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NEWS

FPRA
FEDERATION OF PRIVATE RESIDENTS' ASSOCIATIONS

"ANGER AND DISTRESS" BY THE EDITOR

Unfair, unpopular and expensive fees levied on leaseholders who resell their property – particularly the elderly in retirement blocks – are under investigation by the Law Commission.

A consultation named *Transfer of Title and Change of Occupancy Fees in Leaseholds* is open now, and you can send in your comments straight to the Law Commission, or send them to FPRA to be included in our submission.

Stephen Lewis, Law Commissioner for Commercial and Common Law, said: "Event fees can be helpful for owners and developers, but the way they are currently being used is causing anger and distress."

Purchasers of retirement properties often did not find out about the fees until too late –after they had invested time and money and had an offer accepted. Bereaved families selling the property on often had no idea a fee was due – or its size.

The Law Commission is not proposing that the event fees should be banned, but its interim proposal is that the fees should be made "much more transparent"; that purchasers must be told upfront about the fees and this should be enforced by a stringent industry code of conduct. He said: "Developers, landlords and all those who benefit from event fees must do a great deal more to make them transparent before the public loses all confidence in this valuable sector."

The Law Commission consultation on this project is open until 29 January 2016. This will be followed by interim recommendations in summer 2016.

"Some residential leases require the leaseholder to pay a fee when they resell the property, sub-let it, and on certain other events. The fee can be up to 30 per cent of the property's resale price. The money either goes to the landlord or into a fund for the long-term maintenance of the site.

"Event fees are common in specialist housing for older people. Smaller event fees are found in simpler retirement flats. A higher percentage fee is payable in full-service retirement villages where there may be a gym, swimming pool and 24-hour care available on site.

"After public dissatisfaction at how some of these fees were used, the Office of Fair Trading investigated. Its 2013 report concluded that some terms were potentially unfair contract terms, but there was "a lack of clarity in the legal framework": consideration should be given to legislative reform. In September 2014, the Department for Communities and Local Government asked the Law Commission to look at the problem, the law and possible solutions.

"The fees are called by a bewildering variety of names, from "transfer fees" and "contingency fees" to "deferred membership fees" and "selling service fees". But unlike normal service charges, none of them are subject to the control of the First Tier Tribunal (Property). And all of them are triggered by an event (such as resale or sub-letting). For this reason we refer to them collectively as "event fees".

"Event fees can allow people to use some of their housing wealth to pay for a higher standard of living in their later years. However, evidence shows a lack of transparency about such fees in the sales process.

"We have spoken to organisations from both sides of the debate about event fees. These discussions have informed our provisional proposals."

For any queries, please contact event_fees@lawcommission.gsi.gov.uk

You can watch the interview with Stephen Lewis on the website: lawcom.gov.uk

STOP PRESS:
See interesting interpretation about this item by FPRA Director Shula Rich on page 5

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Unnecessary complications

Direct deeds of covenant: not worth the paper that they are written on, says Nicholas Roberts

IN BRIEF

Long residential leases still commonly include a requirement that assignees enter into a "direct" deed of covenant with the landlord and management company.

Do these serve any useful purpose since the passing of the Landlord and Tenant (Covenants) Act 1995?

Leasehold conveyancing is in its nature already a complicated matter, so why do some practitioners persist in retaining a complication that at best is a waste of time, and at worst suggests a failure to understand the current law? The complication referred to, is the covenant still to be found in many long residential leases for an assignee to enter into a deed of covenant with the landlord, and (if applicable) the management company, whether this is a genuine residents' management company (RMC), controlled by the leaseholders, or a company which is the alter ego of the landlord.

Pre-1996

In the case of leases granted prior to 1996, when the Landlord and Tenant (Covenants) Act 1995 (LT(C)A 1995) took effect, such deeds of covenant do serve some useful purpose. Although the general principles of the law on privity of estate would have ensured that assignees would automatically have been liable on the tenant's covenants (and able to sue on the landlord's), the position of RMCs under tripartite leases was always unclear, so, prior to 1996, it was prudent to ensure that assignees were in a direct contractual relationship with any RMC. Many leases also required that an assignee should covenant to pay the rent and observe the covenants under the lease for the remainder of the term. This would therefore have had –and still has – the result that each new assignee would, in effect, be guaranteeing the covenants even after having parted with the lease. Although this might seem unfair – and one suspects that few assignees were advised that this was what they were undertaking – it did, from the viewpoint of the landlord (and any RMC) serve a useful, if questionable purpose. The covenant, in the case of pre-1996 leases, ought still to be observed.

Post-1995

LT(C)A 1995 did of course effect a substantial change to the law on privity of contract and privity of estate. Its most notable effect was to abolish the principle that an original tenant would remain liable on lease covenants throughout the whole of the term, and, as a quid pro quo for landlords, to provide that authorised guarantee agreements (AGAs) might be required as a condition of assignment: either where reasonable in the circumstances, or (by amendment to s.19 of the Landlord and Tenant Act 1927) where a prior condition to that effect had been included in the lease. Most solicitors involved with commercial conveyancing are well aware of the changes wrought by LT(C)A 1995, and a request that a proposed assignee enter into a deed of covenant ought to result in a refusal. A request that a proposed assignee should enter into a deed of covenant which endures for the remainder of the term is likely to result in the recipient firmly directing the attention of the proposer to s.25 of LT(C)A 1995, which clearly states that any attempt to frustrate or restrict the operation of the Act is to be treated as void (this has been broadly construed by the courts: see *London Diocesan Fund v Phithwa sub nom Avonridge Property Co Ltd v Mashru [2005] UKHL 70, [2006] 1 All ER 127).* But it is a matter of surprise to the author that developers' solicitors who draft residential leases include in them, in spite of LT(C)A 1995, clauses which require assignees to enter into a "direct" deed of covenant with the ground landlord, and (where applicable) with any RMC. Solicitors acting for original lessees and for purchasers, moreover, seem content to go along with this.

The present author finds it impossible to discern what legal function such "direct" deeds of covenant can fulfil in post-1995 leases. Every assignee becomes liable on the tenant's covenants, and able to sue on the landlord's covenants, by virtue of s.3(2) of LT(C)A 1995. This was always so, under the doctrine of privity of estate, but it is explicitly covered by the LT(C)A 1995. Any uncertainty over the position of RMCs is resolved, in respect of post 1995-leases, by s.12 of LT(C) A 1995. This is expressed in broad terms, and it is impossible to see what a "direct" deed of covenant is intended to add to it, or may add to it. Insofar as any "direct" covenant extends beyond the period in which the leasehold term is vested in the assignee, and purports to impose liability on the assignee for the remainder of the term, it is self-evidently an attempt to frustrate the operation of LT(C)A 1995, and is therefore void under s.25.

