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NEWS

FPRA
FEDERATION OF PRIVATE RESIDENTS' ASSOCIATIONS

GOOD NEWS – AFTER YEARS OF PRESSURE

By the Editor

This could be a big step forward to actual improvement in the leasehold law! The Law Commission has at last prioritised leasehold law as in need of reform.

Commissioners considered nearly 70 projects for final inclusion in their programme of law reform and have now confirmed that a project on residential leasehold and commonhold should form part of the 13th Programme and this has been approved by the Lord Chancellor.

The Commission told FPRA: "Consultees suggested that we should examine numerous issues in residential leasehold law. Our project will commence with a review of leasehold enfranchisement, commonhold, and managing agent regulation. Further issues raised by consultees may be considered at a later stage of the project.

"On the basis of receiving funding from the sponsoring Government Department, we expect to start work immediately. The full programme, including further details of the project, is available on our website: www.lawcom.gov.uk

"Thank you again for taking the time to suggest this area of work for inclusion in our 13th Programme of law reform."

FPRA Chairman Bob Smytherman responded: "We are delighted that the Law Commissioners have finally agreed to include leasehold reform in their latest review after many years of us writing to them requesting such a review.

"It certainly seems the current Government is serious about reform this time and I personally would like to thank my own MP Sir Peter Bottomley (Con) for leading the All Party Parliamentary Group, alongside Jim Fitzpatrick (Lab) and Sir Edward Davey (Lib Dem), building a consensus across parties which will be needed if the Government is going to deliver meaningful reforms to outdated feudal leasehold system."

The Commission said that part of their consideration had been that the sponsoring Department gave a commitment that there was a 'serious intention' to take forward law reform in the relevant area.

REVIEW OF THE FAILURE OF COMMONHOLD

FPRA Vice-Chairman Richard Williams agreed: "It is indeed good news. We welcome the Law Commission interest in Commonhold. Their programme publicly notes the widespread view that it is "impossible" for existing long leaseholders to convert into commonhold."

The programme says: "There is an extensive list of highly significant problems with residential leasehold law.

"A large number of respondents to our 13th Programme consultation criticised inconsistency, complexity and (many say) unfairness in the legislation governing enfranchisement, service charges, lease administration fees, rights of first refusal, the right to manage and the appointment of a manager. Concerns were also raised about

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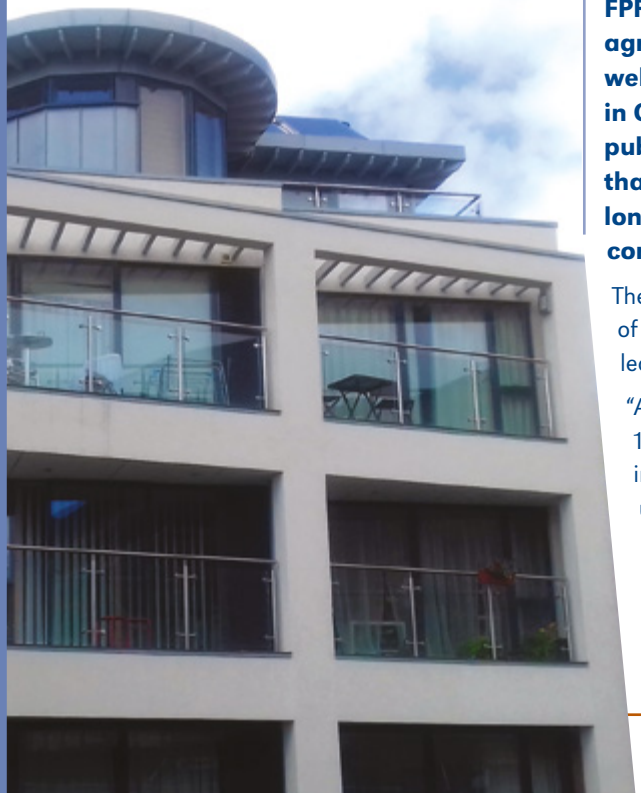

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the limited regulation of managing agents, leaving leaseholders exposed to high fees and poor service. The commonhold regime was also criticised by consultees. It was introduced to avoid problems with long leases, but has not been adopted by developers and it is almost impossible for existing leaseholders to convert to this form of ownership.

"It is essential that leasehold works fairly for the approximately four million leasehold properties in England, and commonhold should be reviewed to enable it to play the role that it was designed for.

"Our residential leasehold project will start by addressing issues identified as priority areas by the Department for Communities and Local Government (DCLG):

"Commonhold; a form of ownership allowing a person to own the freehold of a flat and become a member of a commonhold association managing the communal areas. We will review why commonhold has failed and consider what reforms are necessary to the law, to enable it to operate successfully." www.lawcom.gov.uk/project/13th-programme-of-law-reform

FPRA welcomes the Law Commission acknowledgement that commonhold, has failed and that they will consider what reforms are necessary to the law to enable it to operate successfully. FPRA has consistently pointed out to Government that the requirement under existing law – that every single leaseholder should agree to the conversion – is in practice impossible to satisfy. In other situations, for example, an enfranchisement where the leaseholders buy the freehold so as to manage the block of flats themselves, only a majority of leaseholders need to participate.

MORE GOOD NEWS

In addition, the Communities Secretary has announced the Government's response to its consultation *Tackling Unfair Practices in the Leasehold Market*.

The Government is setting out a range of measures to crackdown on unfair leasehold practices. It says it plans to deliver a fairer, more transparent system for leasehold homeowners in England. Measures to be introduced include:

- legislating to prevent the sale of new build leasehold houses except where necessary, such as shared ownership
- making certain that ground rents on new long leases are set at zero
- **working with the Law Commission to support existing leaseholders** and make the process of purchasing a freehold or extending a lease much easier, faster and cheaper
- providing leaseholders with clear support on the various routes to redress available to them
- a wider internal review of the support and advice to leaseholders to make sure it is fit for purpose in this new legislative and regulatory environment
- making sure freeholders have equivalent rights to leaseholders to challenge unfair service charges.

FIRE SAFETY

INDEPENDENT REVIEW OF BUILDING REGULATIONS AND FIRE SAFETY

FPRA has welcomed the interim report publication of the Independent Review of Building Regulations and Fire Safety.

Chairman Bob Smytherman said: "We welcome this interim report in to *Fire Safety in blocks of Flats* and look forward to working with Dame Judith Hackitt and the enquiry team in 2018 to inform the final recommendations and ensure the voice of those RMC and RTM Directors who carry out responsibilities for fire safety in their own buildings, is heard by Government."

The key finding of the report is that the current regulatory system for ensuring fire safety in high rise/complex buildings is not fit for purpose, and that this is an issue across the building life cycle. The report sets out a number of areas where the system can be improved. These directions of travel will shape the next phase of the work.

It says: "We are keen to continue to engage with all stakeholders as we move into the next phase of the review. We will undertake targeted work in partnership with the industry and others across the sector, in order to make recommendations for the system in the final report."

FPRA is involved in this. More details on our website.

CONCERNS ABOUT FIRE SAFETY

Clive Betts, Chair of the Communities and Local Government Committee, has called on the Chair of the Independent Review of Building Regulations and Fire Safety to reflect on concerns raised by MPs during a one-off evidence session on her interim report last month.

