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NEWS

FPRA
FEDERATION OF PRIVATE RESIDENTS' ASSOCIATIONS

CALL TO MEMBERS

By the Editor

Calling all FPRA members! Please write to your MP and ask them to join the All-Party Parliamentary Group for Leasehold Reform and Commonhold. This was the plea from the AGM held on November 16.

You do not need to list or explain to your MP what the problems with the leasehold sector are, just ask them to join the group. That way the MPs learn about leasehold and the Government in turn becomes aware of the problems.

Martin Boyd, a trustee of the Leasehold Knowledge Partnership (LKP) who attended the group earlier on the same evening, told the AGM that there were 49 members already, MPs were joining at the rate of one a week, and in that particular week three had joined.

The AGM was a successful event and the Federation is very grateful to JPC Law for being such excellent hosts for the evening. FPRA also thanks all its sponsors.

The evening involved group sessions and one-to-one consultations. There were speeches by Chairman Bob Smytherman and by guests Tony Essien, Chief Executive of LEASE (the Government-backed leasehold advice service) and Nigel Glen, Chief Executive of the Association of Residential Managing Agents (ARMA).

Bob Smytherman made another appeal to members: See if you can each persuade two more associations to join FPRA in the coming year, to boost our membership.

Nigel Glen said he had been on both sides of the managing agents issue, as an RMC director, and as founder of a property management company. He urged members to try to solve problems with the managing agents in person first.

Dr Glen announced a new "directors' portal" coming soon to the ARMA website which would have advice and webinars, free for associations whose managing agents were members of ARMA.

He expressed the strong hope that, with the help of the Law Commission, soon the law would be changed to bring up to date the £250 limit for Section 20 (the amount per flat where consultation is required for major works). Chairman Bob Smytherman echoed that view, saying the amount was set 13 years ago and was grossly out of date. A member agreed, pointing out the £250 included VAT was even more inappropriate today.

Tony Essien said that LEASE and FPRA continued to have an excellent relationship. LEASE had launched a new website earlier this year. LEASE and Brady's Solicitors had collaborated on a survey earlier this year, and results revealed that many RMC directors found it a tremendous challenge and there was little support. LEASE intends to address this in future.

LEASE had launched an online booking system for advice this year, and a webchat service was also launched. Free advice would remain at the core of LEASE's services. It was committed to dispute resolution, and to meet the funding challenge in the years ahead, and generate more of its own income to support free services.

INSIDE THIS ISSUE

THE INSURANCE ACT 2015... HOW WILL IT AFFECT YOU?

By FPRA Hon Consultant Belinda Thorpe

The Insurance Act 2015 introduced a number of reforms to the law that governs non-consumer insurance contracts and received Royal Assent on 12 February 2015. The Insurance Act 2015 became effective in respect of all non-consumer insurance policies in the United Kingdom that are incepted, renewed or varied from 12 August 2016.

The principles of the Act are aimed at encouraging a better exchange of information between all parties of the insurance contract and a fair approach to resolving disputes. The purpose of the Act is to update the statutory framework in line with best practice in the modern UK insurance market.

It has always been a principle of arranging insurance that you have an obligation "duty of disclosure" to tell your Insurance Company "material facts" relating to your property. These are details which Insurers are entitled to know to enable them to decide whether they wish to quote or provide cover for your block and if they do, the premium they require and the cover they wish to offer.

The Insurance Act 2015 has replaced the "duty of disclosure" with a duty to make a 'Fair Presentation' when arranging your insurance. This means you have an obligation to disclose material matters which you (and if appropriate, your colleagues and fellow management team) ought to be aware of. The benefit to you is that the Act also imposes a greater onus upon Insurers to behave fairly and reasonably when you make a claim.

Examples of what must be disclosed at the start of cover or at renewal:

- Things which you know about which are material to arranging the insurance.
- Things which if relevant, other senior management know.
- Information which can be revealed by a reasonable search.

Examples of customer knowledge not required to be disclosed:

- Information your Insurer already holds.
- Matters of common knowledge.

Example material facts which would be required to be presented for flats insurance policies, include:

- Installation, alteration or disconnection of fire and/or security systems.
- Roof covering being replaced – whether for the same or different product.
- Installation of cladding materials including insulation materials or other changes to the construction of the property insured or items fixed to it.

To ensure you do not breach the new legislation we recommend:

- Tell your Insurer anything you believe may be relevant.
- Complete and return promptly any questionnaires or declarations that you are asked to complete about your property, for example subsidence questionnaires.
- Make sure you have checked with other committee members or senior management if there is any additional information to tell us about.
- Keep a record of any communication relative to arranging your insurances.
- Ensure you notify any possible claims to your Insurer promptly and in line with policy terms – this is found in your policy wording.

DON'T

- Attempt to conceal any relevant information.
- Make any assumptions about what is material.
- Falsely answer any questions.
- Leave any questions unanswered.
- Overlook checking with colleagues for information you may not be aware of.
- Ignore requests for further information to be provided.

This new legislation can provide you with some very positive outcomes, for example, providing you do not withhold any material information during your period of cover:

- Insurers will no longer be able to repudiate a claim for breach of a warranty unless the breach can be shown to be relevant to the loss e.g. Failure to comply with an alarm setting warranty will have no bearing upon a flood claim.
- Insurers cannot rely upon non-compliance with a policy warranty if you can show failure to comply could not have increased the risk to them.
- If you cannot comply with a warranty e.g. alarm warranty, cover can only be suspended for the period of the failure of compliance with the warranty.
- Insurers can only limit their liability for a claim where there is non-disclosure or misrepresentation of material facts, in proportion to the amount of premium they charged compared with what they would have charged had there been full disclosure.

The background to the Insurance Act 2015 is to achieve fair outcomes for all parties providing all parties act in an honourable and reasonable way and can be viewed in full on the **legislation.gov.uk** website.

Please note, some Insurers have contracted out of their obligations under the new legislation which is only allowable for non-consumer insurances and must satisfy certain obligations.

"A Member Writes"

Recently we asked via the newsletter for members to write in with their experiences of running their block or leasehold life in general. We are very grateful to those members who have taken the trouble to send us their experiences, and think they will be of use to our readers.

Our Chairman Bob Smytherman kicks off this new regular column with his own story. Other members who have sent in their experiences – your articles will be appearing here in our next editions!

Case Study of FPRA Chairman Bob Smytherman

I have been an RMC Director of my own block since 1992 following attending my first AGM as a first time buyer of my two-bed flat in a desirable West Sussex seafront town location.

Within just a few months of owning the flat there was a large unexpected demand for additional service charges dropping through the letterbox from our then managing agent. Following a number of phone calls and failing to get to the bottom of the issue, I decided I must attend the AGM and question the agent further and the then directors.

It quickly became clear that there were significant failings in the process of replacing our flat roofs that were damaged during the hurricane of 1987. The contractors used were simply not up to the job and the works were required to be done again after just a few years instead of the promised 10-year guarantee. That guarantee turned out to be not worth the paper it was written on as the company vanished without trace and later it became clear they were bankrupt making any redress from them impossible.

I therefore decided I should not just stand aside moaning but should get involved and put myself forward for election as director and was duly accepted by those present and have remained a director ever since. I continue to carry out the responsibility as chairman today.

One of the many issues I found needed addressing early on was the block insurance which was included in the company's lease with the freeholder. That they used a single company of their choice without any opportunity for leaseholders to seek alternative quotes and policies to me seemed totally wrong and, following a bit of my own research with other local insurance providers, it soon became clear we were being overcharged by our freeholder's preferred provider.