We therefore have the situation where:

- insofar as a "direct" deed of covenant imposes liabilities on the assignee for the duration of the term, it adds nothing to s.3(2) of LT(C)A 1995;
- insofar as it brings the assignee into a direct relationship with any RMC, it replicates the effect of s.12 of LT(C)A 1995; and
- insofar as it purports to impose any liability on the assignee – whether to the landlord or to an RMC – after the assignee has

himself parted with the leasehold term, then it is entirely void under s.25 of LT(C)A 1995.

The only possible function that a "direct" deed of covenant may fulfil is a practical one: it is at least arguable that it serves as a reminder to someone who acquires a lease that they will be bound by its terms. A surprising number of leasehold owners claim to be unaware that they are taking on precisely the same obligations as the original lessee. But it is questionable whether executing a standard form deed of covenant does ensure that an assignee will actually have read the lease, or require that it be explained to him. The solution has to be for conveyancers and solicitor who act for prospective assignees to do their job in this respect.

But in practice...

Of course, if one is faced with a post-1995 lease which contains this wholly redundant requirement for a direct deed of covenant, in practical terms it may be difficult to avoid complying with it. The seller's solicitor is likely to include a special condition in the contract requiring the execution of a direct deed of covenant. Even if a contract contains such a term, is difficult to see how any court could insist upon someone entering into a covenant which was – if it purported to endure for the remainder of the term – pro tanto void, as an attempt to frustrate s.25. On the basis of the maxim that "Equity does not act in vain" it is at least questionable whether any court should go even as far as to require someone to execute a document which merely replicates the effect of s.3 (and s.12, if applicable) and is therefore redundant. But clearly it is going to be cheaper and less trouble to comply with the requirement for a direct deed of covenant than to challenge it in court.

If a transaction were completed without a direct deed of covenant being executed, then one might also be faced with a restriction at the Land Registry to the effect that no disposition should be registered unless e.g. the solicitor for the management company had certified compliance with the provision. Enquiry of the Land Registry did not elicit any definite answer to this question, but it seems likely that any dispute as to whether a disposition should be registered notwithstanding a failure to comply with such a restriction would be referred to the First-tier Tribunal (Property Chamber). One would hope that the tribunal would find the arguments in this article compelling and decline to require an assignee to go to the trouble of executing a document which was entirely redundant. Again, it is likely to be less trouble, and at the end of the day cheaper, to comply than to take up a point of principle. One may question whether the Land Registry should be accepting applications for the inclusion of such restrictions in the first place, though perhaps it is asking too much to expect that such requests be vetted.

Comment

All in all it seems regrettable that solicitors for developers continue to include a requirement for a direct deed of covenant in new leases when such covenants cannot serve any useful purpose; serve only to complicate conveyancing; suggest that those who draft them do not understand the modern law; and imply that it is fair practice to charge costs for drafting or approving a document which is frankly meaningless.

Dr Nicholas Roberts, associate professor, School of Law, University of Reading. Legal adviser to the Federation of Private Residents' Associations Ltd (the views expressed in this article are the author's own).

(This article first appeared in the *New Law Journal* and appears here with their kind permission).

TRIBUNAL FEES MAY RISE

In August the Ministry of Justice (MoJ) released a consultation paper proposing new or increased fees in a range of court and tribunal proceedings.

For the First-tier Tribunal (Property Chamber) the proposal is that applicants will generally pay £100 to issue proceedings and £200 for their matter to be listed for a hearing. However, for leaseholders buying their freehold or extending the lease the proposed fees are much higher – £400 to issue and a hearing fee of £2,000.

The closing date for replies was 15 September. The MoJ is now evaluating the responses received. The FPRA have responded to this at length with the view that the burden on leaseholders will increase still further... "Any analysis of the cost benefit impact of the fee increases proposed should be cognisant of the fact there is evidence the existing system fails to ensure that justice is available to those who need it most".

LEASE and what we do

By our guest columnist and the Chairman of the Board of the Leasehold Advisory Service, Roger Southam

I had the pleasure of attending the FPRA AGM this year and an even greater pleasure to be asked to address the attendees.

I was shocked when I asked how many people were aware of LEASE and only 50 per cent of the hands went up. We have been around for 21 years and I thought in leasehold circles we were well known but clearly we have a lot of work to do in raising awareness. The Advisory Service is there for all leaseholders and we are an initial point of call for guidance and direction. The website has a host of information and guidance. It should be your first port of call if you have a query, question, or quandary.

The website is going through a redesign at present and we will be launching the cleaner, crisper, easier to navigate site in the New Year.

We are handling around 35,000 queries a year and we have a few people who make repeated calls with a couple who are up over 200 calls! Also whilst we handle 35,000 calls we are not able to answer a further 35,000. We know this is not acceptable and we apologise to all our callers who haven't been answered.

One of the areas that keeps our minds focused is finding changes and new ways to deliver the service to ensure that we can answer 100 per cent of calls and deliver our service to all who need it. This is an ongoing process and I am sure we will not get everything right first time. However, I can give a commitment that we will monitor and measure to make sure that we are improving our service.

The team we have are recognised as experts and the quality of their advice is so highly regarded that lawyers and residential professionals call us to check on matters. Indeed one practitioner trained using our guides and guidance.

One specific question I received at the AGM was why our conference was so expensive. The LEASE conference is on 2 February 2016 and details can be found on our website. During the day we have a paid-for conference, which is aimed at professionals in the residential arena, but anyone is welcome. In the evening we have a free conference for leaseholders whereby they are informed on topical matters and have a surgery to ask their questions.

In order to deliver the free conference for leaseholders we have to charge a full price for the daytime conference. In looking around at other conferences we seem to be in line and not too high. I will ensure that each year we review the pricing and ensure we are offering value and quality.

Hopefully you will search out our website and find our service. If you can come to the conference you will be most welcome.

www.lease-advice.org

PROTECTION LIMIT LOWERED

The Financial Services Compensation Scheme (FSCS) is a deposit protection scheme that provides a level of cover for your money should anything happen to your bank, building society or credit union. The deposit protection limit is changing from 1 January 2016. This change applies to all banks, building societies and credit unions in the UK.

- For individuals: the level of cover is reducing from £85,000 to £75,000 per bank, building society or credit union
- For joint account holders: each account holder will have a level of cover up to £75,000
- For Business, Commercial & Corporate accounts protected by FSCS prior to 3 July 2015 and from that date onwards: the level of cover is reducing from £85,000 to £75,000 per bank, building society or credit union.

AGM a success

Chairman Bob Smytherman was delighted to see our new venue full to capacity for this year's AGM with both members and non-members.

Bob said: "I would like to thank our event organiser Gemma Crabtree from the News on the Block team for putting on another good event and rising to the challenge of the new informal format.

