ISSUE No.125
Summer 2018

NEWS

FPRA
FEDERATION OF PRIVATE RESIDENTS' ASSOCIATIONS

EXCITING NEW APPOINTMENT

By the Editor

FPRA is delighted to announce that our legal adviser Nick Roberts has accepted a post as a lawyer with the Law Commission to work on Commonhold and Leasehold Reform.

This prestigious role means that Nick is taking leave of absence from his academic post at the University of Reading Law School. It is a Civil Service position, and as such is impartial, but Nick has all the experience and expertise to flag up the current problems for leaseholders and the non-appearance of commonhold.

As reported in our last newsletter, reform of leasehold enfranchisement and commonhold has been chosen by the Law Commission for its new (13th) programme.

Nick may or may not be able to continue his role of advising FPRA members – that remains to be decided by the Law Commission – but even if he can't he will now be in the perfect place to highlight all the issues FPRA has campaigned on for so long.

Nick says: "The Government wishes to reinvigorate commonhold, and the Law Commission has been tasked with identifying and overcoming the factors which may have prevented its adoption. It expects to issue a Consultation Paper in the autumn. I would encourage FPRA members to respond to it, as it will be very useful to know what needs to be done to commonhold to make it more attractive. It will be especially useful to hear from members who already collectively own their freehold, and have considered converting to Commonhold, and to learn what put them off."

THE FPRA RESPONSE ON COMMONHOLD

The lack of progress on Commonhold is highlighted in the FPRA's response to the Law Commission's Call to Evidence, which was led by Vice-Chairman Richard Williams:

"About half of our member associations are leaseholder-owned companies which own the freehold of and manage their blocks. Our comments reflect the viewpoint of such companies for whom Commonhold could represent an improvement to their present arrangements. For those blocks where the freeholder is separate from and independent of the leaseholders of the individual flats, an enfranchisement would seem to be an essential preliminary step to a conversion to Commonhold, since there seems to be no role in the Commonhold system for a separate freehold interest. "Commonhold Associations would be eligible for FPRA membership, but there are very few existing Commonholds and none have joined FPRA. We believe that very few of our members have considered conversion to Commonhold in detail, because of the notorious defect in the present legislation requiring

Continued on page 2

INSIDE THIS ISSUE

FPRA response continued from page 1

every single leaseholder in the block to agree. Those running the present self-managed blocks will often have had first-hand experience of the time and effort required to persuade the necessary majority of their fellow leaseholders to 'sign up' to the purchase of the freehold from the original leaseholder, and will invariably have found that a small percentage will not quite get around to completing the paperwork for a very long time – perhaps not until they are proposing to sell their flats. The existence of this problem has inevitably discouraged our members from exploring the possibilities offered by Commonhold in more detail.

"We consider that there are a number of types of developments for which Commonhold may not be suitable such as retirement developments, and other developments where the freeholder would be expected to offer a high level of services over and above the maintenance and management of the building itself. Leasehold may also be appropriate in the case of mixed use developments, especially where there is a high proportion of non-residential use. It may also be the case smaller self-managed blocks will prefer to remain under the leasehold system until Commonhold has become familiar to professional advisers and simple (hopefully inexpensive) conversion procedures have been developed.

"We cannot offer comments on behalf of developers or lenders. However, perhaps we can offer the suggestion that developers would find it easier to continue with the present system, with which the market is familiar, until Commonhold is successfully established and accepted by the market.

"We note that you have asked for comments on Company Law problems, which we comment on in more detail in our replies to your detailed questions. No doubt you will be involving the department of Business Energy and Industrial Strategy in the development of solutions to possible problems in this area. May we also express the hope that HM Revenue and Customs will also be involved in identifying any tax problems that may arise, especially in the conversion of established leaseholder-owned blocks from leasehold to commonhold. It seems likely that the process will involve the existing company owned by the leaseholders disposing of the freehold of the block, and the leasehold interests, and interests in the company being disposed of by the leaseholders, potentially giving rise to taxable gains."

PROTECTING CUSTOMERS IN THE LEASEHOLD AND SOCIAL HOUSING MARKET

Glaring omissions exist in the current Government's proposed 'Crackdown on Unfair Leasehold Practices', FPRA Chairman Bob Smytherman has told the Minister for Housing, Communities and Local Government.

In a letter to Dominic Raab, Bob writes: "We are extremely concerned that the welcomed news, appears to leave a significant gap in the measures announced. This omission will not protect all customers in the leasehold and social housing market.

"We would be very grateful if you would pass on to the team receiving responses, the fact that the recent consultation only focused on the Protection of Consumers in the Lettings and Managing Agent Market. This is a serious oversight in the movement to tackle all unfair and abusive practices in all parts of the housing market.

"Should the Ministry for Housing, Communities and Local Government fail to include landlords (including registered social providers – RSPs) that directly manage leasehold and social properties, with facilities and services (especially those for vulnerable elders in retirement homes) in their findings and recommendations for reform, it will provide a band of unscrupulous traders with the continuing opportunity to exploit tenants. At the moment, the terms and conditions of almost every leasehold and tenancy contract provide unlimited powers for landlords to overide 'professional' codes of practice and 'regulatory framework,' even those approved by the Secretary of State under Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993.

"The Tenant Engagement and Empowerment Standard was a fine start, but the Regulator only has a duty under the 2008 Act to exercise its functions in a way that unfairly minimises interference to RSLs and is proportionate, consistent, transparent and accountable. Whereas tenants only have recourse to Tribunals or the Homes & Communities Agency to prove serious failures or harm, provided they have the huge resources to do so. RSPs may just offer voluntary reviews and actions to 'resolve issues' and claim inadequate resources to make prompt improvements to services, resolutions than might take years to complete.

"Effectively, this unfairly requires customers to pay 'reasonable' costs and landlords and managing agents to make all the decisions regarding 'reasonable' services, without any consultation or consideration. From a tenant's standpoint, the burden of proof of 'reasonableness' is placed on them, whilst 'Enforcement' is rarely prompt and effectual.

"Our members would be most grateful of an acknowledge of this request for new measures, to cut out unfair and abusive practices within the tenancy system, that include landlords and RSPs that directly manage leasehold properties, facilities and services."

CAP ON COSTS

A cap of £5,000 should be placed on costs in leasehold cases and residential property cases in the Property Chamber, FPRA has recommended.

The Federation, responding to a consultation by the Tribunal Procedure Committee, answered:

"We do think it is appropriate for there to be a cap in these cases. While the potential for costs awards can affect all parties, in these cases there is most frequently (although not always) an imbalance in the ability for the respective parties to absorb the costs of going to the tribunal. The threat of unlimited costs (albeit that these costs are not frequently ordered) is more likely to prevent an individual or group of individuals, whose own personal funds are at risk bringing a tribunal claim to protect their rights, than a company.