In a letter to Dame Judith Hackitt, Mr Betts says that it is 'vitally important' that a new approach to building regulations includes a degree of prescription rather than being purely based on outcomes, warning that 'in particular it cannot be right to continue to permit the use of combustible materials on high-rise buildings'.

Dame Judith gave evidence to the Committee on 18 December following the publication of the interim report. The review was set up by the Government in August following the fire in June at Grenfell Tower in west London that claimed the lives of 71 people.

The letter also stresses the importance of examining electrical goods safety, given that the Grenfell Tower fire started in a fridge-freezer, and asks that the Review consider in more detail both Part P of the building regulations and potential changes to the present competent persons' scheme for those carrying out electrical works in domestic homes.

The Committee also calls on the Review to focus on the effectiveness of enforcement, amid concerns about the independence of private sector inspectors and the cost to local authorities of pursuing cases through the courts.

The Independent Review is due to be published in the spring, at which time Dame Judith may again be invited to appear before the Committee.

DATA PROTECTION –

DO YOU **NEED TO REGISTER** AND HOW WILL THE **NEW GENERAL DATA PROTECTION REGULATIONS (GDPR)** AFFECT **YOU?**

As mentioned in our last issue, new GDPR comes into effect this year in May, and we have been receiving requests from the membership asking how they are affected and what they need to do.

We have taken advice from the Information Commissioner's Office which has a very helpful website www.ico.org.uk and a helpline 0303 123 1113 (press option 2 for advice on new registration and option 4 for general advice), make certain you only use this website and number as there are (and as we constantly warn) lots of scam sites out there, some of which charge for the free information available.

Residents' Associations, Resident Management Companies, Flat Management Companies, Right to Manage Companies, Commonhold Associations or all the similar groups that make up the leasehold sector, may need to register under the Data Protection Act with the Information Commissioner's Office. To see if you need to register, what you need to do is check for yourself by doing a self-assessment.

The ICO website also has a very helpful 'quick self-assessment' page which you can complete in about five minutes. It guides you as to whether your organisation needs to register. FPRA as a national body is registered and has updated its own systems and data policy to comply with the regulations – see newsletter issue 123 and our website.

As a general rule, if you have CCTV in common areas, then it is a requirement that you register. Registration is simple and normally costs £35.00.

The key points of the GDPR are to keep information safe and to only use it appropriately. Whether you need to register or not, it is sensible to follow the main principles which are as follows:

1. **Transparency, fairness and lawfulness in the handling and use of personal data.** This means being clear with individuals as to how you will use their personal data and only collecting and processing it on a lawful basis.
2. **Limiting the processing of personal data to specified, explicit and legitimate purposes.** This means you won't be able to disclose or reuse personal data for purposes that are not compatible with the original purpose for collecting the data.
3. **Minimising the collection and storage of personal data to that which is relevant and adequate for the intended purpose.**
4. **Insuring the accuracy of personal data and allowing for it to be corrected or erased.**
5. **Limiting the storage of personal data.** This means only keeping personal data for as long as it is needed to fit the purpose for which it was originally collected.
6. **Ensuring the security, integrity and confidentiality of personal data.** This means you must take steps to keep personal data secure using organisational and technical security measures.

FPRA feels that there is nothing in these regulations that is too onerous or unreasonable, and long leaseholders should have no concerns over what are common-sense precautions which should be taken.

On this occasion we do not feel that we need to expand our help and advice service to include this subject, so if members have any questions they should contact the Information Commissioner's Office rather than the FPRA admin office, although we are always here to help in the event of problems.

(Robert Levene, who drafted this article would like to thank Sarah Elias at the ICO for her assistance with this article.)

WHAT NEEDS TO CHANGE

Responding to the numerous Government consultations has given FPRA the opportunity to further lay out its proposals for change.

1 Law reform/legislation

Leasehold law is unnecessarily fragmented and complicated.

This has made interpretation of leasehold law very difficult, even for the legal profession, never mind the average leaseholder or tenant.

Further, many of the processes and systems created by Acts of Parliament would benefit from simplification and/or updating so as to make them more workable.

There are trade bodies in the sector that are aware of abuses in leasehold management and try – through their codes of practice and membership – to improve an unsatisfactory situation. But they lack any real sanction on their members and membership of any trade body is completely optional, with there being no legal barrier to anyone, however disreputable, setting up in the sector.

Leaseholders who seek redress over abuses find the process complicated and expensive, whether taken through the Courts or the less formal First-Tier Tribunal.

The costs of legal action can be excessive with the worry of having to pay the landlord's costs as well.

FPRA continues to address this because of the glaring need to consolidate all landlord and tenant legislation.

2 Taking control: Enfranchisement and the right to manage

One of the successes of our campaigns and legislation over our 45 plus year history, has been the introduction of leaseholders' right to enfranchise, by acquiring the freehold of their building. So encouraged, significant numbers of leaseholders acted together to take responsibility for the management of their homes, many forming Residents' Associations, Residential Management Companies, Right to Manage Companies, Flat Management Companies etc. and become members of the FPRA. Just the number of types of groups listed gives you an idea of the complexity.

The solution, as used in practically every other country in the world is 'Commonhold' under its various names but there has been a lack of political will, to make this system work, by allowing leaseholder owned blocks to convert to Commonhold with the agreement of a majority, rather than 100 per cent, of the leaseholders.

FPRA considers that the directors of freehold and right to manage companies should not bear the same onerous duties as those borne by commercial companies. They are volunteers who give freely of their own time to make a difference to their community. We have also produced a comprehensive booklet, *A Guide to Formation, Recognition & Running Your Association* which is available via our website.

No new leasehold residential properties should be allowed to be built and all new built property should be Commonhold.

3 Protection of leaseholders' money

Leaseholders are usually required by terms of their lease, to make advance payments towards the service charge, and to contribute to a sinking or reserve fund. These sums can be substantial, especially if major works are in the offing.

It is believed that there is no other area in the UK in which money held by a third party is not regulated. It has been suggested that the sums held by unregulated and unprotected third parties may well exceed £1 billion. An individual can set up in business as a property manager without any formal qualifications or experience or insurance – even if they have a criminal background and hold these deposits or other sums.

Perhaps unsurprisingly, this has from time to time resulted in leaseholders falling victim to fraud or outright theft of their payments. Sometimes they lose money through incompetence and the Financial Conduct Authority has no involvement and therefore there is no compensation.

Shocking as this seems, there has been much legislation to protect much smaller sums and housing deposits for renters, but nothing to protect leaseholders' funds. FPRA believes that it is essential that a system is devised so that funds paid by leaseholders to managing agents or landlords are protected by a scheme similar to the Financial Services Compensation Scheme.

4 Insurance and other commissions and payments

FPRA believes it is immoral and fundamentally wrong that any payments for any service, including the payment of insurance commission be made.

The payment of these commissions is inappropriate and leads to increased charges. Some trade bodies make it compulsory for their members to disclose payments to leaseholders, but even in those cases, it is often well hidden.

All charges to leaseholders, whether it is for repairs, insurance, electricity, entry phone systems or anything else, should reflect the true cost and if a manager or freeholder requires payment, this should be completely transparent and charged separately.

