Dear FPRA
Nick Roberts' legal expertise is directed at an unwanted phone mast and an old tree under threat from a new neighbour.  

Where's Your Stopcock?
A night-time burst water pipe makes Jane Barry house-wise.

Condensation: Causes and Cures
Profiled company John Pryke & Partners offers guidance on the problem of condensation inside buildings.

Legal Jottings
Philippa Turner monitors the latest legal decisions.

London Tradesmens Directory Free Offer
Need a tradesman and live in London? Then turn to the back page

Chairman's Letter
The timetable for implementing all the provisions in the Commonhold and Leasehold Reform Bill continue to slip, but it is expected that the Right to Manage will be finalised by the end of April and will take effect at the end of July. The remaining legislation is scheduled for the end of October with variable lead-in periods.

The Leasehold Advisory Service (of which I am a director) is to produce a series of leaflets on the new leasehold provisions, and these will complement the basic publications from the Office of the Deputy Prime Minister (previously the Department of the Environment, Transport and the Regions). FPRA has decided not to spend its limited resources on duplicating these, and instead will concentrate on those publications which are unique, in particular our Information Pack on setting up Residents' Associations, which continues to be a best-seller. Indeed, many people who buy it go on to join the Federation.

Now a date for your diaries: the FPRA AGM is to be held on Thursday, 9 October 2003 at The Royal Horticultural Halls in Victoria, London. Full details will appear nearer the time.

Muriel Guest-Smith

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Call for help over phone mast
Our freeholders have informed us of their intention to erect a phone mast on the roof of our block. We are concerned that the mast could affect the saleability of our flats and have voiced these concerns to them, and requested that residents are fully consulted before work begins. Despite this, the installation has already commenced. Can you advise us on our rights as leaseholders, and perhaps you have information on other similar cases?

The FPRA replies...
I'm sorry I cannot hold out much hope of resisting this proposal. The basic position is that the block of flats and the land it is built on belongs to the freeholder, and each leaseholder has an interest only in the slice of the building that is specifically included in their lease. If you look at the relevant Schedule in your lease, you will see that the part of the block included in the lease of the top flats includes the plaster of the ceiling, but not the slab or joists to which the ceiling is attached. Everything above this level therefore belongs to the ground landlord. This is consistent with the clause in the lease by which the ground landlord agrees to maintain the roof and main structure of the building.

I have come across this sort of problem before and it would be rare for there to be anything in a lease which prevented the ground landlord from erecting an antenna on the roof. A similar situation arises where the ground landlords want either to put in extra flats in the attic or to add an extra storey. The...continued on page 5
Pickworths property lawyers are often asked about the challenges faced by residential property managers. We recount a number of the current issues below and hope that they are helpful in avoiding at least some of the pitfalls for the unsuspecting….

Flat Management Companies: Directors’ Responsibilities
We know that taking on the role of director of a flat management company can be a daunting prospect. Knowledge of the law relating to flat management is essential if you want to avoid costly errors. We are pleased to guide directors through their obligations.

Service Charges
We can assist in the complicated area of recovery of service charges through the court or the Leasehold Valuation Tribunal (LVT). We can also interpret the parts of the lease dealing with repairs and recovery of service charge expenditure in order to avoid the risk of irrecoverable expenditure and to minimise risk of disputes with lessees. It can often be wise to take advice before paying an unexpectedly large bill for service charges as it may not properly be recoverable either under the terms of the lease or because statutory requirements have not been observed.

Take, for example, a major roof repair. Do you know the correct procedure to follow to recover the expenditure from flat owners? If not and you go ahead regardless, the directors of the company (themselves being owners of individual flats in the block) may find themselves liable for the whole cost of the work.

Variation of Leases
This may be necessary for leases on a particular development in order to secure an objective for the landlord. We can advise on the best means of securing the lease variation and make application to the Court if necessary to sanction the variation.

Disputes Between Owners
The flat owner’s lease will frequently provide that the Landlord is obliged to enforce a flat owner’s covenant at the request and expense of another flat owner. We can advise and where necessary issue Court proceedings. This step may be necessary where failure to maintain one flat leads to damage to another. A common example might be when a water leak in one flat causes damage to the one below it in the block.

Enfranchisement
As representatives of both freeholders and nominee purchasers we have advised clients in contested applications to the LVT for enfranchisement under the Leasehold Reform, Housing & Urban Development Act 1993.

Right of First Refusal
If the landlord decides to sell the freehold we can advise as to the procedures and requirements under the Landlord & Tenant Act 1987 and assist with necessary notices whether the transaction is by private sale or auction.

