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NEWS

FPRA
FEDERATION OF PRIVATE RESIDENTS' ASSOCIATIONS

COME TO THE AGM

We are holding our 45th AGM and event on Wednesday 16 November 2016, from 5.30pm to 8.45pm at Omni House, Belsize Road, London NW6 4BT.

The event will consist of speakers, group sessions and individual one-to-one advice sessions.

Attendance is free to FPRA members and a charge will be made to non-members.

All attendees must book their place in advance.

The evening starts at 5.30pm with registration. Pre-booked one-to-one appointments will begin at 6.15pm. At the same time, sponsors, members, non-members and committee members will be able to network.

Speakers at the event will include Bob Smytherman, FPRA Chairman, Tony Essien, Chief Executive of LEASE and Nigel Glen, Chief Executive of ARMA.

There will be roundtable discussions on a variety of subjects. These must be pre-booked as space is limited.

Throughout the event, there will be plenty of opportunity to talk to our committee and honorary consultants.

This event has only been possible by commercial sponsorship for which FPRA is extremely grateful.

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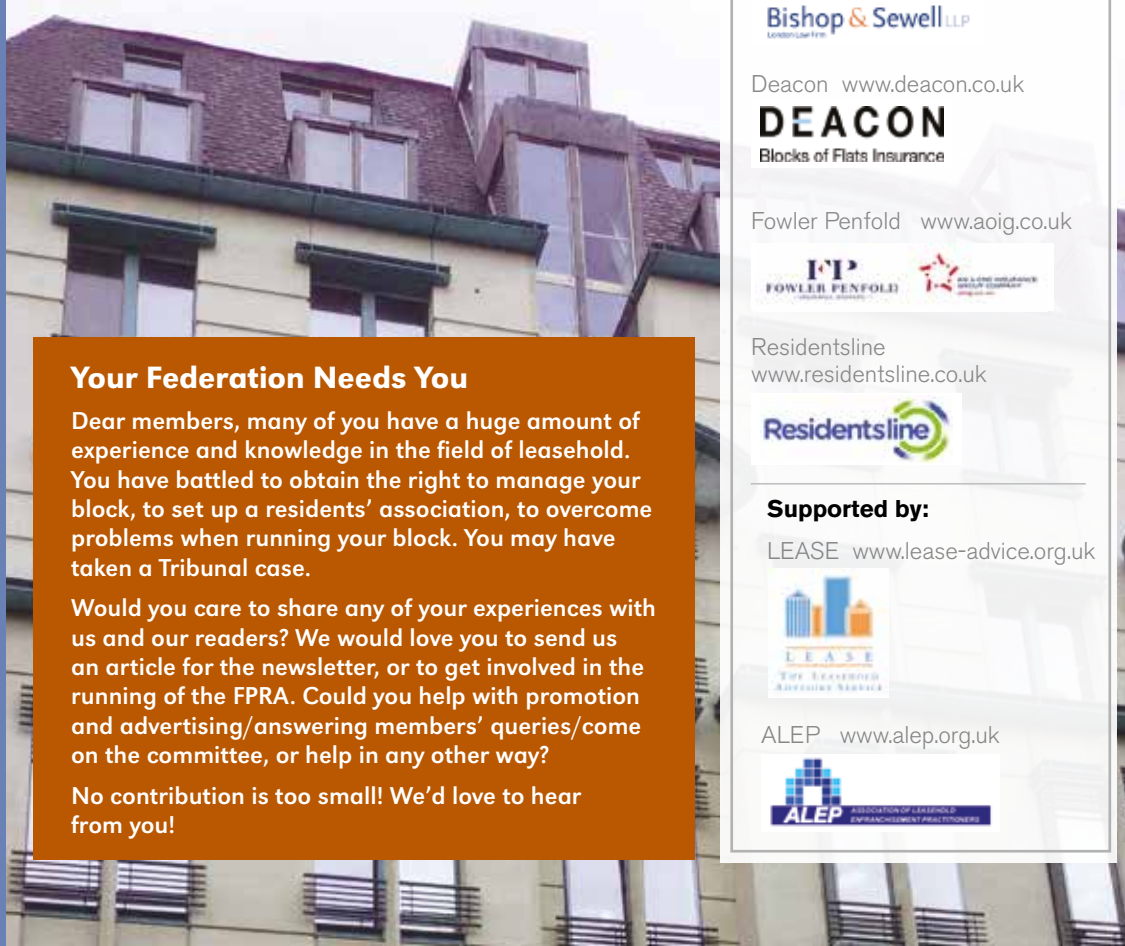

Your Federation Needs You

Dear members, many of you have a huge amount of experience and knowledge in the field of leasehold. You have battled to obtain the right to manage your block, to set up a residents' association, to overcome problems when running your block. You may have taken a Tribunal case.

Would you care to share any of your experiences with us and our readers? We would love you to send us an article for the newsletter, or to get involved in the running of the FPRA. Could you help with promotion and advertising/answering members' queries/come on the committee, or help in any other way?

No contribution is too small! We'd love to hear from you!

INSIDE THIS ISSUE

HAVE **YOUR SAY** ON **LEASEHOLD REFORM**

FPRA director Shula Rich listening to leaseholder concerns at a consultation over a coffee

The Law Commission is consulting on Leasehold Reform, writes FPRA Director Shula Rich, and this is good news.

The Law Commission published its suggestions for Law Reform on 14 July 2016 – a consultation, not just an announcement – and among the proposals is a suggestion that Parliament deal with some of the anomalies of Leasehold Law.

Suggestions are welcomed from individuals as well as organisations.

At the launch of the document, which FPRA attended at the Supreme Court, the Commissioners said they were particularly interested in hearing from individuals and organisations on the working of the law and where it might be changed – with practical examples.

They have chosen leasehold as an area for them to work on, and are asking for our views.

This is what they have written – which is promising:

"We have identified some areas of law that our experience and discussion with stakeholders suggest may require reform. They could be potential projects for the Programme. We would like to hear your views about these, and whether you think they should form part of our work over the next few years.

Leasehold law

Are there areas of commercial, residential or agricultural landlord and tenant law which impose unnecessary restrictions, inefficiencies or costs?

The law of leasehold impacts the lives of millions of people, whether they are landlords or tenants of homes, farms or businesses.

We have heard of increasing dissatisfaction with two areas of commercial leasehold law. While technical, we understand that they have very significant financial impacts and have the potential to inhibit the proper functioning of businesses with knock-on consequences for the wider economy.

Criticisms have been made of Part 2 of the Landlord and Tenant Act 1954, which provides security of tenure for business tenants, such as those running shops and garages and office tenants. A review could consider the extent to which such security continues to perform an important function and whether it should continue under the existing model. It could also (or alternatively) consider whether more technical amendments to the Act could make it more straightforward. Problems also arise under the Landlord and Tenant (Covenants) Act 1995 when leases are assigned. Case law has established that standard and commercially important consensual transactions are made difficult or impossible by the 1995 Act, and we have heard of a range of problems giving rise to costs of £100,000s.

There is a raft of legislation governing long and short residential tenancies, which is vital for those with an interest in the millions of such tenancies in England and Wales. In England alone, the most recent statistics show that 8.2 million households are rented privately or socially, and 4.1 million dwellings are held under a long residential tenancy. We are interested to hear whether there are areas where the law is causing practical difficulties for landlords and tenants. For example, the Competition and Markets Authority has recommended a review of the regime governing the recoverability of service charges under long residential leases in respect of major works.

