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Winter 2020

NEWS

FPRA
FEDERATION OF PRIVATE RESIDENTS' ASSOCIATIONS

SPECIAL OFFER

A wonderful free offer for FPRA members has come from our insurance expert Belinda Thorpe.

Honorary Consultant Belinda and Residentsline have launched **Manage Your Block PLUS** – which includes a facility to invoice service charges.

Belinda says: '**Manage You Block** is an online portal for holding and retaining all of your block's details in one place – access can be shared via other directors. A link to our brochure is here:
Manage Your Block Brochure.

'We are pleased to offer Manage Your Block FREE to all FPRA members – I think they will find this solution really helpful.' FPRA members can email their contact details over to info@manageyourblock.co.uk to set their account up for them.

'We have also launched version one of **Block in a Box**, which is simply a tool-box of services and solutions for people who manage blocks of flats and apartments. We are also developing some services for flat owners too, for example, flat contents insurance.

'Block in a Box is free and available for anyone to make use of, details can be viewed at www.blockinabox.co.uk.'

We are looking to expand the services being offered via Block in a Box. If FPRA members think of anything that would be a helpful addition please email me. (belinda@residentsline.co.uk)

FPRA Chairman Bob Smytherman added: 'As someone who is Chairman and Company Secretary of my own self-managed block, this additional benefit to our FPRA membership is most welcome and thank you to Belinda Thorpe for making this available for all our members free of charge.'

AGM 2021

FPRA looks forward to celebrating its 50th anniversary at the AGM on Wednesday 17 November 2021. We are delighted that Philip Rainey QC, a leading specialist in property law, has agreed to give the address.

INSIDE THIS ISSUE

BUILDING SAFETY CHARGES – NEW COSTS FOR LEASEHOLDERS

By FPRA Honorary Consultant Ibraheem Dulmeer and Mark Loveday

Introduction

On 20 July 2020, the government published the draft provisions of the Building Safety Bill 2020. Pt.4 of the draft Bill brings in a new category of statutory charges payable by leaseholders in high rise blocks of flats known as Building Safety Charges.

The Bill helps meet the government's promise to implement the most urgent recommendations from the Grenfell Tower Public Inquiry and Dame Judith Hackitt's review of building regulations. It provides for fire safety works to "higher-risk buildings" over 18 meters in height (although it may be extended to smaller blocks in future years). The official estimate is that the cost of implementation will be between £4.381 and £8.161 billion pounds over a 15-year period. Pt.4 sets out how leaseholders will be expected to contribute their share of those costs.

Building Safety Charges

Clauses 88 and 89 of the Bill insert no fewer than 20 new sections into the existing Landlord and Tenant Act 1985. Building Safety Charges will sit alongside service charges and administration charges as sums payable by long leaseholders to their landlords – although they are standalone statutory charges which are not payable under the leases themselves. Unsurprisingly, leaseholder representatives have been critical of the new charges they will face: See, for example, "Leaseholders hit out at UK government's building safety bill", *Financial Times*, 20 July 2020.

Tenant protection

Numerous provisions are intended to protect leaseholders from excessive Building Safety Charges, adopting many of the statutory safeguards that apply to service charges:

- Landlords will hold the charges paid by leaseholders on a statutory trust. These provisions echo and extend section 42 of the Landlord and Tenant Act 1987.
- Demands for Building Safety Charges must be accompanied by a summary of rights of obligations, mirroring the provisions of section 21B of the Landlord and Tenant Act 1985.
- There is an 18-month time limit on making demands for payment in almost identical terms to section 20B of the 1985 Act.
- Contributing tenants may require landlords to afford them reasonable facilities for: (i) inspecting documents evidencing compliance with the law, and (ii) taking copies of or extracts from such documents.
- Tenants have a right to request copies of documents evidencing the moneys held on trust. The scheme is similar to the regime which applies to summaries of relevant costs in section 21 of the 1985 Act.
- Tenants may withhold payment of a Building Safety Charge in certain situations.
- There are consultation requirements for "qualifying building safety works" and "qualifying building safety agreements" similar to section 20 of the 1985 Act.
- Building safety costs will be subject to a limitation of 'reasonableness' in almost identical terms to section 19(1) of the 1985 Act.
- As with residential service charges, most disputes about liability to pay Building Safety Charges will be dealt with by the First-tier Tribunal (Property Chamber) in England or the Leasehold Valuation Tribunal in Wales. But the courts will also retain jurisdiction in Building Safety Charge cases.

Conclusions

The legislation attempts regulate the new Building Safety Charges by replicating existing controls over residential service charges. But they will apply to many of the most expensive (and probably controversial) management projects in blocks of flats over the next few years – and the bills for leaseholders may well be very steep indeed.

Mark Loveday is a barrister at Tanfield Chambers and General Editor of Service Charges & Management (4th Edition). Ibraheem Dulmeer is a barrister at Normanton Chambers.
You are able to contact our FPRA consultant, Ibraheem Dulmeer or Mark Loveday directly for fixed-fee advice on any leasehold matter under the bar's direct access scheme. info@ibraheemdulmeer.com or clerks@tanfieldchambers.co.uk

Note from FPRA:

"Leasehold organisations are querying that leaseholders have any responsibility for these proposed charges. If the developers/ freeholders adhered to the building regulations then the government should be responsible for subsequent costs. If the developers did not adhere to the building regulations then the costs should lie with them and their contractors. FPRA is monitoring the situation."

FPRA Chairman Bob Smytherman added:

'We welcome the government making it clear that leaseholders should not face unaffordable remediation costs for building defects. Ministers must make it clear that building owners must take responsibility without passing these costs to leaseholders through their service charge.'

UPDATE

We welcome the recent vote of Peers in the House of Lords who voted 275 to 262 to pass an amendment to the Fire Safety Bill that would stop building owners from making tenants pay for fire safety work.

The FPRA would like to thank Peers and MPs support this amendment when the final Bill comes before the House of Commons.

Ministry of Housing, Communities & Local Government

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Director, Building Safety Reform

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9 November 2020

Mr Bob Smytherman
Federation Of Private Residents Association Ltd

Dear Mr Smytherman,

Thank you for sharing your concerns. I know this is a difficult time for leaseholders affected by building safety issues and I want to assure you that the Government is actively working to address these in a number of different ways, from funding to legislation and from interventions to meetings with lenders and insurers.

The safety of residents is at the heart of Government's actions. The Consolidated Advice Note published by the Government in January 2020 was advice directed to building owners, reminding them of their existing responsibility for ensuring their buildings and the residents who live in them are safe. This non-statutory guidance was published to support them in this duty and set out steps they can take to reassure themselves about the safety of their buildings. The guidance is meant to support building owners and is not, nor was it ever intended as. advice to lenders or valuers in relation to their interests. Where there has been reference to this by lenders, it is a misapplication or misuse of the information.

We share your concerns that lenders are increasingly seeking an EWS1 form for buildings other than its original intention, which was high rise buildings where there may be concerns about unsafe cladding. We are working intensively with lenders to encourage a more proportionate approach to their requirement for these forms. We have made it clear to them that we do not agree with a blanket approach to requesting EWS1 forms for all buildings, particularly those at a lower height. I want to reassure you that my team here will continue to work tirelessly to resolve this issue with lenders.

Where forms are required, we agree with you that it is unacceptable that leaseholders are having to wait on average 12-weeks for an assessment. We are working closely with the Royal Institute of Chartered Surveyors, the Institute for Fire Engineers, and insurance providers to develop solutions that can be rolled out at pace to ensure waiting times, for EWS1 forms – where they are genuinely needed - are reduced rapidly.

On the wider question of who should pay for the remediation of historical defects, the Government is clear that leaseholders should not face unaffordable remediation costs for historic building defects. Ministers continue to be clear that building owners must take responsibility without passing these costs to leaseholders, where possible.

In many cases, building owners and freeholders do meet these costs from their own resources – or by claiming on insurance, warranties, or taking legal action. This has happened in more than half of the cases where there was unsafe Aluminium Composite Material (ACM) cladding on private sector residential blocks.

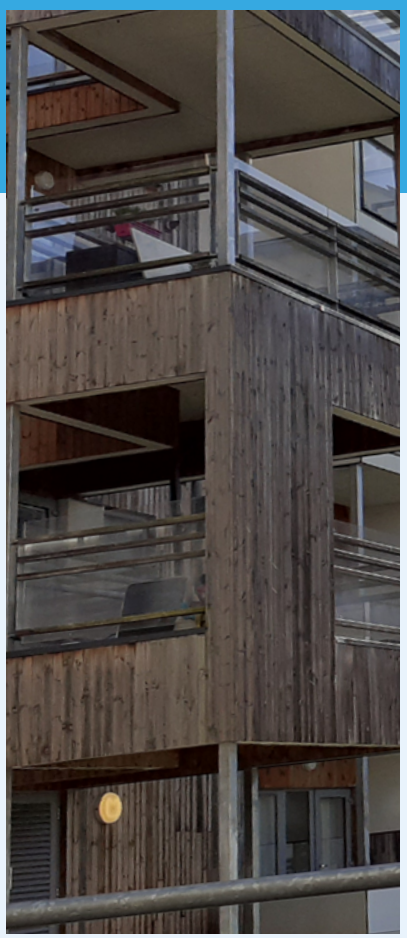
In addition to this, we have made £1.6 billion available to speed up the remediation of unsafe cladding, targeted at the most high risk buildings. Although the intention of the funding is to make homes safer, quicker, a large proportion of this support will also protect leaseholders from costs.