Changes in the Law
We keep abreast of actual and proposed changes in the law and advise clients of the impact upon their interests. The latest example of this has been the introduction of no fault Right to Manage - will this prove more attractive to lessees than enfranchisement where there is dissatisfaction with the standard or cost of management? The regulations under the 2002 Act are about to be issued to enable the first applications to be made.

Best Practice
As experienced practitioners we are familiar with latest codes of practice and changes to leasehold law. We are therefore well placed to advise on practical internal procedures for your situation.

From these few examples we hope that it is clear that flat management can present some challenging situations owing to the constraints of particular lease terms and statutory provisions. We would be pleased to help you. Feel free to call Pickworths on 01442 261731 or 01727 844511, or see our advert on this page for further details.
Where's Your Stopcock?

The kitchen's flooded, the lights have fused and you can smell gas. Don’t panic, you know where to switch off the services or do you? asks Jane Barry.

In the dead of night my partner woke me to announce there was a puddle of water and a strange hissing noise in the kitchen. As I stumbled downstairs, the hiss suddenly became a roar and the puddle a torrent. Mains water was pouring into the kitchen from somewhere inside the saucepan cupboard. Did we know where the stopcock was? Of course not. It certainly wasn’t in the conventional location under the sink. We could turn the water off outside in the drive, but for that we needed what I now know is called a ferrule key. Which, naturally, we didn’t have.

While I sand-bagged the kitchen doorway with every towel in the airing cupboard, David (that’s my partner) phoned the water board - but all operatives were busy mending a burst main - and then the emergency plumbers, whose phones were all on voicemail.

The water kept on roaring into the kitchen. It was terrifying. In desperation, we called the fire brigade. They came in minutes, diagnosed a blown cap from a disconnected pipe - and found the stopcock, in the darkest, least-accessible corner of the saucepan cupboard. They were incredibly kind and sympathetic, particularly considering how stupid we must have looked.

Keep a log book

But apparently I’m not the only homeowner who doesn’t know where their stopcock is. Or what the inside of the fuse box looks like. Or how to turn off the gas. ‘It should be general house knowledge,’ says estate agent Maggie McKenna of John D. Wood, ‘but often people don’t know. When they’ve invested so much in their homes, you’d think they’d ask about these little things than can cause so much damage.’ And according to David Hewett of the Association of Residential Managing Agents, flat owners who aren’t house-wise could face big problems. ‘Lessees have a legal responsibility. Normally, block insurance covers damage, but if you don’t know where your stopcock is, it could put in question any insurance claim,’ says Hewett. ‘Far too many people buy a flat and think water, electricity and gas just happens around them.’

A house log book would help, and there was talk of including one in the Government’s Seller’s Packs, but unfortunately that idea fell by the wayside. And your surveyor doesn’t tell you, which, McKenna muses, ‘is odd’.

So how do we wise-up?

The services that are piped through our walls may seem domesticated, but we forget they’re elemental forces at our peril.

Sticking point

According to Dale Courtman of the Institute of Plumbing (who talks stop valves - stopcock isn’t PC): ‘Every house should have one, it’s in the water regulations. But make sure it’s working - in older properties they can stick. Most people turn it as full as they can, but a trick of the trade is to turn it back half a turn - that prevents it from sticking. And if you can’t find your stopcock, consult a plumber.’

Where’s your fuse box?

Finding the fuse box isn’t always easy either - at least, if you live in a Victorian block or a conversion. According to David Hewett, it isn’t unusual to discover the main fuse box for the entire block is hidden in someone’s flat. ‘If no one’s in and there are security locks, you might have to break the door down. It can all be quite disconcerting,’ says Hewett. A London Electricity spokesman agrees that main fuse boxes can be inaccessible: ‘ideally, when a developer converts a property, the fuses should be in a public area, but that doesn’t always happen and they do end up in people’s flats. The People to contact would be 24Seven, who manage the electricity network. They’ll know where the service enters the property. Typically, the service fuses will be near the main electricity cable.’

With mains fuses, 24Seven takes responsibility, but for the fuse unit in your home, you’ll have to foot the bill. So what if you have old-fashioned wire fuses rather than circuit breakers, and you don’t know one amp from the next? ‘In the past, people knew about changing fuses,’ agrees the LE spokesman, ‘Get an electrician to show you.’ And supposing my fuses keep blowing? ‘If you’re not sure about anything, contact an electrician.’

