The Federation of Private Residents' Associations

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THE ANNUAL GENERAL MEETING

The Annual General Meeting was held on the 20th September 1984 in the New Hall of the Royal Horticultural Society, London, SW1 and the following were elected to the Executive Committee:

Arthur Johnston	Black Lion Lane	Chairman
Salmon James	Queens Club Gardens	Vice-Chairman & Vice-President
Peter Hering	Callow Street	Vice-President
Ms Wendy Nicolson	Bartholomew Close	Hon Secretary
Michael Derome	Queens Club Gardens	Hon Treasurer
Miss Constance Beckett	Deanhill Court	
Miss Judith Brench	Norbiton Hall	
Mrs Nancy Crawshaw	Portland Place	
Mrs Julie Ferguson	Stamford Hill Mansions	
Reginald Jones	Ashley Gardens	
Edgar Mellor	Marlborough	
Roy Rosser	Blythe Road	
Mrs Philippa Turner	Stanlake	
Arthur Weaver	Woodhurst North	

RECENT PUBLICITY

The Federation was mentioned in the Sunday Times this January, in What Mortgage and in Insurance Week. The Federation took part in TV programmes entitled "Reporting London", "London Plus" and "For What It's Worth". The Times of 26 March 1985 published a letter from the Chairman, which is printed below.

THE TIMES TUESDAY MARCH 26 1985

No rooms to let

From Councillor Arthur Johnston

Sir, Private tenants will have been worried by your leading article, "No rooms to let" (March 13). They will have been worried by your urging the Government to think "about dismantling the apparatus of rent control and tenancy restriction". There are latter-day Rachmans about. Repealing the Rent Acts would cause immediate severe hardship to thousands of tenants. In central London they would be faced with enormous rent increases from landlords eager to let their homes to companies or foreign visitors. In the borough of Westminster alone, 40 per cent of residents are private tenants.

Everyone would welcome more rented accommodation in order to encourage mobility, but with proper protection and security of tenure. Financial incentives – yes please; but deregulation – no thank you. How about financial incentives for tenants as well as landlords?

One way of freeing rented accommodation in the private and public sector would be to extend the transferable discount scheme available to some charitable housing-association tenants to private and council tenants. The latter could then buy homes in the open market at a discount and free their current homes for renting to others.

Yours faithfully,
ARTHUR JOHNSTON.

CHAIRMAN'S REPORT

At the Annual General Meeting on 20th September 1984, Members asked if the Chairman's Report be circulated and a precis is provided below.

The Chairman referred to the Federation's busy year. Firstly the Office had been moved from inadequate, but cheap accommodation to better premises, which are more expensive. This move inevitably caused temporary dislocation of the services provided. The second task had been the submission of evidence to the government's Nugee Committee of Inquiry into the Management of Blocks of Flats. This submission, which was included in the Federation's Newsletter number 10, had been based on evidence drawn from files and records, which cover the 12 years of the Federation's existence. The James Report of the Royal Institution of Chartered Surveyors on the Management of Blocks of Flats, had had the support of the Federation, though the Federation considered that the Recommendations were not strong enough. The massive response to the government's Inquiry's request for information had backed the government into a corner and positive action could no longer be avoided.

The Chairman reported that the Federation would be assuming the status of a limited company, which was a requirement made by the Greater London Council when awarding grant aid. The Chairman thanked the General Secretary, Mr Salmon James, Dr Michael Derome and Mrs Philippa Turner for their work. In referring to the work done by Mrs Julie Ferguson and Mr Michael Williams on the Freshwater and Swallow blocks respectively, he reported that Mr Michael Williams could not now continue and that a substitute would be appointed.

The Chairman spoke of the ten percentage increase in the volume of enquiries dealt be the Federation, which included some from non-Members. The Federation had also dealt with enquiries from journals and from other advisory organisations. The Chairman commented upon several personal visits to blocks occupied by Members and potential Members. He indicated that the Membership had increased during the year and that the Federation had applied for grant aid to the GLC and to Westminster City Council. He reported that the Federation had received useful publicity in the London Standard and in the Sunday Times and had participated in the BBC Radio programme entitled "You and Yours".

Other activities included support of an enquiry into unfair discrimination against flatdwellers in respect of rateable values; collaboration with a the College of Estate Management at Reading in a Survey of Service Charges; a meeting with the police on Crime Prevention in the Kensington area; and representation on the GLC Private Rented Sector Housing Sub-Committee. Support had been given to private Members' Bills, which attempted to interest the government in the co-ownership of flats. Support had also been given to the group of flatdwellers, called "Residents Against Property Speculators", who were attempting to close a loophole in the Planning Acts whereby a landlord, refused planning consent to add further accommodation to an existing block, could claim an enormous sum in compensation from the local authority. The Chairman commented on central London Members of Parliament who were concerned about this loophole. In conclusion, the Chairman said that solidarity should be encouraged by the formation of residents' associations; for we were potentially a nation of residents' associations.