"The Directors of the FPRA are currently reviewing the formal feedback provided to News on the Block after the event and I personally would appreciate feedback from both members that attended the event as well as those members who did not attend to give us an idea of what we can do to attract more of the membership to attend the AGMs in the future.

"Specific ideas I would appreciate views on is whether the event should be a 'member only' event, whether we should provide refreshments, location and format of the event. Please email your thoughts to us at info@fpra.org.uk."

HOPE ON UNFAIR LEASES By FPRA Director Shula Rich

Buried inside Consultation Paper 226 published by the Law Commission in October this year:

RESIDENTIAL LEASES: FEES ON TRANSFER OF TITLE, CHANGE OF OCCUPANCY AND OTHER EVENTS.

A discussion of an issue fundamental to Leasehold.

The Consultation paper is rather thick – even the most committed of us confess to 'not having read it all yet'.

Its main purpose is to examine exit fees in retirement housing. These can be up to 30 per cent of the selling price to be paid to the Freeholder on sale of the lease. These fees are resented especially where its not been clear that they would be imposed. They are however part of the lease in retirement leaseholds – which brings up that famous red herring:

"They knew what they were doing when they signed their leases' with its corollary – "but what choice did they have?" Now maybe we might have a choice.

It has generally been said that a lease is a contract between the initial freeholder and the initial leaseholder. So my lease for example, was between the Mars Pension fund and a Mr Ben Raven in 1963 when our flats were built. Now the question is:

Do the terms which Mr. Raven agreed with Mars, also apply to me?

The reply has always been 'yes', for this reason:

I am buying the remaining term of Ben Raven's contract – I am not negotiating a new contract.

So depending on the prevailing views at the time my present lease bans wooden floors, demands lace curtains and requires a communal heating system to be switched off between May and September.

Climate change, building techniques, certainly curtain fabrics have changed since the 60s but my lease is 'set in stone' as the original contract agreed by Mr. Raven. But is it?

In Chapter six of its consultation – headed Unfair Contracts, the Law Commission discusses whether a term in a lease can ever be seen as unfair by a subsequent purchaser of that lease. Can the contract be seen as a new contract each time the lease is sold on?

If that were so, then we can re-visit the terms of our leases in the light of new consumer legislation and terms can be queried as unfair even though agreed by the original parties to the lease.

Here is a quote from the OFT summary of unfair terms (Office of Fair Trading) report on Unfair Terms in tenancy agreements 2005 which could apply to long leases in particular the 'improvements' clause in many council leases:

Group 18(a): Allowing the landlord to impose unfair financial burdens

4.2 In a fairly balanced contract the parties must be subject only to the obligations that they agree to accept. We object to any term that allows the landlord to impose an unexpected financial burden on the tenant. This is similar in effect to a price variation clause (see Group 12) and cannot be considered an exempt 'core' term because it does not clearly set an agreed price.

4.3 We would challenge an explicit right to demand payment of unspecified amounts at the landlord's discretion. The same objections apply even if the terms are merely unclear about what will be payable, because such a term can in practice be used to impose unexpected and excessive demands. We have concerns about the potential unfair effect of terms, as well as the intentions behind them, and do not consider the purpose of such terms relevant if their potential effect could be unfair.

The OFT now CMA (Competition and Marketing Authority) were unable to recognise long leases as continuing contracts.

Therefore Unfair Terms in Tenancy Agreements could not be applied. However the Law Commission has re-examined the position in the light of 2015 Consumer Legislation and the Law in the rest of Europe and comes down 'tentatively' on the side of the European approach.

The Commission says:
"Leases represent a contract between the first consumer tenant (T1) and the trader landlord (L1) Does this contract continue after T1 has sold the Lease to another tenant (T2,) or L1 has sold the freehold to another Landlord (L2)?"

The question is can the terms be reviewed by T2 and subsequent purchasers? The report discusses this question in the light of 'event fees' in retirement hosing, but if it were accepted that the terms can be reviewed, then this will open all leases to question.

"our terms of reference are confined to event fees, so we make these proposals for event fees only, however we ask whether similar provisions should apply to residential leases more generally." (4.20 summary p19)

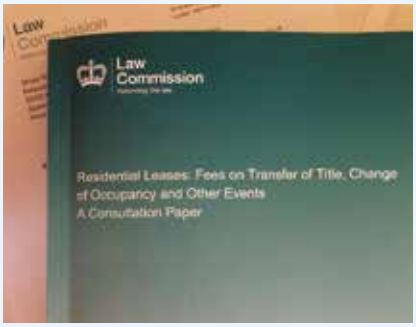
To quote from the paper out of context would not do it justice. There is an impressive amount of legal philosophy and argument within it which has to be read in full, but it says in conclusion:
"English law appears out of line with the rest of Europe (including Scotland). In other European jurisdictions the original lease is a contract and it remains a contract through its life irrespective of any change to the parties.

"We think that for the purposes of unfair terms law, a concept of a contract should be interpreted according to European principles rather than in a traditional English way".
Summary 3.16 p13.

In my opinion this is a fresh look at leases and hope for leaseholders trapped in agreements which may now be seen as unfair.

There is until 29 Jan 2016 to send our comments on the Paper – and our thanks.

Shula Rich
Director FPRA



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

Forfeiture

By the time the landlord became aware that the leaseholder in *Safin v Estate of Badrig (dec.) (2015 EWCA Civ 739)* had died, considerable arrears of rent and service charge had accumulated. When the landlord claimed possession on the ground that the lease was forfeited for non-payment and for breaches of covenant amounting to £22,770, the leaseholder's son was appointed Defendant. The County Court ordered possession but the son applied for relief and meanwhile reached settlement on terms that arrears be paid and works be carried out by a certain date. These terms were incorporated in an order of the Court. Before time for compliance expired, the son applied for an extension and, by the time of the hearing, all terms had been met. The Court allowed the application for the extension and the Court of Appeal dismissed the landlord's appeal holding that the Court had discretion, even in the case of a consent order, to make such a decision taking into account all the circumstances.

Landlord & Tenant Act 1985

In *Cowling v Worcester Community Housing (2015 UKUT 496)* the County Court ordered payment of a disputed service charge of just over £511 to cover the cost of a TV aerial and it was held by the UT that the FTT, on being asked to decide the question of reasonableness within the meaning of Section 19 of the Act, could not overturn a previous County Court judgment.

Although the landlord in *Skelton v DBS Homes (2015 UKUT 379)* had failed to comply with the lease requirements inter alia to supply annual estimates of service charges, Section 20B(1) did not prevent recovery which became valid and due on the date when the demand was served. However, in upholding the decision of the FTT, the UT ordered under Section 20C that the landlord's legal costs incurred before the UT should not be paid by the leaseholders on the grounds that the problems had arisen as a result of the poor drafting of the lease and the landlord's failure to comply adequately with its terms.

