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NEWSLETTER

FPRA
FEDERATION OF PRIVATE RESIDENTS' ASSOCIATIONS

SAYING HELLO AND GOODBYE

By the Editor

FPRA welcomes Greg Clark MP, who has just been appointed Communities and Local Government Secretary in the new Conservative Government.

Former Universities Minister Greg Clark has replaced Eric Pickles, who praised his successor. FPRA is a non-party-political organisation, but Chairman Bob Smytherman (himself a Lib Dem councillor) said: "We welcome Mr Clark's approach to localism and his understanding of the leasehold sector."

Mr Clark is the Conservative member for Tunbridge Wells. We also welcome back to the Commons those two champions of leaseholders, Sir Peter Bottomley (Conservative, Worthing West) and Jim Fitzpatrick (Labour, Poplar and Limehouse).

Sir Peter, interviewed on BBC Radio after the election, vowed to "fight on" for leaseholders who were being ripped off. He said the new ARMA-Q system of regulation was good, but should have been introduced decades ago. He said many managing agents were honest and respectable, but some were not and he would fight on against anything criminal or crooked in the sector.

Some current initiatives which involve leaseholders should not be affected by the change of Government, such as the consultation on the redress scheme (see page 3) and the plan to draw up an advice leaflet for all those buying a leasehold property (see page 14).

A Sad Farewell

Everyone at FPRA is shocked and saddened by the sudden death of our Hon Consultant Martin Redman. Even up to a few weeks ago, Martin was answering queries sent in by members.

We are sad to report that Martin died on March 31. One of our long term executive committee members, and more recently an invaluable adviser to our members, Martin was a retired solicitor. It was his wife Sheila, through her involvement with the Citizens' Advice Bureau, who suggested that there were so many leasehold problems coming into the CAB that Martin should volunteer to help FPRA, which he did for many years. We have sent our condolences to Sheila.

FPRA Legal Adviser Nick Roberts said: "When I first got involved with FPRA in 1999, Martin was a regular attender at meetings, and he was always rather unconvinced of the likely benefits of Commonhold. Experience of the lack of take up of the 2002 Act suggests that he may have had a point! I was sad to hear of his passing, he always came across in a warm way."

FPRA founder member Philippa Turner said: "Martin was on the committee of the Federation for very many years. He continued to be a valued consultant and adviser to members, particularly in the field of the legal requirements involved in running a residents' association. He will be sadly missed for his expertise and for his friendly personality."

After working in Nigeria with Unilever in the 1960s, Martin became a student of the Inner Temple. On his return to the UK in 1966 he joined Stock Conversion, a property company where he gained experience about leases and property management. At the same time he ate his dinners and passed his examinations and was called to the Bar in 1969.

After this, he joined the law department at the head office of what is now Glaxo Smith Klein. This is a company which avoids bureaucracy and expects everyone to get on with the job. He found that no one wanted to hear about problems, only solutions, a lesson that applies when dealing with requests for help from FPRA members! Work with Glaxo included involvement with management of properties of the pension fund and also regular visits to Nigeria as a Director of the Glaxo subsidiaries there.

When he retired in 1991, he found a great demand for legal advice for local charities, amenity societies and village organisations. Martin's wife was deeply involved with the Citizens' Advice Bureau and was well aware of the problems experienced by occupiers of leasehold flats, particularly on the south coast. Through her work, she knew about FPRA and suggested that this was an area in which Martin might help. This led to a meeting with Charles Buckeridge, our late Chairman, and soon afterwards to Martin's membership of the Executive Committee of FPRA.

He will be greatly missed.

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"EXCITING TIME" FOR LEASEHOLD

Roger Southam, the new non-executive Chairman of LEASE, the Leasehold Advisory Service, writes for FPRA about his new appointment and how he views the current situation.

I have joined the Leasehold Advisory Service (LEASE) as non-exec Chairman at an exciting time in the history of leasehold residential property. There is keen interest amongst politicians on how the leasehold residential sector operates. Moreover, the Competitions & Markets Authority stepped in to report on how the market was functioning. This is accompanied by an ongoing issue of a shortage of housing stock that is long debated but solutions are thin on the ground.

LEASE has existed for 21 years and has provided an advisory service to thousands and thousands of lessees and lessors along with their professionals. For an audience like yourselves that are educated in the ways of leasehold property and the need to handle all matters professionally I am preaching to the converted, however you will be well aware of the rogues and villains who persist in muddying your reputations with unscrupulous behaviour.

At our recent conference we had 250 leaseholders along in the evening and when I asked the question "who thought their managing agent was trying to rip them off?" 100 per cent of hands went up! Now this is not the most representative of audiences I admit, because they would come to a LEASE conference for help and therefore have a problem. However, to think they are being ripped off rather than just having a problem is pretty strong.

What we all need to do is concertedly work to make sure that we can get all sides of the leasehold equation to work together and to act fairly and reasonably with each other. Now this is of course a ridiculous Utopian view and never achievable but if we do not have a target to aim to we will not move anywhere. A lot of people over the years have said things are impossible and yet been achieved so you never just know. Otherwise we would not have got the moon but for the Wright brothers launching their first flight.

If we break down the areas of conflict and dispute I think it can be seen what the drivers are and where we can push to get all freeholders and lessors to try to play their part.

Obviously we are dealing with people's homes and that makes it more emotive and a source of conflict before we start. If we look at human nature and freehold houses then you can see how wide differences arise before any service charge is spent. If you find a street of terrace houses or a row of semi-detached and stand back and look, you will see some houses immaculate, some okay and some scruffy, unloved and messy. This highlights that some will willingly spend money on their properties and some will not. Some may be able to afford to spend money on their properties and some will not.

Herein lays the issue. The conflict can arise because some lessees do not want to spend anything on service charge, regardless of what is needed or reasonable. From that premise it is easy to see how conflict can be at every building and the needs of comprehensive and clear communication can never be underestimated.

Indeed I have heard lessees say, when challenged at Tribunal with the large amount of paperwork and information they had been supplied with: "We can't be bothered to read all that!"

This said, the fact that lessors and managing agents are willing to take large commissions on insurance, give an appearance of acting unfairly, and not being as transparent as they could be, all leads to compound the suspicions and aggravation.

So how do we move towards a situation where there is mutual respect and appreciation?

Well, firstly I do not think leaseholders comprehend how difficult a property manager's job can be. More can and should be done to explain and quantify the challenges and the responsibilities they face. More promotion is needed of the professional bodies and what they stand for and the benefit of buildings having such associations through responsible managing agents and freeholders.

We can look to promote what good management looks like and what people can expect and should receive. The professions should put together a service charge index showing average costs for different types and styles of buildings so there is an easy way for people to know what to expect. Also, if there is any variation of a building's service charge to the index it becomes easier to explain.

Of course, ensuring prospective leaseholders are aware of their obligations and commitments would also aid matters and this is an area LEASE is very active on at present.

LEASE is there with the advisory service to help when troubles arise and we are keen to play our part in the education, promotion and improvements that will assist to ensure leasehold is seen as a good form of tenure and not the brickbats it currently suffers.