I then undertook to put this direct to the freeholder who, to be fair, was very courteous, stating he put this exclusivity clause in all his freeholds to get the best possible value and simplicity. However, as I pointed out to him that economy of scale was not being passed on to us, the service charge payers who paid the premium, and of course he no doubt was getting significant commission for arranging all these policies with the single provider, again this commission was never passed on to those of us that paid the premium.

The freeholder to his credit, following a threat of challenge from the RMC, did agree to allow us to seek alternative quotes provided the terms of the policy were the same. We did as predicted, find a cheaper provider offering the same policy terms which he agreed to accept and, as a result, over 20 years on we still have our own broker testing the market for the best insurance policy and provider for our block based on an independent valuation which the freeholder never did.

During all this process, and a number of changes with the managing agents, it became very clear the Directors of the RMC I chaired were actually doing the job of the managing agent, therefore we took steps to see how we could support ourselves as we were all volunteers we needed protection from challenges from other lessees.

We approached the FPRA as they had been advertising their services for blocks like ours with our insurance broker who we actually still use today. The membership seemed reasonably priced and a fraction of the cost of the managing agent so we discussed our options with our accountants who we had built up a good relationship with over time and they made the directors a proposal that they could do the book-keeping and pay suppliers as well as producing the annual accounts for a fraction of the fee charged by the managing agents.

I therefore took this proposal to the directors who understandably were concerned about additional workloads and liability but agreed to give it go. We joined the FPRA almost 15 years ago to assist with independent and impartial advice, which has been invaluable when dealing with the daily tasks that arise when managing a 46-flat development with garages and large grounds.

One of the first and most important pieces of advice they gave us was to insure the directors and officers of the company to protect us from personal liability in the event of a challenge. This was one of the key factors that persuaded myself and the other Directors we could self-manage without the need for a managing agent.

Following attending an FPRA AGM near Westminster with my vice-chairman soon after we took on self-management, it became very clear that there many other blocks from all over the country that could benefit from our experience and take back control of their own blocks.

I was soon approached by the FPRA CEO, now the FPRA administrator, Robert Levene, who suggested I might like to become more involved with the FPRA to help other similar blocks with day-to-day issues. I subsequently volunteered to become a Director of the FPRA Ltd and a few years later became chairman following the resignation of our long-standing chairman Muriel Guest-Smith.

That was some eight years or so ago and I am still there sharing the best practice from my own block with others, but importantly maintaining our own block membership so my own block can still benefit from the whole range of advisers we have providing impartial advice and support day in and day out to members like that in my block down in Sussex. Therefore I wouldn't hesitate to recommend to any similar RMC, RTM Company or residents' association continued membership of the FPRA for that independent support so vital when managing a block of flats.

For us the FPRA is like having AA membership (other breakdown suppliers are available) for your car. You hope you will never need to use it but are really glad to have their number in your phone just in case you need a bit of help.

THE ESSENTIALS OF SELF-MANAGEMENT

Following on from the article on self-management in Issue 117, committee members Shaun O'Sullivan and Bob Slee – who are both experienced "self-managers" – now take a closer look at some aspects of self-management.

ESSENTIAL MAINTENANCE

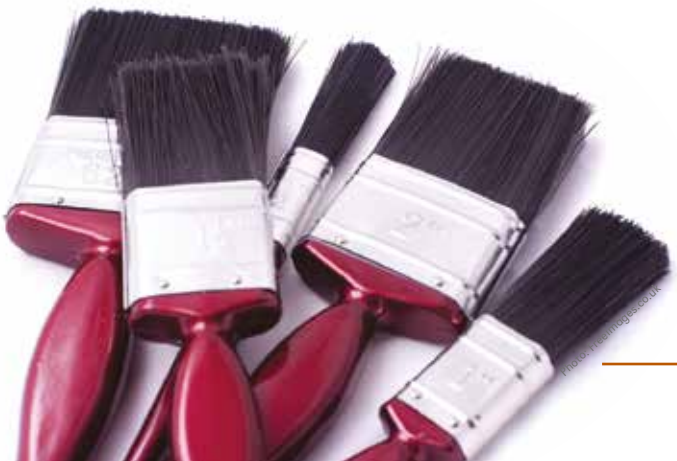
By Shaun O'Sullivan

Avid readers of the newsletter might recall, in Issue 100 (Spring 2012), a 'check list', which was produced by one of our members and which comprehensively listed every conceivable task required to be undertaken, not least for the purposes of budget planning. Although this remains valid, in this article I home into some of the more significant items on the list and those which will probably exercise most self-managers on a regular basis.

As ever, it is the lease which is the starting point for most major and regular maintenance tasks within a block and Landlords' covenants will almost invariably include some specifics and some more general requirements. They might place a quite specific obligation on the Landlord such as 'to paint the said flats and garages which are usually painted with two coats of good quality paint once in every four years'. Equally, they might include some more general obligations 'to maintain in good repair and condition the carriageways and areas hatched black on the plan annexed hereto', or 'to maintain in good repair and condition the main structures (as hereinafter defined) of the flats and garages.' All leases vary as to the frequency of some maintenance tasks, but my unequivocal advice on obligations with specific periodic timescales is to adhere to them rigidly. Although it is tempting – particularly under pressure from those who have to pay – to relax the requirement, this would not only put the Landlord in breach of the lease but can so often prove to be false economy. Also, over the years, leasehold law and other pieces of legislation affecting the leasehold sector have placed additional requirements on self-managers way beyond any requirements contained in the lease.

Painting

Although modern building techniques and materials have, for some, almost negated the need for regular external repainting, internal communal areas do still need to be painted – and for many running older blocks, redecoration of the exterior of the property still remains the most significant, and often the most expensive, single, regular, maintenance commitment and will almost invariably require adherence to Section 20 process required under the Landlord & Tenant Act 1985 (as amended).



It's easy to find a decorator with time on his hands and ready to start at a moment's notice; however, in my experience, good decorators are always busy and in our block we generally start the process 9–12 months ahead of schedule in order to both ensure that we get who we want and at the time we want them, and to give adequate time for completion of the Section 20 process.

The painting specification for the block I help self-manage has been developed over the years, but we make it clear that we require wood to be properly prepared and then for one coat of undercoat and one coat of top coat to be applied. We also describe quite clearly which flats, communal areas (such as entrance doors, soffits, fascia boards, barge boards, bin cupboards) and garages are to be painted (taking into account any flats which might have had replacement windows fitted) as well as peripheral items such as standard lamps and communal tap housings.

We also take the opportunity, during redecoration, to ensure that repairs to any wooden frames to flats or garages are undertaken at the same time. As is the case with many leases, in my block the requirement to repair (as opposed to repaint) window and door frames rests with the lessee rather than the landlord; we adopt a pragmatic approach to this and almost invariably agree with the lessee to undertake the work and charge them accordingly.