The Government remains determined to protect leaseholders from unaffordable remediation costs for those highest risk buildings which may fall out of scope for funding. To this end, Ministers have appointed Michael Wade to test and recommend further funding solutions for fixing historic defects, ensuring the burden does not fall on taxpayers. The Government intends to provide an update on this work before the Building Safety Bill is introduced to Parliament.

I appreciate your engagement on these issues and would welcome an ongoing dialogue with the department as we seek to bring resolution to these difficult issues quickly.

Yours sincerely

Chandru Dissanayeke
Director, Building Safety Reform



THE CLADDING CRISIS CONTINUES

The predicament of leaseholders living in blocks with unsafe or uncertain cladding is painful. Many are living in fear, trapped, and unable to sell, let or re-mortgage. Some flats are rated zero in value. Many face huge remediation costs, massive building insurance premiums (if the flat is insurable), and some are paying high waking watch costs.

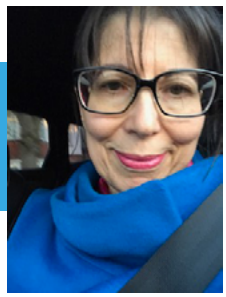
Many are facing difficulties in getting the certificate saying their external wall system is safe, the EWS1 form.

In the following article on the next page, FPRA Director Shula Rich explains the EWS1 and interviews one such leaseholder.

The Cladding Crisis Continues continued from page 3

EXTERNAL WALL WORRY POST GRENFELL

By FPRA Director Shula Rich



The EWS1 form was originally intended, when published in December 2019, for buildings 18 meters and higher to assess if they contained materials that were potentially dangerous.

New government guidance issued this year, however, means that lenders can require a survey on buildings with fewer stories. Only one survey per building is needed. It will last five years and needs to be organised and paid for by the freeholders. Who finally pays for it will depend on the terms of the lease and the attitude and available funds of the freehold company. In my own block, of which I am the chair, we have decided to pay for one if needed. We were, in fact, asked for one by a leaseholder, but it was not pursued. The buyer's mortgage company withdrew the request.

As I write this, I have received an email from a leaseholder saying the writer is lying awake worrying about the delay to her flat sale because she cannot get the freeholder to organise the survey.

A recent WHICH survey listed four reasons why freeholders are refusing to organise these surveys.

- The building is less than 18 meters tall
- It has no cladding
- It is a recommendation not a legal requirement
- Delays from 18 months to 10 years were mentioned.

WHICH quotes the Royal Institution of Chartered Surveyors (RICS) as saying: "EWS1 itself doesn't block mortgages, rather it simply identifies whether buildings have combustible cladding or walls made of unknown materials."

(www.which.co.uk/news/2020/08/homeowners-face-sales-falling-through-and-zero-valuations-due-to-fire-safety-test-delays)

The present position is, RICS says, that changes in government advice in January 2020 brought:

"... all buildings into scope, mean some residential buildings below 18m which have 'specific concerns', may now require an EWS1. Examples include 4-6 storey buildings which may have combustible cladding or balconies with combustible materials and therefore are a clear and obvious risk to life safety and may require remediation in accordance with the latest government advice."

www.rics.org/uk/news-insight/latest-news/fire-safety/cladding-qa/

It is important to note that RICS advises surveyors that it is **not an absolute requirement**. It says:

"You should always have a rationale to justify the request for the EWS."

Below is the link to the form itself
www.rics.org/globalassets/rics-website/ews1-external-wall-fire-review-final-2.pdf

As you'll see, there are two options, A and B, for signatories depending on the construction of the building.

Option A is completed where external wall materials are unlikely to support combustion. In this case:
"The EWS1 form must be completed by a fully qualified member of a relevant professional body within the construction industry with sufficient expertise to identify the relevant materials within the external wall and attachments and whether fire resisting cavity barriers and fire stopping have been installed correctly. ...Anybody instructing an EWS1 form must be satisfied that the signatory meets the requirements..."

Signatories for option A will be from organisations we are familiar with.

- Architects Registration Board (ARB)
- Chartered Association of Building Engineers (CABE)
- Chartered Institute of Architectural Technologists (CIAT)
- Chartered Institute of Building (CIOB)
- Chartered Institution of Building Services Engineers (CIBSE)
- Institute of Clerks of Works and Construction Inspectorate (ICWCI)
- Institution of Civil Engineers (ICE)
- Institution of Fire Engineers (IFE)
- Institute of Fire Safety Managers (IFSM)
- Institution of Structural Engineers (IStructE)
- Local Authority Building Control (LABC)
- Royal Institute of British Architects (RIBA)
- Royal Institution of Chartered Surveyors (RICS)

Option B should be completed where combustible materials are known to be present in external walls. This needs a signatory with a higher level of expertise than option A and specific Fire Protection experience. RICS says:

"The signatory would need a higher level of expertise in the assessment of the fire risk presented by external wall materials and should be a fully qualified member of a relevant professional body that deals with fire safety in the built environment. This should be a Chartered Engineer with the Institution of Fire Engineers or equivalent."

There are warnings from RICS against people already out there to take advantage. I have come across some myself.

On researching this article, I immediately found a headline firm which offered help with the EWS1 form and a downloadable PDF guide to the requirements. What did I get?

They actually sent me a questionnaire with a warning that unless I was able to commission a survey from them any quote they sent me for the EWS1 would cost me "£299.00".

There has been a surge in organisations with official sounding names who either are not qualified to sign the EWS1, or will be implying wrongly that it is needed where in fact it is not. The RICS guidance above on qualified signatories and the form itself should provide FPRA members with protection against these cowboy traders.

Building Societies Association RICS UK FINANCE

Form EWS1: External Wall Fire Review

Objective - This form is intended for recording in a consistent manner what assessment has been carried out for the external wall construction of residential apartment buildings where the highest floor is 18m or more above ground level or where specific concerns exist (Note 1). It should not be used for other purposes. It is to be completed by a competent person with the levels of expertise as described in Notes 2 and 3 below.

This review is for the sole and exclusive use of the client organisation named below. No responsibility is accepted to any third party for the whole or any part if its contents (Note 4). For the avoidance of doubt, the term 'third party' includes (but is not limited to): any lender who may see the review during the process through which they come to make a loan secured on any part of the Subject Address; and any prospective purchaser who may see the review during the process through which they come to purchase an interest in any part of the Subject Address.

Client organisation:……..

Subject Address (One form per block)

Block or building name	Street	Town	Postcodes (all built)

I confirm that I have used reasonable skill and care to investigate (Note 5) the primary external wall materials (typically insulation, filler materials and cladding) and attachments of the external walls of the above building/block.

OPTION A(Note 1) – Where external wall materials are unlikely to support combustion
I confirm that:

- I meet the professional body membership and competence criteria as described in Note 2
- In relation to the construction of the external walls, to the best of my knowledge the primary materials used meet the criteria of limited combustibility (Note 6) or better and cavity barriers are installed to an appropriate standard in relevant locations (Note 7)
- In relation to attachments to the external wall (*tick one of the following*):
  - ☐ **A1** - There are no attachments whose construction includes significant quantities of combustible materials (i.e. materials that are not of limited combustibility (Note 6) or better);
  - ☐ **A2** - There is an appropriate risk assessment of the attachments confirming that no remedial works are required
  - ☐ **A3** – Where neither of the above two options apply, there may be potential costs of remedial works to attachments (Note 8)

OPTION B(Note 1) – Where combustible materials are present in external wall
I confirm that:

- I meet the professional body membership and competence criteria as described in Note 3
- I have used the reasonable skill and care that would be expected of the relevant professional advisor to assess the level of fire risk (Note 9) presented by the external wall construction and attachments (*tick one of the following*)
  - ☐ **B1** - I have concluded that in my view the fire risk (Note 8) is sufficiently low that no remedial works are required
  - ☐ **B2** - I have concluded that an adequate standard of safety is not achieved, and I have identified to the client organisation the remedial and interim measures required (documented separately).

Name …… Qualifications ……..……..
Organisation …… Professional body ……..……
Signature …… Date ……..……..

A PERSONAL TALE

One leaseholder in a mid-rise development, whose sale was about to be blocked without the EWS1 form, said their freeholder refused to arrange the necessary survey and consultancy work. The freeholder's reasoning is that the block is shorter than the 18m threshold and therefore it is not necessary, despite a number of different materials being used in its cladding, as is apparent to passers-by.

The leaseholder said that it is a daunting prospect to hold liability for funding any corrective works that are required, as they do not have the savings available to pay the estimated £75,000 average cost of such works, and they have no other means to raise these funds as they are unable to re-mortgage or sell the property without an EWS1 form.

