ISSUE No.117
Summer 2016

NEWS

FPRA
FEDERATION OF PRIVATE RESIDENTS' ASSOCIATIONS

MPs AND PEERS JOIN FORCES OVER LEASEHOLD

A new All-Party Parliamentary Group on residential leasehold and commonhold has been set up, with help from the FPRA.

The group is due to hold its first meeting at Parliament in the next month. So far 30 MPs and Lords have signed up to join, including two former Housing Ministers: Mark Prisk and Lord Young, and former shadow Housing Minister Emma Reynolds. It is proposed that the group will be co-chaired by Sir Peter Bottomley (Conservative, Worthing West) and Jim Fitzpatrick (Labour, Poplar and Limehouse).

Leasehold Knowledge Partnership (LKP) has been asked to act as secretariat. FPRA committee member Martin Boyd, a trustee of the LKP charity, and FPRA Chairman Bob Smytherman, who had been a board member of LKP before it became a charity, have been fully involved.

An initial meeting was held between London Labour MPs Jim Fitzpatrick, Barry Gardiner (Brent North) and Ruth Cadbury (Brentford and Isleworth).

Now the following MPs have joined them: Emma Reynolds (Lab, Wolverhampton North East): Andy Slaughter (Lab, Hammersmith); Bob Blackman (Con, Harrow East); Catherine McKinnell (Lab, Newcastle North); Graham Brady (Con, Altrincham and Sale West); Julie Elliott (Lab, Sunderland Central); Mark Prisk (Con, Hertford and Stortford); Paul Flynn (Lab, Newport West); Rebecca Long-Bailey (Lab, Salford and Eccles); Rosie Cooper (Lab, West Lancashire); Sir David Amess (Con, Southend West); Will Quince (Con, Colchester); Matthew Pennycock (Lab, Greenwich and Woolwich); Angela Smith (Lab, Penistone and Stocksbridge); John Cryer(Lab, Leyton and Wanstead); Ali Rushanara (Lab, Bethnal Green and Bow); and Andrew Smith (Lab, Oxford East).

The following Peers have also signed up: Lord O'Neill of Clackmannan (Labour); Lord Truscott (Independent); Lord Young of Cookham (Conservative); Baroness Gardner of Parkes (Conservative); Baroness McIntosh of Pickering (Conservative); Lord Campbell-Savours (Labour); Lord Kennedy of Southwark (Labour); Baroness Hamwee (Liberal Democrat); and Baroness Golding (Labour).

If you believe your MP should be a member, please do write to them and urge that they join. They simply need to drop a note to Jim Fitzpatrick MP.

It is vitally important that all MPs who have had some informed dealings with leasehold take part.

Two amendments to the Housing and Planning Bill, which have been accepted by the Government, are the first changes to leasehold law since 2002. These were amendments supported by the FPRA and others.

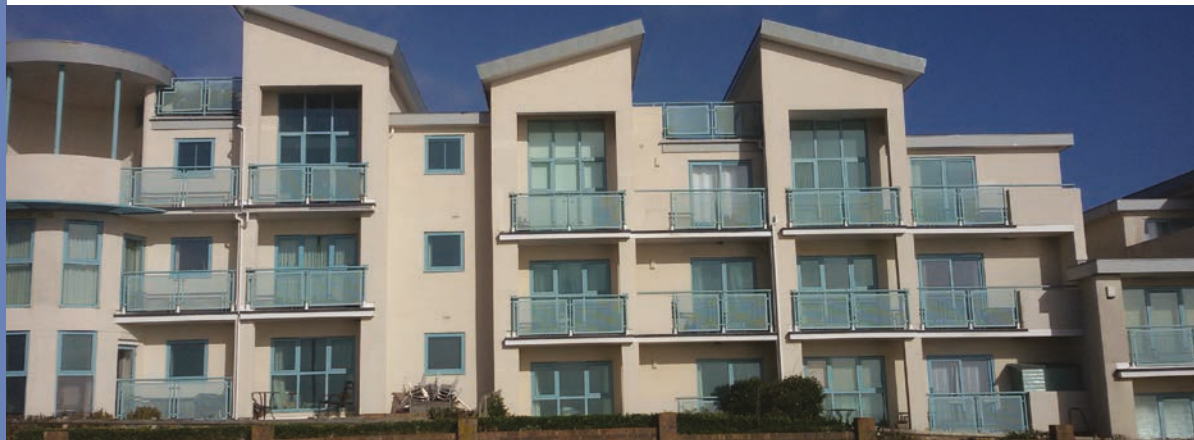
Proposed by Lord Young of Cookham – better known as the former Conservative MP Sir George Young – the first of his two amendments aimed to "level the playing field—which is currently tilted in favour of freeholders—for leaseholders".

The amendment would give leaseholders the right to obtain from their landlord contact information for other leaseholders in a shared block, for the purposes of obtaining statutory recognition of a tenants' association.

This is vital when leaseholders are dealing with an aggressive landlord, who will not provide accounts and who will summon up legal muscle to stifle a right to manage initiative.

Continued on back page

INSIDE THIS ISSUE



TO SELF-MANAGE OR NOT TO SELF-MANAGE? THAT IS THE QUESTION

The personal experiences of two FPRA committee members, Shaun O'Sullivan and Bob Slee

For those who have exercised, or intend to exercise, their Right to Manage (RTM) this will be a burning question – as, also, it so often is for those disenchanted with the service provided by their managing agent.

There is, of course, no right or easy answer to the question. Enthusiasm alone does not necessarily spell success and attempts at self-management by well-meaning and ill-prepared amateurs can so easily result in disillusionment, disinterest and, potentially, disaster with the inevitable result that a professional managing agent is left to pick up the pieces. However, for some with a dedicated, willing, competent, broad-shouldered (!) and self-motivated group of lessees with the right skill set, self-management can be the perfect solution, giving them greater and more responsive control of their block at a much lower cost.

Shaun O'Sullivan

I have been a director of what is now known as a Residents Management Company (RMC) for 30 years. The estate I help run comprises 24 flats in two blocks and was built in the mid 1960s. Each flat has a garage, there are relatively extensive gardens and no lifts. Our management company was established on day one and was also, at that time, the intermediate lessor with the freeholder being the original (local) builder. Since that time, most lessees have extended their leases and the company acquired the freehold interest 10 years ago. We have always self-managed and although legislation, over the years, has placed greater demands on RMCs, it remains, for us, the preferred option.

Although, with the passage of time, as we have moved from scraps of paper to spreadsheets, from cheques to on-line banking and from photocopying to zipped folders, the basic requirements to plan ahead (and, in this regard a good quality crystal ball is an essential item in the self-manager's tool kit), keep effective and auditable records, maintain a database of good and trusted contractors, communicate well with lessees and sub-tenants and to keep abreast of leasehold and company law, remains at the heart of good self-management.

Arguably the main driver for successful block management is familiarity with the lease. This defines the obligations placed on the company, as lessor, for maintaining the estate and the responsibilities of lessees to meet the cost of so doing. Equally it outlines the relationship between lessee and lessor and what each party can expect from the other as well as detailing a range of 'regulations'. In my experience the lease should be the first port of call in determining when and what should be done, and by whom, and can be critical in resolving any dispute between the parties.

The service charge is, of course, as Kate Boyes pointed out in her article in the Autumn 2015 edition of this newsletter, the lifeblood of block management. And the charge is driven solely by that which needs to be done to maintain the block in accordance with the requirements of the lease and within the parameters of leasehold law and other pieces of legislation, enacted over the years, which has affected the leasehold sector.