Flat roofs

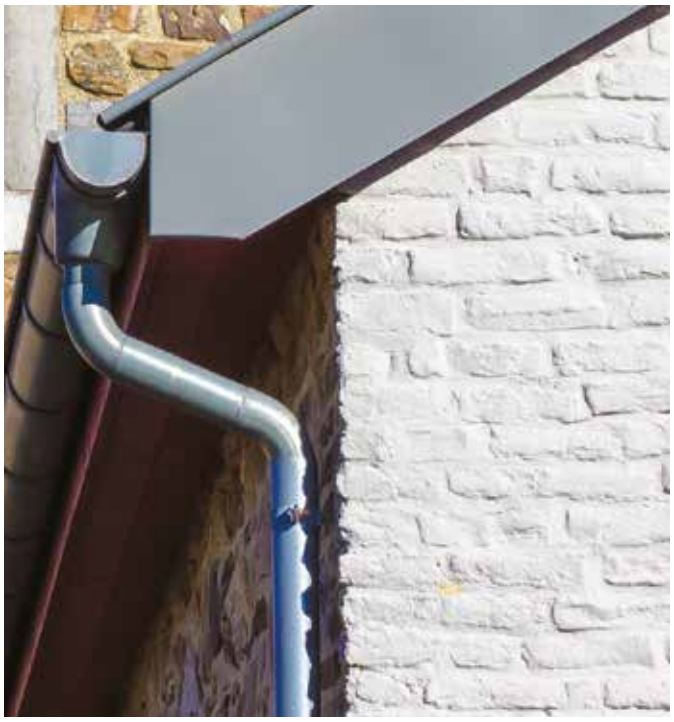
Although, again, modern building techniques and materials – and the dearth of garages in newer flats – have seen a decline in the use of felt, in the many older flats felt is still used extensively and needs regular inspection/replacement. There is no doubt that vast improvements have been made over the years to both the quality and durability of felt, and most contractors would probably recommend a two or three layer system in which bitumen is used between layers – known as a Bitumen Reinforced Membrane (BRM). In my experience, one would normally expect a 10-year guarantee on such a product and, depending on where it was laid and the demands to which it might be subjected (particularly if located under trees), I would hope that it might last 15 - 20 years.

It is worth bearing in mind that some block insurance policies require felt roofs to be inspected by a professional roofing contractor on a regular basis; in the case of my block our policy requires that it be inspected biennially and we employ a trusted roofing contractor to inspect our felt roofs every two years and submit a report – which he supports with photographic evidence if necessary. For us adherence to this regime is important as some of our felt is covering porches and the bays of ground floor flats

which, if the felt broke down, could cause leakage into the flat below. Thus we might need to demonstrate compliance with the requirements of the insurance policy if lodging a claim.

Fascia boards/soffits/gutters

Until the advent of uPVC, fascia boards and soffits were generally made of timber or a combination of timber for the fascia and asbestos for the soffit. Although regular painting will preserve the timber for many years, it is all but impossible to paint behind the gutters and, eventually, wet rot will take its toll. Inevitably the quality of the materials used in the original construction and the level of maintenance undertaken subsequently will determine, to some large extent, when such items need replacing; however, I would expect of life of 30 – 40 years. Replacement would normally entail full scaffolding and removal of guttering, fascias and soffits – and if the latter is made of asbestos, removal by a specialist



licensed contractor or one who is able to deal and dispose of the asbestos in accordance with current regulations. The ARCA (Asbestos Removal Contractors Association) website is a good starting place for advice in that regard. For replacements we installed 10mm uPVC flat boards for the soffits and 16mm uPVC flat boards for the fascias; most good roofing contractors with trade affiliations would provide sound advice to meet the particular circumstances of the block and members should look for at least a 10-year (probably insurance-backed) guarantee. With a traditional pitched tiled roof it is, in my view, well worth considering the fitting of eaves trays when having new soffits and fascias fitted; after many years the membrane fitted under the tiles in the original build will have worn at the exposed edges of the roof and capillary action can cause rain water to travel along the underside of tile back into the soffit. The fitting of eaves trays under the first line of tiles will ensure that rain water runs directly from the roof into the gutter.

Guttering is another consideration when having new soffits and fascias fitted. If original plastic or cast iron gutters are fitted, they will probably have reached the end of their useful life and it would be false economy to have such gutters refitted only to have them fail later. The two prime contenders are plastic or extruded aluminum. Not all roofing contractors offer aluminum – which is extruded on site – but it does possess some distinct advantages over plastic. Notwithstanding the price premium, being seamless it is much less susceptible to leaks and has a considerably longer life. In my view it is well worth the extra cost. And in areas of high leaf fall, 'hedgehogs' fitted into the guttering to minimise leaf build-up are favoured by some and is something members might wish to consider.

And while scaffolding is up, it is, in my view, essential to commission a general assessment of the roof itself; a cracked or broken tile can very easily and cheaply be replaced from a high lift scaffold. It is much less easy – and considerably more expensive – if these jobs are undertaken in isolation. Ridge tiles should also be checked for integrity while scaffolding is in place; not only can they cause considerable damage or injury if they blow off in high winds, they can, again, be an expensive item to fund if dealt with in isolation.

Based on questions from members received in the office, it is apparent that some blocks do suffer with condensation in roof spaces. Although advances in building techniques and changes to building regulations have, over the years, largely overcome this problem in more modern blocks, there is little doubt that blocks of a certain age and construction – particularly, it would seem, those built in the 1960s and 1970s – can suffer from this phenomenon. As with flats themselves, the key to reducing condensation is ventilation, and if there is such a condensation problem then this would be the ideal time to address it. Your roofing contractor would advise on the optimum solution but vented soffits, vented roof tiles or vented ridge tiles are, arguably, three of the most popular options.

Selection of contractors

For those starting from scratch and with no established list of contractors, the Checkatrade Directory is probably as good a place as any to begin. It not only offers an extensive list of local tradesmen but it is the 'Trip-Advisor' of the world of tradespeople offering independent and objective reviews of members. That said, in my experience, there is nothing to beat a personal recommendation and most of the contractors whom we hold on our database have come to us through that route. Equally, establishing a rapport with neighbouring self-managed blocks can certainly have its advantages and result in a mutually beneficial relationship.

ESSENTIAL DOCUMENTS

By Bob Slee

Again, regular readers of the newsletter might recall, in Issue 89 (Summer 2009), an article by Andrew Kerr in which he examined in some depth, the documentation required when taking on the job of self-management. Although this remains valid, it is at first glance a daunting list and in this article I home into some of the documents and

Continued on page six

The Essentials continued from page five

associated procedures which took on greater significance when we assumed management of my block over 10 years ago.

Lease

Perhaps, not surprisingly, the lease is the most 'thumbed' document in the self-management library. It is, arguably, the single most important document used, and constantly referred to by self-managers in exercising their role as lessor. It never ceases to amaze me how many people take on a lease without, apparently, reading it or having it fully explained to them (or, in some cases, even being vaguely aware of it!) – and then becoming indignant when they are required to abide by its covenants and regulations! The lease is, effectively, the 'contract' between lessor and the lessee and grants the lessee the right to live in the flat for the term of the lease subject to certain conditions. It outlines the responsibilities and obligations both parties have in terms of repair and maintenance, as well as the conditions associated with living in the property. It is the governing authority for most issues confronted by the self-manager and when difficulties arise the matter can normally be settled by reference to the lease.

Most leases will require the approval of the lessor when the lessee is contemplating alterations and we have had to consider many proposals over the years. These could involve some degree of reconfiguration of internal walls – perhaps to incorporate an ensuite shower room, replacement of windows and exterior doors etc. Where necessary, the lessor may demand an independent survey, at the lessee's expense, to ensure that the integrity of the building is not compromised.

Estate regulations

Most leases will reserves the right for the lessor to develop additional regulations for the smooth running of the estate and ours have evolved and developed over the years. They draw on the lease's essential covenants and regulations relating to day to day running of the estate, as well as codifying any additional regulations agreed by the directors. They address such subjects as parking, use of gardens, arrangements for dealing with refuse, restrictions on noise and the hours in which work can be carried out, the approval procedure for alterations and the arrangements and procedures for sub-letting. The regulations are reviewed and reissued regularly; they are published on our website and made available to prospective purchasers as part of pre-contract enquiries.

