ISSUE No.133
Summer 2020

NEWS

FPRA
FEDERATION OF PRIVATE RESIDENTS' ASSOCIATIONS

MANAGING THROUGH THE LOCKDOWN

BY FPRA DIRECTOR BOB SLEE

The consequences of social distancing are impacting on every aspect of life at the moment and encouraging everyone to look at different ways of doing things to maintain as much of a semblance of normality as possible, without breaching the vitally necessary safety constraints.

We are hearing from members that one of the problems they are wrestling with is ensuring that they comply with their constitutional requirements, particularly with regard to decisions normally taken at committee/directors' meetings and AGMs. It should go without saying that the requirement to hold such meetings is strongly trumped by the government's emergency restriction on gatherings of more than two people which is now established in The Coronavirus Act 2020.

In the unlikely event that an association member challenges a decision to postpone or forgo a physical meeting, it is inconceivable that there would be a successful case in law. But some ingenuity is required to ensure that business nevertheless continues as efficiently as possible. Here are some tips to consider:

1. Regardless of whatever practices might have developed over time, very carefully scrutinise your association's constitution and/or Articles of Association to ensure that full advantage is

Continued on page 2

A MESSAGE FROM THE CHAIRMAN

'The next few months will be a very challenging time for the Country,' says Bob Smytherman. 'Members will have a number of concerns about the impact of the lockdown restrictions in their own blocks. The FPRA will be continuing to offer a normal admin service during this time, albeit working slightly differently. Many of our advisers may not be so readily available at this time, therefore I will be offering a 'one-to-one' remote advice service to our members using the Zoom app to offer face-to-face advice using the internet.

'Any member wishing to use this service please email me directly to bob@fpra.org.uk with your membership details so we can connect at a convenient time. Although I am not a lawyer I do have many years' experience as a director of my own RMC on the south coast.

'I thank Caroline Carroll and the office team for responding so positively at this unprecedented time. Our newsletter will continue to be available thanks to Amanda Gotham, although this issue is being sent by email. Special thanks to John Ray our IT guru who has kept us connected throughout and ensuring our website is updated with the latest news in this fast-moving health crisis.'

INSIDE THIS ISSUE

BUMPER EDITION

This edition of the newsletter is only appearing in digital form, sent to you by email, due to the restrictions in place to deal with the coronavirus. We know many of you enjoy reading the printed version, and we will get back to this as soon as possible. In the meantime, may we ask the relevant people to ensure your members get a chance to read the newsletter? Maybe you will need to print it off for anyone unable to access it digitally. For any members without access to a printer, the admin office will print you off a copy in black and white and post it to you.

Thank you for your understanding.

The upside is that, being digital only, we are able to give you a special 20-page edition, with an extended version of our popular question and answer section "Ask the FPRA".

Managing through the lockdown continued from page 1

taken of any flexibility. Quite often directors and committee members are given extensive leeway to manage and propositions are sometimes placed before the wider membership at AGM's when it is not strictly necessary to do so. The FPRA is happy to help with interpretation of any points of uncertainty within your constitution or Articles. If you contact us about this, do not forget to include a copy of your constitution or Articles and tells us which element you would like us to advise on.

2. Consider the extent to which written resolutions can be used to move important business forward in the absence of meetings.
3. Look at the practicalities of virtual meetings. This might simply take the form of email debates or telephone conference calls among management committees, or by using conference software to conduct "live" on-line meetings. A useful and very simple device is Zoom which, for most purposes, is free. The Prime Minister recently conducted the first ever virtual Cabinet meeting using Zoom and the FPRA has since conducted a very productive Directors' meeting using it. Look at https://zoom.us for more information.
4. While the restrictions remain in place use whatever means are available and permissible to maintain engagement with members/residents/shareholders and, in particular, look out for more vulnerable neighbours.

CORONAVIRUS

On our website we have a dedicated, up-to-date section on COVID-19 (www.fpra.org.uk/covid-19/coronavirus-news-page) with many useful articles on how the crisis affects leasehold, provided by FPRA Committee Member Yashmin Mistry, a partner at JPC Law, and we are very grateful to her.

Here in the newsletter, we just pick out two important points:

The First-tier Tribunal has gone digital. There are no oral hearings or mediation until further notice but at least to 29 May 2020; any hearings and/or mediations that do convene will be carried out remotely, (the FTT is looking at using telephone or Skype); and where possible, determinations will be made on the strength of the documents /papers themselves.

- There will be no property inspections for at least six months.
- Users have been asked to communicate with the Tribunal only when it is necessary, and to use the Regional Tribunal's generic email addresses only. Any new applications should be lodged by email to the Tribunal's regional offices. (Full details on our website www.fpra.org.uk)

All cases listed for oral hearing have been postponed until 29 May 2020.

With consent of the parties, the Tribunal may decide matters on the papers alone.

Where matters before the Tribunal have not yet been listed for hearing, parties should seek to comply with those directions as far as possible, but the Tribunal acknowledge that there will be delays in dealing with them fully.

The postponement directions that have been issued by the Tribunals thus far suggests that the Tribunal will review the directions already given and consider how to move the case onto final determination. We do not yet know when that process of review will begin.

If directions have not yet been given the Tribunal will aim to do so but perhaps not for another six weeks.

If cases have been heard and the hearing has concluded, or if matters were determined on consideration of the papers alone, then the Tribunal's decision will be issued by post or email.

However, it is acknowledged that there may be delays in the decision being completed, or delays in the decisions being issued.

The second issue to mention is that **forfeiture is suspended**.

Any leaseholder facing forfeiture – or tenant facing eviction – has been granted a 90-day reprieve owing to the coronavirus emergency. This is simply a suspension of proceedings, which will resume.

IS THERE ANY **GOOD NEWS?**

The Budget brought the most welcome news to leaseholders living in flats blighted by cladding. Many leaseholders in this situation found themselves unable to sell their flats, which were valued at "zero", and facing bills of tens of thousands of pounds to have it put right. In many cases banks refused to lend. Many were in despair, facing bankruptcy and losing their homes because of the cost of the remedial work. Many were paying hundreds of pounds a month more in service charges for fire watches and higher insurance premiums.

Hundreds of thousands of these leaseholders celebrated the announcement from the Chancellor Rishi Sunak of a £1 billion fund to remove unsafe cladding from residential tower blocks more than 18m high. It includes all types of unsafe cladding, not just the Grenfell ACM (aluminium composite) material, and includes private as well as social blocks.

There is some debate about whether the money will go far enough. But – more good news – the Ministry of Housing, Communities and Local Government has said that buildings "just below 18m" can apply to the Building Safety Fund on a case-by-case basis.

The MHCLG has provided some reassurance that it will do what it can to ensure the current COVID-19 crisis doesn't adversely affect the remediation of unsafe non-ACM cladding systems on residential buildings.

The Director of the Building Safety Programme Neil O'Connor writes: 'Ensuring that buildings are safe, including progressing the remediation of high-rise buildings with unsafe cladding, particularly those with unsafe Aluminium Composite Material (ACM) cladding, and maintaining measures to ensure buildings are safe ahead of remediation, remains an absolute priority for the government. The government's view is that this work is critical to public safety and should continue, working within the safety guidance, wherever possible. This update provides links to useful sources of information which the construction industry and others with an interest in building safety may find helpful within the current context.

'The government has now put in place additional project management support with construction expertise to help oversee remediation. The additional support will identify blockers to progress and work directly with those responsible for remediation to support individual projects. This new team will work with those responsible for remediation and the Department to understand the impact of COVID-19 on remediation projects and identify ways to reduce the impact on pace. You can see the government's full guidance on how to do this here: **www.gov.uk/guidance/remediation-and-covid-19-building-safety-update-27-march-2020**.'

Full details are on our website **www.fpra.org.uk**

There was also good news from the Competition and Markets Authority.

The UK's competition watchdog has threatened to take housebuilders to court after an investigation found leaseholders were "being misled and taken advantage of" through escalating ground rents, onerous contracts and high fees. The Competition and Markets Authority uncovered "troubling evidence of potential mis-selling and unfair contract terms" in the leasehold housing sector and is planning enforcement action.

TV LICENCES IN SHELTERED ACCOMMODATION

It's complicated! Here is the information from TV Licensing.

From June 2020 TV Licensing regulations are changing where only residents who are over the age of 75 and in receipt of Pension Credit will continue to be eligible for a Free Over 75 TV Licence which will be funded by the BBC. Therefore residents who are over the age of 75 but not in receipt of Pension Credit will be responsible for a Full Fee TV Licence from June 2020.

Fully Qualifying Concessionary Licences

If you have a valid Concessionary TV Licence in place which is a Fully Qualifying concession, residents who are over the age of 75 will continue to be eligible for a Free Over 75 concessionary licence, regardless as to whether they are in receipt of Pension Credit or not. There will be no changes for residents who are over 75 and listed on a fully qualifying concessionary licence.