There are, as Kate explained, a number of on-line block management tools available to assist, albeit these can add to the cost of self-management. What we do is to maintain a simple spreadsheet which schedules all the main and regular but infrequent maintenance requirements, such as decorating the communal hallways and exterior of the property, as well as identifying the more regular and frequent items of expenditure, such as insurance, gardening, cleaning, water, electricity, accountant's fees, felt inspection, and electrical inspection condition report. This, together with a few 'diary alerts', helps us to both plan for the major items of expenditure as well as assisting in preparing our budget and service charge.

Every six months our board of three directors agrees, and records, the charge and defines, in broad terms, what it comprises. This is then issued to each lessee in accordance with the requirements of the lease and a published schedule, together with the Statutory Notice (Summary of Rights & Obligations).

Of course, while major items of expenditure (such as external redecoration) have to be included within the charge, they are subject to 'Section 20' procedures. Inevitably the process of stating our intention, gathering estimates, inviting and 'having regard' to any comments and then placing contracts takes time and we generally allow six to nine months for this process.

Inevitably, and particularly so with an older block, things wear out and have to be replaced – and this is where the crystal ball really comes into its own. We find this a particularly important item in our toolbox as our lease offers no facility for a sinking fund so, to avoid unexpected and unwelcome expenditure we regularly find ourselves gazing deeply into its depths. Of course it doesn't, alone, provide all the answers, and any self-manager worth his salt needs

to have some rudimentary knowledge of property and its maintenance. One can't just assume that the felting on the garages is going to last forever. We employ a professional and trusted roofer to inspect all our felt roofs biennially, we maintain records of when they have been re-felted and keep associated guarantees. We look for tell-tell signs of wear and deterioration to the property. Is a sagging gutter a sign of fascias rotting? Is peeling paint suggestive of wet rot? Are the fence posts rotting? Does the communal flooring need replacing? Do the entrance doors need replacing? Is it time to prune the trees? All of these things have to be 'programmed in' to the spreadsheet and in such a way as to minimise undue and unnecessary hikes in the six-monthly service charge. Not exactly rocket science, but simply a bit of sensible forward planning – something which is absolutely essential if the block is going to run smoothly.

We have employed a family firm of cleaners and gardeners for many years with whom we have a good and close relationship. We maintain a database of trusted contractors, built up over decades, upon whom we can call at a moment's notice when required. The nurturing of such relationships is, in my view, absolutely essential in ensuring the estate runs smoothly, efficiently and with the minimum of fuss.

In terms of Health & Safety, we had an asbestos survey carried out by a specialist contractor many years ago and maintain this ourselves – largely by having asbestos removed on the back of routine maintenance; soffits have been replaced when rotten guttering boards were replaced and Marley-tiled entrance halls have given way to commercial grade vinyl. We carried out, and now maintain, our fire assessment in accordance with the Regulatory Reform (Fire Safety) Order and have identified, and put into place mitigating actions, in terms of safety on the estate. And we now ensure that an Electrical Inspection Condition Report (EICR) is carried out on the communal electricity system every five years.

On block insurance we insure through one of the reputable specialist flat brokers and ensure that our cover is adequate by subscribing to the RICS (Royal Institution of Chartered Surveyors) online Building Cost Information Service and by employing a professional surveyor every few years to carry out an onsite revaluation survey. And, of course, we carry Directors' and Officers' insurance cover.

Any alterations to the flats are, in accordance with the lease, subject to approval, and this process is made known to all lessees and rigorously applied. Because repair /replacement of windows frames is the responsibility of the lessee and because, over the years, many have wanted to install double glazed units, we have published details of the sort of frames we require. This has ensured that the aesthetic appearance of the block has been maintained with new windows reflecting, so far as is possible, the profile of the original Crittall windows. We also ensure that approvals are sought in respect of any breaches of the cavity walls when, for example, flues are fitted, and we require that drainage pipes for modern condensing boilers are retained inside the property so as to avoid unsightly pipes adorning the exterior of the building. Luckily our flats do not lend themselves to significant internal 'remodeling' so we rarely have to consider any structural alterations.

Our company is limited by shares and our Company Secretary maintains the Share Register and issues new Share Certificates when leases are reassigned. Equally he makes the annual return to Companies House which, over the years with the move to online submission of returns, has become both easier and cheaper. And our Treasurer maintains a Cash Book and ensures that invoices & receipts are submitted to our appointed accountant annually for preparation of accounts.

We have always prepared responses to pre-contract enquiries on behalf of the landlord. In years gone by, every solicitor seemed to seek answers to a different range of questions; to bring some level of consistency into the process and to avoid, so far as is possible, the need to respond to supplementary enquires, we developed a comprehensive range of questions which we have honed over the years. It took until 2013 for the Law Society to produce the first edition of the Leasehold Property Enquiry (LPE) forms – followed by revised editions in 2015; although this has introduced a much more consistent methodology to the whole process, the use of the new forms is not mandatory and we have continued to offer our own 'pack' which is tailored to our estate and which includes more expansive information than that contained in even the new LPE forms.

Embracing all residents in the block, whether lessees or sub-tenants, is, we find, critical in ensuring a mutually agreeable environment in which to live. It is evident from discussions and exchanges I have had with some FPRA members that sub-tenants are viewed in some developments as 'unwelcome guests'; this is unfortunate and, in my view, will simply create and perpetuate a sense of division within any flat-living community. For us, with 60 per cent of our flats rented to sub-tenants, we positively embrace

Continued on page four

To self-manage continued from page three

everyone as part of the community – so much so that three families over the last 10 years have moved within the block simply because they wanted to stay. We obviously can't include sub-tenants in the decision-making process of the company and they can't attend AGMs, but we send them a 'Welcome Note' on arrival introducing ourselves and inviting them to raise any concerns about the running of the block with us. And we keep lessees and sub-tenants alike fully abreast of maintenance being undertaken on the estate.

Yes, there is a bit of hard work and yes, there can be moments of hardship and hassle – and occasionally a feeling of exasperation! But, all in all, I see self-management as a positive experience with certainly more advantages than drawbacks. And it's cheaper!

Bob Slee

Although much of what Shaun records, in terms of day-to-day management, equally applies to the block which I help manage, there are some subtle, and some fundamental, differences. For us, the move to self-management arose largely from dissatisfaction with our 'award winning' managing agent. Our block was also built in the mid-60s and is recognised as one of the premier older blocks in the area, not least because all but one of the 24 flats are very large three-bedroomed apartments, all with garages and surrounded by extensive and attractive grounds. The freehold interest was bought by a company formed by all the lessees in the 1980s in the face of potential further development by the original freeholder/developer. This was before 'collective enfranchisement' became a by-word in the leasehold sector. For many years the management of the block was outsourced to a succession of managing agents but 10 years ago, in the face of increasing dissatisfaction with the way the block was managed and with the election of some new, proactive and skilled board members, we decided to take on management of the block ourselves. The way the block is managed, and improvements we have been able to make, has allowed the block to be transformed for the better.

We have not embraced any specific online management tools but have developed our own spreadsheet-based system, which includes a simple invoicing facility, together with our own website. We have progressively worked towards making the block as low maintenance as possible by replacing wooden communal doors with aluminium, as they had reached the end of their natural life, and windows with uPVC. Equally, wooden fascias and asbestos soffits have been replaced with uPVC. The fact that our lease provides for a sinking fund allows us to plan for major maintenance works while keeping the service charge at a more or less consistent level.