5 Major works limit (Section 20)

Leaseholders are facing unnecessary costs and administration because under Section 20 of the Landlord and Tenant Act 1985, there are expensive and time consuming procedures for works over £250. The £250 limit has not been increased for over a decade and is not being kept in line with costs. We are aware that Government is looking at revising Section 20 procedures but pending this, the monetary limit should be changed.

ADDITIONAL COMMENTS ON MANAGING AGENTS CONSULTATION

Further to the above, we are concerned that throughout your call for evidence document there seems to be confusion between the differences in a trade body and a professional body. In many ways we accept that there are good intents on the part of most of the bodies in the sector. Having said this, trade bodies are exactly as the name says, their purpose is to represent their trade. We have a concern that some of the bodies that may respond to you, may be looking at this as a commercial opportunity and we wanted to alert you to this possibility.

Generally (whether justified or not) consumers lack trust in regulation and enforcement by trade or professional bodies and have greater faith in independent regulation.

There is a complete imbalance in the sector between the representation of those that are paid by leaseholders and those that actually are the paying leaseholders. Government and ministers in various forms have shown their willingness to meet with and attend functions put on by trade and professional bodies but not give the same attention to events for leaseholders, the very people paying for all the services and enabling those bodies to exist.

At a recent FPRA event a representative from ARMA spoke and made some excellent points. He threw out some figures that there are around 4 to 4.5 million leasehold properties in England and Wales; that managing agents who are members of ARMA managed about 1 million, and that managing agents and others manage about another 1 million. This suggests to us that there are 2 to 2.5 million leaseholders that are not in any contact with a trade or professional body and like most of our members, self-manage.

A further concern in the call for evidence is that management is undertaken not only by managing agents but directly by landlords (freeholders) as well as housing associations, registered social landlords, local authorities and others and we want to see the same standards for all in the sector that do not have the opportunity to manage themselves.

We also wish to raise the special vulnerability of elderly leaseholders, especially those in 'extra care' homes and retirement properties. Many of these leaseholders lack the information, resources and indeed the will to challenge poor practice and in some cases, are in actual fear or anxiety of doing so.

It is important that the department resists any imposition on people who manage their own leasehold affairs or do this collectively through residents' associations or the numerous other bodies allowed by the legislation for leaseholds who collectively manage their own affairs and whose officers are democratically accountable to their neighbours.

Directors of RTM and RMCs etc hold office by reason of having been elected by their leaseholder members and are very often unpaid. That, rather than passing exams (or being approved of by ARMA or RICS or others), is their qualification for holding office. We feel strongly that any proposal to impose regulation on such directors should be resisted. It is already often hard to get volunteers in some blocks and it would be totally unrealistic to expect part time volunteers who look after their own homes to take professional exams designed for full time persons working in the sector.

We are aware as mentioned elsewhere, that certain in the sector see this as a major opportunity to deter self-management and thus achieve business for managers, who often charge £300+ per unit. Great care must be taken not to inadvertently add a massive cost and burden to leaseholders. A great many live in converted houses, small blocks etc where there is no great desire or interest for agents to manage because of size in any case. A mistake here could double the Market for Managing agents at massive cost to leaseholder, for little if any benefit.

We are fully aware there is a major gap in protection of leaseholders' funds and look forward to the department bringing forward ideas for protection of those funds, possibly in conjunction with the Financial Conduct Authority and the Financial Compensation Schemes.

MORE CONSULTATIONS

FPRA has also responded to these Government consultations:
Improving the Home Buying and Selling Process (DCLG)
Mandatory Client Money Protection Schemes for Property Agents (DCLG)
Tackling London's Housing Crisis (Mayor of London)
Full details of these, along with all our responses to consultations, are available on our website.
As we said in our last issue, they are numerous!

CIRCUMVENT OR IGNORE SECTION 20 AT YOUR PERIL!

Following on from articles on self-management, committee member Shaun O'Sullivan alerts members to the risk of failure to comply with Section 20.

First of all, what do we mean when we refer to 'Section 20'? Section 20 of the Landlord and Tenant Act 1985 (as amended by S151 of the Commonhold & Leasehold Reform Act 2002) prescribes quite specific consultation arrangements when works to be funded by the service charge are expected to exceed certain financial thresholds. It is clear from questions regularly submitted to the FPRA that some of those who self-manage are either unaware of the requirement or simply regard it as an unacceptable 'administrative burden' and look for ways to circumvent it. This is fraught with serious consequences!

Qualifying works are planned maintenance or repair and, if the lease so provides, improvements that are likely to cost more than £250 (inc VAT) per flat. Qualifying long term agreements comprise contracts for cleaning & gardening or maintenance of lifts and entry-phone systems etc lasting more than one year and costing more than £100 (inc VAT) per flat. In all such cases, the landlord is required to consult all leaseholders by means of (at least) a two-stage process.

When qualifying works are planned or a new long-term agreement is to be entered into, S20 requires that landlords must advise all leaseholders in writing by means of a 'letter of intention' and give them 30 days in which to offer comments and/or nominate potential contractors. The landlord must then seek estimates from any nominated contractor. Subsequently it is necessary to advise all leaseholders of the results of tendering and provide them with details of estimates received by means of a 'statement of estimates'. Lessees must be given 30 days in which to offer comments and the landlord must 'have regard' to any comments offered. In addition, landlords must provide an opportunity and facilities for leaseholders to inspect estimates should any wish to. The financial thresholds of £250 and £100 respectively have never been uprated since they were introduced in 2002 and might now be regarded as unrealistically low. Nevertheless, they are the levels currently specified in law and must be observed.

Failure to undertake these processes without a dispensation from a First-tier Tribunal (FTT) could find the RMC/RTM company on the wrong side of the law (and dispensations are granted only in exceptional circumstances). As a consequence, the contribution by leaseholders towards the works in question could be restricted to either £250 (in respect of qualifying works) or £100 (in respect of qualifying long-term agreements).

It would take just one disgruntled leaseholder to invoke his or her right to limit contributions to cause serious financial difficulties for the management company and if others were persuaded to follow suit, the company could find itself plunged into insolvency, particularly if the company had committed itself to major and costly works. And even if the directors of the company carried Directors and Officers insurance cover, it is extremely unlikely that any claims would be upheld if the basic requirement to consult in accordance with leasehold law had not been carried out.

Notwithstanding the requirements of S20, it is apparent that some RMC/RTM companies use, for example, their annual general or extraordinary special meetings to discuss and agree planned works and services and assume that resolutions passed at such a meeting provides the legal basis for carrying out works or services. **Unfortunately, they don't.** Much as an open an honest debate on proposed works and services is to be applauded, where they fall within the categories and financial limits defined by Section 20, strict adherence to the requirements of the Act is necessary. As indicated, the legal and financial implications of not doing so are potentially severe.

More information about the Section 20 procedures and templates of consultation letters can be obtained from the excellent booklet produced by the Leasehold Advisory Service (LEASE) which can be accessed from the following link **www.lease-advice.org/advice-guide/section-20-consultation-council-other-public-sector-landlords**

IT SHOULDN'T HAPPEN TO A RMC DIRECTOR!

