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NEWS

FPRA
FEDERATION OF PRIVATE RESIDENTS' ASSOCIATIONS

IN JEOPARDY? BY THE EDITOR

Are leasehold reforms in jeopardy due to the snap general election and new government? This is the question being asked by many leasehold reformers and indeed by the guest speaker at our AGM, Sebastian O'Kelly of the Leasehold Knowledge Partnership (LKP).

The LKP, alongside the FPRA, has been instrumental in a very successful campaign to promote leasehold reform and really get things moving. This included the influential All-Party Parliamentary Group looking at leasehold and commonhold reform, which of course was suspended at the election, with one of its leading lights Jim Fitzpatrick (Labour) standing down from parliament.

Important Law Commission reports on leasehold, including enfranchisement, had been put on hold by the election.

Sebastian, addressing our well-attended AGM, said the temptation would be to make leasehold less of a priority, 'but I don't think that will happen,' he added. He evidenced the excellent report by MPs and the work on policy by the All-Party Group.

Sebastian called on the new government to impose a ban on new ground rents and set the date now. Then "the racket will end", he said. The previous government commitment on ground rents had been "wobbly" and the government reluctant to commit for wholesale reform of leasehold.

A major problem facing the new government was the cladding on blocks of flats, post Grenfell. The government had committed to remove ACM (aluminium composite material) cladding on about 300 private blocks. But there were thousands of other blocks with other types of cladding that were also potentially an issue. LKP had been deluged with communications from flat owners trying to sell their flats and being told they had nil value.

'People will be turfed out if they can't afford to pay for the removal of the cladding,' Sebastian said. Probably low interest, or no interest loans from government were the only way forward. 'Too many blocks have been too badly built,' he said.

His wish was: 'leasehold will go and flats to be sold on the same basis as every other country in the world', ie commonhold, but the unanimity required to convert to commonhold was a major hurdle.

Our second guest speaker, Tony Essien, Chief Executive of the government-backed Leasehold Advisory Service (LEASE), found himself somewhat curtailed in his comments by the "purdah" of the general election. He spoke of the close cooperation between LEASE and FPRA, and said the new online service, LEASE Learn, would help directors who had responsibilities in the complex world of leasehold.

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In jeopardy? continued from page 1

During the AGM session, Treasurer Roger Trigg reported increased turnover and profits, with £2,000 added to the reserves. The increase in membership fees had helped the Federation's position, which was now strong.

Chairman Bob Smytherman, in his opening remarks, thanked the sponsors of the event. He thanked the three retiring directors who had given such long service to FPRA: Robert Levene, who had basically saved the organisation 10 years ago with his administration plan; Philippa Turner, who had served the Federation since 1972 and for many years contributed the Legal Jottings for the newsletter; and Richard Williams, Vice-Chairman. All three were presented with gifts as a token of their sterling service.

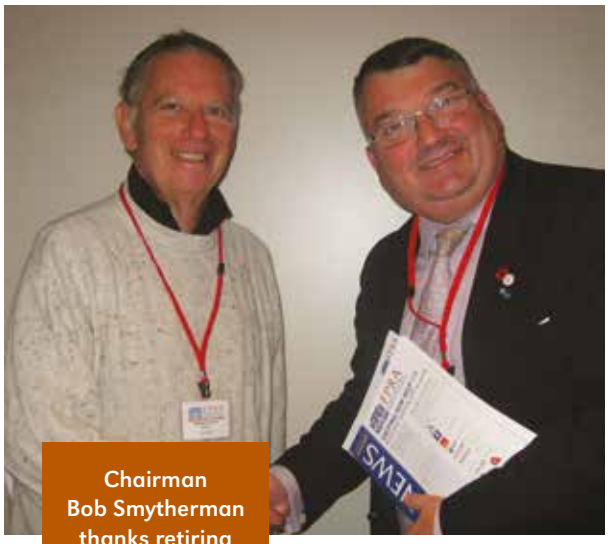
Three new directors were elected by the meeting: Shaun O'Sullivan; Bob Slee and Malcolm Wolpert.

Asked why the AGM was only for members, when it had been an open event before, Bob said new members were not coming from the AGM, but online, and it was unfair on members if non-members came to the evening and gained free advice for no input.

Bob said FPRA had 425 members, which was slightly down. FPRA needed more members and he urged every member organisation to see if they could sign up one other.

New directors (from left) Malcolm Wolpert, Bob Slee and Shaun O'Sullivan with retiring director Philippa Turner

Retiring Vice-Chairman Richard Williams is thanked for his long service to FPRA



Chairman Bob Smytherman thanks retiring director Robert Levene for his excellent work for the Federation

Guest speaker Sebastian O'Kelly of LKP

Treasurer Roger Trigg listens to the Chairman's speech

Hon Consultant Mark Chick of Bishop and Sewell who provided the wine reception!

Both before and after the meeting, committee members and honorary advisers were available to help individual members with problems and advice. There were also round table sessions which gave rise to numerous interesting discussions on legal and other issues to do with leasehold.

During the round table discussions. From left (seated): Hon Consultant Shabnam Ali Khan, Legal Jottings correspondent Nicholas Kissen and guest speaker Tony Essien. Standing behind: retiring Vice Chairman Richard Williams with member Stephen Guy

ELECTRIC VEHICLE CHARGE POINTS AND LEASEHOLD PROPERTIES

FPRA strongly supports the concept of electric vehicle charging in residential and non-residential buildings but has warned the government it has not taken account of leasehold properties in its proposals. Without good implementation the concept will be counterproductive.

Responding to a consultation by the Office for Low Emission Vehicles, FPRA has said it would be very willing to assist the department and government generally with this matter, but it needs a lot more thought and consideration across many government departments and other organisations to successfully achieve its welcome aim.

Chairman Bob Smytherman wrote in response: 'The problem with this consultation and its proposals is it lacks an understanding of the leasehold sector and how it works and as such, rather than aiding the introduction of electrical vehicle charging points to leasehold blocks, if implementing as shown it will inhibit and put obstacles in the way of implementing this important introduction.'