We are also aware of uncertainties concerning the ability to challenge leasehold terms – such as ground rents subject to exponential price escalation clauses – as being unfair in consumer protection legislation. Other concerns may be of relevance only to short residential leases...

A project could include one or more of these issues, or other areas of leasehold law. We want to hear about problems in any area of leasehold law and in particular: how common those problems are; the extent to which they have a significant practical and economic impact and whether such impact has become more significant in recent years; and why they should be considered a law reform priority.

What do you think?

Are there any areas of leasehold law which we should (or should not) be considering for inclusion in our 13th Programme of law reform? Please use this form to send us your comments on this potential project, and email it to ***programme@lawcommission.gsi.go****"*

The questionnaire can be found online under "The 13th Programme Consultation Questionnaire" on the website **www.lawcom.gov.uk**

The closing date for responses is 31 October 2016. FPRA will be responding. Members may fill in the questionnaire individually or write to FPRA for inclusion in our response. Or both! This is good news.

FINDING **COMMON GROUND**

LEASE Mediation is now up and running. Anthony Essien explains how this service from LEASE (The Leasehold Advisory Service) can help you.

A service charge demand lands on the doormat. However the service you get is far from ideal, indeed the cost seems unreasonable. It may, for example, be that recent repairs to the gutters were of a poor standard; or the insurance premium is excessive and the managing agents' approach to communication has left you disappointed or frustrated. Your first instincts are to march into your lawyer's office and demand that something must be done. From then on the meter starts running. With a trip to a court or First-tier tribunal (Property Chamber) (tribunal) it will not be long before the costs outstrip the amount you are challenging, to say the least of the stress and anxiety. Quite frankly you have better things to do with your time. Even if you succeed in litigation, there is no guarantee that the relationship will get better, indeed it may even get worse.

Of course service charges are not the only bone of contention as regards the management of a block of flats. At LEASE we are also asked to help with enquiries about disrepair, noisy neighbours and inadequate carpeting amongst other topics. Usually there is a technical legal solution to the problem. But we are well aware that the costs, delay and adversarial nature of achieving that solution, and it can mean litigation, puts many of our customers with difficult decisions and limited flexibility to address the core problems. Mindful of this, we have established LEASE Mediation. Online, informal, swift, confidential, and inexpensive the scheme is designed to help the parties solve their disputes, restore confidence and reduce tensions.

Our qualified mediator facilitates the resolution of the dispute by listening to parties, paying attention to their core concerns (and not just what may be the presenting symptoms) and helps them work out a mutually satisfactory solution. The mediator does not pass judgement on the case nor test the evidence. Instead, he or she takes responsibility for keeping both sides talking. As and when a settlement is reached, a mediation agreement can be drawn up. This can cover a wide range of matters going beyond what a tribunal can order. For instance, a timetable for repairs, undertakings not to cause nuisance or annoyance, commitments to service charge and sinking fund arrangements and regular supply of accounting information. The idea is to come up with a solution both parties can live with, and they move on.

How does it work?

- The application process is dealt with through an online portal (resolve.lease-advice.org/mediations/create) and ultimately a mutually convenient date fixed for the mediation session.
- It will be scheduled for four hours and either party can call a break at any time.
- The mediator will meet each party separately and then together. Both parties are encouraged to exchange views with the mediator managing the process. There will also be a facility for side meetings.
- The mediator will assist in generating solutions and testing their practicality.
- If a solution is reached the parties write out their agreement and sign it. The mediators will help ensure that the agreement is a workable one and is satisfactory to both parties.

The role of mediation is being recognised by the courts, and is increasingly reflected in orders for costs. Whatever the outcome of the case, a party who unreasonably refuses mediation may find themselves on the receiving end of a punitive costs order. However, the real driver is that mediation works!

LEASE will be playing its part in not only advising leaseholders about rights and responsibilities, but now helping them directly to resolve their disputes by facilitating solutions.

www.lease-advice.org

PEOPLE WITH SIGNIFICANT CONTROL REGISTER

By FPRA Hon Consultant Gordon Whelan (National Head of Service Charge Accounting, Haines Watts, Chartered Accountants)

Another important requirement, arising from The Small Business, Enterprise and Employment Act, came into effect from 30 June 2016.

The Annual Return that used to be submitted each year by all companies (including Residents' Management Companies) is now replaced by a Confirmation Statement. To complete the Confirmation Statement, company directors will need to check the information held for their company at Companies House at least annually.

This will also be the first time that companies will be required to notify Companies House of People with significant Control (PSC). From 30 April 2016, companies have been required to keep a PSC Register. The definition of a PSC can be found at Companies House. However, to summarise, it includes anyone who owns more than 25 per cent of the shares or voting rights of the company or has the right to "exert significant influence" on the Company or can control the Board of the company.

Companies have an obligation to investigate PSCs and to keep the information up to date. Failure to do so will be a criminal offence by both the company and its officers. For existing companies, the information needs to be provided in the first Confirmation Statement. Companies House will issue companies with a reminder letter or email alert when their first Confirmation Statement is due. Further information can be found on the Companies House website.

SALE OF LAND REGISTRY "VANDALISM"

FPRA has written to the Government to oppose the suggested sale of the Land Registry to a private buyer, writes FPRA Director Shula Rich.

Former Chief Land Registrar John Manthorpe has called the proposal wrong and described the Land Registry is a "national treasure".

A recent online petition signed by 350.000 people opposed Government plans to sell the Land Registry.

It is incredible to think that something as fundamental to us as the Land Registry might be sold to a private buyer.

For leaseholders the Land Registry is an unparalleled source of information and guidance. Our flat titles are stored there online. One can search for the names of all neighbours to help with Right to Manage, and organising a Residents' Association.

During an RTM Claim a freehold can change hands to a related company. If this isn't checked the claim may have to be started again. Only the Land Registry can supply this kind of information.

The Land Registry also has well written practice guides for most aspects of leasehold. They are intended for 'practitioners' but as they begin from fundamentals, are useful and readable (and free).

Land Registry advice is also free. They don't give legal advice but in cases of missing leases, boundaries and possible errors they will go to great trouble to find the right reply and call back when they say they will.

They reply to phone calls quickly, and if unsure really will call back with a senior adviser. They are open for downloads until 10pm and a title document at present costs £3.00.

Leasehold Reform legislation is summarised in Practice Guide 27.

In the parliamentary debate on 30 June 2016 Solicitor John Stephenson, MP for Carlisle, said: *"The Land Registry is at the very centre of land and property rights in this country, and the integrity of the system is critical.*

"Its importance is such that all solicitors, property owners, leaseholders, lenders and financial institutions must have complete confidence in its integrity, openness and honesty.

"It has to be trusted. Any doubts or concerns about its integrity, about possible conflicts of interest or about misuse of information could affect this central part of our capitalist system.

"We must also recognise the fact that the Land Registry is a natural monopoly, a bit like the police or other institutions that do not lend themselves to competition.

"Such monopolies, which are of great importance to the very fabric of our system, must be treated with great care."

Caroline Lucas MP (Green, Brighton Pavilion) agreed. She said:

"The right Hon. Gentleman is making a strong case. My understanding is that if the **Land Registry** was privatised, it would not be subject to the **Freedom of Information Act.** It would therefore be easier to conceal who owns our land and would stop the publication of datasets, such as the one that was so important for the Panama papers exposé. Does he agree that that is one of the many risks of privatising the Land Registry?"

