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NEWS

SUCCESS! TAX ON PORTERS' FLATS AVERTED

It's not every day that you spot a flaw in Government thinking, point it out to them, and they immediately act to rectify the situation. But this is exactly what happened when FPRA Director and Vice-Chairman Richard Williams realised that a new Government proposal could adversely affect large leasehold blocks which provide a flat for a porter or caretaker.

This is a slightly technical area, but of importance to the larger self-managed blocks. Richard explains the issue:

Annual Tax on Enveloped Dwellings (ATED) – A Tax on Porters' Flats?

ATED is a tax charged on houses and flats owned by companies. When introduced in 2013 it was a form of "mansion tax", only charged when the house or flat was worth over £2m. At that time it was recognised that there could be a number of circumstances where a company had to provide accommodation for an employee, and a relief was introduced, details being contained in section 145 Finance Act 2013. However, this required the employee to be employed for the purposes of a trade carried on by the company concerned, or a company associated with it. What was overlooked was the technical rule that the letting of property is not regarded by HMRC as a "trade" for tax purposes. Consequently a company which owns and lets property, and also owns houses occupied by employees who are employed in the management of the let properties, or to carry out maintenance, or porters and other security staff would have been able to claim relief under section 145 Finance Act 2013, if the value of the house or flat occupied by the employee exceeds the ATED threshold. This is probably not a problem that will have arisen very often while the threshold was £2m, but could have become a problem when the threshold is reduced to £500,000 from April 2016.

Concerns were raised with the Chancellor by a number of organisations, and the Chairman wrote to the Chancellor of the Exchequer, raising the particular concerns of FPRA in relation to the potential ATED charge on employee's flats where the freehold is held by a management company owned by the leaseholders. Our concerns have been addressed and these are reflected in the draft clauses for Finance Bill 2016 that set out additional ATED and SDLT reliefs. These can be found at: **www.gov.uk/government/publications/annual-tax-on-enveloped-dwellings-and-stamp-duty-land-tax-extension-of-scope-of-reliefs-from-15-rate**, (see clause 54 on this website). The relief is to be extended to "caretakers" employed by leaseholder-owned blocks of flats. It will also be available for certain employees of qualifying property rental business. A qualifying property rental business is one that generates income from land in the UK and is run on a commercial basis and with a view to profit. This should ensure that where the freehold of a block of flats is owned by a "commercial" landlord, rather than the leaseholders, porters' flats will be outside the ATED charge and should not therefore appear in the service charge. Those who manage blocks of flats should note that the relief will apply from 1 April 2016, and will have to be claimed in respect of porters flats worth more that £500,000.

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HIGHER FEES would hit LEASEHOLDERS

Proposed increased fees in court and tribunal proceedings would increase the burden on leaseholders still further, FPRA has told the Ministry of Justice (MoJ).

In our last edition of the newsletter (Winter 2015, issue no 115) we reported briefly that the Federation had responded to the consultation, opposing the increase. For the First Tier Tribunal (Property Chamber) the proposal is that applicants will generally pay £100 to issue proceedings and £200 for their matter to be listed for a hearing. However, for leaseholders buying their freehold or extending the lease the proposed fees are much higher – £400 to issue and a hearing fee of £2,000.

Due to interest in the matter, here are more detailed extracts from the text of the FPRA letter:

"The listing of case types ..... appears to omit what we understand is the largest section case types in the Property Tribunal. Our understanding is that a large proportion of Tribunal time and cases relate to the determination of the reasonableness of service charges where the only net benefit to the leaseholder in the majority of cases is only to mitigate their losses on overcharged fees by the landlord. These cases also tend to be much longer and more complex than all the other forms of cases listed in your document.

"If there is to be a consideration of the review of fees on service charge disputes it becomes relevant to consider how such service charge cases are taken.

"Approximately a third are transferred from the County Court for non-payment where likely to be an individual or small group of litigants, where the landlord has initiated the case, will be entitled to recover costs from the leaseholder under almost all circumstances regardless of the outcome of the case.

"Two thirds of the service charge case will be initiated in the tribunal. Most often as part of a joint action by a group of leaseholders where there is no means to recover their costs in bringing the case no matter what the outcome. They may also be working through a residents group with very limited access to funds. A restructured fee system will need to consider if the existence of higher fees (in a one-sided costs regime) is likely to deter an even larger number of legitimate claims.

"..The document conflates two entirely different issues and cost regimes for enfranchisement and lease extension. Enfranchisement applies to a whole block and will be a joint action where the costs are shared among many, however on small blocks the enfranchisement value may even be lower than the proposed fee. Lease extension most likely to relate to an individual bringing an action related to just their flat.

"...There seems to be a fundamental misunderstanding regarding the lease extension process and the concept of the "added value" the more correct interpretation might be "loss mitigation". The figures and assumptions used in this part of the proposals will also be impacted by the Law Society's recommendation to increase the length of time on a lease before a lease extension is applied from 80 to 85 years. This should result in an increased number of people obtaining a lease extension in the >80 year period which provided a charging fee proposal where a greater number suffer a net dis-benefit from the fee system as proposed.

"The proposed fee structure seems likely to have a disproportionate impact on those living in the poorer areas of the country and those living in retirement homes where the value added may be small. Since the value added by a lease extension is almost entirely a function of ground rent and lease length it would seem logical to link the fee to this charge.

"It is perhaps not within the remit of these proposals but it should be understood the Property Chamber has to oversee a fundamentally flawed costs environment:

1) A leasehold tenant will always have to pay their own fees to bring an action which are never recoverable save in the hypothetical case of the tribunal bringing a wasted costs order

2) The leasehold tenant is almost always obliged under the terms of the lease to pay the landlords fees and costs

3) The leasehold tenant will be liable for tribunal fees except in certain cases where the tribunal may use its discretion to pass a proportion to the landlord

4) The tribunal has no, or at least very limited, powers to limit the landlord's costs when defined as 'administration charges'.

"Changing the fees to increase that burden on leaseholders still further, seems likely to have an adverse effect. It should be remembered that until the autumn of last year Government, and the MoJ, had fundamentally misunderstood the size of the leasehold sector which the property tribunal is required to serve. DCLG (Department of Communities and Local Government) data produced with our help now shows there to be 4.1 million leasehold homes in England – a 63 per cent increase on previous Government estimates.

"Any analysis of the cost benefit impact of the fee increases proposed should be cognisant of the fact there is evidence the existing system fails to ensure that justice is available to those who need it most."

MORE TRANSPARENCY ESSENTIAL

Lack of transparency is one of the main problems with "transfer fees", the fees levied on leaseholders who resell their property – particularly the elderly in retirement blocks, FPRA has told the Law Commission.

FPRA Director Shula Rich has responded, on behalf of the Federation, to the Law Commission's consultation paper on *Residential Leases: Fees on Transfer of Title, Change of Occupancy and Other Events.*

The Law Commission consultation paper was featured on the front page of our last newsletter (Winter 2015, issue no 115). Shula has responded:

The main issues are:

- Subjects of event fees
- Transparency of the fees
- Fairness of fees
- Avenues of dispute

The consultation paper proposes that event fees are a useful way of deferring the cost of retirement housing – agreed.