Memorandum & Articles of Association

These form the basic constitution of the company as required by the Companies Acts. The Memorandum and Articles are not used on a day to day basis but set out how the company will be governed, for example how directors are appointed and how and when shareholders are consulted. Although they are largely set in concrete, they can be amended if circumstances warrant it. Following changes in the Companies Act 2006, we revised our Articles to take advantage of simplified management arrangements introduced for the benefit of smaller companies. This required a special resolution of our shareholders and then lodged at Companies House. These documents will be sought by solicitors when properties are changing hands

Buildings insurance

The lessor is likely to have a defined responsibility under the terms of the lease to keep the premises insured to their full reinstatement value from loss or damage by fire and all usual risks associated with a comprehensive policy. Now and again we test the market for competitive premiums and have changed insurers a couple of times over the last 10 years. It is a key responsibility of the lessor to ensure that there is adequate cover year on year, and it is therefore essential that the reinstatement value is reflective of rebuilding costs. Although the level of cover is uprated annually to reflect building costs inflations, every few years we obtain a fresh valuation to ensure that our cover remains adequate. A good starting point is probably the website of the Royal Institution of Chartered Surveyors (RICS) which allows one to identify surveyors specialising in this type of work.

Share register

Our company is limited by shares and maintaining an accurate and up to date share register is a fundamental responsibility of the directors. Prior to self-management we used a local solicitor to maintain the register, to prepare new share certificates on our behalf and to submit the annual return to Companies House. At first glance this appeared a daunting responsibility, but, having brought it in-house, in fact it does not amount to very much.

Health & safety

Shortly after taking over self-management we produced our own health and safety statement and risk assessment. Two of the main constituents of this are an Asbestos Register and a Fire Risk Assessment. The former requirement, instigated by the Control of Asbestos at Work Regulations (2002), was established before we assumed responsibility for managing the estate. However, we always retained the register and now simply review it regularly noting any changes. The need to undertake a Fire Risk Assessment under the Regulatory Reform (Fire Safety) Order 2005 was introduced just at the time we assumed responsibility for the estate and, as allowed for, we undertook the assessment in-house. One of our directors is now responsible for maintaining and reviewing the assessment and for undertaking a bi-annual inspection of the estate and reporting the outcome to the directors.

Accounts

One of our directors acts as Treasurer and maintains the ledger and cash book on a day to day to basis. But when it comes to producing the annual accounts we decided to contract a chartered accountant. There's more than one way of producing the accounts relating to leasehold property and a chartered accountant is in the best position to advise, based not least on whether or not the lease and/or Articles of Association require a full audit to be undertaken. We produce two separate sets of accounts: the company accounts and directors' report in our case is limited in financial terms to the value of the shares in the company. Then we have a separate service charge account which covers the money collected and expended through the service charge – money which legally is held in trust by the lessor and is not actually an asset of the company. The accounts must be made available to all lessees and as a general rule the accounts covering the three previous years will be called for by solicitors when a flat is sold.

FEEDBACK FROM THE AGM

"Thank you very much for your kind help and excellent advice. It was a pleasure meeting all of you. I can't name one person only that's why I have addressed this to the team because everybody I met was excellent and it was great."

"Once again thank you so much for your assistance."

"It was also very reassuring to know that other people up and down the country are in the same situation as we are, facing the same issues such as purchase of the freehold, insurance claims, roof problems, parking problems etc."

"Can I just say how amazingly helpful Richard Hand was this evening. He very generously gave me as much time as I needed to sort out two questions and offered reassuringly knowledgeable advice which will allow me to sleep tonight. Please thank him on my behalf for bringing my blood pressure down!"

"I would like to express my appreciation to all the people who work tirelessly for the FPRA. You all do a fantastic job for the members. Following the meeting I spoke to Bob with regards to contacting my local MP on the issue of leasehold law and the complexities of section 20. My letter to my MP will be posted today."

"Friendly, relaxed atmosphere."

"Just wanted to thank everybody for all your hard work in organising what I think was a very successful AGM yesterday."

"As somebody who has organised very many fundraising events over the years I do know what is involved and think you all did an excellent job."

FELLOWSHIP OF THE IRPM!

By our regular columnist Roger Southam, non-executive Chair of the Leasehold Advisory Service (LEASE)

The Institute of Residential Property Management (IRPM) educates and seeks to professionalise the property management industry for the residential leasehold sector. Each year they hold a fellows' meeting which is more of a think tank and explores how the property management industry can better serve its customers. One perennial topic is the constant challenge for any service industry to overcome prejudice and perception. If you think about the NHS, British Rail, HMRC, even the banking industry, the chat in the pub or media coverage can colour your judgement of the service delivery and performance.

It is impossible to have a balanced argument with any negative preconceptions being brought into play. So what is your preconceived perception of the NHS? Is it failing, privatising, a basket case? Do you believe press coverage and anecdote, or have you had good experience that you dismiss as not typical because of the wider media coverage.

In the leasehold industry there are responsible managers wanting to deliver good service and manage professionally. Equally, there are managers who do not have any desire to professionalise or improve. There is no other arena where so much public money is held without regulation. It has to be right for the property management profession to be regulated. The challenge is getting Parliamentary time allocated to bring this into play. When focussed on Brexit and regulation reduction targets it is a tough shout to convince politicians adding a new regulated activity is appropriate.

Training and qualifications exist to show where managers have committed to professionalise and provide quality management services. So recognising the IRPM logo and commitment to training of staff is a way to seek professional managers along with ARMA Q (Association of Residential Managing Agents) and RICS (Royal Institution of Chartered Surveyors) regulation.

This is not a problem unique to the UK. In the USA there has been a long standing initiative to professionalise property management and to make it a career of choice rather than people falling in to it. This is a never-ending mission and one that takes constant reinforcement. How appealing is it to ask someone to join a profession where there is a level of abuse and rage that can be soul destroying? That is not conducive to getting the best out of anyone. But for some they feel it is acceptable if they do not get their way or they are not happy with an outcome to abuse the manager.

Equally, it is not acceptable for managers to not reply to emails or fail to deal with things. But in reality we are dealing with real people in real life. Can all leaseholders say they are perfect in their jobs? Have never made a mistake? Well who castigates you? Who shouts at you? Some of the emails I have seen over the years and calls made are unbelievable. We all get frustrated with poor service but it is never right to take it out on the individual.

So we need leaseholders and managers alike to get on to the same side of the table and approach matters in a mature manner to keep improving property management services. Working together will be far more effective than conflict and challenge.

Legal Jottings

Compiled by Philippa Turner

FTT	First Tier Tribunal (formerly the LVT)
UT	Upper Tribunal
UKUT	United Kingdom Upper Tribunal
UKSC	United Kingdom Supreme Court
EWHC	England & Wales High Court
PLSCS	Property Law Services Case Summaries
RTM	Right to manage

Landlord & Tenant Act 1985

The decision of the Court of Appeal in *Edwards v Kumdrasamy* (see Newsletter 113) was successfully appealed by the landlord to the Supreme Court (2016 UKSC 4). To recap, the landlord had been ordered to pay damages of £3,500 to a tenant who had tripped on a defective paving stone on a path on the way to the dustbins. The landlord was the long-leaseholder of a flat which he sublet on an assured shorthold tenancy, together with the right to use the front hall, the path outside and the path to the bin store. The Supreme Court held that Section 11(1A) of the Act requiring the landlord to repair the "structure and exterior of the building" and by implication extending to any part of the building in which the landlord has an estate or interest could not be taken, as was held by the Court of Appeal, to include the path outside the building – it was artificial to describe it as the "exterior" of the hall simply because it was adjacent. Moreover, to impose liability on the landlord it would be necessary for him to have notice of the defect because, just as in the case of defects interior to the demised premises, he had no access, having disposed of his right to use the path on granting the sub-tenancy and, with it, all the appurtenant rights.