New Preserved Rights Licences

However if a licence in place for sheltered or supported living no longer meets the qualifying criteria then the licence may change to New Preserved Rights. When a scheme is offered New Preserved Rights we will continue to honour the concessionary licence for the residents who benefited from the concessionary licence prior to the change but any new residents who move into the accommodation after that date would not be eligible and would be responsible for their own Full Fee TV Licences.

On a normal New Preserved Rights licence any residents who are over the age of 75 would be removed from the concessionary licence and registered for their own Free Over 75 TV Licences which would be issued individually to the residents at their address. However in a scheme with a New Preserved Rights licence in place from June 2020, any residents over the age of 75 and not in receipt of Pension Credit would be responsible to purchase their own Full Fee TV Licences.

SAFETY IN BLOCKS OF FLATS

A range of recommendations to improve the safety of residential blocks has been made by the Mayor of London, Sadiq Khan.

In a letter to building owners and managers, he said: 'Following the tragedy at Grenfell Tower, the housing sector must not wait for legislation to start making buildings safe. It is crucial that everyone acts now.'

The letter and recommendations in full can be read on our website. Here are the main points.

Recommendations for existing buildings which can be implemented immediately

The Mayor encourages building owners and managers to begin taking the following actions immediately to tackle safety risks in their buildings:

1. Resident engagement: The Hackitt Review1 stresses that the involvement of residents must be at the heart of a new approach to building safety, which supports the principles of transparency of information and partnership with residents.

2. In January 2020, the government, with the support of local fire and rescue services and a panel of independent expert advisers, published a consolidated advice note2 on the measures building owners should take to ensure their buildings are safe. It is the responsibility of building owners/managers to review their buildings, involving competent professionals, and make decisions on any remedial work that is necessary.

3. Wayfinding signage, such as floor numbers, is a relatively low-cost option for improving safety. The Grenfell Tower Inquiry (GTI) report3 recommends having floor numbers clearly marked in all high-rise buildings. Building owners/managers are encouraged to install wayfinding signage in their buildings, where it is not already in place. It is also recommended that they display floor numbers on each landing within the stairways, and in prominent places, such as lobbies. It is strongly advised that this signage is of sufficient size and colour contrast to the background to be readily visible, both in normal conditions and in low lighting or smoky conditions.

4. Fire Risk Assessments (FRAs) are essential to better understand the risk of fire spread in buildings and identify what needs to be done to prevent fire and keep people safe. The Regulatory Reform (Fire Safety) Order 2005 legally requires building owners/managers to conduct and regularly review FRAs of their buildings. The government has urged social landlords to publish FRAs. The Mayor supports this position and advises that both social and private sector building owners/managers publish FRAs or otherwise make them available to residents.

The current guidance on FRAs, *Fire Safety in Purpose Built Blocks of Flats* was issued by the Local Government Association in 2012. It identifies four types of risk assessments, which vary in their level of intrusion and the areas of the building they cover. To have certainty of the level of risk in our buildings, the Mayor strongly recommends building owners/managers conduct Type 4 FRAs in high-rise buildings. These FRAs involve an assessment of all parts of the building, including flats, and will help to enhance fire safety.

5. Inspection of fire doors: The GTI report recommends that the owner/manager of every residential building containing separate dwellings, regardless of their height, should carry out an urgent inspection of all fire doors to ensure that they comply with applicable legislative standards. This recommendation involves the inspection of entrance doors to individual flats whose external walls incorporate unsafe cladding. Additionally, the report suggests that owners/managers of every residential building containing separate dwellings, regardless of their height, should carry out checks at not less than three monthly intervals to ensure that all fire doors are fitted with effective self-closing devices in working order.

Building owners/managers are encouraged to refer to the latest advice note4 published by the Ministry of Housing, Communities and Local Government (MHCLG) on fire doors. The Mayor recognises that, in the absence of legislation, building owners/managers may not always be able to get permission from residents in order to access individual flats, and that there may be practical implications arising from such regular checks that the government should consider.

6. Lift inspections: The GTI report recommends building owners/managers of every high-rise residential building should carry out regular inspections of any lifts that are to be used by firefighters in an emergency, and that these inspections should also test the mechanisms that allow firefighters to take control of lifts.

The report further recommends that this information should be shared with local fire and rescue services. In preparation for new legislation, the London Fire Brigade (LFB) is considering how it would receive, record and use any new information provided by building owners/managers. The National Fire Chiefs Council is also considering national solutions for this. In the meantime, building owners/managers are strongly advised to ensure they are carrying out effective regular checks, maintaining fire lifts in good working order and repair, and are keeping relevant records.

Recommendations for existing buildings which building owners/managers can begin preparing for

The following recommendations may not be ready for implementation in advance of legislation or further instructions from authorities. Nevertheless, the Mayor urges building owners and managers to begin preparations now, where they can do so:

7. Premises information box systems: The GTI report recommends that the owner/manager of every high-rise residential building should ensure that the building contains a premises information box that includes a copy of up-to-date floor plans, as well as information about any lift intended for use by fire and rescue services.

In preparation for new legislation, the LFB is considering how it would use any new information provided by building owners/managers. In the meantime, building owners/managers are strongly encouraged to start collecting the information they would include in their premises information box, and start putting in place arrangements to keep the information up-to-date, in accordance with the General Data Protection Regulation (GDPR) and Data Protection Act (2018).

8. Building plans on key fire safety systems: The GTI report recommends that the owners/managers of every high-rise residential building ensure that they have up-to-date plans, in both paper and electronic form, of every floor of the building, identifying the location of key fire safety systems. Building owners/managers are strongly advised to start collecting this information and keeping their own records.

9. Information about external walls: The GTI report recommends that building owners/managers of every high-rise residential building should record information about the design of its external walls, together with details of the materials of which they are made. The report further recommends that this information should be shared with local fire and rescue services.

In preparation for new legislation, the LFB is considering how it would receive, record and use any new information provided by building owners/managers. In the meantime, building owners/managers are strongly encouraged to start collecting this information, if it is not already available and verified, and keeping their own records to ensure they are available to fire risk assessors.

10. Personal Emergency Evacuation Plans (PEEPs): The GTI report recommends that owners/managers of high-rise residential buildings are required by law to prepare PEEPs for all residents whose ability to self-evacuate may be compromised (such as persons with reduced mobility or cognition).

11. Building Safety Manager role: The Hackitt Review recommends that building owners/managers employ a Building Safety Manager who would be responsible for ensuring building safety is maintained to the highest standards and promoting resident safety and engagement.

The Building Safety Manager role does not currently exist. The Competency Steering Group, a sector-led organisation, has been tasked with developing the competency framework for the role. However, building owners/managers are encouraged to start preparing for this recruitment process, in advance of the publication of a competency framework.

Recommendations for the design and construction of new buildings

The Mayor is leading by example through the new measures put in place in the London Development Panel 25 (LDP2) and the new London Plan.6 The following recommendations are based on these measures, and the Mayor believes they should also be considered by organisations involved in the development of new buildings, or the extension or refurbishment of existing buildings:

12. Automatic Water Fire Suppression Systems or Sprinklers: Sprinklers have an excellent track record of saving lives, protecting residents, reducing property damage, controlling the spread of fire and giving firefighters extra time to facilitate evacuation.

Last year, the government consulted on lowering the threshold at which sprinklers for new buildings are mandatory, from 30 metres to 18 metres. Subsequently, in January 2020, the government indicated its intention to lower the threshold to 11 metres. The Mayor has long supported the LFB's campaign to increase the use of sprinklers in new developments.

The Mayor supports the installation of sprinklers in the following buildings:

- All purpose-built blocks of flats (including conversions, student accommodation and hotels)
- All homes where vulnerable people live
- All buildings housing vulnerable residents, such as care homes or sheltered accommodation
- All schools; and
- All buildings/conversion of any type that are of 18 metres in height or more.