The current proposals do not reflect the reality of residential blocks of flats. While FPRA cannot comment on non-residential buildings, which is outside its remit, however, there are many buildings which are of mixed residential and non-residential use.

The legal structure of blocks of flats: Most blocks are freehold with a leasehold occupation, with the lease document being the principle legal document. Many of these documents are prescriptive of what is allowed and not allowed on the estates, and as most were drawn up before the concept of electric vehicles this is not allowed for. Further, many leases specifically prevent a charge to leaseholders for any 'improvements', restricting the service charge to the maintenance of existing infrastructure and prohibiting the introduction and charge of new infrastructure. If this fundamental legal situation is not addressed the whole introduction of charging points could fail and be a minefield of legal disputes. So your whole proposed legislation rather than helping could be detrimental to your welcome objective of meeting climate change objectives.

Many blocks have allocated parking with the costs of the parking also separated from general services charges. What happens if one person wants a charging point on their allocated space and another does not, and equally can charging point costs be charged to spaces that are not serviced by them? This goes further when flats and spaces are sold, who pays? Many leases have no provision for swapping of spaces. What about visitor spaces? In larger blocks there are often security access issues to parking. The list is extensive and beyond the remit of this consultation but needs to be carefully considered before ill-prepared legislation is put forward.

Blocks with garages: The draft refers to open car park spaces. Many blocks of flats have garage blocks which is where the cars and the parking provision is located. Generally, fire regulations would prohibit electrical charging points within an enclosed garage space. How are you going to address this?

Blocks with built-in, often lower level, or underground parking: How does this affect fire regulations?

Access is often difficult, and consideration needs to be given to the maintenance of the units.

Listed buildings: Many of our members occupy blocks of flats, particularly in central London, but also in many other places, where the whole block is listed and anything that changes the appearance of block or estate can be problematic, so running substantial new electricity supplies may be impossible.

Many blocks, although not listed, have a particular look and style such as: Mock Tudor, Art Deco etc. which again would have serious objections as above.

Many blocks already face substantial challenges, particularly our members in the retirement sector, for providing power points for disability vehicles, which even in the latest build retirement blocks is still often not provided for. Indeed, the building regulations are woefully inadequate in this regard.

Many blocks of flats are located above shops or other commercial premises with carpark facilities shared. Further research is required as to how electric charging points can be used in this regard.

There maybe a fundamental breach of rights where people are being asked to pay for electric vehicle charging points and they have no input or say into their provision because of other legislation.

Boundaries of blocks can be a challenge. Often there are estates where the actual boundary is estate wide but individual blocks within the estate have their own boundary.

Grant money: While a £500 grant per charging point is welcome, who will get this? Will it be the individual leaseholder, the management company, the freeholder or indeed one of the intermediaries that may be involved? After all we have head leaseholders, flying leases and umpteen other variations.

Commonhold: It is the ambition of the government that new blocks be built under the 'commonhold legislation' with its prescription under legislation of its management and charges. How would these proposals be incorporated?

Who will own and maintain the equipment? Will it be the leaseholder? Or perhaps if it is a charging point that serves two parking spaces, one of the two. Or will it be the whole block? Or the whole estate? Or in the case of certainly some of our members where they have separately an entrance charge, a block charge and an estate charge. Some estates split their parking charge from other estate charges, but some don't.

(The full FPRA response can be found on our website).

'A Member Writes'....

We continue our series in which members write in with their experiences of leasehold life. Contributions from members are welcome – please consider sharing yours with our readers.

How to boost accessibility at your private residents' association

More than 11 million UK residents live with disabilities, according to Disability Sport, and it's important for private residents' associations to consider the needs of people with disabilities when providing information and services. When you boost accessibility at your private residents' association, it will be easier for residents with disabilities to stay in the loop and get the accessibility assistance that they need. Without accessibility enhancements, some residents may not have equal access to information and services.

Implement accessible website upgrades

Does your private residents' association have a website that members visit to stay abreast of information, meeting times and more? If so, consider the fact that some residents may have trouble using the website due to their disabilities. By making the right website upgrades, you'll be able to boost the user-friendliness of the website. If you don't have a website yet, ask a web designer to keep accessibility in mind while he or she is working.

Some key principles will enhance website accessibility, including minimalist web design. Keeping web design simple will make it easier for residents with disabilities to get optimal value from the website. If you post videos at your website, be sure to caption those videos or provide full transcripts of them, as many people have hearing impairments that make it hard for them to understand videos. Using larger fonts will be a good option for improving website accessibility for those with low vision. Web design should be keyboard navigation-focused to help those with fine motor issues, who may prefer using keyboards to a mouse.

Get feedback from residents

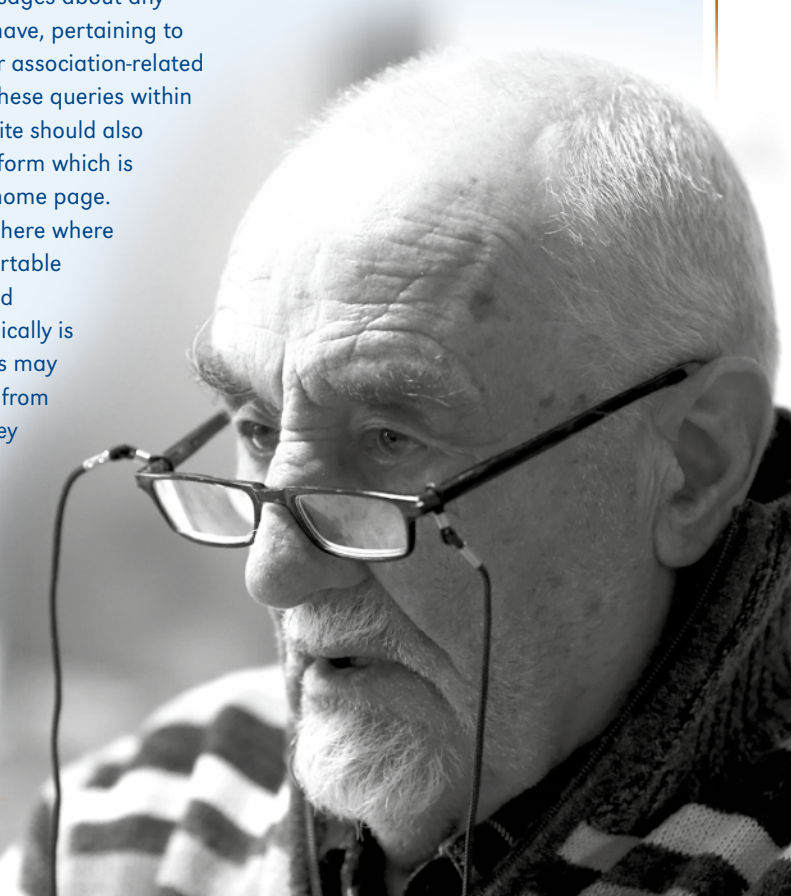
No one understands disability like those who live with it. People with disabilities know what they need in order to live as independently as possible. If you've noticed members of your association who have disabilities, but haven't really talked with them about accessibility, you should try to do so. Ask residents if the property's current accessibility level is acceptable. Inquire as to what might be improved. While you may certainly raise accessibility issues at meetings, don't hesitate to chat with residents one-on-one. Some people may feel shy about expressing a lot of thoughts during a meeting, but may open up one-on-one. Once you have new accessibility ideas and suggestions, act on them if the association is on-board with making changes.

