President) made short work of the sinking fund point, remitting the matter for consideration to the FTT since it had not considered the position in respect of section 27A of the 1985 Act nor the equalisation obligation in the Lease. However, given the Deputy President's conclusion that even if in breach, it was likely to be of no benefit to the Leaseholders' complaint that they had sustained any loss or damage since the money they said ought to have been in the sinking fund ought to have come from them, one wonders whether they have pressed the matter.

More interestingly, the Appellant successfully persuaded the UT that the management charge was not a service charge whether of itself or by its inclusion amongst a larger set of charges, where it itself was in no way variable. The management charge was therefore not within the jurisdiction of the FTT to determine, even if the Leaseholders had demonstrated to the UT that the Appellant had misapplied the contractual mechanism to an even greater extent than it had already admitted in the FTT. This is something that is likely to increasingly be considered in practice, and the question then becomes whether the management charge is a qualifying long term agreement.

The Deputy President further decided that the FTT was wrong in its order that, even if the sums had been service charges and overpaid, they should be repaid to the service charge account. The overpayments should be dealt with in accordance with the Lease, and the FTT had no power to make the order it did regarding the alleged overpayment. Neither was the FTT entitled to order repayment to any Leaseholder not party to the proceedings.

It seems that the papers provided by the Leaseholders to the FTT were possibly (in the Deputy President's words) 'lost in the mass of unnecessary and unexplained documents'. The lesson to be taken is that proper preparation prevents poor performance.

Say what you see, not what you think you see

Triplerose Ltd v Patel [2018] UKUT 374 (LC)

In a continuation of the theme of misconstruing leases, in this case the FTT held that a covenant against 'any alteration in the elevation of a flat' meant only the front edifice. Some readers with knowledge of architectural drawings may find this perplexing – elevation normally simply means the vertical faces of a building (as opposed to its horizontal sections). Whether the FTT had not been provided with more than an extract of the case relied on by the leaseholders in the case below, or whether the Patels were so sympathetic as to engender a desire to import additional words into the clause, the plain and ordinary meaning of the clause did not require 'reading in' of the word 'front' before flat in this clause, which is precisely what the Deputy President decided. Construction of the lease by the FTT ultimately in this case was as loose as what the Patels understood the construction of a window to be (in their case, a door...).

On a side note, rather delightfully the marvellous Justin Bates of 4-5 Grays Inn Square (no bias, natch) appears to have been elevated to Mr Justice Bates by the transcriber of the judgment in this case. A future career path, JB? 😉

Ever decreasing circles

Stemp & Stemp v 6 Ladbroke Gardens Management Limited [2018] UKUT 375 (LC)

Mr and Mrs Stemp are leaseholders of a flat within the five-unit grade II listed Victorian premises, whom the FTT found owed to the Respondent £26,381.98 in administration charges.

Those charges arose from the legal costs that the Lessee-owned management company incurred in litigation with the Stemps (and indeed their predecessors in title) over substantial disrepair to the premises. As early as 2014 substantial works had been identified, but both parties became caught up in 'various causes of argument and dispute' that led to the demand for money for the works being delayed until March 2016. That demand was for £18,971.72, being half the sum for the anticipated works in advance. In order to put itself into a position whereby it was able to forfeit the lease, the Respondent started proceedings in the FTT for a determination of liability to pay and reasonableness of the charges.

The FTT agreed that the sum of £37,943.44 was payable by Mr and Mrs Stemp (ie the £18,971.72 x2). The Respondent sought its costs. In the end, the litigation costs substantially outstripped the costs of the proposed works (sing it with me: Tale as old as time...). The Appellant sought the sum of £67,439.80. The application for costs was dismissed by the FTT (which application itself of course incurred further costs). The Stemps paid £37,943.44 and the works were carried out.

The Respondent then decided to try to recover the costs of the litigation, in the reduced sum of £43,969.96, as an administration charge (presumably this reduction was to reflect no order for costs in the proceedings before the FTT). It demanded, and then sought determination of the reasonableness of, those monies, again purportedly in contemplation of forfeiture. This led (unsurprisingly) to 'further substantial litigation' between the parties. The Stemps

raised 14 points of objection or issues regarding these further sums in a further hearing before the FTT. The FTT determined that £26,381.98 was payable as a reasonable administration charge for legal costs and fees.

Granted permission to appeal on only two (related) points of many, the Stemps sought to challenge the FTT's decision on two bases: (i) whether the FTT had jurisdiction to determine whether the Respondent's right to forfeit had been waived; and (ii) if it did have such jurisdiction, had the right to forfeit been waived (and if so, when).

