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NEWS

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FEDERATION OF PRIVATE RESIDENTS' ASSOCIATIONS

The U-Turn on the Abolition of Leasehold

By Katie Cohen, Partner at Keystone Law and FPRA Honorary Consultant

Now that the first stage of leasehold reform has been enacted in the Leasehold Reform (Ground Rent) Act 2022 (the Act) (which saw ground rent charges on most new residential leases banned from 30 June 2022) the second wave of change to leasehold is anticipated. Practitioners, often acting for both leaseholders and freeholders, agree almost unanimously that change is required but there is of course disagreement about the extent of those changes.

There are far too many pitfalls for the unwary and the system in its entirety needs reformation to make the process simpler for leaseholders to acquire their freeholds or extend their leases. Leasehold is incredibly complex and the established system of ownership cannot be abolished overnight.

On 9 May 2023, Michael Gove 'u-turned' on his previous comments of January 2023 to 'abolish' the entire system of leasehold ownership. This far sweeping and unfounded comment was both unhelpful to leaseholders who believed that the intention would become a reality as well as the Practitioners seeking to advise their clients. It was an unrealistic commitment to any sort of abolition of a widely established system of ownership.

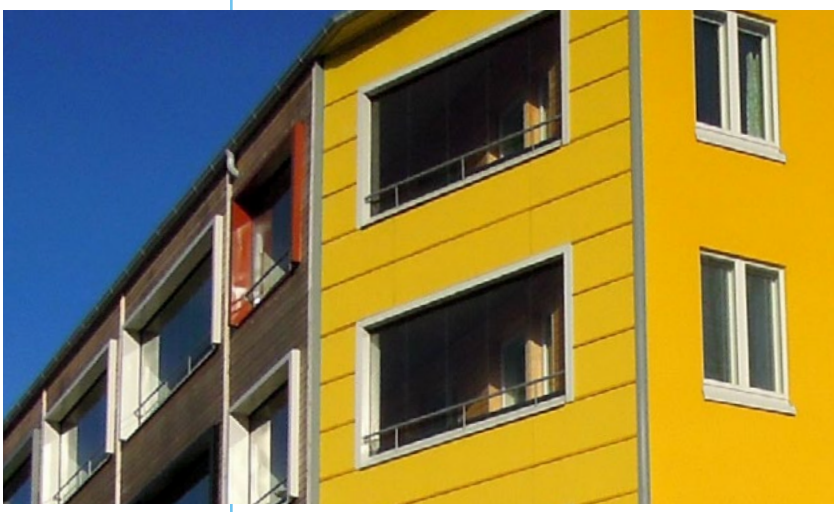
On a positive and at the very least, Gove has hinted that reform is very much on the cards. It is encouraging that the government remains committed to reform.

> **"...change is required but there is of course disagreement..."**

We will wait with bated breath for the next King's speech and hopefully see some detailed and extensive elaboration on the proposed reforms being putting forward.

Ministers continue to say in numerous debates within Parliament over the last few months that they remain committed to the next stage of leasehold reform. However, with no new Bills having been introduced, the wait for anything of substance continues. For now, the questions of 'when and how?' remain without any concrete timeline for the second and more far-reaching second stage of leasehold reform.

With no set dates for future legislation, leaseholders are very much stuck between a rock and a hard place deciding whether to sit tight and await the anticipated legislation or bite the bullet and exercise their statutory rights. Both are equally acceptable options but will turn on the individual circumstances of their proposed lease extension or freehold purchase.



Whilst it is hoped that changes will be brought in quickly, in reality this will take time. There will be much debate on both the freeholder and leaseholder side to achieve a mutually acceptable and working piece of legislation that balances the interests of both sides.

INSIDE THIS ISSUE

Hello FPRA

Our summer newsletter brings us to the mid-point of the year. The days are at their longest, there is sunshine and we're starting to think about time away during the Summer. It's important to have a break and relax beyond the daily routine in order to recharge and prepare for the second half of the year.

The FPRA team will certainly be finding time away from their day jobs over the next couple of months before they are back on the case campaigning, researching and knowledge sharing for all FPRA members.

In this issue we cover changes to the Building Services Act, offer guidance on Fire Safety to those members living in small blocks of flats and we consider the impact of the recent U-turn by Michael Gove on the abolition of Leasehold.

As you know we welcome and enjoy all your contributions. Please continue to send in your questions, participate in our webinars and post your reviews. If you would like to contact me directly, you can at newsletter@fpra.org.uk

Yours,
Val Moore,
Editor – FPRA Newsletter

Do I have to **pay service charges** for **items that I do not use?**

Article courtesy of Kevin Lever, Partner KDL Law and FPRA Honorary Consultant

Disputes around the liability for costs relating to works to repair are common. Often these are whether or not the leaseholder considers themselves liable, say, the communal lift in the building or decoration to the internal common parts to which the basement or ground floor tenant has no access. In such cases it is not at all uncommon for the basement or ground floor flat owner to question why they should contribute when they have no reason to use the lift or access the internal common parts.

In all cases, the liability to contribute is dependent on what the lease for the relevant property provides. Some leases exempt the basement or ground floor leaseholder from making such a contribution in circumstances like that in our example, and other leases do not. Accordingly, it is necessary in such cases to check the lease before acting. This very issue came up in the recent case of Reekie v Oakwood Court Residents Association Ltd [2023] where the Upper Tribunal (Lands Chamber) ('UT') had to decide whether the Appellant, Mr Reekie, was obliged to pay a contribution towards the refurbishment of a lift in the building where he owned three flats but did not use, nor had any need to use the lift.

At first instance the First Tier Tribunal found that Mr Reekie was liable to pay the contribution demanded by Oakwood Court Residents Association Ltd (OCRA) (the management company under the leases). Mr Reekie disagreed and appealed to the UT.

The facts

Oakwood Court is a house converted into eight self-contained flats, two on the ground floor, three on the first floor and three on the second floor. Mr Reekie owns Flats 1 and 2 on the ground floor and Flat 5 on the first floor.

Flats 1 and 2 can be accessed via the front entrance to the building. The flats on the first and second floors can be reached via a side entrance which leads to a communal hallway containing a lift and staircase to the upper floors. When the building was originally converted into flats, the only way of accessing the upper floors was via this side entrance to the building which led to the communal staircase and lift. However, at some point, Flats 1, 2 and 5 were converted into a single dwelling and an internal staircase was built which allowed access from Flats 1 and 2 to Flat 5 on the next floor without the owner having to use the communal staircase or lift via the side entrance. Mr Reekie purchased Flats 1, 2 and 5 as a single dwelling and has never used the lift, there being no need for him to do so.

In 2019, OCRA demanded £3,870.00 (one sixth of the estimated cost of the works) for the cost of refurbishing the lift. OCRA sought this sum from Mr Reekie in respect of Flat 5 only (not Flats 1 and 2) as the lift serviced Flats 3 to 8 and so just six of the eight flats in the building.

Mr Reekie refused to pay his contribution and OCRA issued proceedings for a determination as to whether this service

charge was payable by him. The Tribunal found that Mr Reekie was liable to pay the proportion of costs towards the work. Mr Reekie appealed.

The lease for Flat 5, required the management company to keep the lift in repair and the leaseholder was obliged to pay a specific percentage of the Total Service Cost (TSC) (the cost of performing the management company's obligations in any one year) in equal half yearly payments (the service charge). There was also a provision at Clause 3(1) of the lease which entitled the management company to give notice at any time requiring payment within 14 days of a contribution towards 'any unusual or unexpected expenditure' required in order for it to perform its covenants. The demand for a contribution towards the lift refurbishment was brought under the ad-hoc demand provision at Clause 3(1).

Clause 1 to Part II of the Fifth Schedule, a slightly unusual provision, was the main point of contention between the parties and says as follows.

"In respect of any parts of the main structure of the building (for example the lift flat roofs or balconies) and the driveway leading to the garages at the rear which are the responsibility of the Company under Part One of this Schedule but of which only a tenant or certain tenants have the use the Company may charge such tenant or those tenants either the whole or such part as the Company thinks fit of the cost of maintenance of those parts to reflect such use".

The First Tier Tribunal had interpreted 'have the use…' as 'able to use' and, therefore, Mr Reekie was liable to pay a contribution towards the lift repair as the option was available to him to use the lift to access Flat 5 if he chose to do so.

Mr Reekie's position on appeal

Mr Reekie argued that the wording in Clause 1 to Part II of the Fifth Schedule, 'the Company may charge such tenant or those tenants… the cost of maintenance of those parts to reflect such use', meant that he was not obliged to pay the contribution towards the cost of the works as he did not use the lift. As the contribution reflected the use of the part that required repairing then Mr Reekie did not see why he should pay as he did not use the lift.

Upper Tribunal's decision

The UT agreed with the FTT's interpretation of the lease finding that the lease to Flat 5 provided an express right to the leaseholder to use the lift. There was also an obligation on the management company to keep the structure and any parts of the building which were for communal use in good and substantial repair.