If you send out email newsletters, be sure that the newsletters invite residents to send electronic messages about any concerns that they have, pertaining to accessibility or other association-related issues. Respond to these queries within 24-48 hours. A website should also have a "contact us" form which is easy to find on the home page. Creating an atmosphere where residents feel comfortable sharing concerns and suggestions electronically is important. Residents may send emails directly from the website, after they catch up on the latest news about information and services.

Research new accessibility technology

Tech is evolving, and a lot of new technology makes life easier for people with disabilities. Smart home technology, such as voice commands that operate home systems, is just one example. When you stay informed about new tech developments that might be used to make the property more accessible, you'll be able to discuss the most appropriate technology with association members. Some of it may eventually be added to a property in order to boost accessibility.

Accessibility is always an issue for people with disabilities. It's something that they think about every day. When you enhance accessibility at your association, you'll show association members with disabilities that they matter. You'll also be doing something good for your association as a whole, as it's easier for a group to get things done when every member can contribute equally.



Legal Jottings

Compiled by Nicholas Kissen, Senior Legal Adviser at LEASE

The approach to on account service charges when the NHBC are expected to pay the costs

COURT OF APPEAL

Avon Ground Rents Limited v. Rosemary Cowley and others [2019] EWCA Civ 1827

The case related to a mixed commercial/residential building in London E8 which was completed in 2008 and covered by three separate NHBC warranties applying to different parts of the structure.

Following the discovery of a leak through the central courtyard, caused by a failure in the waterproof membrane, the Section 20 consultation procedure was started in respect of the cost of intended repair works to the membrane and in the same month the NHBC was notified of a claim.

The residential leases entitled the landlord to demand from leaseholders a proportion of anticipated expenditure on account of anticipated works within the service charge year.

In June 2016 the landlord's agent issued demands for the first instalment of the service charges for the year starting 25 June 2016 including the leaseholder's apportioned costs of the works estimated to cost in total around £300,000.

The leaseholders refused to pay, arguing that the building had the benefit of the NHBC policies and that it was not reasonable to ask for payment in full and all that could be demanded was the likely shortfall (if any) between the expected insurance payments and the total cost of the works.

The landlord then applied to the First-tier Tribunal (Property Chamber) (the FTT) for a determination of among other matters that the proposed costs were a reasonable amount to seek payment for on account.

By Section 19(2) of the Landlord and Tenant Act 1985, where service charges are payable on account of future costs, only a reasonable sum is payable, with any repayment or adjustment happening once the costs have been incurred.

The First-tier Tribunal came down in favour of the leaseholders deciding that whilst the costs were reasonable, the service charge contributions should be reduced to take into account that the NHBC had indicated it would cover costs. The landlord appealed to the Upper Tribunal (Lands Chamber) who upheld the decision of the First-tier Tribunal.

A further appeal was made to the Court of Appeal who agreed with the decisions of the First-tier Tribunal and the Upper Tribunal.

In reaching its decision, the Court of Appeal took into account the following three critical facts:

- an effective policy of insurance was in place in respect of the repair works which would cover the majority of the works;
- the freeholder had agreed to give credit for any sums received from NHBC by way of insurance; and
- the amount of the insurance contribution was not hypothetical; the sums payable by the leaseholders following receipt of the insurance contribution had been identified to the FTT and formed the unchallenged factual basis for the FTT's determination.

As the Court of Appeal put it:

'....where...there exists an anticipated schedule of works, the total costs of which are reasonable and there is a possibility of a third party making a contribution to those costs, in assessing the residential service charge payable in respect of those works, the landlord does have to give credit for anticipated payment when assessing the reasonable amount to be credited on account'.

Take aways from this decision

Those managing buildings will need to bear in mind recoverability from a third party, such as under an insurance policy or guarantee, when sending out demands for on-account service charges in order to safeguard against a challenge to the reasonableness of such demands.

When does a qualifying long-term agreement come into existence?

Upper Tribunal (Lands Chamber)

Ghosh v. Hanover Gate Mansions Limited [2019] UKUT 290(LC)

Section 20 of the Landlord and Tenant Act (as amended) provides for statutory consultation before "a qualifying long-term agreement" is entered into by a landlord.

Such an agreement is defined as one for a term of more than 12 months.

If the consultation process is not followed, or dispensation obtained from the First-tier Tribunal (Property Chamber), then a landlord is limited to recovering £100 per leaseholder for any financial period in relation to that agreement.

This case involved six purpose-built blocks of mansion flats in Central London and Mr. Ghosh is the leasehold owner of a one-bedroomed flat in one of the blocks.

During April and May 2017 there were discussions between a managing agent and the management company with a view to instructing the agent to act on behalf of the company.