His Honour Judge Huskinson found that the FTT was plainly wrong to suggest it had no jurisdiction to determine whether the right to forfeit had been waived; that decision was a necessary pre-condition of being able to determine the question before it, ie the amount payable by way of reasonable service charge). If forfeiture had been waived, then the opportunity had been lost before some or all of the relevant costs had been incurred. Failing to consider waiver had led the FTT into error. In the end, HHJ Huskinson determined on the facts that the right to forfeit had been waived on or by 3 September 2016, when the Respondent demanded from the Stemps the second payment of the service charge in advance, in particular since the service charge was reserved as rent. Thereafter, the proceedings could not be considered to be in contemplation of forfeiture, and therefore the costs were not recoverable under the relevant clause in the Lease. Taking the sum of the costs incurred before that date, and reducing them by 40% as had been the (unchallenged on appeal) approach of the FTT, the Stemps were found to be under an obligation to pay a reasonable administration charge of £10,766.

Of course, the story doesn't end there. Will the Stemps pay it? If not, will the Respondent take preparatory steps for forfeiture once again? What will happen to the costs of these proceedings? It seems to me that the parties in this case are on a costly merry-go-round.

High Court

What's in a name?

Baillie v Savage [2018] EWHC 3035 (HC)

There is more than one judgment in the above case now promulgated, due to the continuing mass of issues with which the Chancery Division is dealing. This one is most pertinent as regards rent suspension agreements, which in current experience extends the gamut of leasehold law (residential and commercial).

Mr Savage had taken a two-year fixed term tenancy of a house named Ferndown in Charing, Kent. He paid the entire rent (£34,000 approx) up-front. Almost as soon as he moved in, he began to report bulging of the garden wall. The letting agents agreed action was needed, but none was taken. Only some four months after he had moved in, part of the wall collapsed causing the passage to the side of the property to be blocked and damaging the heating pipe. Mr Savage alerted the agents and explained that the earth retaining wall was allowing material (ie earth) to drop, cracks had appeared and were continuing to grow in the side of the property, the kitchen floor was bulging, and the remainder of the garden wall that had not already collapsed was bulging and leaning. Again, the agents did nothing. By January the following year, Mr Savage had told the agents that he was concerned that Ferndown was no longer safe for occupation. By this time, the garage and car port were also showing signs of distress. No response being received, Mr Savage instructed his own structural engineer (the wonderfully-named Mr Tree), who considered that due to the risk of landslip and wall failures the property was not fit for habitation.

Mr Savage relied on clause 14 of the lease, in which it was stated: *The rent or a fair proportion of the rent shall be suspended if the premises or any part thereof shall, at any time during the tenancy, be destroyed or damaged by any risk insured by the landlord so as to be unfit for occupation and use... The suspension of the rent or a fair proportion of the rent, according to the nature and extent of the damage sustained, shall remain until the premises shall again be fit for habitation and use.*

In proceedings in the County Court, the District Judge preferred the expert evidence of Mr Tree. He considered that there had to be a causal link between the damage and the unfitness for occupation and use. So finding, he allowed Mr Savage's claim.

Mr Baillie appealed to the High Court, on the basis that the part of the wall that had collapsed was separated from the other part of the wall that Mr Tree considered in danger of collapse by a 'sentry box' (probably formerly an outside loo), and the bowing in the undamaged part had been present at the start of the tenancy. There was no causal link between unfitness and damage, as the potential damage pre-existed the tenancy and was not therefore within clause 14.

In refusing the appeal, Mr Justice Henry Carr (no relation!) found that, damage having occurred during the tenancy, a risk of further damage of a similar nature which renders the property unfit for habitation and use is sufficient to come within the clause. The clause was not constrained to specific events such as fire, flood or tempest. There were only two requirements: was part of the premises destroyed or damaged during the tenancy, and second, was the nature of the destruction or damage such as to render the premises unfit for occupation or use. The District Judge had answered affirmatively to both, and in Mr Justice Carr's view was correct. Moreover, the question of the 'sentry box' had never been put to Mr Tree as breaking the chain of causation, and in fact no positive case was put in that regard until the appeal. It was not the appellate court's function to find facts on which the Appellant had failed to rely in the lower court.