A personal view from regular columnist Roger Southam, non-executive Chair of the Leasehold Advisory Service (LEASE)

As there is no written guide as to when to stop wishing people a happy New Year and I think one should always offer a friendly hand to each and every one, then I will start by wishing you all a happy New Year. Especially this year.
At long last it appears the zeitgeist is with the leaseholder and the Secretary of State, Sajid Javed is focused on leasehold and its improvement. The change of department title to Ministry of Housing, Communities and Local Government highlights this.

The session in the House of Commons on 21 December produced a statement from the then Housing Minister that is the most far reaching for the last two decades and more promises to follow. This is unequivocally good news for all. If we get transparency and fairness for all then the result has to be the improvement of leasehold management for all.

As those already directors of Resident Management Companies (RMC), Right to Manage Companies (RTM) and Freehold Management Companies (FMC) will know, the increase in control for leaseholders is a double-edged sword. For a number it is the first and only time they will be a director of a company and the responsibility that brings. It would be good if the Government in looking at changes sought to move RMC, RTM and FMC corporate structures out of the rigours of a lot of the Companies Act confines and created their own rules to make it more balanced for leaseholder directors and not as onerous.

For those who want to play fast and lose they can exploit company law in conjunction with leasehold legislation and that cannot be right. This has been seen in cases where leasehold directors have sought to fund works not recoverable under the lease through corporate means rather than service charge.

Over Christmas this year I met a director of an RMC in South London who was a delightful fellow but had to learn the hard way the onerous nature of taking on the voluntary role. A disgruntled fellow leaseholder had been suing the RMC repeatedly for various matters. This has cost everyone a lot of money as well as time. As a result, other leaseholders in the building are reluctant to step forward to take on the directorships. Also, the managing agent is caught by the politics of the situation and the delays that are resulting in everything from budgeting, billing service charge and carrying out works.

With the radical changes promised and with the growing responsibility there has to be an understanding of the different nature of buildings, their complexity in design and plant, along with the juxtapositions created for leaseholders in having greater control where it does not already exist.

If we all work together, and the changes are shaped in a way to avoid the potential pitfalls, then 2018 promises to be a very exciting year in the history of leasehold.

APPEAL FOR INFO

Dear Members of FPRA, My name is Sam Wetherell and I'm a professional academic historian based at the University of York. My research currently concerns urban redevelopment in Britain and touches on the rental sector. I am looking for volunteers to share historical material, particularly the minutes, newsletters and so on of private residents' associations in high density flats.
I am specifically interested in the period between 1970 and 1990, possibly stretching to 2000 as an absolute limit. If there is any way FPRA members could help with this, I would be extremely grateful. All material, if cited, would be done so only with the permission of those that provide it and in that instance all sensitive material, including names, addresses and so on would be redacted. Academic publishing, unlike journalism, operates under strict ethics guidelines about anonymity of living subjects so members could share their material in confidence with me. Any help would be much appreciated.

Please contact me at:
sam.wetherell@york.ac.uk

"A Member Writes"....

We continue our series in which members write in with their experiences of leasehold life. Contributions from members are welcome – please consider sharing yours with our readers.

CHANGING THE MANAGING AGENTS

We had had the same managing agents for 17 years. Over time, the standard of their service deteriorated badly, in particular in the last three years, culminating in their failure to start the S20 procedure on exterior decoration works, despite the directors working closely with them to ensure that the works took place when scheduled (last year).

After a number of conversations between them and our association, aimed at improving their service, it became clear they we were making no progress. At this time we decided to review our position and look at other managing agents available in the market place.

We engaged in a lengthy tender process during which we looked for viable alternatives and invited lessees to make suggestions as to new agents. The directors and committee drew up a service level agreement (SLA) which we invited each agent to tender against and lay out the costs and services they could offer.

Five agents were considered against this SLA, a mix of large national agents and more local, smaller businesses. They tendered in May, the directors and committee reviewed the available tenders against the needs of the estate and a shortlist of three was agreed. These last three met again with the directors and the committee in June and, after lengthy deliberations, we appointed the successful agent.

The agent was chosen as they provided the balance that the directors and committee agreed that we needed: a smaller business with time to focus on us among their other clients, solid long-standing network of local suppliers, good value for money, and a commitment to delivering the outstanding S20 exterior redecoration works to standard, to budget and on time.

The first six months with our new agents

While we are at the start of our relationship with the new agents, we are delighted to report that:

- The S20 process has gone to time and plan, with various contractors being considered via a tender process and the work starting and continuing on time.
- Our service charge arrears are virtually eradicated, something that has not been the case for many years, with the final debts in the hands of solicitors.
- The day-to-day management of the estate has improved dramatically with lessees reporting that repairs are being dealt with efficiently, in a timely manner and at reasonable cost.

Over the next 12 months we will be working with the agents on:

- A new financial reporting system to make the tracking of invoices and estate costs easier and more visible. This will be delivered quarterly.
- On-going communication with the lessees so we know what is happening and due to happen across the estate (eg a newsletter).

As joint chair, this has been hard work, but also very rewarding and great to see the improvement in our homes as a result.

Legal Jottings

Compiled by Philippa Turner

UKUT	United Kingdom Upper Tribunal
EWHC	England & Wales High Court
FTT	First-tier Tribunal
LVT	Leasehold Valuation Tribunal (now FTT)
RTM	Right to Manage

Landlord & Tenant Act 1985

In *Roberts v Countryside Residential (2017 UKUT 386)* the landlord had made a service charge demand accompanied by the statutorily required notice under Section 21B.

> **! Legal Point**
> Section 21B as added by the Commonhold & Leasehold Reform Act 2002 Section 153 provides that a service charge demand must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges and that regulations shall be made prescribing the form and content of the summary.

This was allegedly defective since (i) paragraph numbering was incorrect (ii) the Welsh language version followed the English version instead of preceding it and (iii) the font size was too small. It was held by the UT that failure to comply with the exact requirements did not invalidate the notice: the errors were trivial, had no bearing on the content and were irrelevant to the understanding of the notice.

Nor did the landlord's alleged failure to comply with Sections 47 and 48 of the Landlord & Tenant Act 1987 (disclosure of landlord's name and address) invalidate the service charge demand: in the case of the Section 47 requirement the failure to specify which of two possible names and addresses was correct was later remedied and, in the case of Section 48, although it was confusingly expressed, it did in fact supply an address for service on the landlord. It was further held that Section 20B (the 18 month rule) had no application in this case since the demands were in respect of estimated service charges and not of actual costs already incurred.

The matter was referred back to the LVT for various reasons: it had failed to take into account the decision of an earlier LVT in respect of reserve funds and electrical credit in another part of the same development; it had been argued that the cost of water should be apportioned 1/42 not on a "fair and reasonable" basis and the LVT now needed to consider the point explicitly; the claim that it was not reasonable for the landlord to inflate the estimated costs above the actual anticipated costs so as to provide a safe surplus, no allowance being made in the lease for such a surplus, had not been considered by the LVT and, the tenants still owing a substantial sum, the landlord needed now to prepare a set of accounts identifying the credit for each tenant to carry forward and reduce over a period of time.

The Tribunal observed that the costs of the whole of this exercise must be considerable but would not be capable of assessment until after the further hearing before the LVT. It would be necessary at that stage for the LVT to reconsider making an order under Section 20C (refused at the initial hearing) that the costs should not be recovered through the service charge.

