ISSUE No.139
Winter 2021

NEWS

FPRA
FEDERATION OF PRIVATE RESIDENTS' ASSOCIATIONS

2021 AGM AND 50th YEAR CELEBRATORY EVENT

The Victory Services Club, in the centre of London, was our venue for this year's AGM and our 50th year celebratory event.

Thank you to all our members who were able to attend in person – it was a pleasure to see so many of you again – and thank you to our 16 sponsors, who's contribution enabled the event to take place.

Previous AGMs have enabled members to speak directly to our Honorary Consultants to discuss key issues and ask their challenging questions.

This year was no exception as our Round Table event kicked off our evening giving members the opportunity to seek advice on managing agents, fire safety, self-management, legal, right to manage and committee procedures.

Our celebratory event would not have been complete without refreshments – everyone was able to eat from the buffet and enjoy a tea or coffee and drink from the bar.

Before getting underway with the AGM, our guest speaker Philip Rainey, QC, shared his views and anecdotes on his suggested changes to leasehold, professionalising property management and the future of Commonhold. Deliberately provocative with his keynote, the audience challenged back with their own comments and questions. Whilst time was limited with his address, views continued to be discussed and exchanged for a while afterwards.

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AGM AND 50TH YEAR CELEBRATORY EVENT

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The more formal part of the evening, the AGM, was led by FPRA Chairman Bob Smytherman and supported by FPRA Treasurer Roger Trigg and Head of the FPRA Admin Office Caroline Carroll. Members, past and present Directors and Honorary Consultants in the room were joined virtually by members unable to attend in person.

The AGM noted the financial success of the last year, with an increase on the previous year (albeit now having to become VAT registered) primarily due to an increase in members' subscriptions and a decrease in expenditure for in person events due to the pandemic.

An investment was made in IT to enable homeworking, which alongside the dedication and hard work of Caroline, Diane, Debbie and Jacqui in the Admin team, secured the success and future development of the FPRA.

The minutes of the previous AGM and the Report and Accounts for the year ending March 2021 were formally received and adopted by FPRA members. Members voted to formally appoint Ross Weddell, Jonathan Gough and Colin Cohen as FPRA Directors. And the Articles of Association, proposed by the FPRA Directors, were formally adopted by FPRA members.

Bob brought the 2021 AGM to a close following an engaging and interactive Question and Answer session. He stated "We're looking forward to building on the overall success of 2021. For the time being, we will continue to run our webinars, meetings and events and distribute our newsletter online, but welcome the opportunity of meeting you in person again at next year's AGM; we hope even more of you will be able to join us."

Thank you to our sponsors:

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HELLO FPRA

I'm sure many of you, like me, feel this year has gone even more quickly than the last. Once again it's been challenging in every respect.

In what has been our 50th year, the FPRA has kept busy and continued to grow.

We've welcomed over 80 new members, ran 10 webinars and answered over 600 of your questions. And as you will see on our front page, we were delighted to be able to run our AGM and celebratory event in November and celebrate the last 50 years in person with so many of you.

Our Directors and Honorary Consultants have continued to lobby, research and represent the FPRA with our members' interests at heart to ensure we can continue to support you and offer best advice.

So as the year draws to a close, I would like to thank you – as a member, advertiser and supporter in any way – for all your contributions.

This is our last newsletter for 2021 but we will return in the new year. Until then, I hope you are able to enjoy the holiday season and here's to a happy, healthy and prosperous 2022.

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

Yours,

Val Moore, Editor – FPRA Newsletter

ELECTRIC VEHICLE CHARGING POINTS ON YOUR MANAGED DEVELOPMENTS – some considerations for you

By Kevin Lever, Partner, KDL Law and FPRA Honorary Consultant

Over the past year, KDL Law has been asked to advise numerous clients and speak on the issue of the need for the installation of Electric Vehicle Charging points (EVC) on managed developments. In doing so we have considered the differing approaches and attitudes towards EVCs, as well as the legal and essential practical aspects. This article is a reflection of the points coming to the fore on this hugely important but potentially tricky issue.

Some time ago now, the Government announced its plan to ban the sale of cars and vans, powered solely by petrol or diesel, from 2030 and hybrids by 2035. The effect on electric car purchases has been suitably huge of course with City A.M. reporting in September that sales of electric cars had increased in 2020 by 186% (we suspect the figure will be even greater this year). The need for the installation of electric charging points in homes across the country has therefore started and will only increase as 2030 looms ever closer.

So as an agent, landlord or management company (RMC or RTM) what is your role in this process? No matter how 'green' your intentions for your development, what will you have to consider in order to facilitate the inevitable need for EVCs?

We can look at the issue from two perspectives:

1. Firstly, the reactive approach of how to respond to a request from a property owner or occupier who wants to install an EVC on their own parking space or elsewhere on the development for their own use.

2. Secondly, the pro-active approach of providing EVCs for all residents on your development.

The property owner's request for an individual EVC

The property owner may propose attaching the planned EVC point somewhere on the exterior of their dwelling or it might be a point erected on or next to their parking space. The very first thing to check here is the lease or transfer (agreement) relating to the specific property. The agreement contains all of the rules and requirements relevant to this request, and no discussion is possible without first knowing the position as set out in that document.

So can the property owner simply install the EVC in a place that is convenient (and no doubt sensible and practical), and can and should you provide licence for that? In most cases the parking space will not be in, or immediately adjacent to, the property of the requesting owner and it may not even be within their demise; they may just have a right to park in a specified space or it may not be allocated at all.

Whatever the circumstances, if the property owner wishes to install an EVC, they are likely to need to work on property that, under the agreement relating to their property, is not theirs. If so, they will require the consent of the management company and/or landlord and, potentially where the cabling may cross the demise of other property in its route to the parking space, the consent of other property owners too.

The landlord or management company will need to consider the following before looking to grant the licence:

(i) **Can** the required licence be granted?
This question is more important now and must be asked following the 2020 decision of the Supreme Court in Duval -v- 11-13 Randolph Crescent Limited. In some agreements you may not have the power to grant the required licence no matter how much you wish to do so.

(ii) **Should** the required licence be granted?
All of the circumstances and effects of the requested matters will need to be considered prior to the grant of any licence.

(iii) The **specific terms** under which such consent is to be granted.
Where a licence is being granted and something is being changed, new considerations will arise, for example future maintenance responsibilities. These will need to be accommodated in any licence (or consequential amendment to the agreement for the property) in order to avoid disputes arising long after the licence has been forgotten.

So who pays the costs? This is such an important question and is one that must be asked and answered before the matter is progressed. Whilst the agreement is likely to provide that the costs of the grant of any licence are paid by the requesting property owner, that should not be assumed. We would advise that where the landlord or management company is asked about consent (any consent for any matter relating to the property, not just EVCs) the first response should be to provide the requesting party with details of the costs of the licence process.

A payment on account of those costs should be obtained from the requesting owner BEFORE a response to the request is considered. That way the landlord/ management company are protected against wasted costs. Such payment by the requesting owner should always be made on the basis that it is payable whether or not a licence is eventually granted.

The licence granted to install the EVC for the parking space will need to set out, or the lease or transfer for the property amended, to ensure that it suitably covers not only who is liable to maintain the EVC whilst it is used and the electricity supply costs, but also the enforcement process (including recovery of the costs incurred in any such action) if the property owner defaults in its obligations at a later stage.

The Pro-active approach – Installing EVC for the development

It has been a constant during our involvement on this topic that specialists who install EVCs strongly advocate a development wide approach as distinct from the piecemeal approach of individually installed systems.

The simple reason is that the draw on power on any development is limited and therefore one multiple user system will enable more simultaneous users than lots of individually installed units exclusive to the single user.

Whilst it is a good idea for the landlord or management company to take on the task of providing EVCs across a development, it does, sadly, raise a whole raft of questions to which answers must be provided before such a project can start. So what do you need to consider for your development if you are looking to install EVCs, serving all or a number of the parking bays?

It is necessary to fully understand the rights and obligations of the property owners and the party responsible for managing the development by reference to the agreements. The following list is by no means exhaustive and is designed purely to provide an indication of points that you will need to consider in moving a project such as this forward. However, each development is unique and will present its own individual issues and solutions.

1. Who 'owns' the area(s) to be used for the installation of the EVCs?

As noted above, the EVC will need to be attached to something and the supply to the EVC will run over, through or under something to reach the EVC. In each case that piece of land or wall, or other structure, is either going to be property reserved to the Landlord (perhaps managed by the RMC or RTM) or the demise of someone else (perhaps a leaseholder or even a neighbour).

It is very often a mistake to assume that as the Landlord or Management Company you/the client can just put the EVC where it is convenient to place it.

2. Does the Landlord or Management Company have sufficient right to install the EVCs?

By reference to the agreements affecting the various properties, you will need to consider the rights reserved to the landlord and whether there is right to install the EVCs, the meters and associated wiring. There might not be, so it is an important point to check.