"We would consider both landlords and leaseholders can be affected by the other party acting unreasonably, however, we are of the view that it is most often individual leaseholders that find it the most difficult to take the risk of going to the tribunal.

"The combined effect of the risk of unlimited costs awards and the additional effect this has on individuals, results in further imbalance in an area whether the law is already perceived to be on the side of the landlord. A cap would give greater clarity to all parties and if it is set at the right level, also dissuade parties from acting in an unreasonable manner in the proceedings.

"The level of the cap is therefore very important to create the correct balance between preventing people from making the claim and to dissuade those who are involved in proceedings, acting unreasonably.

"In practice, the parties would normally take into account the costs of going to the tribunal when determining whether it is worth pursuing a claim. In enfranchisement and lease extension cases, this would normally be based on the difference in valuation figures between the parties and whether the likely improvement in value is worth the risk of the costs incurred in going to the tribunal. If there were a cap, it would remove some uncertainty for the parties. We would however note that we are not aware of there being a large number of successful costs claims having been made, although in practice the threat of seeking costs for unreasonable behaviour are seen frequently.

"We are of the view that a reasonably significant cost, that would go a fair way to compensating a party for unreasonable behaviour but one which would not be too unreasonably high would be £5,000. This would give the tribunal discretion to award relatively substantial costs to act as a deterrent but clearly the tribunal could also award smaller amounts where that was appropriate.

"In practice, we understand that the costs of one party being represented at a tribunal by a solicitor and/or junior barrister and valuers can vary significantly but are likely to be in the many thousands of pounds. The award of costs would not be to cover this cost, but the additional cost that may have been incurred due to unreasonable behaviour.

"We would add, however, that the lack of clarity as to what is considered unreasonable behaviour in proceedings adds to the need for there to be a cap. If the parties could satisfy themselves that certain behaviour would not be considered unreasonable, there would be a reduced concern about there being a risk of being required to pay the other parties' costs."

Asked if the cap should apply to the Upper Tribunal (Lands Chamber), FPRA said: "No, we are of the view that if the matter is appealed to the Upper Tribunal that there should be no cap on the award of costs, if a party has acted unreasonably. If the matter has reached this stage then it should be for this higher court to have the discretion to make any award for costs for unreasonable behaviour, that it deems fit."

GAS SAFETY

New Gas Safety Regulations have been welcomed by FPRA Chairman Bob Smytherman.

The Health and Safety Executive has amended three areas of the Gas Safety (Installation and Use) Regulations 1998 (GSIUR) following consultations.
The one most likely to impact FPRA members is:

Regulation 36(3):

Introduce flexibility in the timing of landlords' annual gas safety checks, and clarify which defects should be recorded.

Welcoming the new regulations, Bob said: "This flexibility will be very important. There is often confusion when a defect has been detected as to who is responsible in a block of flats when leaseholders sublet without notifying the landlord, or a flat owner-occupier fails to notify the landlord of annual gas safety checks to their appliances."

Full details are on the HSE website.

THE COST OF RE-CLADDING POST-GRENFELL

Committee member Shaun O'Sullivan reflects on a recent ruling by the First Tier Tribunal.

The human cost of the tragedy which was Grenfell Tower is being felt, and will be felt for many years to come, by those who were directly or indirectly affected by such an horrific fire.

Although our sympathy must go out to all those involved, as always with such tragedies lessons must be learnt and every effort made to ensure such a disaster never happens again.

The public inquiry, led by Sir Martin Moore-Bick, is split into two phases with the first examining how the blaze developed and the second how the building became so exposed to the risk of a major fire. Sir Martin has publicly acknowledged that there is an 'urgent need' to conduct phase one in order to find out what part of the tower's design and construction played a role in allowing the disaster to happen.

The inquiry will also look at the scope and adequacy of relevant regulations related to high-rise buildings. This will hopefully provide some answers as to the cause of the fire and make recommendations as to what needs to be done to avoid a recurrence; but it is unlikely that this will be before 2019 at the earliest. Meanwhile the residents of many blocks, both new and refurbished, which have been covered with Grenfell-style cladding, understandably remain anxious, both from the point of view of their own safety and the potential cost to them of replacing the cladding.

Most blocks which have been clad with the type of cladding employed on Grenfell are likely to be tower blocks, or at least blocks of a substantial nature, and probably managed by professional agents. Directors of resident management companies are unlikely, therefore, to have to face up to the management challenge which this will undoubtedly pose. Nevertheless, that's not to say that any members who might live in such blocks will not be affected financially – and, potentially, quite substantially.

Pending the outcome of the inquiry, the key question for those who might be living in blocks covered with Grenfell-style cladding and which has failed fire safety tests, is who should pay for its removal and possible replacement?

STOP PRESS

As we went to press we heard that the original builder of the flats Barratt had agreed to meet the cost of re-cladding the 95-apartment block in Croydon. Hopefully other builders might follow this example, but the basic principles of the FTT ruling still apply and there is no saying that other builders will follow suit.

For those buildings where local authorities are the landlord it would seem that the local authority will be meeting the cost, either from their own resources or by seeking (although not necessarily getting) support from central Government. Registered social landlords also seem to be prepared to foot the bill for buildings for which they have responsibility. And at least one private landlord has accepted responsibility for meeting the cost. However, although the Government has 'encouraged' landlords of privately owned blocks to meet the cost, for the most part they are not readily accepting responsibility and are looking towards leaseholders to meet the cost from service charge funds.

One such development is a 95-apartment block in Croydon where leaseholders are facing large bills, reportedly in the region of £30,000 per flat. This has been the subject of a recent determination by the First-tier Tribunal (FTT) following an action by the manager of the block, mounted in order to determine liability for the costs. In this case the FTT has ruled against the leaseholders, leaving them with the cost of replacing the cladding. Depending on the wording of individual leases, there is the potential for leaseholders in other developments – possibly many others – having to foot similar sized bills.

The FTT can but consider its determination from the standpoint of the lease and leasehold law and, in many respects, this ruling goes to the heart of what it is to live in a leasehold property. In simple terms, this requires the landlord or his agent to keep the building in good and substantial repair and for the tenant to meet the cost by means of a service charge. But, as ever, the wording of the lease is crucial; in the case of the Croydon block the lease reads:

'Inspecting, rebuilding, re-pointing, repairing, cleaning, ***renewing or otherwise treating as necessary*** *and keeping the Maintained Property comprised in the Block and every part thereof* ***in good and substantial repair*** *order and condition and renewing and replacing all worn or damaged parts thereof.'*

And the FTT, in reaching its decision, considered that the words shown in bold among the manager's obligations in the lease went beyond simple repair. The FTT also took the view that the words *'rectifying or making good any inherent structural defects'* within the lease encompassed the removal of the defective cladding and its replacement with fire resistant cladding. So the leaseholders are required to pay for removal and replacement of the cladding.