We employ a family firm for cleaning the communal areas and a janitor who lives locally and pops in virtually every day to ensure the gardens are kept in pristine condition and that lights bulbs and smoke alarms are in working order. We have also developed a staple of reliable and good value local tradesmen.

Management is also undertaken in a very efficient manner. All lessees and tenants have signed up to paperless business and we communicate regularly using email. In 2009 we amended our Articles of Association which, among other things, made General Meetings optional. So effective have been our electronic communications that it has been many years since anyone felt the need to request a General Meeting. Similarly, most company business is conducted by email and formal meetings of directors are rarely needed. We try to ensure the board of directors is as representative as possible by keeping filled all seven director appointments permitted by our Articles of Association. This also allows us to share responsibility for the running of the block more equitably, although some directors naturally have more time than others and different skill sets.

About a third of our flats are currently let on Assured Short-hold Tenancies. Although we absolutely embrace sub-tenants as part of our community, we equally ensure that no tenancy is embarked upon without a Deed of Covenant being agreed between lessee and sub-tenant. This is a requirement of our lease and is enforced to ensure that sub-tenants are subject to the terms of the lease and the regulations borne out of it just as if they were an owner-occupier.

As sometimes reported in this newsletter, the impact of the Disability Discrimination Act (DDA), so far as blocks of flats is concerned, has not been fully tested by case law so we do our best to ensure we at least comply with the spirit of the Act. It happens that we have one physically disabled neighbour who is a permanent wheelchair user and we are conscious of the need not to undertake work which would adversely impact on his difficulties. We have not made any specific alterations to the common parts of the property specifically, but we do attempt to ensure that whenever work to the block is undertaken, his needs are assimilated into the brief but without compromising the needs of other lessees. So when we had to replace our crumbling paths to our four main entrances, we specified gradual slopes, rather than the former 'long steps'. Similarly, when we were replacing the large wooden double doors to our main entrances, we specified wide single doors, with a handle at a level able to be used by able-bodied and wheelchair users alike. Every ground floor flat is now able to be accessed by wheelchair users but without specific alterations being in evidence or the needs of able-bodied residents being compromised.

When flats are being sold we don't deal directly with pre-contract enquiries leaving that to our solicitor, who also deals with the deed of covenant on assignment of the lease and the transfer of the share in the freehold company. However, most of what is required – including essential documents such as Articles, Memorandum, Lease, Estate Regulations, Accounts, Insurance Documents, Health & Safety pack and Forward Works Programme – is readily available and kept up to date on our website. Feel free to take a look: www.ormsby-freehold.co.uk

Obviously, self-management is not for all, but it has given us a greater feeling of control of our own destiny and a much greater pride in the place where we live. Whenever there is a hint of reverting to external management there is a collective shudder through our community.

How do you know what you don't know!

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

Donald Rumsfeld really hit the nail on the head when he said "There are known knowns. These are things we know that we know. There are known unknowns. That is to say, there are things that we know we don't know. But there are also unknown unknowns. There are things we don't know we don't know."

At the time of the quote, a lot of people criticised him for the obfuscation. However, as time has gone by, it is often quoted and adequately sums up a lot of situations. The challenge, of course, is how you can ever let everyone know all they need to know.

This is extremely apposite with leasehold property and the leaseholders. Generally, any house or flat purchase will be the biggest purchase anyone can make. Also it is an infrequent occurrence. Therefore, knowing the right questions and the process can be challenging. Of course, when you buy a property that is leasehold there are two elements: firstly the purchase process, and then secondly the ongoing rights and responsibilities.

It should be the most exciting time when finding and buying your property, whether it is for your home or for an investment. Therefore, for most people focusing on all the legal aspects may not be high on the priority list. Everyone is different, and if you think about the amount of terms and conditions (end user licence agreement – EULA) you routinely accept on the internet to access a service or system without reading, well some of them contain some bizarre conditions. For example PC Pitstop had a EULA with a special condition offering $1,000 for free. It took four months before someone noticed and claimed the money!

So when the lawyers send the report on title for the purchase, who reads it cover to cover? Who knows what a report on title is? Over the years it varies how involved a leaseholder becomes with their building and it varies on what is needed to be known and when that need arises.

It is incredibly difficult to ensure everyone has the information when they need it, and what is pertinent rather than just a mass that some will see as a tomb of words. It is something that is vexing the Leasehold Advisory Service to see if we can get more proactive in advice delivery and have it available more readily and more accessible for all leaseholders. Then the question arises of how you make the leaseholders aware it is there. Finally, to pick up Donald Rumsfeld's point: How do they know they need to know something and how do they know where they can access it?

We see this as a matter of education and awareness, and the more that can be done in that arena the better. After all, a well-educated leasehold sector is good for all parties. We will keep working on innovation and improvement of our systems and delivery to try to make sure we can get the best advice out as efficiently and effectively as possible to suit all leaseholders as well as the general leasehold market.

DATE FOR YOUR DIARY

The 45th FPRA AGM and evening event will take place on Wednesday November 16. Please put the date in your diary. More information will be provided in our next edition of the newsletter.

ASK THE FPRA

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

Shoddy Work

Q **I moved into my new build apartment nine months ago. It is situated in a block of 42 apartments, 18 being sold to owner occupiers and buy-to-let landlords and approximately 20 being rented out by the management due to them not selling.**

As leaseholders all of us are now experiencing the fallout from shoddy builders, such as gas boilers being incorrectly fitted; badly fitted kitchens; problems with windows not being repaired along with other problems not being sorted out. The list is endless.

My own kitchen has doors falling off. The management tried to rectify the problem to no avail even swapping one door for one in an empty apartment. Being dissatisfied I have managed to get £500 compensation from them and have employed a qualified kitchen fitter to rectify the problem. Every time a leaseholder has a problem the management fob us off.

All the leaseholders feel it is like banging heads against a brick wall trying to get problems sorted. The management have not appointed contractors to clean the communal areas and the only garden maintenance being carried out is spasmodic grass cutting – no weeding or attention to trees and shrubs. The management have been warned by us that trees need urgent maintenance as dead branches pose a problem, but nothing has been done. One of the rental tenants does some maintenance and occasional vacuuming of the communal hallways. The bannisters and paint work are never cleaned.

Can you advise us on where to go next? We do not want to go down the route of RTM.

A FPRA Chairman Bob Smytherman replies:

This is becoming an increasingly common issue where new build developments are completed leaving behind unresolved 'snagging issues' as developers walk away leaving residents/tenants groups to pick up the pieces.

It is difficult to respond in detail without seeing your lease and how future maintenance responsibilities are to be discharged. This is something our lawyers can look into.

Most new build developments are covered by Building Control or NHBC insurance for 10 years so this should be your first route to get redress. Especially gas boilers, kitchens and windows will covered by this.

If the management company is failing to meet their client's (landlord's) duties under the lease with regards cleaning and gardening, then this should be dealt with ultimately by legal action. Ideally as a 'recognised' tenants group – hopefully you are formally recognised by the landlord – all of these issues should be able to be resolved with communication and compromise. Ultimately if this proves impossible then RTM could well be an option.

If your management company is a member of ARMA-Q, then there is an avenue for redress by them, or alternatively FTT (Tribunal).

I hope this helps but we do have a number of legal specialists available to review your lease and assist members with more detailed and further impartial advice.

Can we Pay Ourselves?

Q **Our owner-managed building in central London consists of 16 flats and is very actively managed by five (otherwise busy) directors, all of whom live in the building. We reckon that by being so hands-on, our service charge is half of what it would be if we employed a managing agent. However – as the FPRA knows only too well – it's hard work. Though some other residents help with other duties (like sorting out the post and arranging window-cleans), not many people seem to want to get involved, and the directors feel under-appreciated and under-valued.**

Because of the huge amount of work we undertake, our (new) Chair has suggested the directors should consider paying themselves an honorarium.