On 12 June 2017 a draft management contract was drawn up and its terms largely agreed

It recorded that it was made on 12 June 2017 and set out the term as being "from 12th June 2017 to 11th June 2018. After this period the Agreement shall continue on the terms set out, subject to termination under Clause 7." Clause 7 stated: "Either party may terminate this Agreement following expiry of nine calendar months of the stated Management Period, by serving on the other not less than three months' notice in writing."

The agreement was never signed. Despite this, the managing agent started providing services on 12 June 2017 and around 24 June 2017 the first payment was made for the provision of services.

Mr. Ghosh claimed that this contract was a qualifying long-term agreement.

It appears to have been conceded by the management company (and the freeholder) that if the contract took effect on 12 June, that it would have been a qualifying long-term agreement.

The First-tier Tribunal (Property Chamber) decided the contract was, in the absence of a signed written contract, an oral contract evidenced by both performance and payment. Applying a judgment from the 19th century the First-tier Tribunal held that such a contract could not come into existence until a payment had been made.

Since payment had not been made until 24 June 2017, the agreement was not for a period of 12 months or more and therefore was not a qualifying long-term agreement.

Mr. Ghosh appealed to the Upper Tribunal (Lands Chamber), the issue being when the contract with the agent took effect and, therefore, whether it was a qualifying long-term agreement.

Before the Upper Tribunal it was admitted that there was a contract with the managing agent and that services were provided from 12 June 2017 onwards and the Upper Tribunal came to the view that the only realistic finding open to it on the terms of the engagement was that it was as in accordance with the draft unsigned agreement.

But there was one issue remaining; namely, on what date did the contract start to apply?

Reviewing the judgment in the 19th century case the Upper Tribunal considered the decision was not authority for the view that, in a contract by performance, payment is necessary for a contract to arise. The contract came into force from the date of performance of the agents' management functions under the draft contract – that is 12 June – and the date when those services were paid for is irrelevant. Accordingly the management agreement was a qualifying long-term agreement.

Take aways from this decision

When taking steps to engage managing agents make sure that there is no room for argument that a qualifying long-term agreement is accidentally being entered into if that is not what you intend to do. Careful drafting is important as is ensuring that a proper written and signed contract is in place.

THE MYTH OF SHARED OWNERSHIP

By FPRA Vice-Chair Shula Rich

FPRA has no membership among shared ownership leaseholders. The reason is not as obvious as it seems.

"Co-ownership where the leaseholder shares the ownership with a housing association is only partial ownership of a lease". Not so! Co-ownership is misnamed.

The leaseholder in fact owns the whole lease. The housing association has simply loaned the money to complete the purchase price, and will generally appear at the land registry as head lessee.

Co-ownership was described by a recent deputation of "co-ownership" leaseholders to the London Assembly on November 5 as a "payday loan".

However, although realising the terms of the loan can be onerous it's clear the majority of shared ownership leaseholders are unaware that they do in fact own their whole lease.

Because of this the leaseholders' name appears as the 'proprietor' at the Land Registry and they are liable for the full service charge – not part of it.

So called 'shared ownership' leaseholders can form a Right to Manage company and take part in the management of their building.

As such they are fully qualified to join FPRA!

Shared "ownership" leaseholders told the London Assembly recently that they deeply regretted their decision to enter the scheme. One of the 30-odd participants at the event described shared ownership as the "pay day loan of housing", which is being used to deceive those who dream of owning their own home.

A report of this meeting is available on the Leasehold Knowledge Partnership website (www.leaseholdknowledge.com)

New national model for shared ownership

FPRA responded to this initiative from the Affordable Homes Programme at the Department of Housing, Communities and Local Government

The Federation said: 'This consultation refers to improvements to the stair casing mechanism for leaseholders to progress towards 100 per cent ownership of their flats.

While an improvement to this process is welcomed, our concern is not the process but the misnaming of the system as "shared ownership".

- Leasehold is not ownership it is long term renting for a fixed number of years.
- The term 'shared ownership' to refer to leasehold is misleading as leasehold is not ownership

'The leaseholder in a "shared ownership" scheme is listed at the Land Registry as the proprietor of that flat. The "sharer" – usually a housing association is listed at the Land Registry as the head lessee. The service charge goes from the freeholder to the head lessee who bills the leaseholder for the whole amount plus their charges if applicable. The leaseholder pays an amount to the head lessee reflecting the share of the money put forward by the association to complete the purchase price of the flat. The shared ownership is in fact the shared purchase price not the shared ownership. A leasehold flat cannot be "owned".

The "shared ownership" leaseholder is the proprietor of the flat, not the part proprietor.'

ASK THE FPRA

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

Residents using cannabis

Q **We have had several complaints regards the use and smell of drugs in the property. We are especially worried as one of the residents has a young son and she has expressed concern about this.**
This is a recent occurrence following a resident's boyfriend moving in with her. We use an outside management company for admin etc and they have sent out a letter asking said flat owner to address this. The practice did appear to abate for a short time, but I recently had cause to show a builder around and was very embarrassed, with the heavy smell of this stuff. Obviously, we are keen to stop this practice asap, as we feel it impedes on everyone and any possible sale of properties. I spoke to the management company and they suggested sending a legal letter citing section 146. Could you please explain what section 146 is?

A FPRA Chairman Bob Smytherman replies:
I am not a lawyer for the FPRA but a S146 is a legal notice to the leaseholder for breach of the lease as the activities of the leaseholder are causing annoyance to another leaseholder. Hopefully the response from the leaseholder will be positive and they will cease the drug use without the need for tribunal to enforce.
The difficulty being that drug use in their own flat is not likely to be in breach of the lease as it's their own home. Therefore, the impact of the drug use on others will need to meet the threshold for causing the nuisance on other occupiers and users of the building.
Hopefully as a leasehold owner, rather than a short-term tenant, they will do the right thing and cease the practise of drug smoking when they receive the solicitor's letter!
Another possible remedy is to alert the police as this is criminal activity. However, many police forces do not prioritise recreational drug use. The drug dealers will be the ones that should be targeted which will be more of a priority for the Police.
I hope this helps and the solicitor's letter gets the response you want to cease the drug taking. Best of luck.