The UT stated that there is a normal expectation that each leaseholder will contribute to the cost of keeping the whole building in repair (with the exception of the interior of individual flats). This expectation is reflected in the definition of service charge as a percentage of the TSC.

Clause 1 to Part II of the Fifth Schedule provides that the management company can charge a different proportion to the fixed percentage for certain works.

The UT agreed with the FTT that 'have the use of' means the leaseholders have the right to be able to use. Therefore, there is a lift at their disposal to use and they are entitled to use it. Whether they actually use it is irrelevant.

The UT decided that the wording 'to reflect such use' did not mean that the costs associated with the lift, or any of the other communal facilities, should be allocated depending on how often the individual used these facilities i.e. the proportion of charge for repairing/maintaining the lift was not based on actual usage of the lift. They stated that if the management company were to apportion the contributions based on individual use then, firstly, Mr Reekie would never contribute (having never used the lift), which would create a continual shortfall and secondly, the building would either need surveillance and logging of the comings and goings and thus the amount of use by each leaseholder (clearly impractical) or there would need to be a high degree of trust amongst the leaseholders.

The appeal was, therefore, dismissed and the UT determined that the amount of contribution to be paid by Mr Reekie (for the lift refurbishment) was at the discretion of OCRA (i.e. they could decide whether the contribution would be more or less than the 7.338% service charge proportion). OCRA decided that Mr Reekie should pay (in respect of Flat 5) the same contribution as all the other leaseholders.

Conclusion

Whilst the fact of this case and the specific lease terms are as they are, the arguments raised are no different to the general arguments seen on a regular basis with such expenses. The key issue here is to have regard to, and understand, the specific provision of the leases in the block that is to be subject to the repairs. Most of these sort of disputes can be knocked on the head at an early stage. If in doubt, as the agent/management company might have been in this case given the specific the provisions in the subject lease, then seek advice before the works start or demands are sent so that you/your client is fully aware of any issue that might arise.

ALEP calls on government to amend Building Safety Act

Source: The Association of Leasehold Enfranchisement Professionals (ALEP)

The Association of Leasehold Enfranchisement Professionals (ALEP) has written to the government to call for an urgent amendment to the Building Safety Act 2022 ('BSA'), which it says is currently causing doubt and uncertainty for leaseholders and the professionals trying to advise them.

ALEP's letter to Rachel Maclean, Minister of State (Housing and Planning) highlights a key concern over the definition of a 'qualifying lease' under Section 119 of the Building Safety Act, which states that the lease needs to have been granted before 14 February 2022 in order to qualify.

Mark Chick, Director at ALEP, said: "As worded, the definition raises the question of whether a new lease granted on or after 14 February 2022 will be a 'qualifying lease', in circumstances where the existing lease is a 'qualifying lease'.

"This issue is causing doubt and uncertainty for leaseholders, which advisors are now obliged to address in each individual case. The issue was compounded by unclear guidance on the matter published by the Department for Levelling-Up, Housing and Communities.

"ALEP contacted the Minister to clarify the definition with the aim of getting clarity for our members and their clients and, subsequently the guidance note has been further amended. government clearly acknowledges that there is a problem here as the renewed guidance states:

> '9. If you are a qualifying leaseholder and you extend or vary your lease, you may surrender your existing lease and be granted a new lease. As the new lease will not have been granted before 14 February 2022, the statutory leaseholder protections in the Building Safety Act 2022 will not apply. We are looking to legislate to resolve this issue as soon as Parliamentary time allows. In the meantime, before seeking a new extended or varied lease, leaseholders should seek legal advice and seek to come to agreements with landlords to apply the same protections as contractual terms.'

"Though this revision to the guidance note is helpful, it simply acknowledges that there is now a significant lacuna for anyone with a qualifying lease with BSA protection who wants to extend this. Whilst most leases in affected properties will be 'long' leaseholders they may also face issues with ground rents/RPI reviews that they would normally wish to address by a statutory renewal of the lease. The current situation means that this cannot be done without losing the qualifying leaseholder protection."

"As the updated guidance note acknowledges, the government now needs to address the deficiencies in the current wording of the Building Safety Act legislation to clarify the definition of a 'qualifying lease'."

He continues: "Whilst the policy objective and overarching goal for leasehold reform has been to make the process 'simpler, quicker and cheaper for leaseholders,' the definition of 'qualifying lease' contained in Section 119 of the BSA fails on all three counts.

"It has not made the process simpler because the issue of whether the new lease is protected under the Act has been made far more complex. It has not made the process quicker, because the uncertainty caused gives rise to a whole area of specialist enquiry to be undertaken before a claim can be made.

"And it has not made the process cheaper, both because it raises the question of whether the removal of protected status gives rise to any valuation issues, and because the extra work involved necessarily incurs additional professional fees.

"I cannot believe that it was the government's intention to create doubt and uncertainty. However, if the goal is to ensure that a new lease granted under the 1993 Act can be a 'qualifying lease', then the absence of any express provision to that effect in the Building Safety Act is surprising and confusing.

"The government urgently needs to resolve this problem, and as they now acknowledge a simple amendment to the legislation is required to make it clear that statutory and other renewals of leases will not lose qualifying leaseholder protection. I hope the government will move swiftly to rectify this problem, which will provide far greater certainty to leaseholders and the professionals advising them."

Section 156 of the Building Safety Act (amendments to the FSO) due to come into force on 1 October 2023

Source: Director Fire, Events and Central Management Directorate Public Safety Group Home Office

Commencement regulations for the majority of the new fire safety legal provisions within Section 156 of the Building Safety Act 2022 (BSA) have now been laid, with the new provisions due to come into force on 1 October 2023. We have also published 3 new fire safety guides on small non-domestic premises, small blocks of flats and for small sleeping accommodation.

More information is available in the news section of the FPRA website.

Retirement Sector

Summary provided by Cecilia Brodigan, Managing Director, Leasehold Consultancy Services Ltd

Following attendance at the ARHM meeting on 17 May 2023, a summary of the key points and actions discussed is set out below.

Retirement Sector

ARCO announced the call for a new tenure type for Integrated Retirement Communities (IRC) – Leasehold Plus which would mean:

- Enhanced consumer protection – every sale of a home in IRC will be covered by consumer law
- Regulation of disclosure and transparency – strengthening protection afforded by consumer law
- Tailored leases – fixed 125 to 999 year leases to be replaced with new leases tailored to new residents
- Improved dispute resolution mechanisms if owners aren't happy with operators.

ARCO believes the government should implement Leasehold Plus immediately:

- Greater certainty for residents around ongoing costs
- Maintains principles familiar to customers and the sector
- Simple to introduce with £0 cost to government
- Increased regulation and legal certainty will encourage growth of sector, helping alleviate the current shortage of IRC schemes.

Making retirement living affordable: the role of shared ownership housing for older people

https://www.housinglin.org.uk/Topics/type/Making-retirement-living-affordable-the-role-of-shared-ownership-housing-for-older-people/

Government task force for older people

The government says the Task Force will ensure the housing market works for older people, now and in the future, and will give them greater choice in where they choose to live.

The Taskforce will run for up to 12 months, producing an independent report to DLUHC and DHSC. It will be made up of three subgroups focusing on older people's priorities, the housing and financial options available, and closely working with local planning authorities to deliver a wide range of opportunities for older generations.

The Task Force comprises:

Chair: Professor Julienne Meyer CBE Professor Emerita of Nursing: Care for Older People; City, University of London

Jeremy Porteus FRSA, Chief Executive of the Housing Learning and Improvement Network

John Galvin, Chief Executive of the Elderly Accommodation Counsel

Caroline Abrahams CBE, Charity Director of Age UK

Stewart Baseley, Executive Chair of the Home Builders Federation

Geeta Nanda OBE, Chief Executive of Metropolitan Thames Valley Housing

Jon Rouse CBE, City Director of Stoke-on-Trent City Council

Councillor James Jamieson OBE, Chair of the Local government Association and a Councillor for Central Bedfordshire

Sarah McClinton, President of the Association of Directors of Adult Social Services and Director of Health & Adult Services at Royal Borough of Greenwich

Kathryn Smith, Chief Executive of the Social Care Institute for Excellence

Sunena Stoneham, Chief Operating Officer of LifeCare Residences Limited

Rt Hon Damian Green MP, Member of Parliament for Ashford and Chair of the All-Party Parliamentary Group on Adult Social Care

Professor Les Mayhew, Part-time Professor of Statistics at Bayes Business School

Ben Rosewall, Head of Investment, Later Living, Legal & General Capital.

Professor Judith Phillips OBE, Deputy Principal (Research) and Professor of Gerontology, University of Stirling

Andrew Surgenor, Senior Director (Operational Real Estate – Healthcare) at CBRE

Paavan Popat, Chief Executive of TLC Care & Trulocom

Richard Morton, Managing Director at Richard Morton Architects and Chair of the Retirement Housing Group

Nick Sanderson, Chief Executive Audley Retirement

Speaking after the first meeting this week, Professor Julienne Meyer, Chair of the Task Force said:

"I am excited to be working with such an expert group, and really glad this important work is now getting underway. I'm going to make sure that the voices of older people are heard at the heart of this Task Force. So one of the things I want to focus on immediately is putting people first and Consumer Protection.