Landlord & Tenant Act 1987

Costs were also an issue in *Simon v St Mildred's Court (2015 UKUT 508).* The case revolved round the attempt – as it turned out, unfortunately unsuccessful – by the residents' company which owned the freehold to remedy a defect in the service charge apportionment in the leases: the difficulty arose because the percentages set out were calculated by reference to rateable values and three out of the total 29 flats had no rateable value. The company obtained agreement from the necessary 75 per cent of the leaseholders (in fact, all but one, presumably, Mr Simon) to allow for each to pay an equal share but omitted, prior to the application to the FTT to vary the leases under Section 35, to obtain written signed consent from the leaseholders. The UT dismissed the appeal since Section 37(5) was clear on the requirement. Furthermore, it ordered no legal costs were to be paid by Mr Simon. The report of the case does not say whether the company could recover the necessary sum by including it in the service charge demand to be paid by the other leaseholders.

Section 47 of the Act requires service charge demands to carry the name and address of the landlord. In *Tedla v Cameret Court Residents' Association (2015 UKUT 221)* it was not clear which of two names mentioned was that of the landlord and the UT held the Notice to be accordingly invalid. However, another UT has in *Tintern Abbey Residents' Association v Owen (2015 UKUT 232)* when refusing to remit a decision to the FTT for failure to give reasons for its decision on the grounds that the tenants had, by then, admitted the landlord's claim for service charges, also held that, although there was non-compliance by the landlord with Section 47, this was not fatal to the claim but merely suspended it until the correct information was provided.

Service charges

Chaplair v Kumari (2015 EWCA Civ 798) was another case concerning costs in which the dispute over service charges before the FTT was resolved in the landlord's favour but no order for costs was made against the tenant who had not been vexatious or unreasonable. The application was referred by the landlord to the County Court which held that the £260 limit on costs in small claim cases did not apply where they were being sought in accordance with the terms of the lease and ordered that the tenant pay a proportion thereof: where there is a contractual right to costs, as in this case, the claim should usually be allowed. It was also held that the County Court could make an order for costs incurred before the FTT.

Guidance of the UT was sought in E*dozie v Barnet Homes (2015 UKUT 348)* as to the effect on the service charges payable by the leaseholders of the receipt of grants from outside bodies towards the costs incurred in complying with the landlord's covenants. It was held that, in general, the liability of the leaseholders should not be affected. This was the case even though the leaseholders had already been charged over £1m towards the total anticipated expenditure of £8.5m.

The premises in *Sadeh v Mirhan and Azziv (2015 UKUT 428)* consisted of mixed residential and commercial uses and the tenants challenged the amount charged by the manager (albeit one earlier appointed by the LVT); they were successful to a limited extent in that (1) the requirement to pay £300 charged to cover the cost of preparation of the Section 20 consultation document was removed on the basis that this was covered by the usual agent's fee for performing statutory duties and (2) £184 insurance commission was also deducted. Two other questions on insurance were remitted to the FTT: (i) whether cover had been included for the tenants' as well as the landlord's personal liability (and it was indicated that it should) and (ii) whether the requirement for the tenants to pay a "fair proportion" of the premium should reflect the extra risk posed

by the nature of the commercial user (dry cleaning) although the UT was at pains to emphasise that the tenants could not expect their share of the premium to be on the basis that the building was entirely residential and to be reduced accordingly.

Clacy and Nunn v Sanchez (2015 UKUT 387) appears to be a harsh decision for tenants, the UT agreeing with the FTT in holding that the landlord's failure to comply with the provision in the lease that there should be an accountant's certificate in support of the service charge demand did not affect the leaseholders' liability; on an interpretation of the wording of the lease, it was merely a confirmatory procedure and not an essential pre-requirement to payment. Moreover, 19 years had passed without the tenants or their predecessors ever having required a certificate, as they were entitled to do under the lease, and they were now estopped from making the request. Presumably, they would be able to do so for future service charge demands.

The *FTT in Ingram v Church Commissioners (2015 UKUT 495)* determined that VAT was rightly charged on the managing agents' fees which were considerable: the landlord had contracted to pay the agents £130,369 flat fee plus 15 per cent of the cost of the salaries of the site staff. Under Section 31 of the VAT Act 1994, no VAT is chargeable on residential rent and payments in the nature of rent (which includes service charges); there is also an extra statutory concession which exempts *mandatory* service charges in residential property for its upkeep and for the provision of staff/wardens etc. but managing agents' fees are exempt only if they are collected direct from the leaseholders and not from the landlord. The UT dismissed the appeal in holding the concession does not apply to *optional* services supplied by the landlord/managing agent to residential occupiers or to charges paid by the landlord/managing agent to third parties for the supply of services e.g. builders. Therefore, if the landlord employs staff directly and passes the cost to residents through the service charge there is no VAT but it is otherwise if they are employed through the agent who in turn invoices the landlord. Bearing in mind that this outcome will add 20per cent to the relevant costs, the question of reasonableness within the meaning of Section 19 of the 1985 Act could well arise although it was not argued in this case.

Leasehold Reform Housing & Urban Development Act 1993

The residents in *Snowball Assets v Huntsmore House (2015 UKUT 338)* had the right to use "from time to time" the adjacent gardens, drive, parking and leisure complex. When they exercised their right to enfranchise under the Act they sought to include the freehold, not only of the flats, but also of the adjacent parts; in response, the landlord agreed to continue the equivalent rights but denied the acquisition of the freehold thereof, arguing that the rights were "precarious" and thus not coming within Section 1(4) of the Act and that it had a right to develop part of the area by building. The UT did not agree and held that the residents were entitled to purchase the freehold of both the flats and the adjacent part; there was nothing in the lease which indicated the facilities granted could be withdrawn.

SLOW PROGRESS

The Housing and Planning Bill – is there any good news? asks FPRA committee member Martin Boyd

The Housing Department is fully aware of a number of issues in the leasehold sector. However, the reality is the Government's overriding objective is to build more homes, even if that results in collateral damage with yet more faulty leases. As a result there is almost nothing, save for two very minor technical issues in the Housing and Planning Bill which relate to leasehold matters.

Like many others we have sought to warn the Government that offering right to buy on leasehold properties will result in more cases of leaseholders facing unaffordable major works.

Some of these issues have been very important to the sector for years but they still sit on the shelf. In these proposals we have not mentioned issues such as Section 20 because these are already under review following the Office of Fair Trading/Competition and Markets Authority investigation of property management services. The joint proposals on changing the rules on recognition of tenants associations which was the subject of a recent Department for Communities and Local Government "discussion" paper is also still being considered.