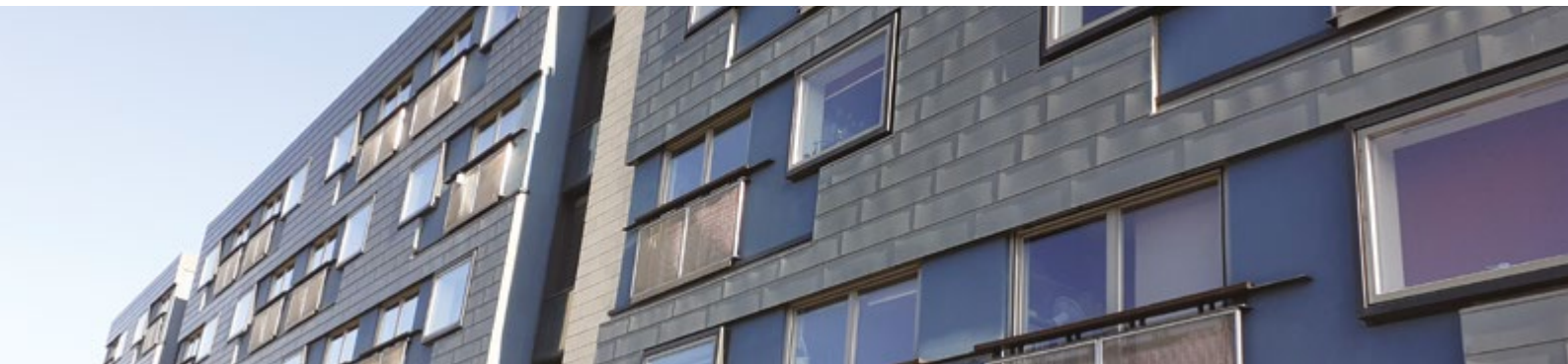
The Mayor also encourages building owners/managers to take advantage of opportunities to retrofit sprinklers in existing buildings.

13. Combustible items in the walls of relevant buildings: The combustible materials ban was introduced through the Building Regulations in December 2018 for buildings over 18 metres. In January 2020, the government launched a consultation to lower the combustible cladding ban to at least 11 metres. Whilst he welcomes this as a positive step, the Mayor strongly supports extending the ban to apply to all buildings, regardless of height or use, and urges anyone involved in commissioning or constructing new buildings to adopt this approach.

14. Water supply for firefighting: Access to, and proximity of, water supplies are critical resources that fire and rescue authorities need to protect communities from the effects of fire. The LFB has recommended that all new buildings or conversion of existing buildings into a residential accommodation include water supplies for firefighting, in accordance with Water UK's national guidance document.

15. Recalls and white goods: The LFB has encouraged building owners/managers to register any electrical products, such as white goods, that are built into the property. This will help to pick up any recalls. The LFB has also advised building owners/managers to encourage residents to register any white goods which the residents themselves bring into their new homes.

16. Safe and dignified evacuation: The new London Plan requires that all new buildings are designed to incorporate safe and dignified emergency evacuation for all building users. Where lifts are installed, at least one lift per core should be a suitably sized fire evacuation lift, adequate to evacuate people who require level access.



ONEROUS GROUND RENTS

When does a reasonable ground rent become an onerous ground rent?

FPRA Director Shaun O'Sullivan highlights some issues underlying the question being asked by an increasing number of leaseholders including some of our members.

Most members will be familiar with the requirement to pay ground rent to their landlords. Thankfully, for many, ground rent amounts to no more than a peppercorn with no cash actually changing hands; for others it can be a relatively nominal sum of perhaps fifty or a hundred pounds a year for the duration of the lease. However, for some it has become an unexpected and burdensome expense with worrying implications.

The underlying rationale for paying ground rent at all is embedded in what is perceived by many as the medieval concept of leasehold tenure. Whether we like it or not what we acquire when we purchase our flats is the right to possession of the flat itself for a certain number of years (the lease term). What we, as individuals, don't own is the ground on which the flat is built – that remains with the freeholder/ground landlord who is entitled to charge rent for use of the land and that, depending on the terms of the lease, can be substantial.

Of course, many of our members will have exercised their right to extend their leases under the terms of the Leasehold Reform Housing and Urban Development Act 1993 and, in so doing, inherently reduced any ground rent charged to peppercorn. And others might have joined forces with fellow leaseholders and exercised their right to collectively enfranchise and decided, if necessary and as part of that process, to similarly reduce any ground rent payable to peppercorn.

For many others ground rent will be payable in accordance with the terms of their lease. Although, historically, this has been a reasonable and often a static sum throughout the term of the lease, in recent years, and almost imperceptibly, ground rents have not only **increased but also have, in many instances,** been subject to an enhancement factor. More often than not this enhancement, perhaps occurring every 5 or 10 years, has been predicated on formula related to the Retail Prices Index (RPI). Whether RPI is a fair basis for review is, in itself, somewhat questionable; however, what has caused such disturbance and controversy is ground rent which doubles at predetermined points throughout the term of the lease. Such rents, particularly if set at a relatively high level at the outset, and/or enhanced frequently, can not only add to the cost of running one's home but can, over time, make the flat unmarketable and unmortgageable. One of our own members, who owns a flat in a 10-year-old block is currently paying Ground Rent of £200 pa; however, the lease, originally set at 125 years, requires that the rent be doubled every 10 years until the 50th year of the term. A quick calculation results in a ground rent of £6,400 pa after 50 years; it also results in an income for the landlord over the 125-year term of the lease of £542,000! It's perhaps not surprising that portfolios of ground rents have been seen to make attractive and lucrative investment opportunities, something which has become common place in recent years with developers exploiting a loophole in the 1987 Landlord & Tenant Act and selling their freehold interests to third parties.

However, over the past few years the leasehold sector has come under a great deal of public and parliamentary scrutiny; the government has consulted widely on a whole raft of concerns and the Law Commission has been tasked with making proposals for reform. Notwithstanding the potential for significant reform in a range of areas over the longer term, so far as the controversy surrounding ground rents is concerned, some progress has already been made. The previous government made a commitment to legislate in order to require ground rents on new builds to be set to zero and there is every expectation that this will be followed through. It is generally now accepted that an onerous ground rent is one which exceeds 0.1per cent of the property's market value, which is the level at which at least one of the major lenders has been prepared to lend. And, in the face of adverse reaction to the implications of doubling ground rents, one of the major developers has set aside £130 million in order to provide for those who have been sold leases of this type and who wish to change to a formula based on RPI, albeit these arrangements appear only to apply to initial owners rather than subsequent purchasers. And many other developers have signed a voluntary pledge in order to provide for similar arrangements. Whether a change to an RPI based formula will necessarily be of benefit will be for individuals to judge; leases with ground rent reviews related to RPI have long been seen to be acceptable to lenders but members who might have leases with doubling ground rents and who might be considering their position in relation to any offer from their freeholder would be well advised to seek independent advice before committing themselves to any change.

It could be argued that the fairness, or otherwise, of high ground rents and/or enhancement formulas should have been pointed out to purchasers early in the conveyancing process, raising the possibility that those who advised them could have been negligent. There are, in fact, a number of negligence claims pending in this regard; however, although it might reasonably be expected for solicitors/conveyancers to outline the implications of ground rent

clauses in leases, it is unlikely they would proffer a view on the fairness of the level of rent and enhancement factors any more than they might express a view on the reasonableness of the purchase price; arguably that would be for the purchaser to determine based on an understanding of the implications of any such clauses, the view of the surveyor as to the impact of ground rent terms on valuation over time and the view of any lender as to saleability over the longer term. Nevertheless the realisation that ground rents could, over time, make a property unsellable, has resulted in an investigation by the Competitions and Markets Authority (CMA) in order to determine whether developers could be accused of mis-selling and whether sufficient information is given to purchasers to enable them to understand the full implications of what they are taking on so far as the payment of ground rent over time is concerned.

So, in summary, we now have a clearer understanding of what is considered to be an onerous ground rent; there is a likelihood that future rents will be set to zero; there is an option for some to seek an alternative arrangement and there is an investigation into potential mis-selling by the CMA. This is a start, but the story will probably not end here.

OVER YOUR **HEADS**

Consternation has been created in some blocks by the government announcement that freeholders will be allowed to build two extra storeys on the top of the building.

Planning for the Future, a publication from the Ministry of Housing, Communities and Local Government in March proposes:

"Introducing new rules to encourage building upwards, increasing density in line with local character and make the most of local infrastructure – we will introduce new permitted development rights for building upwards on existing buildings by summer 2020, including to extend residential blocks by up to two storeys and to deliver new and bigger homes. We will also consult on the detail of a new permitted development right to allow vacant commercial buildings, industrial buildings and residential blocks to be demolished and replaced with well-designed new residential units which meet natural light standards."

The Leasehold Knowledge Partnership commented: 'The proposal by Communities Secretary Robert Jenrick to allow building owners to put another couple of storeys on their blocks without planning permission is a massive windfall for freeholders and torpedoes the Law Commission's – tepid – efforts to make enfranchisement "easy, simpler and more cost effective" for leaseholders.'

FPRA Chairman Bob Smytherman said: 'A number of blocks of flats are experiencing a surge of planning applications to build additional storeys on top of the building. Understandably this is causing huge concern for those flat owners who bought "top floor" dwellings. If the lease states top floor then it would be in breach of the lease for a freeholder to do so. However, from experience most leases are not that specific, which does provide an opportunity for freeholders to increase the height of the building to create new flats. This is of course subject to planning permission from the local authority. However, local councils need to balance the housing demand for their area and each case will be determined on its merits. Many urban councils have a strategy for tall buildings and we would encourage our members to be fully engaged in these applications from their areas and seek advice from us.'