"We have an ageing population and urgently need to address the lack of supply and quality of older people's housing. Whilst we want to support older people to live in their own homes for as long as they wish, existing housing stock is unsuitable for many and people are missing out on the health benefits of specialist housing. This needs to change."

...do I need planning permission?

Article courtesy of Kevin Lever, Partner KDL Law and FPRA Honorary Consultant

We all know about Airbnb, Booking.com and the many other providers out there for renting a house or flat for a week or weekend away, and what great inventions they are. However, for those managing estates and blocks of apartments the whole issue of short term lettings use can be something of a bind because not all property owners realise that sometimes the property that they own cannot be used for such a purpose as the lease/transfers might prohibit such use.

Assuming though that there is nothing in the lease or transfer of a property that will preclude the property owner from using the same for short term lettings, then are there other concerns for the property owner to consider?

> Sometimes the property cannot be used for this purpose

The short answer is 'Yes' or, at least, depending on the location of the property, there will be in the future so watch this space.

The issue is planning permission.

Presently, there is a divide between those properties within Greater London and anywhere else in England (note that this article does not apply to property in Wales).

Properties within Greater London: If you own a property in Greater London then, by virtue of the s.44 Deregulation Act 2015 amendment to s.25 The Greater London Council (General Powers) Act 1973, a property can be let out for up to 90 nights in a calendar year without issue. However, if the property is let for more than the statutory maximum of 90 nights, planning permission is required for what is a change of permitted use under planning legislation. So far as we are aware that position is unlikely to be amended by the following proposals.

Properties outside of Greater London: This covers not only London but the rest of England (not Wales).

Currently, for property outside of Greater London, there are no similar restrictions to those applying inside Greater London as above. That is, it appears, about to change. The government released two consultation papers which ran between 12 April 2023 to midday on 7 June 2023 on the issue of properties used for short term lettings and registration of the same.

The first consultation paper is on the introduction of a new planning use class for properties used for short-term lettings. Presently, dwelling houses have a use class of C3. The proposal is that a new class – C5 – is to be created for property let other than on a standard tenancy. The definition for the proposed class is set out in the consultation papers as follows:

"Use of a dwellinghouse that is not a sole or main residence for temporary sleeping accommodation for the purpose of holiday, leisure, recreation, business or other travel."

It seems that the intention is that changing the use of a property from C3 to C5, or back from C5 to C3, will be dealt with under general permitted development rights where that use is generally not likely to have an unacceptable impact on the area. However, it is further proposed that a local authority can remove that permitted development right by making an Article 4 direction requiring a planning application to be made for the change of use or, perhaps, restrict the length of time in any year that the property can be used other than as the owner's home – say 90 days as is the case for properties in Greater London. An Article 4 direction is perhaps likely only to be used where the change is from residential use, C3, to a property used for holiday letting for at least part of the year,C5, and perhaps in areas like Cornwall and other typical holidaying areas where 'second home' ownership has an adverse impact on the locals in such matters as housing and facilities.

Registration Scheme

The second Consultation Paper is about whether and how local authorities should monitor whether a property is being used as a main home, second home or for short term lettings.

The proposal is that there be a register of use of property – not just short-term lets. Local authorities can then monitor the use of property in their area and, based upon the perceived/evidenced impact of that, consider whether or not to make an Article 4 direction to enable the implementation of procedures to restrict use and ensure compliance with the registration scheme.

We have attached links to each Consultation Paper above (click the underlined text above) for those interested in reviewing the feedback provided once available.

Car parking charges and use of parking apps – Levelling Up Committee writes to government Ministers

Concerns that some motorists are being digitally excluded…

Source: Levelling Up, Housing and Communities Committee

Clive Betts, Chair of the Levelling Up, Housing and Communities, has written to Transport and Levelling-Up Ministers on a series of car parking issues, including the government's Private Parking Code of Practice, the National Parking Platform, and concerns that some motorists are being digitally excluded from the phasing out of pay-as-you-go parking meters.

The Committee's correspondence to Rachel Maclean MP, Minister, DLUHC, and Richard Holden, Minister, DfT, calls for the government to respond to concerns raised about the Private Parking Code of Practice and to state when the government will decide on whether to roll out of a national parking platform across the country.

Clive Betts, Chair of the Levelling Up, Housing and Communities (LUHC) Committee said: "Finding suitable, affordable, and accessible places to park is an important part of our transport infrastructure and of considerable value to people as they visit villages, towns and cities. Recently, there have been accounts of motorists being, in effect, digitally excluded as local authorities phase out pay-as-you-go parking meters due to 3G networks being switched off by mobile operators.

"People shouldn't be left to wrestle with countless apps to pay a parking charge or risk a fine when they aren't able to navigate the app successfully. These developments pose particular difficulties for elderly or vulnerable motorists who may not have a smartphone, or who may struggle to use apps if they do.

"In light of these developments, I hope the government will be able to give an update on the National Parking Platform and when they are likely to decide on whether to roll out a national parking platform across the country. The government should set out how motorists who do not have smartphones, or can't get a mobile signal, will be able to pay for their parking in a convenient way".

In November 2021, the Levelling-Up Committee took oral evidence on the government's Private Parking Code of Practice Enforcement Framework. The government withdrew that code of practice in June 2022 pending review. A recent written question indicates the review is still ongoing.

In December 2021, the Levelling-Up Committee followed up on its evidence session with a letter to the then Levelling-Up Minister Neil O'Brien to raise a series of issues relating to the behaviour and practice of parking operators.

Further information

Committee membership: Clive Betts (MP for Sheffield South East, Labour) is Chair of the Levelling Up, Housing and Communities Committee.

Use of security cameras and **video doorbell** breached data protection law

Written by Cassandra Zanelli, CEO at Property Management Legal Services and FPRA Honorary Consultant

It's becoming increasingly common for the use of video doorbell and security cameras in residential properties. Often, disputes arise out of the use of such devices.

In *Fairhurst v Woodard* the county court was called upon to consider claims for harassment under the Protection for Harassment Act 1997, and breach of the Data Protection Act 2018.

Background

In this case, the claimant and defendant were neighbours. An access road (the driveway) leading into a car park ran along the claimant's boundary and the rear gardens of both properties backed onto a car park.

The defendant installed the following devices at his property:

- A flood light and sensor on the shed in his rear garden, together with a video and audio surveillance camera with an integrated motion sensitive spotlight as a 'ring' spotlight camera pointing in the direction of the car park.
- Next to the front door, a combined doorbell and video and audio surveillance system known as a 'ring' video doorbell too, pointing in the direction of the street.
- On the gable end wall, a second 'ring' spotlight camera, pointing down the driveway towards the car park.
- A 'nest' camera inside the front windowsill of the property, pointing out of the window towards the street.

The claimant noticed the shed camera and the ring doorbell in the spring of 2018.

The claimant noticed the driveway camera in April 2019. Having noticed the camera, she sent a text message to the defendant asking to discuss the 'intrusive' camera. The defendant claimed it was a dummy camera with a working light.

Various interactions between the claimant and defendant followed, together with an increasing level of hostility between the parties.

Claimant's claims

The claimant brought proceedings against the defendant. In those proceedings the claimant claimed the defendant had consistently failed to be open and honest with her about the cameras, and unnecessary and unjustifiably invaded her privacy by his use of the cameras, and had intimidated her when challenged about their use.

The claimant claimed this amounted to:

- A nuisance caused by loss of privacy or light from the driveway camera
- A breach of the Data Protection Act 2018 and GDPR
- Course of conduct designed to harass the claimant contrary to the Protection from Harassment Act 1997.

In the claim, the claimant sought damages together with injunctive relief against the defendant, including mandating the removal of the ring doorbell and shed camera, and forbidding the installation of further surveillance cameras.

Decision of the county court

The county court upheld the claimant's claims for harassment under the Protection for Harassment Act and breach of the Data Protection Act 2018, but rejected the claim for nuisance.

So far as the claim for harassment was concerned, the court held that the defendant had engaged in a course of conduct, and that the course of conduct amounted to harassment. There were several occasions when the defendant had caused the claimant alarm and distress.

The court rejected the case for nuisance caused by loss of privacy, the court having found that it was bound by the Court of Appeal's decision in *Fearn and ors v The Board of Trustees of the Tate Gallery*. In that case, the Court of Appeal held that mere overlooking from one property to another is not capable of giving rise to a cause of action in private nuisance.

So far as data protection was concerned, the court accepted that the defendant had breached the Data Protection Act 2018 and UK GDPR by unlawfully processing personal data of the claimant containing images and audio files via the cameras.

The court reminded itself that to process personal data lawfully, a controller must be able to justify the processing based on one of the processes set out in article 6(1) of the UK GDPR. The defendant had relied on the legitimate interest condition under article 6(1)(f), claiming that his processing of the data was necessary for the purposes of crime prevention at his property and in the car park.