To add a little fire to the flames MP Jim Fitzpatrick put in a modest proposal for the Housing Bill. He proposes to abolish all leasehold by 2020 and replace it with Commonhold.

You might guess Jim is not overly optimistic the amendment will be included or passed but it at least raises some questions. Why does Commonhold still not work in this country while it works in almost every other country in the world?

The problem, as most of you will know, is that leasehold is far too complicated for anyone to fully understand. Ask most MPs for help on a leasehold issue and they (or rather their case workers will hide in a corner). However, because most leaseholders assume nobody can do anything, most never write to their MP. So then we have the problem that most MPs believe everything must be ok because so few people write.

The reality is, for there to be any change, enough leaseholders will have to keep writing to their MPs often enough for them to worry that things are not working – at the moment they don't get enough letters so don't see the problem. Having read too many six or 10-page minutely detailed letters sent to MPs I would urge anyone who writes to stick to one page and maybe just a single issue which most impacts your site.

Outside the direct issues of the Housing Bill, readers may like to know Leasehold Knowledge Partnership (LKP) has been organising round table meetings on leasehold issues in parliament for the last few years. These meetings take place every six months with senior delegates from the sector attending. The point of the meetings is – apart from the fact that nobody else was organising them – to help ensure that Government and the sector better understands the issues and so that nobody can claim they do not know or at least have the opportunity to know.

(Martin Boyd is a Director of LKP)

ASK THE FPRA

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

Fire Risk Inspections

Q **Our last Fire Inspection was in 2012. On going through it, I cannot find indication as to when the next inspection is due. Can you clarify the regulation re regularity of fire inspections in properties such as ours. Plus – is it down to us, or the Fire Service to initiate it?**
In the last inspection two doors were deemed in need of appropriate paint to make them fire-proof. A resident asked if our insurance, in the event of fire, would be invalidated as a result of this. Both doors will be treated soon, but what is the position on this?
On insurance – on going through the policy I cannot find reference to 'fire'. Is our buildings insurance likely to cover damage caused by fire? I'm thinking here exclusively of communal areas. Clearly residents are responsible for their individual household policies.
I know some of the above I ought to be aware of, but I wasn't company secretary at the time of the previous inspections and wasn't directly involved.
I am also under the impression the Emergency Escape Lighting should be examined either annually or every three years. Could you please clarify the rule here?

A FPRA Chairman Bob Smytherman replies:
My response is practical rather than a professional or legal one. On the issue of Fire Risk Assessments you are required under legislation to keep a 'watching brief' in practice this will be maintaining good safe working practices when looking after your common parts.
If there have been no substantial changes then continuing with your good management of the block should be suffice, however I do recommend recording your various findings of the watching brief in minutes of the directors meeting if you decide a formal professional report is not required.
If you are not confident yourselves to do this I suggest bringing in a specialist fire safety consultant. If like in my own block you are uncertain about specific issues then contact your local Fire Service for some free, impartial advice as it is their responsibility to enforce the legislation which in practice is dealt with on a risk basis and following reports to them.
The insurance is more complex and I suggest discussing your concerns direct with them now rather than waiting for a claim or potential tragedy. Your fire service will be able to inspect fire doors and the paint covering. If this was raised as a concern last time I suggest this is a priority.
Emergency lighting should be checked ideally weekly to ensure they are working and change bulbs.
As far as a full service for the lighting this can be done when you carry the periodic electrical testing to the common parts which we usually do every five years.
We have the Fire Service and Electrical Safety guidance available to download from our website which is an excellent guide to assist through the process.
If you require a more specific legal response on your responsibilities in your own lease one of our lawyers will be able to assist.

Rubbish and Noise

Q **New owners/occupiers are given a copy of the House Rules which are for the benefit of all residents. We have had a number of complaints recently about rubbish not put in bins, unacceptable level of noise late at night, mess made by new owners working on their flats. We issue regulations regarding owners renting out their flats and ask them to make sure tenants and letting agencies comply with these. These are not always complied with. Could you advise us how to better to ensure the House Rules and rented flat regulations are complied with, please?**

A FPRA Chairman Bob Smytherman replies:
In my own block we share the very same problems as a self-managed block. I should add that I am not a lawyer and my advice should be viewed from practical experience and not a legal one.
The legal position with enforcement is in terms of a breach of the lease for which the leaseholder remains responsible whether or not he is living in the property and regardless of your 'house rules' this can be expensive and often difficult to prove therefore good communication of your rules with leaseholders, tenants, letting agents and the management company is essential to try and avoid litigation.
The examples you given may well be covered by legislation enforceable by local authorities such as noise nuisance and improper disposable of waste should be reported to your local Council if initial internal communication fails to resolve the situation.
In practice if the culprits are known to you to be tenants rather than leaseholders and informal communication fails to change behaviour I would suggest making regular and frequent complaints formally with their letting agent and provide copies of this correspondence to the flat owners. This usually results in most leaseholders and their agents to act on their tenants and serving notice on them as they can assert more real pressure than your management company. Most reasonable leaseholders would not want a tenant that breaches your rules and cause problems for neighbours and certainly if this involved breaches of the lease they would not want to be held legally responsible for the actions of their tenants so would be more likely to intervene without the need for litigation.
If you would like a legal view about which of your rules and which are covered by the lease and which are just 'advisory' please let us know and we can ask one of our lawyers to review this.
I would always do all I can to avoid litigation as this can be

costly and never certain of getting the outcome you desire where as an informal approach involving compromise is usually preferable.

Annoying Children

Q **Ours is a U-shaped block of 32 flats with three communal entrances: centre, right and left. The block has a boundary wall, with pedestrian gates and a U shape vehicle access way with automated entry and exit gates in the front and communal gardens. Around the gates there are sensors and electrical boxes installed. Safety warning notices are affixed on the automated gates to keep away from the area. Our lease has a specific clause 2(27) that states clearly not to permit children playing in the communal gardens and access ways. We also have a Residents' Handbook, issued to all residents (including those of the rented flats) as regulations under clause 2(28) of the lease, that highlight the obligations of the residents in this respect. Since last year there has been an increase in number of flats let by lessees and some with children. As we have a very nice block-paved vehicle access way with communal gardens around, this has led to a number of children cycling, learning to cycle, riding scooters and sometimes congregating together becoming too noisy and a nuisance. There have also been incidents of children riding their bicycles and scooters, unable to stop, crashing against the gates (gates getting jammed) and handling sensors that get easily damaged or disturbed, requiring a service engineer call to re-set gate control mechanism. Other minor incidents have been children stamping on the flowerbeds. Some elderly lessees have complained of noise and children playing on the access way. We have written to the lessees and the agents of the rented flats and pointing out their obligations under clause 2(27) of the lease but so far have received no response from any except one. We are concerned that with the summer setting in, the problem is going to get worse.**

Our questions are:

1. What options do we have to take further action to remedy the situation and enforcing the lease clause 2(27) on the lessee?