Clause 82 of our Articles of Association states: 'The directors shall be entitled to such remuneration as the company may by ordinary resolution determine and, unless the resolution provides otherwise, the remuneration shall be deemed to accrue from day-to-day.'

We would like to know how common it is for directors of self-managed buildings to pay themselves? What level of remuneration would be considered fair? And is it an appropriate thing to do?

We're not, of course, talking about huge sums of money. However, some directors feel that a modest honorarium would be one way of acknowledging the work they put in every month. I'm afraid these days people rarely say thank you! We assume that any sum paid would be taxable. Any advice you could offer would be greatly appreciated.

A FPRA Director Shula Rich replies:

Some Directors do need to be paid – it's not unusual. You have put the request very reasonably and it should be put to the members in this way.

BUT (there always is a 'but', isn't there?) I am concerned that once you pay yourselves your position vis-a-vis the lessees will be different. You're not volunteers any more. People can make demands and have legitimate expectations. You may also need professional insurance.

Have you considered employing a surveyor, and accountant, a secretary for the work that you can be relieved of? A secretary in particular could do all your routine work and you could pay him or her. I myself am chair of a block of 100 but I make sure things are done right. I don't do them myself. I took the position on condition that we had a secretary four hours a week, and she receives £11.00 an hour.

Perhaps that's an idea too?

Insurance Hike

Q **About 14 months ago there was a change of freeholder and since then there has been a dramatic increase in the cost of our buildings insurance – about 40 per cent. A relatively small part of this can be accounted for because the new freeholder says we need to include terrorism insurance, but otherwise we have had no satisfactory explanation. To give you a guide, I am being asked to pay £362 pa for a 103 square metre, two-bed flat.**
Could you tell us, please, whether we have the right to be told what commission, or other form of income our freeholder receives for arranging this insurance; and also whether we should be able to see 'evidence of research' by the freeholder or a broker if one was used, so that we can establish whether the deal we are on is a reasonable one? If we do have the right to this kind of information but the freeholder withholds it, what should be our next step? Is there anything else we could usefully do?

A Hon Consultant Belinda Thorpe replies:
As the freeholder has arranged the insurance, then you do have the right to request what commission is being taken. I would suggest to ask specifically what amount and percentage of commission is being taken by the freeholder, rather than just asking what commission is being taken from arranging the policy as this could also include their insurance broker's commission.
If the freeholder does not provide the information requested, then you can take the freeholder to the First Tier Tribunal, however, you would be expected to pay the fee for this hearing.

No Directors

Q **What happens when no one is willing to be a director or to continue being a director?**
Do you know of any other leasehold blocks of flats in a similar situation and what have they done or are doing about it?
It seems to us if no buy-to-rent /investment leaseholder is interested, our management company will eventually have no directors and will be struck off by Companies House. Who will then own the freehold – and carry out the Freeholders obligations under the terms of the leases? Alternatively, the company's Memorandum and Articles of Association would need changing to allow one or more non leaseholder directors. Have other RMCs done this and what sort of person would be suitable as a non-leaseholder director – for a fee of course? Do you have a 'model' Memo and Articles of Association for RMC companies?
Some of the so called 'investment' leaseholders are going to get a shock with the likely increase in maintenance/ service charge! Your advice will be most appreciated.

A FPRA Director Shula Rich replies:
First I'm sorry you had to ask this question as changing times have presented challenges to the block which were never envisaged in the 60s. We are not company lawyers at FPRA, but as chair of my own block for many years I will give you my general suggestions.
(1) you can have alternate directors under present company law which you can appoint if the articles are amended to allow it.
(2) you can change the Articles by resolution – it would need, in my opinion, a 50 per cent majority as it's not a change of objects.
This can be done by written resolution rather than a meeting. The resolution could be to allow non-member directors or as I suggested in (1) alternate directors who can be anyone you choose.
The resolutions to change the articles must be formally composed and voted on. Companies House may have a guidance booklet.
We don't advise on Company Law but from my experience I can tell you that changing the M and As is not unusual and just needs a notification to Companies House with the new copy filed, within two weeks of the change.
In my opinion, option (1) is the simplest and gives the work to someone else whilst for safety keeping an ultimate sanction in the block. If one of your alternates turns out to be less good than expected – you can change them.
When appointing agents please read their contract first. You can negotiate it. Don't go for the cheapest – but look for charges which cover actual work (which are fair) rather than percentages for amounts being spent which do not reflect actual work.
Hope this is helpful – you will find Company Law Club very good on proxies and alternate director duties. At some time more people may take an interest so I do hope you are able to make the changes and preserve the power within the block for the future if needed.

Recognition

Q **We've set up our association and have asked the freeholder and head leaseholder for recognition. They have come back asking for:**
1. A copy of our constitution,
2. A list of members, including flat numbers and confirmation of signature on authority,
3. Confirmation from the Secretary that all members have paid their fees,
4. Details of the agreed membership fee.
Would you be able to suggest to us how we should respond to these quotations? They have advised us that we have four weeks to comply.

A FPRA Hon Consultant Mark Chick replies:
As you will know there is a right under section 29(1) of the Landlord and Tenant Act (LTA1985) that in relation to a residential building a Tenants' Association is statutorily recognised by one of the two following methods;
1. by written notice to the secretary of the association from the Landlord, or
2. by a certificate from the First Tier Tribunal (FTT) in respect

Continued on page eight

Ask the FPRA continued from page seven

of dwellings in England.
There are a number of advantages to tenants in gaining official recognition, not the least of which is the right to be consulted about the appointment of an agent.
Further, the Act provides that 'a number of tenants are qualifying tenants if each of them may be required under the terms of his lease to contribute to the same costs by the payment of a service charge.'
In general terms it is established that to be recognised such an association needs to represent at least 60 per cent of the flats in any given building which are liable to pay a variable service charge. A Tribunal will be concerned to see that the Association is properly constituted, has a fair set of rules is independent of the landlord and has paid up membership that as a minimum meets the 60 per cent threshold.
In the above context the questions posed by the member's landlord do not appear unreasonable. Certainly, gaining approval from the landlord will be cheaper, quicker and more straightforward than applying to the Tribunal.

Legionella

Q **Re the above, we have been advised that landlords in the private rented sector are now required to carry out a risk assessment. Do you provide guidelines regarding this and/or a risk assessment form/checklist? Do you also have any advice leaflets that could be given out to tenants?**

A FPRA Committee member Shaun O'Sullivan replies:
Although you are right that landlords in the private sector are required to carry out a risk assessment for Legionella, this does not impact on Residents' Management Companies such as yourselves any more than does the legislation requiring gas inspections/fitting of smoke alarms in private rented accommodation. The responsibility rests purely with the landlord and I don't doubt that agents who might be employed by those in your block who rent flats will be familiar with the requirement. Details of the requirement can be found at www.hse.gov.uk/legionnaires/legionella-landlords-responsibilities.

Liability

Q **We are a limited company managing our own block. We are looking to renew our director's liability insurance and have a few queries regarding the quotes we have received:**
Firstly, is management liability the same as director's liability?
Secondly, is it better to have a specific policy for residents' associations, or would a commercial policy offer an appropriate level of cover?
Finally, we don't directly employ anyone – our cleaner, gardener and other contractors are on contracts and self-employed – so do we need any cover related to employment?