Alan Johnson (Labour, Kingston upon Hull West and Hessle)

"There has been mention of John Manthorpe, a former Chief Land Registrar and someone who has been associated with the Land Registry for 50 years in one capacity or another. He gave evidence to the Government's consultation. We have not seen the results but he published his response, which is absolutely devastating. To quote from just one part, he says:

***"The Registry's** independence from commercial or specialised interests is essential to the trust and reliance placed on its activities. It would not be possible for actual or perceived impartiality to be maintained or public confidence sustained, if a private corporation ...were to assume responsibility for...the maintenance of a public register."*

"That says it all. Parliament must not allow this piece of vandalism to proceed."

After a lengthy and cogent debate it was resolved

That this House

notes** the important role the Land Registry plays in registering the ownership of land and property in **England and Wales;

***further** notes that the Land Registry has made a surplus in 19 of the last 20 years and paid back £120 million to the public purse in 2015 alone;*

***believes** that any privatisation of the Land Registry will have serious consequences for transparency and accountability in the UK property market and hinder efforts to crack down on corruption and money entering the UK property market via offshore jurisdictions;*

***expresses** grave concern that all the potential bidders for the Land Registry have been found to be linked to offshore tax havens;*

***notes** that the Government has acknowledged that property can provide a convenient vehicle for hiding the proceeds of criminal activity;*

***notes** that the **Prime Minister** stated in **July 2015** that there is no place for dirty money in Britain;*

***regrets** the Government's decision to seek short-term profit at the expense of the public interest;*

***opposes** the proposed privatisation of the Land Registry;*

***and calls** on the Government to reconsider that proposed privatisation.*

FPRA has written with its objection to the sale.

This was FPRA Chairman Bob Smytherman's comment on the proposed privatisation of the Land Registry to the Department for Business Innovation and Skills:
"At present, leaseholders can rely on the Land Registry for free help and guidance which could be charged if it is sold. The information available is vital to Right to Manage procedures as well as Recognition of Residents' Associations. We fear that charges would increase and free help decrease if the Land Registry were sold. There are five to six million leasehold units in the UK we believe that their right to this information needs to be protected."

GATE SAFETY WEEK

You've all heard of Gas Safety Week, now we have Gate Safety Week, which is supported by the FPRA.

Chairman Bob Smytherman said: *"This is an important issue for many of our members with gated estates. The Federation is delighted to add its support to the Gate Safety Week campaign and fully supports the Door and Hardware Federation (DHF) in their drive to raise public awareness of unsafe powered gates."*

Safety campaigners are mounting a high profile drive designed to confine deaths and serious injuries caused by incorrectly installed and poorly maintained automated gates to the history books.

Gate Safety Week is being held on 10–16 October this year, with the slogan – Safe Gates Save Lives. The campaign is being run by the Door & Hardware Federation whose Powered Gate Group represents the UK powered gate industry.

The aims of the campaign are:

- To educate specifiers, merchants, installers, inspectors, surveyors and users in the correct specification, supply, installation and operation of powered gates;
- To highlight the liabilities and responsibilities of those who specify, install, maintain and use powered gates;
- To emphasise the importance of ensuring a powered gate is correctly CE marked and has been installed in accordance with the latest industry code of practice governing safety.

Recent significant developments within the powered gate industry mean that this year's Gate Safety Week campaign will be more hard-hitting than previous campaigns. 2016 saw the launch of a new industry code of practice designed to reduce the safety risks associated with powered gates and traffic barriers to as low as is reasonably practicable. All DHF members must abide by the code of practice (DHF TS 011:2016) which provides a framework to ensure a gate is safe and therefore complies with the law.

The National Security Inspectorate (NSI) the accredited certification and inspection body which audits security and safety providers, hopes to announce the first accredited companies under its scheme during Gate Safety Week.

More than 700 powered gate installation engineers have been through the DHF's demanding safety training scheme, recognised to be the most stringent in Europe.

DHF CEO Bob Perry said: "In recent years there have been nine deaths in the UK and Ireland – six adults and three children – several serious injuries and countless near misses in tragic accidents involving badly installed and poorly maintained powered gates and barriers. Properly installed and maintained powered gates are perfectly safe to use. But it's estimated that only 30 per cent of the 500,000 automated gates in service in the UK are, in fact, safe.

"As an industry we're not prepared to tolerate this situation, which is why all the leading manufacturers, installers and maintainers of automated gates are throwing their weight behind this important initiative. We also welcome the support of the NSI for this year's Gate Safety Week.

"Our campaign will hammer home the message that automated gates in schools, public buildings, industrial and commercial premises and on residential driveways should be checked by qualified engineers for safe operation."

For guidance on gate safety and to learn more about the legal obligations of powered gate specifiers, installers and users, and to find out how gates can be checked, visit:

www.gatesafetyweek.org.uk; and on Facebook: **www.facebook.com/doorandhardwarefederation** and Twitter **twitter.com/@gatesafetyweek**

ASKING QUESTIONS

The FPRA admin office are here to help, but we want to remind members that we provide admin and have no leasehold or technical knowledge, and therefore it is important that if you have any questions or need any help, where you need to contact one of our advisers, the best way of doing this is by emailing or writing, enclosing all the relevant information, especially the lease. We are very fortunate to have over 20 volunteers who are experienced and in many cases, industry leaders in the many different subjects leaseholders and their associations need advice on, but our advice is always tailored to your question and circumstances and are not generic, so the more information you can give us, the better we are able to help you.

It would really help us in the admin office, if in every email you included the name of your association in the subject line.

Finally, in the members' area of the website you will find all the Q & As of recent years and these can be really helpful to members to see what others have asked and how they have been dealt with and can sometimes save both our volunteers time and also your own.

Many thanks.

ASK THE FPRA

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

Directors' and Officers' Liability

Q **Our questions are regarding our potentially signing up a third party managing agent to manage our block, specifically re the insurance implications. We have not yet signed the contract.**
The relevant Terms of Business (contract) excerpts from that supplied by the agent currently read:
– The Client is not required to arrange and hold directors' and officers' liability insurance for the Term but is advised to do so. On request, the Client will give the Manager a copy of any such insurance certificate.
– The Client shall indemnify the Manager in respect of any claims made by another or third party for any loss, damage or legal and other expenses incurred as a result of any one or more of those circumstances listed above.
– The Manager shall not be liable to indemnify the Client in respect of any claims made by another or third party for any loss, injury, damage or legal or other expenses incurred as a result of any one or more of those circumstances listed above unless it be as a result of the Manager's negligence.
1. The agent is advising that we have "directors' and officers' liability insurance". Are you able to advise if this is sensible, and what we should look for in cover?
2. Currently we have cover in our buildings insurance under 'Property Owners Liability' which mentions indemnity cover for directors and officers. How does this differ from Directors' and Officers' Liability/Indemnity cover?
3. If we do engage an agent then they will arrange our buildings insurance for us. Would you advise that it is satisfactory to have a Directors' and Officers' Liability/ Indemnity cover policy arranged by our building manager, or, would you advise that we the directors keep some independence and arrange such a policy ourselves?
4: Also, we have employer's liability cover and property owners' liability cover with our buildings insurance. So in addition to Directors' and Officers' Liability/Indemnity cover, is there any other insurance cover that you suggest we could or should take out? (if we have appointed a managing agent or otherwise).