LBC RADIO NIGHT LINE

The Chairman, Arthur Johnston, is to take part in LBC's Radio Night Line programme at 11.00 on Tuesday 9 April 1985.

TALK GIVEN BY THE CHIEF RENT OFFICER

On 29th November 1984, the Federation held a meeting for Members in the Central Library, Kensington, London, which was addressed by Mr Eric Vines, the Chief Rent Officer for the Royal Borough of Kensington and Chelsea.

The Work of a Rent Officer

Mr Vines explained that he was speaking only for the Royal Borough and that the interpretation of the Rent Officer procedure varied in other boroughs. When estimating a rent, a Rent Officer sought a figure that a tenant was prepared to pay and a landlord was prepared to receive where the demand for similar accommodation in that area did not exceed supply. Although he could use any acceptable method to arrive at a figure, the most common was the use of comparables.

Mr Vines referred to a paper by Richard Crossman, written in 1965, in which he laid down his blue print for a Rent Officer: he imagined that no legal or valuation training would be necessary, but looked for common sense and good judgement. After 18 years there has been little official shift from this specification, but since Rent Officers are appointed by the "Proper Officer", who is the Local Authority's Chief Executive, the tendency has been to look for qualifications required in the area. In the Royal Borough, appointments are made of experienced and professionally qualified property people.

Mr Vines explained that there are several sources of guidance for the Rent Officer, the first being the courts. He mentioned Regis Property Co Ltd v Dudley 1958 1 All ER 510 that concerned services at Chelsea Cloisters, which was the framework upon which the London Rent Assessment Panel built their "St Stephens Close" schedule. Mr Vines also spoke of Metropolitan Properties Ltd v Lannon 1968 1 All ER 354, concerning Oakwood Court; of Tormes Property Co Ltd v Landau 1970 3 All ER 653, where the court gave the seal of approval to the 'comparable' method most often used; and of Hanson v Church Commissioners for England & London Rent Assessment Panel 1977 3 All ER 404, on the right to withdraw an application to a Rent Assessment Committee.

The second source of guidance was provided by the Rent Assessment Committee. Originally created as the "expert" tier of a two tier structure, they may overturn a number of Rent Officer decisions and he considered that in doing so, create comparables that the Rent Officer may find it hard to disregard.

Mr Vines spoke about service charges for which he said there is no legal definition capable of providing Rent Officers with a modus operandi. Most Rent Officers, rather than estimate an arithmetical sum, look for a global rent which includes the value of the services provided; and, while noting the cost stated by the landlord, will trim the figures to what they consider to be a reasonable non-variable service charge. In speaking of variable service charges, Mr Vines referred to Section 32 of the Housing Act 1961, which protects tenants on short leases, and he mentioned two decisions that he considered are difficult to understand and which, he expected,will influence decisions made by Rent Officers. In Campden Hill Towers Ltd & Another v Gardner & Another 1977 1 All ER 739, the tenant was protected against paying for parts of the complex he did use, but had no protection against paying for what he did not. In

In Firstcross Ltd v Teasdale 1983 265 EG 305, short-term tenants were left with the possibility of having to meet heavy capital costs of replacement equipment in any one year of a variable service clause, upsetting the Rent Assessment Committee decision to make the services non-variable to avoid unfairness. However, as a postcript, 1984 gave us Wigglesworth v Property Holding Investment 1984 270 EG 555, where the High Court reversed a Rent Assessment Committee decision to reverse a Rent Officer decision making variable service charges fixed, because they were related to a 1959 base year and therefore too obscure.

With reference to the production of statistics by government departments, by tenants and by landlords, Mr Vines said that they had an unimportant part to play in the Rent Officer's estimate of a rent. He concluded by saying that while there is a shortage of housing for rental purposes, he believed the Rent Officer Service is meeting a genuine need.

REPORT BY PHILIPPA TURNER

(Member of the Nugee Committee)

At the AGM of the Federation, Mrs Philippa Turner reported that the Nugee Committee of Inquiry had sent out 4,800 questionnaires, but only 50% had been returned by the due date. However, 548 replies had been sent in from residents' association's officers representing the equivalent of 29,500 flats. If these were added to the replies from individuals then the data represented 96,000 flats. Although it was evident from the response that the problems were widespread throughout the country, the bulk of the privately-rented flats was in the south-east of England and London, with a significant number in Westminster and Kensington & Chelsea. Replies to the landlords' and managing agents' questionnaire, sent out by the Committee, indicated that responsible members of these groups were in favour of residents' associations. However, it was clear from the evidence so far, that there is an imbalance of strength between landlord and tenant - in favour of the landlord. One of the most effective ways tenants have available for influencing landlords is through an active and united residents' association. Strong points that have emerged were that it was highly desirable to purchase the head-lease and freehold or require the landlord to grant extensions of the leases.