The case of *23 Dollis Avenue v Vejadani and another (2016 UKUT 365)* provides useful guidance on the exercise of the Section 20 consultation provisions. The tenants disputed the procedure followed, complaining of a lack of detail in the estimated cost of the proposed works. The FTT agreed and accordingly determined £250 only was recoverable from each tenant. However, the UT allowed the Management Company's appeal in part, ordering £7,810 (instead of the demanded £10,200), payable by each tenant. Whilst it was accepted that there had been certain failures in complying with the procedural requirements of Section 20, the work in question had not yet been carried out and therefore the demand for payment was on account: such advance payment was not subject to the consultation provisions. Since it was, however, still necessary to determine whether the sum was reasonable, UT took upon itself to calculate it and did so at the reduced level; by doing so it allowed the work, which was clearly needed, to be commenced forthwith.

The Section 20 consultation procedure was also the issue in *Foundling Court & O'Donnell Court v London Borough of Camden (2016 UKUT 366).* The two buildings were part of a large complex in central London, known as Brunswick Square. The freehold was initially owned by Alliance from whom Camden held a head lease. The tenants who challenged their liability to contribute to the cost of major repairs were leaseholders from Camden. In 2004 Alliance served a Section 20 notice on Camden who, in turn, served individual notices on the leaseholders inviting comments which were forwarded to Alliance. The leaseholders were not served with notices direct by Alliance and the UT held that it is the landlord who is carrying out the work who has the duty to comply with the consultation requirements and accordingly Alliance had failed to follow the correct procedure *vis a vis* the leaseholders.

Service charges

Other disputes relating to service charges continue to occur on a frequent basis. *In Avgarski v Alphabet Square Management (2016 UKUT 367)* the tenant occupied a flat in a development of 33 flats which was considerably smaller in floor area than all but one of the others but he was paying one thirty-third of the service charge, the lease providing that the apportionment should be made by the landlord on a fair and reasonable basis. The tenant was successful in arguing before the FTT that this was not fair and that his share should be one fifty-third. However, the FTT declined to order the landlord to recalculate the sums due for the period prior to the date of this determination in 2015 on the grounds that it would a very complex exercise and the requirement to repay overpaid amounts could drive the landlord into insolvency, especially if other tenants sought the same relief. On appeal to the UT by the tenant, it was held that this reasoning was incorrect and, on the evidence, there were no grounds for such conclusions, moreover, it was hardly the tenant's fault that the landlord had, in the past, adopted an approach resulting in an unfair apportionment; the tenant should not be prevented from receiving a return of the overpaid amount in respect of the years 2012-15.

The tenant in *Cannon v 38 Lambs Conduit LLP (2016 UKUT 371)* challenged several aspects of the service charges, seeking determination by the FTT under Section 27A of the 1985 Act (see Newsletter 111 page 12) of the amount payable. However, at the time of the hearing the service charge demand in issue was non-compliant with Section 47 of the Landlord & Tenant Act 1987, requiring it bear the landlord's name and address; the tenant argued that this omission deprived the FTT of jurisdiction under Section 27A. The UT disagreed: it did however allow his appeal against the order he should bear the legal costs of the dispute amounting to £16,000. The lease made no express mention of legal costs but that in itself did not preclude their recovery under general "catch-all" provisions that service charges should cover (i) expenses and outgoings (including surveyors' and architects' fees) incurred in providing services and maintaining the building and (ii) the cost of management of the building (including accountancy, surveyors' fees and managing agents). However, after detailed analysis of the lease and examples contained in previous cases, the UT held that the landlord could not, in this instance, charge legal costs to the tenant.

Two cases, one with a tenant named Jarowicki and another named Prokhorava, considered by the UT together as *Jarowicki v Freehold Managers (2016 UKUT 435),* were brought before the FTT also under Section 27A. The appeal to UT was because the FTT had failed to determine the fundamental question to which an answer was sought, namely, what amount was payable by way of service charge. In *Jarowicki* the FTT made findings as to the percentages due of the sums demanded without specifying the figures on which

they should be calculated; in view of the confusing nature of the evidence (which was presented only in writing without the attendance of the parties) it was impossible for the tenant to calculate what he owed. In the other case, *Prokhorava*, the FTT had carried out a detailed examination of the various items in the service charge account but had referred the actual calculation to be made by the landlord. The fact that this would be complicated and needed further clarification of the figures did not prevent the FTT from doing the work and, indeed, it had the authority to require production of any further information which it needed for that purpose. Both cases were remitted to the FTT for this exercise to be performed, the UT emphasising the importance of the FTT carrying out its statutory obligation under Section 27A (1c) to determine what amount is payable.

The procedure adopted by the FTT in *Admiralty Park v Ojo (2016 UKUT 421)* was also criticised by the UT and remitted for further consideration. The error made was to have taken a point raised by neither party, namely, that the calculation of the proportion of the service charge payable by the tenant was not in accordance with that set out in the lease. The FTT had decided that the demand was thereby invalidated and therefore no service charge was due, without allowing further representations by either party on the point. The UT held that this amounted to unfair treatment of the parties.

Costs

The UT upheld the FTT in *Fairhold Freeholds No.2 v Moody (2016 UKUT 311)* in agreeing that £50 administration fee sought by the landlord for costs incurred in demanding unpaid ground rent was not recoverable under the lease.

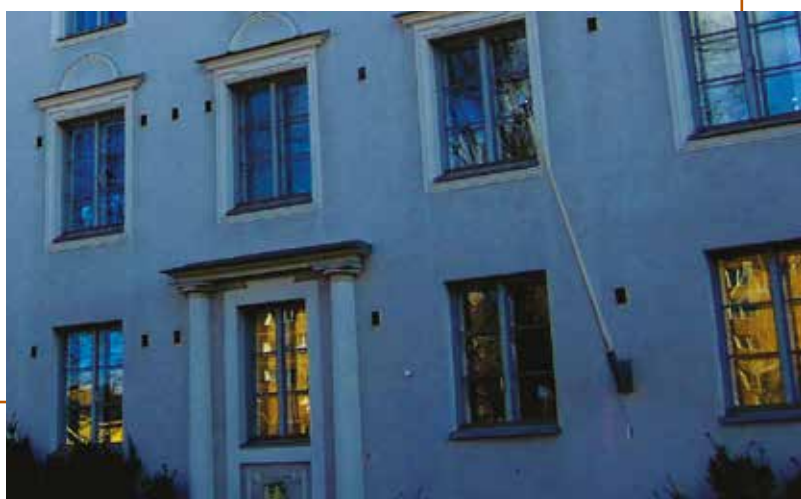
The "administration fee" in *87 St George's Square v Whiteside (2016 UKUT 438)* was quite different in nature and amount: it comprised the legal costs totalling £40,710 incurred by the resident-owned freeholder of a substantial house in Pimlico divided into six flats, only one of which, that leased to the respondent, did not own a share in the freehold. The respondent had in the past caused considerable expense and trouble to the freeholder by taking issues on service charges to the FTT. In the current action, he was unsuccessful in his objections to part of the service charge but, on the other hand, he did succeed in challenging a technical failure in complying with the requirements of the Section 20 consultation procedure. The FTT found that the failure had nonetheless caused him no prejudice but, in the circumstances, felt bound, in spite of what was considered to be his unreasonable behaviour, to reflect his justifiable complaint by ordering him to pay only 20 per cent of the freeholder's legal costs before the tribunal. The lease, however, contained a widely worded provision to the effect that all legal and other costs incurred by the freeholder in recovering service charges should be recoverable from the leaseholder and it was therefore decided to abandon the claim to 20 per cent and rely on the lease covenant in seeking an order under Schedule 11, para.5 of the Commonhold & Leasehold Reform Act 2002 empowering the tribunal to make a determination as to the amount of administration charges (a term which encompasses legal costs) payable: NB this is a parallel power to that contained in Section 27A of the 1985 Act (see above). The FTT declined to make an order on the basis that it had already determined that only 20 per cent was payable by respondent (now tendered by him) and the freeholder could not now seek to rely on its contractual right to all legal costs. The UT did not agree and, citing *Chaplair v Kumari* (see Newsletter 115), held that, in these circumstances, where the freeholder had not applied to the FTT for a costs order but had been invited to make submissions before the tribunal in exercising its statutory power to make such an order, it was a matter for the freeholder whether to accept this or to seek to rely on its contractual rights contained in the lease. The case was remitted to the FTT to decide what proportion of the costs – the UT thought a considerable amount – were attributable to the various matters on which the respondent leaseholder had been unsuccessful before the tribunal and on which a disproportionate amount of time had been spent.