A FPRA Hon Consultant Belinda Thorpe replies:
A number of Insurers are offering a policy titled management liability rather than directors and officers liability, however they are fundamentally the same. The purpose of a Directors & Officers policy is to provide defence costs and/or compensations for civil liability arising from the wrongful act of a director or officer in the running of the company.
It is an all too commonly held misconception that your role within a company or sitting on a committee as a volunteer is protected. Unfortunately, this is simply not the case. Your decisions and those of your fellow board or committee members could end up costing you personally.
A wrongful act is defined in the policy as:
Any actual or alleged
- *Breach of trust*
- *Breach of warranty*
- *Neglect*
- *Error*
- *Omission*
- *Misstatement*
- *Misleading statement*

committed by persons insured.
Persons insured can be present directors and officers, former directors and officers, future directors and officers, spouses, heirs or legal representatives in the event of death, bankruptcy or insolvency of a director or officer.
I would recommend a directors and officers' liability insurance policy which is designed specifically for residents' associations or residents' management companies, particularly as the risks associated with being a director of a residents management company aren't huge, therefore the premium for this type of cover would be cheaper than a 'non-specialist' policy.
You will find that the premiums quoted are for a standard policy wording, and if you request the employment cover be removed, it will make little difference to the cost.

Perpetuity

Q **Each resident's lease refers to 'the perpetuity period' as 80 years from 1994. The management company owns the freehold, and the freehold lease refers to 999 years from 1993. My question is (although it will not be of concern to me!) what needs to happen in 2074 to ensure continuity for residents of the day?**

A FPRA Hon Consultant Lubna Islam replies:
Reference in the leases to the 'perpetuity period' does not mean the lessees rights will cease upon expiry of the perpetuity period. The leases would have been granted when the development was completed. It is likely all services – eg drains, ditches, watercourses, gutters, pipes, wires, cables etc – were not fully laid at the time. The leases therefore granted the lessees the right to use all such services that were present at the time or laid within the perpetuity period – 80 years being more than sufficient for the landlord to lay all services. By now, all services would have been laid and therefore nothing will change in 2074. The lessees will continue to enjoy the rights contained in their leases to use the existing services in the development.

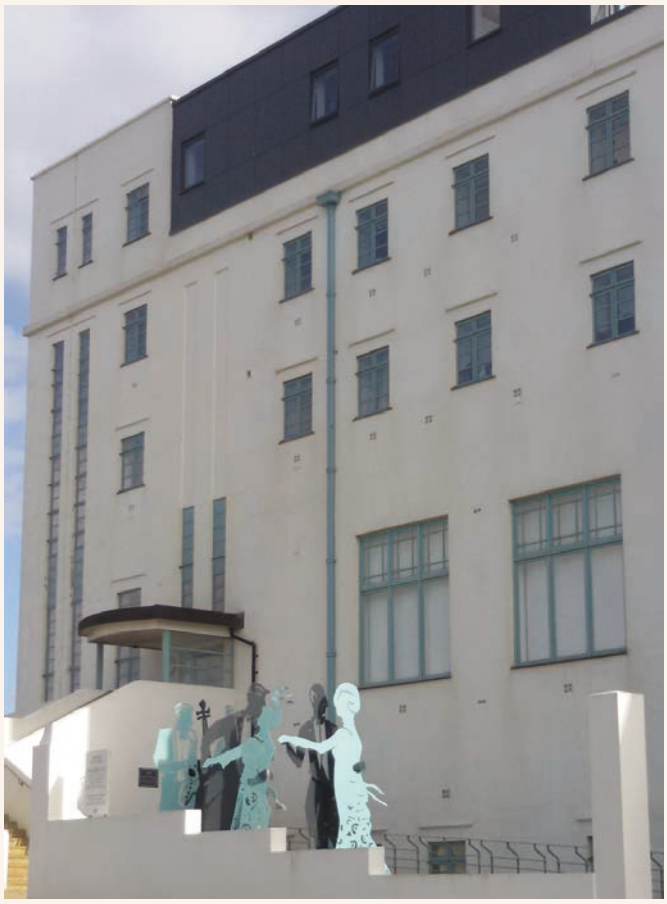
Subsequent Query

Q **Thank your for your response to my question regarding the length of the leases, and I understand that the 80 years is almost irrelevant, but it is causing a problem to mortgage lenders, so my supplementary question is: can we change the lease to be the same as the freehold lease ie 999 years from 1993, and if so how should this be done to make it acceptable to mortgage lenders?**

A Lubna Islam replies:

Yes, it is possible to vary the term of the leases. However, the freeholder must agree to enter into a Deed of Surrender and Re-Grant to amend the term to 999 years from 1993. The parties can agree other modifications to the leases where outdated eg reference to 'perpetuity period' can be deleted as this has now been abolished. It is also common for ground rent to become one peppercorn ie nil where a lease is extended to 999 years. Where lessees have a mortgage, their lender will need to provide a Deed of Substituted Security to carry forward the charge to the new title for the new lease.

In the event the freeholder does not agree to extend the term, the lessees pursue their rights under The Leasehold Reform, Housing and Urban Development Act 1993 to obtain a statutory lease extension for a term of 90 years in addition to the term of years currently remaining at a nil ground rent. In the case of a statutory lease extension, there is no need to obtain the mortgage lender's consent as this is implied by the legislation.



Taxing

Q **We have only recently formed a residents' association and now wish to open a bank account, for an unincorporated organisation, ie club account. One of the questions they have asked is whether we are eligible to receive interest free of tax. I telephoned HMRC this morning but they were unable to help me. They suggested I contact CAB!**

I would very much appreciate it if anyone can help me with this and also advise whether we would need to complete an annual tax return. Our annual income would not exceed £210, with expenditure of approximately £100 - £120 pa.

A FPRA Hon Consultant Gordon Whelan replies:

As an association you should receive interest earned gross from your bank. Indeed from 6 April 2016 most banks will only pay interest gross so it might be a good idea to check with the bank if this question is still relevant.

With regards to your tax circumstances, HMRC treat an unincorporated association as dormant for Corporation Tax purposes if it is active or trading but it's due to pay Corporation Tax of less than £100 for an accounting period. This appears to be the case given the income and expenditure profile you have described. However, if circumstances change and it appears that you will owe more than £100 then you should write to HMRC to let them know of the change in circumstances.

Fire Risk

Q **Just wondering if you hold examples of fire safety policies appropriate for a block of 30 flats?**

A FPRA Chairman Bob Smytherman replies:

The legislation that we as RMC Directors must comply with, is the Regulatory Reform Fire Safety Order 2005. In practice this involves having an up to date risk assessment for the 'common parts' of your block.

As every block is different we don't hold examples of members risk assessments, what we do have on our members' website is comprehensive guidance prepared a few years ago by stakeholders including the FPRA with an interest in fire safety in blocks of flats.

The guide is comprehensive and runs to more 190 pages but covers all the elements you need to consider when producing your own risk assessment, in addition, your local fire service who have responsibility for compliance with the Act are usually very happy to assist you carry out your responsibilities.

Smoke Drift

Q **We have one flat occupied by an elderly lady tenant who smokes heavily. The smoke escapes occasionally onto the landing outside her flat entrance door and causes perceived annoyance to some other residents.**

When this issue was raised with the owner of the flat on a previous occasion she cooperated by fitting new seals around the entrance door but these have not proved totally effective, maybe due to the airflow dynamics through the four storey stairwell involved.