In respect of the ring doorbell, the court was satisfied that the privacy rights of the claimant did not override the legitimate interest of the defendant to protect his home. This was because any video personal data captured by the ring doorbell of the claimant as she went to and from her house on a public street was deemed to be merely incidental because of the relatively limited range and focus of the device.

However, in respect of the driveway camera, the judge was not satisfied that it's line of vision on the claimant's property (including her side gate, garden and her car parking spaces) was necessary for the purposes of the crime prevention legitimate interests. The court considered that as less privacy intrusive measures could be deployed by the defendant, his crime prevention purposes here were overridden by the claimant's right to privacy.

The audio data collection capabilities of the ring doorbell, shed camera and driveway camera were also deemed not to be reasonable for the crime prevention purposes relied on by the defendant. The audio range of these devices was found to extend far beyond their video range and were capable of collecting audio data from their neighbours and areas outside the boundaries of the defendant's property, with those individuals likely to be unaware that their conversations were being recorded.

Commentary

This has attracted a large amount of media attention. It should be noted that this is only a county court case, and therefore is not binding. The court's analysis of the data privacy risks posed by the audio and video collection capabilities of these kind of surveillance devices provide practical examples of the scenarios. The Information Commissioner has also issued CCTV guidance.

The **road to reducing energy costs** continues...

Article courtesy of Future Group

In a move to promote energy efficiency and reduce environmental impact, the government has announced a ban on the sale of fluorescent lamps by the end of 2023.

Fluorescent lamps, which have been commonly used in homes, offices and public spaces for decades, have come under scrutiny due to their high energy consumption and hazardous waste.

According to the Ministry of Energy, fluorescent lamps are responsible for a significant portion of electricity consumption in the country, contributing to high carbon emissions and air pollution. In addition, the lamps contain toxic mercury, which poses a risk to human health and the environment if not disposed of properly.

To address these concerns, the government has decided to ban the import, manufacture and sale of fluorescent lamps from August 2023. The ban will apply to all types of fluorescent lamps, including tube lights, compact fluorescent lamps (CFLs), and other similar products.

The EU Commission implemented stringent eco-design standards for light sources through its EU Eco-design Regulation 2019/2020 (known as the Single Lighting Regulation SLR). In the spring of 2022, revisions were made to the EU ROHS DIRECTIVE 2011/65/EU, tightening the restrictions on mercury exceptions outlined in Annex III for light sources. Consequently, the following lamps are likely to be prohibited from being sold in the EU market soon:

- Circular T5 fluorescent lamps from February 25, 2023
- Compact fluorescent lamps with plug-in bases (CFLni) from February 25, 2023
- Linear T5 and T8 fluorescent lamps from August 25, 2023
- Halogen pins (G4, GY6.35, G9) from September 1, 2023.

The new most important regulations changed for climate friendly light are:

- All light sources will be evaluated in accordance with the regulations
- Packaging and graphics will be adapted slightly
- All light sources will be included in the EU-wide EPREL database
- There will be a new energy efficiency label with a new scale. A++ to E will become A to G
- Existing products may be sold without reclassification until March 2023.

The government has urged consumers and businesses to switch to more energy-efficient and environmentally friendly alternatives, such as LED lamps, which consume significantly less energy and last longer than fluorescent lamps. LED lamps are also free from toxic substances and are easily recyclable.

Here are some of the cost-saving benefits of LED lighting systems:

- A five-year warranty on any good quality LED products will result in a maintenance-free lighting system for the same period. Future Lighting has the right experience and knowledge, they offer the same level of warranty on any labour content should parts fail, resulting in no more call-out fees to simply change a lamp and no more expenditure on parts (excluding batteries in EML products).
- No more fluorescent lamps stored in the cleaners' cupboards, behind the concierges' desks or held as stock and forgotten about.
- No more additional costs to ensure these compact fluorescent lamps are disposed of in the correct, environmentally friendly way.
- Immediate reduction on consumption and electricity usage- typically, a 70W fluorescent light is replaced with a 30W LED light.
- A new EML system; giving property managers and their service and maintenance contractors an opportunity to get on top of the life-saving systems in place and to freeze the on-going estimates and invoices for EML repairs and improvements.

There is no better time, especially with the current energy costs for electricity. Implementing new lighting systems will help overcome the potential issue of limited spares [and not being able to repair failed light fittings] but also make vast savings on the block electricity costs.

Take advantage of our lighting audit process to see the incredible ROIs created from upgrading existing lighting systems to new efficient solutions.

The lighting audit is important to assess the energy, potential cost saving and carbon reduction benefit of changing from one type of lighting system to another, for example, this could be changing from fluorescent technology to LED.

As your audit surveyor, we will also identify whether there are opportunities to retrofit the existing fittings or whether it is more advantageous to simply replace the fittings altogether.

We will also identify where spaces are over-lit and where fittings can be removed to reduce the overall quantity of the lighting solution.

We can also identify the controls methodology and usage of the spaces to identify if there are advantages to automating and controlling the lighting more effectively.

It is vital for common parts in blocks of flats to implement an efficient means of control methods utilising the latest technology in the form of passive infrared/ microwave sensors. These will reduce the need for endless artificial lighting even further. These sensors detect movement within a space to activate lighting for a short period of time. This ensures that lighting is only in use when needed, rather than being simply 'on' during darker hours and 'off' during the daylight.

Passive infrared/microwave sensors can be recommissioned to suit the longer days too. Setting them to disregard movement during daylight hours can save even more on your energy costs while maintaining a well-lit, comfortable space.

For most people, a lighting audit is primarily aimed at reducing their energy demand and thus costs, however, it's still important that good quality lighting is maintained.

Future Lighting is dedicated to assisting our clients in their lighting upgrades, ensuring efficiency and compliance. Our audits are perfect solutions for those who wish to be in the know, and fully understand their block's lighting solution while not having to deal with the hassle.

With the UK already on a journey towards LED technology, Future Lighting has been at the forefront, installing LED solutions in blocks of flats for many years.

If you need help with your own transition or some advice about how to go about upgrading your block, by way of lighting audit, get in contact with a member of our team today – we've got you covered.

Disclaimer: The FPRA Committee does not endorse any supplier. Before engaging with a new supplier, we suggest you make your own enquiries and take up references. You can also make use of the forums available from the members' area of our website and our LinkedIn page.

Legal Jottings

Compiled by Nicholas Kissen, Senior Legal Adviser at LEASE

UPPER TRIBUNAL (LANDS CHAMBER)

Baron Estate Management Limited v. Wick Hall (Hove) RTM Company Limited [2023] UKUT 62(LC)

The Upper Tribunal considered whether the right to manage was acquired where the Right to Manage company failed to give notice of invitation to participate to all leaseholders and the claim notice failed to include names of every person who was both a leaseholder and a member of the Right to Manage company.

The law

Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act') enables leaseholders who participated to take over the management of the building in which their flats are located. This process is called 'Right to Manage' ('RTM').

To do so they must follow a procedure set out in the 2002 Act.

A Right to Manage company must be formed which must first serve a notice of invitation to participate ('a NIP') on each person who is a qualifying tenant of a flat contained in the building and neither is nor has agreed to become a member of the company.

This is an important part of the process, and the aim is to secure as many participants in the claim as possible.

Qualifying tenants are those who are leaseholders of the flat and where a lease is owned in joint names each of the owners are qualifying tenants.

Section 78(2) of the 2002 Act states that a NIP must (a) state the RTM company is to acquire the right to manage the building, (b) state the names of the members of the RTM company, (c) invite those who receive the notice to become members of the company, and (d) contain such other information (if any) as may be required to be contained in NIPs by statutory regulations.

Section 78(7) provides that a NIP is not rendered invalid by any inaccuracy in any of the particulars required to be included in it.

By section 79 the company may make a claim for right to manage by serving a formal claim notice on each person who is a relevant landlord.

Section 79(2) states the claim notice may not be served unless each person required to be served with a NIP has been given such a notice at least 14 days before.

Section 80(3) provides that a claim notice must state the full name of each person who is both:

- The leaseholder of a flat contained in the building and
- A member of the RTM company.

By section 81(1) a claim is not invalidated by any inaccuracy in any of the required particulars.

Disputes about the validity of a claim for the statutory right to manage a building in England can be decided by the First-tier Tribunal (Property Chamber) ('the FTT).

The facts

Wick Hall is a block of 168 flats in Hove.

The RTM company was incorporated in September 2021 for the purpose of acquiring the right to manage the block.

NIPs were served on 9th September by post to all those leaseholders of whom the RTM company's advisers were aware and who were not already members of the company.

Flat 121 was in joint ownership but the NIP served at this flat was addressed to only one of the owners.

In addition, no NIPs were served at flats 30 and 154 on 9th September as a search of the land registry by the company's advisers concluded that no leases had been granted in respect of those flats.

Unfortunately, a week after that search a new lease for flat 30 was registered on 9th September, the same day the NIP was served by the advisers on those leaseholders known to it. Those advisers did not become of that lease until much later and no NIPs were served on the new leaseholders of flat 30 in the 14 days before the claim notice was served on 28th September.