This will be a long road and not an easy one. We have seen a major shift by a large part of the leasehold market but we need to ensure all follow suit.

I hope at the end of my five years we will have made further strides in the right direction of harmony and transparency and fairness for all sides.

(Roger Southam is a Fellow of the Royal Institution of Chartered Surveyors (RICS), a Fellow of Institute of Residential Property Management (IRPM) and a Fellow of Association of Residential Letting Agents (ARLA). He is a regular panelist for industry focused groups including RICS, British Property Federation, Bank of England, HM Revenue & Customs and the Department for Communities and Local Government).

Sending in their subs and renewal, one member writes: "Congratulations on all your hard work and in your efforts to get a sane verdict with regard to the Section 20 consultations. Your newsletters are, as ever, an invaluable source of information, many thanks!"

Does redress need readdressing?

One of our members writes of being in "limbo" trying to access redress.

When our recognised residents' association learnt of the need for managing agents to be a member of one of three Government approved Redress Schemes (The Property Ombudsman, Ombudsman Services – Property, The Property Redress Scheme) since 1 October 2014 we thought here, at last, is access to external bodies with an impartial view on any complaints. New horizons appearing to give leaseholders more opportunity for eradicating the less desirable and driving forward better practice.

Unfortunately, for us long-term leasehold owners of apartments purchased from a private landlord, identifying access to any redress we may wish to pursue has not proved that straightforward. Why? Because our managing agent is a Registered Provider and the Leasehold Advisory Service has intimated that as an arms-length body of a Housing Association it can be viewed as a social landlord. In its turn, that suggests that their membership of the Housing Ombudsman offers access to that body's redress procedures which are sufficient.

That's OK then. Well, perhaps not. For apparently whilst registered providers have to be signed up with the Ombudsman scheme, the scope of its work it seems changed to exclude leasehold complaints and to hearing only rented housing cases. We are currently seeking confirmation of same from the Housing Ombudsman. Our query is two weeks old but, at least, we have a reference number. Of the 10 agencies contacted to throw light on this area, only five could be said to have replied creditably and only two of those categorically.

To be fair to our managing agent, it believes itself in the same limbo and its attempt to remedy this by negotiating membership of ARMA (within whose quality standard is the need to join a redress scheme) is to be commended.

How has this confusion and complexity arisen? A clue may be in the Department for Communities and Local Government document "Lettings Agents and Property Managers", subtitled "Which Government approved redress scheme do you belong to?" In explaining on page 5 what is meant by 'property managers work' it states: "it does not include things done by, amongst others, registered providers of social housing, that is, housing associations and local authorities who are social landlords, as these organisations are already required to belong to the Housing Ombudsman Scheme".

How much simpler it would be to distinguish between registered providers operations to social housing and their operations to private sector long term leasehold owners in return for a service charge so that in the latter case they would also be required to join one of the three schemes applicable to everyone else. No limbo – open access to clear redress channels for all. Please, bring it on! For the moment, we continue to strive to identify if we can access external redress so if you wish to comment through these pages, we are one body of Leaseholders who would welcome your views.

FPRA is currently involved in responding to the Government on two consultations about the redress scheme:

www.gov.uk/government/consultations/creating-awareness-for-residential-leaseholders-about-the-government-approved-redress-scheme

www.gov.uk/government/consultations/making-it-easier-for-leaseholders-to-gain-recognition-of-a-tenants-association.

A TAX ON PORTERS' FLATS

FPRA Vice Chairman Richard Williams explains "ATED" – The Annual Tax on Enveloped Dwellings

ATED was brought in, in 2011. It is a tax charged on companies which own residential property. It was understood to have been introduced to tax, particularly, overseas buyers of expensive properties who held them in companies. When the tax was first brought in, it only applied to companies which owned one or more individual residential properties, in which the company's interest was worth £2m or more. It was recognised that there were cases where it was not appropriate to charge the tax because there could be good reasons for a house or flat to be owned by a company and a number of exemptions were given, including exemptions where the company was letting the house or flat, or some in some cases where it was provided for an employee. The catch, with exemptions for houses or flats occupied by company employees, is that the company must be carrying on a "trade", and for tax purposes "letting property is not a trade".

Since the ATED was brought in, the value threshold has been reduced, so that since last April the tax would be charged on a company which owned a flat or house with a value of £1m or more, and this threshold will be reduced to £500,000 with effect from April 2016.

Where a block of flats is owned or managed by the leaseholders themselves, then the freehold, or a long lease, will be held by a company, with the leaseholders holding shares in, or being member of the company. The value of the company's interest, as freeholder, in any one flat subject to a long lease will normally be very small, and well below the original £2m value threshold, and even the new £500,000 threshold. However, in the larger blocks the company may provide porters, or other employees with flats. These flats will not be leased and therefore the company's interest, in each of those flats will be a vacant possession value. In some areas, the value of an individual flat, on this basis may be over £500,000 with the result that the company will be subject to the tax. In the case of a leaseholder owned or managed block this will have to be passed on to the leaseholders, thereby increasing service charges.

The Chairman will be writing to the Government about this.

FREEHOLD ACQUISITION ORDERS: AN UNDERUTILISED TOOL?

By FPRA Committee member Yashmin Mistry

Where a landlord is in breach of an obligation under the terms of a lease, either due to him being an "absentee landlord" or he is quite simply not performing his lease obligations, and his breach is likely to continue, asking the court for an "Acquisition Order" for the freehold may be another option open to tenants.

Acquisition orders

An Acquisition Order may be applied for by any of the qualifying leaseholders in the building and generally there are two avenues open to them:

1. they may make an application to the High Court or County Court for an Acquisition Order to acquire the freehold landlord's interest – pursuant to Section 25 (Part 3) of the Landlord and Tenant Act 1987 (the 1987 Act); or
2. an application may be based on a Manager/Receiver having been appointed by the First Tier Tribunal (FTT) for no less than two years on the date of application to the Court – pursuant to Section 24 (Part 2) of the 1987 Act

Who may apply?

Before the courts will grant an Acquisition Order they may first be satisfied that certain conditions have been fulfilled, namely:

- that there are two or more flats in the building; and
- two thirds of the flats are owned by qualifying tenants; and
- the requisite majority of qualifying tenants make the application.

This right to apply for an Acquisition Order does not however apply where:

- any leaseholder owns more than two flats in the development; or
- if less than half the flats in the block are let on long leases (which are not business leases) and the landlord is resident.

Grounds:

The grounds for making an application under Part 3 are specific and are set out in Section 29 of the 1987 Act. Amongst other things the court must be satisfied that:

1. the application is made in respect of qualifying premises;
2. that the landlord either is in breach of any obligation owed by him under their leases or would be in breach but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice;
3. the court considers it appropriate to make the order in the circumstances of the case;
4. where a building has been subject to the appointment of a manager pursuant to this section and the manager having been appointed for no less than two years on the date of the application to the court.

Preliminary notice:

Before an application can be made to the Court, a Preliminary Notice must be served on the landlord unless the Court agrees to dispense with the notice requirement.