Then David Hewett reminds us that ‘water just floods, electricity sets things on fire, but gas blows things up.’ According to Transco, the company running the gas emergency services, most of us know you can turn off the gas by pulling the lever on your meter box. But I’m afraid I was totally ignorant of this fact. And most homeowners I asked were equally vague, although one did venture: ‘there’s a thing near the gas meter - I don’t know what it looks like exactly.’

It’s undoubtedly vital to heed Transco’s key message. ‘If you smell gas, call the emergency services.’ So, how house-wise are you? I’m certainly water-wise after days drying out the kitchen. The services that are piped through our walls may seem domesticated, but we forget they’re elemental forces at our peril.

This article first appeared in the Evening Standard
Condensation

Its causes and how to remedy it

Dripping walls, misting windows, and mildew are all signs of the increasingly common problem of condensation inside buildings. John Pryke & Partners have produced the following Guidance Notes about its causes and how to deal with them.

BACKGROUND

1. The amount of water vapour that air can contain is limited. When this limit is reached the air is said to be saturated. The saturation point varies with temperature: the higher the temperature of the air, the greater the weight of water vapour that it can contain.

2. Condensation occurs when the temperature of the air falls below what is known as the dew point. This is a factor dependent upon humidity and temperature. The most common visual appearance of condensation is on windows, particularly those that are single glazed. The windows themselves represent the coldest part of a structure and are thus most likely to be below the dew point appropriate to the atmospheric humidity.

3. In terms of location, condensation most frequently occurs in kitchens and bathrooms, which are subject to periods of high temperature and high humidities. As these periods are often relatively short, they do not generally influence the average surface temperatures so that condensation tends to appear on the walls as well as...
cold water pipes and windows.

4 Condensation does not necessarily occur in the room where the water vapour is produced. If the water vapour is allowed to diffuse through the dwelling into other parts such as unheated bedrooms, then condensation will appear on the cold surfaces of those rooms, which may be remote from the source of the moisture. Soft furnishing, including bedding and clothing, may become damp because of this. The usual sign is the appearance of black spores, which are a mould growth.

5 People within buildings and the activities undertaken by them can greatly increase the amount of moisture in the air and therefore exacerbate condensation problems. Elderly people or those of a sedentary way of life breathe out more than a litre of water in the form of water vapour in a 24-hour period. People of a more active nature may raise this by some 400%.

6 The effects of condensation are often more manifest in the inaccessible parts of rooms. Mould often occurs behind furniture, in the corners, and at high and low levels in fitted wardrobes, particularly where these are adjacent to external walls and corners. The reason is that the natural temperature created within the room gives rise to cold areas within these zones; this cold transfers into the building fabric and the moisture vapour condenses, particularly if there is no free flow of ventilation around the rooms.

THE CURE
The remedial action that can be taken to minimise condensation risk is somewhat limited. Some general recommendations are given below. These are simplistic in nature but may help to minimise the problem:

i) Properties in general should be kept as warm as possible consistent with general economy. If the external walls have not been cavity insulated, then a variety of techniques are available, including the use of blown mineral fibre, which will enable the overall insulation values to be significantly improved.

ii) Activities that give rise to the release of steam and water vapour such as cooking and washing should, wherever possible, be undertaken with the windows open unless there is some form of mechanical ventilation which extracts the moisture directly to the outside air. Cooker vents help minimise this problem but only if they are vented; internal charcoal filters do little to help the problem.

iii) In flats where there is likely to be a high humidity level then the installation of a small de-humidifier unit is likely to prove beneficial. Modern designs of these units are very compact and the units themselves are economic to run.

iv) Avoid drying wet clothes and putting damp and wet articles away in wardrobes, particularly those located adjacent to external walls.

v) Moisture-producing appliances such as tumble dryers should where possible be externally vented.

vi) Where condensation does occur then its consequences can be minimised by removing any mould as soon as practicable using a mild bleach solution.

vii) Window design can be a problem. Many modern houses are fitted with double glazing; these reduce draughts but also cut down on natural ventilation. Double-glazed units should be fitted with trickle ventilators, and these should always be used in rooms that are at risk of condensation. Most windows also have a lock mechanism that can be engaged so as to leave windows marginally ajar; providing security is not prejudiced this will greatly assist matters.

Who’s liable when an established tree causes damage to a new building?
I’m one of two leaseholders, both with a share of the freehold, in a Victorian conversion. At the bottom boundary of the shared garden is a large, very old tree which is so close to a neighbour’s recently-built single storey extension that they touch. The neighbour wants the tree removed, seemingly at our expense, as he has been advised it is damaging his extension. He has only just purchased the property, the extension being built by the former owner.