The issue in *Westmark v Peddle (2017 UKUT 449)* was the date from which the 18 month rule in Section 20B should be calculated where there was an intervening landlord. The expenditure was incurred by Epic, the head lessor, which made a demand for contribution from Westmark, the under lessor, which was within the 18 month period. But in turn was served on QS Management, the leaseholders' management company. It was held that the relevant date was when the invoice was delivered to the QS Management, not when the costs were incurred by Epic. But, in the event, the leaseholders did not owe anything as a result of the demand since there was no evidence that Westmark had ever been validly served by Epic.

Leasehold Reform Housing & Local Government Act 1993

The facts in *Parkes v Wilks (2017 EWHC 1556)* were unusual. The building was divided into two flats owned on long leases, one by Mrs Parkes and the other by Mr Wilks (half the size of the other). In 2007 they acquired the freehold for £19,500 calculated according to the collective enfranchisement provisions of the Leasehold Reform Housing & Urban Development 1993 Act, Mrs Parkes contributing a larger share to reflect the larger size of her flat; they created a trust by which each held the property as trustees in equal shares. In 2014 Mrs Parkes requested Mr Wilks to agree to her extending her lease to 999 years at a peppercorn rent under the power afforded the Section 14(2) of the Trusts of Land & Appointment of Trustees Act 1996. Mr Wilks refused, arguing that to do so would diminish the value of the freehold to his detriment. He also said that,contrary to Mrs Parke's evidence, an extension of the leases had not been in the contemplation of them at the time of the acquisition of the freehold and had not been discussed. The purpose of the transaction had been to give the parties freedom to manage the property for themselves and to save money by doing so. The County Court judge agreed and exercised his discretion to dismiss the claim. On appeal the Chancery Division judge agreed: even though there was power to make such an order under the 1996 Act, there were no grounds to interfere with the judge's discretion. To comment on this case, it was unfortunate that Mrs Parkes had paid more than 50 per cent of the original price and that the question of lease extensions had not been settled at the time of the purchase. As it was, she now had only the option of extending her lease to 90 years under Section 39 of the 1993 Act which would moreover entail paying a further premium.

Commonhold & Leasehold Reform Act 2002

By Section 167 the notice to be served on a tenant prior to forfeiture must be accompanied by an explanatory note containing the words set out in the Regulations: these provide that no forfeiture can occur for an overdue amount of £350 or less nor has the sum been owed for three years or less. In *Cheerupmate 2 v De Luca Calce (2017 UKUT 377)* the landlord served a forfeiture notice and the UT agree with the FTT in holding the notice was invalid because the wording adopted was the earlier 2004 version of that introduced by a 2011 amendment of the Regulations; although there was no change in the substantive meaning between the two versions, the first was considered by the legislature to be insufficiently clear and therefore not performing its primary purpose of informing the tenant of the restriction on forfeiture. It was relevant in this case because the amount outstanding was only £11 ground rent overdue for two years only.

FTT

The UT did not, however, uphold the FTT in *Gibbs v Clevedon Court (2017 UKUT 411)*, a case in which the Respondent was a RTM

Company opposed by the freeholders who also owned seven flats out of the total of 22. The dispute was in respect of the freeholders' contribution towards the costs of works of repair on the building amounting to 20.09 per cent of the total. At the time of the FTT hearing, £44,000 was allegedly owing in respect of 2015/16. It was found by the FTT that although there were certain defects in the standard of work, nonetheless, the Appellant freeholders should pay the full amount demanded from them. The UT criticised the FTT for failing to give reasons for its conclusion. In view of the amount involved, it was not justifiable to refer the matter back to the FTT for a rehearing and the UT itself inspected the property (which the FTT had wrongly failed to do) and concluded that the share of costs sought from the Appellants should be reduced by 7.5 per cent and thus they should pay £10,447 of the cost of work done to a reasonable standard.

The FTT was also overruled by the UT in *Hyslop v CHG Residents (2017 UKUT 389)* but on this occasion because of procedural irregularity on the part of the FTT itself. The Appellant was a leaseholder who claimed to be unaware of a FTT order of amount due by way of service charge until she received a notice of impending forfeiture for non-payment. She applied to the FTT to have its decision set aside but was refused, principally because she was out of time, being nine months after the date of the order. There was no investigation of the evidence as to her claim of non-receipt of any of the prior documents – the notice of application as well as directions for the hearing and the final decision. She then applied to the UT who held, whilst it was, under the Rules, open to the FTT to delegate its obligation to notify all relevant parties to the proceedings (having in this case requested the landlord to do so), it could not do so in respect of the notice of the outcome. The UT held that it was not now possible to carry out an investigation of the evidence and, accordingly, the only course of action was to hold a fresh hearing of the original application under Section 27A of the 1985 Act. The FTT decision was duly set aside.

Insurance

The lease in *Atherton v MB Freeholds (2017 UKUT 497)* provided unusually that not only should the leaseholder contribute towards the cost of insurance of the block, but also in the joint names of the landlord and of the leaseholder, insure the flat itself against fire damage and such other risks included in the insurance policy, the insurer to be nominated by the landlord; failure would entitle the landlord to place insurance and recover the cost from the leaseholder. Also unusually, there was no covenant by the landlord to insure the block, common parts or garages although there was provision for the recovery through the service charge of the cost of insuring the structure, the common parts and the garages but not the flats. In 2015 the landlord's costs for this were £6,162, four times the previous year's costs, and in 2016 it increased again to £8,367. The FTT held that there was no overcharging of the leaseholder because it was not possible to insure the common parts separately from the structure and the only practical and economic way was for the whole building to be insured by the landlord. This resulted in the leaseholder paying twice – once for the insurance of the flat and once for the whole building. The UT allowed the leaseholder's appeal. There was no evidence that it was not possible to insure the structure of the building excluding the flats and it was therefore wrong to charge the leaseholder the cost of doing so as well as insisting he comply with the obligation to take separate insurance for his own flat. The only insurance cost which could be recovered by the landlord was that for insuring the common parts and garages.

The leaseholders in *Cos Services v Nicholson (2017 UKUT 382)* were also successful in obtaining a significant reduction in the cost of insurance. In 2014/15 the cost of insurance premiums demanded for 16 flats plus garages was £12,598, in 2014/16 £12,670 and in 2016/17 £13,561. The leaseholders obtained quotations for at least a quarter less and applied under Section 27A for the FTT determination as to what was payable. It was held that the figures should be £2,803, £2,819 and £3,017 respectively. On the landlord's appeal by way of rehearing the UT agreed with the FTT, holding that the costs were not reasonably incurred within the meaning of Section 19 of the 1985 Act; the "rationality" of the landlord's decision-making was not the sole test in considering reasonableness but the outcome also must be held in mind: ie the risk being covered, the terms of the lease and the value of the property; this did not necessarily mean the lowest cost insurance was to be taken but, if not, the landlord should explain its process and why a particular policy had been selected and that it had assessed the current insurance market. The leaseholders were entitled to obtain alternative quotations but they must be genuinely comparable; here, they had been significantly lower. There was no criticism of a landlord employing a "block" policy covering several properties but, in doing so, it needed to demonstrate some advantage; in this case, the advantages were too insubstantial to justify the excessive premiums. The leaseholders were not accordingly obliged to contribute to the supermarket car park costs.