2. In the event of an accident or injury suffered by anyone on the vehicle access way, what are the risks of any liability arising on the RMC and its management?

A FPRA replies:

It is clearly a breach of the lease under clause 2(27) and one of the big issues here would be the problems with insurance if indeed there was any claim made for either injury or damage to property. The insurance company may take the view, that any liabilities for cover may be void/uninsured because the lease has been breached.

The recommendation here would be to take legal advice as soon as possible, and enforce the lease with members and or landlords who have children etc. With regard to any liability, you could advise members/landlords writing "We have written to the lessees and the agents" and indeed have put them on notice to this problem, therefore any claim would be difficult against the RMC.

A note here, the rental agreement with the tenants should normally be a mirror of the lease, therefore also the tenant could be in breach of the lease.

What Can We Charge?

Q **We are not sure whether the lease allows us to raise administration charges as per the Commonhold and Leasehold Reform Act.**

We would like to say how much we appreciate the helpful advice that you have given us in the years that we have been members.

A FPRA Legal Expert Nick Roberts replies:

I found your query slightly curious and I am wondering whether you are clear what an 'administration charge' is, within the terms of the Commonhold and Leasehold Reform Act 2002. The CLRA 2002 does not permit any landlord (or management company) to levy administration charges except where these are already permitted by the lease (or, occasionally, by common law). The purpose of the provisions in the Act about administration charges (which are contained in s.158 and Schedule 11) is to ensure that administration charges, if chargeable, are not excessive. (The provisions were included as previously there was a gap in the law: service charges could be recovered only insofar as they were reasonably incurred, and a Tribunal could rule on this, but there was no similar provision regulating administration charges).

The sort of things which count as administration charges are:

(1) Fees to approve plans if a leaseholder wants to make structural alterations (e.g. Clause 8 in Schedule Six of your lease);

(2) fees chargeable if a landlord serves a Notice under s.146 of the Law of Property Act 1925 (in other words, a notice alleging breach of covenant and threatening forfeiture) – see Clause 13 of the same Schedule;

(3) fees for consent to assignment (in your case, only in the final years of the lease: see Clause 17(c) of the same Schedule)

(4) fees for the Deed of Covenant required on an assignment (clause 17(b)

(5) fees for giving notice of assignment, so that the landlord and/or management company can register a change of ownership (Clause 18 of the same Schedule: though, as a fixed fee of £4.20 is chargeable, no one is likely to claim that that is excessive!)

An area which has proved controversial – and has been raised in several of the (relatively few) cases on administration charges which have been taken to a Tribunal – is that of the fees which are chargeable under some leases for obtaining the landlord's consent to subletting (i.e. the approval that, under some leases, a leaseholder must obtain before renting to a tenant). This sort of provision is not included in your lease.

I am not saying that these are necessarily the only administration fees that might arise under your lease, but

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they give you the gist of what administration charges cover. If you have any more specific query on this then I shall do my best to answer it.

Bathroom's Structural Wall

Q **Ours is a 1970s purpose-built block of 24 flats on three storeys (brick built, pitched tiled roof, concrete floors). All the flats have a bathroom and cloakroom which happen to be separated by a structural wall. One of the first floor lessees wants to remove the wall in order to make a larger bathroom and needs lessor approval to do so. We want to be as helpful as possible but some of the directors are concerned. Clearly we will need a surveyor's report (at the lessee's expense) to confirm that the alteration is practical and safe (probably by installation of an RSJ). But it has been suggested that we should also seek some form of indemnity against wider damage that might be occasioned to the superstructure of the block on account of the work – coming to light either at the time the work is done or at some point in the future. Would this be usual and/or acceptable and how practical would it be over the remainder of a 999 year lease and numerous subsequent assignments? Additionally it has also been suggested that the request should be rejected on account of the degree of noise disturbance which removal of a structural wall would cause – the lease contains particularly robust covenants regarding noise disturbance. Would this be reasonable?**

A FPRA Hon Consultant Mark Chick replies:

Alterations: Under the terms of the lease you have provided, there is an absolute prohibition on any alterations to the property (clause 5(x)(i)). In the event you were to waive this position and provide consent, such consent cannot be unreasonably withheld.

Indemnity: If consent were granted, you may wish to request that the leaseholder insures the alterations for the period of time it takes to complete the works. On completion, once the works have been approved by a surveyor appointed by the landlord, such alterations could be included within the wider estate insurance policy with the leaseholder paying any increase in the insurance rates.

It would be common and perhaps you may wish to insist, that the leaseholder obtains builder/installation warranties for the work and the materials; in all likelihood any prospective purchaser of the flat would request sight of these before purchasing the property. This would provide an additional layer of protection, albeit would not be directly enforceable by the freeholder and may only be valid for 10-15 years.

Refusing Consent: Notwithstanding the provisions of the first schedule of the lease concerning noise, you would not need to provide justification for refusing consent; alterations are an absolute prohibition as discussed above.

Nuisance Sub-lessee

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

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

A FPRA Legal Adviser Nick Roberts replies:

The matter is covered by paragraph 3(a) of the Fourth Schedule of your lease. In my experience it is fairly unusual for long leasehold flats to be subject to such a restriction, at least outside the Central London area, and therefore fairly unusual around Southampton (I was for a long time in practice there), but the provision is perfectly valid and enforceable.

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

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

It is also fair to say that refusal of consent may not be without its consequences. If the leaseholder should object, and wish to argue that consent was not being reasonably withheld, he would be able to apply to the County Court for the court to

rule on the matter. When the lease says that you cannot withhold consent unreasonably, the court has the final word on that, though it is accepted that the test is not whether the judge agrees with your decision: the test is whether the decision that you have come to is one which a reasonable landlord might make. The burden of proving that you have refused reasonably is on you. It seems to me, on the basis of what you have said, that you would clearly be acting reasonably. You should, however, bear in mind that if the court did rule against you, you would be liable for the leaseholder's costs; you might also be liable for damages for any loss resulting from his lost sale. In practice this might not matter, as, if the court ruled against you, then presumably the sub-tenant would still be around, and could still proceed if (and on present information I do not think it likely) the court ruled against you.