Continued on page twelve

Legal Jottings

Compiled by Philippa Turner

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

Covenants

In *Stevens & Stevens v Ismael (2016 UKUT 43)*, the premises consisted of a four-storey house converted into four flats. The applicant, owning 99-year leases of the garden and ground-floor flats, wished to amalgamate the two and obtained planning permission to do so. The demise of the garden flat contained a covenant not to permit any new opening into the flat and that of the ground floor flat to use only as a self-contained residential flat. It was clear that these covenants required modification should the work be carried out. The lessee of the first-floor flat objected to the jurisdiction of the FTT on the ground that S.84 of the Law of Property Act 1925 (which allows the discharge or modification of restrictive covenants) was ineffective since it was subject to a proviso that it should only operate if more than 25 years had elapsed since the grant of the lease and there had been a surrender of the original lease and a re-grant as a result of a Deed of Variation dated only 17 years previously. The FTT referred the issue to the UT as a preliminary point. The UT found that, on the facts, there had been no surrender since the purpose of the Deed in question was solely to grant a licence to park a vehicle on the ground in front of the premises; the fact that the attached plan showed the garden flat to incorporate extensions which had been added after the grant of the lease was insufficient from which to infer a grant of a new lease. In addition, the objector sought to argue that the user covenant affecting the ground floor flat was, in truth, a positive and not a restrictive covenant and thus fell outside the scope of S.84; the UT rejected this submission and remitted the case for hearing by the FTT.

The covenant in issue in *Raja v Aviram (2016 UKUT 102)* was not to make any alteration to the structure of the building without the landlord's consent. The lessee of the first-floor flat in a two-storey building containing one other flat on the ground floor had a new boiler installed after the previous boiler failed. This necessitated the creation of a small opening in the outside wall to accommodate a new flue. On the application to the FTT by the freeholder for breach of this and other covenants, the FTT found that no breach had occurred in respect of the new opening; its (apparent) reasons were: (i) the new hole was not obvious and the lessee was not aware that it had been made and anyway, his plumber had told him that the existing hole would be utilised and (ii) he could not find the landlord's address and so it was impossible to seek consent. On appeal, the UT held that the FTT was incorrect: in the wording of its decision there was a clear implication that a new hole had been made and it followed a breach of covenant had occurred; furthermore, no real effort had been made to trace the landlord's name and address, eg by a Land Registry search. However, the UT indicated the matter was so petty that, before taking the case any further for the purpose of deciding what, if any, remedy was available, the parties should seek a compromise agreement.

As a general rule, covenants in leases are not only enforceable against current lessees and landlords but also their predecessors after assignment. However, this rule has been modified by the Landlord & Tenant (Covenants) Act 1995 which mitigates the potential harshness of its outcome in certain cases. Under Section 23(1) "where as a result of an assignment a person becomes, by virtue of this Act, bound by or entitled to the benefit of a covenant he shall not, by virtue of this Act, have any liability or rights under the covenant in relation to any time falling before the assignment". In *Southwark LBC v Clarke (2015 UKUT 597)* the local authority landlord made an estimated future service charge demand in October 2006 of Mr Clarke, lessee of one of its flats, which was not paid; in September 2008 the lessee assigned the lease to his daughter, Ms Clarke. The landlord did nothing until 2013 when it sent Ms Clarke a 'final account' for £8,562, later reduced by £3,960. On this demand remaining unsatisfied, the matter was referred to the FTT for a Section 27A determination in respect of the service charge for 2007-8. It was held, in reliance on Section 23(1) that the lessee had no liability; this decision seemed to take no account of the fact that the claim was not in respect of the 2006 estimated demand nor for expenditure incurred before 2008 but for a balancing amount after Ms Clarke's ownership commenced.

NB: A full account of this case can be found on FPRA's consultant, barrister Amanda Gourlay's Blog at www.lawandlease.co.uk

Service charges

A nine-storey block of flats in Chelsea was constructed in the early 1970s with a penthouse on the top floor. A headlease was granted to the appellant, Christopher Moran Holdings, in 1972 which company also acquired by assignment the lease of the penthouse in 1975. By this date, the penthouse had been extended by the construction of two conservatories on the roof terrace on two sides contiguous to and incorporated into the penthouse, there being no walls, doors or windows between them although these structures were not shown on the unamended plan attached to the assigned lease and there was no documentation or other evidence of when, how and who carried out this work. In the usual way, the head lessor covenanted to keep the main structure and external walls of the building in repair, recovering the cost through the service charge. By 2012 it became necessary to carry out extensive repairs to the building at an estimated cost of almost £1.8m, in particular replacing all the windows and external doors and including the complete rebuilding of the conservatories which, by this time, were in a state of disrepair. Some of the lessees of the other flats in the building applied to the FTT for a determination of liability to contribute towards the cost of rebuilding the conservatories since they had allegedly been constructed in breach of the covenant in the headlease not to carry out any structural alterations and of the covenant in the penthouse lease not to make any external addition to the premises. The FTT *(Christopher Moran Properties v Carrara-Cagni 2016 UKUT 152)* found in favour of the lessees and ordered

the contribution should be reduced from £91,334 to £45,000 which would cover the estimated cost of repairing the penthouse doors and windows, had there been no conservatories; it was of the view that it would not have been the intention of the original parties to the leases that the lessees should be required to contribute through the service charge to the cost of repairing/maintaining an 'unlawful' addition to the building. On appeal, the UT disagreed, holding that such a conclusion flew in the face of the natural and obvious meaning of the wording of the leases; the lawfulness or otherwise of the additional structures made no difference to the rights and obligations of the parties which was to contribute *inter alia* to the cost of external walls of which the outside of the conservatories were a part.

In *Hemmise v Tower Hamlets LBC (2016 UKUT 109)* the premises consisted of a block of flats situated on an estate containing other blocks, estate roads, paths, gardens, play areas etc. The LVT held that the service charges for 2000-5 inclusive could not, on interpretation of the leases, include the costs of maintaining the 'estate' as opposed to the 'common parts'. The landlord did not appeal this decision but nevertheless continued to issue demands including 'estate' costs; a further application in respect of the years 2006-14 inclusive was made to the LVT's successor, the FTT, relying on the earlier decision disallowing this expenditure. The FTT disagreed and held that the definition of 'common parts' in the lease was wide enough to encompass 'estate' costs and that the LVT's decision was not binding on a subsequent tribunal. The UT dismissed the appeal holding that the LVT was clearly wrong and the landlord was not estopped from arguing the point; furthermore, it would be unjust to perpetuate an incorrect interpretation for the full term of a long lease. The second issue on the appeal was in respect of the charge for repair/maintenance of TV aerials as to which the UT held the FTT was also wrong: according to the wording of the lease the tenant was required to contribute to the costs only of the building in which its flat was situated and not to the costs of aerials serving the whole estate, however inconvenient this might prove to be for the landlord in allocating the amounts due.

Costs

The landlord in *Sidewalk Properties v Twinn (2016 UKUT 122)* sought payment of £6,615 for its legal costs incurred in granting extended leases to seven lessees under Section 60 of the Leasehold Reform & Urban Development Act 1993 but the FTT determined a liability of only £1,105 taking account of the use of an 'in-house' solicitor whose services would necessarily be far less costly than an equivalent solicitor in private practice. The UT held this approach was not correct and the FTT should have taken private practice fees as its guide in assessing the amount of reasonable costs. The second issue under appeal was whether solicitor's fees for instructing a valuer and thereafter considering his report should be allowed: this was held to be reasonable but the amount and the time spent should be reduced. The third issue was to consider the hourly rate and the UT allowed this at £240, more than the £150 determined by the FTT but less than the landlord's figure of £275, reflecting the lower rates paid locally to solicitors in East Anglia rather than London.