It suggests that these fees can also be paid 'up front' – agreed. This is fair as it gives families a choice.

Subjects of event fees

The fees are paid on three main occasions – subletting, re-mortgaging and selling.

a) subletting fees should be no different from fees in the private sector generally otherwise the fees are like a fine. Fees should not be related to value.

b) re-mortgaging – similar.

c) a deferred payment on selling – accepted as long as it is clear to the prospective purchaser and an upfront alternative is offered.

Transparency of fees

This seems to be one of the biggest problems.

The Commission might take as an example the regulations covering the letting of a commercial property outside the 1954 Landlord and Tenant Act. The prospective tenant for commercial premises outside the LTA (giving no security of tenure) must be served a notice 14 days before signing the lease, or, if this period is not allowed, must declare that they are aware of the removal of their right to renew before an independent solicitor.

This is to make sure that the lessee knows that a right to renew has been removed from the lease. Similar cautions should be required for event fees prior to purchase or the event fee is not payable.

Another example, from residential leasehold, is the regulation which used to apply before a residential landlord let a property on a six-month assured shorthold tenancy. The landlord had to show evidence that the prospective tenant had been served a notice limiting the tenancy to six months or an assured tenancy was created. This procedure should be adopted before a lease is sold in retirement housing. In addition there should be clear worked examples attached to the 14-day warning of amounts which would be due at certain sale points – eg 20 years' time/10 years' time – specific to that development.

Fairness of fees

If the fees are related to the eventual selling price and are levied at that time and known to the prospective purchaser in the circumstances above, then there is no reason to find them unfair. If they are not related to the actual event – for example a proportion of value as a fee for subletting or re-mortgage, then they are unfair and should be unenforceable under unfair contract regulations.

Avenues of dispute

The Commission suggests that "unfair contract legislation" will be the best to handle any disputes rather than the First Tier Tribunals. This is agreed.

There should be an application fee but no more. Decisions should be publicised.

The paper is a very thoughtful and detailed document, and will last a lot longer than the consultation for its insights.

A fundamental issue which it raises is – can leases ever be considered "unfair contracts"?

Gas MOT

FPRA would not object to new "MOT-style" annual gas safety checks suggested by the Health and Safety Executive, Chairman Bob Smytherman has told the HSE.

However, FPRA would request that new regulations are introduced to allow for resident management companies and right to manage companies to be provided with copies of the Gas Safety certificates when these checks are carried out to flats in the block that they manage.

"The directors of these companies have a legal duty to complete a Fire Risk Assessment for the common parts of these blocks, yet often have no idea whether gas equipment within each flat complies with current health & safety legislation," Bob wrote.

"We would ask that in your deliberations you give careful consideration to how these issues will impact upon blocks of flats and estates that are managed collectively and where they are governed by legislation in the leasehold sector."

HSE is currently considering proposals to introduce flexibility around the timing for landlords' annual gas safety checks.

The current legislation requires that checks are carried out at intervals of "no more than 12 months", however HSE is looking at the possibility of introducing an annual check date (which is retained year-on-year), but the actual check could be carried out up to one month before or after this date – similar to the provisions already available for MOTs in motor vehicles.

Although this proposal would allow much greater flexibility for landlords and could result in a large cost saving, it could also mean that on occasion there could be up to 14 months between gas safety checks.

This change will require an amendment to the Gas Safety (Installation and Use) Regulations (GSIUR) and would be subject to a formal consultation and scrutiny to ensure that there will be no lowering of health and safety standards. Before HSE proceeds any further with this idea it is keen to get an informal view from stakeholders on any support or concerns they might have about changing the law in this way.

Extra stamp duty and leaseholders

The extension of flat leases should be exempted from the Additional Stamp Duty Land Tax (SDLT) charges recently proposed, FPRA has told the Government.

Higher rates of SDLT on the purchase of additional properties were put forward at the end of last year – aimed at buyers of second homes. Responses were invited.

FPRA has alerted the Government to a potential problem for leaseholders. Chairman Bob Smytherman has written to The Treasury, pointing out that, for technical reasons, relating to the enforceability of covenants, it is not possible for an individual flat in a block of flats to be owned on a freehold basis. It is only possible for the owner of an individual flat to own a leasehold interest in that flat. The freeholder of the block will be responsible under the terms of the leases, for the management and administration of the block as a whole.

FPRA's letter said:

"Traditionally the freehold of the block of flats would be owned by an individual or corporate investor. In such a case the relationship between the freeholder and the individual leaseholders is essentially a commercial arrangement. However, a number of leaseholders have been able to take control of the management of their blocks, by collectively purchasing the freehold which will thereafter be held by a company of which the leaseholders are members. Currently about half the Federation membership consists of such "self-managed" blocks.

"We are grateful for the opportunity to comment on the Consultation Paper issued on 28 December 2015. The Federation does not represent individuals who will no doubt be affected by the proposals when purchasing a leasehold flat. We are however, concerned that the Consultation does not discuss the particular considerations which may arise in relation to leaseholders flats and the companies which own the freehold of a block of flats so as to be able to manage it on their behalf.

1. Extension of a Lease

We understand the policy reasons behind the imposition of the Additional SDLT liability, and why it may be imposed when an individual acquires a leasehold flat for use as a second home or to sub-let on shorthold tenancies, as an investment. We suggest that these policy issues would not arise where an existing leasehold interest is extended. Even if the owner of a leasehold flat holds it as an investment or a second home the extension of that lease will not affect the availability of properties for purchase by another party as a main home.

We suggest that the extension of flat leases be exempt from the Additional SDLT charges.

2. Enfranchisement by Leaseholders collectively Purchase the Freehold of their block

We are anxious that the Enfranchisement process should be made as simple and inexpensive as possible. The leaseholder-owned company will inevitably be purchasing an interest in freehold residential property. In the case of the larger blocks, the suggested relief for the purchaser of 15 or more units by a company might apply. However, we do not see that it would be fair to penalise the leaseholders of smaller blocks by adding to the costs of acquiring their freeholds. We have three specific recommendations.

(a) That the purchaser of the freehold reversion (and intermediate reversionary leasehold interests) of a block of flats by a company of which the flat leaseholders are members, should be exempt from the Additional SDLT charge

(b) Since lease extensions are often an important part of the enfranchisement process, we repeat our suggestion that lease extensions be exempt from the Additional SDLT charge.

(c) We do not represent the interests of commercial freeholders of blocks of flats. However, we feel that it would be in our members' interests as well as theirs, if the CGT "Payment Window" requiring advance payment of CGT when an "additional property" is sold, did not apply to the sale of the freehold of a block of flats to a leaseholder owned company."

A LEASE for all REASONS

By our regular columnist Roger Southam of the Leasehold Advisory Service

One of the challenges in any aspect of leasehold management is how to please all the people all the time. Well of course that is physically impossible and anyone would be crazy for trying. Of course with a block of flats that is exactly what any managing agent is endeavouring to do. There may be diametrically opposing views and perspectives but somehow they have to be drawn together to ensure that everyone feels listened to and to have got their way.