ADDRESSING FAILURE

FPRA welcomes an announcement by The Housing Ombudsman of a revised scheme which will give tenants (social and leaseholders) living under registered social housing providers, more power to challenge systemic service failure and maladministration.

The Ombudsman says the revised scheme will give stronger powers and more resources to deliver significant improvements in housing redress.

FPRA Chairman Bob Smytherman commented: 'We welcome this announcement by the Housing Ombudsman which follows many years of lobbying to protect leaseholders and tenants living in developments managed by social housing providers and look forward to a greater level of scrutiny and accountability to protect our members and others living in these schemes'.

The new provisions, which take effect from 1 July 2020, include:

- A new power that allows the Ombudsman to issue **complaint handling failure orders** when a complaint gets stuck in the landlord's process or where landlords do not provide evidence requested by the Ombudsman in a timely manner.
- A "severe maladministration" finding to clarify the range of determinations from **service failure** to maladministration to severe maladministration, together with a requirement for the landlord to demonstrate learning after the Ombudsman's decision.
- A more proactive approach in identifying possible systemic failure and to undertake further investigation either into an individual landlord or sector-wide issues. Any systemic failing found would be referred to the Regulator of Social Housing, as part of a broadening range of closer working processes between the two organisations.
- Developing a **new complaint handling code** to achieve greater consistency across landlords' complaint procedures.

It introduces a new, more efficient dispute resolution service as well as improved accessibility and greater transparency. It aims to reduce the average determination time on cases by half over the next two years – to four-five months in 2020-21, then to three-four months by 2021-22. The subscription fee for landlords will increase for the first time in three years to £2.16 per home – to deliver service improvements and meet continuing high demand for the service.

The plan also outlines new initiatives to share learning. A new dedicated team will be created to undertake further investigations into potential systemic issues, provide greater analysis and insight on complaints to promote positive change in the sector. We are committed to openness and transparency and will publish individual landlord complaint handling performance data as well as all determinations by the end of the financial year.

Guidance on how complaint handling orders will work, the framework for systemic investigations and the complaint handling code will all be published during the year.

'A Member Writes'....

about difficulties achieving resolution of complaints

This is welcomed news for tenants wishing to bring complaints to the Housing Ombudsman for resolution, but sadly a long-term plan. Some tenants will look forward to guidance on how complaint handling orders will work, the framework for systemic investigations and the complaint handling code, which are due to be published during the year. The plan is unlikely to deliver significant improvements – a step-change in timely, effective and high-quality redress, as claimed. In the short term, the continuing high demand for the service, the 9-month or so waiting period, the Ombudsman having virtually no powers of enforcement (being hog-tied to a statutory duty of minimising interference to freeholders) remains little changed. If a social housing provider ignores Ombudsman remedies, all it might do is suggest tenants takes court action, or in cases of "serious detriment," report to the Regulator of Social Housing (who is likewise hog-tied and toothless!) Tenants are continuing to indirectly pay for the costs of an "impartial" adjudicator. Some are treated as "cash crops".

Some tenants find navigating the landlords' internal complaints processing extremely confusing and frustrating, often being delayed with little or no acknowledgement of difficulties encountered and little or no improvements to services.

So some recommendations for tenants to promptly progress "expressions of dissatisfaction" avoiding the many obstacles and diversions:

- Learn about the providers' obligations, customer service commitments/ standards and its formal, internal Compliments Policy and Procedures
- Establish the local manager to speak or write to first
- Identify precisely what causes dissatisfaction, what isn't working fairly or what standards aren't being achieved
- Be assertive and KISS (keep it short and simple) – explain clearly why you're unhappy/what reasonable expectations have not been met and what changes you need
- Keep a record of dates and all interaction and any agreements/ promises/actions
- Keep copies of correspondence;
- Give a reasonable amount of time for the landlord to respond/correct errors/put things right/make improvements. If no timescale is given, the Housing Ombudsman suggests it

is reasonable to allow up to three weeks for a response
- Check the response for accuracy and reasons for any complaint rejected;
- Escalate the complaint immediately to the next stage, if either a response is not received within the reasonable timescale, OR if you disagree with the outcome of earlier stage(s) investigation and any reasons given for rejection;
- Write or email, clearly explaining if/when agreements have been broken and if/why it remains unresolved and request a 2nd (or 3rd) stage review;
- Normally, the landlord's written result of the final review ends the internal complaint process and indicates that the process is 'exhausted.'
- If and when the landlord unreasonably delays in responding to formal complaints, write or email Ombudsman, report matters in detail and request that it intervenes and seek advice.
- At all costs, keep control of your frustrations, anger and rage! (Avoid "you" statements.)
- If appropriate, work as a collective – petitions can be more powerful than individual letters.

Once a final response is received and if still aggrieved, tenants can seek assistance from a "designated person," by writing/emailing an MP, a local councillor (from the "local housing authority" in the district where the complainant lives,) or a Tenant Panel (if one exists.) Authorise the designated person to act on your behalf and ask her/him to assist by requesting that the Housing Ombudsman intervenes, ideally by conducting an investigation.

The alternative adds eight weeks to the process. This is a required delay before tenants can approach the Housing Ombudsman directly. Very few designated persons have the time or skills of a competent mediator and have no authority to be arbitrators and make recommendations or orders. If vulnerable adults are at risk of harm, a detailed report should be sent immediately to the local authority's Adult Safeguarding Board for investigation.

Be prepared for a marathon, rather than a sprint as a three stage complaint process may take a minimum of 10 weeks from the first expression of dissatisfaction, plus eight weeks wait plus currently nine months wait before the Ombudsman begins to investigate, which equals around 13 months. (The writer's experience, some unresolved formal complaints – including a few that were referred to Ombudsmen – plus many unresolved 'informal' expressions of discontent cover a period of five years!)

It all indicates that the Deregulation Act 2015 has impacted on the regulatory focus on economic matters and the high threshold for intervention on the grounds of consumer issues resulted in less focus on the voices and experiences of tenants.

THE FUTURE IS ELECTRIC

Electric vehicles are growing in popularity but are the blocks you manage equipped to deal with a change in the way we drive? Jamie Willsdon, a director of Future Fuel, which is working to deliver a simple charging solution to the block management sector, takes a closer look at the issues around installing communal charging points.

Climate change and tackling air pollution are two issues that have been pushed to the top of the political agenda in recent months, with the government calling on the commercial sector to develop eco-friendly solutions that we can adopt without too much disruption to our daily lives. One change that has been noticeable on UK roads in recent years is the increase in hybrid and electric vehicles.

The government announced in 2017 that the sale of new diesel and petrol cars and vans will be banned in the UK from 2040, although there is now a steady push for this deadline to be earlier. Sweden has just announced that the sale of electric cars outsold combustion vehicles for the first time in April this year. But, at present, the market for electric cars in the UK is still relatively small, with around 155,000 of these vehicles sold in the UK in 2018, and around 4,500 more being registered every month. By comparison, there are around 30 million fuel-powered cars (source: Wired UK) in the country. However, during the next 20 years we will all be switching to electric vehicles (EVs) and where there are EVs, there must be charging facilities.

Charging points have already sprung up at motorway services, at railway stations, at supermarkets and in car parks but increasingly vehicle owners want the convenience of charging their car at home. Studies show that 75 per cent of electric vehicle charging will be done at home. The convenience of getting into a fully charged car (rather than standing at a petrol pump) in the morning is a huge appeal to prospective buyers.

This is no problem if you live in a freehold property but leasehold flats throw up more challenges. Developers are now installing electric charging points in new blocks as standard but for anyone with responsibility for an existing development that wants to install charging points, there are a number of issues for property managers to consider.

Start with the lease

As ever, the starting point is always the lease. In the majority of cases, residents will need a licence to alter from the landlord to install one or more charging points. This formal, written consent will normally attract an administration fee which will need to be covered by the resident/s in question – assuming the freeholder is happy to oblige.

Location, location, location

Once consent is obtained, there are also issues around location of charging points and electricity supply to be considered. Some

Continued on page 10

The Future is Electric continued from page 9

flat owners may have an allocated parking space or garage demised to them but the electricity supply to that parking space – if there is one – won't be connected to the electricity meter in their flat. As most leases provide for a right of use of parking spaces without ownership, car parks are normally connected to the communal supply that is covered by the service charge. When only a handful of residents are gaining the benefit from the electricity that is being used by EV owners, this is unlikely to be warmly welcomed by the majority and may not be possible under the terms of the lease.

The good news is that EV charging technology is rapidly evolving to keep pace with demand and there are now options on the market that can get around many of the problems that residential blocks throw up.