If the court makes the Order, the FTT will determine the terms on which the landlord's interest may be acquired (including the purchase price) unless, they have been agreed between the parties involved.

Health warning!

Obtaining the freehold via Part 3 of the 1987 Act is often under used (or unknown) but with careful planning and preparation it can be a valuable tool for tenants who are tearing their hair out with rogue landlords!

For example, if the tenants are making an application for an Acquisition Order based on a management order under Section 24 of the 1987 Act, the advantages for tenants are:

- they will acquire under the 1987 Act without paying marriage value; and
- they are entitled to recover their costs in the County Court where such an application is made

As previously mentioned however, the FTT and County Courts regard Acquisition Orders against the wishes of the landlord to be a draconian step and the tenants should make sure certain preliminary stages are completed (unless the court's otherwise dispense with the requirements!)

For further advice please contact Yashmin Mistry of JPC Law on ymistry@jpclaw.co.uk

WILL WE EVER WAKE UP?

By FPRA member Shaun O'Sullivan

If one believes the figures published by the Royal Society for the Prevention of Accidents (RoSPA), about 50 of us each year won't wake up. They are mostly those who go to bed and never wake up, overcome by the effects of Carbon Monoxide (CO) – often referred to as the silent killer.

Unlike gas, which has a distinctive smell, Carbon Monoxide has no smell and no taste and those affected are often oblivious to the fact that they are being poisoned alive. CO is potentially given off through burning any fossil fuel but for us the focus must be in respect of gas appliances (boilers, cookers and fires) and particularly those installed in flats.

Apart from the 50 deaths per year, more than 1,100 people are recorded as having been admitted to hospital suffering from the effects of CO, which can often lead to severe and lasting neurological damage. Overall it is considered that about 4,000 people per year suffer from the effects of Carbon Monoxide, and many of those are as the result of faulty gas appliances. The Gas Safe Register – the official list of gas engineers who are qualified to work safely and legally on gas appliances – records the fact that 1 in 6 homes are deemed to have a faulty gas appliance.

So why should this be, what measures are in place to prevent so many unnecessary deaths and what are the implications for the leasehold sector?

The two measures most likely to prevent such tragedies are to have appliances inspected annually by an engineer listed on the Gas Safe Register and to fit Carbon Monoxide detectors. However, the normally heavy hand of the law adopts a somewhat lighter touch – some might say head-in-the-sand approach – than perhaps one would wish in ensuring these universally accepted preventative measures are adopted.

As the law stands, any new gas appliance must be installed by an engineer listed on the Gas Safe Register. Equally, landlords who rent their property are required under the terms of the Gas Safe (Installation and Use) Regulations 1998 to ensure that any gas appliance fitted in rented accommodation is inspected on an annual basis and that records of such inspections are made available to their tenants with 28 days of any check having been carried out. So far, so good.

However – and this is the rub – there is absolutely no legal obligation on owner-occupiers to have gas appliances checked at all, and no obligation on either landlords or owner-occupiers to fit Carbon Monoxide detectors. Concerning though it is that those owner-occupiers living in houses can decide, quite legitimately, to ignore advice to have their gas appliances inspected regularly, it is particularly worrying that those living in owner-occupied flats can adopt a similarly laissez-faire approach. Residents in flats are effectively living in the same building, and the effects of Carbon Monoxide resulting from a poorly maintained gas appliance or a suspect flue in one flat could easily affect, possibly with fatal consequences, residents in another flat within the same block.

Successive Governments appear reluctant to legislate in order to force owner-occupiers to have gas appliances inspected annually. Equally, there appears to be little appetite to require owner-occupiers and landlords to install Carbon Monoxide detectors. Instead the last Government stated that they were *'considering non-regulatory approaches such as public safety announcements to encourage the installation of alarms in all dwellings'*. Even if such an approach were adopted, one can only surmise as to how effective it would be in reducing the number of tragic deaths resulting from the effects of CO. The Minister of State for Housing & Planning in the last Government is on record as saying that the current legislation requiring landlords in the private rented sector to have an annual gas safety check is to *'remedy a potential lack of incentive by not living in the property'*. Although this statement might imply that owner-occupiers are inherently incentivised to have an annual gas safety check purely by dint of the fact that they are living in their own homes and would be putting themselves at risk by not having an inspection, the fact that almost 17 per cent of appliances are deemed to be faulty might suggest otherwise. Against this background one could be excused being sceptical about the likely success of a non-statutory approach.

Although, so far as annual inspections are concerned, putting owner-occupiers on the same footing as landlords would be the preferred solution, legislating to require everyone with a gas appliance in their home to fit a Carbon Monoxide detector would certainly be a good second best and would hopefully reduce significantly the number of tragedies resulting from this silent killer. It is already a legal requirement to have such a detector fitted where solid fuel appliances are installed; and in Scotland building regulations were amended in 2013 requiring CO detectors to be fitted in any property when any new gas appliance is installed. But this still leaves the bulk of the UK vulnerable to the effects of CO from poorly maintained gas appliances.

So, will we ever wake up? One of a number of attempts to force the issue on Carbon Monoxide detectors was the Private Members' Bill sponsored by Andrew Bingham MP in which he sought to have the Building Act amended so as to require the fitting of an audible detector in any newly built dwellings, and the amendment of the Health & Safety at Work Act to expand landlords' obligations to include the provision of such a detector in addition to an annual inspection. Although this Bill had its first reading in July 2014, its second reading on 12 September 2014 was adjourned and it failed to be debated further by the time Parliament was dissolved on 30 March 2015.

Someone needs to wake up and to put a stop to these unnecessary deaths. To this end, I would encourage readers to lobby their MP on this potentially life-saving issue and in that regard a template has been included on the new FPRA website. Please use it; it could save a life.

Sources:

www.rospa.com/home-safety/advice/carbon-monoxide-safety

www.gassaferegister.co.uk

www.hse.gov.uk/gas/landlords/index.htm

Legal Jottings

Compiled by Philippa Turner

LVT	Leasehold Valuation Tribunal
FTT	First Tier Tribunal (successor to the LVT)
UT	Upper Tribunal
EWHC	England & Wales High Court
EWCA	England & Wales Court of Appeal
EWSC	England & Wales Supreme Court

Landlord & Tenant Act 1985

Edwards v Kumarasamy (2015 EWCA Civ 20) was a claim by a sub-tenant of a long leaseholder who tripped on a defective paving stone in exercising his right to use the path outside the flat to the rubbish bin. Although the landlord was not the head lessor who was ultimately responsible for the maintenance of the common parts, nonetheless, as immediate landlord, he was liable under S.11(1A) of the Act (as amended by the Housing Act 1988) for keeping in repair the structure and exterior of the "dwelling house" and was required to pay damages of £3500. The Court of Appeal reversed the judge's decision that notice of the defect was required: such a condition applies only to repair to the interior of the dwelling.