With this backdrop, it is no surprise the UK Cladding Action Group, having surveyed its members, has discovered it often inflicts a large impact upon the mental health of those affected. One member, a practising solicitor facing bankruptcy, also faces the loss of livelihood as this would be breach of their professional code of conduct.

GOVERNMENT'S £1BN BUILDING SAFETY FUND: NEED ADVICE ON THE FUNDING PROCESS AND/OR THE AGREEMENT TO BE ENTERED INTO?

By FPRA Committee Member Yashmin Mistry and her colleague at JPC, Andrew Morgan

The government in 2018 and 2019 had previously allocated funds of around £400m and £200m as its estimate of the cost of fully funding the removal of unsafe aluminium composite material (ACM) type cladding on public and private sector residential blocks taller than 18m.

The March 2020 budget saw the fund increase to £1bn to enable the removal of non-aluminium composite material (ACM) cladding from buildings.

It is understood that the government is currently aiming for all remedial work to be completed by the end of 2021. It previously committed to a June 2020 deadline.

Eligibility

The fund is available for the benefit of leaseholders in residential buildings of over 18 metres in height, where leaseholders would otherwise have had to pay the costs associated with the removal and replacement of unsafe ACM cladding systems.

The fund does not cover:

- other onerous fire safety costs, such as 24-hour "waking watch" patrols, which can cost thousands per year, or other structural fire safety defects not related to cladding.
- non-residential buildings, although mixed use residential and commercial will be eligible.
- Buildings, where a warranty claim for the full cost of dealing with the unsafe cladding has been accepted.

Applying for the funding – deadlines

An application for funding should have been made by whoever has legal responsibility for the repair, condition and safety of the building, and which has a legal right to recover the cost through the service charge. This will usually be the freeholder, but could also include a head landlord, or a management company or even the right to manage company.

Building owners, freeholders, and other responsible organisations had between 1 June and 31 July 2020 to register if could not cover costs themselves. The application process, at the time of writing this article, is therefore now closed.

Building safety fund for social landlords

The government has also now published guidance for social landlords on how to apply for a £1bn fund to pay for the removal of dangerous cladding without billing leaseholders. The application process for social landlords also closed on 31 July 2020.

Social landlords would have also needed to provide:

1. Confirmation that evidence is available to support submissions regarding eligibility of height and materials.
2. Confirmation of costs of the project – this could be a report from a cost consultant, together with the basis on which costs attributable to leaseholders have been calculated.
3. Confirmation that they have the legal right to recharge leaseholders – this could be evidence in the form of a copy of a lease agreement that contains the legal right to pass cost back to leaseholders. Social housing providers will be expected to show a representative sample demonstrating that the ability to recharge is across all leases.
4. Certification that the project will be on site and remediation work will have started by 31 March 2021.

We understand that they will not need to impose a formal 'Section 20' order claiming for the funds from leaseholders in order to recoup them.

The funding is not available for buildings below 17.7m in height. Replacement work for any combustible window sets or balconies are not eligible for funding.

Agreement and payments

The fund monies are paid to the applicant for the benefit of the leaseholders, who would otherwise be paying for works via the service charge.

Payment of monies will be in stages and be monitored by the Ministry of Housing, Communities and Local Government (MHCLG) to ensure correct use of public funds.

Before the funds are sent, MHCLG will require the building owners, freeholder or other party responsible for management of the building, to enter into a complicated agreement setting out the terms upon which the funds are being released.

Need assistance?

The team at JPC have assisted freeholders, leaseholders and management companies with the application process, as well as providing advice on the terms and form of agreement that will be required to be entered into with MHCLG.

The agreement is complicated and contains may warranties and guarantees and advice should first be sought before entering into any such agreement.

(If you need help or advice on the terms of the agreement, please do contact Yashmin Mistry, ymistry@jpclaw.co.uk or Andrew Morgan, amorgan@jpcaw.co.uk

FREEHOLDER BORROWING FOR MAJOR WORKS

By Nigel Urban, Mortgage, Equity Release and Protection Adviser, The Finance Planning Group Ltd

As freeholders of blocks of flats will know, there is generally an obligation on the freeholder to undertake repairs to the structure of the block and the common parts. Equally there is generally an obligation on leaseholders of flats within the block to pay for the cost of those repairs through the service charge, but the obligation to repair is not dependant on those service charges having been received.

Some freeholders will have built up a reserve fund to cover major works, but even if no such fund has accrued the freeholder will need to carry out the works, possibly quite quickly if there is a risk of greater structural or consequential damage if there is a delay.

In that case the freeholder will need to look for finance for the works. Where the freehold is owned by some or all of the leaseholders, through enfranchisement, one solution would be to take loans from leaseholders, but they may not wish to, or be able to, provide sufficient funds.

Alternatively, what chance is there of getting commercial finance? A key factor here is the value of the freehold. Whereas in the past it may have been easy to get finance based on the leaseholders' service charge obligations, those days have gone. For many enfranchised blocks that will preclude commercial finance, as 999-year leases at peppercorn rent will commonly have been granted, leaving the capitalisation of the freehold at virtually nothing.

It is easy to see commercial lenders' reluctance to lend where the security may ultimately rest on either taking possession of the leases of non-paying leaseholders (after having taken possession of the freehold or possibly through a right of subrogation) or a right of forfeiture. The former may require multiple legal actions, costly in time and money, and the latter may well involve "picking on" an individual errant leaseholder, which would be bad publicity for the lender. A recent conversation with NatWest, who used to make these kinds of loans, confirmed the latter point.

Any legal actions themselves may not be simple. There could be a complex argument on contribution, Part 20 CPR claims and restitution here, but any research would be purely academic, as no lender would wish to get involved with such complexity, hence they steer clear of lending.

Where there are shorter leases and substantial ground rents, particularly if the latter escalate, the freehold will have value, through the reversions of the leases (or possibly interim lease extensions) and the rents. Even in enfranchised blocks not all of the leaseholders will necessarily have been engaged in the purchase, so there may be value even then, where the leases are relatively short. Where freehold value exists, it may be possible to get short-term bridging finance, to cover the period between needing to pay for the works and recovering the money through the service charge account. A lender would expect the freehold value to at least cover the loan and may require a loan to value substantially lower.

Each case would need to be looked at individually but, as an indication, finance could be at 1 per cent per month, with an initial fee of 2 per cent of the amount loaned and similarly a 1 per cent exit fee.

Flexibility may be possible. Not all the money will be needed at once, for example if the builders require staged payments. Equally, money might be receivable from the leaseholders in stages, if for example the service charge is calculated annually but paid at six-month intervals. In that case it may be possible to receive the loan in stages, an initial sum and then two or three further drawdowns, only paying interest on amounts actually drawn down. It may also be possible to make partial repayments, although a minimum amount, typically £10,000, might be required and there would be a repayment administration fee each time. The overall loan period would not usually exceed two years, although that should be time to recover monies from leaseholders.

Even if there is sufficient value in the freehold to act as security, lenders will still need to take a view. They will need to be confident that the exit strategy (recovery of the funds from the leaseholders) is feasible within the given timeframe. A good history of timely payments will be useful here. They will also want to see that the cost of the finance, i.e. initial fees, interest and exit fees, can be met by the freeholder; unless there is a sufficient accumulation of ground rents, the leases will need to allow for recovery of those costs through the service charge account, which some leases do not.

In summary, getting finance in these situations is not impossible, but difficult, but not impossible. You will need to show, at a minimum, that there is sufficient value in the freehold, the exit strategy is feasible and the finance costs will be covered.

Nigel (www.financeplanning.co.uk) was formerly Senior Lecturer in Law, New College of the Humanities, London.

Finance Planning Group Limited can connect you with suitable lenders. We also advise on all aspects of residential mortgages, including lifetime mortgages for the over 55s.
nigel.urban@financeplanning.co.uk
www.financeplanning.co.uk

(FPRA does not endorse any particular products or services).

2020 – A ROUNDUP

By FPRA Chairman Bob Smytherman

Well, what can we all say about 2020?

The year started with a new government with a clear majority and we expected to spend the year persuading the new Parliament that the long awaited Law Commission review of leasehold sector recommendations, should be implemented in full for a once-in-a-generation opportunity to tackle the inequalities faced by long-leaseholders, and finally see full independent regulation of managing agents.

Instead the world was facing a global pandemic and we were all locked down in our own homes coming to terms with the likes of Zoom (other platforms are available) to connect with family, friends and work colleagues.

As an organisation we were looking forward to our 49th year supporting residential leasehold groups in England and Wales. However, I am really proud of how we were able to adapt our services for members by rolling out a series of online webinars with our Honorary Consultants taking questions from members directly. These now available for all our members on our secure website as a dedicated resource to members.

In addition, we have been working with the Leasehold Advisory Service on a new online tool to help leaseholders. Most recently we have worked with Companies House on a new online tool for the Directors of Flat Management Companies to assist them fulfilling their responsibilities which all too often, are voluntary and increasing onerous to ensure compliance with new legislation.