Pay-as-you-go solutions working in tandem with cloud-based mobile apps – similar to those now being installed in public spaces and by employers – mean that electricity used by individual residents can be monitored, logged and paid for. Flat owners can use such systems to pay their costs back to their block on a monthly basis, so that residents who don't use charging points are not subsidising those that do.

Will installation be disruptive?

Set-up is simple, with very little electrical work needed to install a simple pay-as-you-go charging system. Your existing landlord/communal area supply service distribution equipment will hopefully be extended and a dedicated distribution board installed to feed the new charging points. Sizing will depend on how many charge-points you require now or wish to allow for future expansion. It should be possible for all wiring to charge point locations to be run using the building's existing wiring containment system where feasible, ensuring the installation is as discrete as possible. If not, then galvanised cable tray may be needed to disguise any additional wiring.

For sites with external parking only, it will be necessary to trench and backfill across hard or soft landscaping back to any suitable electrical intake room. Chargers are normally mounted on pre-manufactured pedestals or custom wood, metal or plastic posts/columns.

What will we get for our money?

One simple wall-mounted control panel in the car park can feed up to 15 charging points that block managers can open up to residents and their guests. Residential blocks can even generate revenue by opening up one or more charging points to the public and in the near future Zap-Map, an App that locates charging points, is expected to be embedded into Google maps and WAZE.

How to choose the right charging system

Charging efficiency and economy go hand in hand. Any charging system you choose should have the ability to provide users with information about your charging in real time and keep a searchable charging history for each user. Also look for a solution that allows you to programme charging schedules that correspond to lower tariff times as time-of-use tariffs reduce costs for plug-in vehicle owners. Depending which system you choose, an electricity usage check-meter to correctly offset any usage back to your block's account can also be installed.

Finally, it is important to understand that operating a charging station requires your power source (your block) to carry the cumulative sum of the total capacity of these charging stations. So look out for an intelligent system that incorporates load balancing. This distributes the available capacity proportionally over all active charging stations, ensuring that optimal charging is provided to all-electric vehicles at your location, within the limits of your charging stations' capacity.

How much will it cost?

Of course the other big question that residents will be asking property managers to answer is how much will the installation cost and who pays? And costs to residents may be partly covered by a government-subsidised grant from the Office for Low Emission Vehicles (OLEV). The OLEV Grant is also known as the Electric Vehicle Homecharge/Workplace Scheme (EVHS) & (WPCS) and provides £350 off the cost of purchasing & installing a charging point. However, as with all government grants, this one won't be around forever, so if you are considering EV charging points, now is a good time to think about installing them, while financial assistance is still available.

One exciting aspect of EV charging technology is that in future, once charged, EVs will be used as mobile batteries that, rather than just taking an electrical charge from a residential supply, will also be able to put electricity back into the system, making charging points carbon neutral – or even carbon positive. New storage batteries currently in development are expected to unlock a range of in-home energy production methods. These batteries will be able to store power at a local level and further down the line, may even distribute power across a community.

Start the conversation

In the early days of satellite TV and broadband installation, take-up by early adopters in blocks of flats raised similar issues around installation and cost. Now residents would be reluctant to buy or rent a flat in a block without these services as standard. So now is the time for property managers and landlords to start thinking about providing charging facilities and to have the conversation with residents – whether or not anyone in your block/s owns an EV. In future they will and it is well worth being prepared to deal with the questions that will be asked by residents about installing them – in 10 years' time they will be standard too.

(Jamie Willsdon is a director of Future Group and its subsidiary, Future Fuel, which is partnering with Wallbox to deliver a simple charging solution to the block management sector.)

ASK THE FPRA

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

Cost of cleaning and painting

Q **Our building (65 apartments, seven stories) is due to be decorated this year. At a previous AGM we were advised by the management company that is was best to engage their in-house surveyor for this project. We agreed and a specification was drawn up. Initial suggestion: the work will cost about £80,000, and the surveyor fee would be 11.5 per cent plus VAT on top. For basically a cleaning and painting job (with scaffolding required for a third of the building), we felt this charge for a surveyor was excessive, so we asked about not engaging a surveyor for such a basic job (albeit expensive due to 'access'). The management company have advised us that they can get their 'major works' department to take over, but we would now incur a 10 per cent management fee from them (plus VAT).**

Can you advise if this seems in order please?

A FPRA Hon Consultant Emily Shepcar replies:

It is not unusual for a fee to be charged for the involvement with major works where you are asking the managing agent to do work which is over and above the terms of their management agreement. I would anticipate that this fee includes the costs of producing the specification of works, obtaining quotations for these works, reporting to the residents' association, possibly carrying out section 20 consultation (although this may be a further fee depending on their management agreement terms) and the liability which is involved with producing the specification and signing off the works on completion. They are, effectively, acting in place of a surveyor.

I would suggest that, to obtain some further clarity, you request confirmation from your managing agent on what this 10 per cent fee covers and they should be able to give you a breakdown of this.

Vexed by VAT

Q **The problem was that for the first five or six years of the development we were VAT exempt because our service charges were paid direct to the developer. That at least is clear in all VAT related searches. Now the developer (not us) has sold most of the properties and handed over control to a management company, and although WE have no contract with them and were not involved in the handing over of the running of the development, we are now being charged VAT by this management company on everything.**

The ground rent and property insurance is still payable to the developer. The management company collect the money for those, but we don't think there is VAT on that although it is not clear and we are questioning it.

We are now being handed a bill for an extra £100 a month because we have 24/7 porters, a manager, maintenance man and public area cleaners who used to work for the developer but who are now employed by the management company. We are being charged VAT on their wages.

Why should pensioners suffer because the company hands over day to day running of their complex to an outside agency? We were not given the opportunity to run the complex ourselves even though there are a good number of very qualified residents who have run major businesses or – in my case – been the chairman of a board of directors of a management company run by residents.

A FPRA Hon Consultant Gordon Whelan replies:

VAT is a complex tax, but I will try to summarise the situation for you. Under an Extra Statutory Concession (ESC3.18) issued in 1994 domestic service charges are exempt from VAT. So for VAT purposes all payments made by a leaseholder under the terms of a lease with a landlord are exempt from VAT. In November of last year, HMRC issued new guidance on this matter. This stated that the exemption to VAT would not apply when the landlord appoints a managing agent to provide services to leaseholders. This is the case when a managing agent employs staff (eg concierge, porters and cleaners) to deliver the services required under the lease. The cost of providing the services is subject to VAT at the standard rate of 20 per cent. This is the position you now find yourselves in and your managing agent is only following the recent guidance issued by HMRC.

The guidance issued by HMRC last year has surprised many tax practitioners and there is some criticism of HMRC's stance and interpretation of the legislation but for the time being, this is the VAT position. VAT can often depend on the exact circumstances of the parties concerned and so this summary should only be taken as a general guide.

Electric car charging

Q **Our development has 193 flats in several blocks. There is an underground garage with 189 numbered spaces, each one part of an owner's leased property. There are no unallocated areas. Visiting workpeople are lent a space temporarily.**

Some residents have raised the matter of vehicle charging points. When discussed, some residents considered it unfair for any installation cost and maintenance to be borne by owners who have no need for such, maybe not even owning a vehicle. It was suggested that it is up to individual leaseholders to apply to the landlord (to whom they pay ground rent) for permission to install one on their parking space. Not all spaces are large enough or near electric supply.

Suggestion was made that some owners might "sell" a space to the landlord.

Our buildings are in a no-through road, just within the congestion charging zone by about 100m, such that one has to drive out to drive further into the charging zone!

Continued on page 12

Ask the FPRA continued from page 11

There are no public charging points nearby that we know about. How are other residents' associations are addressing the issue, please?

A FPRA Director Shaun O'Sullivan replies:

You have raised a topic which is generating some considerable level of debate both within the FPRA as well as the wider leasehold community. The subject is evolving to the extent that the Department of Transport/Office of Low Vehicle Emissions (OLEV) issued a consultation document last July on the provision of Electric Vehicle Charging Points (EVCP), the responses to which they are currently considering. The FPRA's response, should you wish to read it, can be found on the FPRA website – just search for 'electric vehicle'. However the essence of the response is that we believe that the leasehold sector has been largely ignored in the proposals as currently formulated. You may also wish to read or re-read the article in Issue 127 (Winter 2018) of the newsletter which attempted to outline some of the issues and challenges surrounding the subject.

Any changes as the result of the OLEV consultation notwithstanding, the proposals seem to be that new builds of blocks of flats will have EVCP installed as a matter of routine and reflected in building regulations; and the proposals also seem to be that blocks undergoing material change and which have 10 or more parking will be required to have cables installed in readiness. However there appears to be no proposals in respect of existing residential buildings, including blocks of flats.