Court of Appeal

One more time with feeling: it's all in the contract

Duval v 11 – 13 Randolph Crescent Ltd [2018] EWCA Civ 2298

In this case, the Landlord of a block of flats had licenced to one of the lessees to carry out work which would breach an absolute covenant contained in the other leases of which he could be required by the other lessees to enforce. The covenant in question was an absolute one *not to commit or permit or suffer any waste spoil or destruction in or upon the demised premises nor cut nor maim or injure or suffer to be cut maimed or injured any roof wall or ceiling within or enclosing the demised premises or any sewers pipes drains radiators ventilators wires and cables therein....*

The difficulty was that there was a clause in each lease providing the following: *Not without the previous written consent of the Landlord to erect any structure pipe partition wall or post upon the demised premises nor make or suffer to be made any alteration improvement in or addition to the demised premises.*

So which was it? Absolute prohibition? Conditional consent?

The lessee of flat 13, Mrs Winfield, approached the Landlord in 2015 for permission to carry out works including removal of 7m width of load-bearing wall at basement level. That would have been a breach of the absolute prohibition, and also extended beyond her demised premises. Dr Duval was the lessee of flats 11G and 11H. The reversion of their respective leases was with the lessee-owned

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ASK THE FPRA

Members of the committee and honorary consultants respond to problems and queries sent in by members

Noisy fan

Q **I am aware that there is a dispute between two flat-owners and I strongly expect the matter to be referred to the management company in the near future. I would like us to be clear how to proceed.**
The two flats have internal bathrooms that back onto each other. They are fitted with extractor fans. Until the end of September there have never been any complaints about the noise of their fans, nor about the other four bathrooms stacked above these properties.
In September the owner of Flat A (non-resident, lives in another country) arranged for a new extractor fan to replace the broken one in her flat. However, very soon, the owner of Flat B (resident for 12 years with no previous complaints) expressed concern to Flat A that the new fan was very loud and instead of just being heard in the adjacent bathroom was now being heard in her living room and bedroom even when the doors were shut and with a hallway in between.
Flat A's owner arranged for the local managing agent to send someone to see if the fan could be adjusted. This was done but with only a slight improvement in the noise. The fan noise is heard every time the bathroom light is switched on until the humidity is reduced. The times which most affect Flat B's owner are the mornings before the tenants go to work, evenings when she is watching TV (and cannot hear it) and then for half an hour or so around 11.30 pm when she is woken up.
The owner of Flat A has said that she does not want to change the fan as it was expensive. I am sure that if she lived locally and could pop round to hear the noise for herself the problem would be zapped. She originally lived here and so far has been very cooperative with the management company.
In the event that the fan is not changed, and Flat B wants to the management to enforce the lease regarding 'nuisance or annoyance' in addition to 'quiet enjoyment' what can we actually do? If we need to engage a solicitor who pays? Is there anything that we do not know we do not know?

A FPRA Hon Consultant Emily Orner replies:
Looking at the terms of the lease I can see that there is an obligation on the leaseholders not to do anything which may cause nuisance to other residents of the building. I anticipate that the argument is going to be that the installation of the new extractor fan is causing nuisance and therefore a request could be made for the management company to enforce this obligation and pursue a breach of lease.

Such action is likely to be very expensive for the management company who, as a residents' management company, is unlikely to have the funds to be able to take such action. I anticipate a lack of desire from the shareholders who are not directly affected to take such action.

The affected leaseholder would therefore need to rely upon the mutual enforceability clause within the lease which allows the leaseholder to force the lessor to take action to enforce the terms of the lease, but to do so they must underwrite the costs of the landlord in taking such action. This is a potential solution.

However, it must be considered that the time and cost of taking any such action is likely to be excessive and for relatively little gain.

Other, more practical, options which could be considered are:

Advise the leaseholder affected to contact the environmental health department at the local council who can take more proactive measures on noise complaints including measuring the level of the noise and, if necessary, serving a notice of the neighbour to force them to take some action.

You have advised that the owner of the flat with the new fan has previously been co-operative and that the problem may be resolved if they were to visit the flat. Perhaps a recording could be made of the noise experienced in the neighbouring flat and sent to them to demonstrate the level of the noise and encourage them to take some further action. It may be that they would need to further investigate the specification of the fan which has been installed and check that it is working correctly.

If the new fan is working correctly, perhaps there is a sound insulation issue around the ducting which would need to be addressed. It is not clear from the plan on the lease how the extraction vents to the exterior, and this may also need to be investigated.

A further consideration to be taken into account is whether the extractor fan may be considered as a 'Landlord's fixture', especially if this does vent into a communal duct as opposed to being directly sited on an external wall. Under the lease, leaseholders can change the Landlord's fixtures but only with consent of the Landlord prior to doing so. If no consent was obtained this could be a further argument for the management company asking the leaseholder to resolve the issue with their extractor fan.