However, costs, according to leasehold law, must be 'reasonable' – always something of a subjective concept but one which might at least give some small degree of hope to the leaseholders. The chairman of the FTT, in ruling that if there is an obligation to do the work the tenants are obliged to contribute to the cost, made it clear that leaseholders remain entitled to dispute the reasonableness of the cost, leaving open the opportunity for a determination by a higher court on whether the costs involved are reasonable.

Equally the chairman of the FTT suggested that, in the circumstances, the leaseholders might be able to lodge claims on other parties involved such as the certification

authority *"if there were errors in the certification process"* or the cladding manufacturer *"if warranties were given as to its suitability"*. He also suggested that the leaseholders could challenge central Government *"if the building regulations were not fit for purpose."* However, he equally made the point that no claims could reasonably commence until the public inquiry had reported, that any such claims would be entirely speculative with uncertain outcomes and warned leaseholders that they could *"find themselves mired in litigation for many years, during which time their flats would be effectively unsaleable"*.

In a sense we, as leaseholders, shouldn't perhaps be too surprised by the FTT ruling; landlords or their agents are covenanted to maintain the building and leaseholders are required to meet the cost of so doing. Nothing new there. The difficult pill to swallow, in this sorry tale, is that most buildings where such cladding has been employed would appear to be relatively new or very new. Thus, it would not seem unreasonable for leaseholders to expect that the cladding would remain in situ as an integral part of the building for many years and only require repair or replacement once it had deteriorated to a point where this became necessary. But this would be on a planned basis with costs being met from service charge funds and probably, for such a long-term, expensive and identifiable requirement, from reserve or sinking funds.

It is perhaps understandable, therefore, why leaseholders are feeling aggrieved to find themselves faced with such large and unexpected bills, required to be paid within the service charge period defined in the lease, and on buildings that, to all intents and purposes, have been certified as meeting current building standards.

In essence, until Grenfell, buildings utilising cladding in their construction, would have been deemed to be 'fit for purpose'. Patently, and notwithstanding what might emerge from the public enquiry, this appears not to be the case. Nevertheless, as things stand and depending on the wording of individual leases, it would seem that costs will fall firmly on the shoulders of leaseholders.

SPECIAL OFFER FOR FPRA MEMBERS

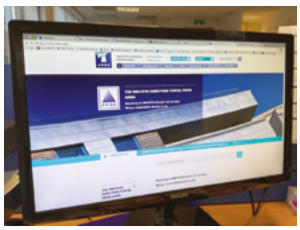
The Association of Residential Managing Agents (ARMA) announces a new category of membership called 'RMC/RTM Director'. This membership level is open to directors of RMCs (Residents' Management Companies), RTM Companies (Right to Manage Companies) and Residents Associations and is designed to provide invaluable information and guidance to those dedicated individuals who take on the responsibility of managing their own building.

We are delighted to offer FPRA members a special discounted annual subscription fee of £400 + VAT (normally £500 + VAT) for this membership category.

What does the new membership category offer?

As an RMC/RTM Directors member of ARMA, you will receive the following benefits:

- Access to ARMA's RMC/RTM Directors' Portal – an invaluable online resource for company directors. It will help directors carry out their responsibilities and enable you to understand your legal obligations and requirements. There are sections on company law, legal responsibilities, compliance, communications, running your RMC/RTM on a day-to-day basis, accounting and finance, answers on the most commonly asked questions, templates for AGMs, etc. There are also nine webinars on different topics such as company general meetings, directors' duties, etc, which give very clear explanations of what's involved in being a company director.
- Technical advice from an expert Technical Officer on your residential leasehold management queries.
- A monthly e-newsletter keeping you abreast of the latest industry, legal, technical, health & safety, training and events news.
- A quarterly printed newsletter (AQD), with in-depth articles on industry news, hot topics and any relevant changes in legislation likely to affect you.



Other benefits allow you to:

- Book onto a wide range of training courses on subjects relating to the leasehold system: www.arma.org.uk/training-events/training-courses.
- Attend the ARMA Annual Conference (18 October 2018), now firmly established as the largest event in the residential leasehold calendar.

What to do next ?

If you would like to take advantage of the special membership rate for FPRA members (£400 + VAT per annum) to join ARMA as a RMC/RTM Directors member, please complete the online membership enquiry form at the foot of the following page: www.arma.org.uk/managing-agents/join-arma.

Who is ARMA ?

ARMA is the leading trade association for companies that manage private residential leasehold blocks of flats in England and Wales. ARMA's role is to promote the highest standards of leasehold management by providing technical advice, training courses on the leasehold system and guidance to its member firms. ARMA provides 44 free, easy-to-understand Advice Notes for leaseholders on its website: www.arma.org.uk/leasehold-library.

ARMA is committed to the highest standards of property management in the sector. Fundamental to this is improving the understanding and knowledge of the leasehold system and the framework within which managing agents have to work to help leaseholders through the complex maze of residential leasehold management.

Collectively, ARMA members manage:

- Over 50,000 developments across the country
- 1,000,000 homes
- £1 billion of client money (service charges) per annum

For more information, please contact ARMA at:

Tel: 020 7978 2607 email: info@arma.org.uk web: www.arma.org.uk

Legal Jottings

Compiled by Philippa Turner

FTT First-tier Tribunal
UT Upper Tribunal
UKSC United Kingdom Supreme Court

Landlord & Tenant Act 1987

The decision of the UT in *Coates v Marathon (2019 UKUT 31)* arose from the appointment by the Court of a manager under the Act in respect of a development in Canary Wharf. This gave rise to continuing disputes between the landlord, the head lessor "CREM", and the manager (see newsletter 122 *Octagan v Coates*) and a series of reported decisions of the FTT and UT. In the latest, difficulties were caused to the manager, Mr Coates, because of the failure of the previous manager, Marathon, an agent of CREM, to comply with the order of the FTT to deliver to Coates "all... accounts, books, papers, memoranda, records, computer records ... and other documents as are necessary to the management of the premises". In denying its failure, Marathon claimed that all the documentation had been supplied as well as the computer on which it had been stored. However, the figures were incomplete and in a form which made it impossible to calculate income and expenditure. Furthermore, it was found that the computer had been wiped clean of all data. Marathon argued that it would be prohibitively costly to extract the figures from their records which also comprised those of other properties under their management. No explanation for the loss of data from the computer was offered. The UT had no hesitation in agreeing there had been a failure by Marathon to comply but refused to order that a penal notice should be attached to the original order since Coates should have sought a remedy against CREM who was Marathon's principal. The next step would be to apply to the FTT that CREM should comply and should, as ordered, render all "reasonable assistance and co-operation to the manager".