Landlord & Tenant Act 1987

Under S.24 of the Act residents may apply for the appointment of a manager. In *Sennandine Properties v Heelis (2015 UKUT 55)* an application, on the grounds of failure to repair by the landlord, was made by the leaseholders of two flats in a building, the remainder consisting of empty commercial premises, the tenant of which was trying to relet. The FTT granted the application and directed the newly appointed manager to disclaim the commercial lease and relet on commercial terms. It was held by the UT on appeal that the FTT had no power to order the manager to do so; what it should have done was to direct it to undertake only those tasks proportionate to the landlord's obligations in respect of the residential tenants, eg. repair of the structure, the upper floors and common parts. It was the landlord who remained responsible for contributing the balance of the cost in respect of the commercial part.

When such orders are made they need to be reviewed periodically; on such an occasion, renewal was granted to the tenants but was challenged by way of judicial review in the High Court *(R (on the application of Cawsand Fort Management) v First Tier Tribunal 2014 EWHC 3808)*. There, the judge held inter alia that the decision could have been appealed to the UT, even though the point at issue was the extent to which the FTT had exceeded its jurisdiction. NB the original decision in this case can be found in *Newsletter* 81, page 9.

S.27A of the Act (as amended by S.155 of the Commonhold and Leasehold Reform Act 2002) enables the FTT to determine whether a service charge is payable, when due, by whom, in what amount and in what manner. The LVT (as it was) held in *Parissis v Blair Court Management (2014 UKUT 503)* that it was not now possible, due to delay by leaseholders, to challenge the service charges for the years 2001 – 5 inclusive. On appeal to the UT the judge disagreed since this was an action based on Statute and neither the equitable doctrine of laches, nor the six-year limitation period applying to arrears of rent were relevant. In remitting the case to the LVT for further consideration he did not however decide whether a 12-year limitation period might apply.

Service charges

Arrears were due from one lessee of a service charge amounting to £1060.54p consisting of the apportioned part of the cost of a new door entry system. The landlord's claim issued in the County Court was transferred to the FTT (in accordance with Sch 12, para. 3 of the 2002 Act) for a ruling on whether or not it was reasonable. During the hearing, the parties agreed to share the amount in issue 50/50 but the FTT went on to consider the issue of apportionment and whether the charge was fair and reasonable, holding for the landlord on both points. The UT allowed the appeal *(Cain v Islington LBC 2015 UKUT 117)*: the FTT jurisdiction was statutory and, on referral from the County Court, was confined to the question on which the transfer was made and any issues comprehended therein. It was necessary, in considering the question of reasonableness, to interpret the lease and therefore the FTT had jurisdiction to decide the matter. However, once the amount due had been agreed by the parties, the question of apportionment was no longer in issue and, being subsidiary, fell away and there was no further role for the FTT . Likewise, had the matter been referred to the FTT under S.27A(1) of the 1985 Act, its jurisdiction would not have remained after agreement had been reached between the parties.

The lessees in *Morris v Blackpool BC (2014 EWCA 1384)* challenged the inclusion of a management fee in the service charge demand to remunerate the agents appointed by the landlord to manage the development. They were successful in the LVT but lost the appeal to the UT which decision was upheld by the Court of Appeal. The point relied on by the lessees was that the relevant clause in the lease provided that the landlord should make regulations for the management and for the services to be performed but had not done so. The Court of Appeal held that this was not a prerequisite and the words of the lease "any of the Authority's" (ie the landlord) "costs of providing services" and "employing gardeners, porters and other employees" were not dependant on the making of regulations. Furthermore, the lease allowed a charge for services provided at the discretion of the landlord rather than pursuant to any obligation under the lease.

It was the cost of services which was in issue in *Anchor Trust v Corbett (2014 UKUT 510)* causing the residents to apply to the LVT for determination as to its amount. There was no dispute that the installation of a fire alarm system fell within the items payable under the service charge and the argument that it was unnecessary to replace the old system was rejected, the consultation procedure having been correctly observed; however, the cost (£50,000 divided between 28 flats) was such that it was not "fair and reasonable" in that the flats were designed for and let to pensioners, unlikely to have any other significant financial resources. The UT disagreed and held it was incorrect to rely, as had the LVT, on the case of *Finchbourne v Rodrigues* (*Newsletter* 97 page 9) which had preceded the statutory protection afforded by S.19 of the Landlord & Tenant Act 1985 and had suggested merely that the charge for an individual item should not be unreasonably high. This was not the case here and the amount was accordingly payable.

In contrast, the tenants in *Waaler v Hounslow LBC (2015 UKUT 17)* were in part, successful in challenging the amount payable for

repairs. The FTT had found them liable for £55,000 each but the UT allowed their appeal on the basis (i) although cost of both repairs and improvements were recoverable (ii) consideration should be given as to whether that for improvements was reasonably incurred taking into account the tenants' circumstances and views; improvements were a matter of choice and cheaper alternatives should be explored. Replacement of a flat roof with a pitched roof was a "repair" within the meaning of the lease but replacement of wooden window frames with metal and the installation of external cladding were improvements. Accordingly, the decision to incur the latter was not reasonable and the whole of the cost was not reasonably incurred.

Another challenge to the imposition of costs incurred in major works was referred by the lessees to the FTT in *Nogueira v Westminster LBC (2014 UKUT 327)*. It was found that there were significant defects in the works but, on the landlord undertaking to make good, the FTT did not reflect this in the amount due. The UT held that the FTT did not have jurisdiction to accept the undertaking and anyway it had no power to ensure its enforcement. It should have made an appropriate reduction in the service charge.

In *Assethold v Watts (2014 UKUT 537)* the UT allowed an appeal from the FTT in part by disallowing recovery through the service charge of solicitors' and counsels' fees incurred over a party wall dispute with neighbouring property owners. However, in reliance on the words in the relevant lease clause "all works installations acts matters and things as in the reasonable discretion of the landlord may be considered necessary or desirable for the proper maintenance safety amenity and administration of the development", legal costs were recoverable.

Leasehold Reform Housing & Urban Development Act 1993

As well as the right to enfranchise the freehold granted by the Act, an individual leaseholder may apply for a lease extension. The case of *Howard de Walden Estates v Accordway (2014 UKUT 486)* clarified the extent to which an intermediate landlord has any input into the amount of premium paid. The UT held that although the Act gave the head landlord (or "competent" landlord) absolute authority to agree the amount with the leaseholder, nonetheless the intermediate landlord (if any) has a separate right of representation in any proceedings and the head lessor should act with due care and diligence. If not, it was open for the intermediate landlord to apply to the Court for directions.

Commonhold & Leasehold Reform Act 2002

It was held by the UT in *Elim Court RTM v Avon Freeholds (2014 UKUT 397)* that it was essential, in order to comply with S.78(5b) of the Act, that a Notice of Claim to acquire the right to manage the premises must allow inspection of the Memorandum and Articles of the RTM Company on days including a Saturday and/or a Sunday. It was also necessary to serve the intermediate landlord in order to comply with S.79(6). The Notice in this case failed on both counts and was therefore void. This is yet another example of how vital it is to take note of the requirements of Statute to avoid simple mistakes which can nevertheless have fatal repercussions.