A FPRA Committee Member Bob Slee replies:
I am responding as someone in a situation very similar to your own rather than as an insurance expert, which I'm not. When I became a director of a self-managed block I found it extremely useful to sit down with an insurance broker and discuss the various types of cover that are available through different policies and what we needed to ensure adequate protection. What follows is based on that advice – considered in context by my fellow directors and myself – and which has stood the test of time over many years. We concluded that Directors' and Officers' Liability (D&O) cover was essential. Volunteer directors regularly take decisions on the basis of their best judgement but not necessarily based on any particular professional expertise. In the best of situations things can sometimes go badly wrong and the actions of directors may be legally challenged which could be a hugely expensive business. D&O cover would provide protection in most circumstances.
Property owners' liability protection is usually included in a buildings insurance policy and is primarily intended to cover third party claims arising from defects in the building and grounds, which is quite different to claims arising from decisions and actions of the directors. In summary and in response to your specific questions:

- In my view D&O cover is more than sensible. Standard policies are widely available and the only variable consideration is likely to be the monetary level of cover that you are prepared to pay for. We don't employ managing agents these days but even when we did we held D&O cover separately from the arrangement we had with the agents – it is quite possible that a claim under the cover could arise in connection with your contractual arrangement with the agents.
- Property owners' liability cover is quite separate from D&O cover and intended for different risks.
- I have personally never come across D&O cover being included in a buildings insurance policy.

However, some insurance companies offer preferential premiums if you buy both policies from them.

- In most situations potential third party claims not covered by employer's liability or D&O cover would be covered by property owners' liability cover in your buildings insurance. In our situation we have a good buildings insurance policy with built in property owners' liability cover and separate D&O cover and we regard ourselves as being amply protected.

Wooden Floors and Noise

Q **Our flats were erected in 2003. One of the conditions of the lease is that the floors be covered with carpet or other sound deadening material. The original buyers of one the first floor flats laid a wooden floor without putting a layer of insulation between it and the concrete floor. The owner of the flat below complained and the then agents for the landlord wrote to the owners of the flat in question in September 2003 telling them that they were in contravention of the lease and to rectify the situation immediately.**
The owners of the flat in question only resided at the property for a short time before moving abroad and renting the property to a single lady. Nothing was done about the floor covering. The owner of the ground floor flat moved away. The new owner of the ground floor flat was elderly and hard of hearing so no further complaint was made.
We acquired the right to manage in 2009.

The owners of the first floor flat have now put their flat up for sale and the RTM company have given copies of the 2003 correspondence to the solicitors in response to their enquiries.
The seller's solicitor has written to the RTM company saying "..... that as no action has been taken over the past 13 years, any breach of covenant would have been waived and so no action could be taken at this late stage." Is the solicitor correct in saying this? Surely the passage of time does not alter the lessee's responsibility to comply with the terms of their lease?

A FPRA Hon Consultant Claire Allan replies:
There may have been a historic attempt to remedy the breach of lease but there is nothing preventing the new RTM company which I note took over the RTM only in 2009, to issue another letter. This will act as a fresh request by the landlord to remedy the breach. There is an argument that the passage of time will remedy the earlier breach but nothing preventing a new letter of breach and requesting compliance being sent.
If there are no current complaints by the owner of the lower flat or any adjoining flats, then all well and good and the RTM company may be agreeable to let sleeping dogs lie. However, it does need to protect itself in case a noise complaint issue arises. The RTM company could write to the owner stating that it is aware of the breach and whilst it will hold off taking any enforcement action for the time being, it will not hesitate to do so (claiming all costs it incurs in doing so) should any noise complaint be raised.
It seems that the current set up and occupancy arrangement does not give rise to any audible noise. However, the new buyer may make more noise, or there may be more people living at the flat, which may cause more noise and for the owner below to complain again. At which point the flooring will need to immediately be remedied so that it complies with the clause in the lease as to flooring. The RTM company should ask for a copy of the new flooring specification before it is laid and could request that the tenant backs it up with an acoustic engineer's report so that it has been properly signed off that whatever flooring the lessee intends to use (unless of course the tenant decides to carpet the flat with double thickness underlay) will meet appropriate sound levels for the building.

Q Buying the Freehold and Parking Problems

There are two matters we should value your advice on:
1. We have recently been offered the opportunity to purchase the freehold of the property. This offer came through the agents for the Freeholder. No price has so far been mentioned.
I have never heard of a flat owner holding a freehold. I don't know how it works. Which of the 21 flats would own the land?
None of us are particularly enthusiastic about this proposal. We have a 999-year lease, as from 1960, the date the flats were built, and pay a ground rent of just £12.60 per annum. Those with a garage pay an additional £4.87. We do not see any advantage in purchasing the freehold, but I may be missing something. I would like, as Secretary, to be able to give an informed opinion to any flat-owner who asks how they should respond to the offer.
2. We have a big problem with parking. There are garages, but not enough for every flat. We park where we can, on the forecourt, taking care not to block other cars. In other words, there is scarcely enough room for residents' parking, let alone visitors, and outsiders who choose to use our premises for parking. We already have a notice at the front of the property saying "RESIDENTS PARKING ONLY" but this does not deter.
What can we do to deter rogue parking? We have looked into a company who have authority to issue penalty tickets – they patrol on a regular basis – but it would involve unsightly (to my mind) notices everywhere about NO UNAUTHORISED PARKING and information about FINES, to ensure that people have fair warning that patrols are in operation.
My own opinion (it is others who have had this idea) is that the law of unexpected consequences could soon kick in. For example, we, the management, could get a lot of aggravation from anyone getting caught – people do not usually pay up quietly. Secondly, I feel that notices plastered everywhere, both at the front and rear of the property (where the garages are), could deter potential buyers and that the value of our properties could fall.

A FPRA Chairman Bob Smytherman replies:
I will do my best to provide some initial thoughts and advice on the two areas you raise. I am not a lawyer, but have been dealing with issues from a practical point of view with over 20 years' experience as a Director of an RMC of a 46 flat development in Sussex. We have a range of legal and other experts with many years' experience to provide more detailed responses to members' queries.
On the issue about buying the freehold, it is likely that the Freeholder wants to sell for a variety of reasons to your management company. The individual flats would remain leasehold with a share in the Freehold. This is usually (if the price is right) a good thing to do as your development will be managed by Directors with a direct interest in the running of the estate (hopefully).
The fact you have such a long lease at the moment makes the advantages of owning a share of your own freehold a lot less. The ground rent is already low and – unless there are any horrors in your lease – is unlikely to rise drastically over the next few years.
I would suggest you send us a copy of your lease so we can ask one of our specialist in 'Collective Enfranchisement' (or buying a share of the freehold to you and me) to have a more considered look about the advantages.
Owning a share of the freehold could substantially add to the value of each flat.
If you do decide to take advantage of the freeholders offer I

Continued on page eight

Ask the FPRA continued from page seven

would certainly seek an independent valuation to ensure it is a good deal and not take the freeholders word for it.
The issue of parking control is my area of expertise by default as my own block suffers a similar issue of too many cars and not enough spaces for all the residents and visitors, as well as living close to a commuter train station.
A few years ago FPRA campaigned against the Government's proposal to ban wheel clamping on private land as this provided a very good deterrent to selfish parking. Sadly the Government ignored us and introduced the ban leaving the only enforcement option for illegal parking on private land being the issue of parking tickets. These can be self-regulated by companies that are members of the British Parking Association. Not ideal, but if you do go down this route I strongly advise ensuring whoever does this for you are members of the BPA.
This will involve the adequate number of signage on your development. The criteria for the number and nature of the signs is regulated and will be supplied by the company (sometimes free). The company may also offer free patrols.
If you go for the free option, the company is motivated solely by the number of tickets issued.
If you pay for signage and regular patrols there will be more emphasis placed on deterrent and informing motorists of the rules than just issuing fines.
I would certainly strongly urge against issuing fines yourself as this is both illegal and unenforceable and very confrontational.
The specialist companies will always be willing to visit your site provide options and take instructions from your Directors or your agent and it is important to communicate well with all the residents, details of any new parking regulations you impose and explain why.
As to whether parking enforcement deters buyers , well from experience in my own block the opposite appears to be the case as potential buyers value the fact the management have taken responsibility for and tackling the issue of selfish parking.
We have much more background to these issues in our past newsletters on our members' website.