Expenses and fees

Q **We are a small association, comprising 13 of the 18 non-director lessee shareholders in our block of flats, aspiring for formal recognition. I have no experience in this and want to suggest to the association what would be an initial amount for an annual membership fee to cover I know not yet what, but presumably possible small expenses like postage. Are you able to advise what other similar-sized associations have as a membership fee, or what you feel might be suitable as an initial suggestion?**

A FPRA Director Shula Rich replies:
Re membership fee that depends what you want to achieve. If the only expenses you are incurring are stationery, and the FPRA membership fee, then perhaps our fee plus £10 – £15 per member would be appropriate and could also cover some refreshments at your meetings which is always nice. If the Committee plans other activities, then it will need to be more to cover these.

Paying for major projects

Q **Our block is a property containing 14 flats owned by leasehold. The freehold is owned by our management company, which is wholly owned by the 14 leaseholders. We are facing two major projects – re-roofing and electricity intake cupboard upgrade – that will cost a substantial amount, probably in excess of £100,000. What I would like to do is spread the cost of these works over several years and possibly different owners as flats are sold rather than ask the current 14 leaseholders to pay their full share at the start of the project (which has been the custom in the past). Expressed in simple terms, take out a loan. The regular service charge would be increased to include an amount to service the loan.**
I have not approached our bank to discuss this as I have no idea if this is something that is realistically possible. I wold be grateful for your thoughts.

A FPRA Hon Consultant Gordon Whelan replies:
The works being considered are both covered under your lease and there is an obligation on lessees to contribute to these costs through the service charge. You should follow the terms of your lease and prepare the lessees for the service charge demands that need to be raised. It may be possible for you to stagger the start dates for the two different projects and this will help alleviate the cashflow impact on lessees.
The proposal for the company to take out a loan to cover the costs of these works has a number of complications but the most important point to realise is that it doesn't make commercial sense. A lender will usually require some security for a loan of this size and the company has no assets to offer as security. An alternative may be for the directors to give personal guarantees against a loan but this is not advisable and is unfair on the individual directors.
Finally, the financial interest in the building rests with the current lessees and not the management company. It is the lessees who will benefit from a new roof and this should be reflected in the resale values of the individual flats at the time of their sale.
There are two other points to bring to your attention. Firstly, there is no provision in your lease for a reserve fund to be collected. You may wish to consider varying the leases in order to collect reserve funds for future expenditure. This may help you avoid one-off large payments of this nature in the future. Secondly, the cost of the required works means that you must follow a section 20 consultation process with lessees. This statutory process is required if costs of major

works exceed £250 per lessee and details of the process are available from LEASE. Also, note that your lease requires you to obtain three quotes for these works and to "select the lowest of the three estimates obtained".

Sold without notice

Q I have recently found out our landlord has sold the freehold status of our lodge, and now retain a superior landlord status. What does this mean to us? To me this puts cash in their pocket, also another person has control of the ground rent we pay. We have had no official notice of this change. What is our position in the circumstances?

A FPRA Director Shaun O'Sullivan replies:

When a freeholder is proposing to sell his freehold interest he is required by law to offer the interest to the tenants before offering it on the open market – known as the Right of First Refusal (RFR). Although the majority of disposals will trigger RFR, there are categories of disposal which are exempt and one of these is a disposal to a company which has been associated with the parent company for at least two years. Without knowing the precise details of the transaction in your case, I suspect that this is the arrangement to which you refer. Although quite legitimate and not terribly unusual, it is seen by some as a device for exploiting a loophole in the 1987 Landlord and Tenant Act by effectively circumventing the requirement to either alert or offer the interest to leaseholders and, as a consequence, keeping the interest within the same group of companies.

A member comments:

'Excellent response and very useful advice given.'

Front doors and fire regs

Q **Our development of 36 flats was built in 1990. Residents have begun to enquire about replacing their individual front doors with more attractive, thermally-efficient and secure composite doors, which requires permission from our freehold-owning RMC. As company secretary and acting managing agent, I've tried to find ways we could help replace/upgrade everyone's door, to ensure conformity.**

Unfortunately, I've discovered there are NO manufacturers of doors that meet the latest post-Grenfell fire safety requirements relating only to flats above ground floor level. This is due to manufacturers deeming it uneconomically viable to put their existing products through the new fire safety tests. Hence, although owners could replace their doors (with our permission), their door fitter can only provide a FENSA certificate, and no fire safety guarantee, even though the same door would be perfectly legal as the front door to a house. I assume this is because for a house, the front door is the final exit, whereas a flat door opens to a communal hall/landing. My question is, if we allowed owners to replace their front doors with a modern composite door and obtain their FENSA certificate, would they unwittingly have difficulties selling their flat?

A FPRA Chairman Bob Smytherman replies:

Front door replacement and fire safety is a very topical issue as we recently had Fire Door Safety Week which FPRA supports every year. Since the Grenfell tragedy there has been various reviews, enquiries and suggestions for change which have all stalled due to government being paralysed about Brexit!

The best advice I can offer is to fully comply with the lease and ensure any replacements are uniform and meet the latest standards at the time of replacement. Building Regulation standards are advancing all the time but are not retrospective, therefore compliance on the day of installation is essential.

The Fire Door Safety Week website includes lots of useful information to inform your decision-making and your Building Control Department at the council is always a useful source of free advice too.

The only issue with selling the property on I would foresee is that building regulations were not fully complied with at the time of installation, although this may be an issue if government require the changes to be made retrospectively. There is also a potential for conflict with Fire Safety Reform Regulations as there is an ongoing requirement to ensure the "responsible person" ensures the common parts are a means of escape and is safe in the event of a fire.

Continued on page 10

Ask the FPRA continued from page 9

Private parking post

Q **One of our leaseholders has requested to erect a parking post because of problems with illegal parking on the drive to his private garage. As leaseholders we also own the freehold to the block of flats and the driveways up to the garages are common land.**
The leaseholder has provided us with details of the parking post which is sturdy, bright yellow and collapsible. He has offered to pay for this and the securing of the post by our local reputable builder.
We recognise that any fixture to the drives would become the responsibility of the company and as such would be covered by our insurance in terms of liability.
I would anticipate that more leaseholders might wish to put parking posts in place at some point.