Conversely, that landlord or management company may be obliged, under the agreements, to provide such facilities. This is less likely given that most agreements were granted long before the thought of electric vehicles became 'a thing' along with the sudden need for infrastructure to charge them.

3. Who is to fund the cost of installation?

This and the following point are very important questions. Despite all of the good and green intentions, and the support from residents on the development, the cost of the installation and the ongoing maintenance is likely to be in the thousands (possibly tens of thousands) – funding is, therefore, a serious consideration.

It is essential to check whether the agreements, through the communal charge, will provide funding. It is easy, but wrong, to assume that because the project is for the benefit of all owners it should be a service charge expense. Service charge funds may only lawfully be spent on the items expressly permitted within the service charge provisions within the agreements. If the agreement does not provide for it then it is highly likely that it is not lawful to fund the works from the service charge funds. Do check them carefully.

4. How is the cost of running and maintaining the EVCs and the associated equipment, including updating as the technology progresses, going to be covered?

This point is similar to the previous one when it comes to funding. There will always be some cost in the running and maintaining/updating of equipment once installed. Do the service charge provisions enable the service charge to be used for these costs and, if not, how is that cost to be covered?

5. Who is going to use the EVCs and how is that right set out, or going to be set out, so as to avoid dispute?

Consider whether the use of the EVCs will give rise to any conduct or parking that might cause a nuisance or derogation from grant. There are a number of scenarios here.

If the landlord is installing the EVCs, it may be impractical to install one for each space, resulting in disputes from irate car drivers with low batteries, unable to access a charging point when they need to.

Perhaps the plan is to put EVCs only on what were originally visitor parking spaces. But is that the correct approach? Those spaces would then be used by residents and therefore not available to visitors.

Unfortunately, whatever decision you make regarding the placement or number of EVCs, issues and disputes are likely to arise. Accordingly, you should seek advice on how you are going to regulate use of parking spaces with EVCs and what enforcement options will be available.

6. Do you need to obtain the consent of another party (a neighbouring land owner) in order to install the EVCs or perhaps planning or conservation area consents and building regulation certification?

Here the consideration is whether, as an RMC or RTM Company, you may need the consent of the Landlord or, as a Head Leaseholder, you may need the consent of a Superior Landlord. Such consents should be obtained prior to expending too much time and resource researching the project.

You should also ensure that you are aware if any specialist consents apply in respect of the development.

All of the above, if required, are likely to result in legal and other professional fees. Consideration should therefore be given as to how these, and all associated costs, will be covered.

7. Insurance requirements and cost

Are the EVCs and ancillary equipment going to be adequately covered by the present insurance policies and what, if any, is the additional cost? Is that additional cost recoverable through the service charge provisions in the lease and, if not, where will the additional cost be paid from? Furthermore, are the additional costs one that a Court or FTT would consider to be a reasonable service charge cost in all of the circumstances?

Conclusions

What we have set out here is by no means a complete list of the considerations for a landlord or Management Company, but it should act as a guide for some of main points to consider.

Given the potential hurdles mentioned, it may not be feasible for a landlord or Management Company of an existing development to provide EVCs for individual or general use because the agreements in place across the development do not enable such provision – they will have been drafted long before the concept of electric vehicles. In these cases, unless and until the legislators address this issue by imposing obligations upon Landlords to install EVCs and statutory facilities to enable the cost of such a project to be covered, then progress will be slow.

It is of course also possible for the landlord and residents to address any failing in the agreements by way of a collective amendment to all agreements. Whilst this is logistically challenging and is generally only workable for such matters if 100% support can be obtained, it is definitely something to think about.
It may well be the case that some developments will simply not cater for electric cars. Whilst at present, this is not a major issue, it could and almost certainly will, have an adverse effect on the interest and future value of property i.e. when electric car ownership becomes the norm, and home based EVCs is a fundamental requirement of any purchaser's property hunt.

Our view is that Landlords, RMCs and RTMs should be looking to be proactive if they can. All new developments will adequately cater for electric vehicles and therefore it is important that the existing property base keeps up.

Some of the issues mentioned may seem at this stage difficult to overcome. But with a sense of community and teamwork, they can usually be managed.

The subject of EVCs will eventually affect every home owner or occupier. Start now mustering support and understanding of what is going to be required to ensure that the EVC issue is one your development can address.

QUESTIONING COMPLEXITY

Written by Ross Weddell, FPRA Director

Running a block of flats, I am constantly being drawn in many different directions. There is an endless stream of stuff that could be done for the building. From cleaning to fire alarms, from budgeting to resident's queries and from Section 20 notices to insurance. The list is seemingly endless.

Even when there is a managing agent in place, the potential number of actions and decisions for any board of directors is huge, particularly when affairs haven't been kept in good order in the past. It is therefore vital to work out the difference between what works are essential and what are non-essential. For example, is it really essential to spend 20 minutes of a board meeting discussing the purchase of a new flower pot? I would argue that in the vast majority of cases it isn't. The meeting time could be better spent discussing more important matters such as maintenance issues or budget planning.

The categorisation of works is only a starting point. It is definitely helpful but it won't make a fundamental difference, given that time and resource are the key variables in what ultimately gets done.

What if we could cut down the resource requirement we have in all building related works?

This is a larger challenge than that of the essential vs non-essential question, as it requires thinking that goes against the grain of modern society. In E.F. Schumacher's book *Small is Beautiful*, he succinctly describes this challenge: "It is my experience that it is rather more difficult to recapture directness and simplicity than to advance in the direction of ever more sophistication and complexity."

It is all too easy to put in place schemes or procedures that seemingly solve a problem. In reality, a new scheme will often add to the workload and could make a problem worse. To take an example...

I've had issues with tradespeople leaving mess around the communal areas of my building. I could ignore the issue but this will lead to complaints and inevitably more work. I could put in place a system of permits for all contractors using the building. Quite apart from the questions of whether my lease would allow this approach, the implementation of this scheme would be very resource intensive for both myself and my fellow directors; it is therefore unlikely to add sufficient value to warrant implementation. I could also take a middling approach...

I could put in place rules for contractors using the building. These rules may take some time and effort to set up, but once they are in place, they would require minimal maintenance, if any. The middling approach is likely to be the most resource efficient of the approaches available.

In the world of building management, it appears to me that the ability to be simple is an uncommon trait. Maybe going to a simpler way of operating is in fact a better way of running our buildings.

We will end up paying the cost of complexity. Shouldn't we at least make efforts to simplify our operations?

ARE APARTMENT BLOCKS ABOUT TO BENEFIT FROM THE COP 26 EFFECT?

FPRA's Honorary Consultant, Shaun O'Sullivan, glimpses some light at the end of the tunnel.

Well, no, probably not specifically, although climate change is undoubtedly the backdrop against which the UK government's road to zero strategy is set. And if rumours are to be believed, it does seem that greater and more flexible grant-based incentives are likely to become available to those living in apartment blocks in the near future in order to make the transition to electric vehicles, and their contribution to reducing carbon emissions, more of a reality. As avid readers of the Newsletter will know, a variety of articles have appeared over the last few years as we have tried to keep members abreast of evolving thinking on the subject.

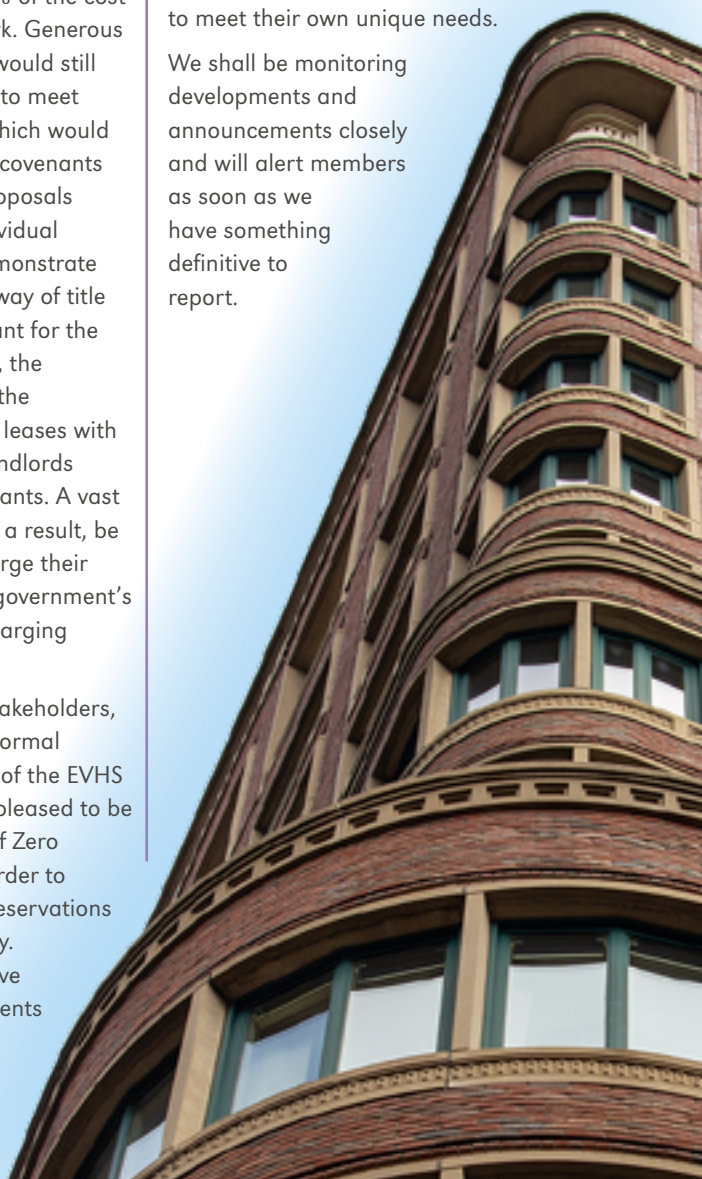
From a purely technical viewpoint the articles, by Future Group's Jamie Wilson, have outlined both the challenges, as well as the solutions, of installing charge-points in apartment blocks. Every block is different and every block will present its own challenges, but it seems very unlikely that most cannot be overcome. The real stumbling block for most apartment blocks is the lease.