I am sure many residents' associations will witness the same thing when there are factions or splits in how the building should be run or where money should be spent. Unfortunately, that is communal living. Whilst each flat owner may have their home behind the front door, the shared areas are for all and how you live must be respectful for everyone in the building in terms of noise and disturbance.

Blindingly obvious you might think, well not always. Witness any social situation or group and you can recognise that people accommodating each other and getting on requires give and take. Sometimes the managers have to be more social worker and community liaison officer than property manager – completely different skill sets!

Equally, leaseholders can feel they have to be property management experts to have their point addressed or listened to. It is this trial to achieve balance that can cause a lot of the disruption and challenges in leasehold.

I have now spent a day and a half on the phones at LEASE to listen to actual callers to see the types of issues and questions that come in first hand. Surprisingly, in my experience there are as many leasehold freeholder queries as complaints and queries about third party managers and freeholders. I will continue to do the occasional time on the phones to ensure I have an accurate perspective on our callers. However, the point on this is that in reality there may still be queries and complaints if you have complete control of your building.

In reality it is logical because we are all different with varying expectations and perspectives. We want different standards, delivery and service. Some people just don't get on – doesn't make them bad people, they just clash. For sure, there are a number of areas needing to be addressed in legislation and regulation, but however good it is made, it will not eliminate communal living and a need to work together.

LEASE has launched a survey for all leaseholders to genuinely gauge the feelings and mood of the leaseholders to better inform what they actually want. The survey was the idea of Brady's who have funded the project with LEASE's backing. The results will be widely published and already some interesting perspectives are coming through. We hope the outcome will allow the improvements needed in the sector in delivery and servicing of the buildings. I would urge you to partake and have your voice incorporated to the results.

(Information on how the UK's 4.1m leaseholders are being urged to have their say in the national survey can be found on the LEASE website www.lease-advice.org. You can contribute your views up to 31 March.)

DON'T PANIC

Right to manage companies should not rush into action if they manage more than one block of flats and are worried about a recent court ruling, says FPRA Committee Member Martin Boyd.

Don't panic and collapse your RTM in the fear that multi-block RTMs are illegal, following the *Triplerose v 90 Broomfield Road RTM* decision, he says. In this he is backed up by advice from the Leasehold Advisory Service: "The advice to the customers for now can only be to do nothing, unless the landlord starts any action of their own. There has been no authoritative court judgment on this point [ie the status of existing multi-block RTMs]. Consequently, the law is not settled and therefore, we cannot say for certain what the legal position is."

However, commercial intermediaries are seeing the ruling as a fee-earning opportunity, warns Martin. He says: "It is understood that RTM directors are being advised to head off to the property tribunal, dissolve their RTM company and then set up new RTM companies for each of the blocks. LKP has seen correspondence for one site – with only two blocks and the sleepiest conceivable housing association freeholder – where fees of £4,500 were suggested. Here there is very little risk of the freeholder doing anything at all."

Martin is a trustee of the charity the Leasehold Knowledge Partnership, which has been discussing the Triplerose issue with Government, the Land Registry and barristers. He says: "None of the lawyers has suggested making a move unless a landlord has begun some form of action of his own. None has suggested the multi-block RTM is or has always been illegal. None has suggested there is no legal right to collect service charges. Civil servants advise us that they, too, are observing events before making any decision to revise RTM law.

"Suggestions that the Land Registry may refuse to register the sales of flats on multi-block RTM sites, seem to be without foundation. LKP is advised that it has no such plan. The Land Registry is no longer able to register existing multi-block RTM companies that came into force before 27 March 2015, but which have not previously been registered. The registration of the RTM with the Land Registry is voluntary, and in any case a separate matter to the status of the flat."

Legal Jottings

Compiled by Philippa Turner

FTT	First Tier Tribunal (formerly the LVT)
UT	Upper Tribunal
UKUT	United Kingdom Upper Tribunal
EWCA	England & Wales Court of Appeal
PLSCS	Property Law Services Case Summary
RTM	Right to manage

Landlord & Tenant Act 1985

In *Islington BC v Cain in re Flat 6 Thornhill Road (2015 UKUT 542)* the lessee acquired his lease in 2002. Initially, he paid the service charges and it was not until July 2014 that he issued an application under Section 27A of the Landlord & Tenant Act 1985 seeking a determination of the reasonableness of the service charges for the years 2002 to 2013 inclusive. The FTT dismissed the application on the preliminary issue as to whether it was now too late to make such an application by finding (1) he had agreed or admitted the demands by prior payment and (2) more than six years had elapsed, thus falling foul of Section 8 of the Limitation Act 1980 and was therefore statute-barred although this did not prevent a challenge in respect of the years after 2007-8. The UT dismissed the Lessee's appeal : although Section 27A(5) provided that "the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment", in this case, the facts and circumstances went beyond mere payment – *inter alia* there had been no demur by the lessee when paying "for many years" and the FTT was entitled to reach the decision which it did. It was not necessary to consider the limitation point but the UT held it was not relevant to the proceedings under Section 27A because the action is neither a claim under a lease (a 12-year limitation period) nor in respect of rent or service charges (six year limitation) but a request for a determination as to reasonableness.

Landlord & Tenant Act 1987

The lessees in *Artists' Court Collective v Khan (2015 PLSCS 313)* successfully out-manoeuvered their devious landlord. He transferred the freehold of the building containing eight residential flats and three shops to a company of which he was the major shareholder for £225,000 – greatly below the market value. When the lessees discovered this (a year later) they served a notice under Section 12 of the Act seeking the disposal of the property to themselves. The company thereupon transferred the ownership back to the original landlord. The lessees then had to recommence proceedings the outcome of which was an order that the landlord transfer the freehold to them for nil consideration.

In *Queensbridge v Lodge & others re 135 Ladbroke Grove (2015 UKUT 635)* the lessor of a five-storey building containing three residential flats with commercial units on the ground and basement floors failed to remedy its serious disrepair including the exterior flank wall and other structural defects giving rise to fire and health and safety hazards. The lessees applied under Section 24 for the appointment of a manager, citing in support the lessor's breach of its repairing covenants. In allowing the application, the FTT imposed certain conditions on the appointment: (1) the manager was to be empowered to manage the commercial part of the building and receive its rents; (2) the lessor was to pay the manager the equivalent to the service charge to represent the contribution from the commercial unit; (3) there was a restriction on the disposal by the lessor of the property and (4) the manager was to have the power to grant any consents required under the lease. The lessor appealed against the imposition of these terms but the UT dismissed the appeal and refused any variation of the order holding that (1) this was necessary to secure the proper management of all the property by removing the lessor's ability to do so and to obtain proper and sufficient funding for the purpose; (2) Section 24 is worded widely enough to allow collection from the commercial tenant and the wording of the lease was such that, without such payment, it was doubtful that the manager would be able to secure 100% of the service charges; (3) it was necessary to prevent the lessor selling without paying the manager its share and, in any event, the management order was for two years only and consent to any sale could not be refused unreasonably by the manager under Section 24(9) and (4) exercise of the power to grant or refuse consents was justified in the light of the lessor's previous conduct.