St Stephens Mansions RTM v Fairhold NW (2014 UKUT 541) concerned two adjacent blocks, St Stephens and St James which shared the same water supply. Each applied for the right to manage. In the counter notice served in the St James case, the landlord denied that St Stephens (not St James) was entitled to acquire the right because of the water supply problem. However, the LVT held that this error invalidated the counter notice and accordingly the objection failed. On appeal, the UT took the view that St James could not have been misled by the error since it was quite clear what had been intended and, in any event, there was no statutory requirement to include the name of the RTM Company in the counter notice. On the contrary, in the case of St Stephens, the LVT had decided, purporting to follow *Oakwood Court v Daejan* (Newsletter 82 p.9), that it was not possible to separate the water supply without providing a new service and would therefore be in breach of S.72(4) of the Act. The UT however allowed the appeal and found that the alterations required to effect two separate supplies were minimal and therefore right to manage would be granted.

The Court of Appeal allowed the landlord's appeals in *90 Bloomfield Road RTM v Triplerose (2015 EWCA 282)* and three others (*Newsletter* 109 for original decision) in holding that a RTM Company could only operate in respect of one self-contained building or part thereof (S.72(1a) and it was inconsistent with the intention of the Act for a RTM Company to manage different sets of premises with different tenants who were not members of the company, even if on the same Estate.

Forfeiture

Although *Telchadder v Wickland Holdings (2014 UKSC 57)* concerned a mobile home, comments made by the Supreme Court have a bearing on S.146 of the Law of Property Act 1925 providing relief from forfeiture. The issue revolved round whether or not the breach on which the landlord sought to rely in obtaining possession by way of termination of the agreement was remediable: if so, as with the tenancy of a dwelling, relief could be granted, subject to conditions. The appeal of the occupier was allowed even though the anti-social behaviour for which he was responsible and which had triggered the initial notice had occurred and could not be remedied retrospectively; the breach was not serious, had caused no injury, merely alarm, and could be dealt with by giving the occupier time to modify his behaviour for the future.

A reader writes:

As ever, I find the newsletter both interesting and informative. In the context of the first Q&A under 'Ask the FPRA' in the Winter 2014 newsletter (issue 111), we were persuaded to have an Electrical Inspection Condition Report (EICR) undertaken, based on the Chairman's assertion that it should be done every five years. We did, however, unearth some degree of validation for this contained in the Local Government Group publication on Fire Safety in Purpose Built Blocks of Flats. Section 46.7 is relevant. The inspection – which was very detailed and threw up a few small issues – cost us £750 for 24 flats on three floors in two blocks.

ASK THE FPRA

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

Tricky Situation

Q **I am a director and company secretary of an RMC, which manages three leasehold blocks. We also include eight freeholders as members, who own a small house within our grounds and contribute only to the general purpose fund.**

In 2014 three leasehold flats changed hands. One of the three was of the smallest block with only four flats, where four owners contribute equally to the building maintenance fund. During the sale we found an old anomaly in our lease, which must have originated from the time of initial development of our estate in 1981. The proportion of the contribution by the flat owner to the building fund was typed as 1/47, instead of ¼, apparently an error. Naturally we sought to amend this number prior to the sale, by varying the lease, and the seller agreed.

Our solicitors' fee for the variation was £540. The seller was persuaded to pay, and paid £190, i.e. ¼ of the cost plus a little extra. Our solicitors suggested that the other three lessees of the same block might pay for the rest, £350, but they argued that they should not be liable for amending such an old error, made either by the developer or the initial directors of the company. The sale of the flat in question has just been completed, and the new owner is about to move in.

Our leases do include administrative and legal cost as items recoverable via service charges: [the 5th schedule, clause 1] "The expenses of and incidental to the running and administration of the management company whether or not the management company be also the lessor": [clause 7] "All other expenses incurred by the lessor in and about the maintenance and proper and convenient management and running of the building and the land including in particular but without prejudice to the generality of the foregoing ..... and any legal or other costs bona fide incurred by the lessor in taking or defending proceedings arising out of any lease of any part of the building or any claim by or against any lessee or tenant thereof (other than a claim for a rent alone) or any third party against the lessor as owner or occupier of any part of the building".

The freeholders' deeds of covenants only mention such cost as recoverable via service charge when it relates to management of the communal land and the car parks: [clause 4(i)] "...including the costs of and incidental to the administration and conduct of the company's affair in relation thereto (= the communal land and car parks)."

Am I right to recommend to the board of the RMC that we should pick up the bill for this variance and pay it from the company's net asset?

A FPRA Committee Member Yashmin Mistry replies:

A tricky situation and arguably, one that should have just been dealt with by the four flats concerned. Given the lease term however it may well be possible to use the clause you have pointed out to recover the balancing costs. The RMC would however only be able to reclaim the costs from the flats rather than the freehold houses. We are not sure whether, given the amount, any of the residents would challenge the cost at Tribunal.

Parking Nuisance

Q **One of the owners of our block has rented her property out.**

It has been necessary for us several times in the last year to talk to and write letters to the tenant regarding their parking cars out of the designated marked areas.

We have a strict rule that there is to be no parking in the front of the building (emergency services access etc) and parking only to be in the marked bays (we have signage erected regarding this) but they continually park a car at the front and under the windows of one of the ground floor owners.

We now intend to write to the owner of the property informing them of our grievance about the parking issue in an effort to try and get her to sort it out but if she does not could you advise as to what steps we (or the owner) can take to enforce the matter?

Would this matter possibly be an infringement of the lease?

A Committee Member Yashmin Mistry replies:

Having reviewed the lease the following provisions are relevant:

- **Clause 2 of the First Schedule**...."...and the right to park vehicles in the parking areas but not so as to cause obstruction"
- **Clause 7 of the First Schedule** – "the right in common with the lessees of the other flats in the block and the two pavilion bungalows to the use by a private motor car of the parking areas marked "P" on the plan attached hereto subject to such regulations as may be made from time to time by the Lessors"

The leases we hold in the office unfortunately do not have coloured plans attached to them. We assume you do however hold plans?

We understand you will be writing to the lessees reminding them of the provisions contained in the lease.

In the event the parking still continues and the letter is ignored, the landlord would be entitled to enforcement action in light of the breach of lease covenants. There are a number of options available:

- **Injunction:** Probably too expensive and a little over the top for the situation in hand.
- **Forfeiture (or least the possible the threat of forfeiture**

proceedings): Forfeiture proceedings, whilst the landlord is unlikely to obtain a forfeiture order, the threat of bringing such proceedings may be enough to resolve the situation. The process has also become wholly protracted. Before forfeiture proceedings can be commenced in the County Court these days, the landlord would first need to obtain a determination from the First Tier Tribunal or the County Court confirming the tenant is in breach of lease covenant. The key to any application is evidence. We assume the freehold has diaries, complaints, photographs etc of the parking complaints. If the landlord is successful in obtaining an order that the lease has been breached, it would be entitled to proceed to serve a Section 146 Notice giving the tenant a reasonable time to remedy the breach. If the breach is still not remedied, County Court proceedings may be commenced for a forfeiture order.