Although, in theory, grants are available to those living in apartment blocks, just as they have been available for some years to those living in individual houses, as things stand the likelihood of individual leaseholders being given consent by the landlord/freeholder to install charge-points is remote. Even in situations where a space or garage might form part of that which has been demised, unless there is a ready source of power it is unlikely that a landlord would readily consent to individual leaseholders trenching and back-filling the retained part of the property on a piecemeal basis as they acquired an EV or had one on order – necessary prerequisites to leaseholders securing an individual charge-point grant. And of course, in many blocks, spaces are often not demised which would deny the leaseholder obtaining a grant as one of the other conditions of securing such funding is to be able to demonstrate ownership by way of title deeds. Most spaces are either allocated (sole use without ownership), or form part of the property which has been retained by the landlord.

Superficially the solution might seem to be for the landlord to install the basic infrastructure, leaving individual leaseholders to seek a grant for themselves as and when they order or acquire an EV. Unfortunately most leases do not provide for the landlord to make improvements and to be able to recover the cost of so doing by way of the service charge. When it was announced last year that the Electric Vehicle Home-charge Scheme (EVHS) was being extended to leaseholders, it was hoped that the introduction of a landlord's grant, in order to support the provision of infrastructure and communal charge-points, might have been our saving grace. Welcome though it was, unfortunately the proposal was that the grant would meet just 75% of the cost capped at £6,500 per car park. Generous though this might seem, this would still have meant landlords having to meet 25% of the cost, something which would still not be feasible under the covenants in most leases. Equally the proposals perpetuated the need for individual leaseholders to be able to demonstrate ownership of their spaces by way of title deeds in order to secure a grant for the charge-point itself. In essence, the proposals failed to recognise the difficulties thrown up by most leases with the net effect that very few landlords would be able to utilise the grants. A vast raft of leaseholders would, as a result, be denied the opportunity to charge their vehicles at home despite the government's aspirations that 80% of EV charging would take place at home.

Along with other interested stakeholders, the FPRA responded to the informal consultation on the extension of the EVHS to leaseholders and we were pleased to be able to meet with the Office of Zero Emission Vehicles (OZEV) in order to articulate our concerns and reservations about the proposals more fully. Although we have yet to receive anything definitive on refinements to the scheme as the result of these consultations, we believe that it is likely that the landlord's grant, in order to provide the infrastructure, communal charge-points and any upgrade to the supply system, will now be set at a much higher level and that it will not be limited to 75% of the cost. Also we believe it is likely that the requirement to demonstrate ownership of any space by way of title deeds will be dispensed with and that leaseholders will be able (subject to consent from their landlord) to seek a grant for an allocated space. And if rumours are to be believed, we think it likely that grants for charge-points available to both leaseholders and landlords will be set at a higher level – perhaps £850 for initial charge-points with grants of £500 for future installations. Such arrangements, if they do materialise, should offer the opportunity for many more apartment blocks to develop their own arrangements to meet their own unique needs.

We shall be monitoring developments and announcements closely and will alert members as soon as we have something definitive to report.



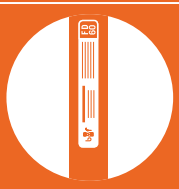
HOW TO CHECK A FIRE DOOR

Fire Door Safety Week, 20 – 26 September 2021, encouraged us all to 'Make time to save lives...'

5 Step Fire Door Check

Suspect the building you're living in, working in or visiting has a faulty fire door? Don't walk by. Report it to whoever manages or owns the building.

You could save a life that day.

	Certification	Gaps	Seals	Hinges	Closing properly
WHAT TO CHECK	 Look for a label or plug on top (or occasionally on the side) of the door.	 Check the gaps around the top and sides of the door are consistently less than 4mm when the door's closed. The gap under the door can be slightly larger (up to 8mm), but it does depend on the door. Ideally, you should not see light under the door.	 Look for any intumescent seals around the door or frame. Check they're intact with no sign of damage.	 Check all hinges are firmly fixed (three or more of them), with no missing or broken screws.	 Check the door closes firmly onto the latch without sticking on the floor or the frame.
WHY	Without a certification mark, you cannot be sure this really is a fire door.	Make sure gaps are not so big that smoke and fire could travel through the cracks.	Be sure the seals will expand if they're in contact with heat, and will stop the fire (and in some cases smoke) moving through the cracks.	Be sure the door has been properly maintained, and in the intensity of a fire will perform properly.	A fire door only works when it's closed. A fire door is completely useless if it's wedged open or can't close fully.
HOW	Use a mirror or the selfie function on your camera phone.	Use a £1 coin to give a feel for scale, this is about 3mm thick.	Take a look at the edges of the door and frame.	Open the door and take a look at the hinges.	Open the door about halfway, let go and see what happens when you allow it to close by itself.
CONCERNS	Report it	Report it	Report it	Report it	Report it

This advice is simplified and for general purposes only. If in doubt you should always refer to the documentation of the door, and if there's any concern we recommend that someone competent is engaged to inspect the fire door, such as a registered FDIS Inspector. **www.fdis.co.uk**

Spread the word **#FireDoorSafetyWeek**

www.firedoorsafetyweek.co.uk

FIRE DOOR SAFETY WEEK

The brainchild of the British Woodworking Foundation (BWF) and supported by the BWF Fire Door Alliance, Fire Door Safety Week was aimed at raising the awareness of the critical role that fire doors play in saving lives and encouraged us all to report unsatisfactory fire doors.

Included in the Fire Door Safety Week Toolkit is a Five Step Fire Door Check which is replicated opposite. The BWF initiative is timely. The new Fire Safety Act 2021, which introduces a strengthened fire regime for all multi-occupancy buildings and which places greater emphasis on fire doors, including those between domestic premises and common parts, was made law on 29 April 2021 and is expected to come into force by the end of 2021.

Infographic sourced from The British Woodworking Foundation (BWF) and supported by the BWF Fire Door Alliance

AUTUMN STATEMENT

FPRA's Treasurer, Roger Trigg, provides a summary from the government's Autumn Statement

Development

Among a thin set of announcements on housing, the chancellor's promise of £1.8bn to assist housing supply via land regeneration – one of the pledges trailed ahead of the Budget – at least represents new spending.

The pot consists of two parts, with £300m to be distributed to councils and combined authorities to help them free up smaller brownfield sites for housing 'and improve communities in line with their priorities'.

The remaining £1.5bn is to 'regenerate under-used land and deliver transport links and community facilities', with the government claiming the fund can help deliver 160,000 new homes.

Details of how the money will be allocated are so far light, with the Treasury telling Inside Housing that the Department for Levelling Up, Housing and Communities (DLUHC) will release information 'in due course'.

Budget documents say the money formed part of what Rishi Sunak called a '£24bn multiyear settlement for housing to 2025/26'. But how the government has got to this figure has been questioned by housing commentators on social media.

Financial Times property correspondent George Hammond seemed to have an answer from the DLUHC:

"What is clear is that £11.5bn is accounted for by the already announced Affordable Homes Programme (AHP). The big launch of this fund was last year, and some of that money has already been allocated as Homes England has chosen its strategic partners for the programme."

In truth, no news may be perceived as good news for some in the housing sector.

Amid economic headwinds, there is a feeling in the sector that social housing funding could have been chipped away at – either through a rent cut or, more likely, a reduction in the AHP. But, thankfully, for social landlords that has not come to pass, and the £11.5bn AHP has remained intact.