Leasehold Reform & Urban Development Act 1993

The premises in *Tibber v Buckley (2015 EWCA Civ 1294)* consisted of a terraced five-floor house converted into two flats and one maisonette, the latter let on an assured tenancy by the freeholder. Under Section 13 of the Act, the lessees of the flats served a Notice to acquire the freehold and the freeholder served a Counternotice claiming a leaseback of the maisonette under Part 2 of Schedule IX of the Act. Before the LVT, the freeholder sought to include in the leaseback, not only the maisonette but also the roof of and the airspace over the building, the mezzanine and some storage space, a landing and the front garden. It was held by the LVT that the leaseback should be of the maisonette only with rights to use the common parts and furthermore prohibited alteration to it without consent. The UT dismissed the lessor's appeal and the Court of Appeal agreed and held that it was in any Counternotice that the extent of the property should be spelt out, including whether it also comprised the exterior walls, the windows, the roof etc. The LVT would be able to resolve any disputes as to clarification of the terms of the demise.

The Commonhold & Leasehold Reform Act 2002

The lessees in *Avon Ground Rents v Earls Court Square RTM (2016 UKUT 1221)* formed an RTM company in respect of an end-of-terrace property originally built as a house but now converted into 13 flats let on 125 year leases. The company's Articles described the "Premises" as "Flat 1-13 51 Earls Court Square" and the name of the company as "51 Earls Court Square". In the claim notice under Section 79 it was also described as "51 Earls Court Square". The lessor challenged the claim on the ground it was not a self-

contained building and therefore fell outside the Act but the FTT allowed the claim. On appeal to the UT the lessor argued that only an RTM company which defined premises in its articles could claim under the Act: here, the Articles referred to the flats alone and not the whole building thus not including the common parts, foundations etc. The appeal was dismissed: it was clear from the Articles and from the notice of claim that the company was formed for the purpose of managing the whole building.

Costs

In **Sinclair Gardens v Clemo (2015 UKUT 597)* the lessor sued the lessee in the County Court for arrears on insurance rent (£446.77) and administration charges (£146.70). On transfer to the LVT it was determined both sums were payable and an order under Section 20C of the Landlord & Tenant Act 1985 was refused thus allowing the lessor to recover legal costs through the service charge but declining to make any order in respect of the legal costs in the County Court through lack of jurisdiction. Back in the County Court, the lessor claimed judgment and the matter was settled on terms that the lessee paid the amounts due plus interest as well as the lessor's cost of "this claim", setting out only the County Court costs totalling £1472.12. Seven months later the lessor sought its costs in the LVT from the lessee; on his refusal, the lessor returned to the County Court which referred it back to the LVT which held that the lessor had settled its claim including costs and could not now reopen the agreement. The lessor's appeal to the UT was dismissed: the meaning of the consent order was clear.

The dispute in **Geyfords v O'Sullivan (2015 UKUT 683)* was in respect of legal costs arising in two sets of proceedings: the first was the landlord's claim against three lessees in the County Court for £12,000 interim service charges in respect of major works which was settled by consent, each side agreeing to pay its own costs. The second action was an application to the LVT by five lessees under Section 27A of the Landlord & Tenant Act to determine the service charges due for the years 2005 – 13; it was held that the landlord could recover most of its costs but no Section 20C order was made and there was no determination as to whether costs were in fact recoverable under the lease. It was perhaps understandable that the dispute as to legal costs was not thereby resolved and the landlord made a further application to the FTT (as it was by then) under Section 27A. The lease provided for payment by the lessees of a share of the "costs expenses outgoings and matters" including "all other expenses (if any) incurred by the lessors or their managing agents in and about the maintenance and proper and convenient management and running of the building". The FTT held the word "management" was not wide enough to cover legal costs of the dispute with those lessees from which it was now seeking recovery and accordingly legal costs were not recoverable through the service charge under the terms of the lease. On appeal the UT held the relevant clause must be interpreted to carry the natural and ordinary meaning of the words and must be clear and unambiguous to allow recovery of legal costs; here, the wording was intended to cover only routine and unexceptional expenditure and therefore did not include legal costs.

Repairs

The County Court dismissed the greater part of the lessee's claim against the landlord for damages in *Moorjani v Durban Estates (2015 EWCA Civ 1252)*. In breach of its obligations under the lease, the landlord had failed to insure or to reinstate and maintain and repair the common parts necessitated by a flood in 2005. At the time and until 2008 the lessee lived elsewhere for reasons unconnected with the disrepair. The Court of Appeal awarded another £7,380 over the County Court judgment of £1,500. The non-occupation by the lessee of the flat was irrelevant and should not reduce the quantum of damages awarded, even though inconvenience and discomfort was thereby less than it would have been otherwise. The fact was that there had been interference with the lessee's property rights even if only for a temporary period.

The premises the subject matter of the dispute in **Fairburn v Etal Court Management (2015 UKUT 639)* consisted of 39 flats held on 999 year leases contained in three 1970s purpose-built blocks. The leases obliged the landlord to keep the retained parts of the buildings in "good and substantial repair and condition" and "to do all other acts and things for the proper management administration and maintenance of the blocks . . . . as the lessor in its sole discretion shall think fit"; all the costs of doing so were covered by the service charges payable by the lessees. Cracks developed in one of the flat's floors and initially the RTM company which managed the property denied the lessor's liability for its repair. The lessee instructed a surveyor who established that there was contaminated infill below the concrete floor which was confirmed by a surveyor appointed by the RTM company. After a consultation under Section 20 of the Landlord & Tenant Act 1985 the repair was carried out at the cost of over £27,000. However, there was inevitably some delay before this could be done and the lessee applied in the County Court for an injunction to oblige immediate execution of the work, plus damages and costs. The claim was settled by the lessor agreeing to pay a total of over £25,000 . On recovery of this sum being sought from all the other lessees through the service charge, one lessee refused to pay and the lessor issued a claim against her. This was upheld by the FTT but on appeal the UT determined that the lessor had been in breach of its repairing covenant, albeit for a short period and "a sum paid in satisfaction of a successful claim for damages", although validly incurred in administration and management of the lessor's company (as opposed to the property), did not fall within expenditure covered by the service charge. The problem this causes for RTM/resident-owned companies which have no funds other than those set aside for maintenance was touched on by the Tribunal in pointing out that the company may, as a result, become insolvent unless its members voluntarily undertake to accept liability.

Note

For those who are interested in a more extensive account, the cases marked with an asterisk* have been included by FPRA's Consultant, Amanda Gourlay, in her "Blog" to be found at www.lawandlease.co.uk

ASK THE FPRA

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

Equity release

Q One of our leaseholders wants to release equity from her property under an Equity Release Scheme. This is the first time we have come across this problem. The management company owns the freehold of all the flats and houses in our development. We are not sure if we can give the leaseholder permission to release the equity in the property to a third party.