For undisclosed reasons, the RTM company in *Triplerose v Forth Banks Tower (2016 UKUT 77)* withdrew its application to take over management from the landlord shortly before the hearing by the FTT and it was consequently dismissed. The landlord was therefore entitled to seek from the company its reasonable costs as provided by Section 88(4) of the Commonhold & Leasehold Reform Act 2002. The FTT allowed £666 for the managing agents' work and £4,200 counsel's fees but not the solicitor's costs of £3,632, not being satisfied that these had been calculated on an 'indemnity' basis – that is, were not more than the client was required to pay or had in fact been charged. The UT allowed the landlord's appeal, holding that there was no reason to suppose that the amount was not on such a basis, supported as it was by the solicitor's statement of truth; this was so even though the bill had not been rendered and a considerable period of time had elapsed since the work was carried out.

RTMs

• Not only did the case of *Triplerose v Mill House (UKUT 2016 80)* have the same landlord as the above but it also concerned procedure under the RTM provisions of the 2002 Act. The RTM company's notice under Section 78 of the Act to the qualifying tenants was argued by the landlord to be defective because (i) it did not include the Notes in Schedule 1 of the RTM Regulations 2010 and (ii) the address for service of a counternotice was not to the registered office of the company but that of its solicitors. The UT allowed the appeal from the FTT holding that statutory procedure should be complied with and the purpose of the statutory scheme and the effect of non-compliance should determine the FTT's approach; the omission of the Schedule 1 Notes contained important information which could influence a tenant on whether or not to join the enterprise. However, there was nothing to prevent the provision of an address for service alternative to the registered office.

• The issue in *Gateway Property Holdings v Ross Wharf ATM (2016 UKUT 97)* was whether a Section 79 notice to claim a right to manage was served on the landlord 's correct address. An earlier notice had been served in July 2014 but not progressed after the landlord's counternotice opposing the claim and, as it was entitled to do, specifying that any future communications in relation to the subject matter of the notice and any future notice should be sent c/o of its solicitors as authorised by Section 111(4) of the Act. The next service charge demand was accompanied by the landlord's name and address as required by Section 47 of the Landlord & Tenant Act 1987 and a notice specifying that the registered office of the landlord should be the address for service of notices. Accordingly, when, in April 2015, the RTM company prepared a fresh Section 79 notice it was hand-delivered to the registered office. The landlord sought a ruling from the FTT that the notice was incorrectly served and should have been sent to the solicitors in reliance on the direction given in response to the first notice. The FTT found in favour of the RTM company and the landlord appealed to the UT. It was held that, although the Section 47 notice did not have the effect, as argued by the RTM company, of superseding the Section 111(4) notification, nonetheless the wording of that notice on analysis covered only notices given under the first application and did not extend to any subsequent applications. In the circumstances, the RTM company could rely on Section 111(3a) and serve its notice at an address given to its members in the service charge demand.

Continued on page sixteen

Ask the FPRA continued from page nine

We have nothing in the lease, deed of covenant or rental agreement to control smoking within individual flats, but we do display 'no smoking in communal area' signs. If the complainant(s) insists further action be taken then we would appreciate knowing our options and in what order any steps should be taken.
We may be wrong, but feel this scenario is more complicated than, say, loud TVs or music in that cigarette smoke pollution in communal areas might be an area already subject to existing legislation.

A FPRA Committee Member Shaun O'Sullivan replies:
I fear that I can offer few words of comfort to those suffering the effects of 'smoke drift' in your block. Smoking in internal communal areas of blocks of flats has been banned for the last 10 years. In this regard those who do smoke in such areas can be fined as can Residents' Management Companies (RMCs) if they do not enforce the ban. Equally signage, of at least A5 size and displaying the international no-smoking symbol in colour and of a minimum diameter of 70mm (3 inches), has to be displayed in a prominent position. It would appear, from what you say, that the lady in question is confining her smoking to the flat itself and that you do have appropriate signage. Also it would appear that the flat is sub-let, that the tenancy agreement does not place any restrictions on smoking and that the owner of the flat has no objection to her tenant smoking in the property. Although legislation underpinning restrictions on smoking was extended to cars when children are present, I am not aware of any move to ban smoking in one's own home.
So far as the lease is concerned, there is (perhaps not surprisingly) nothing specifically to ban smoking, albeit the Paragraph 8 of the Fifth Schedule does impose a restriction on the Lessee not to cause any annoyance, nuisance or disturbance to the Lessor or other Lessees. In practical terms, however, and on the basis on what action has already been taken by the owner of the flat to try and reduce the effects of smoke drift, I'm not sure what more could be done in this regard – other than perhaps encouraging the owner to consider banning smoking in the property in respect of any future tenancy agreements and when the current tenant moves out.
Perhaps the only possible hope is to seek the help of the local authority. My understanding is that local authorities do have a duty to take such steps as are 'reasonably practicable' to investigate complaints of 'statutory nuisance' as set out in the Environmental Protection Act 1990. Complaints of smoke passing from one premises to another would usually be carried out by local Environmental Health Officers (EHOs) who would need to determine whether the problem constituted a 'nuisance' under the terms of the Act. However the EHO is, perhaps understandably, required to balance differing interests and to assess what is 'reasonable' in the circumstances and to determine whether the effect of the smoke is prejudicial to health. Equally the assessment of what constitutes a 'nuisance' must take into account the standards of an average person (rather than someone who is hypersensitive) as well as the duration, frequency and severity of the problem.'

Island Garden

Q **A problem has arisen on our island development because one of the residents is querying paying for garden maintenance within his gated compound (shared between 15 units) instead of it being a charge to the Estate (which is the whole island). The Managing Agent is asking us residents how to proceed, but I wonder if we can ask your legal experts for advice before we are embroiled in a court case, as seems likely.**
I email you a specimen Lease (they are all the same for all five blocks on the island, or supposedly the same – there are variations in the duration of the leases between 99 and 125 years, which is hardly trivial) and correspondence on the matter thus far if you are able to take a look.

A Yashmin Mistry replies:
The lease sets out the following definitions:

- 'Building Common Parts' are 'parts of the Building intended for use by some or all of the tenants and other occupants of the Building....and the Garden Areas and all other parts of the Building not specifically demised by this Lease or the leases of any other flats in the Building'
- 'Garden Areas' is defined as being 'the private garden areas to be shared by the occupiers of the Building as the same are shown shaded green within the area of the Building on Plan No. 2'. The lease held by the office does not have plans within it. You would need to refer to Plan No 2 in your leases to see whether the area mentioned in your email is the area referred to as 'Garden Areas' in the lease
- 'Common Parts' is defined in the lease as being the 'Estate Common Parts and the Building Common Parts together'.

The lease then requires the tenants to contribute a service charge for the management company to maintain the 'Common Parts'.
As mentioned above, we do not have a copy of the plans referred to in the lease and do not know where the garden area you refer to on your email is by refer to the lease plan, but we assume from the description of the lease that the areas you mention in your email are indeed the 'Garden Areas' as defined in the lease (see above).
If our assumption is correct, then the tenants raising the query may well have a valid concern which needs to be addressed.
We think the first thing to do is to review the lease plans in light of the above.