Universal Credit

Viewers had to wait up until the very last moments of the chancellor's speech for arguably the most important new policy move for the housing sector.

In his final announcement, the chancellor revealed that he would be cutting the Universal Credit taper rate by 8%. The taper rate is one where Universal Credit is reduced once a claimant starts to earn over a certain amount.

The drop from 63% to 55% means the level of Universal Credit a claimant can receive will be cut by 55p rather than 63p in every £1 over the work allowance.

As part of the government's drive to attempt to make it more attractive to be in work, it also intends to increase work

allowances by £500 for households with children or those with a member with limited capability for work. Both changes, which amount to a £2bn tax cut, will come into effect by 1 December 2021 at the latest.

Though the move was broadly welcomed, some housing figures have pointed out that many will not be advantaged by this. There are currently around 2.5 million households currently on Universal Credit not currently in work.

It is important to point out that many people who are unemployed are out of work for a myriad of reasons – such as living with a long-term disability or being full-time carers.

This comes after claimants are still coming to terms with the government removing the £20-a-week uplift in Universal Credit, which equated to £1,040 per year. Introduced during the pandemic, the uplift was described as a 'lifeline' for millions of low-income families, and its removal equates to about £6bn cut.

So for some claimants that benefit from the tapering, the money gained may not make up the loss.

Local Housing Allowance

Buried deep in the bottom of the Budget documents is an important nugget of information for renters. After making the bold decision to once again align Local Housing Allowance to cover the cheapest third of private rents during the pandemic, in April the government decided to refreeze the rate for 2021/22.

While the term used is 'freeze', in reality it is a drop in real terms as inflation and the cost of renting grows from year to year. So, what about next year?

Well, it would seem as if the freeze is likely to stay in place for another 12 months at least. The government has said that its forecast is 'defaulting Local Housing Allowance rates for 2022/23 to the level of elevated cash rates agreed for 2020/21'.

The Department for Work and Pensions has told Inside Housing that this will be looked at in an uprating review in November, but if it has not been committed in the Budget, it could be the case that the freeze will remain in place next year.

This is significant for those living in privately rented accommodation and relying on housing benefit. At a time when the cost of living is on the creep due to issues, such as increasing energy bills, spending more on housing will leave even less money in the pockets of those already struggling.

Homelessness

In his speech, the chancellor promised to spend '£640m a year for rough sleeping and homelessness'.

The Budget documents clarify exactly what he means by this. After an analysis, Inside Housing has discovered that the government plans to spend £639m in resource funding – spending that relates to day-to-day operations – 'by 2024/25'. Over the total three-year Spending Review period, the government will spend £1.9bn in resource funding, which equates to an average of £633m per year.

On top of that, the government will spend £109m in capital investment – which is spent on investments that add to the public sector's assets such as housing – over the three-year period. This equates to an average of £36.3m per year, bringing total average spend to £669m.

As the chancellor pointed out in his speech, a £639m-per-year resource investment is 85% higher than pre-pandemic spending in 2019. However, the total spending is still lower than the £750m that the government said it has spent on homelessness and rough sleeping this year.

The end of this Spending Review period coincides with the government's target to end rough sleeping, so some will be questioning the logic of cutting spending in this area considering how far the government still has to go to make this a reality.

The Budget documents provide some detail of what this money will be spent on, including continued funding for the Rough Sleeping Initiative, the delivery of homes under the Rough Sleeping Accommodation Programme, and a promise of £200m a year by 2024/25 to 'address the drivers of rough sleeping'. This will be tackled by spending money on things such as 'transitional accommodation for prison leavers' and 'treatment for substance misuse'.

However, the Budget is silent on continued funding for Housing First. As it stands, funding for the government's three pilot programmes is set to finish at the end of this financial year and those working in the pilots have warned that more than 1,000 people are at risk of returning to the streets if this funding is not continued.

Levelling Up Fund

While not a purely housing-based announcement, the chancellor also revealed that more than 100 projects across the UK would be recipients of the first £1.7bn tranche of a £4.8bn Levelling Up Fund.

With the department in charge of housing now focused on levelling up too, you would think the two would go hand in hand.

While unveiling the fund 11 months ago as part of last year's one-year Spending Review, the chancellor described the fund as taking 'a new holistic place-based approach to the needs of local areas. And it has been fraught with controversy ever since, with some accusing the government of channelling funds towards Conservative-held areas.

Among the 105 projects being backed, two in 'the great city of Stoke-on-Trent', as the chancellor put it, include the creation of 450 new homes. Luton will also see 300 new homes being built via the Levelling Up Fund, Budget and Spending Review background documents reveal.

COMMONHOLD OR LEASEHOLD – is it all just a people problem?

By Shula Rich, FPRA's Vice Chair

Do you think leasehold issues are all about people or is it 'the system'? Will all leasehold problems be over once we have commonhold?

Of course there are issues between people which arise from living in flats whatever the system. Our Brighton Drop-in for leaseholders (BHDLA) was established in 1976, almost 50 years ago. I joined the Association in 1994 when our block got a bill for more than £2 million pounds – our block had to pay! However, the amount halved through protest; we then bought the freehold. This was in 1996 after which we joined FPRA.

At the drop-in, in the block and as a Director of FPRA, I see leasehold issues from both sides – the managed and managing.

Is the leasehold problem mainly a people problem?

There are of course people issues: noisy neighbours, cooking smells in the corridors, parking problems, washing on the balcony, pets without permission... there are also management issues arising from poor managers or no management at all.

Will these still exist in commonhold?

Of course they will, but commonhold will deal with them more effectively. I was a member of the Lord Chancellors Working Party on Commonhold leading up to the 2002 legislation... this is the reason why.

Under the leasehold system, the freeholder is generally not under any obligation to deal with any issues involving, for example, disputes between neighbours, unless they are indemnified by the complaining party.

Take a look at your own lease, it's rare not to see this clause because, seeing it from the freeholders' point of view, would you be willing to spend your own funds following up disputes if not covered by an indemnity and pre-payment? The result of this is that the agreements in the lease which make for a well-run and peaceful community may not in practice be enforceable.

Under most leases, if a leaseholder wants to raise a neighbour dispute, the agent on behalf of their clients, needs to ask for indemnity (assurance of funding) before taking the issue up. In fact some leases will also say they don't need to follow it up at all unless deemed 'in the interests of good management'.

The managing agent acts for the freeholder – Right To Manage Company (RTM)/Resident Management Company (RMC). They need to act according to the lease and ask for an indemnity before acting where required. Although this is fully explained in the third edition of the RICS Code of Conduct (page 19 – 5.2) for managing agents (where I represented the FPRA), many stakeholders don't adhere to it or are ignorant of it.

In commonhold the situation is different. There are rules covering community issues and these can be upheld by the Agent or Commonhold Community Association on behalf of the Unit Owners. There is a legal route to deal with management of the commonhold which does not exist in leasehold.

Disputes between unit owners can be dealt with more effectively through the Unit Owners Association. There are voting procedures in a commonhold and necessary majorities for different levels of decision-making. It is also easier to introduce, for example, any new energy saving measures which go to a community vote rather than a freeholder, who will be unable to act if they don't come under the lease.

Finally and most important, leasehold embalms an unequal relationship between the management and the lessees. Commonhold re-works this to a democratic system where a vote means something.

Leasehold and commonhold may both involve people problems

These may even be the majority of issues raised. Under leasehold, there is generally no efficient mechanism to deal with them.

1. The lease, which contains the regulations and which make for peaceful communal living, need not be enforced by the freeholders or their agents unless their costs are covered. An RMC or RTM may also find it difficult where service charge funds are not available to finance any action.

2. Votes under the leasehold system may be for guidance only; there is no regulation in leasehold to take account of them.

3. Leasehold is always a relationship of inequality. If the lessees own their freehold, there is no law to cover acceptance of new membership applications. The Right to Enfranchise procedures under the 2002 Act were abandoned and not brought in. Where the lessees have RTM, whilst all lessees can become members, the flat will still revert to the freeholder at the end of the lease.

Commonhold has a clear voting procedure. Its unit owners own their unit, and the manager is employed by the unit owners.

How to increase the number of commonholds through planning

Speaking at the Westminster Policy Forum recently, I raised the issue of how to increase the number of commonholds through the planning system. Presently developers are building large mixed-use estates where more than 25% is commercial. Here the lessees can never obtain RTM or their own freehold; presently the route to commonhold is blocked here by the design of the development.

If we can require a proportion of affordable housing within the planning system, surely we can also give preference to developments which have less than 25% commercial, as long as the 25% rule remains?

We must, in addition, use the planning system to promote commonhold by giving preference to commonhold developments over new leaseholds. This can be done through planning incentives which are already offered by local authorities in other cases.