Leasehold Reform Housing & Urban Development Act 1992

In *Roberts v Thain & Gardner (2018 UKUT 64)* an appeal by the freeholders from the FTT was allowed by the UT after analysing the valuation figures in claims for extended leases of two flats in the same development. The interest in the case is the account it gives of the calculation to be made in arriving at the amount of premium to be paid. The flats in question, each contained two bedrooms, one, No.13, on the first floor and the other, No.5, on the ground floor; No.13 had a garage and a parking space but, although No.5 had no garage, it had direct access to the grounds, containing various facilities, including a heated outdoor swimming pool. The existing leases for 99 years had 71 years unexpired (No.13) and 69 years unexpired (No.5). Otherwise, the terms were identical with a ground rent of £200pa to be reviewed every 25 years, linked to the RPI. In addition, the landlord was entitled to receive 1% of any premium received on an assignment of the lease. The UT increased the premium for Flat 13's lease extension from the FTT's figure of £16,100 to £20,694 and for Flat 5 from £22,300 to £28,818.

In this case, it was held that the lease provision for increasing the ground rent should be reflected in the valuation by compensating the freeholder for its loss; but, as members will no doubt be aware, the problem caused by such provisions has become a hot issue in recent times with calls for such terms to be outlawed. The government has indicated that this will indeed be implemented in respect of any new leasehold properties but the question of existing leases containing such clauses will continue to cause difficulties. In *Proxima v Michael Spencer (2017 UKUT 450)* it was the mechanism for increasing the ground rent which became a relevant matter in determining the premium for extended leases of three flats on 125 year leases. All issues as to the calculation of the premiums had been resolved, arriving at a provisional figure of £6,800 each by the time of the FTT hearing. However, the leases provided for ground rent of £50 pa to be reviewed every 21 years but the first renewal date had already passed by the time the claim for extended leases was made without a new rent being settled. The £6,800 figure was therefore on the basis that £50 was still the ground rent. The leaseholders argued that the landlord had failed, after serving notice of intention to renew, to appoint an expert valuer to ascertain the new rent. One of the leaseholders had purported to make time of the essence in effecting this appointment and therefore the new rent, now calculated to be £192.70, not having been demanded for six years after the original review date, was not recoverable. The FTT had held that the ground rent remained £50 and the landlord appealed to the UT which allowed the appeal: it was not possible, in the absence in the lease of an express time limit for the review process to take place, for one party unilaterally to make time of the essence; furthermore, the leaseholder had not stated what time limit would have been appropriate. It was accordingly ruled that the rent had been validly reviewed at the increased figure and accordingly the premium for the lease extension would be £7,900.

Service charges

The leaseholders in Urban Splash v Ridgway (2018 UKUT 32) occupied "loft" flats in a converted Liverpool warehouse. The service charges for the years 2010-16 were in dispute and one of the leaseholders sought determination from the FTT under S27A of the Landlord & Tenant Act 1985 of the amount due for the period and for the future year 2017. Of the sum demanded he had paid £15,978 in total but disputed the balance on two grounds: (i) for the period prior to 2011 when the building was managed by different agents insufficient information/explanation had been afforded as to how the brought-forward sum, totalling £3,558 had been arrived at and (ii) the fees allegedly incurred by the agents as "administrative charges" in pursuing the leaseholders for recovery of disputed sums were not due. The FTT made no finding as to service charges due for the years 2010 and 2011 or for 2016 because of insufficient evidence but ruled that the total due for the 2012 -15 years was £11,324; the overpayment should be credited towards later years. It also made an order that the administration costs were not due and, under S20C of the 1985 Act, the landlord's costs of these proceedings were not to be added to the service charges. On appeal by the landlord the UT held that (i) the outstanding charges for 2010 of £3,894 claimed by the previous

agent were not due, no evidence now being available and no certification as required by the lease being provided; (ii) the 2011 charge of £3,281, having been certified, was payable; (iii) the 2016 charge was remitted to the FTT since a certificate was now available; (iv) the certification process did not apply to quarterly payments in advance but only to the final balancing sum; (v) the question of the administrative charges was also remitted to the FTT since, until a valid calculation of the total sums demanded was available, it was not possible to ascertain whether or not leaseholders were in arrears; if not, no so-called administration charges made in respect of allegedly enforcing such demands, could be levied and (vi) landlord's costs were not to be recoverable through the service charges.

The sums involved in *Avon v Cowley (2018 UKUT 92)* were not inconsiderable even when divided between 49 leaseholders – nearly £6,000 each. The newly-built development containing two commercial tenants on the ground and basement floors as well as the residential flats on the four upper floors, suffered significant leaking of the surface of the courtyard seriously damaging the ground and basement floors. A claim was made under the NHBC warranty which was accepted in principle although had not been paid before the work, needed as a matter of urgency, was carried out. It was held that the residential leaseholders were not liable to contribute to the cost of remedial work of £291,000 under the service charge provision for advance payment; demands must reflect the NHBC contribution by allowing a credit.

The landlord in *Assethold v Adelhadi (2018 UKUT 22)* issued a claim in the County Court against the leaseholder for arrears of rent and service charge amounting to £2,173.94 and for administration charges of £561.35. By the time the dispute came before the FTT it was only the latter which was in issue and the FTT disallowed it. On appeal to the UT, this decision was reversed: it had been successfully argued that on the evidence, these charges represented legal costs and interest thereon incurred in contemplation of forfeiture which were recoverable according to the lease and which were reasonable in amount; the only element consisting of interest (£51.35) was disallowed. The UT also set aside the order under S20C of the Landlord & Tenant Act 1985 since litigation was clearly the only method the landlord could employ to recover the sums claimed.

The charges in dispute in *Wyldecrest v Santer (2018 UKUT 30)* were for the supply of water to 92 owners of "park homes". Under the Water Resale Order 2006 which governs the resale of water, the reseller must charge no more than itself pays the water supplier; the FTT found the owner of the site was in breach of the Order having charged each home owner £148.75 more than it had cost. The park owner appealed (i) that although there had been an overpayment by the time of the FTT's decision, it had been effectively used up by the underpayment in subsequent years, thus reversing the imbalance and it was therefore wrong of the FTT to order immediate repayment and (ii) that it was the County Court, not the FTT , which had jurisdiction. The UT held (i) that the home owner should be entitled to reimbursement immediately, even though, in this case, it was accepted by all the parties that this was no longer necessary and (ii) that under S4 of the Mobile Homes Act 1983 most dispute resolution was to be dealt with before a tribunal rather than a Court and the FTT accordingly had jurisdiction.