A FPRA Chairman Bob Smytherman replies:
Parking is a contentious issue for most of our members. Allowing a leaseholder to erect a bollard on "Company Landlord" is something I would strongly advise against as it will make managing your own land more complex and liability and maintenance issues will become confused.
Without knowing your site it's difficult to recommend what a solution could be, but I would always advise against allowing one leaseholder to do this as others will surely follow making things even more complicated.
There are a number of security companies that offer patrol services – often for free – to manage a car park from obstruction and illegal parking. This would be my preference for your common parking areas. I would advise using a company that is a member of an Approved Operator Scheme which will provide additional safeguards and independent appeals process.

Recycling rejection

Q **We are an estate of 30 flats in west Oxford. Seven are fully owner-occupied, three are second homes intermittently occupied, and 20 are sublet. The residents' company owns the freehold, and all 30 flats participate in this ownership.**
We have separate council-provided waste bins for landfill/incineration and recycling. They are just about sufficient for the population. Both types of bin are very full on collection day.
Oxford Council has strict and well publicised rules governing what can be put in the recycling bins, and also how it can be put in. The council is increasingly taking a hard line about enforcing these rules, with the penalty being non-collection from the affected recycling bins.
The penalty is being widely applied, not just to our estate. One particular contravention is dumping recycling material in plastic bags which have been tied up: the rule is that all items be presented separately.
Of course many occupants use the tied up route to transport recycle easily from the flat to the bin.
We believe, but without much hard evidence, that our problems come from the sublet flats.
The residents' company has provided hard copy information on Oxford City policies to each flat, and has also informed flat owners of the requirements. We can and will do much more in this area, both through our agents and through our own efforts.
Do you have any suggestions? Could clauses in our lease (complying with regulations; nuisance) be used against owners of flats if their tenants are demonstrated not to be behaving compliantly with the rules?

A FPRA Director Shaun O'Sullivan replies:
In order to meet increasingly stringent recycling targets, local authorities (or contractors working on their behalf) are known to be taking steps to try and ensure compliance with local arrangements. Although 100 per cent compliance is probably an unrealistic aspiration, non-collection – or at least the threat of non-collection – is, nevertheless, one of the devices used by some.
Although I don't believe that there is any stock or easy answer to this issue, my own experience in a self-managed block of 24 flats in one of the London boroughs, is that we engaged positively with the local authority and their appointed contractor at the outset and during the first few months after introduction in order to ensure that our bin capacity (we are required to use four types of bin) was as consistent with usage so far as was reasonably possible. As the result of this, bin capacity, and the number of bins provided, was adjusted accordingly.
Although the local authority circulated details of the new recycling regime to every household (and flats were different to houses) we placed copies in all of our four bin stores.
In addition, we wrote to all our residents (whether owner-occupiers or sub-tenants) giving details of the new arrangements and encouraging compliance. We also included details in our estate regulations (circulated at least annually) and we make new residents (whether owner/occupiers or sub-tenants) aware of waste collection arrangements as part of a 'letter of welcome' as soon as they take up residence. This generally works for us although, occasionally, we have to remind residents of their obligations in this regard. A simple email, or general circular to all, is normally sufficient.
Your lease places an obligation on the lessor to 'keep in a reasonable state of cleanliness' the 'estate external areas', of which 'shared refuse bin stores' form part. Should your ability to do so be compromised by uncollected waste, then I believe the lease could be invoked in that it includes both the 'premises' (largely that which had been demised) and 'the remainder of the estate'. However, I would positively encourage you to adopt other means of encouragement, as you appear to doing, before taking lease enforcement action.

Dormant company and tax

Q **We are a limited company with 15 shareholders for the 15 flats in our building. We do not trade, nor do we have "income" except for advance payments from our 15 shareholders to cover our annual operating costs.**
In terms of Companies House and the Inland Revenue,

what is our category? We are not sole traders, nor a trading company, nor an individual.

A FPRA Hon Consultant Gordan Whelan replies:
For Companies House your SIC Code is 98000 – Residents Property Management.
With regards to HMRC your status is a dormant company. You should write to HMRC explaining your circumstances and that you have no income arising from your activities. Your letter should include a request to dispense with the requirement to submit corporation tax returns.

Getting recognition

Q **We have made an application for formal recognition of our residents' association. We have received this reply from the management company: "I believe that in order to achieve formal recognition, 51 per cent or more of all owners, ie 51 per cent of 48 properties must be a member. Unfortunately, as only 50 per cent is occupied I do not believe you will have sufficient membership at this stage."**
In actual fact we only have 47 properties as one property is our guest suite. At present we have 22 apartments who have signed up for membership. What is the percentage required for formal recognition to be granted? Also, is this a percentage counting every member as some apartments have two occupants, or is it of apartments only?

A FPRA Chairman Bob Smytherman replies:
This is a very common issue in new build developments, the 51 per cent is the usual percentage quoted as this is a simple majority. Provided you have a majority of those currently eligible to join your RA and can demonstrate that the RA operate in the best interests of ALL leaseholders according to principles of democracy, then the landlord should recognise your RA. If they decline you will need to appeal to the First Tier Tribunal who are the adjudicators of the reasonableness of their decision.
The request for recognition must be addressed to your landlord /freeholder, not the managing agent who is just contracted by them.