Are Meetings Necessary?

Q **I'd be grateful if you could confirm the requirements re meetings for our 'limited company without portfolio'. We have our AGM which is a formal meeting and minuted. But are we also expected to have 'directors' meetings' of a similar formal nature? We have had them thus far on a six monthly basis but with some directors living mostly abroad it's becoming a little difficult to plan in advance and a more informal 'chat' about things rather than formal directors' meetings would suit us better. Obviously the AGMs will continue as at present.**

FPRA Committee Member Shaun O'Sullivan replies:
Although I am not a lawyer, my understanding is that there is now no legal requirement for private limited companies to hold board meetings unless required to do so by the Articles of Association of the company. So, although you should refer to your Articles of Association for guidance in this regard, I doubt whether there is such a requirement. However, should you decide to hold board meetings, it is my understanding that any decision must be recorded and the record kept for at least 10 years. In my block we have long dispensed with board meetings and manage business by email with the secretary recording significant decisions (such as the agreed level of Service Charge or the selection of a decorator after a Section 20 process) in a Minute Book.
Although you appear to wish to retain your AGM, since the 2006 Act came into force it is not now necessary for small private companies to hold an AGM unless required to do so by the articles. Even then it is possible to resolve not to hold an AGM and to lodge an amendment to the articles with Companies House within 15 days of the resolution being passed and with the formal business of the AGM (Report of Directors and laying down of accounts) being dealt with by other means (eg email).

Japanese Knotweed

Q **We have just made the horrifying discovery that we have a small amount of Japanese Knotweed (JK) in our grounds. We hear that it is rife along railway embankments in the Bromley/S E London area and, although we understand that it spreads laterally under ground through its rhizomes and not through seeds, somehow a small patch of about 2-3 square metres has taken root next to our block of garages.**
We have done a considerable amount of research on how to treat it. It seems that it may respond to strong weed killer if applied in the growing season either by a spray method or injection of individual stems. The alternative of digging it out is prohibitively expensive due to the depth of excavation needed.
Although we are used to doing our own gardening (we do not live at the block) our reading of the cautionary advice about the handling and disposal of JK suggests that it is serious enough to warrant professional treatment. Unfortunately, we have not been able to identify any local horticultural companies offering to deal with the problem. Going further afield into Kent and Sussex, we have identified four companies who advertise that they are experts in dealing with JK. There is a considerable difference in the costs of treatment offered. They range from a professional weed treatment company who will simply come and apply weed killer (by spray or injection) for approx £250. There are no guarantees that the JK will not return next year and need the same treatment again. We understand that JK can take approximately three years of repeated treatments to eradicate it. Other companies will take a more systematic approach by offering an initial survey, a five-year plan of treatment and a written guarantee that the ground will be free of JK for five years. Costs range from £1,200 (without any guarantee) to just over £2,000 (no reduction for our very small infestation) if an

insurance-backed guarantee is required.
Another company quoted a massive £3,900 – £5,400 for a survey and treatment with a five-year Lloyds-backed guarantee.
Our inclination is to start with the cheapest company and hope that the treatment may eradicate the JK. If not, we would be in for another £250 next year and, possibly even the year after. Adopting the more expensive approach would increase our annual service charge to unacceptable levels for many of our nine residents (three of whom are between 88 and 94 years old and on low incomes) by adding at least £500 to it. I get the impression that this more expensive solution is not necessarily good value for money – it is aimed at infestations of 50 sq m and certainly takes no account of the fact that our infestation covers only a tiny area.
Treatment of the JK is urgent as it grows at an alarming rate and we must take action quickly to eradicate it. We are concerned that, if any one of our nine lessees sells their flat, we are likely to be asked (in the purchaser's enquiries) a specific question about the presence of JK on "The Estate" and if it is present, what treatment or guarantees have we obtained. One company we contacted makes clear that any failure to answer correctly the question on the Law Society Property Information Form TA6 (3rd edition) would render the author guilty of misrepresentation and make them responsible for "all damage up to the point of sale and also liable for this historic damage after the sale of the property". It is not our intention to answer with anything but the correct information but we wonder whether, if we, as the two directors of the freehold company, do not obtain a guarantee that JK has been eradicated, could we be held to be negligent if our response to enquiries reveals that fact and then holds up or even causes the sale of a flat to be aborted? Whilst we realise that you are not in a position to recommend any particular company for the eradication of JK, if you feel able to mention any you are aware of we should be most grateful.

A FPRA Chairman Bob Smytherman replies:
I respond from a practical point of view.
This is now a standard question on the LPE1 forms for prospective purchasers to ask as the consequences of having JK on site can be potentially very serious to the health of people coming in to contact.
I can't claim to be an expert on the subject but my practical advice would in the first instance contact your local council who will probably have experts who have dealt with this if they have parks and allotments. You should also seek advice from the Environment Agency who should be able to provide you with a measured means to deal with the removal that will also prevent a reoccurrence.
I am concerned that the contractors are offering such a difference in cost to provide a solution.
My concern with opting for the 'cheapest' first is this might not be the longest term solution to eradicate the JK which must be the desired outcome.
The Environment Agency and/or your council will be best placed to provide you with an impartial view as how best to eradicate it fully, this is unlikely to be the cheapest solution although of course it is possible?
My advice would be to try and find a solution that is a 'one off' solution that you can evidence to prospective purchasers rather than short term solutions that won't provide you with that evidence.

Asbestos in our Lift

Q **We had an asbestos survey of the common parts of our building (built 1964) in 2013. Some areas were identified which required removal. This was dealt with by a licenced contractor. Other low risk areas were noted and labelled. During a recent lift upgrade the contractors requested a further survey of the areas in which they would be working. Some asbestos was identified but this did not necessitate removal prior to work commencing. The asbestos surveyor who undertook this survey on behalf of the lift company has advised that it is necessary for us to have an annual survey of common parts. Our earlier understanding was that this is not necessary. Reading on the subject on your website would also indicate this to be the case. Can you please advise us if an annual survey of the common parts is now mandatory? We wonder if the surveyor is simply trying to generate business. We have been unable to contact our original surveyor and would be grateful if you have a list of reputable asbestos surveyors for this area, who we would be able to use in the future, should the need arise.**
Following my initial query I have learnt we have been told to keep an annual register as asbestos has been discovered in a communal part of the building – in this instance in the control unit of the goods lift. This, we have been advised, involves having an annual asbestos survey carried out. We are hoping that you can clarify this for us.