A FPRA Committee Member Yashmin Mistry replies:
Unless the lease prohibits tenants from having charges registered against the title, or the freehold title contains a restriction prohibiting a tenant to register again a charge against their leasehold title, we are not too sure why the freeholder would need to provide consent to the equity release scheme?
The equity release scheme is similar to a re-mortgaging exercise. The scheme at the end of the process will just register a charge against the title. The solicitor acting for the tenant will probably serve on the freehold company at the end of the transaction a "notice of charge" advising the freehold company of the new charge having been registered.

Lawyer or DIY?

Q Can you please explain the necessity or advantage of using a conveyancing solicitor as opposed to a DIY job?

A FPRA Director Shula Rich replies:
First it entirely depends what you are doing. A lease extension, new lease or lease variation may be more complicated than transfer of title.
The law says that only a Solicitor (or conveyancer) may transfer an interest in land, or yourself. You can do it yourself or you can pay a suitably qualified person. The reason that "anybody" can't do it is that land – unlike other things we purchase can't just be picked up and taken away with us – so the only way we can prove 'title' is to transfer the title at the Land Registry.
When a property is sold the purchaser's solicitor will first of all make sure to prove "good title" that all the documents are correct. Just because its done by the professionally qualified person of course doesn't mean it will always be right. (I've had bad experiences myself with a Solicitor sending me several forms with errors!)
If you do it yourself it won't always be incorrect. There is just a likelihood that the more experienced person will know where the trip ups are. On the other hand the less experienced person might take infinite trouble.
If you want to do it yourself the Land Registry provides excellent Practice Guides. They are very helpful and (hopefully) you can rely on the Land Registry to return it to you if you get it wrong. In my RTM work we come across Land Registry entries with minor errors that need correcting.
The LR itself is very helpful on the phone. They can't give 'legal' advice but will explain the forms if they aren't clear to you.
All the guides are free they are beautifully written and very comprehensive.

Dodgy director

Q Our directors may only serve as such if they are shareholders. Recently a joint shareholder decided to attend a Board meeting with a partner who is the "elected" Board director. What is the view about the status of the second partner at such meetings and would it be appropriate to exclude them? Our issue is that potentially we could have nearly 32 joint shareholders attend our meetings!
The Board has not adopted any standing orders separate from the Companies Act Schedule.

A FPRA Director Shula Rich replies:
Directors meetings are for directors only. Directors must be shareholders – but all shareholders cannot be directors. If this lessee was elected as a director personally then the partner cannot attend directors' meetings. I don't think you need to make this clear with standing orders. Lessees votes as shareholders are different from directors' votes.

Nuisance car

Q Since the New Year a car has been left in the corner of our private car park, occupying one of the spaces. On checking the registration on the DVLA website, we have discovered the vehicle has a SORN (Statement of Off Road Notification) dated 02/01/2015, therefore having no requirement for Road Tax, MOT or insurance. We have established that the vehicle is not the responsibility of anybody in the block.
Are we under any obligation to track down the owner of the car (cost to us) and demand they remove the vehicle on the grounds that they are trespassing on our property and causing an obstruction (denying a resident/visitor access to the parking place), as well as charging them £5 per day for the time they have been parked.
We could either move the vehicle back onto the highway, then report it to the DVLA/council for being on the public highway with no tax etc, or just treat it as an abandoned car on our property and have it removed? The vehicle does have a broken rear quarter light, so gaining access is not a problem.

A FPRA Committee Member Yashmin Mistry replies:
Firstly I would advise not to tamper with the vehicle or attempt to remove the vehicle onto the public highway, not least because, in so doing, you might be committing an offence. There are numerous reasons why cars are abandoned and one such reason could be that it has been

used, possibly by someone other than the registered owner, in some form of criminal activity – and the fact that it has a broken rear quarter light might suggest that this could well be the case. To that extent it might reveal clues or prints useful to the police. Additionally the registered owner might be unaware of his car's location and might be very anxious to retrieve it. It is my understanding that local authorities have a statutory authority/obligation to remove abandoned vehicles, whether on the public highway or on private land, and in my view it should be reported to the local authority without delay; they should then liaise with other agencies (police/ DVLA) and with the owner of the vehicle as appropriate. There is the possibility that a charge could be levied should it cost in excess of £250 to remove; although, in the circumstances, I would think this unlikely and you might be able to make a claim under your block insurance policy – as 'property deposited illegally within the boundaries of the building(s') – and, in this regard, I would suggest you inspect your policy/ discuss with your insurers. However, if investigations by the council reveal that the car has been dumped on your property by the registered owner they will almost certainly recover the cost of removal from the owner.

Nuisance sub-lessee

Q Currently we have a situation where one of our leaseholders wishes to assign his lease to his current sub-lessee. This sub-lessee has caused us many problems over a number of years – parking too many vehicles in our car park, storing personal property in communal areas, keeping dogs that foul the lawns etc, etc. We have received no support from the current leaseholder when we have attempted to enforce our regulations.

We would like to refuse to agree the Assignment – do you think we have the legal right to do this?

A FPRA Legal Adviser Nick Roberts replies:

The matter is covered by paragraph 3(a) of the Fourth Schedule of your lease which provides that consent of the landlord is required to assign the lease, such consent not to be unreasonably withheld. In my experience it is fairly unusual for long leasehold flats to be subject to such a restriction, at least outside the Central London area, and therefore fairly unusual around Southampton (I was for a long time in practice there), but the provision is perfectly valid and enforceable.

There is a good deal of case law dealing with what are reasonable grounds to refuse permission to assign. Most of it was decided in the context of commercial lettings, where it would be almost unknown for there not to be such a restriction. Although generally permission is refused on financial grounds, it is quite clear that the character and identity of the proposed assignees can be taken into account. The position here seems particularly clear-cut, as you have direct evidence of how they are likely to behave. They cannot argue that if the matters that you are complaining of are a breach of the lease then you should have done something about it previously: it would be accepted that it is difficult to enforce restrictions, particularly against sub-tenants, and that you cannot be compelled to accept them as head-tenants (leaseholders) and then have to try to enforce the lease terms against them.

I would, however, offer some words of warning. Requests for Licence to Assign are covered by the Landlord and Tenant Act 1988. As soon as you receive a request in writing for permission to assignment (whether it is from the current leaseholder or his solicitor) then you are under an obligation to deal with the request as quickly as is reasonably possible. There is no set time limit (say, 14 or 28 days) – it will depend on the complexity of the case, and various considerations, most of which are unlikely to be relevant here. If you require further information, then you must request it promptly. Once you have all the information you require, you should certainly be thinking of giving a full response within 10 working days. It may be, however, that you feel that, as soon as you receive any request, you already have enough information to respond (negatively) to the request. You would therefore be under an obligation to give your refusal, in writing, and to give brief reasons in writing. You are not required to give details of the evidence that you would be relying on. You should note that, once you have given your reasons, that is it. If the matter should come to court, you would not be entitled to add any further reasons that might subsequently come to your attention. You therefore need to get the reasons right first time.