My questions is: are we responsible for paying for the removal of the tree? Surely, as the extension was built when the tree already existed, the building should have been designed to accommodate the tree’s proximity. And if we are responsible, who exactly ‘owns’ the tree, the leaseholders or the freeholder?

The FPRA replies...
When I first read your letter it seemed quite unfair that your neighbour’s predecessor could build right up against the boundary, very near an established tree, and that his successor could then complain that the tree was damaging his building. However, having checked out the situation, somewhat to my surprise he does indeed have a case. A case decided in 1879 (Sturges v Bridgman) decided that it was ‘no answer to a claim in nuisance for the defendant to show that the plaintiff brought the trouble on his own head by building or coming to live in a house so close to the defendant’s premises that he would inevitably be affected by the defendant’s activities, where no one had been affected previously’. That would seem exactly to be the position here. The point arose in the Court of Appeal again in Miller v Jackson in 1977; one of the judges did go so far as to express the view that they might not have decided the principle the same way if the matter had been coming before them for the first time, but they did not feel able to depart from established authority on the matter. So it would seem that you are liable for any damage done by the tree.

With regard to whether the tree belongs to the freeholder or the leaseholders, the legal position is that a tree is deemed to be part of the land itself, so it is owned by the freehold company, subject to the leases to the leaseholders. That answers your question, but it does not really address the problem. Liability for the nuisance depends on occupation rather than ownership. It seems most unlikely that the freehold company would be held to be in occupation.
Legal Jottings
Compiled by Philippa Turner
EG = Estates Gazette
EGCS = Estates Gazette Case Summaries
EGLR = Estates Gazette Law Reports
P&CR = Property Planning and Compensation Reports

Leasehold Reform Housing & Urban Development Act 1993
Under Section 42 of the Act, a leaseholder seeking an extension of a lease must serve a notice on the landlord containing specified information; this includes the price which (s)he is prepared to offer. In *Mount Cook Land Ltd. v Rosen* (2003 10 EG 165) it was held by the County Court judge that £100,000 was not a realistic sum when, on the leaseholder’s expert’s own evidence, the market value was approximately £200,000 for such a flat in London W1. Accordingly, the notice was invalid. This might not have mattered had the leaseholder been able to serve a fresh notice but unfortunately for him he had already sold the flat for a sum which reflected the value of an extended lease. The purchaser might never qualify under the Act to acquire an extended lease (and certainly not for two years) and he therefore had a valid claim for the difference in value between the current and the extended leases.

The leaseholder in *Latifi v Coleherne Court Ltd.* (2003 12 EG 130) also wished to extend his lease in reliance on Section 42. The decision of the Divisional Court did not prevent him doing so but entailed him paying more than he wished, largely, it appears from the report, because of the failure by his legal representatives to act in a timely manner. The flat in question was in a building subject to a head lease expiring on 14th March 2026. In February 1999, the leaseholder served on both the freeholder and on the head lessor a Section 42 notice seeking an extended lease until 21st December 2126. The solicitor acting for the latter did not realise that his client did not have competence to grant a lease for the full term and duly served a counter notice under the Act. The parties then entered into negotiations and the head lessor agreed in principle to grant the extended lease subject to the terms being settled by the LVT. The parties then entered into negotiations and the head lessor agreed in principle to grant the extended lease subject to the terms being settled by the LVT. The freeholder never served a counter notice thus losing its right to object to the terms proposed by the Section 42 notice. In October 1999 the leaseholder’s solicitor realised that the head lessor did not have the necessary competence but nonetheless did not take the point until May 2001 that the freeholder, being the correct competent landlord, had not served a counter notice. It was argued before the Court by the leaseholder that, in the absence of a counter notice from the freeholder, he should therefore be granted an extension at the £40,000 premium proposed in the S.42 notice and not the £117,000, the approximate market value. The Court disagreed and held that, by his conduct in continuing negotiations with the head lessor after the mistake was realised, the leaseholder had waived the absence of the freeholder’s counter notice and it followed that the head lessor’s counter notice was valid. In any event, the head lessor had by this time become competent by reason of having been granted a further head lease expiring after 21st December 2126. It was the collective right to purchase the freehold under the Act that triggered the litigation in *Etzin v Reece* (2003 P & CR DG 16). The leaseholders in this case had signed an agreement* binding themselves to perform the necessary acts and pay the necessary sums to enable them to acquire the freehold of their block. When the time came to pay his share, one leaseholder, Mr Etzin, refused to do so (he had moved abroad and was planning to sell his flat) in spite of the freeholder having served notice to complete the sale. The opportunity to purchase would be lost if the full amount due was not paid within four months of terms being agreed and therefore the other leaseholders provided Mr Etzin’s share on condition that he was henceforth excluded from benefiting from the purchase (inter alia obtaining an extended lease at a low or non-existent premium) and would be treated as non-participating. Completion took place and, four days later, Mr Etzin paid his share but the other leaseholders maintained that he should remain excluded. He took proceedings for specific performance of the agreement or damages amounting to the difference in value between his current lease and one of 999 years. The Divisional Court held that his conduct had been such that he had been in breach of contract and, on service of the landlord’s notice to complete, time became of the essence, making the
breach repudiatory. It should be noted that the agreement expressly provided that the participants should act diligently and promptly, the Court observing that this obliged the parties to remain available and contactable so to act. Mr Etzin therefore failed in his claim.