A well-run block with a board of Directors that knows its duties and behaves ethically, can create a block as near to commonhold as we can get. Many of our members will be in this position, but for those who aren't, commonhold will be a viable alternative.

Abandoned belongings and what to do with them?

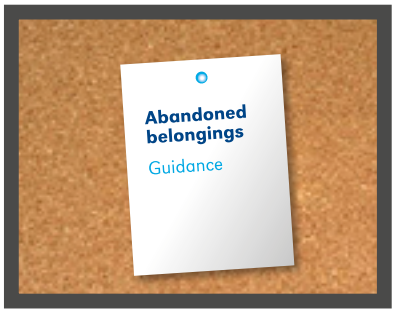
We're often asked for advice on what do to with belongings left behind by a tenant of a property and/or items left in common parts by long leaseholders.

With the latter in mind:

- On any update/newsletter add in a paragraph setting out the client's policy as to items left/stored in common parts and the basis for that i.e. fire safety guidance/means of escape etc
- If you have the ability to do so, post on all notice boards around the building the same information as above stating that items left in common parts will be removed (possibly without warning).

In relation to storage and disposal/return of items removed and in steps taken to protect the client from spurious later claims, this guidance will help you.

Source: KDL Law



Code for Construction Product Information (CCPI)

The Code for Construction Product Information (CCPI) has been published alongside manufacturer preparation information and Code guidance to drive higher standards in the presentation of construction product information in the manufacturing industry. Registration for manufacturer verification will open towards the end of 2021 so organisation's can register their interest now to receive updates.

Management of the published Code and its verification has been formally handed over from the Construction Products Association to Construction Product Information Ltd (CPI Ltd) – a not-for-profit organisation with independent governance and management being set-up to administer the CCPI.

See the Code, Guidance and additional information

Source: CCPI – Code for Construction Product Information cpicode.org.uk

Keep up to date

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

Legal Jottings

Compiled by Nicholas Kissen, Senior Legal Adviser at LEASE

COURT OF APPEAL

Eastern Pyramid Group Corporation SA v. Spire House RTM Company Limited – [2021] EWCA Civ 1658

The Court of Appeal has recently considered certain procedural aspects relating to the legislation which brought in Right to Manage and whether failure to take a particular step will have serious consequences.

The law

Under Part 2, Chapter 1 of the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act'), leaseholders of flats can take over the management of the building in which their properties are contained. There is no need to prove fault on the part of the landlord/manager of the building.

The process involves service of a formal Claim Notice (Section 79 of the 2002 Act) on the landlord which makes it clear that the leaseholders named in the notice desire to acquire the right to manage.

Should the landlord wish to oppose the claim they must serve a formal counter-notice under Section 84 of the 2002 Act.

If a counter-notice disputing the entitlement to right to manage is indeed given, then the RTM company may apply to the appropriate tribunal for a decision as to its entitlement.

The claim notice may be withdrawn at any time before the right to manage is acquired.

This can be done by the service of a notice of withdrawal under Section 86 of the 2002 Act.

By Section 86(2) of the 2002 Act, the notice of withdrawal must be given to each person who is a landlord, a manager named in the lease, a manager appointed by the appropriate tribunal or the leaseholder of a flat contained in the premises.

There can only be one Claim Notice in existence at any one time. This is because by virtue of Section 81(3) of the 2002 Act where any premises have been specified in a claim notice, no subsequent notice specifying the premises may be given so long as the earlier claim notice continues in force.

The facts

The building in question is an unusual one being in three parts:

1. The only original part of the building is a church tower and spire dating from the 1850s.
2. The rest of the original building was demolished and replaced in 1982, with 23 flats on six floors accessed through the church tower and with a car park underneath.
3. An enclosed garden next to the church tower.

Certain of the leaseholders of the flats set up an RTM company to acquire the right to manage.

On 18 March 2019, the RTM company served a claim notice on the landlord.

On 29 April the landlord sent a counter-notice alleging that the claim notice did not comply with a number of the provisions of the 2002 Act.

The RTM company wrote a letter dated 17 June to the landlord which was received by it on 18 June.

That letter purported to withdraw the claim notice and to serve a second claim notice in which the defects were corrected.

By a letter dated 18 June the RTM company wrote to the leaseholders notifying them about the withdrawal of the first claim notice and provided them with a copy of the second claim notice.

In other words the RTM company notified the leaseholders about the withdrawal of the first claim notice, and served a copy of the second claim notice, a day after serving those documents on the landlord.

In July 2019 the landlord gave a counter-notice to the second claim notice alleging that notice was invalid on various grounds.

Those grounds fell away save for one which remained in issue, namely that the purported withdrawal of the first claim notice on 18 June was not effective to withdraw that claim notice because notice of withdrawal had not been given to the leaseholders. Accordingly, the first claim notice was still in force on 18 June meaning that the second claim notice was not valid because by section 81(3) of the 2002 Act, no subsequent claim notice can be given while an earlier claim notice is in force.

Briefly put the landlord's argument is as follows. On the face of Section 86 of the 2002 Act a notice of withdrawal must be given both to the landlord and to the leaseholders. It was said by the landlord that notice of withdrawal was indeed given, but only by 19 June, which would be too late to save the second claim notice.

To decide the issue and whether RTM can be acquired, an application was made by the RTM company to the appropriate tribunal.

As the building was in England the appropriate tribunal was the First-tier Tribunal (Property Chamber) ('the FTT').

What did the FTT decide?

The FTT rejected the landlord's argument that the withdrawal of the first claim notice had not been effective when the notice was given owing to the failure to give notice to the leaseholders on that date.

The FTT stated that what matters is that the landlord received the notice of withdrawal.

The landlord appealed to the Upper Tribunal (Lands Chamber).

What did the Upper Tribunal (Lands Chamber) decide?

The Upper Tribunal held that the withdrawal took effect when the landlord was served with the notice of withdrawal and the failure to serve the leaseholders on that date was a breach of the 2002 Act but was not fatal.

The landlord appealed to the Court of Appeal.

What did the Court of Appeal decide?

The Court of Appeal upheld the decision of the Upper Tribunal (Lands Chamber) and dismissed the landlord's appeal.

The Court of Appeal recited certain principles derived from previous court judgments regarding failure to comply with statutory requirements.

These principles applied to any step in the statutory scheme.

The question was whether a step, such as a notice, was wholly valid or wholly invalid. The right approach in answering that question was one of interpreting the statute (in this case, the 2002 Act), determining the legislative intention as to the consequences of non-compliance in the light of the statutory scheme as a whole.

One then turns to application of the principles.

The fundamental question was the role and importance of the relevant step in the context of the procedure as a whole.

The legislator-Parliament- could be taken to have assumed that the courts would take a realistic and pragmatic approach in determining the significance of different steps in a procedural scheme laid down by statute. A result which was impractical or unrealistic was unlikely to be what was intended.

So, was the breach of Section 86 of the 2002 Act a fatal one?

Section 86 provided that withdrawal was to be effected by service of notice on all those specified in Section 86(2).

Failure to give one of those persons a notice was therefore a breach of the terms of the 2002 Act.

However, there was a difference in importance between giving notice of withdrawal to the landlord/managers, as compared to the leaseholders.

The landlord was the person who needed to know that the claim to which the notice applied had been abandoned.

Accordingly, failure to serve the landlord would indeed be fatal.

By contrast, the service of the notice on leaseholders was simply a matter of information; it had no other purpose.

Therefore, not sending that notice to leaseholders did not invalidate the withdrawal which was effected by service on the landlord.

THINKING ABOUT RETIREMENT? WHAT ARE YOUR OPTIONS?

By Cecilia Brodigan, Leasehold Consultancy Services

The Elderly Accommodation Counsel (EAC) is a national charity that aims to help older people live safely and well at home, with any help or support they may need. EAC's advice is free and independent, and its impartial service offers information and practical advice on finding solutions to some of the challenges getting older brings.

- Are you thinking of moving, and considering buying or renting a retirement property?
- Do you need any help or support to continue living independently at home?
- Could some internal changes to your flat make it more manageable, safer or comfortable?
- Are you finding it difficult to afford your service charge and other bills since you retired?

EAC Advice is the result of a partnership with the charity Bassetlaw Action Centre, and its joint team of advisers includes five individuals with a wealth of knowledge between them (and a dedication to helping you make decisions that will be right for you).

Its main areas of expertise are:

1. **Moving to retirement housing** – looking at the range of retirement and 'extra care' properties available locally, what each provides, who runs them, the tenures on offer, who is eligible, and what they cost.

2. **Affording what you decide to do** – comparing the costs of options you want to consider, and exploring how to make them affordable.

3. **Living safely and well where you are** – repairing or adapting your home, making it safe or more energy efficient, getting in help to manage it or to get out and socialise.

You can contact EAC Advice on 0800 377 7070, weekdays 9am – 5pm or visit EAC's HousingCare website https://housingcare.org which contains searchable directories of all UK retirement housing as well as a comprehensive directory of home services.