Regarding service on flat 154 the RTM company's advisers addressed the NIP to previous joint leaseholders who had sold their lease on 17th March 2021 with the buyer registered as the new owner on 23rd April 2021. No NIP was served on the new owner before the claim notice was served.

The Claim Notice served on 28th September 2021 listed 112 members of the RTM company who were leaseholders.

The freeholder maintained that one member of the company who was also a leaseholder was omitted from the Claim Notice being the leasehold owner of Flat 87.

The FTT made no such finding, despite having been provided with copies of the claim notice, the official copy of the land register for flat 87 and the register of members of the company.

What did the FTT decide?

The FTT decided neither defect was sufficiently serious to prevent RTM being acquired.

It found that at the date the Claim Notice was served, NIPs had not been served on one of the two leaseholders of flat 121, or on the leaseholders of flats 30 and 154.

The FTT decided that the Right to Manage claim should not fail because of the failure to serve the required NIPs and reached the same conclusion regarding the suggested defects in the claim notice.

It found that the current leaseholder of flat 87 appeared in the register of company members but was not named on the claim form. Nevertheless, the FTT felt unable to conclude that there had been a breach of section 80(3).

The FTT granted permission to appeal its decision to the Upper Tribunal (Lands Chamber) ('the UT').

What did the UT decide?

The UT had to consider and decide upon three separate issues.

1.Whether the failure to serve NIPs had invalidated the claim.

There was a previous decision of the UT which settled this issue but unfortunately the FTT was not referred to this.

That decision made it clear that Parliament in the form of section 79(2) of the 2002 Act had said expressly that a notice of claim may not be served where the requirement to serve NIPs had not been complied with.

The FTT's conclusion that NIPs were not served on the leaseholders of flats 30 and 154 is enough to settle the issue, without needing to consider the rather different case of flat 121, where notice was served on only one of two joint leaseholders.

2. Did the evidence establish that the leaseholder of flat 87 was both a leaseholder and a member of the RTM company?

The official copy of the register of ownership for flat 87 showed clearly that the leaseholder identified in the register of members had owned the flat for a year before the claim notice was given.

The leaseholder's name should have been included in the claim notice and the UT were satisfied that this was the only conclusion properly open to the FTT on the evidence.

3.Did the failure to include the name of the leaseholder of flat 87 in the claim notice invalidate the claim?

This issue has not yet been the subject of consideration in the UT.

Given the UT's conclusion on the first issue the outcome of the appeal does not turn on the answer to this final issue.

The issue is an important one, and in those circumstances the UT prefers not to reach a concluded view on it in this case and will leave it for a decision in a case where the answer matters.

Summary

The UT allowed the appeal on issues 1 and 2 and made no decision on issue 3 with the result that the RTM company was not entitled to make the claim and did not acquire the right to manage.

News on the Block – 2023 Unsung Heroes

Congratulations to Bob Smytherman, FPRA Chair, and his fellow colleagues on the Goring Chase Residents Association who have been voted News on the Block 2023 Unsung Heroes.

WHAT DO YOU THINK?

We publish our newsletter each quarter and supported by our website, it's our opportunity to share news and information that will benefit you and in turn the community you represent.

But what you think matters.

Click here to let us know your views about what we're doing and how we're doing it.

And in the meantime, see what some of our members are saying:

5* - March 2023

Very comprehensive reply email received

The reply was much quicker than I thought it would be.

5* - March 2023

Excellent, timely service

The FPRA always provide us with high quality, timely information in response to the questions we raise. We are avid readers of their newsletters and regard our membership as excellent value for money.

5* - March 2023

Urgent Building Works

Impartial detailed advice from an expert. I doubt it would have been given quicker if we'd paid for it.

5* - April 2023

I can now be a RA Director with confidence

Our Residents Association were spending significant sums of money getting legal advice from local solicitors. Often the advice was inaccurate and not clear. It became obvious that many solicitors do not have the necessary knowledge or experience in this area of regulation or law.

I became aware of the FPRA and their experience and legal advice has been invaluable. Apart from advice on legal matters they offer advice and guidance based on years of experience.

Directors of Residents Associations have considerable responsibilities and are ultimately accountable. So it is vital the directors do everything properly. The individual questions one can ask are answered by expert lawyers. The Zoom lectures keep us up to date about new laws and regulations e.g. the new Fire Regulations post Grenfell. FPRA gives me the skills and confidence to continue as a Director.

I highly recommend the FPRA and the subscription is a bargain!

5* - April 2023

Joining FPRA 3 years ago was the best thing we could have done.

Their expert, considered advice has proved invaluable to leaseholders as we deal with an incompetent and immensely frustrating freeholder.

It gives great reassurance to know we are taking a reasoned approach with the details considered rather than rushing in unprepared and risking getting things wrong. Thank you FPRA for your patience and support.

5* - APRIL 2023

Excellent Service

I was recently elected as our FRPA representative. This month I requested advice for the first time. The reply came back quickly and has been extremely helpful. I and the other residents would highly recommend the FRPA Organisation.

5* - June 2023

An invaluable service!

We are a freehold management company that had lost its way and the FPRA have helped us enormously. They gave us valuable and practical advice in a very difficult situation on our estate. They have helped fill a huge void in understanding that we'd hoped to get from our managing agent but who we feel very let down by. We were worried we had asked to much of them but they came through. We have been members a matter of months but they have become a very reassuring presence. A breath of fresh air! If there were bonus stars for an organisation – I would give it to this one. Their webinars and newsletters are on point and excellent. We wish we'd found them sooner. Well worth the fee!

5* - May 2023

Prompt Expert Response

Prompt expert response, comprehensive advice. Worth the membership!

5* - May 2023

Simply the speed of response…

to my complex legal matters with very valuable advice gratefully received. Thank you.

5* - May 2023

Invaluable support and legal advice

The team of advisers at the FPRA are awesome. They offer valuable tailored advice based on our lease and have always been quick to respond to our enquiries. We have found their comprehensive professional insights reassuring and we would like to thank the whole team, including the lovely administrators, for their co-ordinated support.

5* - June 2023

EV parking and charging

The FPRA gave me very pertinent advice regarding Parking and charging an Electric Vehicle in an underground car park. I was given several links to articles dealing with EV and have been able to make a decision regarding the block and the safety of the inhabitants.

The **Energy Pricing Revolution** hits Westminster

Source: Fuel Poverty Action

You can get involved too!

Last week the media were reporting a good news story about falling energy bills.

We explained why prices remaining high and reductions in support are not good news and radical reform is needed in our energy system!

On 4 July, we're taking our #EnergyForAll Manifesto to Parliament.

We need your help to ensure that MPs of all parties hear about our launch event and the demand for Energy For All.

Ask your MP to attend our Manifesto launch and sign in support of our demand for a cheaper, greener and fairer energy pricing system! Click here.

Based in Scotland, Wales or Northern Ireland?

You can also write to your devolved parliamentary representatives to ask them to add their name in support of the Manifesto! Click here.

Our Manifesto has been signed by over 150 organisations, community groups, businesses and elected officials so far.

Let's keep that growing to build as much pressure as possible on MPs and parties to support. Take the Manifesto to your local community group, councillor's surgery or union branch using our model motion and sign here.

You can read the full content of our Manifesto and view our full list of supporters at energyforall.org.uk.

Finally, share these posts to get the word out!

https://twitter.com/FuelPovAction/status/1664183582514901000

https://www.instagram.com/p/Cs8MkQEA-Sh/

https://www.facebook.com/fuelpovertyaction

DLUHC PRS Newsletter

Updates from the May 2023 edition of the DLUHC Newsletter are set out below.

Renters Reform Bill

The long-anticipated Renters (Reform) Bill has recently been introduced! The Bill follows on from the commitments set out in the White Paper 'A Fairer Private Rented Sector' which includes delivering on the government's manifesto commitment to abolish Section 21 'no fault evictions', reform possession grounds, and introduce a new Ombudsman and Private Rented Property Portal.

New Minister for Housing

In February, Rachel Maclean was welcomed to the Department as Minister for Housing and Planning. Through the Minister's own personal experience, she has seen first-hand how the Private Rented Sector has changed over recent years and is absolutely committed to delivering the government's agenda.

"It is a pleasure to be the Minister for the Private Rented Sector here at DLUHC. 2023 is going to be a busy year for the Department as we take the Renters (Reform) Bill through Parliament and deliver our promise to improve the experience of renters and good landlords."

Rachel has met with a number of organisations and key stakeholders representing tenants and landlords in the sector. The Minister recently attended the Renters Reform Coalition: Renters Day of Action, where she took questions in a lively session. She has met landlord representatives, including Ben Beadle of the NRLA, and a few weeks ago heard the powerful testimony of a range of renters brought together by Shelter to explain how section 21 and non-decent homes have affected their lives and those of their children.

Update on the Renters (Reform) Bill

The Renters (Reform) Bill will deliver the government's commitment to a fairer private rented sector. It will legislate for reforms set out in the private rented sector white paper published in June 2022.