Lease interpretation

Pressfab Engineering re Grange Poi (2017 UKUT 448) was also an appeal against the decision of the FTT which was allowed by the UT. The issue in the case was whether or not the cost of maintenance of a car park for 103 cars situated next to a supermarket adjacent to the residential development and owned by the same head lessor could be recovered from the under lessor, the Appellant leaseholders' immediate landlord and hence through the service charges which would be in addition to the leaseholders' obligation to contribute to the cost of their own car park. On analysis of the lease, the UT held that the large car park which could not have been in existence at the time the residential head lease was created was designed as a separate lettable unit and did not fall within the residential demise. The absence of signage confining the use of the car park to supermarket customers was irrelevant.

Inconsistencies in drafting of the lease in *Ryan v Villarosa (2017 UKUT 466)* were, according to the UT wrongly analysed by the FTT and its decision set aside. Briefly, the facts were that the leaseholder held flats on the ground, first and second floors of a terraced house, but not the basement. A clause in the lease provided that the roof and foundations were to be repaired at the joint expense of the landlord and of tenants. The FTT had held that this obliged the landlord to pay 50 per cent of the cost. On appeal the UT found that the roof was included in the leaseholder's demise and although the landlord was obliged to repair and maintain it, the leaseholder, under an express covenant, was to contribute 75 per cent of the cost. The lease, it was conceded, was poorly drafted and inconsistent.

Asbestos

For guidance on the position of landlords in respect of asbestos present in a building the case of *Lugay v LB of Hammersmith& Fulham(2017 EWHC 1823)* can usefully be consulted. In it, the Queens Bench Divisional Court sets out the test to be applied in a claim for breach of the duty of care arising from the contracting of malignant mesothelioma: it must establish (i) that there was a duty not to expose the victim to asbestos fibres and consequently the risk of related injury; (ii) there was a breach of that duty; (iii) such breach caused material increase in risk of the victim developing mesothelioma and (iv) proof of loss and damage resulting. In this case, the claim failed since the evidence, although asbestos was present in the building and in the victim's flat, did not show exposure to asbestos fibres above background levels and thus failing test (iii) above.

ASK THE FPRA

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

Selling the flat's garage

Q **We have a request to allow a flat to sell their garage to another flat which has a car port. The buyers have used the flat as a holiday home but are now preparing to move in and have two cars Our leases are specific that flat and garage are combined for the full term of the lease, but apparently a deed of variation can be prepared to allow the sale.**

The flat owner is covered by a power of attorney with relatives and we have advised them that such a sale will affect the resale value of the property.

A FPRA Committee Member Yashmin Mistry replies:

We have not had sight of the lease, but should the directors be willing to grant consent to such an arrangement, a deed of variation will be required. All parties to the leases affected would need to consent to the deed of variation, including any lenders also. Further, new lease plans will also need to be incorporated into the deeds of variations.

Water leaks

Q **With a development of 193 flats, built in late 1990s, water leaks and damage to nearby flats have occurred many times. What guidelines do you have regarding:**

(i) management's initial access to flats to identify the source of the leak where the management has a spare set of keys for an absent landlord.

(ii) management's assessment of the damage in all the affected flats, including the one where the leak has occurred.

(iii) owners being informed and allowed chance to arrange repair under their own insurance (in the case of the leaking flat) or an approved repairer (in the case of the damaged flats, covered by buildings insurance).

(iv) the responsibility of the lettings agent in communicating information.

A FPRA Committee Member Shaun O'Sullivan replies:

Although I am not a lawyer, under Common Law, landlords are under an implied obligation to allow their tenants 'quiet enjoyment'. This principle is almost invariably contained in residential leases and I don't doubt that yours includes such a covenant; effectively this means that the landlord (freeholder), or someone acting on his behalf (eg managing agent), cannot interfere with the tenant's right of possession. It is often the case that the principle is conditional upon the tenant abiding by the covenants in the lease and in the case of sub-tenants it is often conditional upon the landlord (ie the lessee of the flat or the letting agency acting on his behalf) having access for gas inspections etc. But in the context of this principle, it would generally not be permissible for the landlord or his agent to enter the property without written notice (and most leases will require a period of something like 48 hours for such notice to be served) unless in an emergency – and this might reasonably be considered to be fire or flood. To enter other than with permission or a court order would be a criminal offence.

So far as the source of any leak itself is concerned, this may or may not be straightforward, neither may the responsibility for putting it right and dealing with any consequential damage. It would first need to be established whether the source of the leak is from a pipe used in common with other flats, in which case the responsibility for putting it right and meeting the cost of any consequential damage would rest with the freeholder, with the cost of putting it right being met through the service charge and consequential damage being met from the block insurance (with any damage to contents of residents' flats being met from the contents cover in respect of those flats). An example of this type of leak might be seepage from the deterioration of a joint seal around a stack (sewer) pipe serving more than one flat. Sometimes such leaks can be difficult to trace but I would expect your block insurance to have a 'search & trace' provision.

Should the source of a leak be from a pipe used solely by one of the flats (ie part of the property which has been demised) then it would almost certainly be the case that the lessee of the flat concerned would be required to undertake repairs. Most leases will include a covenant requiring that drains, pipes etc used solely in connection with the demised premises are properly cleansed, repaired, renewed and maintained. Equally most leases will include a facility to allow the landlord (with or without workmen) to inspect the state of repair once repairs have been undertaken and I would expect your managing agent, on behalf of the landlord, to ensure that such repairs are carried out in accordance with the requirements of the lease.

It is also is possible that your lease may require the lessee, in whose flat the leak occurred, to make good damage to other parts of the building/other flats. In my own case (and I live in, and help manage, a self-managed block) our lease states that 'lessees are not to let water soak through the floors of the demised premises and, if this happens, to immediately and at their own expense to make good all damage'. We apply this rigidly; it not only serves to focus lessees' attention on their obligations, but also minimises insurance claims, thereby containing premiums at a reasonable level. Also some insurance policies will require the water to be turned off at the mains in the case of flats unoccupied for more than 30 days.

With all this in mind, and without sight of the lease or knowing the precise details of the circumstances or details of the insurance coverage, but on the premise that the leak is from one of the flats, I would expect that the managing agent, on behalf of the freeholder, to:

a) make contact with the owners (and through them the tenants of any sub-let flats) of any flat or flats thought to be the source of the leak and to arrange for access in order that this can be determined. And, on the basis that it can be

determined, to serve notice that it is to be put right within a specific timeframe (the use of any keys held by the managing agent would be dependent upon the details of any agreement between the absent landlord and managing agent and whether the flat is occupied).
b) make contact with the owners of any flats thought to have been affected by the leak and to arrange access (possibly with a representative from the insurance company or loss adjuster appointed by them if the cost is to be met from insurance) to assess consequential damage and to ensure that it's undertaken.
So far as lettings agencies are concerned, unless your lease stipulates conditions on sub-letting there would not normally be a relationship between the landlord/freeholder (or managing agent on his behalf) and the letting agency; the letting agency would be working for the lessee.