On the subject of new legislation, we have been working with government on the new Guidance for the Fire Safety Act which is in response to the Grenfell Tragedy. We are also working with The Business Department (BIES) on how best to improve the energy efficiency of long leasehold flats which has been an ongoing challenge for some time.

As 2020 comes to an end, and the whole world breathes a collective sigh of relief, we are looking forward to 2021 which will be our 50th Anniversary year. We are delighted to announce that – all being well – Philip Rainey QC will be our guest speaker. We will be inviting all the various partners we have worked with over that time to a celebration event in November 2021 at the Victory Services Club in London.

Finally, can I thank all our admin team who have adapted to social distance working so quickly to continue to support our members every day, John Ray for keeping our website updated with the latest news and especially Amanda as this is her last edition as newsletter editor. On behalf of everyone at the FPRA thank you, Amanda, and enjoy your retirement.

We look forward to welcoming you all to our big celebration in 2021 for our 50th year.

EVERYTHING YOU NEED TO KNOW...ASK THE FPRA WEBINARS

For those of you who have already attended one of our "Ask the FPRA" webinars, you'll appreciate the insight as well as the valuable advice and guidance they give to you and your residents.

While we'd like you to attend the live sessions and hear first-hand from our experts, if you can't attend, you don't need to miss out.

All our past webinars, as well as those that are up and coming, can be found in the Members' section of the FPRA website (https://www.fpra.org.uk/news-updates/webinars)

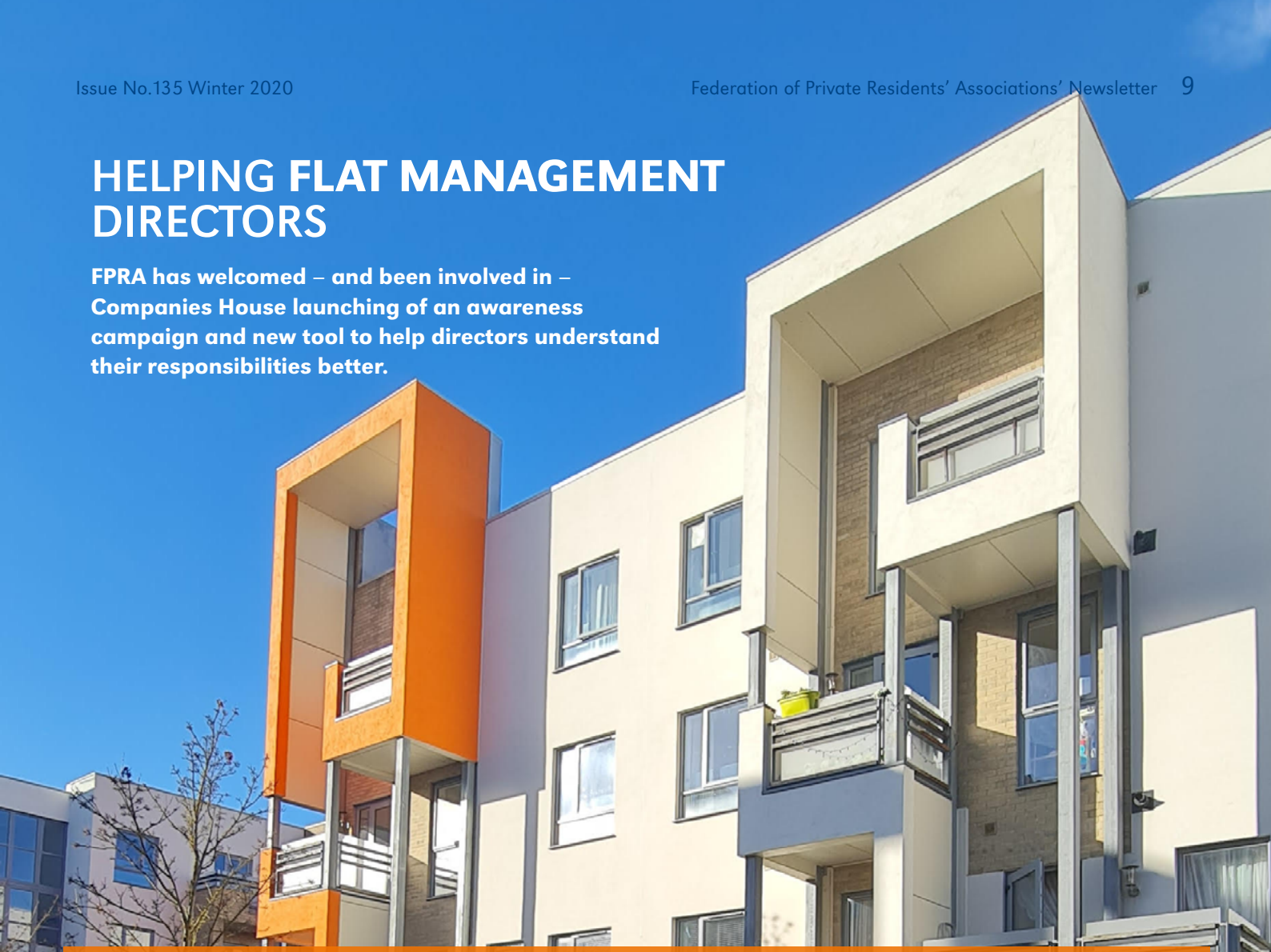
In the words of one of our members, 'the excellent online question and answer seminars are well managed, well chaired, share very helpful information and are easy to follow online. It fully justifies our membership of FPRA'.

When it comes to Fire Safety, it's vital that you're up to date with current legislation and aware of the responsibilities you have. So, take another look our Fire Safety webinar. Listen to Jonathan Gough, FPRA's Honorary Consultant, alongside FPRA Chair Bob Smytherman, answer your questions and share their knowledge and advice.

Make sure you're familiar with the Fire Safety Bill; how and when to use the expertise of your local fire service; where, when and how to display a fire safety notice; what to do when residents won't comply and how the EWS1 certificate applies to you, among other essential subjects.

HELPING **FLAT MANAGEMENT** DIRECTORS

FPRA has welcomed – and been involved in – Companies House launching of an awareness campaign and new tool to help directors understand their responsibilities better.



Every year, Companies House receives complaints from residents living in shared buildings or properties such as flats, a significant number of which it has no powers to deal with. These can range from disputes between residents to the poor condition of carpets or paintwork in shared areas such as stairways.

Such properties are commonly run by companies set up by residents – who take on the roles of directors and/or shareholders – to manage communal areas and the overall condition of the building.

Each company is required by law to file accounts with Companies House every year, which can lead to confusion among some directors and shareholders as to where the responsibility for some issues lie. When registering, all companies must agree a set of written rules, or articles of association, about the running of the company.

The campaign includes the unveiling of a free online flat management tool which guides directors through exactly what they need to know. It is completely free, works on any device and can be completed in just 25 minutes.

Companies House Director of Operations John-Mark Frost said:
'We receive a significant number of complaints each year regarding these companies. Often we find that residents are confused about their responsibilities and what Companies House can or can't help with.

'All company directors must be aware of their legal responsibilities both to Companies House and to their shareholders or members. This includes keeping information up to date and filing the necessary documents in a timely fashion.

'Although the tool does not replace independent legal or professional advice, we hope it will be of immense help for people who are looking for help or guidance.'

The online flat management tool covers five key parts, namely (i) Companies House and your flat management company (ii) becoming a director (iii) keeping records (iv) filing accounts and types of accounts, and (v) a quiz to test your knowledge.

Start our interactive learning tool about flat management companies. You can find more information in our flat management and right to manage (RTM) companies guidance.

FPRA Chairman Bob Smytherman said:
'We very much welcome the introduction of this new online tool from Companies House.

'We represent residential management and right-to-manage company members right across England and Wales and we know all too well some of the difficulties that they can experience.

'Becoming a director of a company is a significant step and the position comes with a number of responsibilities. This additional support to help directors understand these responsibilities will, I'm sure, prove to be incredibly valuable.'

Legal Jottings

Compiled by Nicholas Kissen, Senior Legal Adviser at LEASE

Court of Appeal

This case concerned the statutory entitlement of company members to inspect the current register of members.

A request to do so was met with resistance by a management company who argued that the leaseholder seeking inspection did not have a proper purpose for doing so.

Houldsworth Village Management Company Limited v Barton [2020] EWCA Civ 980

The law

The applicable law in this case is Sections 116 and 117 of the Companies Act 2006.

Every company must keep a register of its members which sets out the name and address of members, the date on which each person was registered as a member, and the date at which any person stopped being a member.

The register of members must be kept available for inspection.

Any member of the company may inspect a company's register of members upon submitting a request which, among other matters, states the purpose for which the information is to be used.

Following receipt of a request for access, the company has five working days from receipt to allow inspection and/or provide a copy of the register, or, if it believes that the request is not made for a proper purpose, to refer the request to the court for a declaration that one of its members had requested inspection of the register of members for an improper purpose.

Should the court be satisfied that inspection is not being requested for a proper purpose, the court must direct the company not to comply with the request by granting a "no access order", and moreover it may make a further order concerning the company's costs.