Taxing troubles

Q **Our managing agent has sent leaseholders a demand for excess payment to cover deficits in the 2017 accounts. Some members have had bills up to £600. We asked for more information and have received a four-page list covering Common Area Repairs. We note that the items listed, from suppliers, are inclusive of VAT at 20 per cent and we just want clarification on this matter. One of our committee considers the listing should be net of VAT, since presumably the managing agents could reclaim VAT as Input Tax.**

A **FPRA Hon Consultant Gordon Whelan replies:**
It is correct that services provided to lessees or tenants in

this way include VAT at 20% as the services arranged by the managing agent are considered to be taxable supplies and the VAT is therefore payable by the leaseholders. The costs do not enter the managing agent's books as so there is no opportunity for the managing agent to record the VAT in its own records. The contractor providing the service will have to declare the VAT charged to HMRC although they can offset the VAT they pay against the VAT on the services provided by to lessees.

Unhappy situation

Q **Two of us have just become directors of our management company which consists of eight apartments in a Grade 2 listed building. All the apartments are shareholders in the company and also leaseholders with nearly 999 years to run in each case. There is a lot of difficulty among the individuals concerned, primarily by one apartment who are consistently unpleasant, which means that the directors have to act with firmness and attention to the rules.**

The Articles of Association are clearly defined and give the director(s) almost complete powers and the leases are fairly standard with rights and responsibilities declared with considerable clarity. However, as complete newcomers to this kind of situation, what documents and procedures must we produce to satisfy the company requirements as well as those needed to be provided by the company in its function as a landlord? We need a starting point from which we can ask more detailed and specific questions in future. Any help you can suggest may mitigate the current unhappy situation that exists.

A FPRA Chairman Bob Smytherman replies:

The directors are legally responsible for compliance with the lease and company regulations. It's essential that full compliance is adhered to. You may decide to delegate some of the functions to a qualified accountant or a reputable managing agent. Regardless of this, we strongly recommend taking out Directors & Officers Insurance to protect yourselves from personal liability in the event of a successful challenge from one of the leaseholders.

To assist you with prudent management of your building we have just updated our guide to running a block of flats which is free to download to all members from the website. This document has been prepared and updated by committee members with first-hand practical experience of the vast majority of issues you are likely to face.

That's why ongoing membership of the FPRA is essential as we provide a free unlimited advice service to respond in detail of any issues that come up.

The key to the successful running of a block is genuine good communication with all leaseholders and tenants, including holding an AGM where directors can be fully held to account for the running of the company and others can consider seeking election as director should they feel changes in management is required.

Deceased leaseholder

Q **We are a lessee-owned company which owns the freehold and manages 49 flats. In September 2017, a lessee died. Consequently, there is now a year's service charge outstanding amounting to £1,725. Our lease permits interest on unpaid service charges at a minimum of eight per cent and we have added this to the bill.**

The solicitor dealing with the estate on behalf of the executor has said that the estate is not in a position to pay us and is unable to give a timetable. Looking at the Probate website, it seems that probate has not been granted. We do understand that there is a will but suspect that this may be being contested.

Do we have any rights to force the executor to pay in advance of probate? Could we threaten forfeiture? While our financial situation is not desperate, our reserves have been depleted by a costly balcony balustrade replacement program, so this money would assist things.

A FPRA Committee Member Yashmin Mistry replies:

Unfortunately, there is a limited amount that can be done until probate has been obtained. The solicitor is correct in that the executors are not entitled access to the deceased person's funds until probate has been obtained. Has the solicitor confirmed in writing that once probate has been arranged, they will settle the service charge amount? If not, it might be worth asking them to do that. Alternatively, are the executors able to confirm that they will settle the service charge statements upon probate being obtained?

There may be another possibility, if there is a mortgage registered against the leasehold title. In some circumstances, depending on the lender, the executors may be able to write to the lender to explain the situation and before probate is obtained, some lenders do settle the service charge liabilities. We understand there are certain threshold before lenders

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will pay out before probate is obtained and also not all lenders do pay out, but it might be an option worth exploring? It may also be worth speaking to the Land Registry as they may be able to register something called a 'unilateral notice' against the leasehold title in respect of the outstanding sums due. Otherwise, unfortunately, the only option is to wait until probate has been obtained and/or the flat sold. Sorry we are unable to provide better news.