By contrast, in *Sinclair Gardens v Avon (2016 UKUT 317)* the landlord was held not to be enabled to recover the legal costs incurred in defending a challenge to the service charges before the FTT. Although there was a contractual entitlement in the lease to the employment of solicitors, on its true construction of the wording this was only for the purpose of management of the estate and not on the conduct of a service charge dispute.

Leasehold Reform Housing & Urban Development Act 1993

On applying for an extended lease under the Act, the terms of the acquisition are those contained in the tenant's notice and the landlord's counternotice – if disputed to be negotiated between the parties or settled by the FTT. The period of two months within which to issue proceedings for implementation dates from the settlement of the terms (Section 48(6). *In Greenpipe Investment Holdings v Howard de Walden Estates (2016 EWHC 1923 (CH)* the requirement sought by the respondent landlord to obtain legal advice on the status of the claimant was not a matter in dispute, nor did it constitute a "term of acquisition". The claimant was therefore out of time in seeking the enforcement of the grant of the extended lease since proceedings were not issued until after the legal advice was obtained which was more than two months after the terms of acquisition had been agreed.

In *Cowthorpe Road Freehold v Wahedally (2016 UKUT 247)* two leaseholders applied under the Act to purchase the freehold, offering £41,550. The notice under Section 13 gave the address of their solicitors for service and expressly stated that no service could be effected by email. Time for the counternotice expired on a Saturday; the landlord sent an email on Friday to the leaseholders' solicitors and posted the signed original through their letterbox on the Saturday. It was not disputed that it could not be proved by the landlord that the notice was not actually received until the Monday after. The notice was required to be signed and an email could not contain an original signature (Section 99(5a). The leaseholders were therefore entitled to a vesting order on the terms sought.



Legal Jottings continued from page nine

Commonhold & Leasehold Reform Act 2002

An RTM company managed the building in *Francia Properties v Aristou (2016 PLSCS 229)* when the freeholder obtained planning permission to add another flat on the roof. This would not only cause substantial interference to the existing top flat, which had a roof terrace, but also cause huge disruption to the roof of the whole building which would have to be removed and reconstructed. The County Court held that such work was not prohibited by the Act, nor was there anything in the leases which could prevent such work, nor would it be in breach of the covenant for quiet enjoyment. The existence of the RTM did not affect the landlord's proprietary interest. This decision is to be appealed.

The tenant in *Nemcova v Fairfield Rents (2016 UKUT 438)* appealed to the UT against the decision of the FTT under Section 168 that the tenant was in breach of the user covenant in the lease. This required that the premises should be occupied as "a private residence" but the tenant had been accustomed to advertise its availability for short-term occupation for a few days or weeks. The UT upheld the FTT since such occupation could not, in the ordinary meaning of the word be described as a "residence". However, the reliance of the FTT on three previous decisions was criticised: in particular *Caradon v Paton 2000 EGLR 5* which, on a differently-worded covenant, held that it was necessary to import the concept of "home" into its interpretation. The UT did not consider that this decision was relevant to the construction of the covenant in the present case.

! Legal Point

Under Section 168 of the Commonhold & Leasehold Reform Act, a landlord cannot serve a forfeiture notice in respect of a breach of the lease unless either (i) the FTT has determined that a breach has occurred or (ii) the tenant has admitted the breach or (iii) a court has finally determined that a breach has occurred. Under Subsection 4 a landlord may make an application to the FTT to obtain its ruling.

Roundalistic Ltd. V Jones and another (2016 UKUT 325) was another case appealed to the UT under Section 168 but, on this occasion by the landlord for determination on whether a breach of the user covenant in the lease had occurred. There were two maisonettes in the building, both on long leases; the lease of the lower provided that it was to be occupied only as a "single private dwelling house" by the leaseholder and his family. The respondent leaseholder of the maisonette sublet it on an assured shorthold tenancy. The FTT held that although there was a breach, the landlord could not object since the upper maisonette was either empty or used as an office. The UT disagreed: (i) there was a breach; (ii) there could be no waiver in reliance on the user of the upper maisonette since there was no similar covenant in that lease and (iii) the Consumer Unfair Contracts provisions could be applied to the terms of a lease but not in this instance since the 1999 Regulations provided an exemption when the terms of the contract reflected mandatory statutory provisions; here, the lease had been granted pursuant to statute, namely, the 1993 Act.

Which statutes apply to us?

By FPRA Hon Consultant Amanda Gourlay, barrister, Tanfield Chambers

The law of landlord and tenant is technical and, although it affects millions of people across England and Wales, cannot be found in just one place. Over time, Parliament has legislated to correct and improve perceived problems with the existing system. The result is a network of provisions which are often scattered across several Acts of Parliament. The Acts themselves are frequently lengthy and contain more than a handful of Schedules.

This article looks at the three main Acts of Parliament with which landlords and lessees should be familiar. They are:

The Landlord and Tenant Act 1985
The Landlord and Tenant Act 1987
The Commonhold and Leasehold Reform Act 2002

This would indeed be a dull article – and a very long one – if I simply recited each relevant section of each Act. Instead therefore, I propose to highlight those parts of the Acts which are of most direct relevance to lessees who have grouped together, whether as a limited company, informal residents' association or intending Right to Manage Company.

The Landlord and Tenant Act 1985

The 1985 Act is the prima donna of service charge disputes.

If you have ever been involved in tribunal proceedings about the amount of service charge that you are liable to pay, it is more than likely that those proceedings will have been based on section 27A, which is the foundation of all applications to the First-tier Tribunal for determinations about liability to pay service charges.

The provisions relating to service charges are in sections 18-30: technical terms are defined in sections 36 to 39. The key sections governing service charges include:

- The definition of a service charge (s.18);
- The reasonableness provisions (s.19);
- The imposition of a requirement to consult (s.20), and
- The power of the LVT/First-tier Tribunal to dispense with that requirement (s.20ZA).

An order made under section 20C prohibits a landlord from putting the costs of proceedings in the Tribunal through the service charge, even if in principle the lease permits that to be done.

In the case of *Morshead Mansions v Di Marco [2014] EWCA Civ 96,* Lord Justice Lewison reviewed a number of the service charge provisions of the Act, and explained how they can be enforced.

Residents associations' and the 1985 Act

A residents' association may ask a landlord for recognition under section 29, and, if the landlord declines recognition, the association may apply to the First-tier Tribunal for recognition.

There is one key difference between a residents' association and a residents' association which has recognised. A recognised tenants' association (or "RTA") gives the association the right to appoint a surveyor to advise on any matters relating to, or which may give rise to, service charges payable to a landlord by one or more members of the RTA.

The surveyor's appointment becomes effective on notice in writing to the landlord. It carries statutory rights of access to the documents and premises detailed in Schedule 4 to the Housing Act 1996.

The case of *Rosslyn Mansions Tenants' Association v Winstonworth Ltd [2015]* UKUT 0011 (LC) is a useful read for more on the criteria relevant to recognition of a residents' association.

The recent Housing and Planning Act 2016 inserted a new section (29A) into the 1985 Act. Its purpose is to require landlords, on a request from an unrecognised residents' association, to provide the contact details of fellow lessees so that invitations to join the association can be extended to those lessees.