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

Gardeners and Cleaners

Q **Our managing agents have been taken over and the new ones are demanding that the gardener, the cleaners and the window cleaner pay an annual fee to retain their contracts. As they get paid very little we do not think this is fair but is it legal and normal practice?**

A FPRA Committee Member Bob Slee replies:

There are situations where managing agents employ their own tradesmen or have umbrella contracts which provide trade services to a number of properties. Where freeholders or RTM companies require newly appointed managing agents to retain existing sub-contractors in such circumstances, the agents might well claim that this results in additional management overheads that need to be funded. It would be more usual for this to be reflected in the agent's fee (in which case it would be recovered from lessees via the service charge). Arrangements such as the one you describe are not common but that doesn't mean they are necessarily unlawful. Much will depend on the nature and terms of the contract between the managing agent and the sub-contractors involved.

Can I be a Director?

Q **As a company we have directors, but being very small we have only two. One is a director and chair of the company, but is currently seriously ill. She has said she will have to resign her post, which means a new director will have to be elected. The association comprises 14 households, each having one share of the company. Our problem is most of the residents are very elderly and have no interest in becoming involved in running the association. Previously the directors have always been shareholders. My question is, should no householder/shareholder be put forward or be elected, can someone who is not a householder/shareholder become a director of the company? For instance, I do not live in a house within the association's remit, and I am not a director. I volunteered as secretary as my wife's very elderly mother lives in one of the houses and is a shareholder. Could someone with a link to a shareholder, or even with no link, become a director?**

A FPRA Hon Consultant Roger Hardwick replies:

Your Articles of Association should state who may be appointed as a director, and the process for appointment (e.g. by another director and/or by the members, at a general meeting).

If the Articles contain no restriction, then a non-member may be appointed.

If the Articles restrict the appointment of directors to members only, there are a number of options:

a) Continue with one director.

It is possible that the company's articles specify a minimum number of directors, but even if they do, that should not affect the de facto ability of a director to make decisions on behalf of the company (see below).

b) Ignore the articles and appoint a non-member in any event.

Despite the various rules and restrictions on appointment to and holding of office by directors, the acts undertaken by those occupying the role of director are generally valid even if the appointment or office holding is flawed.

In addition to the general and statutory rules that apply in relation to corporate contracting (and the acts of unauthorised directors), s.161 of the Companies Act 2006 provides that "[t]he acts of a person acting as a director are valid notwithstanding that it is afterwards discovered" that the appointment or holding of office was defective for various specified reasons. The purpose of s.161 is to protect third parties (both members and outsiders) against a company relying on a person's lack of entitlement to act as a director in order to avoid obligations. It follows that any acts performed by a director that is not technically entitled to be a director; as regards third parties, are valid.

However, this is a risky option, because the director in question could be liable to the members for acting in breach of the company's articles (so it is not recommended).

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c) Call a general meeting and amend the company's articles by special resolution, to permit non-member directors. (75 per cent of those present at the meeting would need to vote, assuming the meeting is quorate i.e. has the required minimum members present, which will be stated in the articles). You would need to follow the correct procedure (serving a notice of general meeting which complies with the company's articles, and which set out the proposed wording of the amendment to the articles).

d) Although this is a more drastic measure, if the company ends up with no directors, it may be that you would wish to apply to the First-tier Tribunal (Property Chamber) to appoint a manager under Part II of the Landlord & Tenant Act 1987.

Carbon Monoxide

Q **I understand that as of 1 October there is a new legislation requirement on carbon monoxide issues. We are a block of 27 flats built in the late 60s, all of which have gas boilers installed. We have smoke alarms in the communal staircases but have not at this time advised our residents to have them in their flats. How will the legislation affect our residents and what steps will we (as the landlord) need to take to comply with the new legislation?**

A FPRA Chairman Bob Smytherman replies:

This is an issue we have been raising with Government for some time as the new regulations do not apply to the 'common parts' of the flats and only apply to those flats that are sub-let. Therefore there is little you can do as a management company other than to strongly recommend that each flat does install a detector for their own flat. Regrettably your management company has little power in this new Act to ensure each leaseholder does install one unless they are sub-letting to a tenant.

If you have any specific safety concerns with any flat then I strongly advise contacting your local fire service.

We will continue to lobby Government to include a requirement that gas safety certificates for each individual boiler are shared with management companies like yours. Gas Safety Register can also provide some impartial legal clarity with the regulations for you.

I would urge you to write to your local MP to raise the concerns with this new regulation.

Airbnb

Q **We have recently become aware that one of our leaseholders has decided to make his flat available to people seeking overnight accommodation. We have received a number of complaints from other leaseholders and are concerned in regard to the security and safety of residents, and as to how such activities might affect our insurance arrangements. We will of course be writing to our insurers in this regard. We are sure we are not alone with the problem.**

FPRA Hon Consultant Yashmin Mistry replies:

There has been a recent change in the law relating to subletting in London. However, while planning permission for short term lets is no longer required, the terms of the individual leases still need to be adhered to.

Before 26 May 2015, a lessee in London wishing to sublet their flat for 90 consecutive nights or fewer needed planning permission from their local council. Our experience of dealing with Royal Borough of Kensington & Chelsea and City of Westminster often showed planning permission was unlikely to be granted.

Good news then that the law has changed. However, while this means more flexibility (and potentially more rental income) for landlords, it increases the risks of anti-social behaviour, damage to common parts, a high turnover of tenants and complaints to on-site staff and property managers.

Crucially, while planning permission for short term lets is no longer required, the terms of the individual leases still need to be adhered to. Therefore, if a lease restricts subletting in some way, the lease will need to be adhered to. The lease is therefore key to what enforcement action the landlord can take going forward.

Subletting and Airbnb

Q **We are resident directors of an owner-managed block of 16 flats and members of the FPRA. All flats are leasehold and own a voting share in the freehold. Historically, we allow leaseholders to sub-let but require them to register their tenancy for a small, non-returnable fee, as required under the terms of their lease. After some difficult tenants some years ago, we now also require leaseholders to lodge a refundable deposit with the management company if they let their flats.**

Alongside this we have a number of private arrangements where leaseholders let family and friends stay in their flats while they are away. These are not registered tenancies. Somewhere between these two arrangements there are other situations e.g a friend staying for six months (paying rent), flat swaps and flats to be rented as holiday lets over several weeks (through Airbnb or similar).

We were asked recently by a flat-owner to allow her to let out her flat for a few weeks while she went on holiday abroad. The arrangement was made through an agency and we were concerned that we would have no control over who was in the building and no means of addressing any potential problems while the owner was away. This flat owner, incidentally, subsequently withdraw her request for our permission.

Our leases contain this clause requiring leaseholders: 'Not to carry on or permit to be carried on upon the Demised Premises or any part thereof any trade business or profession...nor do or suffer or permit to be done in or on the Demised Premises or any part thereof any act or thing which may be or become a nuisance or annoyance injury damage or disturbance to the Landlord and/or the Company or the tenants or occupiers of the other flats in the Building.'