Service

The question of service of proceedings by email was considered by the Supreme Court in *Barton v Wright Hassal (2018 UKSC 12)*. The appellant, who was unrepresented, purported to serve a claim against his former solicitors by email where no agreement had been made that it would accept such service. All Courts up to and including the Court of Appeal had declined his application to allow retrospective validation of such service. The email was sent on the last day before time expired on the claim and accordingly it was by now too late to rectify the position by alternative means. The Rules of Court allow service by electronic means only when the party to be served has previously indicated its willingness to accept such service. The argument that the claim had, in effect, been brought to the Defendant's attention within the time limit was no reason to allow service by means other than that prescribed by the Rules. Mr Barton's status as a litigant in person did not exempt him from observing the Rules; to do so would confer on him an unmerited advantage and a corresponding disadvantage on the recipient. The Rules are not obscure or difficult to understand, nor was the existence of previous email communications with the Defendant be taken to imply it would accept service by such a method. It is fair to say that the Supreme Court reached its decision by a majority of three to two and that there was some criticism of the fact that this particular Rule is contained in the Practice Directions, rather than the body of the Rules.

NB in previous newsletter No 124, the final sentence of the section headed "Insurance" – "The leaseholders were not accordingly obliged to contribute to the supermarket car park costs" – should have appeared as the last sentence of the section "Lease interpretation", thus following the sentence "The lease, it was conceded, was poorly drafted and inconsistent."

Philippa Turner has been a mainstay of this newsletter, providing her Legal Jottings for every edition across three decades. This is her last column. The editor, and the whole of FPRA, would like to give her a huge vote of thanks for her great contribution.

ASK THE FPRA

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

Fire Safety Costs

Q **I have a question about certain costs which have been passed to our service charge by our freeholder.**
Our development opened in 2013. Every 12 months since then a fire safety review has been performed by a private company. As a result of these assessments a number of recommendations have been made due to non-compliance with fire safety regs. The works to resolve these have cost thousands of pounds.
I have consulted a leading fire safety organisation. They advised that there have been no changes to relevant fire safety regs since 2012. So my question is: Can a developer open a development and sell flats if all fire safety regs are not signed off? If they are allowed to do this, then are they legally allowed to then pass on the costs of meeting fire safety regs to leaseholders?

A FPRA Chairman Bob Smytherman replies:
Thank you for your email about the issue of fire safety in your block; very much a topical issue in 2017 and featured regularly in our newsletter to assist members understand and fulfil their responsibilities. All of these are available to view on our members' website going back many years.
The legislation you refer to in your question is the Regulatory Reform (Fire Safety) Order 2005 which places a responsibility on the 'responsible person/s' to maintain fire safety standards for the common areas of the block of flats not the flats themselves. This is likely to be the managing agent on behalf of the freeholder.
Since Grenfell last year there have been a number of reviews instigated – and all ongoing – which I contribute to on behalf of the FPRA. Therefore, there may be changes to these legal requirements in future including improvements to fire safety that may – and I stress MAY – be able to be passed on to service charge payers. Indeed, this has been in the news this year with a large developer passing on the cost of replacement cladding to the service charge as a result of the block failing tests following Grenfell.
Your own lease is important here as to what improvements can be passed to the service charge or not and we will need to refer your lease to our legal adviser for a definitive legal view in this situation.
My own view is your freeholder is entitled and expected to carry out a fire safety review at least on an annual basis. However, I would be surprised if this resulted in significant additional measures required in such a new block. It is rare for significant new risks to be identified that require new expenditure to deal with non-compliance. I suggest challenging the recommendations to satisfy yourselves these are new risks that need mitigating. To assist you with this, I suggest independently contacting your local fire service, who will be able to advise whether any such recommendations are both reasonable and proportionate, and then contacting your managing agent with your findings to enter in to a discussion about the reasonableness of any costs. Ultimately, if you can't agree on the reasonableness of costs added to the service charge, then as leaseholders you can seek a determination from the First-tier Tribunal.

Sinking Fund

Q **You kindly provided us with some guidance a few years ago whilst we were going through the process of 'collectively enfranchising' to purchase the freehold and grant ourselves new longer leases.**
We have been self managing the block of eight flats for a few years now and are slowly building up a sinking fund to cover the unforeseen items. As the block is now 11 years old the reserves typically have seen a battering in the last couple of years.
One of our newer residents has asked what our target is for an appropriate level of sinking fund, having started with a very modest dowry from the developer. Does the FPRA have a guidance note on this? The development is a three-storey, low rise, high-spec stone-built block with a lift under a mostly slate roof.

A FPRA Committee Member Colin Cohen replies:
FPRA newsletter 100 (Spring 2012) contained a very relevant checklist. This is available on our website.
I am not aware that FPRA has any guides as to rates for sinking fund contributions, as in any case each block is different. Thus, in order to calculate the amount of funds to be held in a sinking fund it may be advisable to have a planned maintenance programme drawn up by a professional surveyor unless one of the residents/lessee has knowledge of doing this. In short, a spread sheet needs to be made putting in every item of common parts that need to be maintained/replacing and preferred time frame.
External and internal redecorations may already be stipulated in the individual leases and a guide based on either past cost with room for increases for inflation, or the likely cost. A rough cost should be put down in the various categories and then spread over a number of years (say five or 10 years).

Lack of Volunteers

Q **When we enfranchised seven years ago, 12 of our 30 flats were owner-occupied. The figure is now four, and set to reduce. We face a real problem of finding volunteer directors.**
We remember reading something about this in the FPRA literature a couple of years ago, and wonder whether any of FPRA's members have tackled the problem, and whether they would be willing to share solutions.
Our contingency plans involve recruiting (paid) non-executive directors with specialist experience in areas relating to enfranchised freeholds. We wondered whether FPRA has a directory or similar of people who might be appropriate.

A FPRA Chairman Bob Smytherman replies:
The problem of finding good volunteer directors for any RMC is very difficult, especially when many of the shareholders live elsewhere and let out the property. My own block is a good example of this, with five out of the maximum six directors not living in their properties, the only exception being me.
The reality of this situation is I am the immediate first port of call for any leaseholder or tenant. In my block this works well as I receive a small honorarium each month for acting as company secretary and we employ a professional bookkeeper to manage the service charge account on a day-to-day basis. We are lucky that five of the six directors are signatories, as two live within half a mile of the block and the other is within the county.
Without sight of your articles of association it's difficult to be specific with advice as this has to be the starting point. Most RMCs will have a minimum and a maximum number of directors required to run the company – usually a minimum of two and maximum of six, but this can vary and can be changed by a resolution at an AGM or EGM if this is too prescriptive in your case.
Whether paying non-executive directors is an option in your case, again you will need to refer to the articles of association. If payment is involved and allowed I am sure people would come forward.
From my experience I have just asked people face-to-face at a AGM and emphasised the importance of the role as well as being honest about the responsibilities they are undertaking. In reality this will be less onerous if you use the services of a good managing agent, which is the best option if you can't find volunteers to run the company on a daily basis.
We don't have such a directory and don't recommend individuals or companies but would recommend an extensive recruitment process if you are looking to pay individuals as non-executive directors.
If you wanted further company advice, please send us a copy of your articles of association and we can arrange for one of our company specialists to review possible options available to you.