The facts

HVMCL was a management company limited by guarantee and owned by the leaseholders. It was responsible for the management functions of a residential apartment complex in Reddish, Stockport known as Victoria Mill.

Mr B was the owner of one of the 180 flats in the complex under a tripartite lease to which HVMCL was a party.

HVMCL was responsible for delivering the management functions to benefit the complex and served no other purpose save to provide those services, which were financed by service charges payable by individual leaseholders.

Each lease provided for each leaseholder, including Mr B to be a member of HVMCL.

Mr B put in a request to inspect the current register of members on the grounds that he wished to communicate with fellow company members in order to seek a general meeting of members and proposing resolutions to remove and replace the existing directors and the current managing agent appointed by the Board.

HVMCL declined the request and applied to the court for a declaration that Mr B did not have a proper purpose for making the request for inspection of the register of members.

In the earlier case of Pandongate House Management Company Limited v. Barton [2019] 1 WLUK 599, which also involved Mr B, the court decided that contacting other leaseholders to gather their support to challenges to the service charge and the keeping of the managing agents was not a proper purpose. In addition, the court held in that case that Mr B's true purpose was to continue a campaign likely to make it difficult to run the company efficiently and harass its officers.

HVMCL was concerned that, by making his request, in the current proceedings, Mr B was seeking to continue that campaign.

The High Court judgment

The judge declined to make the order sought by HVMCL and directed them to comply with the request to inspect the register of members.

In view of the company's objects (which included managing the property), it was an entirely proper purpose for Mr B to seek to contact HVMCL's members with a view to seeking a general meeting and proposing resolutions to remove and replace the existing directors and the managing agent.

HVMCL had failed to discharge its burden of proving that Mr B's purpose was an improper one and not as stated in his request. The company had failed to show that his true purpose was to seek to harass the directors or managing agents, or to cause disruption to them, or to other leaseholders, in the management of HVMCL.

It might be appropriate, in certain circumstances, to make a distinction between the running of the company and the operation of its business. In the present case the business of the company was the management of flats and the appointment of the managing agent was vested in the board of directors. Therefore it was an entirely proper and legitimate purpose for a member to seek to inspect the register of members with the object of seeking via a general meeting to bring about a change in the make-up of the board of directors, leading to a review of the terms of appointment of the current managing agents.

It could not be said that seeking to change the board with that aim in mind had nothing to do with Mr B's interests as a company member.

The court did accept an undertaking given by Mr B. that, if HVMCL's non-access request were refused, he would use the register only for the purpose of contacting his fellow members with a view to seeking a general meeting and proposing the resolutions to replace the existing directors and agents.

HVMCL appealed contending that it was essential to differentiate between the two different capacities of Mr B (1) as a party to the lease which provided for a range of services to be provided by the company; and (2) as a member of the company. The appointment

and removal of managing agents was relevant to the first capacity but not to the second. The judge was wrong in equating the governance of the company with the discharge of covenants for services under the lease. Section 116 of the Companies Act 2006 was only concerned with matters relating to corporate governance.

The Court of Appeal judgment

The appeal by HVMCL was dismissed.

A member seeking to communicate with other members to challenge, in good faith, the way the company is being run should normally be regarded as having a proper purpose.

There was a clear distinction between the rights of a leaseholder in that capacity and the rights of a member of a company conferred on the member in that different capacity but that does not mean those rights are necessarily mutually exclusive.

Generally, if a person has several rights which afford a remedy, they can choose which right to exercise to achieve their goal.

Accordingly it did not follow that Mr B's attempt to exercise his rights as a member through a general meeting was improper, even if the ultimate remedy he was seeking, removal of the directors and appointment of new managing agents, could be achieved by another route.

It was clear that it was impossible in the present case to draw a sharp dividing line between the covenants under the lease and the company's affairs.

HVMCL''s sole relevant purpose under its constitution was the management of the building.

Therefore, a complaint relating to the appointment of agents to undertake the day-to-day management of the building was central to the objects of the company and the way in which it was run.

Such a complaint was a matter concerning the company's affairs and was legitimate to seek to raise at a general meeting.

It therefore lay within the area of overlap between the two sets of rights, those of member and those of leaseholder.

Consequently, Mr B's purpose was one which lay properly within his rights as a leaseholder as well as his rights as a member.

HVMCL could legitimately, in a general meeting, at the initiative of a member such as Mr. Barton, pass a resolution for the removal of the managing agents.

In those circumstances it was difficult, if not impossible, to suggest Mr. B had an improper purpose in trying to gather support for such a meeting , whatever his rights might be under the terms of his lease or under the landlord and tenant legislation.

Points to note

This particular judgment will be of interest to companies controlled and owned by leaseholders whether they are leaseholder-owned freehold companies, residents' management companies in tripartite leases and right to manage companies.

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MEMBERS GIVE US FIVE STAR REVIEWS

'I have placed three enquiries; all have been very helpful and within the agreed upon timescale. Thank you for this great service.'

'When my neighbours suggested combining to buy our freehold and take the management of our flats into our own hands we naturally sought to benefit from the experience of others who had already made that journey. Uniquely placed to provide exactly the support we needed was FPRA. In the early days we had a lot to learn and frequently called upon the advice and guidance made available by FPRA's experts and by our fellow members. Over the years we have gained in confidence and are now sometimes able to offer the benefit of our experience to others but this industry retains the capacity to surprise and we still sometimes seek advice. We also continue to benefit from having FPRA as the voice of our movement at the highest levels where the organisation has gained an excellent reputation for its expertise in an ever increasingly complex world. If you run your estate or if you intend to start then joining FPRA is a no-brainer.'

'I cannot express enough how helpful the team at FPRA have been over the last few years since we joined them. They provide helpful, clear guidance when needed and the newsletters are always an interesting read. I am the Administrator in charge of two blocks of flats, in total 124 properties and I have found their service to be invaluable. Thank you team.'

'FPRA has proved a very valuable resource for up-to-date information and clear, trustworthy advice. The membership fee is worth what we pay many times over.'

'Extremely helpful and quick response to a series of complicated questions! Thanks to all at FPRA!'

'Response was rapid and comprehensive covering the various possibilities in view of the ambiguity of the lease on the subject. It also included options for clarifying the situation under the different possible scenarios.'

'New members in June 20, we have already benefitted hugely from attending the webinars and from website content. However a recent request for some specific guidance on a First-tier Tribunal situation provided a real insight into the fantastic benefits of being a member. I cannot recommend membership enough and would say it is vital for any self-managed block or residents' association who want to understand their rights and obligations to their third party landlord. This won't be the last huge thank you to the FPRA. Outstanding.'

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ASK THE FPRA

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

Meeting virtually

Q Many members have contacted FPRA asking about whether they can hold AGMs by Zoom of other digital means.

A FPRA replies:
Due to the challenges of holding physical AGMs during the current coronavirus crisis, we now understand that the Corporate Insolvency and Governance Act 2020 and secondary legalisation thereto, provides for AGMs be held virtually even though not authorised by the company's articles. This flexibility currently applies to AGMs required to be held by end December 2020 but this date might be extended by further secondary legislation. Although these measures provide for some flexibility as to how such meetings should be run, it is necessary to seek to achieve as much engagement and challenge as possible and, to that extent, we would encourage those organising virtual meetings to communicate well and openly prior to any such meeting and to be as innovative as possible in order to ensure that all members/shareholders rights and ability to vote are not compromised.

Telecoms mast

Q We have received a letter from a telecoms mast installer that has identified the roof of our building as a suitable site for the installation of a mobile telecoms mast. We have not yet formed a view as to whether this is something that we would like to happen. We would however welcome some initial guidance from FPRA or one of its advisers on the following:
1. whether other developments have faced similar requests.
2. what action we can take to resist this if that's what we choose to do.
3. what factors we should take into account in protecting our position and that of the lessees in the development if we decide to agree to the request.
We are aware that this might constitute an alteration and therefore require freeholder consent (not to be unreasonably withheld) under the terms of the Headlease.

A FPRA Chairman Bob Smytherman replies:
I have been a local Councillor for almost 20 years and experienced many of these applications in the past, with the rise of mobile phones. Thirty years ago these applications were received almost on a weekly basis. Given the length of time, many of these now require replacement or upgrading to meet further advances in technology.

1. Yes, frequently, as blocks of flats due to the height and often having one freeholder make gaining consents a fairly straightforward process.

2. Write to the freeholder and ask them to refuse to give consent, although this is unlikely to bring much success as they will receive a financial reward for agreeing to this and the planning grounds for refusing are very limited if the building is not listed or in a conservation area. Health fears cannot be take into consideration in the planning process. I would suggest as a consultation response that you ask the company to present the case for granting to your residents and take questions from them directly.

3. I would suggest asking the freeholder how any financial payments made will be distributed to all the leaseholders from the freeholder by way of compensation. If you believe you have planning reasons to object, I suggest discussing this with your local councillors and ask them to make representations on your behalf to the planning committee. It's worth suggesting a better site as simply refusing to allow is not an option as this will need to go somewhere to meet the communication needs of the company to support their customers.