RTM Company

Note however the right to forfeit belongs only to the landlord party to the lease.

We note from the letterhead paper you are an RTM company and therefore would not be entitled to take forfeiture proceedings in your own name.

Does the RTM own the freehold? If not, the RTM would need to request the landlord take any breach of lease action in its name or provide authority for the RTM to issue proceedings in the name of the freeholder.

Given the rules and legislation with RTM companies, we would suggest a specialist solicitor is consulted before breach of lease action is commenced.

Hope that helps.

Handing Over Management

Q **For some eight years our tenants association has managed the block. Due to changes in ownership of the flats and the capacity of those of us living here to continue managing the flats, we have decided to use a managing agent to do this for us and are working towards a handover date.**

I would appreciate your advice:

1. We have had meetings with both freeholder (also owner of two of the six flats) and managing agent. A draft contract between managing agent and freeholder has been drawn up and we have been invited to comment on it. As I understand it there is no formal agreement proposed between managing agent and lessees. I am concerned to protect my/our position and rights. Are agreements usually between managing agent and freeholder? Is FPRA able to look through the proposed contract and advise us on whether we should be suggesting any changes? Would this need to be in conjunction with our lease?

2. When the handover of management has occurred what are the advantages and disadvantages of continuing to have a residents' association? It has in effect been for the owners of the properties to meet and discuss the management of the flats, rather than as a forum for all the residents in the block. Should we formally close it? Should be creating something else?

A FPRA Director Shula Rich replies:

1. Agreements are essential and no management should take place without one. I can look briefly through the agreement for you and see if anything is obviously 'not right'. I hope this will help.

2. The Freeholder has signed an agreement with the new agents. In my opinion they are on the right lines in passing over the management. There are so many regulations that it can be a very time consuming job.

However, the freeholder still has the legal responsibility for management. As there are only six flats, in my opinion you should keep the association and it should monitor the agents. I suggest at the least a quarterly meeting with a report from the agents.

The report might be divided into: Information and Decision. If decisions are needed between meetings a phone or email consultation can take place between yourselves. One named person should at all times be delegated to talk to the agents on management matters.

All leaseholders of course should talk to them on any leasehold issues to do with their own flat at any time.

Debit Cards

Q **Our bank (Barclays) have advised us that they will soon be discontinuing the use of cheque submission and advised us to make use of electronic banking and have the use of a debit card for purchase of items needed to maintain the property. The directors had a meeting in August and agreed to obtain two debit cards for the association. We have used this card on one occasion since. However, one of our directors has queried if this is included in our Articles of Association and that we are not beaching any clauses. This person thinks it may be risky and all directors can be held accountable. My question is: Is there any approved wording that we could use to be included in our Articles that would allay any fears of accountability in respect of the use of electronic banking and the use of debit cards for purchases? We are a directorship of six residents, none of which have a great accounting knowledge.**

A FPRA Vice Chairman Richard Williams replies:

The Articles of Association merely require the company to have a bank account. The Articles do not require the account to be operated by any particular means or technology. I therefore do not think that there is any need to alter the Articles of Association. Nowadays I do not think that electronic banking would be regarded as unusual or hazardous.

In so far as any protection is needed, in order to protect the directors, consideration might be given to having a formal Board resolution governing the use of the debit cards i.e. who can use them and what authorisation is needed for payments,

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or at least payments over a certain amount.
The lease does not require payment to be made in any particular way, either by or to the company. The practical question is whether there are any leaseholders who are reluctant to pay service charges other than by cheque.

Expenses Refused

Q **In the past our old landlord included, with our agreement, a charge of £50 per apartment (there are 37) in the annual service charge, and this £1,850 was passed over to the residents' association to defray expenses on such items as room hire for meetings, refreshments at the AGM, stationery, professional advice, and, of course, the FPRA sub.**
Our new landlord seems likely to refuse to do this, on the grounds that it is not a legitimate charge for the service fund. Similarly they have refused to purchase or rent additional parking spaces for the communal use of residents, financed through the fund.
Could someone let us know, please, what is the position on these matters and if we can find a document that gives a list of legitimate and non-legitimate payments from service charge monies?

A FPRA replies:
With regard to this enquiry and items of expenditures previously paid for from the service charge account, I would note that unless otherwise stated in the lease, the landlord is correct in that, payments made under the service charge account are for the purposes of maintenance and therefore these type overheads aren't covered.

Onsite Sewage Treatment

Q **I quote from the Summary of Rights:**
To consultation on major works costing over £250 per flat or £100 per flat in respect of ongoing contract which is for a period more than 12 months (1985 S.20 as amended by 1987 Sch.2 para.3 and by 2002 Ss 150 – 1); failure to comply excess costs not payable unless LVT orders to the contrary. This consultation is required if any single flat in the block meets the limit.
I don't understand what "in respect of ongoing contract which is for a period more than 12 months". What contract has to be > 12 months? We have a situation where the onsite sewage treatment plant has been out of action for eight months because of faults in the initial installation, and the maintenance company has been paying to have the system emptied every week at a cost of £720 per week. They have spent over £20,000 in that time (nearly £1,000 per flat), but have never referred the payments to the residents. I need to know if we have a valid claim to have the payment restricted to £250 per flat. If yes, how do I go about it?

A FPRA Committee Member Colin Cohen replies:
I can answer this one simply as follows:
Whilst Section 20 notices should be served above the statutory limits, it maybe that in view of the emergency nature that the managers may have failed to do this but if challenged then they could apply for dispensation from the FFT (formerly the LVT) which if the costs were reasonably incurred and could not be avoided it is likely from recent case law that this would be granted.

Accident Risk

Q **As building owners, are the directors obliged by law to make sure that the Health & Safety Policy and Risk Assessments of contractors are adequate and adhered to and that the insurance policy is comprehensive and includes Public liability insurance? Or is it the responsibility of the contractor to make sure the law is adhered to?**
Our managing agents are strongly against us using the cheaper contractor because they say the paperwork is inadequate. I agree with the managing agents. However, if it is put to a vote I am sure that a majority of directors will vote for the cheaper quotation even though the paperwork may be inadequate.
I am very concerned that by being part of the management company I will be held responsible for any accidents even though I didn't vote for using the cheaper contractor. Is there anything I can do to protect myself from being prosecuted in the event of serious accident that isn't covered or am I linked by association.

A FPRA Chairman Bob Smytherman replies:
With regards to the first question, the answer is a simple yes. It will be for the directors to reassure themselves that any contractor is suitably qualified to carry out any works within the law and comply with various regulations. If you feel more information is required I suggest this is something you should demand as a director to satisfy yourself before voting to award the contract. I would hope the directors would not vote for an option based on cost alone.
As far as protecting yourself from personal liability, I would advise your RMC have a Directors & Officers policy to protect you all from personal liability.
Our FPRA Directors – and indeed in my block – insist of having a D & O policy and I certainly would not be director if this was not in place.
As far as the substance of the issue the roof replacement itself, if there is a difference of opinion you may want to get an independent surveyor to provide a specification for contractors to quote against. This will add to the overall cost, but is advisable for such major works receiving at least three quotes against a specification produced by an independent professional and given to the contractors in advance rather than asking the contractors to suggest the specification required.