Continued on page fourteen

Advertisements

Ask the FPRA continued from page twelve

Water Tank Worry

Q **A year ago last September we had installed a new water tank for our building. Does this need legionella testing? Could you advise if this is a legal requirement please? Our last tank lasted over 12 years and I cannot ever recall it being tested.**

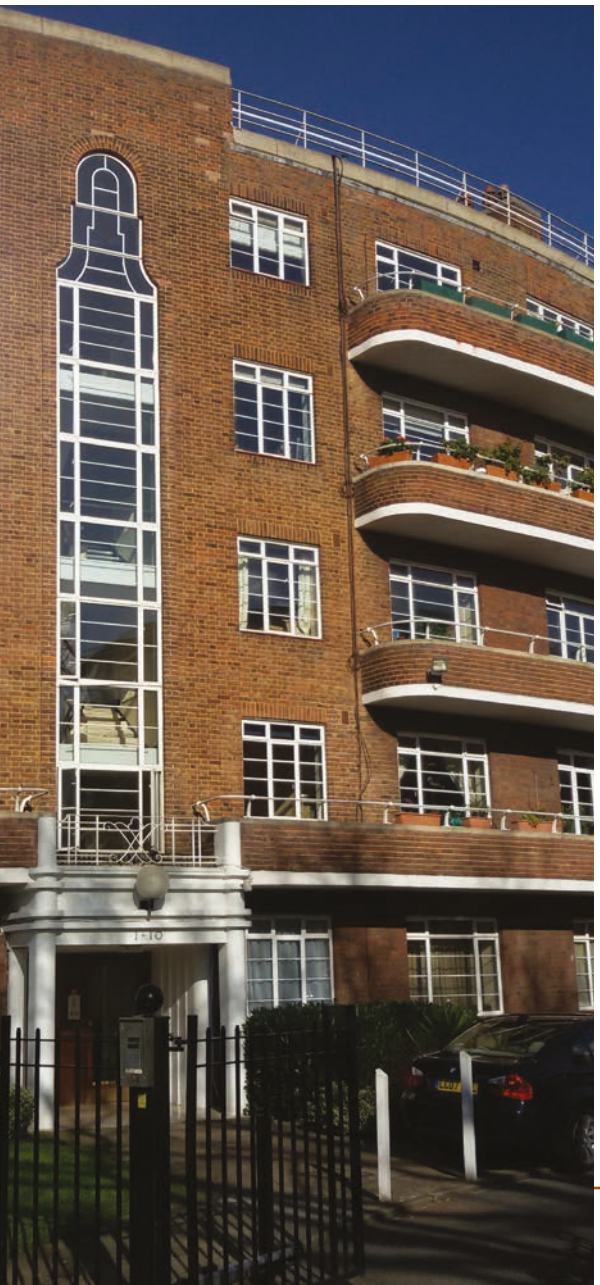
A FPRA Director Shula Rich replies:

There are now new legal requirements on freeholders for legionella testing for the supply of stored water to the common parts.

The first thing is to have a risk assessment. This must be done with reference only to the supply and storage of water for delivery in the common parts. You do not need to test in flats, as you are not responsible for repairs to water outlets in flats (unless your lease is very unusual).

The legislation is confusing as it refers to 'landlords' which is does not distinguish from freeholders or ground landlords. Under any legislation the cleaning of a storage tank would be required and an initial bacteriological test recommended. This is a minefield of sensible precautions and some rip-off firms out to charge unreasonable fees – please come back to us if any work is recommended as a result of cleaning and testing.

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.



FUNDAMENTAL FLAW

The Financial Conduct Authority's consultation paper into increasing transparency and engagement at renewal in general insurance markets is fundamentally flawed, according to the FPRA.

FPRA has told the FCA that the questions in the consultation paper are entirely devoted to the technicalities of implementing the reform but do not deal with the fundamental failure within the insurance industry and the failure of Government through the FCA to deal with systematic and widespread abuse of consumers rights through overcharging.

"It is therefore difficult for this organisation to respond to your technical questions while the overall framework is so flawed," FPRA Chairman Bob Smytherman wrote in the Federation's letter of response.

FPRA's response explains that leaseholders in blocks of flats pay their insurance collectively. The insurance industry often deftly bypasses consumer rights by classing this as business insurance as a means to avoid regulation applicable to consumers while of course it is in fact consumers that end up paying the cost.

In response to Question 1: Do you agree with our proposal that firms should disclose last year's premium on renewal notices? FPRA points out that the consultation does not identify that the main problem for leaseholders of flats is that the decision on insurance is usually made by someone else who has no incentive in getting a good deal, and as such, the questions posed are not very relevant to this underlying problem.

Back in April 2013 the FPRA wrote to the FCA calling for a formal review of this market and its abuses.

"We look forward to the FCA taking this problem seriously," he concludes.

Advertisements

MPs and Peers join forces over Leasehold continued from front page

A second amendment proposed by Lord Young addressed freeholders recovering mountainous legal costs from leaseholders through administrative charges.

"At the moment, a landlord can recover their costs for appearing before a tribunal or court as an administration charge where a covenant exists in the lease, without the leaseholder being able to ask the tribunal or court to consider the reasonableness of the costs, which they are able to do when the costs are recovered via the service charge," said Lord Young.

"This is potentially unfair and can discourage leaseholders from exercising their rights to seek a determination that service charges or other payments are payable and reasonable, where they are aware that the landlord can recover his costs in this way through this loophole.

"The proposed amendment would enable the court or tribunal to consider on application whether it is reasonable for a landlord to recover all or part of the costs of appearing before it as an administration charge, where the lease allows this. At the moment, that cannot be done."

FPRA committee member, barrister Amanda Gourlay, has been instrumental in helping draft the amendment on tenants associations for Lord Young.

With the new All-Party Group, let's hope more substantial reforms should follow.

New Code

A new Code of Practice by the Association of Retirement Housing Managers (ARHM) has received Government approval and will come into effect on June 1. ARHM says the revised code "underpins our aims and objectives in raising standards in retirement housing". FPRA has been invited to attend the launch and we will report on the details of the new code in this newsletter.

POOR COMMUNICATION IS BIGGEST THREAT

A healthy future for the UK's expanding leasehold property sector is at serious risk from a breakdown in relationships and poor communication between leaseholders and managing agents, according to the initial findings of the country's first-ever independent national survey for the sector.

A lack of detailed knowledge about their lease and confusion over the options available to replace a poorly performing managing agent are among the biggest challenges facing owners of leasehold properties sharing their views in the survey since it opened in January.

The survey is the UK's first ever independent national survey of England's 4.1 million leaseholders. Designed to identify the levels of satisfaction amongst the UK's leaseholders and RMC directors, it has been developed by LEASE, the Government-supported leasehold advisory service, and property law firm Brady Solicitors.

The survey is now closed. The full findings will be presented by the end of May, and we will report them in the next newsletter.

Legal Jottings continued from page eleven

• Unlike landlords who are not responsible for a nuisance caused by tenants (unless they had facilitated it or participated in it), licensors are liable for occupiers of premises as licensees because of the control they are able to exercise. In *Cocking v Eacott (2016 EWCA Civ 140)* a mother gave a licence to her daughter to occupy premises; neighbours took action against the mother for nuisance caused by shouting and dog barking. The mother gave the daughter notice to quit but did not enforce it and she was held liable for the barking but not the shouting. Her appeal was unsuccessful – she had done nothing to abate the nuisance even though she had control of the premises.

Contact details:
The Federation of Private Residents' Associations Limited, Box 10271, Epping CM16 9DB
Tel: 0371 200 3324 Email: info@fpra.org.uk
Website: www.fpra.org.uk
If telephoning the office please do so weekday mornings.
www.linkedin.com/grp/home?gid=3721009
www.facebook.com/FoPRA
@FoPRA https://twitter.com/FoPRA