You may also want to discuss any implications with your insurer for having the installation on the building. With regards to the legal grounds to refuse consent this will require our legal adviser to review your lease in detail. Please let us know if you require such a review, but I don't on the face of it see you have "reasonable" grounds to withhold consent.

Data Request

Q We took legal and compliance advice on the matter of responding to a Data Subject Access Request (DSAR). Unfortunately, the response requirement is enormous. We used a forensics data company to extract all emails and data files, filter out on personal data attributes that would identify the individual making the DSAR.

This resulted in around 2,000 documents and media files which had to be read, withdrawn and redacted. It took a team of us 12 days plus legal, compliance and forensic data extraction costs totalling around £5,000 (plus the time).

Can we legitimately assign the £5,000 direct costs to the service charge resulting in all lessees picking up a proportion of that cost?

A FPRA Honorary Consultant Shaun O'Sullivan replies:
I had no idea that meeting the request would have been so exhaustive or expensive. Although my initial inclination would have been to advise that such costs should not be met from the service charge, I note that your published accounts refers to the fact that administrative costs are charged to the service charge

under the terms of a clause of the lease. Although I would recommend seeking the advice of your managing agent, this clause does rather suggest to me that these costs might legitimately fall to be met from the service charge.

CCTV

Q We have 13 CCTV cameras around the common parts of the building: front entrance lobbies, over the mailboxes; reception areas; over the bin stores; in the car park at entrances and exits. There are no cameras external to the building. There is CCTV signage near to each camera with details of the purpose of the CCTV (crime prevention) and the contact details of our managing agents. The CCTV footage is stored securely onto a PC which is in a double locked cupboard in the car park. Footage can be accessed remotely by directors.

Is the RMC covered by the ICO rules for Domestic CCTV usage? (ref: https://ico.org.uk/your-data-matters/domestic-cctv-systems-guidance-for-people-using-cctv/) and as such registration with the ICO is not required because the RMC is not run as a for-profit business (ref: https://www.gov.uk/can-i-use-cctv-at-my-commercial-premises).

I understand that the directors would be data controllers, and therefore have to follow the obligations set out in the link above (eg providing footage of people on request; deleting footage of people on request; providing CCTV to police; ensuring footage is secure etc). Is there anything else that the RMC needs to consider to ensure it is following the necessary Data Protection regulations?

A FPRA Director Shula Rich replies:
I am myself a director of a company which owns the freehold of our block of 109. We had this discussion lasting several hours of meeting time and various views among directors as to whether registration was needed or not. In the end we decided better safe than sorry whatever the regulations may say about our position, which is the same as your own. We registered for a small sum (less than £50 I believe) and in this way we are sure that we cannot be making a mistake.

External wall fire review

Q We have been asked by one of our members about the External Wall Fire Review Form and the need to get an assessment carried out if people want to sell their flats. It seems that this is something that the residents' association should be lobbying the freeholder to get done otherwise it will be difficult for anyone to sell their flats in the block?

A FPRA Hon Consultant Jonathan Gough replies:
The EWS1 form was developed by UK Lending and RICS to help banks decide if the cladding presents a risk. The EWS can only be issued after an external wall survey has been completed by a suitably qualified contractor. At first, the EWS1 was only for buildings that are higher than 18 meters, but following government guidance, this height restriction was removed.

It should be noted that depending upon the size of the block the survey could cost several thousands of pounds. The building's 'responsible person' is normally expected to instruct the survey, the freeholder can be asked but they are not obliged to fund it.

Here are links to government guidance on why external wall surveys are needed and to the EWS1.

EWS1 form
https://www.ukfinance.org.uk/system/files/EWS1%20External%20Wall%20Fire%20Review%20Dec%2019.pdf

Government guidance
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/869532/Building_safety_advice_for_building_owners_including_fire_doors_January_2020.pdf

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Parking problem

Q We have 12 flats, and each has one allocated parking space. There are only four visitors' parking spaces and the lease states that tenants have the right to use these spaces only on an occasional basis. However, some residents are using these spaces to park their second cars, so that on some occasions there are no parking spaces for visitors. We have sent out so many reminders about this, quoting the lease in Reports to Owners following our directors' meetings. This is always emphasised when property is sold and owners who let their properties also inform their letting agents. Two of the culprits are from rented properties and despite being told, they continue to disregard this rule.

Can you advise how to enforce this? What powers do the directors (who manage the flats) have?

A FPRA Chairman Bob Smytherman replies:
Parking is the biggest problem I face in my block too. Like you, our block has one space or garage per flat and five visitors spaces for 46 flats. The only way we have managed to prevent residents parking second cars in the visitors spaces is by contracting with a security company to provide enforcement with PCN parking fines.

Each flat has a parking permit for their space, and each is allocated with a visitor permit for genuine short-term visitors. We restrict these to 12 hours and no return within 24 hours to prevent overnight parking. Clear signage is in place to alert anyone parking.

Those residents with multiple vehicles will be unhappy especially if there is no on-street parking close by, but realistically this is the only way to resolve the problem.

There are various options for the directors to control the visitor parking, such as pay and display. We didn't do this as we felt it would give an advantage to second vehicle owners who were just happy to pay for a second space!

My suggestion, if the directors agree in principle to enforce the parking rules in the lease, then contact a specialist security company – ideally a member of the British Parking Association to ensure they meet responsible standards of practice.

They will then visit your site and discuss the various options for your directors to consider. Once you have decided the best option for your circumstances, I would suggest it's good practice to communicate with your leaseholders. It's likely not all will agree, but hopefully they will understand the rationale for the change. Ultimately, it's the directors' decision if this parking enforcement is deemed necessary.

I would strongly recommend not getting involved as directors in the process once the parking contractor is engaged, to ensure the parking rules are applied consistently by the company. They will manage any appeals process for tickets issued in error.

Our contract costs us nothing. The contractor installed the signage to ensure legal compliance and patrols on a 24 hour basis issuing tickets to anyone in contravention of the rules. They manage the appeals to ensure the directors are not involved at any stage of the process.

Too few directors

Q We are a block of 12 flats who self-manage. Initially each flat had a director who represented interests in decision making regarding the management of our homes and communal areas. Our current situation is that we have over time had several resignations from director positions. We now only have two named directors. We wish to approach residents to gain their input and support of the limited company. Can you please share any guidance?

A FPRA Honorary Consultant Shaun O'Sullivan replies:
It would appear that there can be a maximum of 12 directors and a minimum of three and that with just two directors, the company has already and effectively compromised its Articles of Association. Unfortunately there is no silver bullet in terms of persuading shareholders to become directors, although that is

evidently necessary if the long-term survivability of the company is to be achieved and self-management of the estate (which I assume is still an aspiration) is to be maintained.

However the situation in which you find yourself is by no means unique; a combination of general apathy, lack of time, lack of appropriate skills, unwillingness to take on responsibility for an area which has become subject to greater regulation over time and the reduction in owner-occupation (with often just the very elderly left as owner-occupiers) are all factors which seem to be contributing to the challenge.

On the assumption that there is a wish to continue with self-management and on the assumption that you believe there are shareholders that would have the appropriate skills, my advice, if you've not already done so, would be to make a direct approach in the hope of persuading them to join the board. If that fails, I would suggest that the current board write to all shareholders, whether living on the estate or not, outlining the implications of not participating in this way. This might include the unfair burden placed on the current directors and the fact that the effort of managing the estate would be spread more evenly if there were more directors, the fact that self-management brings with it greater self-determination and the fact that, if the company failed completely as the result of a lack of participation, the estate would fall into a state of disrepair. Alternatively the current directors might consider whether it might be preferable to employ a managing agent to administer the estate with minimal input from (the few) directors and simply resolve to do so or to outline the additional costs of so doing in the hope that this might persuade shareholders to participate more fully in the running of the estate.

Paying the FPRA subs

Q Finally our bank account is open after four and a half months' delay due to Covid-19. The treasurer who set up the account resigned some weeks ago, and at next general meeting we have a new treasurer ready to be voted in. We have 160 members and need to collect funds asap – the fee to FPRA of £345.00 was paid from the personal account of one member. We need to repay this promptly, as he has been requesting this reimbursement.

Can the secretary, who is signatory to the account, and the chair, now/before the meeting send bank payment details to all members requesting subs payment? The new treasurer, pending being voted in, and former treasurer, will need to confirm with the bank the change of treasurer's details.

A FPRA Hon Consultant Shabnam Ali-Khan replies: I have looked at the constitution and the lease to answer the question outlined above. Essentially, you want to share bank details with all members to enable them to pay their share towards the FPRA which one member has covered. I understand a secretary and a new treasurer may have been voted in this week. Clause 8 of the constitution gives information on calling general meetings. One option is to call a general meeting in accordance with the rules and for a member of the committee to propose a resolution covering this issue: namely to ask the members to pay their share. This can be agreed provided clause 10 is followed. For example, a majority of members agree.

The lease is not relevant here as it is between the landlord, the manager, and the leaseholders. The residents' association is not a party to the lease. Therefore, will not have any right to recover the FPRA subscription under the lease.

The only other option is to write/email all the members to say the bank details will be disclosed and for them to arrange the relevant payment.