Rules on charging VAT

Q **We have been informed by our managing agent that our part-time house manager's salary will now be subject to 20 per cent VAT. This is to comply with new rules from HMRC.**

Our development consists of retirement flats with elderly residents on pensions, some with fixed incomes. Increases in the service charge can be difficult to meet and cause worry. It is our understanding that retirement flats were exempt from VAT requirements on certain service provisions some years ago, but HMRC has now revoked this concession.

The information received from the managing agent quotes from advice they have taken from ARMA which refers to ESC 3.18 no longer being applicable. Please could you explain the reference to ESC 3.18 and the situation both past and present regarding VAT and retirement flats.

At the recent Budget Meeting to agree the 2019 service charge a figure was given for the line heading House Manager Salary. We had always assumed that this was the house manager's take home pay. Nothing in the Budget notes for this or previous years indicated otherwise. The property manager, however, informed the meeting that the figure also included NI and Pension contributions. The Committee pointed out that the salary came below the threshold for these entitlements.

We have received confirmation from the property manager that there is in fact no NI or pension contributions. The explanation now has been given for the budget figure is that it is the house manager's take home salary plus a provision for the cost of agency staff for holiday or sickness cover. We were never informed previously that the service charge included any such provision. It appears that this had been the case in past years without our knowledge.

The revised budget figure now provided with 20 per cent VAT addition is calculated on a sum with a projected agency charge included, not just on the house manager's actual salary. Is this allowable? It obviously increases the total charge. The revised figure is £1,195.00 higher than that agreed at the budget meeting, on 30.11.2018.

A staff management fee, introduced in January 2017 without consultation, and the general management fee have apparently both always had VAT included. The managing agent collects all service charges on behalf of the freeholder.

We would appreciate clarification and advice regarding all these issues. We also urge the FPRA to make representations to HMRC to reconsider their decision to remove the VAT exemption for retirement flats.

A FPRA Honorary Consultant Gordon Whelan replies:

This is a topical issue. In September 2018, HMRC issued new guidance on the application of VAT to residential service charges. The guidance clarified HMRC's position when a landlord is contractually required to provide services to the occupant of a property and uses a property management

company to provide those services. It is important to understand that this guidance does not represent new legislation and the position in law has always been that the supply of site staff arranged by a managing agent is VATable. The guidance has been necessary because many managing agents (including yours) have been misinterpreting the legislation and not charging VAT in these circumstances. There has never been a special case for retirement flats and it is also wrong to state that Extra Statutory Concession (ESC) 3.18 is no longer applicable. ESC3.18 was never applicable in your circumstances. Fortunately, HMRC accept that the original VAT legislation is badly worded and therefore it will not be applied retrospectively to services provided before 1 November 2018. However, your managing agent is correct and VAT must be charged on the supply of site staff from 1 November 2018.

It is also correct that VAT should be charged on management fees.

You have a statutory right under Section 22 of the Landlord and Tenant Act 1985 to inspect 'invoices, receipts and other documents' that support expenditure charged through your service charge accounts and so you should follow up the House Manager Salary item with your managing agent until you are satisfied as to what is included in the expenditure heading.

With regards to the FPRA making representations to HMRC regarding a VAT exemption for retirement flats, this is unlikely to work as HMRC are constrained on giving exemptions to VAT legislation by European Directives on VAT.

Continued concern over cost of cladding

Q **Our managing agents are going ahead with replacing the cladding on our block next year. What leverage do we have to try and fight this cost?**

A FPRA Chairman Bob Smytherman replies:

From my non-legal perspective I see no reason why the freeholder should not instruct the managing agent to replace the cladding if they believe this to be unsafe following investigation. The issue is whether the cost can 'reasonably' be passed to the leaseholder.

The 'reasonableness' ultimately can only be determined by the leaseholders, either collectively or individually, challenging the cost at a Tribunal hearing.

I guess the leverage is to formally write to the freeholder – not the agent – expressing this as a concern and threatening to take the agent to Tribunal should any cost be passed on to the leaseholders. Of course, if they proceed then you will need to decide together whether or not to carry out the threat?

I will ask one of our legal advisers to review the lease to see what they believe the position is with regards to passing on the costs of major works such as this.

I suspect in the light of Grenfell, if there is any question about the type of cladding being similar to that at Grenfell, then the works will be deemed 'reasonable'. If this is the case, then the issue remains does the lease allow for the freeholder to pass the costs on to the leaseholders? Certainly, the Government is saying that costs should be met by the freeholder if replacement cladding is required due to fire risk.