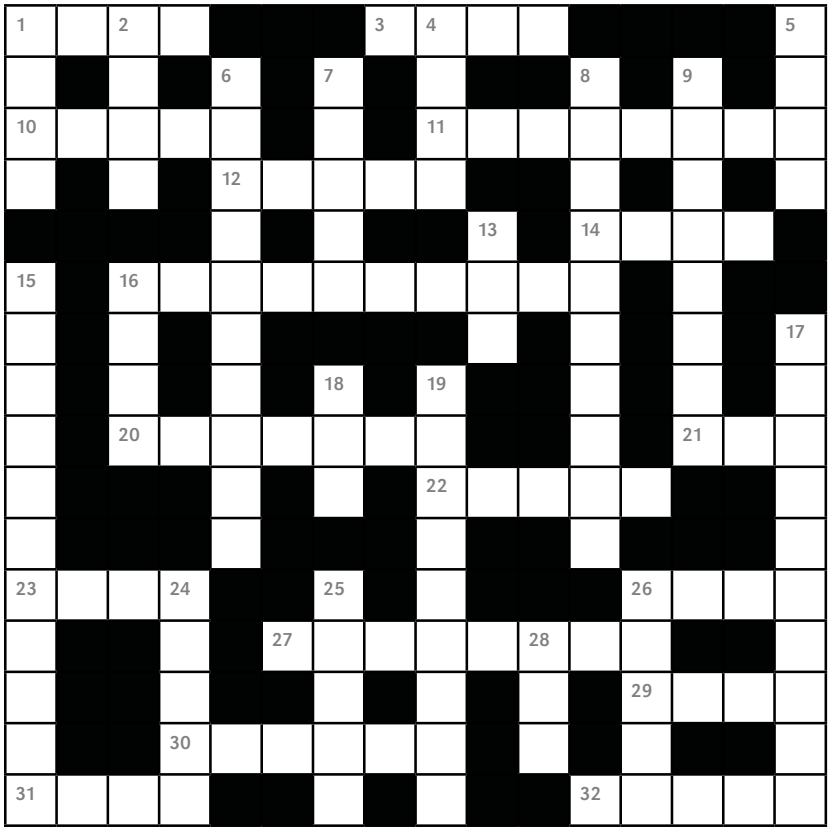
Asbestos

Q **We are completing form LPE1 for the sale of one of our flats. One question asks if there has been an asbestos survey done. There has not. Is it compulsory for us to have this survey carried out? – and how much is it likely to cost? We are a block of six purpose built flats, constructed in 1981.**

Continued on page 12

PUZZLING

Director Bob Slee is a man of many talents, and here he has compiled a leasehold crossword for your amusement.



Answers on page 14

CLUES

Across

1 All the flats in this block are identical
3 What difficult neighbours do with their doors
10 Permission to reside long term
11 Ultimate ownership
12 First crack at the minutes
14 Essential for the power shower
16 Lifesaver in a large block
20 Definitely not public
21 Offered to 30 across
22 Where the gardener keeps his supplies
23 On top of everything
26 The cleaner must have left the floor wet
27 Legal agreement to obey
29 Essential management commodity
30 Occupies without ownership
31 Keeps the association going
32 Another term for 7 down

Down

1 When it's time to move on
2 Water protection in a large property
4 Underneath 23 across
5 Offers under Section 20
6 Mutually beneficial collective
7 What each flat freeholder receives
8 Spicy ground rent
9 What it is to share
13 At the door
15 Fifth column parking
16 The cat's comings and goings
17 Admits desirables only
18 Unwelcome visitor in 4 down
19 Me and all my neighbours
24 What leasehold is all about
25 Panelled energy
26 A spell on the committee
28 The yearly bunfight

Ask the FPRA continued from page 11

A FPRA Hon Consultant Emily Orner replies:
Thank you for your enquiry. The Control of Asbestos Regulations 2012 are the governing document in relation to asbestos. If your property was built or converted prior to 2001, as the party responsible for the communal areas, you would need to have an asbestos management survey on file. This is an assessment of the property to identify any areas where asbestos may be present and to identify what measures need to be put in place to manage any asbestos. It is important to make clear to any assessor that the survey only extends to the communal areas of the property and should be non-intrusive. There is no requirement for you to investigate the individual flats.
It may be that a report will give you a clean bill of health with no asbestos found. If this is the case it should be a one-off exercise and the report can be retained on file. However, if there are areas of asbestos noted advice will be given on how to manage this. This may be by way of an annual re-inspection, labelling and monitoring the area, or encapsulating or removing the asbestos. It is important that any contractors are made aware of any asbestos within the building so that they do not disturb this by accident during the course of any works.
I cannot give any firm idea on prices as I am not local to your area but I would expect a management survey for a block of six flats to be around £250.00 to £400.00.

Sink fund and service charges

Q **Having just reviewed the management agents service charge budget for the coming year, the freeholder is not contributing to the sink fund for the current 10 unsold apartments in the building. Is this correct? When the apartments are sold would the new leaseholder be expected to pay the missing contributions? The apartment block is only three years old but obviously the longer the apartments remain unsold the bigger the sink fund becomes.**

A FPRA Hon Consultant Shabnam Ali-Kahn replies:
The lease does allow the management company to charge for service charges with costs incurred and costs to be incurred. Therefore, there is provision for advance service charges and some sort of a reserve fund. However, the tenant is liable to pay their tenant proportion as outlined in the lease. Although there are rights for this to be varied it can only be varied as "it may be deemed appropriate" as outlined in Schedule 7 to the lease. One could argue being charged for unsold flats is not an "appropriate" reason. Furthermore, the lease specifically outlines that the landlord must observe the lease covenants in relation to unsold flat. This means it is unreasonable and not allowed under the lease for this shortfall to be recovered from the other flats.

Cosy relationship

Q **Our lease allows the freeholder to place the insurance without consulting us, and I believe the longstanding cosy relationship they have with their insurers does not work in the interest of residents. We therefore want to obtain quotations from alternative insurers and then coax, cajole or pressure the freeholder into accepting what would be a better deal from the RMC's point of view. How can we go about this? What insurer or broker could we approach?**

A FPRA Chairman Bob Smytherman replies:
This is something that is very common and included in the lease of my block too. What we did was to seek a number (three is ideal) of quotations from other insurance providers. It's important that you share with these companies the existing cover to ensure that the quotations are based on the same cover.
Hopefully the freeholder will then accept the new quotation without further challenge, however you may need to consider getting an independent valuation for insurance purposes to providing this evidence to the freeholder. If they still object you will have to consider a tribunal application for unreasonable service charges. It's important the freeholder discloses the commission they receive for organising the insurance as this will be vital evidence with any challenge.
The FPRA do not recommend any insurer or broker but would strongly advise seeking quotes from providers that specialise in ensuring blocks of flats for an RMC.