A FPRA Chairman Bob Smytherman replies:
Thank you for your email and query about the issue of asbestos in the common parts which has been passed to me for response from a practical point of view and not a legal one. My understanding of the asbestos regulations is there is no need for a further survey on an annual basis provided as this is important. That there has been no material change to the common areas which has resulted in the asbestos being disturbed.
I suspect the lift contractor is being cautious to protect their staff asking for an annual survey to satisfy themselves that it is still safe to work in the area.
Provided you can demonstrate to the lift contractor that the asbestos is still being managed in accordance with the original plan either by way of removal or labelling AND no changes have occurred since the plan was produced then my view is that an annual survey would be disproportionate.
FPRA Hon Consultant Paul Masterson, lift expert, adds:

Continued on page twelve

Legal Jottings

Compiled by Philippa Turner

FTT	First Tier Tribunal (formerly the LVT)
UT	Upper Tribunal
UKUT	United Kingdom Upper Tribunal
EWHC	England & Wales High Court
RTM	Right to manage

Leasehold Reform Housing & Urban Development Act 1993

Under the Act, calculation of the premium to be paid on extending a lease requires *inter alia* the valuation of the existing lease on the open market. Until the Act came into force this did not pose any difficulty but, since then, the price of all such leases changing hands take into account the increased value attributable to the benefit they enjoy as a result of the Act, namely, the statutory right to acquire an extended lease. It follows that there are no longer available "comparables" by which to assess market value. The following three cases were considered together by the UT *(Sloane Stanley Estates v Mundy 2016 UKUT 223)* in order to give guidance as to the correct method of assessing the capital value of existing leases. The problem required detailed analysis, requiring calculation of the "freehold vacant possession" value, the difference in value when with the benefit of the Act and without employing two different methods hitherto devised by the profession for the purpose (in the end, the UT did not approve either method as being suitable). The findings, when calculating the present value, were: (i) *Aaron v Wellcome Trust* Flat 5 (with 41.32 years unexpired lease) should be allowed a 10 per cent reduction on the £2m recent sale price; (ii) *Sloane Stanley v Largesse* Flat 11 (with 37.71 years unexpired) should be reduced by £10,000 to a rounded figure of £360,000 and (iii) *Sloane Stanley v Munday* Flat 3 (with 23 years unexpired) should be reduced by £13,302 to a rounded figure of £435,000. The judgment concluded with giving some guidance on valuation in future cases but found there was no clear way of doing so, and merely pointed out matters which must be taken into account.

Sinclair Garden Investments v Wisbey (2016 UKUT 203) was a dispute about the landlord's solicitor's fees payable by the tenant under Section 60 of the Act on the grant of a lease extension. The FTT had reduced the bill from £1725 plus VAT to £845. The UT allowed the landlord's appeal on the basis that the FTT had erred in its assessment of the fees and a new calculation was required by the UT resulting in an increase to £1320. The full amount was held to be unreasonable since there was no evidence that the landlord had carried out any negotiation to effect a reduction in the costs of instructing a surveyor by reason of the work being substantially the same as that undertaken for the same client in respect of a similar property.

Costs

Costs were also in issue before the FTT in *Winchester Park v Sehayek (2016 EWHC 1216)*. The landlord had issued a service charge demand whilst the lift was out-of-order. Unsurprisingly, the tenant's flat being on an upper floor, he did not pay the demand but, after the hearing before the FTT, paid the amount ordered of £12,770, reduced by the FTT to reflect the absence of the lift. The lift was restored to working order but only after the tenant had applied for a mandatory injunction, the hearing of which was adjourned; much later, at the substantive hearing as to the reasonableness of the service charge demand, the FTT held that nothing was outstanding and the tenant was, in fact, in credit at the time the injunction application was made. However, on the lift again failing, the tenant issued a further application for an injunction and, again, by the time of the hearing it was working again; the tenant applied for dismissal of his claim but also for payment of his costs in the sum of £10,845. These were awarded and were upheld both by the recorder and by the High Court. It was observed that the tribunal was entitled to exercise its discretion and, provided it was exercised in a rational manner, an appeal court would not interfere with such a decision.

Under Rule 13 of the Tribunals Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 made by virtue of Section 29 of the Tribunals Courts & Enforcement Act 2007, the FTT is empowered to award costs in cases of unreasonable behaviour on the part of a litigant. In the three cases heard before the UT *(Willow Court Management v Alexander 2016 UKUT 290)* guidance was issued for the future exercise of this power. In the course of its judgment, the UT considered the significance and meaning of "unreasonable behaviour" by the parties, the element of discretion, the position of unrepresented parties, the withdrawal of claims and causation. In the first case, *Willow v Alexander*, the FTT had found that the residents' management company had not followed correct procedure required by the lease when demanding service charges and ordered the company to pay the tenant's costs of £13,095 plus VAT although the outstanding service charge was only £5,702. The UT did not agree: there were other issues to be resolved by the FTT, namely, the reasonableness of the service charge amount and the limitation of costs under Section 20B of the Landlord & Tenant Act 1985. It followed that it was not unreasonable on the part of the company to take and continue the proceedings and that no order for costs against it should have been made. In the second case, *Sinclair v 231 Sussex Gardens RTM*, the tenant was ordered by the FTT to pay the RTM £16,800 towards its costs, although the service charge claimed was only £9767, on the grounds that the tenant's defence to the claim was spurious and was not supported by sufficient evidence. The tenant's appeal was allowed by the UT: she had been treated unfairly by the FTT in not having been given notice in sufficient time to deal with the costs application; furthermore, the UT considered the FTT had failed to examine her case adequately or the evidence tendered by her which did in fact exist. In the final case, *Stone v 54 Hogarth Road*, the tenant was ordered to pay £2,260 towards costs in a dispute as to the landlord's right to retain service charge surpluses as a reserve fund; the FTT held that the tenant had acted unreasonably in withdrawing shortly before the hearing rather than earlier when the opportunity arose. The tenant's appeal was allowed by the UT on the grounds that, on the facts, it was not unreasonable for him to withdraw at a late stage: he had sought and acted on, in a reasonable time, advice received from LEASE to the effect that nothing was to be gained by proceeding with his case.

Service charges

The tenancy in *Cardiff Community Housing Association v Kehar*

(2016 UKUT 279) was at a weekly rent including a service charge but, in error, the place in the lease which should have set out the services in question had been left blank. When the rent was increased to £87.70 including a service charge element increased from £14.60 to £16.22 the tenant sought to challenge the latter before the FTT which held that, in the absence of any description of the services to be provided, no service charge was due and accordingly disallowed that part of the rent. The UT disagreed and held that the tenant and her predecessor had paid the earlier service charge element for a period of eight years without raising any objection; the UT could not, in the absence of any evidence, assess what the correct amount should be and invited the parties to agree a figure (which they did, at £11), pending consideration by the Housing Association of what sum should be included in future to create a fund to replace the lift.

The dispute in *Syed Balkhu v Southern Land Securities (2016 UKUT 239)* was in respect of contributions to the sinking fund, amounting to 20.04 per cent of £70,000. The FTT had held that the amount was reasonable in view of the need to maintain a building of about 100 years old, albeit only converted into flats within the last few years, and that it was likely to need extensive and expensive maintenance in the near future. The tenant appealed to the UT on the ground that the FTT had not explained why the sum was reasonable. On analysis of the evidence, which was in a confused state, by the UT it was established that £40,000 in total was a reasonable sum to build up by way of a sinking fund to cover external redecoration but not £70,000 for which there was no explanation by the landlord's surveyors; the tenant's liability should accordingly be reduced from £14,028 to £8,549.

NUISANCE PARKING

Francis Wood represented FPRA at a parking summit called by the British Parking Federation.

This is what Francis told them: "I am here representing the FPRA – The Federation of Private Residents' Associations – which speaks for many blocks of flats, across the country, which have parking for their residents and visitors. Generally, they do not offer parking facilities to the public but the DVLA's present rules on the release of vehicle owners' details deprive them of any effective deterrence of vehicular trespass unless they employ an Accredited Contractor.