At the time of writing, the Department of Communities and Local Government is preparing to consult on the regulations governing the procedure whereby that request can be made and the relevant information supplied.

The Landlord and Tenant Act 1987

The 1987 Act plays a supporting role to the 1985 Act in relation to service charges, but it is thrust into the limelight in three important situations:

- If lessees make an application for the appointment of a manager (sections 21-24);
- On an application to vary the terms of a lease or leases (sections 35 to 37), and
- In relation to the ownership and use of service charge money (section 42).

The Act contains a section defining technical terms. The most important definition is that of "landlord" in section 60(1). It is not the same as the definition of "landlord" in the 1985 Act.

The RMC difference

Landlords and their agents must be alive to the requirements of sections 47 and 48 of the 1987 Act. Those sections impose an obligation, when serving a service charge or rent demand, to provide the lessee with the landlord's name and address, even if not in England and Wales, and an address in England and Wales where notices can be served on the landlord.

Sections 47 and 48 apply only to service charge demands made by landlords as defined by the 1987 Act. They do not apply to service charge demands issued by management companies. That is because of the difference between the definitions of "landlord" in the 1987 Act and the 1985 Act.

In *Pendra Lowerth Management Company Ltd v North [2015]* UKUT 0091 (LC), Martin Rodger QC, Deputy President of the Upper Tribunal (Lands Chamber) gives a useful analysis of that difference.

The Commonhold and Leasehold Reform Act 2002

The 1985 Act runs to 40 sections and one schedule, and the 1987 Act to 62 sections and four schedules. By contrast the 2002 Act is voluminous, comprising 183 sections and fourteen schedules, many of which are not yet in force. Of those that are in force:

- Part 2, Chapter 1 contains the code for acquiring the Right to Manage;
- Sections 167 to 170 contain important brake on a landlord's power to forfeit a lease on the ground of breach of covenant or non-payment of small sums of rent, service or administration charge, and
- Section 176C provides for enforcement of First-tier Tribunals which are not decisions about sums of money.

For the purposes of this article, Schedules 11 and 12 are the important ones.

Schedule 11 and administration charges

Schedule 11 to the 2002 Act defines a variable administration charge. In summary, it is a charge which a lessee covenants to pay, but which cannot be quantified from the wording of the covenant itself.

Most will come across an administration charge as a demand for payment of legal fees incurred in relation to breaches of covenant and forfeiture or when applying for consents.

Paragraph 5 of Schedule 11 controls a landlord's recovery of variable administration charges. That control was bolstered by the insertion of paragraph 5A by the Housing and Planning Act 2016.

The effect of paragraph 5 is that a lessee is only obliged to pay an administration charge to the extent that the amount demanded is reasonable.

The effect of paragraph 5A, when it comes into force, will be almost identical to section 20C of the Landlord and Tenant Act 1985. It will allow the Tribunal to extinguish any obligation to pay the amount demanded if the Tribunal considers that it is just and equitable to do so.

Schedule 12 and costs

Schedule 12, which is no longer applicable in England, but is still alive and well in Wales, governs procedure in the Leasehold Valuation Tribunal, and specifically costs where a person involved in LVT proceedings has behaved unreasonably.

COMING UP

The next article in this series will grapple with the Acts of Parliament that at first glance do not apply directly to long lessees, but that may trip up the unwary.

ASK THE FPRA

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

Insurance

Q **We are six leaseholders who recently became freeholders. Although our property will be professionally managed by a managing agent, since none of the Freeholders has the time to do this, we have had to put in place insurance ourselves for the first time for the building, but as none of us are insurance experts we do not wish to risk leaving ourselves open to denial of a claim due to lack of understanding of the small print in the policy schedule. Could you please advise how other landlords who are laymen like ourselves deal with such a situation? Should we employ an independent broker to review our policy?**

A FPRA Hon Consultant Belinda Thorpe replies:
I would recommend the use of an independent broker who can review the options and covers available to ensure it provides a level of protection to suit the residents' association. I would also recommend a valuation is completed every three years. Care needs to be taken when deciding on an insurer as some may require you to include VAT on your rebuilding cost and others may not.

Sinking funds

Q **We have read recently about sinking funds. We wonder whether our lease enables us to create one? We may need to save for a long-term project of replacing our block of garages, and wonder whether we could do this by having a sinking fund. If we had a sinking fund, if someone sold their property, would they be entitled to a refund of payments made into the fund?**

A Stuart Merrison, Bishop & Sewell, replies:
The lease does not make explicit provision for a sinking fund. The fourth schedule is fairly restrictive in what the landlord can recover and does not make explicit provision for significant future costs on account. It is unlikely that a court would interpret this as provision for a sinking fund. If that analysis is right, then a fund could be set up by agreement of the leaseholders, or an application made to the First Tier Tribunal to vary the leases as required.
A sinking fund clause in a lease may well deal with repayment issues, but it is more general for this to be dealt with in the sale price of a leasehold property or by allowance/retention of funds on sale.

Section 20

Q **Are we required to serve a Section 20 notice for works that will be paid for out of our reserves fund? In other words, if we are not asking the shareholders for additional funds to pay for the works, do we need to serve the s20? Is the requirement based on the spending of any service charge money above the per flat figure, or on the source of the payment for the works? People who buy flats in our large block have shares in the company that owns the freehold, and the company is managed by volunteer non-executive directors who are shareholders elected by the shareholders. We put aside money from the service charge every year to pay for major works, and have never asked the shareholders for additional payments.**

A FPRA Committee Member Amanda Gourlay replies:
Yes, you do need to consult for works paid for from the reserve fund. The money is collected and put into the reserve fund, but when it is paid out, it is the lessees' money. Any expenditure of lessees' money on qualifying works which results in a service charge demand in excess of £250 per lessee should be the subject of consultation.

Anti-social behaviour

Q Over the last three years, one of our residents, who is a leaseholder, has been having heated arguments within their flat including shouting, banging of furniture, slamming of doors at all hours of the day and night. On one occasion the lady of the flat commenced cleaning her bathroom with petrol at 00:30 am to the extent the Fire Brigade were called due to the toxic fumes causing concern to the other residents.
We have sent numerous letters and emails to the resident concerned and it does recede for a short period, but still continues. This week the tenant of the flat below moved out citing deteriorating health and being unable to sleep or relax due to constant shouting and loud conversations. The lady has been a tenant for over 25 years.
Her landlord has again written to the noisy neighbour stating that her new tenants will be moving in shortly and have small children, and the fear is that they too may be driven away by the unsocial behaviour of these leaseholders. She says she has sought legal advice that if her new tenants leave due to their behaviour she will seek loss of rent and legal costs.
Is there any other recourse or legal action that we as an association can take to stop the nuisance behaviour continuing?

A FPRA Chairman Bob Smytherman replies:
These are really difficult situations, especially when warning letters are just seen as provocative. With regards possible action, it is for the local authority to deal with and take action for anti-social behaviour and should be involved at an early opportunity to collect the necessary evidence.
This evidence could also be used by yourselves to take action for possible breach in the terms of the lease. I am not a lawyer but from experience bringing such matters to court are not easy and would require very clear evidence from statutory authorities such as the Fire Service and Environmental Health as well as being potentially costly.
My advice would be to seek local authority action which can lead to Anti Social Behaviour Orders to force a change in behaviour or face the full force of the criminal law. Providing you take all reasonable steps to prevent this anti-social behaviour I think it would be very difficult to seek redress from the association for loss of rent from a departing tenant.