FPRA Subs Legitimate Expenses?

Q **Could you please let me know if the RA subscription fee to FPRA is a legitimate expense that can be charged to the service charge account managed by the managing agents? If this is so, does it imply that all leaseholders in our block are members of our association? If it does not, are the members just those who sign a form of authority for the association to act on their behalf?**
We are hoping to amend our constitution to reflect current practices and need to be clear who is eligible to vote at our forthcoming AGM, and the quorum required for such a change.

A FPRA Chairman Bob Smytherman replies:
My non-legal view is it is perfectly 'reasonable' for the service charge fund to be used to pay the FPRA Ltd subscription to provide an unlimited FREE impartial advice service. My own RA certainly does in my block as we see the FPRA in the same way as a motorist would with a rescue service such as the AA – you hope you will never need us but very glad to be members when needing advice.
I guess the problem may arise if your RA was not formally recognised by the landlord that appoints the managing agents in your block as in this case there is a possibility that a leaseholder who is not an RA member could potentially challenge the landlord/agent that this charge is 'unreasonable'. I am not convinced that a tribunal would support this view and in reality it's unlikely that such a case would make it to tribunal over such small sum.
The advantage of the service charge paying for FPRA Ltd is that all the leaseholders who pay the service charge would be members of the RA with full voting rights. If the managing agent refused to pay the subscription, then it would be very interesting to know why, as presumably they would not like the idea of potentially being challenged by an RA benefiting from independent expert advice from ourselves who have over 45 years' experience?

Pressing Questions

Q **We are a fledgling residents' association, with membership of 12 out of 15 leaseholders in a small block of flats. We were motivated to form the RA in response to a range of shared poor experiences in relation to our management company. We therefore have a number of queries about which we would appreciate your support and advice, of which the most pressing are raised below:**

SERVICE CHARGE / ACCOUNTS

1. **We have received no financial accounts from the management company since early last year, despite several requests. What would you advise that we do about this?**
2. **We are aware that several residents are withholding all or part of their service charge payments due to disputes or lack of confidence in the financial management of the property. What would you advise that we collectively do about this?**
3. **How can we determine whether our service charge is set at a reasonable rate?**
4. **Can we refuse to pay for service charges that we deem to be either poor value for money or surplus to requirements?**
5. **If we were to change management companies, how would the current financial problems be resolved / transferred (eg non-payment of service charge, funds being held by the management company to pay for proposed works)?**

COMMUNICATION

6. **What can we do about poor communication from the management company (i.e. phone calls and emails repeatedly being ignored or unsatisfactorily answered)?**
7. **What information are we legally entitled to receive from the management company (eg information on maintenance contractors such as cleaning and gardening)?**

Continued on page 10

Ask the FPRA continued from page 9

PROPOSED EXTERNAL WORKS

8. What is our legal position regarding external works that were not completed satisfactorily (and are therefore being proposed – and therefore charged for – again)?

9. Is it possible to (legally) refuse to pay for external works being proposed by the management company?

GENERAL ENQUIRIES

10. Our members are in two different buildings which are being managed as one property. Should residents in one building be responsible for works carried out in the other?

11. How can we determine whether the cost of our insurance is reasonable?

12. What is the process for putting a management company out to tender?

13. How can we determine how much it would cost to buy the freehold of the building?

A FPRA Director Shula Rich replies:

1. There is a legal requirement to supply accounts. I suggest you ask the managing agents which property ombudsman scheme they belong to and threaten to complain. You should also ask what the agents' internal procedure is for complaints as this needs to be undertaken before going to the property ombudsman. It is a legal requirement to belong to a scheme. If they are not members, then they should not be operating as agents.
2. This is a duty of the agents. It should not hold up essential work as it is the freeholder's duty to do this and reclaim from the lessees.
3. You can ask to see the invoices supporting the accounts. It is a legal requirement that these be made available to you.
4. Yes, but sometimes this can result in legal fees for collection. It is always best to pay what is reasonable. You may deduct what you consider to be unreasonable but must be prepared to defend the deduction at a tribunal if the freeholder instructs the agents to take legal action. Always explain the reason for deductions. You may also consider paying and then going to a tribunal for a refund. The form to look at is 27a – application to decide reasonableness of service charges.
5. Generally, lessees themselves are not able to change agents unless they have the right to manage. Please ask us if you would like to discuss how this is obtained and what it can mean for the lessees.
6. See reply to (1) ombudsman schemes. Also, if the agent is a member of ARMA Q – they will have a disputes procedure ending with a reference to ARMA.
7. You may see all the invoices which support the accounts. If copies are required they may make a reasonable charge (say 5-10p per copy).
8. Ombudsman, ARMA Q, appeal to First-tier Tribunal under S27a – reasonableness of service charge. Right to manage, a procedure which will remove the agents and allow you to either manage the block yourselves or appoint another agent.
9. A refusal to pay service charges or a proportion can only be allowed after an appeal to a tribunal or court if the agents on behalf of the freeholder do not agree.
10. Only if the lease covers both buildings and the service charge is a proportion of the total number of flats in the two buildings.
11. Find out the re-building cost it is based on or obtain your own calculation and then ask other insurance companies.
12. If your lease allows you to appoint an agent, then you can follow any procedure – see FPRA publication appointing an agent – or obtain right to manage.
13. There are calculators on the internet for lease extensions. A rough estimate can be obtained by adding up the cost of each lease extension as this is the opportunity cost that the freeholder will have if you buy the freehold. This will give you a rough idea. Otherwise a professional valuation will be needed for which there is a fee. Please come back to us for further details. To obtain the right to manage will always be less expensive although you do not have the right to extend leases. please come back to us for details of this also.

Voting at the AGM

Q **We are holding a General Meeting to decide on a number of motions, which our treasurer has been working on for over two years. As a proportion of our members are frail and elderly, I guess that many will not fully understand the issues and what we are voting for. As secretary, I have suggested that proxies are appointed and they may be relatives, friends, neighbours or Committee members to vote on their behalf, in their interests. I believe that this is 'in order' or will our landlord have grounds to invalidate the meetings decisions if Committee members are appointed proxies?**

We have given the requisite 14-day notice of a meeting with an agenda and full details of the background and motions are planned to be hand delivered to every apartment (even those unoccupied).

A FPRA Director Shula Rich replies:

Unless they have a medical condition which prevents them understanding the written word, I think if they are required to make a decision then the decision should be explained clearly in a large print version if needed. (I hope you will excuse my saying so and do not take it as a criticism – but it would be great if you can be as inclusive as possible). Lessees can appoint a proxy who will vote on the lessees' instructions.