ASK THE FPRA

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

Fire safety

Q We had our first in-person resident's meeting since Covid yesterday and we discussed a fire safety survey we have had done by an external company.

The fire safety report 'recommends' that FD30SC compliant entrance doors should be fitted for each flat. However, we are unclear what (if any) the current legal requirements are regarding flat entrance doors (as distinct from any fire doors in communal areas). Can you help, please?

A FPRA Director Jonathan Gough replies:

Flat front doors must meet the building regulations in force at the time of construction. When doors need replacement, that should be done so to current standards, which would be a fire resisting door (30 minutes) fitted with a suitable approved self-closing device. Intumescent letter boxes should also be used, as and when needed.

Data management

Q As the person responsible for overseeing our data management I am pondering the position of Section 20 notices. Do you consider them part of the financial records, which should therefore be retained for seven years, or related to the works and hence subject to retention for the lifetime of the guarantees on the works, or part of something else?

My expectation is that they only relate to the financial side and not subject to challenge beyond either the statute of limitations, hence retain for seven years.

Similarly, building control permissions and certificates probably need to be retained for the duration under which a future lease purchaser might ask for proof that any changes were authorised. Do you know how long that should be?

Can I have your opinions please?

A FPRA Honorary Consultant Kevin Lever replies:

In answer to the question, I say as follows:

To the first point... Section 20 notices will be required to evidence compliance with the statutory consultation procedure in the face of any later dispute. Service charges used to pay for the works covered by the section 20 consultation process are either subject to a six or 12-year limitation period.

Six-year limitation

Where service charges are reserved as rent within the lease s.19 Limitation Act 1980 will apply restricting the limitation period to six years and thus retention for seven years as the member proposes is advised. I would run this seven-year period from the year end date of the period in which the works were undertaken just to be doubly sure.

(Potential) 12-year limitation

Where service charges are NOT reserved as a rent because they arise out of an obligation under a deed, they are arguably a 'specialty; and thus could potentially be subject to a 12-year limitation (s.8 Limitation Act 1980). The reasoning behind this is complex and potentially arguable, but it remains that there is a risk that there will remain an ability to go back 12 years in those circumstances. On that basis, where service charges are not reserved as rent, I would suggest that any documents relating to service charges (demands, accounts, s.20 documents etc) are retained for 12 years from the financial year end date of the relevant year in which the expenditure was incurred.

Hopefully, most clients have the ability to retain all records electronically so that storage issues are minimised.

To the second point... my view is always going to be to retain anything that relates to, or will assist a claim under, a guarantee for at least the term of the guarantee irrespective of the length of that guarantee.

First-tier Tribunal

Q We are a recognised tenants association and wish to ask our landlord to contact owners who are not members of the association, for the purpose of being a joint applicant for a First-tier Tribunal for the unreasonable service charges.

We have 376 apartments and only c56 are not members, and we feel it would not be fair to give them an opportunity to be part of this tribunal as we are challenging hundreds of thousands of pounds for a period of seven years.

Is this a valid request I can make to the management agent/landlord?

A FPRA Honorary Consultant Kevin Lever replies:

A request to the landlord/managing agent for names and addresses of other leaseholders (as distinct from Company members/shareholder – see here) is likely to be met with a refusal on grounds that it breaches GDPR. Whilst the request is a reasonable one (and should be made in any event, as you get nothing if you don't try!), the GDPR based refusal is also likely to be quite correct. It matters not that the information requested is arguably available elsewhere as a public record (see point 1 below).

If the response from the landlord/managing agent is a refusal then there are a number of other options as follows:

1. Records of proprietors are available for the sum of £3.00 (no VAT) per property from HM Land Registry and the Official Copies of the register of the property can be downloaded from the HMLR website.

It is worth noting, on the plus side, that the copy of the HMLR record (the leasehold title) will provide the names of each owner and a postal address(es) for them. Often, if the properties have been purchased in recent years, the entries may also provide you with an email address for the current owner.

On the negative side the address(es) is only correct as at the date of purchase or, the date that the owner last notified HMLR of a change of address; the latter rarely occurs and thus it is not uncommon for the address details to be out of date if the property was purchased some time ago.

2. The RA could ask the LL/agent to pass on to all of the 56 owners a letter from the RA to them asking them to get in contact with the RA. The RA should offer and expect to pay postage and time costs if you do this.

3. The RA could also ask the LL/agent to send an email to the 56 owners – there are no postage costs payable on that option but again expect to get asked to cover the time of the agent in doing that.

There is no obligation on the LL/agent to do what we have suggested in two and three above but they probably will if the RA approaches them correctly. If all else fails then the suggestion at one above will be of some assistance at least.

Looking for a recommendation

Q We are looking to change our Facility Management Company and seek assistance in this process; also do you have a recommendation of two legal firms we could work with as part of the process?

A FPRA Chairman Bob Smytherman replies:

As an independent and impartial organisation, we are unable to recommend specific commercial companies but our website does include a list of companies we work with.

With regards the process of changing a contractor, I would always suggest seeking tenders from three companies wherever possible and would recommend putting together a clear list of expectations from the contract. I would also suggest you set up a panel of Directors – either three who can make a recommendation for the whole board or use the whole Board to interview. Although the latter can be unwieldy, this may be the best option if ALL Directors want to be involved in the process.

Always establish a named person dedicated to your block and understand the methods of communication and delegation for the day to business.

I hope this helps and best of luck; cheapest doesn't always mean best value.

Lease variation

Q The RMC has reason to believe that a leaseholder is in breach of his lease on at least one count. With the tripartite structure we have in place, we were wondering if the RMC can initiate proceedings or if only the Freeholder can (or perhaps either can)? We know that in Clause 3 of the lease, the lessee covenants 'with the Lessors and with the Managers as a separate covenant'. Does this mean that either the lessor or the managers can take action against the leaseholder for a breach of covenant?

If the RMC can indeed do so, alone, please advise the most cost-effective process, and if the RMC can claim compensation for the breach(es).

The alleged breaches are:

1) The flat is a 4th floor flat, and has non-carpet flooring to main living areas. If so, could we (RMC) demand to inspect the flat to collect evidence?

2) The flat has multiple individual tenants (multiple occupancy); it appears a head tenant sub-lets the rooms out individually.

The clause states: 'To use the flat for the purpose of a private residence in one occupation only.....'

Whilst there is case law that an Airbnb rental would not adhere to this clause (Upper Chamber of the Lands Tribunal called Nemcova v Fairfield rents Ltd), we were wondering if the aforementioned arrangement would also not adhere?

A FPRA Honorary Consultant Shaun O'Sullivan replies:

The main advantage of a tripartite lease from the lessor's point of view, is that it relieves him of the burden of day-to-day management; thus, although, in theory, he could take action against leaseholders for breach of covenant that would certainly not normally be the case. The only exception is forfeiture of the lease which can only be pursued by the lessor/freeholder.

So far as 'demanding' access is concerned, Clause 3 (F) of your lease does 'permit' the Managers to 'enter and examine' the state of the flat at all reasonable times for the specific purposes detailed in the clause. This does not appear specifically to include the inspection of flooring although I believe that it would not be unreasonable to write to the leaseholder requesting access at a mutually convenient time and giving a reasonable amount of notice. It has always to be borne in mind, however, that leaseholders have a right to 'peaceably enjoy' their home without undue or unreasonable disturbance form their landlord (or manager or agent). This can be implied or explicit in the lease; in your case it is explicit to the extent that reference is made in Clause 5 to the lessee being able to 'peaceably hold and enjoy' the flat.

That said, and if you believe that there are reasonable grounds for suspecting the lease has been breached, you

(or your agent who will or should be familiar with the procedures) could issue a lease enforcement notice for which a reasonable Administration Cost (but not compensation as such) can be levied, albeit it must be accompanied by a Statutory Notice outlining rights and responsibilities. You might find paragraph 6 of this leaflet produced by the Leasehold Advisory Service helpful https://www.lease-advice.org/advice-guide/service-charges-other-issues/#32

Copies of Statutory Notices can be accessed on the FPRA website under the 'Publications' drop-down menu. Your agent will almost certainly have a policy for dealing with (alleged) breaches of the lease and my clear advice, if you have not done so, would be to raise your concerns with your agent before taking any action.

So far as occupancy of the flat is concerned, although I am not a lawyer, the wording in Clause 3 (P) would suggest to me that the leaseholder/sub-tenant might be in breach, albeit you will be aware from the case you cite, that the Upper Tribunal made it clear that each case must be 'fact specific' and that its 'factual context' is relevant to any determination. However your lease is particularly demanding with regard to under-letting and requires the execution of a deed of covenant, in a form supplied by the lessors or the managers, embodying a direct covenant with the lessors and the managers to perform all the covenants on behalf of the lessee. I would assume that your agent manages this process on your behalf so, again, my clear advice would be to raise this with your agent.'