Fire risk

Q **A buyer's solicitor has recently written to us: "Fire Risk Assessment is a legal requirement for any property with common areas, rather than an insurer's requirement." Does this sound correct? Is there a particular format that this should be in?**

Continued on page fourteen

Advertisements

Ask the FPRA continued from page twelve

A FPRA Chairman Bob Smytherman replies:
The legal requirement is for your company to have a Fire Risk Assessment (FRA) for the common parts of your block not the flats themselves. There is no prescribed format and requires the directors to keep a 'watching brief' and be able to demonstrate this to your local fire service who are the enforcement authority.
There is an extensive guide on the members' area of our website that will assist you in the process of producing your FRA. Your local fire service will also be able to assist with advice to ensure that your directors are managing the potential for a fire in your building and maintaining a safe means of escape which are the two key issues to take account of.
My strong advice is to arrange for a fire safety adviser to visit your block and get some initial advice before deciding whether to contract a formal report from a specialist contractor, as most blocks tend to be a low risk and usually very easy to manage, but please do not ignore this legal requirement as your directors are the ones responsible.

Pollution liability

Q **We are an estate of 24 properties. The landlord has his own management company and they in turn use a managing agent to handle the day-to-day maintenance of the estate. The service charges are paid to the management company via the managing agent.**
The estate has an on-site bio-digester sewage treatment plant that outputs treated water into the nearby river. The landlord's management company has a permit from the Environment Agency to operate the treatment plant according to certain standards laid down in the permit.
If the treatment plant were to pollute the river, who would be liable for any potential fine that the EA might impose – the landlord, the landlord's management company, the managing agents or the leaseholders?

A FPRA Committee Member Shaun O'Sullivan replies:
Although I am not a lawyer, and although I don't have sight of the agreement between the management company and managing agent nor, indeed, details of the licence granted to the former, I do not believe this will impact on my advice. My reading of the lease is that the foul digester treatment plant forms part of what the lease describes as 'Service Media'. Other than those parts of Service Media which have been demised to what the lease describes as 'Units' and which comprise only such items as serving the Unit exclusively, the rest of the estate and its infrastructure has, as is usually the case in residential leases, been retained by the freeholder. Thus, although the management company has an obligation to repair and maintain such items as comprising Service Media, ownership of the treatment plant remains with the freeholder whom, I believe, would be ultimately responsible for any pollution from the plant and any fine which might be imposed. However, the management company is obliged to keep the estate insured against a range of risks and to do so in the joint names of the landlord (freeholder) and management company. Additionally, the management company is required to buy any further insurance the management company and landlord might deem to be necessary in meeting their obligations and with the cost of such cover being met from the service charge(s). My guess would be that the management company would, on behalf of the company and the Landlord, have ensured that the (somewhat unusual) risks resulting from any instance of pollution would have been covered.

Collecting service charges

Q **Do you have a template/draft letter as we want to write to the mortgage company of a leaseholder who has not paid their service charges and has failed to answer any correspondence on the matter?**

A FPRA Committee Member Colin Cohen replies:
There is no draft set letter to mortgage lenders, just a normal letter explaining who is the landlord or management company/residents' association, with copy demands telling them of the arrears. Otherwise it may be worth appointing independent debt collectors. There are firms who specialise in this and do not charge the company but the defaulting lessee.

Charging for info

Q We manage the communal areas for the 14 houses included in the association. Over the years we have had several houses change ownership and are asked various questions by solicitors involved in the sales. We have always answered the questions and furnished relevant paperwork where required free of charge. But on the latest occasion, in addition to the normal questions, for the first time we have been asked to supply a copy of our Memorandum and Articles of Association. Is this a "normal" request, and as the Articles are some 16 pages, should we be charging for this information, and if so, how much?

A FPRA Committee Member Colin Cohen replies:
They are entitled to this information, although, in the case of the Memorandum and Articles, these can usually be downloaded from Companies House free. However, I would certainly suggest you do charge them a fee for any management information for a conveyance, which certainly is not unreasonable. The amount to be charged obviously is discretionary. If a manager is appointed, as a business then they will charge more, either a set minimum amount for the time and costs or by a set fee, but a residents' company may want to charge just a nominal fee.

Are we paying too much?

Q We are at present paying approximately £9,550 for our building and terrorism insurance to our ground landlord, whose responsibility this is, and who after paying the insurance company, looks to us for the repayment of the premium.
We have established that we could obtain equivalent cover from an equally competent and well reputed insurance company for considerably less (of the order of £1,000 less). We have discussed this at length with the ground landlord but they are not willing to reduce their price (for reasons that we can well imagine). Is there any tribunal, ombudsman or other

authority that we can apply to resolve this difference that we have with our ground landlord?

A FPRA Hon Consultant Belinda Thorpe replies:
The most effective approach would be to take the ground landlord to the First Tier Tribunal who will be able to challenge the insurance charges for reasonableness.
I would, however, recommend that at least three quotes are obtained to show a "normal" premium level. I would also ensure that quotations are gained using the same rebuilding cost as your current insurance, and that you approach specialist insurance providers to ensure the policy is designed for flats.
It is also important to be aware of all claims that may have been incepted over the last five years, for both communal areas and individual flats, as if the history is different to the one that the ground landlord has, then this could have a considerable effect on the insurance quote obtained.

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.

NEW FACE

FPRA welcomes its newest Hon Consultant, Kenneth Allcock, from Malvern.

Kenneth worked for 30 years as a quantity surveyor, contract manager and director in building contract work. Then he took a BPhil in education and became a community mediator. He has worked to support the Youth Justice system. He formed a charity, South Worcestershire Mediation Service and acted as coordinator and principal mediator for five years. He has also served as a volunteer and trustee on numerous local charitable organisations for more than 40 years primarily with the Malverns Scout District as district secretary and adult trainer and supporter.

Kenneth moved into a mixed tenancy "extra care retirement village" in 2014, helped to create a residents' association in 2015 and was elected secretary.

DISPROPORTIONATE COST

FPRA has written to the new Minister of State for Housing and Planning, Gavin Barwell, at the Department of Communities and Local Government, to suggest that he should use his powers under the Commonhold and Leasehold Reform Act 2002 to increase the financial limit under Section 20 to reflect the effects of building cost inflation, sine the present £250 limit was proposed nearly 20 years ago.

FPRA Chairman Bob Smytherman wrote: "This is causing additional cost for leaseholders disproportionate to the benefit."

Mr Barwell has replied:

"Thank you for your letter dated 14 October referring to S 20 of the Landlord and Tenant Act 1985, (as amended by the Commonhold and Leasehold Reform Act), about the financial threshold requiring a consultation before carrying out qualifying works.

"I appreciate you drawing FPRA members' and leaseholders' concerns to my attention and recognise the threshold above which consultation is required, which are of concern to the FPRA, has been in place since 2003. I am also aware that there have been calls for the threshold to be increased, including the Competition and Markets Authority as part of its market study into property management services, published in 2014.

"The Department is taking forward the majority of the wide ranging recommendations made by the Competition and Markets Authority. We have supported work led by the Association of Residential Managing Agents (ARMA) to consider a range of legislative amendments to reform S 20. I understand Amanda Gourlay represented the FPRA on the ARMA led group.

"My officials will be setting up a Technical Discussion Group to inform a consultation and proposals for Ministerial approval in 2017 to update the S 20 consultation process and my officials will invite FPRA representation on the Technical Discussion Group."

LEASEHOLD HOUR

Join the FPRA and Flat Living on Twitter every Tuesday at 8pm to discuss all things leasehold. Recently launched #LeaseholdHour is your opportunity to speak to other individuals and organisations with an interest in leasehold, you can ask questions or follow the discussion for other relevant news.

To follow the conversation just search the hashtag **#LeaseholdHour** and when joining the conversation just make sure you use **#LeaseholdHour** on your tweets so that everyone can see them.

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