VAT LIABILITY FOR BUILDING WORK

H M Customs and Excise have issued guidance on what for VAT purposes from 1 June 1984 constitutes a "new" building rather than the conversion, reconstruction, alteration or enlargement of an existing one.

Zero rating applies to the building onto an existing building of another with no inter-connecting doors; it also applies to construction of a new building where an existing building is reduced to foundation level, or what remains is a single wall.

Standard rating applies to the building of an additional flat on top of an existing block; it also applies to reconstruction of a building where the outer walls remain, even though the floors and roof are destroyed, or where internal features remain in addition to any part of the wall structure.

The Federation is indebted to Jim Robinson of Dunstable House Residents' Association for drawing attention to the Press Release 912, 10 May 1984.

CONGRATULATIONS

To Dunstable House Residents' Association when they obtained a dismissal of the landlords' forfeiture action against one of their Members for withholding part of the service charge relating to the insurance premium. When the judge dismissed the action he remarked that their block was obviously grossly over-insured.

To Mrs Shilling of a London Borough for whose flat the Rent Officer recently registered no increase in the level of Fair Rent above that of the previous two-year period.

To University Mansions Residents' Association whose block has gained a 90% Repair Grant from the London Borough of Wandsworth.

LEGAL JOTTINGS

Strata Title

Members have noticed recent press references to the above concept and have requested an explanation from the Federation. Briefly, this type of title was devised in New South Wales in 1961 and, since then, adopted in slightly differing forms in other states in Australia and in New Zealand; it facilitates the ownership of blocks of flats by the residents and provides for the freehold ownership of each flat by its occupant and for automatic membership of the Body Corporate which owns the freehold of the rest of the building.

It is called "Strata Title" because the building is subdivided by floors into strata for the purpose of management. In effect, therefore, it is not all that different from those blocks in the United Kingdom which are owned by residents' own companies. There are, of course, differences in principle and advantages in practice over anything so far available under English law. In particular:

(1) The system is tailor-made for blocks of flats and therefore the management of the building is made fairer and easier;

(2) Any disputes (which, in spite of everything, do occur!) can be referred to a Special Commissioner or to a Board of Commissioners which is cheaper and quicker than anything provided by the Courts.

On the other hand, the scheme was devised to cater for new rather than existing developments and, in Australia, the conversion of existing blocks to the new system has been confined to previously short-term rented accommodation or to blocks held under earlier similar systems; in both these cases it has been necessary to obtain the unanimous consent of all the residents. There has been no Australian experience of conversion to Strata Title of blocks where flats are held on existing long leases. Another caveat is that it is not yet known how the owners will deal with the problems arising when the building reaches the end of its useful life.

The support given to Strata Title recently by the Building Societies Association will no doubt add to the pressure on the government to consider the adoption of something similar in this country. Such a step is unlikely to be taken in the foreseeable future since it involves a radical alteration in those most sacred of British institutions, the holding of land and the sanctity of the private contract.

LEGAL JOTTINGS

Status of a Residents' Association

Members will already be aware that a Residents' Association, whether "recognised" or not, cannot sue or be sued in its own name. This is because it has no legal existence, such as does a company or a charity. Thus, if, for example, it is desired to seek a declaration under Schedule 19 Housing Act 1980 paragraph 12, that the costs or advance payments sought by the landlord by way of service charges are not reasonably incurred or the works and services are not of reasonable standard, the action will be in the name of one or more of the individual tenants or lessees and not the Residents' Association itself. However, the Rules of both County Court and High Court provide for proceedings to be taken by an individual as representative for a whole group of individuals who will then be bound by and benefit from the decision of the Court. The principal advantage of such an action is to simplify, to keep costs down and save a multiplicity of actions. Unfortunately, those represented cannot be forced to contribute to the legal costs although the knowledge that they have a personal interest in the outcome ought to assist in persuading them to do so. At present, it is uncertain whether representative proceedings can be taken for any relief other than a declaration, although there is some authority for suggesting that an injunction or damages might also be sought.

Damage caused by defects in building

1. Rimmer v Liverpool City Council 1984 2WLR 426

The legal liability of a landlord to his tenant for damage caused by the defective condition of the premises is normally limited by the lease and by Statute (the Defective Premises Act 1972 and the Occupiers Liability Act 1957). Thus, unless there is an obligation under the lease or the tenancy agreement for the landlord to repair or maintain, the tenant has no right of action against the landlord for injuries or loss caused by the condition of those parts of the building under the tenants' control. However, the Court of Appeal recently decided that in cases where the landlord is not simply the landlord but also the builder, developer or designer of the building, he can be liable for its unsafe condition at the time of the letting of a part of the premises for which he has no repairing liability. Accordingly, when a Mr Rimmer tripped and cut his hand on a glass panel installed inside his flat by the landlord builder, he was able to claim £2,500 by way of damages for the injuries sustained. It was held that the landlord, the Liverpool City Council, in designing the flat in the way they did, was negligent not to have used glass which was reasonably safe. This was so even though the tenant knew the glass was thin and liable to break easily.