The Renters (Reform) Bill will improve the system for both the 11 million private renters and 2.3 million landlords in England. Reforms are carefully balanced and have been developed in consultation with landlord and tenant groups over the past five years. The Renters (Reform) Bill will:

- Abolish section 21 'no fault' evictions and move to a simpler tenancy structure where all assured tenancies are periodic – providing more security for tenants and empowering them to challenge poor practice and unfair rent increases without fear of eviction.
- Introduce more comprehensive possession grounds so landlords can still recover their property (including where they wish to sell their property or move in close family) and to make it easier to repossess properties where tenants are at fault, in cases of anti-social behaviour and repeat rent arrears.
- Provide stronger protections against backdoor eviction by ensuring tenants are able to appeal excessively above-market rents which are purely designed to force them out. Landlords will still be able to increase rents to market price for their properties.
- Introduce a new Private Rented Sector Ombudsman that private landlords must join that is intended to provide fair, impartial, and binding resolution to many issues and to be quicker, cheaper, and less adversarial than the court system.
- Create a Privately Rented Property Portal to help landlords understand their legal obligations and demonstrate compliance, alongside providing better information to tenants to make informed decisions when entering into a tenancy agreement. It will also support local councils – helping them target enforcement activity where it is needed most; and
- Give tenants the right to request a pet in the property, which the landlord must consider and cannot unreasonably refuse. To support this, landlords will be able to require pet insurance to cover any damage to their property.

Further improvements to the PRS

Alongside the Rented Homes Bill, we are working in partnership with the Ministry of Justice and HM Courts and Tribunals Service, to ensure that, in the small proportion of tenancies where court action is required, court users can use a modern, digital service. This remains a priority for the government.

The private rented sector white paper also committed to further reforms to support both landlords and tenants. We remain fully committed to implementing these reforms and will bring forward legislation at the earliest opportunity to:

- Apply the Decent Homes Standard to the private rented sector to give renters safer, better value homes and remove the blight of poor-quality homes in local communities. This will help deliver the government's Levelling Up mission to halve the number of non-decent rented homes by 2030. We launched a consultation in September 2022 to ensure the Decent Homes Standard is applied and enforced appropriately and fairly in the private rented sector. We will respond to this and set out the next steps in due course.

- Make it illegal for landlords and agents to have blanket bans on renting to tenants in receipt of benefits or with children – ensuring no family is unjustly discriminated against when looking for a place to live; and
- Strengthen local councils' enforcement powers and introducing a new requirement for councils to report on enforcement activity – to help target criminal landlords.

We've put together a helpful guide which explains the reforms in more detail which can be found here https://www.gov.uk/guidance/guide-to-the-renters-reform-bill

Select Committee Response

The Levelling Up, Housing and Communities Select Committee launched its inquiry into the Private Rented Sector Reform in July 2022. The aim of the inquiry was to scrutinise the government's plans to, among other things: introduce a decent homes standard for the private rented sector; reform the system of tenancies and abolish no-fault evictions; reform the grounds on which landlords can take possession of their properties; and better protect tenants from unfair rent increases.

The committee sought contributions from key stakeholders including the NRLA, the British Property Federation, Shelter and Generation Rent and members of the public to inform its thinking. The Committee published its report and recommendations in February 2023.

Stakeholder Engagement

At the end of April, our Secretary of State Michael Gove hosted a roundtable with organisations and representative bodies from across the sector to hear their views on the government's PRS reforms.

The feedback from attendees was extremely positive with many saying that all stakeholders were given a fair amount of time to express their views and the roundtable provided a good indicator of the direction of travel for the Bill. It was a great opportunity for Secretary of State to hear directly from stakeholders about the common ground shared as well as their concerns.

Following the introduction of the bill, the Secretary of State was out and about in Teddington, South West London visiting a tenant to hear about their experience renting privately and their hopes on the benefits the Bill will bring to tenants and good landlords in the sector.

ASK THE FPRA

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

An important advantage to being an FPRA member is the access you have to our team of experts. Remember that we are here to provide insight, support and guidance on a wide variety of subjects and issues that matter most to you when managing your properties. So don't hesitate to send in your questions which will be shared with the FPRA panel and in turn you will receive a personalised response. We look forward to hearing from you. In the meantime, take a look through the Q&A section below to see how the FPRA is helping its members.

Block lighting

Q We have had an opinion raised about the requirements for lighting in the common parts of the block. We have a timer system switching all the common parts and the hall on at sunset and off again at approximately 11.30pm.

However, we have been told that the lights should be left on all night and go off at sunrise. This would more than double the electricity usage and cost a lot more, especially as these prices have been escalating in recent months.

We do have the emergency lighting required for the fire regulations which has a dim glow all the time, would this be sufficient to keep a degree of lighting at night? The underground garage area has a different system and the lights come on when movement is detected.

A FPRA Honorary Consultant Shaun O'Sullivan replies:
So far as the lease is concerned, in accordance with Clause 6 of the Sixth Schedule, you are required to 'keep adequately lighted all such parts of the Reserved Property as are now lighted'. Although 'adequately lighted' is a somewhat subjective term, I cannot imagine that those running the block, even in 1968, would have felt it 'adequate' to plunge the block into complete darkness at 11.30pm with no other means of turning on the lights during the night.

The more usual arrangement, at that time, might have been the provision of time-delay switches (such as Columbus Pneumatic Timer Switches which were widely used in blocks of this era and which are adjustable between five seconds and five minutes) allowing visitors/ residents sufficient mains light to access flats. However, on the premise that no such switches were installed I imagine the block would have been lit permanently during the night. I can only guess, but I suspect the arrangement whereby the main lights are turned off overnight was introduced when the emergency lighting was installed.

As to whether the emergency lighting is adequate, this is really a judgment call for your board, or on the advice of any external professional body carrying out the Health & Safety Risk Assessment on the board's behalf.

The judgement must be whether the assessor believes, taking into account the configuration of your block, brightness of the lights, location and length of passageways and stairwells etc, that 'adequate' safety can be maintained by way of the emergency lighting only. This is not something which can be determined remotely although, personally and notwithstanding the fact that I don't have visibility of the block, I would have some doubts. However, if it is determined that safety can be maintained in this way, then that should be recorded in your H & S Risk Assessment. If you are not familiar with it, ARMA have a very good library of publications one of which, on Health & Safety, can be found on the FPRA website under the 'Publications' drop-down menu, under 'Non-FRPA Publications' and thence by following the ARMA Leasehold Library link. Alternatively it can be accessed from this link https://arma.org.uk/wp-content/uploads/2022/04/2014-04_ARMA_Advice_Note_-_Health_Safety_V01.pdf

If the judgement is that the emergency lighting is not adequate, then other options might need to be considered. Leaving the lights on all night is one; but, as you say, this would be expensive as well as being wasteful, albeit running costs might be able to be reduced by the fitting of LEDs if that has not already been done. Another option might be the installation of a PIR system similar to that installed in your garage area.

As an aside, but on the subject of Health & Safety generally and Fire Safety in particular, hopefully you have implemented the arrangements for the new fire safety regulations which became effective on 23 January 2023 and which can be accessed at https://www.gov.uk/government/publications/check-your-fire-safety-responsibilities-under-the-fire-safety-england-regulations-2022/check-your-fire-safety-responsibilities-under-the-fire-safety-england-regulations-2022

Ground rent charges

Q The leaseholders of our block are in the process of buying the freehold with completion imminent. The current ground rent is £40 pa.

Will the new landlord, our nominee purchaser, be required to charge a ground rent? My thinking is to maintain the current charge. Are there any pitfalls to this or legal requirements that we should be aware?

A FPRA Honorary Consultant Anna Favre replies:
The freeholder (new owner) is not obliged to collect the ground rent but if it does not do so and a period of more than six years elapses, then it will not, as a matter of contract, be recoverable. The question does not clarify whether all flat owners are participating in the claim but for those that are, it would be usual and indeed best practice for the nominee purchaser to grant new 999 years leases (immediately post completion) of those flats at a peppercorn rent thereby obviating the need for any rent to be demanded or recovered.

Casual labour

Q We currently use the services of a resident, self-employed, odd job man to keep an eye on our small estate. His duties are to report any problems, perform a monthly inspection and keep the bin shed tidy. For this he is paid a small amount.

He is no longer able to perform these tasks and we were wanting to ask whether any other resident (probably retired and most likely not self-employed) would like to take over. How are we able to pay them, around £30 per month, in a way that gets neither them, or us into any trouble?

A Sally Drake, FPRA Honorary Consultant and Giles Stratton (Bishop & Sewell) reply:

It would be advisable to take out Employers' Liability Insurance if the member wants to employ someone directly to work at site who isn't covered by other external company insurances.

I would also advise they should only be asked to do 'unskilled' tasks (things that do not require a skilled tradesperson) to avoid public liability issues. This is because there is little or no recourse for if the job is not done well or if other damage or incidents occur in these scenarios.

As long as insurance issues are covered there is nothing stopping the RMC using a handyman of their choice, a bit like the old days where you had resident caretakers at site for that sort of thing.