It is also fair to say that refusal of consent may not be without its consequences. If the leaseholder should object, and wish to argue that consent was not being reasonably withheld, he would be able to apply to the County Court for the court to rule on the matter. When the lease says that you cannot withhold consent unreasonably, the court has the final word on that, though it is accepted that the test is not whether the judge agrees with your decision: the test is whether the decision that you have come to is one which a reasonable landlord might make. The burden of proving that you have refused reasonably is on you. It seems to me, on the basis of what you have said, that you would clearly be acting reasonably. You should, however, bear in mind that if the court did rule against you, you would be liable for the leaseholder's costs; you might also be liable for damages for any loss resulting from his lost sale. In practice this might not matter, as, if the court ruled against you, then presumably the sub-tenant would still be around, and could still proceed if (and on present information I do not think it likely) the court ruled against you.

The converse is also true on costs: if the leaseholder challenged your decision, and lost, then he would be likely to be held liable for your legal costs. So, if he realises his case is weak, he is unlikely to challenge your decision.

Yearly maintenance fee

Q We have a situation that has arisen which the residents' association is unsure about.

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Ask the FPRA continued from page nine

At the last bi-annual meeting it was agreed by three directors that the yearly maintenance fee should be increased by £500 per year to cover the costs of the redecoration bill (to be done in 2017) as well as cover work for exterior lighting, general funds for bills etc and gardening fees.
The fourth director, unable to make the meeting, agreed with this by email.
The non-director, also unable to make any of the five dates offered to him for the meeting, has not agreed with this increase and is resistant to an increase above £250 per year. Where do we stand with this? We don't want to involve a legal position but fear this will be a continuous pattern of resilience as there are concerns that the new owners (non-directors) are not in a financial position that allows the increases that are necessary to maintain such a large, old building.
Your advice and direction would be most welcome.

A FPRA Committee Member Amanda Gourlay replies:
The directors are normally entitled to exercise all the powers of the company under the Articles of Association of the company. A non-director who is nonetheless a shareholder cannot exercise any decision-making power while the directors are in post.
If the directors have unanimously decided that the service charge must increase next year, that is not only a company decision, but also a decision of the landlord, and I assume that the landlord is required to set a budget, manage and maintain the building in the normal way.
If the increase of £500 can be justified because the works on which the money will be spent will be reasonably incurred, the shareholder/lessee really has no defence to the landlord's demand. If he/she is unhappy with the amount of the charge, the primary option is to apply to the FTT for a section 27A determination.
I appreciate however that the directors do not want to become involved in litigation. In that case, is it possible to phase certain works so that the increase is not as steep? Could the lessees pay by instalments? Another alternative may be for them to ask their lender to fund the increases and to add the service charge to the mortgage.

Wheelchair user

Q **I am a director of the management company of a block of 16 flats whose shares are divided equally between the current 16 leaseholders, of which I am one. Most of the flats are owner-occupied, but some are let out.**
Recently a potential purchaser of one of the ground floor flats, who was confined to a wheelchair, asked that we consider providing ramp access to the rear of the building at our expense. We agreed to do this. They also asked us to consider improved access at the front of their potential flat, but we declined to fund this, put conditions on what could be done because of its position in a conservation area, and required full restitution at their expense when the flat was resold.
Subsequently the enquirer dropped out of the purchase for reasons unconnected with this, but the Board have asked me to establish – for future reference – whether we have any legal obligation to modify the block to meet such requirements, or whether we can continue to use our own judgement on a case-by-case basis.

A FPRA Chairman Bob Smytherman replies:
Disability – related improvements are an issue on which I respond from a practical point of view. Although I am not a lawyer, I did take a keen interest in this matter when the Government consulted on this issue and opposed S.35 Equality Act. I and others raised a number of very real practical concerns that would have impacted on the likes of you and me and our management of common parts of blocks of flats.
I am not sure I can take the credit, but following the raising of our concerns, successive Governments have not yet implemented this section of the Equality Act. This therefore leaves us with a degree of uncertainty when dealing with such requests from leaseholders or in your case a prospective leaseholder.
My view is there is a very clear difference here. In my block I would have declined a request from a potential purchaser as the flat they were looking to buy would be clearly unsuitable if they could not access it without an adjustment. In my view this would be an "unreasonable adjustment" and should be declined. If, however, one of your leaseholders became wheelchair-bound and required an adjustment to access their home, then you may take a view that this would be "reasonable adjustment".
The next issue is one of who would pay. The legislation (yet to be implemented) requires the cost to fall to the leaseholder, not the service charge fund, and I would support this view unless the directors can demonstrate that the adjustment would be of benefit to all service charge payers, and certainly not have a negative impact on any of them (for instance if the ramp was to form a trip hazard for other leaseholders or visitors).
My advice in the future is that, unless the Equality Act S.35 is implemented in full, you should continue to deal with each request on its own merits and take a common sense, practical position, being sensitive to the disability needs of the person making the request while at the same time balancing the impact on the other leaseholders, both from a practical point of view with regards the adjustment, but also the cost to the service charge of any improvements. Of course bear in mind your lease may not allow for "improvements" as many don't and only allow for repair/maintenance.

Danger to volunteer

Q **We have many volunteers that help around the property we manage, including a couple of people that help with gardening and outside tasks. One gentleman has offered to trim hedges but has asked that we purchase an electric**

hedge trimmer for him to carry out the work.
I am concerned that if we provide this item we will become liable for any damage or injury that may happen to the volunteer offering to carry out the work and would be devastated should anything happen to the individual. The committee have asked me to get in touch to ask where we stand should we agree to this purchase and activity.

A FPRA Hon Consultant Belinda Thorpe replies:
The flat management company will be liable for any injuries obtained during tasks performed by volunteers whether they purchase the equipment or not.
Most comprehensive insurance policies automatically include Employers Liability Insurance, which should extend to volunteers, so I would suggest they check whether they are automatically covered.

Disabled parking

Q **We are a residential block of 42 flats with our own private car park for around 20 cars. There has always been a disabled parking space which was used by one of the original residents, who now has sadly passed away.**
A question raised at our committee meeting yesterday was: "Do we have to have a designated disabled parking space?" With parking being so limited for residents and parking being on a first come first served basis, do we have to allow the space for a designated disabled parking space? One of the committee members thought we may have to have one by law as we have more than 20 dwellings within the block. As the space would be seldom used it seem unfair to have so much of the space taken up and not used when there is such a shortage or parking for the whole block.

A FPRA Chairman Bob Smytherman replies:
I respond from a practical point of view, not a legal one. In simple terms there is no legal duty to provide a disabled bay unless your lease requires it, and from what I have read in your lease the parking spaces are allocated and available on a first come first serve basis with no restrictions on usage.
My advice would be it be unwise to allocate this as a disabled bay as you may well have more than one leaseholder with a disability and therefore could cause an unnecessary conflict.
If, however, you decide you do want to reserve this bay for a disabled bay then you may well want to seek further advice from our lawyers about varying the lease to ensure that this is legally possible.
From what I interpret from your lease, your management company is responsible for maintaining a very limited number of spaces compared to the number of flats on the development, which is failing to meet the demand from the flat owners.
Your management company may want to as part of your duties use the services of a parking management company to manage this demand in a fair way by use of permits or other restrictions such as length of time for parking.
If you were to propose something like this again I suggest asking our lawyers to review your options under the terms of your lease.