A comment from a happy member:

"I give you 5 stars. The response was fast, clear and helpful."

Unpopular refurbishment

Q **If a majority of our residents' association membership decides they do NOT want a complete overhaul of our block. can we refuse it outright on the grounds that we do not want it? Can we refuse to pay for these refurbishments? Can he force us to pay for something we do not want?**

The landlord has offered no plan B: which would be to simply redecorate. Is there any mileage for us in the fact that the landlord has used the term 'refurbishment' – and steered clear of 'repair and maintenance' as it is obvious his proposals are far more than that. He has also steered clear of 'improvements' – because we won when he last used that term.

A FPRA Committee Member Gerry Fox replies:

If a majority, or significant number, of leaseholders vote against the landlord's proposal in the Section 20 Notice, it will not automatically mean you cannot be charged.

The landlord may decide to proceed and he will then be at risk of the expenditure being considered unreasonable by a Tribunal or Court. The expenditure cannot be recovered if held to be unreasonable. It is important to have supporting paperwork of all the leaseholders objecting, and reasons, and that this is communicated to the landlord during the consultation process. The landlord has a duty to have regard to the written observations of leaseholders and recognised residents' association made during the consultation process.

Improvements can be carried out if in accordance with the lease and the expenditure is reasonable. There is, however, interpretation that replacement/renewal rather than repair can be cost effective and an argument can be presented to justify replacement with modern materials or style etc. Also to consider is the loss of period features in any discussion over the merits of the proposals.

Having said the above, some leaseholders may favour what becomes modernisation with possible improved values of the flats. The relative costs of the different schemes are important as the landlord's proposals are likely to be more expensive, and the landlord will need to show that consideration has been given to the financial impact on the leaseholders.

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Section 20 calculations

Q **Could you please clarify how to calculate the threshold for an S20. We have, as a board, been challenged by a shareholder who has questioned our formula for calculating when we need to issue an S20.**
We have 30 flats in our development, two of which are penthouses. Until now we calculated that an S20 is required for any work which exceeds £7,500. Our calculation was £250 per flat £250 x 30 = £7,500.
The shareholder, who has challenged this calculation, states that the calculation is wrong because we have not taken into account that the two penthouse flats pay a larger maintenance charge than the other 28 flats. The maintenance charge for the penthouse flats is 1.5 times the maintenance charge for the other flats. The quarterly maintenance charge for 28 flats is £460 and for the penthouses £690.
Please could you let us know the correct formula for calculating the S20 threshold?

A FPRA Committee Member Yashmin Mistry replies:
Qualifying works arise where a landlord intends to carry out works to a building or any other premises and any tenant is required to contribute more than £250 towards the cost of those works.
It had previously been assumed that the £250 threshold applied on 'a project' or 'set of works' basis, with a 'common sense' test to avoid artificial splitting of works so as to avoid the £250 threshold. In Philip v Francis the High Court disagreed; the £250 is a cumulative figure to be applied to the total of all costs of qualifying works in each service charge year, such that every item of expenditure must be taken into account.

No notice on lifts

Q **Today a resident notified me that our lift contractor was carrying out works and could not understand why they were there seeing as the lifts were working perfectly well. I contacted our building manager who then informed me that when they sent in a surveyor last week to assess the lifts in preparation for a new specification for major lift work the person noticed oil leaks in the gearbox. They did not notify us of this situation and arranged for the lift engineer to come in and do the work to fix it today and have had to order parts and take a lift out of service per day. I immediately sent an email expressing my concern at not being notified and also not being sent any paperwork/report to show that this work needing doing thereby leaving us open to claims of work without any proof or chance for a second opinion. The building manager says that there is no paperwork but was able to give me a price for the work. My question is: Do they have a right to authorise work to be carried out without our agreement/consultation/notification seeing as we will have to foot the bill regardless of the level of costs associated?**

A FPRA Chairman Bob Smytherman replies:
The simple answer is it will depend on the nature of the contract as to level of notification. Personally, I feel given the importance of the lift to residents, all should be informed. However, having said that if the call out was unlikely to impact on the use of the lift, then clearly then it would be for the contractor to liaise with the managing agent and it would be for them to judge who needs consulting – chair, all the RA committee or all residents. Once it is established what works may be required then the necessary arrangements to consult such as S20 Consultation will need to be put in place, however if the reporting mechanisms are not clear then I suggest an urgent review of the protocols in place for the managing agent reporting back to residents.