The handyman would just need to provide a rudimentary invoice for the paper trail and year end audit (Year End Service Charge Account). Nothing fancy, just something that noted an invoice number, the date, £ expenditure , the service provided and who provided it along with the details for making payment to them would suffice.

The other option would be to have petty cash held with the company secretary who can use the funds for sundry items and paying ad hoc works, but you would still need insurance cover in place in case of any accidents or injury; otherwise the handyman isn't covered in such an event. You would also still require a paper trail of expenditure so a rudimentary invoice would still need to be submitted for the cost.

The former option is the more transparent and modern approach and the one I would recommend should they proceed.

A second 'legal' response

We set out our answers below, which, given the broad nature of the question raised, we have broken down into two sides of the issue – what does the lease say about the hiring of a resident, and what are the employment law considerations?

What does the lease say?

As the member is no doubt aware, clause 6A(1) requires the company to produce accounts for the money spent on the matters in clause 6B. Clause 6B(2) includes the 'fees charges expenses salaries wages, paid to any agent, contractor or employee whom the Company may employ' in order to meet its obligations under the lease. One such obligation is, under clause 5(4), to 'keep in a reasonable state of repair condition and cleanliness.... the refuse bin store or stores'.

These clauses therefore allow for a resident to be paid for the service of keeping the bin store tidy, so long as this expense is accounted for. We would therefore concur with the advice given above that the handyman submit invoices to allow for clear billing and accounting, which would meet these obligations.

What are the employment law considerations?

The issue that the member will face if this is not approached carefully is that if the resident could be considered an 'employee' and if so, then the member will be obligated under statute to deal with certain issues, such as National Insurance and tax for the handyman, as well as opening itself up to areas of liability such as the minimum wage and vicarious liability for the individual's actions. It is our view therefore that it would be prudent to ensure that the individual chosen to take over the responsibility described in the enquiry be a self-employed contractor and genuinely be so as a matter of fact. This would be very much dependent on the exact facts and only very brief details have been given. Therefore, we cannot provide any detailed commentary or advice as to how this might be done. If the enquirer would like to take this further, then we suggest that this firm is instructed on a private paying basis, and we will refer this to a member to our employment team who would be able to give more detailed advice on this matter.

Broadband speed

Q Our broadband speed has been between 2-5Mbps, not really sufficient for modern life. We have been asking our Landlord for the last five years to install fibre broadband but he has not agreed way leaves with any providers so far. It seems he wants an annual way leave fee which none of the providers are prepared to sign up to. Recently, Openreach have started to lay fibre in all of the other houses and apartments in our area except in our block. Are we able to use the Telecommunications Infrastructure (Leasehold Property) Act 2021 to force the issue?

A FPRA Honorary Consultant Benjamin Hume replies:

Telecommunications Infrastructure (Leasehold Property) Act 2021 does give telecommunications providers the right to apply for an order to gain access to the property to provide the service, however it can only be commenced by the provider. The end user or management company is not entitled to use it, however I would suggest you advise the freeholder that they will eventually be overruled and to allow access now, easily. The freeholder cannot make a charge for the install if the provider does not want to pay for it, but some providers will offer an incentive to install systems, so it might also pay to research fibre installation companies that cover your area and find out what they can do or offer and try and put them in touch with your freeholder.

Ultimately though the communal areas remain the freeholders 'land' so you cannot force anything, but the providers can, if they feel it is lucrative enough for them.

Legal

Q Are you able to help us with a legal matter related to a property which is a Grade II Listed building converted into seven flats?

This is the problem: One of the flats was owned and occupied by a freeholder who died on 23rd August 2021. His son moved in and has repeatedly requested a place on the board of directors as he is the executor of the estate. The directors have not seen the will.

The board has repeatedly stated that he can have a place on the board of directors when he produces a grant of probate. He has failed to provide this. No grant of probate has been applied for. The property of the deceased (Flat) is still shown in Land Registry searches as belonging to the deceased man.

Additional information: The position of the freeholder is that only a lessee can be a director in accordance with the lease. This requires the ownership of the property to be registered with the land registry in the relevant name.

As far as we know, the property is still registered in the deceased's name. We understand there are multiple beneficiaries of the will. The son's sister was named as a joint beneficiary and could have an equal claim to being a director when probate is granted, and the will is settled.

Further to this, the son has claimed that his mother owns or will own the property despite not being named as a beneficiary in the will. We have an email from the son stating this.

What we need:

1. **Legal clarification on whether the board of directors have acted within the law by requiring (the son of the deceased) to produce a grant of probate before granting him a place on the board of directors of the Residents Association.**
2. **To know whether the son has a case for litigation against the board on the basis that they have required him to produce a grant of probate before allowing him a place on the board.**
3. **If the board has acted within the law by requiring a grant of probate, we need a legal response to send to the son?**

A FPRA Honorary Consultant Kevin Lever replies:
The client will need advice (unlikely to be available pro bono) on the provisions of their Articles of Association and who can be a member of the company or director. However, given the apparent conduct of the 'son' referred to, I suspect that the client has done nothing wrong here. My strong recommendation is that the client appoint lawyers, ideally specialists in residential landlord and tenant matters to advise on:

(i) The position of the leaseholder.
- Is the deceased's estate being managed?
- What is the effect of that on the client?
- How the client should pursue any arrears or other breach arising in respect of the lease?

(ii) The Company's position in relation to representatives of the estate.

(iii) The responses to the Son (or anyone else from the deceased's estate) and how the client should protect it's right of forfeiture in relation to on-going matters.

The client really does need to appoint a competent specialist to assist them with costs of that advice being covered by the service charge. Insofar as there are breaches by the deceased leaseholder/representatives, then relevant action (which does not necessarily mean the issue of court proceedings as often these issues can be resolved without the need for such) can be taken to move the matter to resolution.

It is often the case that on the death of a leaseholder who may only have one or close family members taking a benefit from the estate, that those family member(s) do not deal with the formal matters of administration until forced to do so. Accordingly, where the flat inherited is not being sold, but instead occupied by the beneficiary, then what is the rush for them to process the estate? There often isn't one. Such beneficiaries often misunderstand their position insofar as whilst the will might say they are to receive the flat they actually don't in law until the estate transfers the lease to them. Various other misunderstandings arise from the same issues and I suspect that that is the case here.

If the client obtains specific advice on the issues it is facing then it can educate the beneficiaries and hopeful bring any nonsense to an end assisting both parties in the end.

Fire safety

Q We are the leaseholders of a block of 12 flats, managed by three directors who are absentee owners. The composition of the site is a mixture of four owner occupiers with the remaining eight being tenanted.

As you are aware all tenancies in England are required to have a valid EICR at the commencement of their tenancy. The ones that are rented out through a letting agent we believe will have had a EICR undertaken, any works required will have been undertaken and obtained a certificate. Our concern is that there are some flats that are managed by the owner and seem oblivious of the EICR requirements.

As managing agents, should we be asking for a copy of their certificate as the majority of fires are caused by electrics inside a flat and what do we do if they refuse to produce one to the managing team? Also would the directors be held responsible in anyway?

A FPRA Director Jonathan Gough replies:
The member should write to each Landlord and remind them of their legal duty. Supplying the link below is suggested as it provides a simple overview of requirements.

Guide for landlords: electrical safety standards in the private rented sector – GOV.UK (www.gov.uk)

Records should be kept of these communications in case of future contact with an enforcement agency.

Leaseholder's RA – lift/asbestos

Q We are in the middle of major work on the lifts. During this work we understand that the lift shafts had filled with water and had to be pumped and lagged; this is a problem going back years and I think one of the reasons they were switched off. We believe the water is coming from a mains pipe. There has also been work to remove asbestos from the building.

Could you please advise who's responsible – freeholder or leaseholder?

Removal of asbestos.

Removal of water and lagging of lift shafts.

A FPRA Director Jonathan Gough replies:

The lease should be consulted to establish who has the repair and maintenance responsibility. The table right has been taken from the HSE web page on this topic. From experience the duty tends to fall with the Managing Agent/RMC with funds drawn from the service charge.

More details can be found here: Asbestos campaign – duty to manage (hse.gov.uk)

Tenancy arrangements and how responsibilities may be allocated or shared

Responsibility for premises	Who has the duty to manage under regulation 4?
The owner has sole responsibility for the premises or has sole responsibility for the common parts of multi-occupied buildings.	The owner.
Under a tenancy agreement or contract, tenants (including employers or occupiers) are responsible for alterations, repairs and maintenance.	The tenant or tenants in multi-occupancy premises.
Under a tenancy agreement or contract, the owner keeps responsibility for maintenance and repairs, and the owner has control of access by maintenance workers into the building.	The owner.
Under a tenancy agreement or contract, responsibility is shared between several people, eg owners, sub-lessors, occupiers and employers.	Each party - for those parts of the premises for which they have maintenance responsibilities. Note that employers occupying the premises also have a general duty of co-operation to comply with the requirement of any health and safety regulations under regulation 11 of the Management of Health and Safety Regulations 1999.
If an owner/leaseholder uses a managing agent.	The owner. The managing agent would act on behalf of the owner but does not assume the owners duties in law. The ultimate responsibility remains with the owner.
There is no tenancy agreement or contract.	The person in control of the premises.
The premises are unoccupied	The person in control of the premises.