Excess in an Insurance Claim

Q **Recently our RMC had to renew a frequent argument, about who should pay the excess in an insurance claim, forwarded on behalf of our owner-lessee who owns a ground-floor flat. The cause was one of the commonest, a leak of water from a shower room of another flat above him. We saw articles in your newsletter before, in circa**

2010, which said that the company was supposed to bear the insurance excess. So far we have followed this, and this time, have been intending to absorb the excess in the building fund, as we think our lease allows us to do so. But we want to review the process for two reasons. First, the excess for such a "wet incident" has increased drastically recently (now £500). The other owner-lessees of the same building started saying it was unfair to be charged for the problem not caused by any of them. Second, a book which we have read recently (Shulman, N., 2012, Being a Leaseholder, 2nd edition) indicates that (p90) we may be able to take steps so that the culprit flat may be called upon to pay the excess in a claim. Is it reasonable for us to charge the excess to the causer of the leak?

A FPRA Hon Consultant Belinda Thorpe replies:

My understanding is that if the leak has come from a tank which is the sole responsibility of the leaseholder rather than from "communal pipework" there is nothing to stop the RMC from pursing the offending leaseholder on a civil basis for loss. Point 5c on page 8 states the leaseholder should not permit any act or thing which may render the insurance policy to be voidable or which may cause an increased premium, which I guess must have happened if the excess has increased so substantially too.

This would give the RMC a breach of covenant should they choose to pursue a request to the leaseholder to take the necessary steps to mitigate future escapes of water from his demise, which would be the most appropriate thing to do to show their insurer that everything has been done to prevent leaks in the future. This in turn should help reduce the premium payable and excess applicable when these incidents occur. This is a difficult one as one needs to consider the practical implications as well as the financial.

Gas Safe

Q **Some of the flats on the development we manage are let by the flat owners. Whilst we know it is necessary for the individual landlords to obtain Landlords' Gas Safe Certificates for their properties we would like to know if it is necessary for us, as a residential management company, to see copies of those certificates. Please can you assist?**

A FPRA Chairman Bob Smytherman replies:

Thank you for your query which is a common issue raised by members and one I have been lobbying on for some time. The simple answer is there is no legal entitlement for you to see these certificates and – worse still – owner-occupier leaseholders are not required to have an annual certificate despite your RMC being responsible for health and safety in the common areas.

Can I suggest you write to your MP if you share my concerns so we can hopefully get some change in the new Parliament? In the short term I suggest requesting all landlords & leaseholders get a Gas Safety certificate and share copies with you so at least you have some idea of the issue in your block as most will be happy to share the information.

Overdue Service Charges

Q **Having been secretary for over 27 years, I have never had to deal with the following two instances, and to have them at the same time is quite unusual, so your help and guidance would be appreciated:**

I. I have a resident freeholder who is now nine months overdue with her service charge and since then a further service charge has been issued so she is now two months overdue with this is a total of £1,076.46. I have kept up correspondence but the resident is failing to correspond with me to let me know how they will settle the amount. I am aware there are financial problems as they have dealt with the mortgage company over their arrears. Is this the time to copy my correspondence to the mortgage company or start involving our solicitor?

2. We have had a resident freeholder pass away and I issued the service demand in their name and put it through their door. This was in December. Again I have heard nothing. I am about to re-issue an overdue notice for payment but I am not really sure who, if anybody, is dealing with the estate. I believe there is an elderly wife but do not know how much they would be aware of what is necessary or how they would handle the settlement.

The committee understand the need to remain "human" whilst dealing with this but I also believe there is an obligation for me to continue to try and obtain the funds. Your guidance would be appreciated.

A FPRA Hon Consultant Chiara Gorodesky replies:

1. Although it can be a good idea to copy the information to the mortgage company at this stage, it is not a given that there will be a payment made by it and there is indeed no requirement of the mortgage company to do so. I therefore suggest to send an official letter of demand from your solicitor, who will also be able to advise if the previous demands issued by the management company were done in the correct manner required by statute. Assuming all was served on the leaseholder in the right way and she still fails to make payment (or indeed agree to a payment plan, which can be one option to move forward), it would be appropriate to issue proceedings at the First-tier Tribunal (Property Chamber), formerly also known as the Leasehold Valuation Tribunal. You do not need to instruct a solicitor to do this as the procedure of issuing proceedings has been simplified to enable non-lawyers to start such an action and there is a lot of information available at the Tribunal regarding 'how to'.

2. I am sorry that you have to deal with such an unfortunate situation and advise contacting the Principle Probate Office for guidance asking for contact details of any executors to a will. Even in case of intestacy you will be informed of a contact person to whom you can then forward the demands. Normally, the spouse would be the natural person inheriting the flat, but of course that is not a given should there be a

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will. It is advisable to re-issue any service charge demand and any future correspondence to 'The Personal Representative and/or Trustee(s) of the late Mr ..."
Please do let me know how you are getting on.

Investigation

Q **I understand that a recognised RA has the right to appoint a surveyor to investigate how the landlord's management company is operating. Can you please confirm that's the case and let me know how I go about initiating that process?**

A FPRA replies:
I can confirm that, provided yours is a recognised tenants' association (ie either recognised by the landlord, or, if recognition has not been granted by him, then recognised by the First Tier Tribunal – formerly the Rent Assessment Committee), you have the right to appoint a surveyor to advise. In the interests of giving you as much information as quickly and easily as possible, I would refer you to the following guide on the Lease website: www.lease-advice.org/documents/Appointing_a_Surveyor.pdf

Nuisance Smoker

Q **We are just a small block of six flats. One of the properties has been recently let to a smoker, (flat 1), and this is causing problems for the flat above (flat 2). There is a really bad smell of smoke there, and repeat holiday makers to the upstairs flat have complained about the smell of smoke. The owners have communicated, and the lady who owns flat 1 is not prepared to ask her tenant to not smoke in the property. Obviously as a result, flat 2 feel they should let her prospective holiday makers know the situation and give them the opportunity to pull out of their bookings.**
It has made us think, that none of us flat owners are smokers, and we would all be unhappy if the flat above/below us was sold to a smoker – it wasn't anything we had thought about before this issue. One flat owner suffers from asthma, and would have problems if they had smokers below them. Obviously a lot more is known these days about the dangers of passive smoking, plus there is an increased fire risk.
Is it possible that we could make some alteration to the lease? If so, what would be the cheapest and easiest way to do this? Would everybody need to be on board for this decision, of is a majority sufficient?
I am in the process of asking flat 1 when they re-let their property that they stipulate non-smokers, as the two other flats that let their property stipulate none smokers. Can we reasonably ask them to do this?