Pond maintenance

Q **We have a pond in the grounds which is mentioned in the lease as the responsibility of the Management Company to maintain and is an item in the annual service charge.**

Over the last 10 years we have spent huge amounts of money on trying to maintain the pond; there seems to be constant problems with it. Despite having it regularly cleaned and serviced by professional companies it still looks awful. It has a persistent weed covering the whole surface which cannot be eliminated despite trying many remedies. We have tried wildlife such as frog spawn and fish and water lilies and aerating stones and a solar fountain to keep the water moving but all to no avail. There could be one remedy which is to install an electric pump and fountain as the solar one is not effective enough, but this would cost several thousand pounds as the nearest electrical feed is some distance away (our grounds cover three acres and the pond is situated in the bottom corner under trees).

As we are in a situation where we need to keep down service charge costs we suggested to residents that we get rid of the pond completely as it seems we are spending money unnecessarily and in its place plant wildflowers with a view to doing our bit for the environment. The area the pond is in is a meadow area anyway.

So far we have had all but four residents giving their approval to drain and remove the pond – I had given a deadline of end October for all replies however I am

just wondering whether we need 100% agreement or will a majority be sufficient? No one actually goes down the garden to sit by the pond by the way, even though we made a sitting area there!

A FPRA Honorary Consultant Shaun O'Sullivan replies: I was rather hoping/expecting that the association's covenants might have included a general statement such as 'to maintain the communal gardens' which might have implied a large degree of flexibility and might have given the association's board a reasonable basis to vote to dispense with the pond without consultation. However, the covenant obligating the association to have the 'gardens' water features and ponds' properly maintained, might suggest that dispensing with the pond altogether would put the management company in breach of the lease.

In the circumstances, however, and on the basis that you have tried but failed to resolve the issues with the pond, I believe that you are right to have consulted more widely, suggested a low-cost alternative of wild flowers, and given your residents the opportunity to comment.

If, as seems to be the case, you receive an endorsement of your plans from a substantial number, then I believe that it would be reasonable and defensible to dispense with the pond. Even if not all respond, you have consulted so, to that extent, I feel you would have taken all reasonable steps in order to gain acceptance. If, however, there are specific and written objections then you might have to consider retaining the pond and installing an electric pump, but I would hope that it would not come to that. In extremis, a variation to the lease to exclude the obligation to maintain the pond could be considered but that would incur costs and certainly require 100% agreement.

In certain circumstances an application can be made to the appropriate tribunal for an order to vary a lease or leases of residential property under Part IV of the Landlord and Tenant Act 1987.The appropriate tribunal in England is the First-tier Tribunal (Property Chamber) and in Wales it is the Leasehold Valuation Tribunal. It is prudent to consult a specialist solicitor on the process.

Service charge

Q In common with many other RMCs we are facing unprecedented increases in the cost of gas and electricity.

As we are a limited company we buy our gas and electricity on commercial contracts (paying commercial rates) even though the supply of gas, in our case, is not for common parts but simply to provide heating and hot water to 15 residential flats, via communal boilers. Most of our electricity is for lighting common parts; parking spaces and stairwells.

As we know 'normal' residential customers are being protected, at least in the short term, by the OFGEM 'price cap' (or rate cap as it should really be called). However as far as I am aware no similar situation applies for smaller companies, even though the end users, and those who actually pay for the gas in our case, are residential leaseholders.

Can the FPRA offer any suggestions as to what could be done? Can we be re-classified as a residential customer? Is the FPRA lobbying the government to rectify this anomaly?

Obviously we have benefitted in the past from cheaper commercial rates (we currently pay 2.5p per kWh for our gas) but with no price cap applying, we are currently being quoted four or five times as much for 2022 when our two-year fixed term deal ends. As the 15 flats concerned are one-bed ones, our leaseholders are facing huge increases in their service charges, which will no doubt cause significant hardship for them, and 'difficulties' for us.

A FPRA Honorary Consultant William Bush replies: Each supplier will work in a different way but in essence, the bills are being paid out of a bank account which is related to a business so it's treated as a business account. As the company secretary has pointed out, this has always been beneficial to the site until the last couple of months. The supplier knows that it is for residential use which is why they are able to pay reduced VAT and avoid CCL charges.

The alternative would be to speak to the residential arm of the supplier. Depending on who they are supplied by will determine how easy this process would be as some commercial suppliers do not have residential supply agreements. A change of tenancy can be performed to switch this from a business account into a residential account but this does come with some caveats.

At the moment, the RMC Ltd company is responsible for the payment of the bills but if it's transferred to a residential account then an individual will have to be responsible for contracting the meter and paying the invoices. They will also be responsible for the debt on the account. Again, depending on who the supplier is, they may be asked for proof that the individual is responsible for the invoices. Understandably, it can be quite difficult to produce the relevant documentation and also arrange for an individual who is happy to be responsible for the debt on the account.

The short-term forecasts for the wholesale energy prices are not good with the winter period likely to cause even more supply and demand issues. A quote of 400-500% increases does seem very high though when we've seen that even in the most extreme cases, renewal rates are still below a 100% increase at the moment.

Managing agents

Q Could you please advise who keeps the fees charged for the management packs that are produced when a property is being sold? I just need clarification whether the management company keeps them, as they are not part of the management fees?

A FPRA Director Colin Cohen replies:
The person who completes the enquiries form is entailed to charge a fee which is not usually part of a management fee. Thus if the member has an agent then they would be justified in charging the fee and keeping it.

It is usually not an income for a Management Company but a fee for providing a service i.e. information for a sale.

I would add that the government has proposed that in future this fee is restricted to a maximum £200 plus VAT, but as yet this legislation has not come in to force.

Q If the managing agents are not performing their duties, what recourse do the leaseholders have short of changing them?

A FPRA Honorary Consultant Yashmin Mistry replies:
Unless the leaseholders have bought the company and have instructed the managing agents OR the managing agent are appointed by a leaseholder-controlled management company, the 'client' of the managing agent is the landlord or management company controlled by the landlord or external third party. In those situations, even though the leaseholders are paying the service charges and management fees, there is little that can be done, save for the possibility the two options set out below.

In terms of taking over control of the management services, which may invariably lead to a change in managing agents, there may be the following options available:

- Right to manage
- Appointment of a manager
- Purchase of the freehold

The leaseholders would however need to consult a specialist solicitor before exercising any of these options to ensure (1) the correct process and procedure is followed but (2) more importantly, to ensure any avenue that is followed achieves the designed outcome.

Two lesser known and underused provisions that could also be employed are:

Management audit

In general terms, tenants may appoint an auditor to conduct what is called a 'management audit'. The proposed function of an audit is to ascertain whether the landlord's obligation to the tenants, including their management obligations, are being discharged effectively. The management audit must be requested by a minimum number of 'qualifying tenants' – the number depending on the number of dwellings in the qualifying premises. A specialist solicitor should be consulted on the process and qualifying rights etc.

Appointment of a surveyor

The Housing Act 1996, Section 84 empowers a Recognised Tenants Association to appoint a surveyor who must be qualified in the same sense as for a management audit. The rights and powers of a surveyor are similar to that of an auditor appointed under a right to management audit and are set out in Schedule 4 of the HA 1996.

www.lease-advice.org/advice-guide/appointment-of-a-surveyor-management-audits-2/

Electric Vehicle Homecharge Scheme

Q I wonder if you have any information yet on how the Electric Vehicle Homecharge Scheme will be extended to leasehold blocks of flats? I understand that the criteria are likely to shift from private residences to developments such as ours in April 2022. I would be grateful if you could provide me with any information you have on this matter so I can see if it might affect us.

A FPRA Honorary Consultant Shaun O'Sullivan replies:
there is nothing, at the moment, to stop many leaseholders seeking a grant to install an electric vehicle charge-point – currently set at up to 75% of the cost and capped at £350. However, and as explained in the article in Issue 127 (Winter 2018) of the Newsletter, unless it is possible for that leaseholder to have direct and easy access to their own electricity supply (and that is extremely unlikely), it would pose a challenge in most blocks of flats.

As things stand, the individual seeking a grant has either to already own an electric vehicle or have one on order and, additionally, has to be able to demonstrate ownership (by way of Land Registry title deeds) of an off-road facility such as a driveway, parking space or garage. Many spaces in blocks of flats are 'allocated' (right of use without ownership) or have been retained by the landlord for use by all or subject to regulation by the landlord. Few spaces are demised. However, even if a leaseholder's garage or space is demised, it would, almost invariably, be necessary for the retained part of the property to be impacted (perhaps channelling out a driveway or across a garden) in order to reach either the individual's electricity supply or the communal supply, which might need to be upgraded. Because of the potential impact on the retained part of the property, most landlords, in considering any application for alteration, are unlikely to grant a licence on a piecemeal basis as more residents aspire to move to EVs.