Dockless bikes nuisance

Q **Our estate in Oxford is gradually becoming infested with dockless bikes, in assorted colours. They are being left in accessible areas of the estate, obstructing walkways. We suspect that the phenomenon is perhaps associated with one flat (out of 30) which is let for very short-term tenancies, but have no proof – truth is, we do not know who is leaving them. What are our options to remove these pesky things?**

A FPRA Committee Member Bob Slee replies:
This sort of problem is irksome enough when you know who you are dealing with, but when the perpetrator is unidentified it can be especially challenging – but not impossible – to handle. You say that the cycles are obstructing walkways; this would appear to be in clear breach of your lease, which prohibits lessees from permitting "anything which may obstruct or render hazardous access over or use of the Estate External Areas...". I imagine that this will also be reflected in the Fire Safety Assessment that you are obliged to have undertaken and kept under review in accordance with the Regulatory Reform (Fire Safety) Order 2005 which came into force on 1 October 2006.
I believe the way to take this forward is to write to all lessees and sub-tenants pointing out your concern about the continual breach of this covenant and that the lessor intends to take appropriate action to protect the safety and integrity of the estate. You might say that with immediate effect (or possibly from a near future date) the practice of leaving cycles in the communal parts must cease in accordance with the requirements of the lease and that in the interests of safety any cycles so left will be removed.
Under Section 11 of the Commonhold and Leasehold Reform Act 2002 you are able to apply reasonable charges against a lessee in relation to the enforcement of a breach of the terms of their lease. Lessees who sub-let their properties should be informed that they are liable for the payment of such charges in relation to breaches by any sub-tenant so it would be in their interest to take steps to ensure compliance too.
This leads to the nature of the sub-tenancy (which you describe as very short term) that you believe may be at the root of the current problem. Your lease requires lessees to seek lessor approval before sub-letting their flat. While

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approval cannot be unreasonably withheld, it would be reasonable to apply as a condition of such approval that sub-letting must be on the basis of an Assured Shorthold Tenancy agreement of at least 6 months duration which, besides anything else, would bind the sub-tenant to the covenants contained in their landlord's lease. It is possible that sub-tenancies on any lesser basis than this could have a negative impact on your block buildings insurance policy and this is something that might wish to look at with your insurers as a matter of urgency.

Cycle sheds – improvements or repairs

Q **Our lease requires us to transfer an amount of not less than five per cent of the total annual subscription, ie service charge, into a contingency fund 'until the total reserve shall amount to one year's subscription from all'. This has always been done, but over the years the amount in the reserve fund has built up and now exceeds the amount stipulated in the lease.**
The committee has been considering various items of long-term expenditure and we have had considerable discussion about whether or not the reserves – over the contingency limit – can be spent on improvements.
In particular, we would like to build a new cycle shed.
The rules of the society (equivalent to articles of association) empower the management committee to undertake repairs and maintenance 'including such renewals and additions as may from time-to-time in the opinion of the committee, become necessary to maintain and improve the amenities on the Estate for the benefit of members of the Society'.
Can we legally spend some of our reserves above the contingency limit on improvements (as opposed to repairs) such as a new cycle shed?

A FPRA Hon Consultant Neil Jinks replies:
The lease does not restrict how reserves can be applied so there is no reason why the reserves cannot be used to improve services at the development.
Due to the fact that building cycle sheds would constitute something above and beyond the services already provided, it may be the case that the landlord's consent is required, although there is no requirement for this under the lease.
It would also be sensible to seek agreement from the lessees that they are happy for the reserves to be put to this use. This would prevent any possible application to the First-tier Tribunal for a determination as to the reasonableness of the charges.
The other thing to bear in mind, and this is extremely important, is that if the overall cost for this exceeds £250 per leaseholder, then the association will have to invoke the major works statutory consultation process, whether or not the moneys are held in reserve.

Snow and ice

Q **This must be a perennial question. During periods of ice and snow, is the RMC Board liable for injuries caused to residents or visitors from slipping on untreated paths within a block of flats?**
Our present policy is to:
1. advise residents that, during hazardous ice and snow conditions, both they and their visitors, are responsible for their own safety in walking on untreated paths within the development.
2. provide and maintain grit bins full of salt, plus a small shovel, for individual use.
The local authority state that they are not responsible for clearing public footpaths, therefore I presume that postmen et al are responsible for their own safety in using untreated footpaths.