A FPRA Chairman Bob Smytherman replies:
My response is from a practical point of view rather than a legal one.
The no-smoking in enclosed public spaces covers the 'common parts' of blocks of flats but not the flats themselves so a starting point has to be one of reasonable compromise rather than enforcement.
It's not uncommon for landlords to impose a no smoking clause within a short term tenancy, however it not likely that lease agreements include such a clause that would bind home owners from not smoking within the confines of their flat.
A lease variation may be possible but would require some specialist legal advice which would need to be referred to one of our lawyers. Would such a variation be 'reasonable' to impose on someone's legal activities (smoking) within their own home? My instinct is probably not.
A more complex issue is the one of passive smoking. If it can be demonstrated that smoking from one flat is impacting on the health of someone in another then this is a legal issue and one that would require enforcement if this could be proven. Enforcement of the public spaces smoking ban lies with the Local Authority Environmental Health and would be for them to investigate the claims of those leaseholders that their health was being impacted as a direct result of activities of one smoker in their own home which as mentioned is legal.
The final point about stipulating non-smokers for prospective short term tenancies would in my view be reasonable. The wider problem is one of enforcement if this was ignored as this would be a matter for leaseholder renting not the management company unless smoking was banned under the terms of the lease.
The wider issue of fire risk is something you will need to consider when reviewing your fire risk assessment having taken into account all of the issues including the terms of lease which is the starting point for what someone can do within their home.
Fire risk responsibilities for the management company only covers the common parts and not the flats themselves which can often cause a tension when the activities within a flat are endangering others in the building.
Should you require a further legal review of your lease and options for varying the lease please let us know.
My initial recommendation is to seek informal advice from both the Environmental Health Officer and Fire Safety Adviser for your local fire service. This advice will help inform your next steps in the best interests of all your residents.

Costly Roof

Q **Our block is an 1895 house, most recently converted into 10 flats around 20 years ago. We have recently organised quotations for some serious work on the exterior of the property.**
The leaseholders (all of whom are directors of the company) agreed some time ago that the maximum we could jointly afford would be around £65,000; ie £6,500 for each leaseholder. However, we have just been advised that we really need to replace, rather than repair, the roof, at a cost of around £90,000.
We do not have a sinking fund, and I am certain than at least half the leaseholders will not be able to afford this. On the other hand, we are aware of the legal obligations

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Advertisements

HELP FOR NEW LEASEHOLDERS

FPRA is taking an active role in helping the Government create a helpsheet for buyers of leasehold property.

Aspiring homeowners looking to buy leasehold properties will have all the information they need at their fingertips under plans announced recently under the last Coalition Government by the former Communities Secretary Eric Pickles.

Mr Pickles published the Government's response to the Competition and Markets Authority's report into the way leasehold properties are managed.

He said he wanted to ensure anyone looking to buy a leasehold home, and those who have already done so, are clear about their rights and what to expect from agents who manage their property.

Measures have already been taken to cap the leasehold charges councils can charge. These plans will give those buying properties managed by private companies, confidence they are getting a fair service.

Mr Pickles said: "We're determined that anyone who works hard and wants to buy their own home has the opportunity to do so. For many first-time buyers that means buying a leasehold home, and I want to be sure anyone taking that first step on the property ladder can do so confidently and know the full extent of the financial commitment – and what they can expect for their money. The report by the Competition and Markets Authority highlighted ways in which we can do this, and our plans will shine a light on the whole market, so people know their rights and the service they should receive, and where to go if they get a raw deal".

The Government wanted to support owners of leasehold homes, and helping aspiring homeowners is a key part of the Government's long-term economic plan. The number of first-time buyers is at a seven year high and since 2010 nearly 204,000 households have bought or reserved a new home through Government-backed schemes. This figure is set to rise with the introduction of a new Help to Buy ISA, helping people to save for a deposit to get on the property ladder.

Managing agents are now required to belong to one of three redress schemes so leaseholders have somewhere to go if they have a complaint – and could receive compensation.

The Government is working with the Leasehold Advisory Service, National Association of Estate Agents and the Law Society to develop a new information leaflet to ensure that prospective purchasers are able to make informed decisions. FPRA is also involved in this, represented by Chairman Bob Smytherman, along with other stakeholders.

As part of this work, the existing standard set of questions, which can be used by solicitors in the conveyancing process for a leasehold property will be examined again by the Law Society in light of the Competition and Markets Authority's study.

And by April 2016, industry Codes of Practice will be revised to set out more clearly the best practice property managers should adopt when managing a leasehold property.

When the information leaflet is agreed, we will inform our members.

Advertisements

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of the company to maintain the property.
We recently approached our bank re a loan of around £6,500 to cover one leaseholder's share of what we thought was going to be the cost of the work, but the bank refused our application, on the grounds that the company does not have any income, other than the leaseholders' monthly maintenance payments. So a loan seems out of the question.
Please do you have any suggestions for any avenues we can explore in this predicament?

A FPRA replies:

We understand the issue to be that the company has carried an informal consultation in relation to the service charge costs of replacing the roof and the initial budget was £65,000. It appears that the actual budget will be £90,000.00.

In the event that one or more of the shareholders cannot afford the capital cost of carrying out the repairs then the only other available option will be for the individual flat owners to consider re-mortgaging and/or drawing down some further equity on their leases so as to be able to contribute towards the capital cost of repairs that are required.

Clearly, it is for the company to set a budget for the repairs and to consult in accordance with the appropriate provisions within the service charge legislation.

As you say in your letter, the company has an obligation to maintain the property in accordance with the terms of the leases.

If individual leaseholders are unwilling/unable to contribute towards the required capital costs then provided that the company consults under the service charge legislation our suggestion would be that it makes an initial demand for the payment that is required. In an extreme circumstance (such as repeated non-payment) it may become necessary to sue the flat owner or owners involved for the required funds. Provided that the Tribunal would determine that the amount required was 'reasonable' then such an application would be enforceable. It would be possible to obtain a charging order or similar against the non paying flat owners properties.

As an alternative, could the work perhaps be split into phases to assist in cash flow?

The only other option would appear to be some kind of loan to the company from one or more of the directors and/or members (we are not certain that any individual would want to do this without adequate security being in place).

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.

FPRA NEEDS YOU!

Among our members we have many people with a great deal of experience of their own residents' associations and we are in desperate need for volunteers to come forward to help other members and new members. To you it may be basic and non-technical help, but to them it may be a lifeline to have contact with other people who are having similar experiences or have dealt with similar problems in the past.

Helping each other is the core of what FPRA does.

Through a combination of circumstances, we have lost a number of our regular helpers over the last year and we really need members to come forward and help others. This is mainly by email and you need devote no more than one or two hours a month. Not too demanding!

In the same way, in your personal or professional life you may have expertise or experience of a range of issues. Perhaps you are familiar with websites, service charges, noise, parking or a range of other issues. Again, this is mainly by email and can be for one or two hours a month.

If you are able to help, please contact our chairman, Bob Smytherman for an initial chat on **bob@fpra.org.uk** or by phone via **0871 200 3324**.

Contact details:
The Federation of Private Residents' Associations Limited,
Box 10271, Epping CM16 9DB
Tel: 0871 200 3324 Email: info@fpra.org.uk
Website: www.fpra.org.uk
If telephoning the office please do so weekday mornings.