Lack of a majority

Q **Are there any recognised associations where the landlord was happy to grant recognised status without attaining the 51 per cent majority vote from leaseholders? Is it a legal requirement that 51 per cent of leaseholder votes must be attained? We have 825 apartments and many of the owners do not live in the development, many live abroad and do not speak English as their first language making communication with these groups very difficult. We have almost 300 leaseholders signed up and would like to approach the landlord for recognition now.**

A FPRA Hon Consultant Roger Hardwick replies:
Recognition as a "recognised tenants association" (or "RTA"), for the purpose of S29 of the Landlord and Tenant Act 1985, can be obtained in one of two ways: either the landlord can grant recognition, or the First-tier Tribunal (Property Chamber) can grant recognition, following an application by the tenants' association.
The term "landlord" is defined in S30 of the Landlord and Tenant Act 1985 and "includes any person who has a right to enforce payment of a service charge". The word "includes" would suggest that the "landlord" includes both the reversioner (the freeholder, in this case) and any third party management company, or RTM company, as the case may be.
Where an application is made to the FTT, the FTT must now have regard to the tenants' associations (Provisions Relating to Recognition and the Provision of Information) (England) Regulations 2018, which came into force on 1 November 2018. Regulations 3 and 4 specify those matters which an FTT must have regard to when deciding whether or not to grant a certificate, and those circumstances in which a

Continued on page 14

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Ask the FPRA continued from page 12

certificate may not be given. By Regulation 4(1), the FTT "must not give a certificate to a tenants' association in relation to a premises where the tenants' association represents fewer than 50 per cent of the qualifying tenants of dwellings situated in the premises".
So the FTT could not currently grant recognition, but the landlord could, although that is a matter for the landlord's discretion.

Contractors and regulations

Q **We are a self-managed management company with 24 flats. We use a small number of contractors such as decorators, gardeners, cleaners which all operate as a business. One leaseholder feels we should abide by Construction (Design and Management) regulations. Is this required for a small management company?**

A FPRA Committee Member Colin Cohen replies:
The self managed block would need to comply, firstly since they are likely a "company" managing their own block's affairs and therefore must conform with all applicable health and safety law and secondly the common areas of the block including external areas are deemed to be a workplace as people work in them (postmen, delivering post, cleaning contractors, gardeners, etc.) Hence I would suggest that the block employs an CDM specialist to advise them on what they need to do for any supplier.

Insurance expiring

Q **We are in the process of employing a new management company and phoned them to advise them our building insurance expires at the end of this month and could they please attend to it, only to be advised that due to a change in legislation they cannot advise us on that and our directors would have to find a suitable insurance company, but they could pay the premiums.**
The whole idea of employing a management company was to relieve us of such matters. Does the change in legislation apply to our situation? We are a block of six privately owned flats, collectively we own the freehold under the limited company name. Each flat has one voting director.

A FPRA Insurance Expert Belinda Thorpe replies:
The agents are absolutely correct – unless they have a licence with the FCA to provide assistance or advice with regards to insurance contracts they are not allowed to advise or assist, although they can pay premiums.
I would recommend that you approach a broker that can provide a specialist flats insurance policy and they will be able to provide you with advice regarding the cover. Once you have made the decision on which insurer you wish to accept cover with, you can then request that the agent pays the premium.

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.

PUZZLING SOLUTION

Did you solve it? Here are the answers.
The crossword is on page five if you missed it.

ACROSS
1 Same
3 Slam
10 Lease
11 Freehold
12 Draft
14 Pump
16 Fireescape
20 Private
21 Let
22 Store
23 Roof
26 Slip
27 Covenant
29 Info
30 Tenant
31 Dues
32 Stake

DOWN
1 Sell
2 Moat
4 Loft
5 Bids
6 Federation
7 Share
8 Peppercorn
9 Communal
13 Mat
15 Underground
16 Flap
17 Entryphone
18 Rat
19 Residents
24 Flats
25 Solar
26 Stint
28 AGM

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HEALTH AND SAFETY EXPERT

FPRA is delighted to welcome as new Honorary Consultant Jonathan Gough.

Jonathan is a highly experienced health and safety professional and has worked across a number of sectors over his 19-year career. Now responsible for delivering H&S across the Fexco Property Services group, Jonathan also sits on the ARMA high rise buildings safety committee, and the IRPM safety working group. Jonathan provides no-nonsense practical advice across the group, which ensures a safe environment for staff, clients and home owners alike.

Jonathan will be helping our members with queries relating to: lifts; fire risk assessments, general risk assessments, asbestos register, hardwiring tests, portable appliance testing, water testing – Legionella and general quality; health and safety and fire safety.

FIRE SAFETY IN FLATS AND BEST PRACTICE

ARMA (the Association of Residential Managing Agents) has issued a *Fire Safety Management in Flats* Guidance Note to share best practice with professional fire safety personnel involved in the residential leasehold sector, including managing agents, developers and landlords.

The Guidance Note has been produced in line with statutory guidance and industry best practice and independently reviewed by Hampshire Fire and Rescue Service, ARMA's Primary Authority Partner. It is available on the arma.org.uk website.

Dr Nigel Glen, CEO of ARMA, said: 'ARMA members have access to over 100 Guidance Notes on a wide range of topics affecting leasehold properties. This is the only one that has been made available to non-ARMA members, as we wish to promote fire safety industry-wide.

'Our commitment to fire safety includes running dedicated training, technical support and advice, and a 24/7 ARMA Crisis Line to support members in the event of an emergency'.

COMMITTEE MEMBER MALCOLM LINCHIS is doing a great job identifying consultations that FPRA might want to respond to. Currently we have:

Sprinklers and other fire safety measures in new high-rise blocks of flats;

Proposed fire and rescue services inspection programme and framework 2020/21;

Heat Network (Metering and Billing) Regulations 2014: proposed amendments – closes 9 January 2020;

The Future Homes Standard: changes to Part L and Part F of the Building Regulations for new dwellings – closes 10 January 2020;

If you would like to comment on any of these (the first two are closing imminently) please let the admin office know. All the consultations are on the www.gov.uk/consultations website.

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