Thus, in circumstances where spaces or garages are demised, it is generally felt to be preferable that the

landlord provides the basic infrastructure to support charge-points, leaving the individual leaseholder to apply for a grant for the charge-point itself. And where spaces are allocated or retained by the landlord, it is felt that it might be preferable for the landlord to provide both the infrastructure and charge-points. However most leases do not provide for the landlord to fund, what is considered to be an improvement, and to recover the cost via the service charge. (Most leases allow for recovery of costs for maintenance, repairs and renewals only.)

Thus the OZEV announced in February 2021 that a landlord's grant would become available in April 2022 to support the provision of infrastructure. The FPRA participated in the testing of a prototype online application process and have offered observations in respect of provisional plans which are to provide 75% of cost up to a maximum of £6,500 per car park. But, as you might have seen from Jamie Willsdon's article in Issue 138 (Autumn 2021) of the Newsletter, there remain unanswered questions which still need to be addressed if the extension of the charge-point scheme to the leasehold sector is to be successful.

Having had a cursory read of the lease we have on file for your development, it would appear that car parking spaces have been demised and, to that degree, individual leaseholders should be able to demonstrate ownership through title deeds and should therefore be entitled to seek a grant should they so wish. Also, Part 2 (a) of the Third Schedule would appear to give the landlord reserved rights over the spaces to provide for the laying of cables, meters etc.

So far as I can determine, your lease does not have an 'improvement' clause in it (the obligation as defined in the Second Part of the Fourth Schedule is to 'repair, support, maintain, reconstruct and cleanse'), other than in respect of the Development Amenity Lands. The responsibility for these appears to have been transferred by way of the Deed of Variation and provides, in Clause 6 of the Third Part of the Fourth Schedule, for this part of the development to be 'repaired, maintained, improved, renewed, cleansed'. But this area does not appear to include the parking spaces. Thus (unless, in accordance with Clause 3 (A) (c) (vi) of the leases there is any scope), I don't believe you could legitimately spend service charge funds on the infrastructure to support EV charge-points and to recover from the service charge.

Although in theory individual leaseholders could apply for a grant at the moment (because they 'own' their spaces) and although in theory you, as landlord could consider any application to install with the potential impact on the retained part of the property, I think, like most estates, you would be well advised to await further details of the landlord's grant which it is hoped will be announced shortly and in respect of which we shall aim to alert members by way of the website/newsletter. That said, and as Jamie's article suggests, grant funding is likely to be time limited and some level of planning might be prudent. In this regard you might find this link to authorised installers helpful https://www.gov.uk/government/publications/electric-vehicle-homecharge-scheme-authorised-installers.'

The letters above are edited. The FPRA only advises member associations – we cannot and do not act for them. Opinions and statements offered orally and in writing are given free of charge and in good faith, and as such are offered without legal responsibility on the part of either the maker or of FPRA Ltd.

2021 SIMULTANEOUS EVACUATION GUIDANCE REVIEW – FOR CONSULTATION

As a key stakeholder in the current review of the Simultaneous Evacuation Guidance, the FPRA Chairman Bob Smytherman was invited to provide comments on drafts of the:

- revised guidance
- addendum on maintaining fire safety provisions, and
- equality impact assessment.

Key changes to the main guidance document include further detail on measures alternative to waking watch, more detailed definitions of timeframes, and division of the guidance into two sections. Changes are underpinned by the aim to ensure readability and useability of the guidance:

- Detail on measures alternative to waking watch – a temporary system of detection and warning that is not a waking watch or common fire alarm could be implemented, subject to a risk assessment by a competent person. But as with a waking watch, RPs (Responsible Persons) should still make immediate plans for more appropriate and sustainable evacuation arrangements.
- Definitions of timeframes – please see details in the main guidance document.
- Structure of the guidance – The guidance has been divided into two parts:

  Part A provides guidance on risk mitigation measures that should be taken when considering a change in evacuation strategy. Relevant information from other governmental guidance has also been incorporated into Part A.

  Part B provides guidance for where, having fully considered all options in Part A and in order for occupation to remain a viable option, the decision has been made to temporarily move from a stay put strategy.
- Information has been reordered, expanded upon, and synthesised where appropriate to provide greater clarity to those using the Guide.

The proposed changes are the result of an expedited light-touch review that was launched following recent government announcements on the proportionality of fire safety buildings in multi-occupied medium and lower rise blocks of flats, and in order to ensure alignment across other relevant guides.

This is particularly important in the context of MHCLG's (DLUHC) stated intention to withdraw the Advice for Building Owners of Multi-storey, Multi-occupied Residential Buildings guidance (known as the CAN). The intention is that PAS 9980 fire risk appraisal and assessment of external wall construction and cladding of existing blocks of flats – code of practice will replace the CAN and is due to be published towards the end of 2021.

Some aspects of the guidance from the CAN have been included to ensure that Responsible Persons have due regard to those steps before making the decision to change to a simultaneous evacuation strategy.

Source: National Fire Chiefs Council

WHAT DO YOU THINK?

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

But what you think matters.

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

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

October 2021

5* Exceptional advice for apartment leaseholders

We have been able to successfully take our useless management company to the First-tier Tribunal and have a new manager appointed, based on advice from the FPRA. All apartment building Residents' Associations should belong.

August 2021

5* Clear advice

Thank you for clear advice on our options. None of them are easy, but it is really useful for us to assess those different options. Much appreciated.

October 2021

5* Immediate confirmation

An immediate confirmation that my question had been passed onto an appropriate person.

FIRE SAFETY ACT 2021

The Fire Safety Act 2021 (Wales) was bought into force on 1 October 2021. This Act makes important changes to fire safety law in respect of buildings that contain two or more sets of domestic premises and was developed in close collaboration between the Home Office and Welsh Government, and agreed by the Senedd.

The Act specifically amends the Regulatory Reform (Fire Safety) Order (the FSO) to provide that in relation to buildings captured by the legislation, the FSO covers the building's structure and external walls, including anything attached to the exterior of those walls (including balconies) and doors and windows in those walls.

The Act also specifies that all doors between domestic premises and common parts, and the common parts themselves are covered by the FSO regime. In turn, this means that the fire risk assessment for each building covered by these provisions must cover these elements; and, where necessary, risks and hazards identified by that assessment must be addressed. It also means that Fire and Rescue Authorities' powers of inspection and enforcement cover these elements.

Guidance to accompany the Act can be accessed on the Welsh Government website at Fire Safety Act 2021 | GOV.WALES.

This will apply in England from December 2021 onwards.

Advertisements

Advertisements

JO-ANNE HAULKHAM TO LEAVE FPRA

Following six years of loyal service to the FPRA, Jo-Anne Haulkham will be leaving us.

Back in January 2015, Jo-Anne accepted Chairman Bob Smytherman's invitation to join the FPRA as one of our Honorary Consultants. Throughout her tenure, Jo-Anne used her extensive company accounts and audit experience, alongside her areas of specialist knowledge, to provide FPRA members with answers to their accountancy and service charge questions, always in a very timely and thoughtful manner.

The Directors would like to thank Jo-Anne most sincerely for her contribution and wish her well for the future.

If any of our readers know of an equally reputable accountant, such as Jo-Anne, who would like to join the FPRA team, please make your recommendation to the FPRA Admin office who will be happy to provide details of the process and what will be involved.

HAVE YOUR SAY...

Would you like to contribute to our newsletter?

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

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

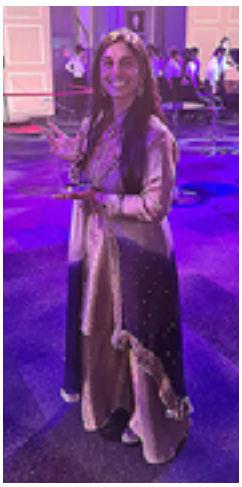
MEET THE FPRA

Five things about....

Debbie, one quarter of the essential FPRA Admin Team.

- My career with the Metropolitan Police spanned 32 years. I spent the majority of those years in HR and Training and working for the last 10 at New Scotland Yard in The Counter Terrorist Command.
- I am passionate about food. I love to eat out and cook – I am the family birthday cake baker.
- Being in London makes me happy, it is the most beautiful and interesting City in the world.
- I have recently taken up yoga.
- My fantasy is to play the role of Nancy in Oliver (but I have a voice like a cat being strangled!)

WINNING WAYS



We're delighted to announce that Shabnam Ali-Khan, FPRA Honorary Consultant and Partner at law firm Russell-Cooke LLP, has been voted Solicitor of the Year at this year's News on the Block Awards. Shabnam joined the FPRA in July 2019 and since then has been using her knowledge and expertise to provide invaluable support and advice to our members. It's a fantastic achievement and on behalf of everyone at the FPRA, we send her our congratulations.

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