A FPRA Chairman Bob Smytherman replies:
I think your policy is excellent and over and above many RMCs' including my own. We don't provide grit and shovel for residents to use as we were concerned that, if we did and an accident were to occur, the RMC had a potential for liability. To be honest, provided you have carried out your 'due diligence' with a health and safety risk assessment and, as a result of that process, the directors conclude that the grit and shovel is provided and stored safely when not in use, then that would seem to me to be fine.
As I see it, the potential for problems arise when directors undertake clearance themselves and an accident occurs, then the RMC then has a potential for liability.
In conclusion I suggest discussing your public liability insurance cover with your insurance provider to ensure this is adequate. Most RMCs should have £3-5 million cover. And directors and officers insurance is essential to protect all your RMC Officers from personal liability in the event of a successful claim from someone suing the limited company.

The letters above are edited. The FPRA only advises member associations – we cannot and do not act for them. Opinions and statements offered orally and in writing are given free of charge and in good faith, and as such are offered without legal responsibility on the part of either the maker or of FPRA Ltd.

Update on FPRA Administration Change 2019-20

Further to the article on page 2, issue 126 (Autumn 2018), and the discussion at the AGM in November we are progressing well with the investigation into new administrators.

We are very grateful that there has been so much interest. We have had more than 20 different approaches from serious applicants.

Your committee was very pleased that so many ideas and suggestion have been put forward to give a real choice going forward to secure the future of FPRA for some year ahead.

A meeting is to be held in mid-February (about the time you will be receiving this newsletter), after which a shortlist will be taken forward for detailed negotiations and investigation as to the exact handover process with the aim to agree this no later than the end of May. The actual transfer will then take please between June and the end of the year, the exact details to be agreed between the parties.

Advertisements

Have your Say continued from page 1

Quicker

By introducing deadlines by which the landlord must:

- provide information on certain topics, like insurance, to the RTM company; and
- transfer service charges to the RTM company.

Less uncertain

By proposing education for prospective RTM company directors about their responsibilities;

By suggesting a new "information notice" procedure which makes clear the extent of the management functions being transferred to the RTM company; and

By giving the tribunal exclusive jurisdiction over RTM disputes.

Over to you – and us!

The Law Commission has also prepared a short survey for leaseholders and RTM company directors to tell about their experiences of the RTM. You can complete this survey at: https://consult.justice.gov.uk/law-commission/rtm_survey .

SAD LOSS

FPRA extends sympathy to Leasehold Solutions, which is mourning the sudden death of its founder Alex Greenslade at the age of 51.

In the late 1990s, Alex was the owner of a leasehold flat with a relatively short lease. His landlord offered an extension, but with unfavourable terms. Not wanting to be bound to an unsatisfactory lease, Alex instead managed the freehold acquisition of his building on behalf of his neighbours.

Reflecting on how difficult the process was, Alex noticed a gap in the market and set up the first specialist leasehold enfranchisement project management company, working solely on behalf of leaseholders.

Alex was joined at Leasehold Solutions by his sister, Anna Bailey. In 2007 Alex and Anna – in an effort to stop those 'dabbling' in the sector – went on to launch the Association of Leasehold Enfranchisement Practitioners (ALEP).

SAVE THE PLANET – AND FPRA COSTS!

Dear members, thank you very much for all the times you tell us how much you value our newsletter and find it informative and a good read. We always appreciate receiving these comments. Also feel free to give us suggestions for any improvements!

Many blocks have a system of passing the published newsletter among residents or leaving it in a common area where all can enjoy it. We don't want to stop anyone doing that. But have you ever considered that on the FPRA members' area of the website there is an electronic version of the newsletter which you are free to share with all of your members. Let us know what you think about receiving the newsletter by email instead of print and post.

More details will follow as soon as an agreement has been made. Cutting down on hard copies of the newsletter would save on our postage and admin costs. No pressure, but please give this a thought. **Thank you.**

Legal Jottings continued from page 7

limited company. Despite valiant efforts by Mr Edwin Johnson QC to import into the construction of the wording of the clauses issues of practicality of management and keeping the peace between leaseholders, the Court of Appeal very simply said no.

It was also held that the Landlord did not have the power to license what would otherwise be a breach of the covenant. The Court of Appeal said no: so doing would immediately bring the Landlord into breach of his contingent obligations by disabling himself from complying with them. The vice in this case lay in the absolute nature of the covenant. Being as it was, the parties were all bound by it.

One wonders how many times and in how many more ways various judges can say in such a short period 'read the contract'...

Contact details:

The Federation of Private Residents' Associations Limited, Box 10271, Epping CM16 9DB

Tel: 0371 200 3324 Email: info@fpra.org.uk

Website: www.fpra.org.uk

If telephoning the office please do so weekday mornings.

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