Electrical safety

Q I have been sent an email with a link to "Guide for landlords electrical safety standards. June 2020". From reading it and trying to understand its contents, I believe that ALL flats that our association manages (27) should have an EICR carried out. I personally have this and is due to be renewed in 2022.

I have written to the 27 leaseholders asking if they have this type of report and have had some feedback stating that as the buildings were built in the mid 60s it is not required. I have responded stating that in some cases the wiring may be as old as the building and not up to the current 18th Wiring Regulations BS7671.

Can we as landlords insist that the leaseholders comply with the regulation and carry out an EICR for their flat? I have suggested that if all flats are required to have this done, we could get an electrician to carry out the work as a block booking thereby saving some money for the leaseholders if they were to do it themselves.

I have also noted that the regulation requires all works to be done by 1 April 2021.

A FPRA Honorary Consultant Shaun O'Sullivan replies: I believe the regulations to which you refer are The Electrical Safety Standards in the **Private Rented Sector** (England) Regulations 2020. These came into force on 1 June 2020 and apply to new tenancies from 1 July 2020 and existing tenancies from 1 April 2021. However, these regulations apply to the private rented sector and the obligation to comply rests solely with private landlords and not with resident management companies. They are the equivalent of the Gas Safety (Installation and Use) Regulations which require private sector landlords to ensure an annual gas safety check is carried out by a Gas Safe registered engineer.

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Ask the FPRA continued from page 15

So far as any responsibilities of your RMC is concerned, these are confined to common areas of blocks of flats; although I don't believe that it is currently mandatory to carry out an EICR it is strongly recommended that such an inspection be carried out every five years. This is exactly what we do in the block I help self-manage.

Unfair ground rent

Q In 2003, at the time, ground rent for our apartments was pretty expensive when our apartments were sold (£250, £350, £500 for a studio, one-bed and two-bed apartment respectively). Then everything went up by 55 per cent 2017 to £390, £550 and £780 respectively.

Ground rent for parking spaces was extortionate in 2003 (£750), and now this has also gone up by 55 per cent, to £1,165 annually for a one-bed apartment! We asked our landlord to understand how this extortionate ground rent is justified, and specifically why a parking space (which is about 5 x 3 metres) is almost double the ground rent of the apartment. Her reply (after lots of chasing) is that she is waiting for her legal team to reply.

How can we:
a) challenge the increase (55 per cent) in ground rent for apartments?
b) challenge the fact that ground rent for parking spaces is increasing at all (why should it be linked to inflation?)
c) if the ground rent for parking spaces has to go up, then challenge the specific increase (55 per cent).

A FPRA Committee Member Mary-Anne Bowring replies:
The short answer is you can't challenge it. While you may feel that unfair contract terms legislation applies, you would have been professionally advised by a solicitor. The FTT has no jurisdiction on ground rent payable. In the first instance I suggest you go back to your conveyancing lawyer and ask: In the light of debates in the Houses of Lords and Commons, would he consider that he mis-advised you and that he led you to buy an unfair contract?

No obligation

Q We own our freehold as a limited company, with eight flats and one shareholder for each flat. Currently we have three directors, one of which is the secretary and attends to all financial income and expenditure, agendas and minutes plus all administrative duties.

Our newest shareholder of only six months wishes for a complete rewrite of our leases. He feels these are confusing, misleading and technically being breached. He wants clarity in a rewrite. Can this be done?

A FPRA Director Shula Rich replies:
Yes – but it will only be valid for those who accept it. You personally are under no obligation to accept a new lease nor anyone who does not agree it. You will also need to consider how it will be paid for. Service charge funds could not be used.

If some directors would like to draft a new lease for themselves and they pay for it then if they vote to do this I cannot see that you can stop them BUT there is no obligation at all for anyone who does not want to accept it. Your lease stays as it was when you bought it.

Cost of stairlifts

Q There is a stairlift already fitted in our block. The lift was purchased by a leaseholder many years ago but is now used by another leaseholder, the original owner having moved on. The company has been paying for the service of the lift as we felt – it being in our property – we had a duty to ensure it was safe.

The lift is now beyond repair. Does the company have the responsibility of replacing it or not? It seems unfair if the company has to replace as it is only used by one flat out of 24.

A FPRA Honorary Consultant Shaun O'Sullivan replies:
Responsibility for replacing the stairlift would very much depend of the terms of the licence which should have been granted at the time of the original installation.

Structural alterations to "the Premises" (ie that which has been demised) are, in accordance with your lease, subject to written approval (licence) and with associated costs being paid for by the leaseholder. As is the case under the lease and leasehold law, approval cannot unreasonably be withheld in respect of that part of the property which has been demised.

So far as "the Reserved Property" is concerned (ie that which has not been demised and retained by the landlord /freeholder and the subject of your question), the leaseholder has no rights over this part of the property, other than those defined in the Fifth Schedule. Any leaseholder seeking alterations/adaptations to the reserved part of the property should have sought approval from the landlord with the landlord requiring that any associated costs be met by the leaseholder. Unlike that which has been demised, consent for any alterations to the reserved part of the property can reasonably be withheld.

Thus, so far as the case in point is concerned, I would have expected the original leaseholder to have sought consent for installation of the stairlift, for the planning authority to take a view on whether building regulations would be compromised and for the Fire and Rescue Service to have made a judgement on whether the adaptations would undermine safe egress from the property, particularly by others using the stairway, in an emergency. Had the advice been that a stairlift could be fitted without compromising building regulations and without inhibiting emergency

evacuation and had the landlord granted a licence, I would have expected the licence to detail responsibility for maintenance and removal (and I would expect responsibility for both to rest with the leaseholder) and for the existence of the licence to be made known in pre-contract enquiries when the flat was sold and for the licence to be revoked on sale and after removal of the stairlift – or, indeed, for it to be regranted should the new owner wish to avail themselves of the facility.

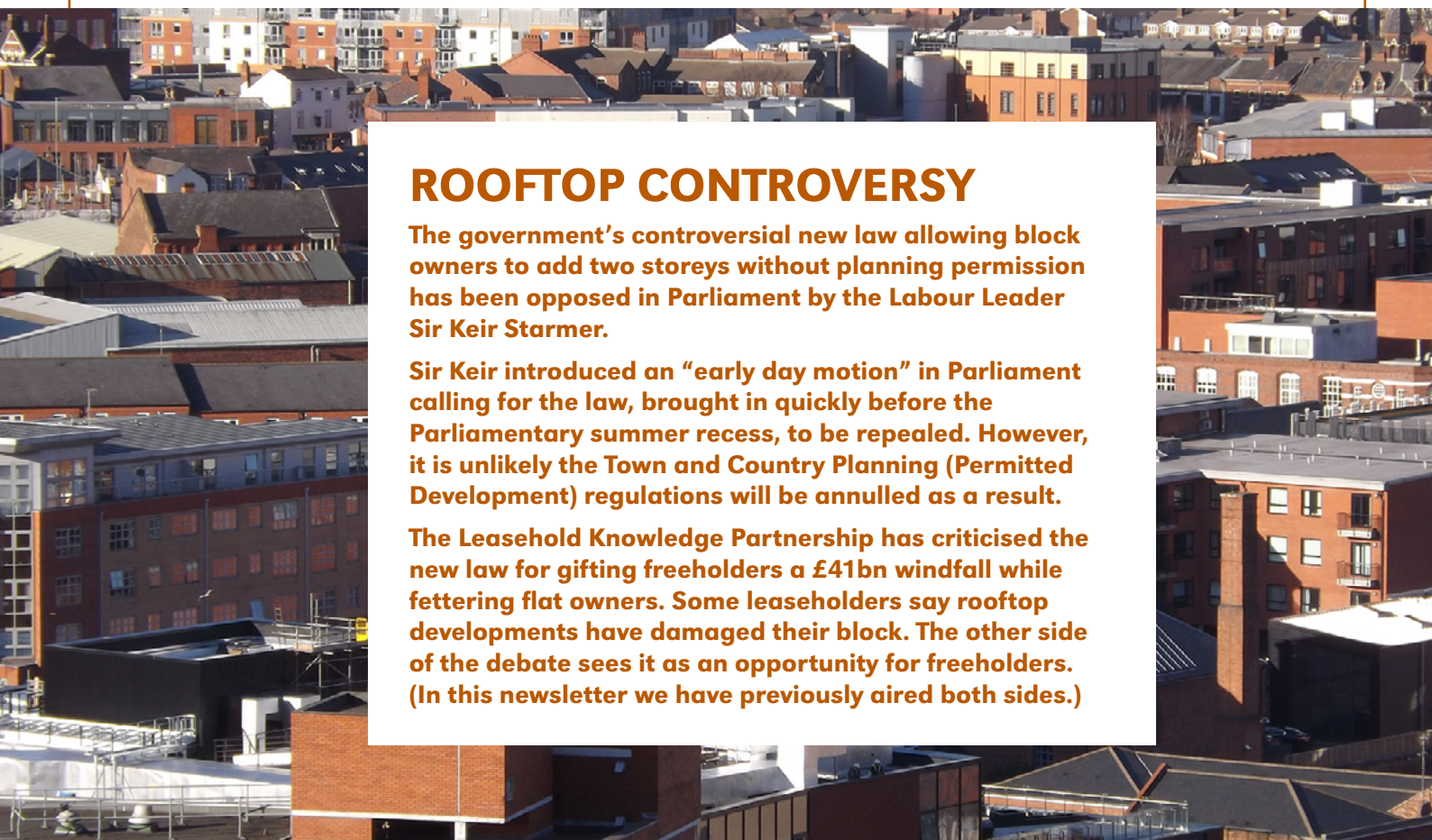
The Equalities Act 2010 does include the issue of adaptations in common areas; unfortunately that part of the Act which addresses these issues was never brought into force. However, the concept of "reasonableness" was a core feature. Thus, although it might be "reasonable" to perhaps install a grab rail on the reserved part of the property or to have built a slope for easier/wheelchair, access, it might not be seen to be reasonable (or, indeed, safe due to the problems identified earlier), to install a stairlift. Much would depend on circumstances and configuration of the block.