Thus, as things stand, I am inclined to the view that the installation of EVCP on a communal basis will be construed as an improvement. In this regard very few residential leases (with the exception of local authority leases) provide for landlords to make improvements to leasehold property and to recover the costs of so doing through the service charge. Unsurprisingly your lease appears not to mention improvements with the thread running through being to maintain, repair, replace and reinstate. Although some might argue that the imperative to move to electrified vehicles and the consequent need to install charging points, could be construed as a inextricable necessity and not an improvement in leasehold terms, this has not, to my knowledge, been tested in the courts/tribunals and, although I am not a lawyer, my own view is that it is an improvement.

However should an individual lessee wish to install a charging point they could seek consent from the landlord in accordance with your lease. This would be for the landlord to then consider although it would, in my view, be unlikely that such consent would be granted, not least because it sounds as if the retained part of the property would have to be compromised (perhaps by having to lay cables and/or conduits etc) and I can't imagine that the landlord would want to do this on a piecemeal basis. Although leasehold case law suggests that applications to alter cannot unreasonably be withheld, this only applies to that part of the property which has been demised and not to the retained part of the property in respect of which the landlord can quite reasonably refuse consent. Although you say that each space forms "part of the owner's leased property", it does not, in fact, form part of that which has been demised; that is purely the flat itself. The underground car park is defined, in your lease, as forming part of the common parts and although it would appear that189 of the lessees have been granted exclusive rights of use, the space can be varied by the landlord on serving written notice in accordance with the provisions of a clause of the first schedule. By the same token the space cannot be sold as suggested as it is not "owned" by the lessee and does not form part of that which has been demised; and, even if it did, your lease, as is usual with most residential leases, prohibits the transfer of any part of the property as opposed to the whole.

My current conclusion (although this could change depending on the results of the current consultation and any determination in the courts as to whether EVCP are an improvement) is that leaseholders in existing blocks and whose leases seem to prohibit improvements are likely to have to rely on public charging points. In this regard, you might wish to investigate the Go Ultra Low City Scheme (GULCS) and www.poweremystreet.co.uk which gives the option to nominate locations for public charging points.

All that said, you might wish to consult your managing agent/landlord in case they have already been considering the situation and in case they have already devised an innovative solution – in which case we would be more than a little interested to hear about it.

Is our garden at risk?

Q **We are three blocks of flats, two storeys high, 21 flats in all. Large garden area, with a row of garages at the back. How does it work if not all lessees are willing to purchase the freehold? This looks likely to be the case. If it needs a majority vote – which we haven't actually been told – what benefits do those who pay the £6,000 have over those who don't? Is owning the freehold such**

a valuable asset (eg when it comes to selling one's property) compared with a 939-year lease?
We are concerned that if we do not purchase the freehold ourselves, it may go on the open market, and then the new freeholder would be free to develop a further block of flats on our garden space, which is considerable and one of the attractive features of living here. Is this fear a well-founded one, and do we have any protection?
One of our residents has already booked an appointment with a solicitor and we plan to do the same.

A FPRA Hon Consultant Mark Chick replies:
The leaseholder has been sent a Section 5(a) notice that its freeholder is disposing of its interest in the property and it is required to first provide the qualifying leaseholders with a right of first refusal to purchase the freehold on the same terms.
If the qualifying leaseholders do not serve the acceptance notice the freeholder is then free to dispose of the interest on the open market, but not on different terms or at a price lower than that proposed to the tenants in the Section 5 notice. If the qualifying leaseholders wish to take up the offer, the requisite majority must accept. That majority is more than 50 per cent of the qualifying leaseholders and they must serve a notice accepting the landlord's offer within the period set out in the landlord's notice.
The benefit of leaseholders owing the freehold include right to manage the building, ability to vary your leases to make them more favourable to you as leaseholders, extending lease terms and the power to control what happens to the building and property (subject to agreement between the leaseholders).
In relation to the rights to redevelop the property, without seeing the title register we cannot advise on this. There may well be restrictive covenants in the title that limits the ability to develop parts of the land or buildings regardless of who owns the property. Of course, if the leaseholders own the freehold, they may have more control to decide what developments are allowed.

Leaseholders with tenants

Q **We are about to update our lease that we think is rather outdated and wondered if you had any ideas, with self-managing flats of a similar set up to ours, shareholder/freeholders with all owners having their own front doors and no shared hallways.**
Primarily we wish to ensure that our leaseholders that have tenants abide by the rules and regulations and that in turn, they enforce such rules and regs as binding, whether by the lease, or if you think necessary, a separate document signed by leaseholders to be held by the association? Most complaints and work revolves around these lets. We want to ensure we do not incur any legal charges if any tenants breach the terms of their contract with the owner and that the owner becomes totally liable for them.

A FPRA Hon Consultant Shabnam Al-Khan replies:
There is quite a lot to consider and no simple answer. Essentially, you need to engage a solicitor to advise and prepare a new draft. This should be straightforward as an experienced solicitor will have template lease documents which can be used and simply rolled out to each flat. Firstly, they will need to ensure the freehold company has authority to vary the leases. Alternatively. if all the leaseholders and the company agree to vary the lease to effectively have a brand new lease this can be done. The original leases will need to be surrendered and new leases granted to each leaseholder. This could be done in one document as a deed of surrender and lease.
The current lease places an obligation on the leaseholder to repair and maintain their demised premises. The obligations extend to painting and decorating the interior surface of the demised premises. There are clauses regarding not to cause a nuisance or to use the flat only for residential purposes. The new lease clauses could be widened to extend these obligations to expressly include renting tenants. Although the existing lease is quite wide as it covers the obligation "not to permit" which goes further than the leaseholder simply causing a nuisance etc.
The current lease does give certain rights to let out the property. These could be tightened to restrict particularly short term lets if of course this was agreed. The obligation to observe the regulations could be extended to cover renting tenants. The insurance obligations could be widened to ensure renting is covered by the insurance because of the additional risks.
The extent of the demised premises can be made clearer.

Water leak

Q **We have recently experienced a water leak from a supply pipe. I would be grateful if you would help us to determine areas of responsibility for future incidents of this nature.**
I would be very pleased to know the legal aspects of the maintenance of pipework and stopcocks supplying the water to individual apartments. We have been informed by our water provider that their responsibility ceases as the supply main enters our property. The supply pipe then divides into 22 to serve each apartment in the four blocks. A main water stopcock is fitted in each line to the individual apartment and many leaseholders have opted to have water meters fitted. The line then goes into the leased apartment and in eight cases there is a further shut off valve outside the apartment. Inside each apartment is another stopcock.
We have never established a clear policy for the maintenance and repair of the said water systems. The question is who is responsible to arrange and pay for repair or leaks in the stopcocks and the pipework? Should the leaseholder take responsibility once the pipe work enters their apartment?

A FPRA Hon Consultant Mark Chick replies:
We have reviewed your lease and Clause 3 states that: "The

Continued on page 14

Ask the FPRA continued from page 13

tenant hereby covenants so as to bind the demised premises with the lessors and as a separate covenant with the company and with and for the benefit of the flat owners and the remainder of the estate that throughout the term the tenant will:

- Repair, maintain renew uphold and keep the demised premises and all parts thereof including so far as the same form part of or are within the demised premises all windows...**water gas and electrical apparatus** and walls and ceilings **drains and pipes** wires and cables and all fixtures and additions in good and substantial repair and condition."

Further, in Clause 5, the lease states: "The company hereby covenants with the lessors and as a separate covenant with the tenant as follows:

- Subject to and conditional upon payment being made by the tenant of the maintenance charges (provided nevertheless that the obligation contained in sub-clause (c) of this sub clause shall be absolute and subject aforesaid); to maintain and keep in good and substantial repair and condition:
  - The main structure of the development including the principal internal timbers and the exterior walls and the foundations and the roofs thereof with is main water tanks main drains gutters and rain water pipes (other than those included in this demise or in the demise of any other part of the development)
  - All such gas and water mains and pipes drains waste water and sewage ducts and electric cables and wires as may be by virtue of the term of this lease by enjoyed or used by the tenant in common with the flat owners
  - All other parts of the development not included in the foregoing sub-paragraphs (i) and (ii) and not included in this demise or the demise of the other part of the development."

Therefore, what this means is that you, the tenant is responsible for the upkeep of the pipes and apparatus within the demised premises and the freeholder is responsible for the upkeep of the pipes and apparatus outside the demised premises.

This is a initial view of the documents provided and therefore general advice.

Flood risk

Q **Last year when our building insurance became due for renewal, we were met with an almost 100 per cent increase in the premium because all insurance providers had changed the rules about coastal properties and flood insurance.**

We took the decision as a committee that, because there are no flats on the ground floor, only car ports and garages, and the building had never been flooded in 43 years, we would not take the flood cover on offer at nearly £5,000 additional premium.