Owner deceased

Q **A neighbour died nine years ago and his flat is still registered with the Land Registry in his name as having title absolute. We think we know the name and address of the beneficiary, who has promptly paid the service charges but not, apparently, notified the Land Registry. The company secretary can do nothing without the correct information should the flat be offered for sale. We are a freehold property of 26 flats with individual leases granted out of the freehold. We'd like to resolve this matter so company records are up to date.**

A FPRA Committee Member Colin Cohen replies:
I would answer that there is nothing that the member, being either the freehold company or management company, can do that would enforce a lessee to register correctly at the Land Registry, as it is part of their property. In particular if there are no arrears then it is really not a problem. One day they will want to sell the property and put their house in order as it were.

Boiler room

Q **The old boiler room at our block is no longer in use and it has been suggested that it could be sold. As the majority of the flat owners now hold the freehold, what are the tax implications if it was sold, and the money distributed among the shareholders? Alternatively, could the money raised be used in the refurbishment of the building, if all the shareholders agreed, and what would be the tax implications in this case?**

A FPRA Hon Consultant Mark Chick replies:
A number of points arise in considering your question and these are as follows:

The 1987 Act

a) If the property in question forms part of the "common parts" of the property then in disposing of it, it may well be that the freehold company will need to serve Notice under the 1987 Act offering it under the right of first refusal to the other flat owners.
b) If a price is agreed with any third party purchaser (it is not clear if this person will be a flat owner in the building or not) then the terms of that disposal should be notified to the other flat owners to avoid criminal offence being committed and/or the risk that the transaction could be set aside because it is in breach of the 1987 Act.

Tax

a) You have asked the question as to whether there are tax implication in the distributions of the proceeds of the sale. Presumably the company holds the freehold and the participating flat owners are the owners of the shares in the company. If the company receives income then any distribution of this is likely to be treated as dividend and payment to the shareholders and they will need to account for this in their tax return. In addition, it may be (depending on the amount of the payment in question) that the company

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may have a corporation tax liability in respect of the premium that it will receive on the sale of this unit.
b) The Company may also have a capital gains tax liability in respect of the sale of this area.
c) We would be grateful if you could confirm the likely sale price so that we can advise further.
d) In addition, depending on how the original contributions to the purchase of the freehold were structured, it may be that any payments out of the company can be seen as being payments in whole or in part satisfaction of "loans" made by the members to the company to assist in the purchase of the freehold. This may mitigate some individual tax liability.
e) If the beneficial interest in the freehold is held in trust the position will be different and we would therefore need to understand the mechanism of which the shares in the freehold are held for the participating flat owners.
f) If the proceeds of sale of this unit are used towards the refurbishment then, provided all the shareholders agree and are beneficially entitled to this, then it could be used as a way of defraying the service charge obligations of individual flat owners. The issue is likely to be that unless the company can be shown to have a liability to pay for the repairs/ refurbishments out of its own pocket that the funds are likely to be subject to tax as income received by the company.

Accounts and bank accounts

Q **We have three bank accounts: 1. company bank account; 2. service charge account; 3. tracker account.**
1. Company account: This account has income from registration/administration charges from flat sales and the 10 per cent discount we receive on ground rent invoiced by the head lessor (the freeholder). Outgoings from this account are such as the hire of a hall for the AGM, new Xmas tree for the entrance hall and suchlike.
2 & 3. These accounts hold service charges and outgoings are for building expenses and running costs. A Summary of Service Charges is prepared, certified and audited at the end of the financial year with a copy distributed to all leaseholders.
All three accounts are held in statutory trust.
We know that company and service charges accounts should be separated, but to what extent? Our question is regarding the figures to be included in the accounts to Companies House. Should these include the figures from accounts 2 & 3 as well as from the company account, or should it be the company account figures only?

A FPRA Hon Consultant Gordon Whelan replies:
The statutory accounts for residents' management companies are governed by two new accounting standards: FRS102 AND FRS105. These standards include specific reference to RMCs but conclude that no special guidance is offered for RMCs. This means that directors of RMCs have two choices when preparing and filing statutory accounts:
a) prepare accounts including all transactions (service charge and company).
b) only include transactions relating to the company and exclude all service charge transactions.
However, best practice guidance for service charge accounts is to prepare accounts in accordance with TECH03/11 and service charge expenditure that is only permitted under the terms of the lease is to be included in these accounts. The predominant view within the industry is that statutory accounts should exclude all service charge transactions and this is the view given recently by the Association of Residential Managing Agents (ARMA) to its member firms. Therefore RMCs need to prepare two separate sets of accounts to comply with best practice.
Given that you have wisely kept your records so that service charge transactions and company transactions are in separate pots, it would seem sensible that you use account 1 for the statutory accounts and use bank accounts 2 and 3 to prepare service charge accounts.

Noise nuisance

Q **We have an issue between two of our residents. I realise it's not your place to intervene directly in such matters, but if you could advise as to a possible course of action beyond the two I mention, I'd be grateful. The complaint is to do with persistent excessive noise – banging, chairs scraping etc at an unreasonably early hour – around 6:30 am. My advice is to notify the local authority who may monitor noise levels and should intimidation occur, inform the police. If there are other measures that might be considered maybe you could advise; and again I apologise for contacting you on what essentially remains a matter between the two residents.**

A FPRA Chairman Bob Smytherman replies:
I deal with these matters for the FPRA from a practical point of view not a legal one.
I think your advice is both reasonable and practical as the local authority have powers under the Environmental Protection Act to deal with noise nuisance. The complainant will be required to carry out a monitoring log of noise to accumulate evidence for the Council but if this is loud and persistent with evidence the Council can and should take enforcement action.
In addition, the police and local authority have powers under the Anti-Social Behaviour Act. Again, this will require recording to get enough evidence to enforce which ultimately could result in Anti-Social Behaviour Order served on the offender.
In addition your lease may have some specific clauses relating to noise. This can be more problematic and costly but can be a useful tool and it may be the threat of action in a solicitor's letter, coupled with action from the authorities, will be enough to see a change in behaviour.
From personal experience, frank and honest open communication between all parties tends to be more successful than the heavy hand of the law.