Airbnb – letting

Q One of the owners in our small block of flats contacted me to ask what the position would be if he wanted to rent his flat as an Airbnb. He bought his flat three years ago, letting us know that he would be letting the flat out. He has let the flat out to three different tenants and the present ones are very pleasant, causing no problems.

My understanding is that London Airbnbs are often used as 'party flats'. The renters spend a weekend in a flat, make plenty of noise, trash the property and the landlord has little control over this.

Our lease was written before Airbnbs started so there is no mention of this. I believe we have provided a copy of it to you.

The owner in question probably thinks he can make more money than with a six or 12-month lease. But as he is non-resident, he won't be involved with any of the problems that may arise here. There could be issues with noise, litter and damage to common areas for example.

Do you have any comments or suggestions? We'd be very grateful!

A FPRA Honorary Consultant Matt Lewis replies:

The writer has prepared a brief answer to the considerations raised by your email. It is, however, expected that (as may be seen from the below detail) you may take advice/request assistance from further instructed professionals, as appropriate.

Ultimately, the legal question will require an interpretation of the lease wording, unless there is anything specific attending to holiday/business/short term lets in the lease. The writer cannot see anything specific referring to short term lets.

We will be unable to provide you with a legal interpretation of the lease as this is the work of an instructed lawyer. To safely conclude, the lease would need to be reviewed in detail, alongside the proposals/correspondence/communication had with the leaseholder concerned. Further, practical options would then flow from that analysis, detailed review. In order to safely consider this in detail, you ought to consult an instructed lawyer. You should ensure the lawyer has the required expertise to attend to this task.

In the absence of specific wording within the lease, usually other words or other agreements given in the lease are used to draw a conclusion of the intention of the parties,

in so far as that relates to short term lets. What the writer can see is there is a covenant/agreement/ restriction within paragraph 1 to the Fourth Schedule, which perhaps ought to be considered in a bit of detail. This deals with use.
As you can probably expect, there is some case law on this topic, interpreting similar or the same words. You could research and consider those cases, alongside your circumstances and the lease wording here. Please note, cases very much turn on the individual facts and documentation involved in that particular situation. Those circumstances and documents may not be relevant to your circumstances and documents here. They may be helpful to consider, however, to get a feel for the considerations.
Fundamentally, and to reiterate, we suggest obtaining legal advice from an instructed lawyer. You ought to consider the timing of that, along with the funding and commerciality, depending upon the communication/discussion had with the relevant leaseholder.

Anti-social behaviour

Q We are facing repeated trespassing, loitering and anti-social behaviour (drug use, littering) in our estate which sometimes results in cycle theft and vandalism. Recently they managed to get to our top floor and painted Swastika graffiti.

The trespassers are mainly the teenagers from around the neighbourhood. We even went up to photo them and reported to local schools. Of course we also called the local ABS hotline many times. We also tried to confront them and ask them to leave and in most of the instances we hear verbal abuses. Overall these are turning out to be quite unpleasant experiences.

Are you able to advise us on how to effectively handle this?

A FPRA Chair Bob Smytherman replies:
Thank you for your email which has been passed to me to respond to.
Unfortunately most blocks across the country suffer from ASB and criminal activity from time to time. For the sort of graffiti you describe this will be a high priority for councils and police as this can lead to further, more serious hate crimes. Always report every incident to police and the council, as this evidence is used by them to target resources to an area. What we have done in my block is create deterrents to prevent them coming on your site in the first place.
CCTV is always a good deterrent although you will need to register with the Information Commissioner for recording. We have installed 'dummy' cameras with signage which has been fairly effective at preventing low level ASB activity. Having a good intercom system, ideally with visual as well as sound on the front door and upgrading lighting with sensors can be a good deterrent too.
We have also installed 'anti-climb' paint on walls and fences which again will put off casual trespasses as this makes a real mess. Always include warning signs of these measures to put off people in the first instance.
It's also worth contacting your local crime prevention teams at both police and the council who will be able to offer bespoke crime prevention advice for your estate.

Funds held by managing agent

Q We have recently discovered that the reserve funds held by our managing agent, are held in an ordinary current account.

Should monies held on behalf of residents by managing agents be held in trust in compliance with the Landlords & Tenants Act 1987 section 42. If so, is this seen as a serious breach of their obligations?

A FPRA Honorary Consultant Lisa Warren replies:
The first thing to understand around S42 and holding of client monies is that this applies to anyone and everyone, not just managing agents. So if you self-managed the block as a landlord, you would still be expected to comply with S42 and hold the monies in trust. So it wouldn't be right to say that it is a breach of an agents obligations (and therefore serious or not). It is a legislative breach which is either compliant or not with no levels of deemed acceptance.
However, whilst there is nothing that overcomes a breach of legislation, there are significant problems in the banking world with regard access to client/trust accounts that spread a lot further than the block management industry. Because of that I wonder whether it is worth exploring with the agent the reason for the use of the current account. It may well be that they are not able to obtain an appropriate client account right now and therefore have used the current account to ensure there is still a clear segregation of funds between those they hold as service charge/reserve and those that are their own corporate monies.
If that is the case and they can provide you comfort that they are working with the banks to obtain the correct/ compliant account I would be more inclined to ask them to keep you updated on the progress. Having a separate account, if that is the case, is still recognition that the monies need to be separated whilst they resolve the issue as opposed to a complete disregard for S42.
It is a widespread problem and ARMA, as the trade body for managing agents, are working hard to assist in finding a solution by engaging with the banks & UK Finance.

Fire Safety in small blocks of flats

A guide to making your small block of flats safe from fire with guidance on compliance with fire safety law for those responsible for fire safety in small blocks of flats is available in full on the FPRA website.

Summer Refresh – our new look website

fpra.org.uk

Over the last few months, we've been working behind the scenes to review and update the FPRA website. While the content and information remain the same, you will see a much fresher and more modern look and feel. We'll be launching the new website shortly, there are just a few final checks to complete. When it's ready, you can find it here.

MEET THE FPRA

Five things about…

Roger Trigg

FPRA's Treasurer

Roger has been part of the FPRA since December 2012 and the FPRA's treasurer since February 2018

1. Roger attended Enfield Grammar School and Tottenham Technical College where he Studied HNC Building Construction.
2. He is a qualified member of the Chartered Institute of Building and has worked as a Quantity Surveyor for several Building Companies. He is a member of CQSA Quantity Surveying Association and a long-term member of Room at RTPI (formerly National Housing and Town Planning Association).
3. Elected Borough Councillor for Welwyn Hatfield Council in 1999, Roger is currently the opposition member serving on Planning and Housing Committees and was a past Cabinet member for Housing and Planning.
4. He has been Director of a London based House Builder and Contractor for 25 years and was Mayor of Welwyn Hatfield Borough Council (which included Welwyn Garden City during its 100 year celebration year) for two years between 2019-2021.
5. Roger lives in Hertfordshire, is married and has four grown up children and 10 grandchildren.

FPRA'S Spring Conference

We held our Spring Conference via webinar in April.

It was attended by over 40 FPRA members all of whom had the opportunity to hear from and ask our panel questions on Fire Safety, Block Management and Right to Manage.

The conference was a great success – we think the feedback speaks for itself.

We just wanted to express our sincere thanks for the excellent webinar last night. We could not have hoped for more. We found the information very useful and every question was answered with patience and care.

What you do is deeply appreciated and needed in society. We look forward to a long and happy relationship with you.

If you'd like to participate in any future FPRA events, full details can be found on our website.

Read all about it

In addition to our newsletter, you will find further news and information on the FPRA website.

This year's AGM will again be held in person, in **Central London on Wednesday 22 November 2023**. The full agenda for the evening will be shared nearer to the meeting, but in the meantime, please save the date – we would love to see you there.

Details about all our events, as well as lots more information and useful insights, can be found on our website: https://www.fpra.org.uk/

WE WANT YOU...

If you have the time, and would be willing to share your knowledge and expertise with our members, you could join the FPRA as one of our Honorary Consultants.

If you're interested and would like to be considered, email Bob Smytherman, Honorary Chairman at (Bob@fpra.org.uk) or the FPRA office (info@fpra.org.uk) – we'd love to hear from you.

Have your say...

Would you like to contribute to our newsletter?

For our 'A member writes…' section, your article could be an opinion piece, something offering insight and advice or a 'pros and cons' or 'for and against' point of view – anything would be welcomed as long as it would be of interest and relevance to our members.

We would very much appreciate your contribution so please get in touch at newsletter@fpra.org.uk

Your Committee

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. All questions and answers are passed to our newsletter and website editors and may be published (without name details) to help other members. If you prefer your question and answer not to be used please inform us.

Non-members can subscribe to our newsletter at the reduced price of £10 per annum. Please contact the FPRA office (info@fpra.org.uk) to sign up and receive your copies.

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