We have had a lot of support from the residents here, and absolutely no objections to it. It was minuted when the decision was made.

The wording in the lease about the insurance says: "That the lessor will at all times during the said term (unless such insurance shall be vitiated by any act or default of the lessee or occupier of any other flat comprised in the estate) insure and keep insured the building against loss or damage by fire and other such risks (if any) as the lessor thinks fit in some insurance office of repute in the full value thereof and whenever required etc".

We have recently had people who are trying to buy these flats with mortgages, something which has only happened here on a very rare occasion, about two in the past and one of those being a buy to let.

Could there be any repercussions from the solicitor who is dealing with the estate of a recently deceased leaseholder, or any other solicitor who may be dealing with buyers who wish to get a mortgage for whatever reason? One of these solicitors recently tried to change the insurance clause on the back of a deed of variation, but we were aware of what was going on and refused.

We know we cannot change any clauses in the lease without 75 per cent agreement.

A FPRA Insurance Expert Belinda Thorpe replies:

I would always recommend that when a decision is made that could affect any individual owner that 100 per cent agreement is obtained (in writing) to ensure that you have proof that everyone has understood and agrees.

I would agree that flood cover is a fundamental part of their insurance policy, but I expect the decision may have been made based on affordability against perceived risk if the block has not flooded in 43 years.

Any future purchasers will be made aware of the lack of flood cover by their conveyancing solicitor and then can make an informed decision on whether to proceed with their purchase.

Escape of water

Q **Due to our recent claims history (four claims in two years totalling £17,510) our insurance premium has increased substantially, and the insurer is imposing an excess a £1,500 Escape of Water Excess with effect from renewal. The advice we have followed previously was that the management company has to pay the excess, as owners could argue that a policy with a lower/no excess could have been negotiated by the management company. When the excess was £250, it wasn't really a big issue, but at this level of excess it could potentially be a significant financial burden. Please could you advise?**

A FPRA Insurance Expert Belinda Thorpe replies:

I would recommend that you have a conversation with residents at the next AGM and recommend that due to the lack of funds available all excesses are paid by the offending party.

It sounds like the claims experience has been pretty poor over the recent years – hopefully this will ensure the owners act a little more vigilantly, check pipework, to try and avoid

water damage incidents – potentially agree that the management company still pays the first £250 – for all incidents – and the owner pays the balance which has become required because of the whole block's experience. I would recommend getting agreement from all residents in writing as well as discussing adding to minutes.

Malfunctioning lifts

Q **The first occupants here arrived in May 2018 and to date 60 per cent of the apartments have been sold. The situation which currently concerns us all is the problem of the lift malfunctioning such as:**

- **23 May 2019: one person trapped from 1330 to 1430**
- **30 September 2019: one person trapped from 1125 to 1230**
- **31 January 2020: doors not functioning – frozen in open position for 52 hours**
- **24 February 2020: two people trapped from 1420 to 1645**

We the residents find this situation completely unacceptable. A number of the residents have health issues which makes using the stairs very difficult, but they are in fear of using the lift.

We are told by the management: yes, you can have a seat fitted providing you pay for it. Currently they have provided a standard office chair loose in the lift, while we seek quotations for a fitted seat. BUT, this is not the solution to why the lift keep malfunctioning, this when the two levels it supports are less than 50 per cent occupied. Not all of those use it for fear of being confined in the lift for a number of hours.

A FPRA Chairman Bob Smytherman replies:

The Equality Act requires "reasonable" adjustments to be made to common areas of blocks of flats to support people with a disability. I am not a lawyer or an expert on the Act but my understanding is that is the sort of thing that would qualify as a "reasonable " adjustment. If so, then it would be for the person/s making the request to pay for such an adjustment.

I would suggest formally writing to the landlord making the request under the Equality Act and see how they respond. Then take legal advice about the next steps depending on their response.

My own view is it would be unreasonable to charge ALL the service charge payers for such an adjustment that would benefit a limited number of flat owners.

I think there is wider issue about having a lift that frequently breaks down and therefore disproportionate costs associated with repeat repairs. It would seem to me something very wrong if the managing agent is not addressing a permanent repair. Maybe a new lift is required?

Pests in pipes

Q **An owner with a tenant in situ says his tenant can hear vermin in the u-bend of her bathroom pipe and he wants the association to pay for a pest control officer to check the drains. This owner decided to upgrade his bathroom and we are unsure whether this was carried out satisfactorily. We have inspected the flat and there are no holes or means of access for vermin from outside. Are we responsible? We thought he should have tried a baited trap in an outside (old refuse chute) cupboard attached to his property, for which we have no access without permission. Please could we have your view on this as no one else has any problems. We do live across the road from a canal and expect to see the odd fox but no one has seen any rats. We think in the pipe would almost certainly be mice.**

A FPRA Hon Consultant Emily Shepcar replies:

If the issue is within pipework which only serves the one flat, this pipework would be demised to that flat and it would be their responsibility for the investigations and rectification of any issues. If the problem is found to be with communal pipework, the service charge would then need to meet this cost. With regards to your comments about the bathroom works potentially not having been done correctly, if these interfere with the structure in any way, they would have required permission from the freeholder which, if not obtained, would be a breach of the terms of the lease.

Taxing situation

Q **We have now accumulated nearly £20,000 in the bank. It is now time to earn some interest on it which will require paying Corporation Tax. I have telephoned and written to HMRC without success to find out how we initiate the process. How should we proceed?**

A FPRA Hon Consultant Gordon Whelan replies:

I am assuming that you are a dormant company and that

Continued on page 16

Ask the FPRA continued from page 15

you have no other sources of income and therefore do not file a Corporation Tax return for the company at present. If the interest you earn exceeds £100 then you should write to HMRC and state that you need to complete a Corporation Tax return and ask for the company's UTR number to be sent to you. Once you have the UTR number then your return can then be completed at the same time as you finalise your year end accounts. If the interest earned in the financial year is less than £100 then there is no requirement for you to declare, or pay tax on, the interest earnt in the year.

Bullying agents

Q **We have constant issues with our management agents, who before the new committee was in place, were copied into all residents' association correspondence and invited to all meetings.**
As the new committee were aware that this was a courtesy and not a right to invite the agents, we decided not to invite them amid a number of complaints from residents of the alleged "bullying" attitude of the agent, who pushed through numerous works, that in my opinion, were overpriced and in some cases not fit for purpose, with some of the works having to be redone at a further cost to the residents. Since I bought my property and have been on the committee a year, I have been trying to sort out the mess. We are only achieving this by copying in the freeholder on our emails. He asked us to do this as he has been kept out of the loop. However, the management agents are saying they don't recognise us and want us to prove we are a residents' association. We joined FPRA in 2007 and approached the freeholder who confirmed this and for a few years after this the same management agents wrote officially to the RA. However, I have scant evidence of this as most of the previous committee are not around and those who are have not kept the paperwork. We also took the freeholder to tribunal many years ago as an RA. Now suddenly the management agents are asking for copies of minutes. They say they wish to confirm the committee members. On previous advice from the FPRA I redacted all the other information with only election of committee members visible. Now they have contacted the previous chair demanding to know why they have not been invited to our meetings and asking her for the full minutes. I have advised her that I did not agree to this and there are GDPR considerations. They are also now asking us for proof that we are a residents' association and asking for a copy of your invoice and our constitution.
Does the attached correspondence hold up as evidence we are recognised by the freeholder and, secondly, is the contractual relationship between the freeholder and the management agents, so the management agents should go to the freeholder for this information?
Hope you can help. I am standing down as the chair this year but don't want to leave a mess for the incoming chair!

A FPRA Director Shula Rich replies:
The agents are interfering in a bullying way.
They have no right to the info they are asking for and no right to invitations to your meetings or minutes.
Recognition is a formal matter. If you have no letter stating you are recognised by the freeholder then assume you are not recognised.
So my suggestion is:
1. You write to the agents and let them know their queries are not appropriate.
2. Please look at our booklet on recognition and send a formal letter to the freeholder.
3. If the agents persist, ask for their complaints procedure and reserve the right to refer the complaint to the ombudsman scheme (time consuming – but you may want to consider it).
4. The RICS code of conduct tells agents they should deal with both recognised and unrecognised associations – download free from RICS site.
5. If appropriate for your block consider Right To Manage and appoint your own agents. FPRA can give you more details.
You're doing a great job for your block – without people like you, team efforts would not be possible.