It is usual to include a form when sending out an invitation to an AGM. The landlord will not have grounds to invalidate the meeting's decisions if you have proxy forms signed by the leaseholders themselves.

You need to give 14 days' notice with all information and motions either three or two weeks in advance depending on the nature of the motion. However, if you are an RA and not a company then you will not be governed by company law so should be OK.

Subletting

Q **I am aware that we cannot ban subletting unless all leaseholders agreed to it – and they won't! However, would we be within our rights to state that from a certain date we will only allow it with permission with the prime criterion being that you have to have lived on the estate for four years minimum and either a) the leaseholder has to go into a home and needs to raise money from the rent; or b) unavoidably having to work away; or c) another good reason necessitating an unavoidable move from the property? Would having to obtain permission from the board be legally enforceable? Any decision would be made by the board in the first instance and then the AGM. We are keen to try and limit the number of people buying for rent.**

A FPRA Committee Member Shaun O'Sullivan replies:
Although I am not a lawyer, I can see nothing in your lease which inhibits flats being sub-let. Equally I can see nothing in your lease which provides for additional regulations being drawn up; and even if there were, I'm far from sure that you could do as you would wish as such regulations cannot contradict the terms of the lease which, although silent on sub-letting, does, by dint of its wording, contemplate this form of tenure.
Whatever might be decided by the Board or at an AGM is irrelevant; it is the lease which is the determinant. As you imply, the only real option would be for all leaseholders to agree to there being an absolute ban on sub-letting, in which case a deed of variation would need to be drawn up at cost; however such support appears not to be forthcoming. And even if you could gain support for a less stringent variation, such as that which would require leaseholders to seek approval before granting a tenancy, case law would suggest that any request to sub-let sought under such a covenant cannot unreasonably be withheld.

Dumping of Rubbish

Q **We have a problem with tenants in one property dumping rubbish outside the maisonette (on our land). The landlord is not being as cooperative as we would like. Legally are we entitled to bill the tenants for clearing up the rubbish or should the bill go to the landlord who is the leaseholder? Some paint has been left on company property outside the maisonette. Do we have a legal right to remove it, the same as an old fridge?**

A FPRA Committee Member Shaun O'Sullivan replies:
Your schedule states that the lessee is 'Not to put place or erect or allow to be put placed or erected any caravan or temporary structure on the demised premises' (with the demised premises in this case being that demised to the company by a separate lease and comprising the gardens footways carriageways and courtyards to the garages).
Although I am not a lawyer I believe that rubbish, paint and a refrigerator could certainly be construed as 'temporary structures' in this context and the fact that the lessee has allowed such to be placed on the part of the estate so defined, puts the lessee in breach of the lease. In this regard it is for the lessee to resolve the breach and ensure that the tenant complies. I might suggest that you write formally to the lessee stating that you consider him or her to be in breach of paragraph 6 of the Schedule of the lease and that the items must be removed within (say) 28 days. In so doing I would suggest you indicate that, unless he/she complies within the stated period any future request will be subject to an Administrative Charge in accordance with Schedule 11 of the Commonhold and Leasehold Reform Act 2002. Should it be necessary to levy a charge it must be 'reasonable' (this is a somewhat subjective term and although I can't advise on a particular sum I am aware of charges of about £35 being levied in similar circumstances) and, to be compliant, it must be accompanied by a Statutory Notice – The Administration Charges (Summary of Rights and Obligations) (England) 2007 – available from the FPRA website by clicking on 'Statutory Notices' under the 'Publications' drop-down menu.'

Low AGM Turnout

Q **Could you advise us on the legal requirements for an annual AGM for a limited residents' company such as ours. We have been holding formal AGM meetings for some years but with declining attendance a less formal format would be preferable, if permitted.**

A FPRA Committee Member Bob Slee replies:
The lack of interest in AGMs, at least so long as everything is running smoothly, is a common issue. I wrote an article about this in the Summer 2017 FPRA newsletter (Issue 121) describing how we had successfully tackled this in the block that I manage. The key issue is that the arrangements relating to your AGMs will almost certainly be mandated by your articles of association. If you wish to take advantage of the greater flexibilities provided for smaller companies in the Companies Act of 2006 (as we did) then it would be necessary for you to get agreement from your members to amending the articles and to re-register them at Companies House.
In our case, we consulted a solicitor on the wording of the revised articles to ensure that we were adequately protecting ourselves and our members in making the particular changes we had in mind and also that our revision would be acceptable to Companies House.

Lightning Conductors

Q **Our Fire Risk Assessment suggested we should consider a lightning conductor. Of course, we have never been struck by lightning, but there is always a first time! And of course, any risk assessor would put in anything possible, even if unlikely, to protect themselves.**
We are six stories high and next to the sea, so are probably at a greater risk than some others. After a little investigation, it seems that the 'British Standard' requires a lattice work of metal all over the roof. This is clearly impractical on a felt on timber construction roof, which may need maintenance, etc. even simply when we flush clear the waste pipes from above, or replace felt after a

Continued on page 12

Ask the FPRA continued from page 11

number of years. The 'French Standard' requires a high pole with two conductors earthed to the ground.
So where does that leave us? Is it not needed? Is simply best to do the best system we can to fit our building design? What have others done? I have not broached the subject with our insurance company yet. They obviously know that we have not got any form of conductor in place. Any thoughts on this subject would be appreciated.

A FPRA Chairman Bob Smytherman replies:
I don't claim to be an expert on this issue, but as a principle if this has been identified as being required in your Fire Risk Assessment then to ignore this would almost certainly invalid the insurance in the event of a claim as well as having far reaching human implications.
In terms of specification I would also recommend seeking quotes from three specialist companies. Your building control departments from the Council will be able to assist with an impartial view on the standards required to meet the requirements of the Fire Risk Assessment.

Banned from Gardening

Q **Our development comprises two types of properties: one section is made up of flats for which all the residents pay rent to a housing association (our landlord); the other section is a block of flats which are sold leasehold on the open market. Both sections are for the over 60s.**
Our Board of Directors now feels they are no longer qualified to control the day to day running of the properties, due to 'new rules and regulations' being imposed upon this type of housing. They announced in January that they are in the process of handing over the running to an outside company.
It appears that this company runs several properties in this part of the country all of which seem to concentrate more on not only older residents, but 'vulnerable' and therefore are starting to impose more restrictions. They have already made redundant our live-in staff, which has caused much upset to the residents, and are planning to install a call system.
We as leaseholders, are upset because we feel that the ethos and atmosphere of our flats which in all cases is why we bought into this development, is being spoiled. Last year a couple bought a flat here, having sold their much loved home. Part of the husband's pleasure is the fact that we have been encouraged to potter in the gardens if we so wish. He has enjoyed adding plants and generally tidying the area near his flat. He told me last week, he has now been told that due to health and safety he is no longer allowed to do his gardening. He is now unhappy and wishing he had not come here now, as am I!
Can they impose this restriction on residents in the leasehold section, if it doesn't state so in our leases?