* The FPRA publishes a draft of an agreement appropriate for use in this situation priced at £10.

**Landlord & Tenant Act 1987**

Compare this decision with that in *Mainwaring v Henry Smith’s Charity (No.2) (EGLR 1997 (1)93)* which also concerned collective purchase of the freehold but not under the LRHUDA 1993 but under the 1987 Act. This Act does not give a mandatory right but rather an option to purchase when the landlord is selling or disposing of the building in any event. In this particular case, the leaseholders had, on 17th January 1996, entered into a written agreement with each other to purchase the freehold by accepting the anticipated offer from the landlord under Section 5; this agreement was expressed to be ‘irrevocable’ and they also signed a draft Section 6 notice of acceptance. On 5th February 1996 one of the leaseholders withdrew his agreement, which had the effect of reducing the number below that required by the Act to enable them to exercise the option. When the Section 5 notice was received the leaseholders served the Section 6 notice without deleting the name of the withdrawn leaseholder. The Court of Appeal held that the Section 6 notice was invalid because within the context of the Act a tenant cannot contract out of his right to withhold acceptance of the offer under Section 5 until there is a binding contract of sale.

**Statutory tenancy**

*In Baygreen Properties v Gil (2002 49 EG 126)* there were rent arrears of £2500 and disrepair assessed as being worth £5230 in damages. The County Court made a possession order expressed to be by consent under which the tenant was required to pay the arrears, but no finding was made in respect of the disrepair. The tenant appealed on the basis that if the damages had been set off against the arrears nothing would be payable. The Court of Appeal held that the allegations of disrepair should have been investigated by the lower Court before making a possession order even when it was by consent and it should be clear that this exercise had been carried out even if it did not appear expressly in the order. Accordingly, the order was set aside.

**Repairs**

The building in *Abbathall v Smee (2003 2 EG 103)* contained two flats, one leasehold and, unusually, one freehold (‘flying freehold’); the roof required repair but there was no contractual relationship between the flats and therefore no means of obtaining a contribution towards the cost of repair. The Court of Appeal held that the freehold flat was liable for 50% of the cost (calculated by reference to the benefit which would be derived), the legal justification being that there was owed a duty of care. The leaseholder was therefore entitled to an injunction requiring the repairs to be carried out subject to contribution, or in the alternative an order allowing access to the leaseholder to carry out the repairs himself and the freeholder’s share of the costs by way of damages.

**County Court Fees**

These have increased; in particular the fee for issuing proceedings in a landlord and tenant case is now £120.
How Do You Find a Good Tradesman When You Want One?

For Londoners, one solution is to call a new 24 hour helpline called The London Tradesmens Directory. Set up by consumer journalist Alison Cork, the inspiration behind the scheme is that only recommended tradesmen get listed, and the recommendations come from happy customers who nominate them, with the Directory seeking out two further customer references. So if you phone the Directory and choose a carpenter on its list to make you that bespoke kitchen cabinet, you will know he, or she, comes with a good reputation. You can be reassured that at least three other people have employed them and been satisfied.

How much does it cost to tap into the scheme and locate a thrice recommended tradesman? Around £2, which is paid for through using a premium line telephone line (£1 per minute, the average call taking about two minutes). But as a special offer to FPRA members, the service is FREE.

Free Offer to FPRA Members

The London Tradesmens Directory is free to FPRA members. Please note that this free telephone service is restricted to office hours only, and members must ring 020 7794 0396 (i.e. not the main enquiry number listed below).

The London Tradesmens Directory
Main enquiry telephone number: 0906 780 8888
Email: queries@ltr.co.uk

...continued from page 5
would say, therefore, that the two leaseholders are jointly liable in nuisance, and the freeholder as such is not responsible. However, in the circumstances I cannot see that this is going to make a great deal of difference if the two leaseholders are the shareholders in the freehold company.

Your Committee
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