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Advertisements

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In hard times, we don't want to prevent people making money from their empty flats – however, we also want to make sure that leaseholders take responsibility for their tenant's behaviour so it remains a nice place for us all to live. Can you advise us where to draw the line?

A FPRA Hon Consultant Claire Allen replies:

I understand your concern regarding the subletting of the flats, and it can often be difficult to balance between the demands of carefully managing a building and allowing lessees to receive rent when their property is vacant. Unfortunately, there are always risks for landlords, freeholder and/or management company when subletting at a building occurs. I have recently been instructed by a number of landlords (lessees) who have been the victim to individuals who, as a career, secure a tenancy and then unlawfully sublet a flat as short-term and holiday lets at a maximum rent. They will continue to sublet until evicted by their landlord by a court order (which can often take several months). The risk of course is that it can open the building to unknown occupiers that can cause serious disruption to neighbours and damage to the building. It is not uncommon, especially in Central London, for several flats in a building at one time to suffer from such unlawful subletting if the freeholder or Management Company fails to effectively manage or prohibit subletting.

As a management company, you will have no right to possession unless the lessee is in breach, and you are prepared to follow forfeiture proceedings. You will need to rely on placing pressure on a lessee to take possession of a flat that has been unlawfully sublet; that will of course prove difficult in circumstances where you have consented to the subletting in the first place.

It is important therefore to take a firm approach at the outset on the question of subletting, either to restrict it as much as possible or only agree to allow it to occur when the freehold company is satisfied that the prospective tenant is suitable. I note your current policy of requiring lessees to register their tenancies, and also to pay a security deposit, and I think that is a good policy to maintain if it is properly implemented. I have of course not read the leases for the flats, but I presume there is a provision in the lease or in regulations for the building regarding the restrictions on subletting (i.e. only with consent) which must be followed by lessees at all times.

You will appreciate that the purpose of the covenant in the leases, "'Not to carry on or permit to be carried on upon the Demised Premises or any part thereof any trade business or profession" is intended to keep the properties as dwelling houses. Short term holiday lets will of course mean that the flats will remain in use as dwelling houses, but the utilisation of flats as a business (i.e. holiday letting) will change the nature of the building. The high turnover of temporary occupiers and the involvement of the commercial agent who will erode the management company's ability to effectively control the responsible conduct of occupants. Furthermore, such use will of course be in breach of the covenant not to carry out a trade business or profession, but if it has consented to it, the management company will have limited recourse to take action against the lessee unless serious disruption or other breaches are occurring.

Another issue to consider is that, if a flat is turned over to short term holiday lets, can in some circumstances be a material change of use, which will require planning permission (Moore v Secretary of State for Communities and Local Government and another [2012).

In the circumstances, to limit risk, I would suggest a firm policy is adopted by the management company that it will only allow subletting to individual tenants under ASTs or licences (i.e. not turned over to an agent as a holiday let), and only then when the tenancies has been registered and all requirements (identity documents provided for the tenant, deposit, etc.) have been complied with.

The letters above are edited.
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Advertisements

New Honorary Consultants

Tony Hymers

FPRA welcomes as a new Hon Consultant Tony Hymers. Tony is a chartered surveyor with more than 20 years' experience of property management in prime Central London.

Tony has a post graduate diploma in Housing from Sheffield Hallam University and a post graduate diploma in Surveying from Reading University. He is a Fellow of the Institute of Residential Property Managers. He was elected to the ARMA Council in 2014 and is the current Chair of the Finance Committee.

Maxine Fothergill

Maxine Fothergill is Managing Director of Amax Estates and Property Services Limited working in Residential Sales, Lettings, Property Management and Block Management.

Maxine has been invited over the years to sit on various consultative groups on new legislation. Along with a vast amount of experience at playing an active role on various boards ranging from Orbit Housing Association, The National Federation of Landlords (Vice Chairman) and Southern Private Landlords Association, Maxine is currently a member of the ARMA board and a personally invited member of RICS Residential Property Management Working Group.

In previous roles, she was the vice chairman for the National Federation of Residential Landlords, branch chairman of her own local association of Southern Private Landlords where she built a local branch to over 400 members.

Maxine is a qualified counsellor, although not practising, and was elected ward councillor in the London Borough of Bexley.

New Committee Member

Bob Slee

Originally from the North-East and a long line of coal miners, Bob Slee spent a diverse career of over 30 years in Whitehall, which included the establishment of a tri-service government agency responsible for the UK military housing estate, followed by two years as a member of the Agency's management board.

In 2005, following early retirement, Bob became a volunteer director and chairman of a freehold and management company in a 24-apartment block. He is a keen organic gardener with a very large allotment and Treasurer of local allotment association.

SHULA SAVES THOUSANDS

FPRA Committee member Shula Rich was recently interviewed on LATEST TV about her work in Brighton saving leaseholders hundreds of thousands of pounds by helping them to Right to Manage.

The interview can be viewed on YouTube: https://youtu.be/0MECwQt_UqE

FPRA SUBS

Following the AGM, these will be the annual subscriptions for membership of FPRA (per association) in future:

Based on number of flats/houses in your block/estate

	2016/17	2017/18	2018/19
Up to 25 flats	£87.50	£97.50	£107.50
26 - 50	£105.50	£115.00	£125.00
51 - 100	£170.00	£180.00	£190.00
101 - 150	£235.00	£245.00	£265.00
151+	£295.00	£305.00	£325.00

(Joining fee – once only £ 75.00)

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

Please note: the office will be closed from 12pm Friday 18 Dec and will re-open Monday 4 Jan.

Your Committee

Directors
Bob Smytherman – Chairman
Richard Williams – Vice Chairman
Patrick Gray – Treasurer
Philippa Turner, Roger Trigg, Shula Rich

Committee Members Amanda Gourlay, Colin Cohen, Mary-Anne Bowring, Yashmin Mistry, Shaun O'Sullivan, Martin Boyd, Bob Slee

Honorary Consultants Andrew Pridell, Ann Ellson, Nic Shulman, Belinda Thorpe, Gordon Whelan, Jo-Anne Haulkham, Leigh Shapiro, Lord Coleraine, Marjorie Power, Mark Chick, Paul Masterson, Roger Hardwick, Claire Allen, Lubna Islam, Tony Hymers, Maxine Forthergill

Legal Adviser Nick Roberts

Newsletter Editor Amanda Gotham **Designer** Sarah Phillips

Admin Job Share Jacqui Abbott, Diane Caira, Debbie Nichols

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All questions and answers are passed to our newsletter and website editors and may be published (without name details) to help other members. If you prefer your question and answer not to be used please inform us.

Extra copies of the newsletter can be obtained from the FPRA office at £3.50 each, postage paid. Cheques to be made payable to FPRA Ltd. They can also be seen and printed out free from the Members' Section of the FPRA website.

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