"I will use my own association as an example. We have 21 flats and parking for about 24 cars, close to town centre. We display signs making it clear that the land is private and talk to unknown drivers whenever possible, or leave politely worded notices on their windscreens asking them to identify themselves if they are genuine visitors and warning them that, otherwise, if they return, they will be charged £50 a day, or part day. Some are understanding and do not return, others can be abusive and quite threatening. The problem is the small minority who persist in parking on our land. Previously we could obtain the owner's address and invoice them (offering an appeal procedure to those who felt aggrieved). If they did not pay we could take them to the County Court. A charge is necessary to recover our costs, it is not intended to make a profit. We consider that the DVLA's withholding of owner information in such circumstances is not justified, though admit that it may be an administrative convenience.

"We do have reasons for not wanting to employ an Accredited Contractor but, in my allotted three minutes, I do not have the time to go into them.

"We can demonstrate that we treat trespassers fairly and want the DVLA to resume releasing owner's addresses to those who will use them responsibly."

Later, Francis received this response from Jamie Pickering of the DVLA.

"Regarding access to DVLA vehicle keeper data to pursue charges following unauthorised parking on private land, the Government's policy is that those who pursue charges or damages against motorists following parking incidents on private land, need to be members of an appropriate Accredited Trade Association (ATA) in order to request DVLA vehicle keeper data. This policy applies equally to invited parking (i.e. contract parking) and unauthorised parking (trespass). The requirement for accredited trade association membership is to ensure that those who request DVLA data to pursue charges operate within a code of practice that promotes fair treatment of the motorist and ensures there is a clear set of standards that cover aspects such as signage and appeals processes. It is important that the policy is applied equally to both contract and unauthorised parking in order to avoid loopholes. This aspect was looked at during a judicial review at the High Court last year.

"If a landowner requests DVLA data to send advisory notices to the keepers of trespassing vehicles, DVLA would be able to consider disclosure in such cases in the absence of ATA membership so long as charges were not pursued. Whether data would be disclosed in such circumstances depends on the facts and evidence in individual cases.

"It might be the case that, for some landowners, DVLA data is not the most effective way of managing parking non-compliance and other methods need to be considered. Also, I believe there are enforcement operators (who are ATA members) who offer a range of services to landowners including schemes where the landowner can collect evidence of non-compliance for forwarding to the operator for action. We wait to see what impact any future changes by DCLG will have on the problem of unauthorised parking."

NEW HON CONSULTANT

Francis Wood spent 20 years as Company Secretary in a group of engineering companies. After retirement, he became involved in the management of the flats in which his mother-in-law lived because the then Chairman, who ran the place almost single-handed, died suddenly and no one else knew what to do. Consequently he stresses the importance of overcoming the reluctance of owners to get involved and making sure that there are several Directors with knowledge of the ropes. He has assisted the Federation in responding to government consultation on Service Charge accounting and parking and vehicular trespass problems.

Francis comments: "I am keen on making Accounts (both Service Charge and Company) informative and useful to flat-owners rather than merely compliant with requirements."

IF IT DIDN'T EXIST YOU WOULDN'T INVENT IT!

By our Regular Columnist Roger Southam, non-executive Chair of the Leasehold Advisory Service (LEASE)

Leasehold has been in England and Wales for over 1,000 years and does not exist in any other country in the form we have it. One thing is for sure if we started from scratch leasehold would not be invented now. However, I believe that the nature of the tenure is not really the issue at hand with regard to service charges and communal living.

I recently had the pleasure of listening to Dr Hazel Easthope of the Australian University of New South Wales on the subject of strata tenure. What fascinated me was the fact that results in surveys they had carried out, mirrored the results of the survey carried out by LEASE with Brady's solicitors. Also whatever the tenure and whatever the control there is a real need to increase education of rights and responsibilities for the home owner.

That is of course not the be all and end all. The way we will tackle the long seated mistrust that resulted in 57 per cent of our survey saying they regretted buying freehold is a long shopping list. The fact we need managers to improve customer service, the fact we need to eradicate the bad owners and managers from the market, the fact we need to increase transparency on service charge expenditure is all true. However the start point as I see it is for all to work together, discuss together and to look for solutions not just wanting leasehold abolished.

I genuinely believe if we waved a magic wand and changed all leasehold to commonhold that would not resolve the problems and issues. The tenure of a property is a side show.

If people are buying property without knowing they have a service charge to pay then that is fundamental, there would still be service charge in commonhold. If estate agents are not aware of the essentials of leasehold to differentiate value of freehold to leasehold then that is fundamental. If mortgage companies won't lend on commonhold flats that is fundamental. If we can all work together then we can see a delivery of better service, more awareness of responsibilities, and a better understanding of what the owner is buying.

Of course if everyone had perfect knowledge, all agents were exemplars of management services and all charges reasonable we

Continued on page sixteen

Ask the FPRA continued from page nine

Management Survey

There is no requirement for an annual report from a specialist, however the ACM (asbestos containing materials) should be examined to ensure that conditions have not changed (deterioration/damage), the recommendation being not greater than every 12 months. Providing nothing has changed, the building register should be updated to reflect this, photographs of ACM condition is advisable.

Refurbishment/Demolition Survey

Should there be refurbishment/demolition works, then a specialist surveyor would be required to ensure nobody will be harmed by work on ACM and that such work will be done by the right contractor in the right way.

So providing the condition has not changed and no refurbishment/demolition is planned the Management Survey once per annum should be sufficient.

Who Can Vote?

Q **My colleagues and I have recently formed a residents' association. Our constitution was drawn from the Department for Communities and Local Government proposal and we hope to gain RTA status shortly. We have six blocks of flats and 18 houses, in total 76 residences. One of the blocks of flats is social housing and the flats are owned by a housing association. Should the tenants of the social housing block be offered membership of our tenants' association, each flat one vote, or would the housing association be entitled to have a block vote?**

A FPRA Hon Consultant Yashmin Mistry replies:

Unfortunately there is no precise definition of who can be a member of a residents' association. In general terms a member will usually be contributing to the payment of service charges which, under the terms of the lease or tenancy, vary from time to time to meet expenditure incurred or to be incurred for providing services to the block/development. This should be contrasted against a tenant paying a fixed or non-variable service charge who may become a member but probably will not have the ability to vote on matters in which they have no interest.

In practice the tribunal will want to be satisfied that the constitution and rules of the association are fair and democratic and that it is independent of the landlord and, in the case of a company landlord, its employees. The tribunal will be concerned to see that the actual paid up membership of the association represents a substantial proportion (as a general rule not less than 60 per cent) of the potential membership.

The letters above are edited.
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NEW CODE GETS THUMBS UP

FPRA Director Shula Rich reports on the new RICS (Royal Institution of Chartered Surveyors) Code of Conduct, which she helped to create.

For the first time FPRA was invited to be part of the committee which met to discuss the transition. We were the only leasehold body to be represented.

The Third Edition of the RICS Code was brought in by Statutory Instrument in June this year. It is not a legal requirement for all block managers, but as one of only two legally accepted codes, it is a gold standard and may be cited at a tribunal as an example of very best practice.

The sections vary in depth – but most give guidance as to how the regulations in the legal framework are to be carried out. It is not a blue print for what to do – but for how to do it.

All surveyors by their membership of RICS are obliged to abide by it, when undertaking block management.

The code applies only to residential leasehold properties in England but practitioners operating in other parts of the UK are encouraged to follow the best practice guidelines contained in the Code. It has *"been prepared to promote desirable practices in respect of the management of residential leasehold property. Successful management can only be achieved through cooperation and a mutual understanding of the procedures necessary for the effective management of property as well as of the problems that can arise.*

"The Code is therefore intended to be read by landlords, leaseholders, managing agents, managers and occupiers of leasehold property. Although most of the Code is aimed directly at managing agents of residential leasehold property, parts are specifically intended for other parties such as owners and professional advisers.