I can't help but feel from your question that little or no consideration was given to the implications of fitting a stairlift or to its maintenance and rather suspect that no licence was granted. And it would appear that the cost of maintaining it has, inappropriately, been met from company funds.

On the assumption that my suspicions about absence of licence and lack of endorsement of the current lift by the planning authority and Fire and Rescue Service are correct, it seems to me that the most realistic way forward, in order to regularise the situation, would be to determine whether the current leaseholder does seek to have the lift replaced and, if so, for the leaseholder to formally seek consent. That being the case the planning authority (local authority) and Fire and Rescue Service should, in my view, be consulted with any costs being met by the leaseholder. If a stairlift were deemed acceptable, the company could, if they were so minded, grant a licence conditional upon the leaseholder funding its provision, maintenance and removal when no longer required as well as making good any damage to the reserved part of the property. In the circumstances I see little option but for company funds to pay for removal of the defunct stairlift unless such costs could be subsumed into the cost of any replacement lift.

Issue 128 (Spring 2019) of the newsletter included an article on alterations which you might find helpful.

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.



ROOFTOP CONTROVERSY

The government's controversial new law allowing block owners to add two storeys without planning permission has been opposed in Parliament by the Labour Leader Sir Keir Starmer.

Sir Keir introduced an "early day motion" in Parliament calling for the law, brought in quickly before the Parliamentary summer recess, to be repealed. However, it is unlikely the Town and Country Planning (Permitted Development) regulations will be annulled as a result.

The Leasehold Knowledge Partnership has criticised the new law for gifting freeholders a £41bn windfall while fettering flat owners. Some leaseholders say rooftop developments have damaged their block. The other side of the debate sees it as an opportunity for freeholders. (In this newsletter we have previously aired both sides.)

THE CURSE OF CONDENSATION

FPRA Honorary Consultant Shaun O'Sullivan points to the causes and identifies possible solutions

Although questions related to condensation do not overwhelm our Inbox, it is nevertheless evident that some members suffer greatly from the effects of this natural phenomenon.

The presence of mould growth is often the first sign that there is a problem and, almost invariably, those living in the property will attribute the issue to "damp". There is no doubt that ceilings, walls and floors can become damp; however, provided the building has been properly constructed, rising damp can generally be discounted immediately. Damp proof courses, in their myriad of forms, have been an integral part of building regulations for decades and unless the damp proof course is breached or bridged damp shouldn't rise through the structure of the building.

However, an undetected dripping tap (perhaps from a washing machine or dishwasher) or stop cock can easily result in a damp problem as can a broken down-pipe or blocked or broken gutter. If damp is suspected these are the places to look. But by far the most likely cause of mould growth is condensation. Not only is mould growth unpleasant to live with, the spores which are produced can have an adverse impact on health, and particularly so for those who suffer with respiratory problems.

In simple terms condensation, and the mould growth which is often associated with it, results from an excess of moisture in the air which then condenses onto cold surfaces and provides a perfect environment for the growth of mould. Left untreated and without the source of the excess moisture being addressed, walls, ceilings and carpets can become "damp" and produce ideal conditions for mould to develop. The very act of breathing, results in moisture in the air and showering, cooking, washing and drying clothes indoors can all exacerbate the problem significantly.

The structure of the building itself can also have an impact. Older buildings without cavity wall insulation often have relatively colder walls than those built today and moisture can therefore condense onto these colder surfaces. The same goes for windows: the internal surface of single glazed windows, and particularly those with metal frames, are much colder than their modern double-glazed counterparts causing moisture to condense on the internal surface.

But even new buildings, constructed in accordance with current building regulations, are not necessarily immune from the problem, not least due to the building materials themselves "drying out" over time. So what can be done to reduce the level of moisture in the air and to contain the amount of condensation and mould growth which can sometimes result? Perhaps the simplest solution is ventilation; trickle vents found in many double-glazed units can make some small contribution, but opening windows when cooking, bathing and showering can help expel moisture-laden air more effectively, as can extractor fans. And closing doors to contain the moisture in one area (kitchen or bathroom) while at the same time ventilating the area can help to minimise the spread of excess moisture to the rest of the property.

However, these options are not always practical or viable and, in such cases, or in homes where there is a high level of humidity and where mould growth is apparent, a dehumidifier might be worth considering. They are generally considered to reduce humidity by between 30 and 50 per cent and come in a variety of sizes and two main types – compressor and desiccant – with the former generally considered appropriate for warmer areas, such as the main living areas of a home, and latter perhaps more appropriate for colder areas such as a basement. Most have inbuilt sensors – a humidistat – which can detect moisture level in the air and activate the dehumidifier accordingly so that it is not on all of the time and does not cause the air in the property to "dry out" too much.

Of course, whatever solution is adopted, existing mould growth will not necessarily or of itself, be eradicated. A fungicidal wash should be applied to any mould and, if on walls, and anti-mould paint should be applied.

Finally, some members have raised problems with moisture in the roof space; although some level of moisture is almost inevitable, excess moisture can generally be attributed to a lack of ventilation. Although the solution to increasing ventilation in the roof space is, in itself, a relatively simple and cheap one by the introduction of vented roof or ridge tiles, the potential need to scaffold can cause the cost to increase significantly so it would be wise to dovetail with other work requiring scaffolding.

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Advertisements

GOODBYE AMANDA

By Former FPRA Director Robert Levene

We are sorry to say goodbye to our newsletter editor, Amanda Gotham, who is retiring after 17 years.

Amanda joined the FPRA in January 2004, editing her first newsletter issue no 68 and we are sorry to see her go, but wish her all the best for her retirement.

Amanda has been an amazing editor and has taken our newsletter from strength to strength – increasing the number of pages, transforming the whole look, style and content, to turn in it into an even greater asset and membership benefit of the Federation. During Amanda's tenure, as our third ever editor, readership has increased with great plaudits from both our members and the many others involved in leasehold, who read the magazine on a regular basis.

What is less known is that Amanda has been a major contributor to our website, with her editing of our questions and answers and carrying out the extremely difficult task of selecting from the many hundreds of questions we receive every year – some of which are extremely technical – and turning them into readable and understandable information for our members.

As Amanda goes forward to concentrate on her family, we wish her all the best for the future and thank her sincerely for all her help.

Amanda replies:

Thank you, Robert, for those kind words. I have really enjoyed working with the team at FPRA. The personnel have changed quite a lot over the 17 years, but everyone involved has always been enthusiastic and easy to get on with, and the atmosphere positive and dynamic.

The experience of owning a leasehold flat on the south coast (share of freehold, husband a volunteer director on the board) means I have shared many of the problems faced by FPRA members: fire risk assessment responsibility; noise; wooden floorboards; pets; water leaks from one flat flooding another; central boiler breakdown; pigeon infestation; unsatisfactory work by contractors; arguments over the service charge; items left in the common areas; penetration of smoke into common areas – including cannabis smoke – and so on and on. When members have written in with your problems, I have often been feeling your pain!

I've enjoyed taking photos of interesting blocks to put in the newsletter. It's become quite a hobby, wherever I go. I would like to say thank you very much to everyone who has contributed to the newsletter, to the readers who have sent me articles or ideas, and for your lovely comments about the publication. Please continue to contribute!

I wish FPRA continuing and growing success in the future.

Amanda and her husband have retired to Cambridge

WELCOME KEVIN

FPRA welcomes Honorary Consultant Kevin Lever, a lawyer specialising in property law.

Kevin says: 'I've worked in the property industry since 1987. I ran the Residential Leaseholder Enforcement Team at a top 100 city and regional law firm. In 2011, I started KDL Law, a niche dispute resolution solicitor practice servicing landlords, RTM and RMC companies and professional managing agents in the management or residential developments. We advise clients on how to avoid issues arising, solving problems that have arisen and assisting in the resolution of breaches of lease and other residential property agreements.

'We are expert in residential property management dispute resolution including matters such as non-payment of service charge, unlawful alterations, sub-letting, section 20 and other statutory compliance, progressing disputes through the court or FTT process and general advice to client on how to avoid all of the above.'

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