2. Limitation on claiming damages after the passage of time

Until recently, it was thought that an action for damages for negligence in building design or workmanship could be taken up to six years from the date of the discovery of the defect, but last year the House of Lords decided that no action can be brought after the expiration of six years from the date the damage occurred, irrespective of when it was discovered. This means that if the damage is concealed, for example, below a floor or behind a fitting, it may be too late to sue by the time it is discovered. In this particular case, a chimney built in 1969 developed a fault in 1970 due to the unsuitable nature of the material used in its construction. But because the building owners did not discover

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the cracks and thus the defect until 1977, they could not claim against the consulting engineers who had been responsible for the design. This unfortunate rule of law is currently being considered by the Law Commission and may eventually be amended by Statute.

3. Elmcroft Developments v Tankersley-Savage and Others 1984 EG 140

The tenants lived in three basement flats which had become almost uninhabitable through rising damp. The landlord refused to install a damp course (which was the only effective way to cure the damp) on the grounds that their only liability was to maintain and keep the exterior of the building, the main walls, timbers and drains, in good and tenantable repair and condition and this did not include installing a damp course. Both the County Court judge and the Court of Appeal held that the landlords were wrong and that the flats were not reasonably fit for occupation by any reasonable tenant having regard to the age, character and locality of the flats and therefore the landlords were in breach of their repairing covenants. One of the tenants was awarded £2,600 for about two years' discomfort and inconvenience caused by the damp and a reduction to take account of her own partial responsibility to prevent damp on the interior walls and floor.

The same case decided that, in failing to light the external basement area which was the only means of access to the flats, the landlord was in breach of a covenant to light the "entrance hall, stairs and passages" "in and about the building" and the tenant had acted reasonably in fixing lighting herself even though she was not entitled to do so under the lease.

4. Guppys (Bridport) Ltd v Brookling and James 1984 EG 846

Tenants who suffered from the effects of conversion and modernisation works being carried out by the landlord to other flats in the block with the object of selling them on long leases were successful in claiming substantial damages from the landlord for nuisance. The works in question were such that the tenants (one aged eighty years) were forced to leave; all sanitary and washing facilities were removed save one cold water tap and an outside WC with no water; electricity was turned off daily and then eventually altogether - all of which acts were in breach of an undertaking given to the Court. In confirming that damages were recoverable for breach by the landlord of the terms of the letting (i.e. for the cost of alternative accommodation and incidental expenses, inconvenience and worry), the Court held that the damages should also be inflated by a further £1,000 to each tenant because the landlord's actions amounted to the tort of nuisance in a particularly extreme form.

5. Notice of repairs

The landlord will be excused from carrying out even those repairs for which he is responsible if he does not know of the need. The Court of Appeal has recently emphasised (Mcgreal v Wakes the Times 9 Feb 1984) how important it is for tenants to notify their landlords of want of repair to the premises even where the tenant is not certain whether or not the landlord is responsible. This is particularly so in cases where the Housing Act 1961 applies or might apply; this imposes on landlords of leases of less than seven years an obligation to repair external structures etc. in absence of any express covenant in the lease or tenancy agreement to the contrary.

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Porters

1. Russell v Laimond Properties 1984 269 EG 947

A County Court judge recently decided that even though the lease did not oblige the landlord to provide a residential porter, nonetheless the duties of a non-residential porter could be carried out more cheaply by a residential porter. Accordingly, if the landlord wished to use a non-residential porter, he could not recover from the residents by way of a service charge the difference between the cost of doing so and the lesser expense of a residential porter.

The same judge decided that the cost of providing a flat for a residential porter to be included in the service charge should not be the market or registered rent but only the actual cost to the landlord including a reasonable return on capital employed in providing the flat.

2. Nahas v Pier House (Cheyne Walk) Management Ltd 1984 EG 328

A lessee was successful recently in claiming damages from the management company and from the managing agents for the theft of jewellry from her flat by the porter. The managing agents were held liable for negligence on two grounds: first, in failing to check sufficiently the references, background and antecedents of the porter prior to engaging him and, secondly, vicariously liable as employers for their employee's dishonesty in the course of his employment. Even if there had been a disclaimer in the lease for negligence or criminal acts by the landlords' employees (which there was not), it would not necessarily have prevented a successful claim by the lessee.

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