Gas safety

Q We recently had a gas safety certificate done for one of our tenanted flats; this raised no issues apart from one with the supply. Our gas engineer (who we have used for many years) insists that we should have a gas emergency control inside the flat. This can apparently go inside the hall cupboard, as long as there is a notice on the outside of the door to indicate its presence. Is this now an obligation? The estimate for the work is £300. Our engineer quotes BS 6891 but it's extremely difficult to find information on the internet as there are apparently so many complex regulations. Material from the BSI is extremely expensive. I'd greatly appreciate your advice on this.

A FPRA Chairman Bob Smytherman replies:
I deal with these issues from a practical point of view so we may need a legal review of your lease as am not sure I understand why the company is carrying out gas safety checks to individual flats, my understanding of the regulations is that this would be the responsibility of the flat owner unless this was a communal supply serving all the flats in which case this would be the company's responsibilities.
If you have specific concerns about the advice from the gas contractor I suggest contacting the regulator Gas Safety Register who monitor their members. If the gas supply is a communal supply then any emergency control should be in communal areas accessible to anybody in an emergency, however if the installation is solely for the flat then I see no reason why this cut off should not be within the flat itself.

Road resurfacing is rubbish

Q In 2013 the property developer laid roadways on site which were overlaid with a bonding. This bonding began to break very quickly leaving dangerous holes. The contractors who laid the bonding made some small efforts to remedy the problems but after 12 months from installation, refused further work. Naturally the problems got worse and the managing agent is advising that the whole system be re-laid at an estimated cost of £100K to be met from the service charge. Not only is the bonding at fault but initial roadway design has caused long standing pools of rainwater.

A FPRA Committee Member Yashmin Mistry replies:
It is difficult to provide any specific advice in relation to the issues without sight of a lot more papers and information about what was provided to each of the flat owner when the flats were first purchased.
Generally speaking though, most new built purchases come with the benefit of some type of build warranty – similar to something called NHBC cover. From the information provided, it is not clear whether the flats have the benefit of such an insurance policy. If they do, unless a claim can be made under any such warranty, the costs will usually fall to the freehold company, with the freehold company then reclaiming the costs of any remedial works through the service charge for the building relating to communal parts (subject to the lease permitting such maintenance costs to be put through the service charge).
While there may be a remote possibility of mounting a potential tortuous action against the original developer for negligence (if it is still in existence) such an action is likely to be an extreme long-shot particularly if there is in place some type of build zone warranty (that is the whole point of the such warranties so the original developer avoids any personal warranties).
Further, it could be argued that each of the leaseholders should have been advised to obtain a structural survey prior to purchase of their individual flats. Further, if it can be proved that the building is not compliant with building regulations, there may also be a potentially remote action against the party that provided building regulations sign-off although it is not clear what exactly is being claimed at this stage.
For the avoidance of doubt, we cannot advise on the merits of such potential action against any third party for any defects in the construction of the building as we have not had sight of any papers. If further advice is needed the matter would need to be referred to a specialist solicitor.
In summary however:

- each flat should check whether they have the benefit of some type of build warranty. The build warranty will usually stay in place regardless of who the freeholder is i.e. insurance policy will either accept the claim or they won't
- if the claim is accepted, the works should be undertaken as directed by the insurance company/their contractors etc.
- if the claim is not accepted, unless some type of legal action can actually be mounted against a third party on which we cannot provide any advice on at this stage, any remedial works will need to be undertaken by the freehold company
- if the works fall to the freehold company, the costs of those works will usually be put through the service charges for the whole block which relate to communal areas.

The bottom line is: unless the works can the remedied under some sort of build warranty, the remedial costs will fall to the freehold company and recouped by the service charges (insofar as they relate to the communal areas as per the lease).

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Doing it right

Q **We are a company limited by guarantee, set up to manage the common parts of the building. There are eight flats in total.**
1) Regarding the audited annual service charge accounts, do these have to be sent automatically to all the leaseholders without fail when they are prepared? Or can we send them only to the members who expressly request them?
2) Regarding the section 20 duty to consult, we are looking to appoint a managing agent who will potentially charge fees of over £2,000 per annum (that is more than £250 per leaseholder, since there are eight flats in the building.) Do we still need to consult all leaseholders via a section 20 process, before entering into such an agreement?

A FPRA Director Shula Rich replies:
1) Generally unless the lease says otherwise the accounts would not be audited. The lease will generally say that the accounts should go to everyone. By law they must be issued on request. If you are collecting for the next year it would be unwise not to issue last year's accounts with the new demand.
2) You only need to consult if the agreement is for longer than a year – that's because it's an agreement not 'works'. I suggest you make sure the agreement is renewable every year – there is no reason to make a longer agreement as you'll keep the agents as long as you are happy with them.

Are AGMs necessary?

Q **Do we really need to have an annual general meeting of shareholders?**

A FPRA Committee Member Yashmin Mistry replies:
There is now no statutory requirement for a private company to hold any general meetings, not even an Annual General Meeting. This change was introduced when Part 13 (S281 - S361) of the Companies Act 2006 came into effect on 1 October 2007. Before that, all companies were required to hold an Annual general Meeting, though since the 1989 Act came into effect it has been possible for private companies to opt out if holding AGMs, by passing a (now defunct) elective resolution.
Some companies' articles will require them to hold an AGM and any such provision will continue to be binding on the company until the articles are amended. A company may hold an AGM even though not bound to by the Act or its articles.

Getting information

Q **Are leaseholders entitled to details from their managing agent of current supplier contracts with their annual costs? Should any interest made from reserve fund contributions be passed on and made known to leaseholders? The managing agents receive commission from insurance contributions. Are they obliged to reveal the amount to leaseholders on request?**

A FPRA Committee Member Colin Cohen replies:
The answers to all these questions in YES and if the information is not provided then you can apply to the First-tier Tribunal and would have reasonable grounds to dispute the service charges.

Shock costs

Q **In May 2017 our residents' committee became aware that our managing agent has introduced a new staff management fee of £60 per month as from January 2017. This was not mentioned at the budget meeting in November 2016 and was not included in the 2017 budget. Neither the previous nor the current Committee had agreed this charge. Is the managing agent entitled to introduce a fee without the prior knowledge or agreement of the leaseholders, or the recognised residents' committee? We are concerned that they could introduce other arbitrary charges without prior consultation.**

A FPRA Committee Member Colin Cohen replies:
You should check the management agreement that is in place to see if it allows for these extra charges – which I suspect it may do. If it is does not, or they are unable to ascertain this information from the landlord, if they feel the charge is unreasonable then they should make a formal complaint to the landlord, or apply to the First Tier Tribunal.