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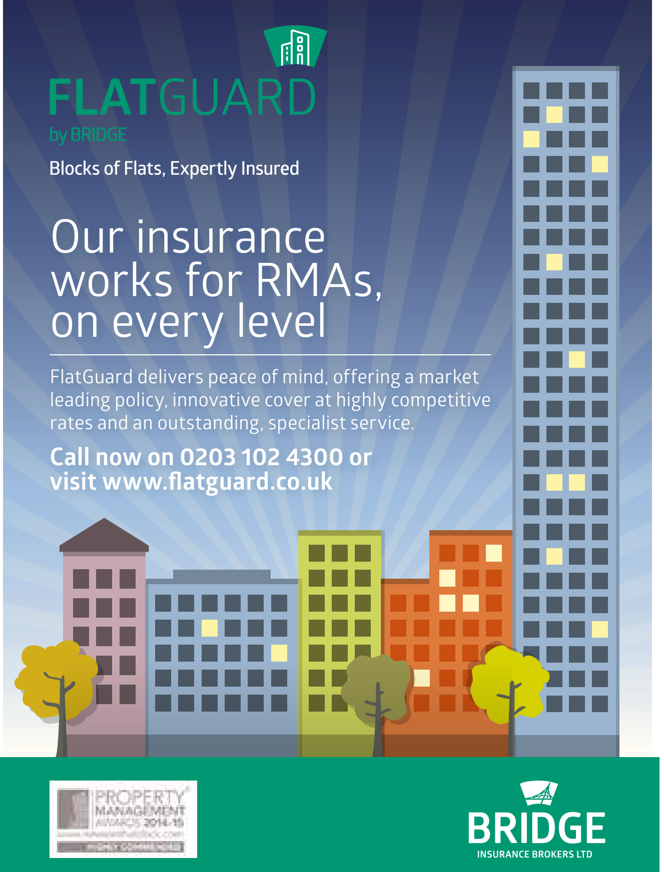

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Legionnaires' disease

Q We are a development of 40 flats arranged over three floors and like many others we have the ground and first floors flats' cold water tank in the roof space in the communal stairwell (the top floor flat has its tank in the loft space above the flat). Each flat has a hot water cylinder in the confines of the flat itself.

Because the tanks are sited in the communal space, do we as the management company have to do a risk assessment or any tests for Legionnaires' disease? From the current information available the infection can only thrive in temperatures of 20-32 degrees and a cold water tank is never likely to reach that temperature. So do we even need to bother to do any risk assessments or just do one which considers the risk but rules it out in the first instance because of the temperature aspect?

A FPRA Chairman Bob Smytherman replies:

The simple answer is yes, as risk assessment will be required as this is a communal supply.

As you say, being a cold water supply the risk is likely to be low. However you will need to document and evidence this. My advice would be to seek a specialist in the first instance to provide the risk assessment and then in future, probably annually, (unless circumstances change) just carry out a simple review and document this fact.

The tanks are sited in communal areas which are the responsibility of the management company to carry out a risk assessment. It may be that assessment highlights some issues with responsibility? I think you need a legal view on the issue of responsibility of these individual tanks being present in a communal area? Let the office know if you would like our legal officer to review the lease to identify responsibility.

What fees can we charge?

Q Could you offer guidance as to the fees that can be charged by ourselves as managers during a lease transfer? During recent sales we have been approached by existing owners, their solicitors, the buyer's solicitors, and on occasion by the buyers themselves, seeking lease and property details. The requests have been by email, telephone, various standard forms and can involve significant amounts of time and paper. One recent agent made many such requests. We also have to prepare a Deed of Covenant and administer a share transfer.

We note our previous professional agents charged fees varying from £60 to £150 and £10 per additional question. Our question is: what is seen to be a reasonable figure for providing the information requested and should the invoice be settled by the vendor or purchaser? Finally, on completion of recent sales we have received a notice of transfer of the lease from the solicitors. Should this not have gone to the freeholder rather than ourselves?

A FPRA Committee Member Yashmin Mistry replies:

The figures you have described sound reasonable, however we cannot provide any guarantees on what a tribunal would hold to be reasonable in the circumstances if those fees were ever challenged.

In respect of which party should be responsible for the fees, this depends on the circumstances and what can be negotiated between the parties, but general practice would be for the sellers to pay the costs of requesting pre-contract management information.

In terms of the invoice, as the fees would be classed to be an "administration charge", you must ensure the correct summary of rights and obligations is attached to the invoice.

Crumbling garages

Q We have a line of adjoined garages separate from the main building. There is a fault in the structure between two of the garages to the effect that the walls of one of the garages can be moved slightly – clearly an issue that needs to be sorted. One of the two residents involved asked if it would come under the buildings insurance. Could you advise us as to whether this would likely be the case? My impression is the problem is due to general wear and tear, as opposed to storm damage.

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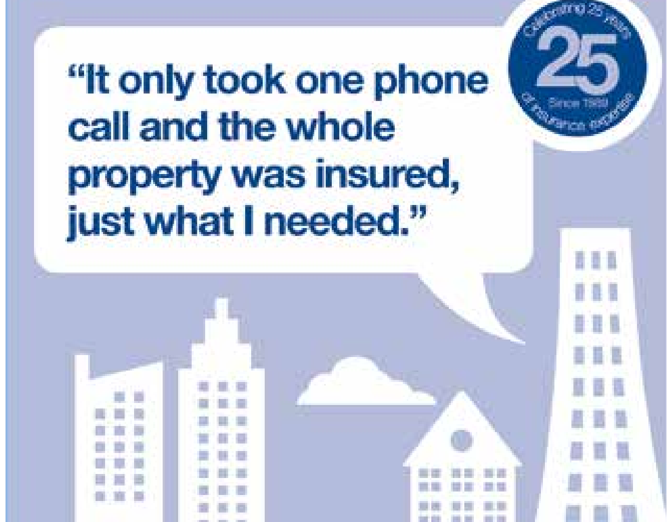

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Ask the FPRA continued from page fourteen

A **FPRA Director Shula Rich replies:**
I agree with you that wear and tear is never covered by buildings insurance. If it is a structural fault, then the effect of the fault could be. However, why not ask the brokers? Depending how much money is involved they will send someone to look at it, if you were to make a claim. If they turn it down, it may be worth your talking to assessors to draft the claim for you, but generally an assessor who works on commission will not be interested in claims of less than £5,000. I do hope this helps. My suggestion is ask the brokers for their opinion, and don't make the decision yourselves. You never know!

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.

PROGRESS

Good progress is being made on its recommendations for the residential property management sector, according to the Competition and Markets Authority (CMA).

Since the publication of the CMA's December 2014 market study, the CMA has been working with the residential property management sector and Government to implement its recommendations. It says that good progress has been made in finalising the most effective approaches and actual delivery.

CMA says: "We have been particularly pleased to see significant innovations in improving pre-purchase information to prospective leaseholders.

"This includes:
- short information sheets produced by LEASE with input from the Law Society
- revised conveyancing documents produced by a sector working party, including representatives of the Law Society and the Royal Institution of Chartered Surveyors (RICS)

"In addition, some of the main industry trade bodies have improved their Codes of Conduct for members. The statutory codes, approved by Government that promote desirable practices in the residential leasehold sector, have undergone further review and are awaiting approval by DCLG.

"Work is continuing in conjunction with our partners in the sector and in Government on the CMA's other recommendations to ensure that they are implemented in as full and timely a manner as possible. We will provide a more comprehensive update in spring 2016."

Escalating Charges

The shock to leaseholders being unexpectedly asked for thousands of pounds a year in ground rent was explored in an edition of BBC Radio 4's *You and Yours* programme broadcast on 2 February. You can access the programme on BBC iplayer and the item is 31 minutes into the show.

The inclusion of an insert or advertisement in the FPRA newsletter does not imply endorsement by FPRA of any product or service advertised

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