Section 20 delay

Q **Our managing agent served us with the first Section 20 in April 2018, and it hasn't gone anywhere since then. Is it still active two years later, or should we expect the process to have to start from the beginning again if and when they move it forward?**

A FPRA Director Bob Slee replies:
Normally the Section 20 procedure would be triggered when a potentially expensive piece of work has been identified and at that stage the Notice of Intention would be issued. If that is the situation you have and nothing further has happened for two years, the agent should be asked if the work is no longer considered necessary and if not, why not. If it is still necessary, what is the reason for the delay and when is it likely to proceed to the next stage.
The time critical part of the Section 20 procedure is between the stage where estimates have been received and commencement of the work. Had estimates been obtained two years ago it is highly unlikely that contractors would be prepared to honour them now and that element of the procedure might have to be re-run.

Parking places

Q **We would like your advice as to whether our reserve fund can be used to create new parking bays, as this is not ongoing maintenance. We thought we could ask the owner/leaseholders for agreement to use the funds, but just wanted some clarity from yourselves. We currently have 13 car spaces for 16 flats. We also have 16 garages, but they are not always used or full of "stuff". Would our other option to be to ask for contributions from all owners? Might this prove difficult?**

A FPRA Hon Consultant Emily Shepcar replies:
On reviewing your lease, I cannot see that the obligations of the landlord extend to any improvement of the premises or the estate. Therefore, it would not be valid service charge expenditure to create additional parking spaces. You may have the option of collecting monies from shareholders of the limited company to carry out this work. However, additional car parking spaces would usually require planning permission from the local council and the leases may also need to be altered to allow the maintenance of these spaces to be a service charge responsibility in the future. I could also see no right to use any area of the estate for overnight parking in your lease, in fact there appears to be a specific prohibition on this, and this too may need to be amended. You may require some legal advice on the validity of any demand to shareholders as your memorandum and article may not allow for a collection from shareholders.

Drug dealing and CCTV

Q **Do the Data Protection Regulations bar us from using CCTV? The premises have at times been used by people trading drugs which is causing leaseholders a considerable amount of concern.**
These "traders" are using an area near where our refuse bins are situated. The incidences have been reported to

Continued on page 18

Ask the FPRA continued from page 17

the police and we have had advice on what to do when reporting these incidents. One issue suggested is to install CCTV, not from the police, but from a leaseholder who has a contact for the police.
Our managing agent has informed us that the use of CCTV for these incidents would contravene the Data Protection Regulations, as it would infringe the liberty of individual(s) without gaining their consent in the first place.
I am aware that under the current Data Protection Regulations we need to be mindful of any information we obtain relating to leaseholders and cannot mention or release any personal information without the consent of the individual(s) concerned.
However, I am unclear on how the use of CCTV would breach the Data Protection Regulations. Can you provide the directors with advice on this issue from a legal perspective, particularly the limits, if any, on the use of CCTV?

A FPRA Hon Consultant Mark Chick replies:
To provide a complete overview of data protection compliance is beyond the scope of this reply. All resident associations should be mindful of compliance not just with CCTV but all data they hold.

GDPR applies across the entirety of the EU but each individual country has the ability to make its own small changes. In the UK, the government has enacted the Data Protection Act 2018 (the DPA). This law is applicable regardless of Brexit.

Data protection encompasses more than simply personal details, such as email addresses and names; it applies to any information that can identify someone and this includes CCTV. This does not mean that CCTV cannot be used entirely, rather the legislation introduces controls on how footage/ data is gathered and stored.

An organisation (which is known as a "Data Controller" and "Data Processor") must comply with the provisions of the DPA. This introduces onerous obligations that a Residents' Association may not be able to cope with.

Perhaps this is the reason the managing agents have advised not to use CCTV. Possibly they want to ensure that the residents' association does not unwittingly breach data protection rules. Maybe enquire whether the managing agents can recommend a security company who can provide DPA compliant CCTV for the property?

While this is not an exhaustive list of requirements to ensure compliance, the following examples illustrate the complications the residents association may encounter if the use CCTV:

- Is there adequate signage in the area being recorded informing people that they are on CCTV, why there is CCTV in operation, their rights and how they can request access to this information?
- Where are the captured images stored, is this secure and who has access?
- How often is the footage deleted?
- Has a Data Impact Assessment been prepared?
- Is there an appointed and qualified Data Protection Officer?
- How would they deal with a request for images (a subject access request) from those people you are trying to deter?

(Please also see the article on Data Protection in FPRA Spring 2018 newsletter 124 about the need to register with the Information Commissioner's Office if you install CCTV).

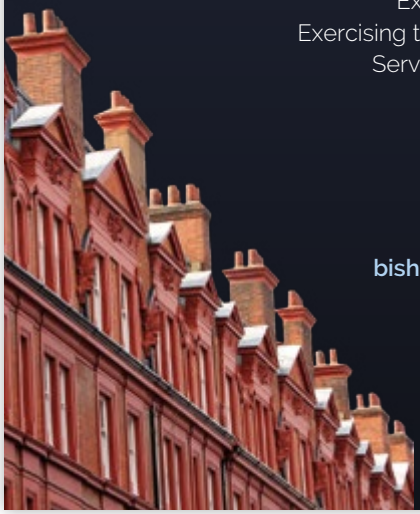
Abandoned bikes

Q **We have limited accommodation for the growing number of bicycles owned by our 120 residents while valuable space is being taken up by dusty old machines, some of which appear to have been abandoned.**
Can we give notice to residents that if they do not remove the tag we've put on each bicycle by a specified date, the bicycle will be removed and disposed of? If so, what might be a reasonable period of notice?
Where do we stand legally if a bicycle we've removed is subsequently claimed by a resident? If we have a free-for-all allowing residents themselves to "adopt" unclaimed bicycles, effectively acquire an apparently abandoned bicycle, where do we stand if the original owner comes back to reclaim their old bike?
Doing nothing leaves valuable space taken up by some apparently abandoned bicycles, depriving new owners of a space.

A FPRA Director Bob Slee replies:
There is no entitlement under your lease for storage of bicycles on the estate but facilities for doing so have been provided on a concessionary basis. It would be perfectly in order therefore for the concession to be subject to reasonable regulation. The fact that it has not been regulated hitherto could be explained by the fact that it has only recently become necessary to regulate because of the increasing number of residents requiring bicycle storage.
Whatever regulation you might introduce would need to be applied equitably and you would have to be very precise about the circumstances under which it might be decided to remove a bicycle from the storage area, where the bicycle would be removed to and how long it would be held there before it was decided to dispose of it. This is not an easy factor to determine. Just because a bicycle has the appearance of being unused doesn't necessarily mean that it has been abandoned. If a resident leaves a bicycle in the storage area having believed it to be secure but then doesn't touch it for 10 years or so, it might look abandoned, but it still remains that person's property.
Any regulations you might introduce therefore would need to be crystal clear on how abandonment is to be established. A reasonable way of dealing with this might be to issue users with an affixed numbered tag (akin to a parking permit) which would allow you to have visibility of which bicycles belong to whom. You will gather from the foregoing that there is no simple method of dealing with this effectively and it is a matter for judgment whether the problem warrants the remedy.

Continued on page 20

Advertisements



FPRA welcomes new Honorary Consultant Jonathan Channing. Jonathan, the owner/director of JC Property Consultancy Limited supports and works with stakeholders in the residential property management sector, including block management companies, suppliers, RMCs and RTMs, freeholders and industry bodies.

Jonathan says: 'I am a tenacious, energetic, knowledgeable and personable residential property management consultant, well known and respected in the industry, an IRPM Fellow, working with managing agents, talented suppliers, residential management companies and freeholders. I held head of property management positions for 10 years in total.'

HAPPY MEMBER

Thanks for all you do for us. As managers/proxy lessor of a very small block of flats we much appreciate the advice you are able to give us. We found the Spring 2020 Newsletter absolutely full of useful information.

Ask the FPRA continued from page 18

Subletting

Q **The son of a deceased who owned one of the flats has now told me that it is his intention to rent out this flat. Is this allowed under the terms of our lease?**

A FPRA Director Shaun O'Sullivan replies:

Some leases are silent on sub-letting, some (perhaps most) state that sub-letting is permissible subject to consent (and that consent cannot unreasonably be withheld, albeit conditions can be attached to the licence which might be granted) and some contemplate or infer sub-letting. Yours appears to be in the last category in that the clause requiring the delivery of any notices or documents to the lessor refers to such notices or documents being served upon the lessee or any sub-tenant of the lessee. Thus the lease contemplates there being sub-tenants.

I can find nothing in your lease which requires the consent of the lessor in this regard. One clause places a restriction on sub-letting in that it is not permissible for the lessee to let any part or parts of that which has been demised. So the lessee couldn't, for example, sub-let just part of the flat or a bedroom and garage together or, indeed, the garage on its own as it forms part of that which has been demised. So, if the lessee is sub-letting the whole of that which has been demised must be sub-let and the lessee should not withhold the garage for his/her own use.

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.

The inclusion of an insert or advertisement in the FPRA newsletter does not imply endorsement by FPRA of any product or service advertised