Rights to enter a flat

Q **When we're faced with urgent maintenance issues such as ongoing leaks from a particular flat, under what circumstances may we force entry without a court order?**

A FPRA Committee Member Yashmin Mistry replies:
Your lease permits the landlord and the management company or their duly authorised agents to enter into a flat to examine the state and condition of the flat and thereafter give to the tenant notice in writing of any defects or want of repairs which are in breach of the tenant's obligations under the lease. The tenant then has two months (or less time in the event of emergency) to rectify any breach of lease and if not done, the landlord is then technically entitled to undertake those works and re-charge the cost of undertaking those works to the tenant under the lease terms.
There are however a few issues concerning this lease provision:
1) Seeking entry into the flat in the event the leaseholder refuses entry is never generally recommended in residential property. The reason being is that tenants will usually receive protection under the Eviction Act 1977 which requires landlords of residential premises who has reserved a right of re-entry or forfeiture in a lease to exercise that right by means of proceedings in court.
In the event the works are urgent works and are causing damage to the common parts or other flats, we would suggest specialist advice is obtained as it may be the police would also need to be notified.
Is the flat tenanted? If so, is it possible to arrange access to the property via the tenant and/or the letting agent to resolve the issue?
2) Even if entry is provided by the leaseholder, is the landlord prepared to forward fund the proposed works? If they are, they will then be left in a position of having to recover the costs from the leaseholder and if the leaseholder refuses to pay, issue proceedings for recovery of the same. Court proceedings are generally expensive and lengthy affairs and

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further subject to the amount involved, the landlord may not be able to recover all its costs from leaseholder.

Nuisance

Q **What authority do we have under the lease to regulate residents'/children's conduct relating to noise, fly tipping, badly parked bicycles/cars, barbeques, washing lines, storage of items in common parts, the use of incompetent/uninsured contractors and services run outside flats? Can we issue a list of rules/guidelines? Within what parameters? Faced with non-compliance, what are our options? Under what circumstances can we add 'fines' to residents' service charge accounts, or add costs to cover fly tipping or damage when we have CCTV evidence? After due warning, can we take away/dispose of bicycles causing obstruction?**

A FPRA Committee Member Yashmin Mistry replies:
Unfortunately on a brief review of the lease it does not seem to reserve to the landlord nor the management company the right to create estate regulations for the benefit of the development/block. Without this provision in the lease, the landlord and tenant are stuck with the provisions contained in the lease as drafted.

Car park conflict

Q Following the appointment of a manager our landlord has taken action to make the day-to-day management of the estate difficult for the manager and the estate staff. This has included withdrawing from use facilities previously used in the management of the estate, including staff welfare and restroom facilities, the estate management office, basement storage rooms and the contractor's workroom. Estate staff had previously been allowed to park for free in the underground car park, which includes a public (commercial) element owned by the landlord. That facility was also withdrawn.
Residents with demised parking spaces but without cars have been allowing the concierges to use their parking spaces for free. There is no assignment/underletting, and no money involved. The landlord has heard about this and has issued letters to the residents claiming they are in breach of their lease and telling them to desist.
We do not believe that residents allowing concierges (or friends, neighbours, visitors) to utilise their space is a breach of the lease and would appreciate your confirmation.
Looking at the residential underlease the following clauses seem relevant:
The Tenant shall not use the Premises of the Parking Space otherwise than for the Permitted User.
Permitted User: For the Premises a private residence. For the Parking Space the parking of a private motor vehicle taxed as necessary.
There is also a clause which states *Not to underlet assign share or part with possession of the Parking Space separately from the Premises of the Premises from the Parking Space.*
We do not know if the word 'share' could be applied to prevent the current use?
We know the restrictions on parking space use causes residents in many blocks of flats a headache as it prevents neighbours from letting a vacant space to another neighbour. Ironically, our landlord sub-lets parking spaces – and provides these (non-resident) underlessees with access cards that enables them to gain entry to the residential buildings and use the lift to get ground floor access, instead of using the regular public-car park exit with stairs to street level. The use of the lift is not included in the car park service charge, but of greater concern is the security risk to residents that such arrangements pose: the car park user can access the entire residential block, and gain access to our gardens. The landlord is allowed to breach residents' security, while the lease restricts residents from making arrangements to sub-let parking spaces to other residents...

A FPRA Committee Member Bob Slee replies:
You have identified the relevant parts of your lease which could, in extremis, be used by the landlord to prevent lessees from allowing their parking spaces to be used in this way. But on the basis that there is no legal arrangement between any lessee and the staff concerned, nor any rights implied or conferred, it is difficult to see how the situation is any different to a lessee permitting his or her space to be used by a visitor, and I assume there has been no attempt to prevent spaces being used by bona fide visitors. This situation is covered in your lease which confers a number of rights, including access, on the tenant "and all persons expressly, or by implication, authorised by the tenant". A reasonable interpretation of that would be that anyone, including a member of staff, personally authorised by a tenant to use his or her parking space is entitled to do so – provided no formal rights to use are actually transferred to the user any more than they would be to a bona fide visitor. In other words, the member of staff using the space fully understands that he is using the space at the invitation of a specific named resident and that that invitation is personal, informal and can be withdrawn at any time. A key factor would be that no money changes hands in connection with the arrangement.
In the first instance, this right conferred by the opening paragraph in the First Schedule should be drawn to the attention of the management company. In most circumstances I would expect that to be the end of the matter. In this situation, however, it is possible that the management company might choose to come back from a different angle. Should that happen, feel free to come back to us.

Sub-letting

Q **A high proportion of our 120 flats are sub-let, but we don't know how many because the lease does not require permission. Such properties consume a disproportionate amount of management time.**
What are our options for basic regulation, nothing too complex or restrictive initially, but at least a register of sublet properties with the various parties contact details?

A FPRA Committee Member Yashmin Mistry replies:
Your lease permits the leaseholders to sub-let their properties

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providing the underlet is for not less than six months. Accordingly, unless the tenancy is for less than six months, the leaseholders will not be in breach of lease terms. To alter the sub-letting provisions under the lease, the landlord could consider lease variations but given the proposed changes, it is unlikely all the leaseholders will agree to have their leases amended.

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.

LAND REGISTRY – PROPERTY FRAUD

The Land Registry has a new service to help prevent property fraud, where you can register to receive an alert if any attempt is made to change the ownership, or to register a mortgage to a property. Our members may wish to register alerts if they own their freeholds or head leases and indeed individuals may wish to register their own leasehold flats.

Property fraud is increasing and Land Registry tell us that property is more at risk if it is rented out, empty, mortgage free or indeed is not registered.

You can contact the Land Registry Property Alert team on 0300 006 0478 or email: propertyalert@landregistry.gov.uk or more easily go to www.gov.uk/propertyfraud

We are often asked in the admin office how you can find out who owns a flat or property and this information is freely available from Land Registry (check you are on a Government site, there are lots of fraudulent sites that charge excessive fees) for a small fee. This is both a useful facility in one way, whilst at the same time making it easier for fraudsters. As always be alert.

SUBSCRIPTION RENEWAL

Enclosed with this newsletter is your subscription renewal letter please make certain you return the form even if paying by bank transfer. When paying please include the name of your association as the reference as we had several subscriptions paid last year who did not include a reference and we still do not know who they were from. Many thanks.

FOR YOUR INFORMATION...

...we are hoping that a high profile person will be joining the committee next month and as soon as this is confirmed we will get you some detailed information for issue 125. We are also currently working on two more consultation responses suitable for issue 125.

SAVE THE DATE

Following the great success of our 2017 members-only AGM, we are keeping the same format for 2018. The date will be Wednesday 14 November 2018 and the location will again be the Victory Services Club in London. We hope to see you there.

WORTH LOOKING AT

An excellent debate on Leasehold and Commonhold was held in the House of Commons on 22 December with many new MPs sharing local experience from constituents. You can find this on the Hansard website, or follow the link from our website.

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