"Whilst there are cost implications of managing residential properties to the standard specified by this Code, the benefits in terms of improved service and the level of satisfaction should make any additional cost worthwhile in the long run. A managing agent should provide a compliant, transparent and value for money service.

The Code aims to:

- *Improve general standards and promote best practice, uniformity, reasonableness and transparency in the management and administration of long leasehold residential property.*
- *Ensure the timely issue of all documentation including budgets and year end accounts.*
- *Reduce the causes of disputes and to give guidance to resolving disputes where these do occur."*

As the FPRA representative, and with (too much!) experience of committees, I can vouch that this working group was run democratically and with respect for everyone's views. The drafts were reviewed by all of us and suggestions were included or excluded through reasoned discussion.

Disputes between occupiers – guidance amended

In too many instances the Agent or Freehold company misunderstand their role as block manager and can exceed the role laid down in the Lease.

One of my aims was to amend the guidance in section 19 of the old code disputes between occupiers as it was confusing, and worse incorrect.

The guidance on **disputes between occupiers** has now been re-written in my opinion to all our benefit. RMCs are often pushed to arbitrate in disputes between lessees and agents can be pushed into writing letters which are basically not enforceable under the lease – so making fools of themselves.

However much they want to help, in most cases the hands of the freeholder/ landlord/RTM Co or managing agent are actually tied by the lease.

The Code now gives us specific and correct guidance (see below).

The RICS Code goes alongside the ARHM code which is similar, but contains extra chapters on subjects which specifically concern retirement blocks. It is different from the new ARMA Q code, which concentrates far more on actual process within the organisations, rather than focusing on the rules of block management. The ARMA code has not been presented for Government approval, and would not be suitable – not because it is inferior but because it has a different focus.

It is also available free to download and its emphasis on procedures is a new and welcome contribution to block management.

Service charge residential management Code and additional advice to landlords, leaseholders and agents
www.rics.org

NEW CODE

5.2 Disputes between occupiers

You should always refer to the lease when dealing with disputes between occupiers. You cannot go further in dealing with the parties than the landlords remit under the lease. Most leases will not allow you to recover any costs from the service charge in connection with disputes between occupiers.

The local authority may help in establishing evidence of noise, anti-social behaviour or keeping animals in unsuitable conditions.

You should always have regard to the enforceability clause in the lease before embarking on any action which involves expense from the service charge.

Leases typically contain a mutual enforceability clause requiring landlords to seek an indemnity for their costs from leaseholders requesting enforcement. This may also leave the landlord the option of choosing not to enforce if it is not 'in the interests of good estate management'.

Any enforcement action should be with your client's authority and confirmation that the client will be responsible for the costs until or unless recovered from the leaseholder.

This can be by way of requesting estimated costs in advance as part of the indemnity.

Complainants should be given realistic estimates of the likely time and cost involved in any enforcement. You should also consider other methods of dispute resolution such as mediation, be familiar with local mediation services and suggest this method of dispute resolution, where appropriate. Information on mediation service providers can be obtained from the National Mediation Helpline.

OLD CODE

Service charge residential management code 55
Part 19 Disputes between occupiers

19.1 You should have clear policies and procedures for handling disputes between occupiers and complaints of nuisance from neighbours. The procedures you adopt for handling disputes should be available and their existence made known to both the landlord and tenants and should include response times for their various stages.

19.2 You should deal fairly with all parties. On occasion it may be appropriate to remind complainants that those they complain about may be able to produce counter-arguments in their defence or counter-allegations which are just as real to them as the complainant's grievances. It may be appropriate to remind a complainant of the need for objectivity and confidence as to the grounds for the complaint. Guard against overreaction to a situation; on the other hand, consider whether if you fail to act there may be an action for breach of 'quiet enjoyment'. You should be aware of the wide powers of local authorities to deal with antisocial behaviour and you should have particular regard to complaints of racial harassment.

19.3 Leases/tenancy agreements will sometimes specify that a procedure, such as arbitration, should take place where there is a dispute between occupiers. Arbitration can be cheaper and often more effective than litigation. You should also consider other ways of resolving disputes, such as through mediation. You should bear in mind however that where the dispute refers to service or administration charges, any clause in a lease specifying that arbitration must be used is not valid, unless it is as a result of an agreement after the dispute has arisen.

19.4 On receipt of a complaint in writing, you should investigate and (if under your control) enforce the conditions of occupancy on other residents in the building, subject to consideration of cost implications. If the remedy is not under your control you should advise the tenant making the complaint to notify the local authority for assistance. You should take into account the requirements of the lease/tenancy agreement and the possibility of an action for breach of quiet enjoyment if you do not act.19.5 In considering enforcement action you should have regard to the availability of supporting evidence and the willingness of others to attend any hearing that may be necessary.

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ALEP

NEW INDEPENDENT REGULATOR

Former Government Minister Sally Keeble has been appointed new Independent Regulator of ARMA (the Association of Residential Managing Agents).

She will chair the Regulatory Panel which oversees ARMA members and determines disciplinary outcomes of cases involving member firms.

ARMA is the leading trade association for residential leasehold managing agents in England and Wales. It works to achieve the highest standards of leasehold property management and campaigns for improvements in legislation and policy for the benefit of consumers. The Regulator and Panel are operationally independent of ARMA and the Association has no power to intervene in its affairs.

As Government Minister Sally Keeble had responsibility for social exclusion and housing and was, among other appointments, council leader of the London Borough of Southwark. As a minister she took the Commonhold and Leasehold Reform Act 2002 through Parliament.

Current Independent Regulator, the Rt Hon Keith Hill, said: "The calibre of applicants was exceptionally high and Sally is expertly placed to take over a role which is crucial for the standing and integrity of the independent status of the Panel." She will take up the appointment in November 2016 when Keith Hill stands down after three years in the role.

MOVING ON

Please note that ARMA have moved, and their new address is:
3rd Floor, 2–4 St George's Road, Wimbledon, London SW19 4DP

NEW WEBSITE FOR NEW LEASE

The relaunched LEASE (Leasehold Advisory Service) website includes a new online booking facility enabling customers to book themselves a free telephone appointment. LEASE currently has 70,000 visitors a month to its website and says that with the changes to navigation and functionality, along with a more modern look and feel, the new website will allow for a much improved user experience. **www.lease-advice.org**

NEW FEES

Previously there were no fees for making a Tribunal application on enfranchisement matters. Now there will be a £100 application fee payable with a further £200 payable when they send out the hearing date.

ANOTHER NEW CHIEF

The new CEO of the Institute of Residential Property Management (IRPM) is Andrew Bulmer (previously of RICS). The IRPM aims to improve standards in property management and sets exams and independent accreditation for those working in the field. **www.irpm.org.uk**

If it Didn't Exist continued from page twelve

would still face an issue on people living in communities. This is really at the heart of the debate in reality. One person's noisy neighbour is the next persons hip trendy music playing fun loving friend. One person's irritation on lights shining in windows or ugly colour scheme is the next persons feeling of safety or desired look.

We are on a long road and it is not going to be solved overnight. We should commit to work to see the necessary education and delivery that will keep us moving forward and improve the world of leasehold. This can be done one step at a time and this can be done if we look for how to better inform and be consensual rather than just seeing things as a battle.

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