A FPRA Committee Member Shaun O'Sullivan replies:
Although I sympathise with your situation and understand the disappointing of some of your residents, the issue you raise goes to the heart of leasehold living. The whole property is owned by the freeholder (landlord) who has (in the case of those who have bought their flats) granted leases (for a premium and for a certain number of years) in respect of individual apartments. However, the common areas and gardens remain in the ownership of the landlord who will grant certain rights or easements over such areas. In your particular case (and as would be the case in all residential leases albeit with marginally different wording) leaseholders (tenants) have, in accordance with the lease been granted the right to use the entrance halls, drives, paths, gardens, paths etc 'subject to such rules and regulations.....as the landlord may from time to time prescribe.' So, although residents have been given the right to gain access to their flats through the entrance halls and to use the gardens for their enjoyment, this would not normally extend to actually undertaking gardening which would rest with the landlord or his agent with the cost of so doing being met through the Service Charge. One of the dangers of allowing residents to undertake gardening is that what one resident might like might not sit well with another! And if residents took it upon themselves to place pots in the communal garden that could pose a risk to residents / visitors and could compromise the block insurance coverage.
All that said, and notwithstanding the formality of the lease, it does appear somewhat harsh to place a complete ban on individuals wishing to tidy the garden and undertake some minor planting. In my own block we do have one or two residents who do like to 'potter' and do like to add plants – often at their own expense and for the enjoyment of all. What we have done in order to recognise this and to comply with the terms of the lease, is to say 'residents are invited to supplement this (i.e. that provided by the gardening contract) if they so wish albeit, to comply with the requirements of the lease, any substantial changes or planting must be subject to board approval.' This has worked for us; we have had to refuse some proposals but most are no problem whatsoever. Although, at the end of the day, it is for the landlord or his agent to dictate how the gardens should be maintained, you might want to explore, with the managing agent, the prospect of introducing a similar arrangement.

VAT Query

Q **If within a 12-month period, as a result of collecting extra monies from the leaseholders specifically for the replacement of two large water tanks, our income rises above the £85,000 threshold, will the company become VATable?**

A FPRA Hon Consultant Gordon Whelan replies:
Service charges raised for the upkeep of the common areas of an estate of dwellings, or the common areas of a multi-occupied dwelling are exempt from VAT as long as they are required to be paid by the leaseholder under the terms of the lease agreement. Therefore, VAT will not be an issue for you if you raise service charge demands in excess of the VAT threshold.

Continued on page 14

Advertisements

Ask the FPRA continued from page 12

'Stay Put' in case of Fire?

Q **We were built in 1996 and according to plans, the flats are compartmentalised. We're checking safety, and are wondering about the 'stay put' recommendation found in all the guides from Government and ARMA. It feels intuitively right for tall blocks (even after Grenfell) but wrong for our three/four stories with five separate staircases.**

A FPRA Chairman Bob Smytherman replies:
I have been very busy since Grenfell tragedy regarding this issue and currently involved with a Government appointed enquiry looking at this issue.
The key answer lies with your Fire Risk Assessment (FRA) where you will need to determine a safe 'means of escape' in the event of a fire in your building.
My own view, having taken advice from my own local fire service when completing the FRA in my block is, where the building is compartmentalised and each flat separated from the rest of the building with a 30 minute fire door, then 'stay put' is usually the best policy. It's simple to understand and safe as if you discover a fire and can isolate from the rest of the building for at least 30 minutes then this allows enough time to allow the fire service to reach you.
Having an exit policy can often result in panic as everyone exits the building at the same time. It is then complicated by someone needed to roll call to ensure everyone is out and at the meeting point, which is not always easy to define in a block of flats.
I would strongly recommend seeking advice from your local fire service who will usually send someone out free of charge to review this with you to establish the safest means of exiting the building in the event of a fire.

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.

UNFAIRNESS IN THE HOUSING MARKET

It is essential to have a single housing ombudsman with sufficient resources to meet the need for prompt and fair resolutions, FPRA has told the Ministry of Housing, Communities and Local Government.

In response to a consultation of strengthening consumer redress in the housing market, Chairman Bob Smytherman wrote: "We are of the firm opinion that this can only be achieved by reforms to landlord and tenant legislation and fairer dispute resolution process that is simplified and accessible to consumers. We also believe that standardisation and clarity of management service standards is vital to ensure greater consistency and reduce disputes over terms of contacts.

"We trust that the Government's intention to restore the broken housing section will shortly be realised. Many of our members were extremely disappointed, following the Competition and Markets Authority leasehold enquiry, in 2014, and the subsequent failure of Government to make necessary changes and bring the law in line with the principles of truth, justice and openness, enshrined in Consumer Protection Law. Further, this organisation and others have been inundated over the last six months with consultation requests and call for evidence requests from different parts of Government.

"We sincerely hope that all the different aspects can be brought together and actual action taken in a coordinated way. From what we are seeing, there is clear concern over the state of the leasehold sector but there is a failure to co-ordinate and have a clear path to improvement."

FPRA WELCOMES TWO NEW FACES TO THE TEAM

GERRY FOX is a Fellow of the Royal Institution of Chartered Surveyors and Fellow of Institute of Residential Management. He retired in 2015, having been involved in the profession for more than 50 years. During this time he worked for the London County Council and Greater London Council dealing with acquisition and management. He moved to the private sector in the early 1970s. He continued to be involved in valuations and increasingly in the management of blocks of flats. He continued at board level with leading companies; Gross Fine and Krieger Chalfen, Fineman Lever and Peverel.

Gerry has been active with the RICS since mid 1980s and has chaired the working parties which produced the two editions of the RICS Service Charge Residential Management Code, both of which were approved by the Government. He has been involved in new legislation, lectured extensively, written articles and broadcast on residential management topics, particularly service charges.

MATT LEWIS is a Solicitor, Partner and Head of the Residential Leasehold Property department at Coles Miller Solicitors LLP, Bournemouth. Coles Miller is a member of the Association of Leasehold Enfranchisement Practitioners (ALEP).

Matt is a founding member of Leasehold Management Professionals (LMP), a not for profit organisation providing free training events for managing agents.

Matt is a Trustee of Bournemouth and Poole Citizens Advice Bureau. He has a long association with the bureau, having spent most of his spare time advising its clients on welfare reform and individual rights during his years of study.

Advertisements

CH CH CH CHANGES!

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

This is the last column in this newsletter from Roger, who has now resigned from LEASE. FPRA thanks Roger for his regular contributions over recent years.

The winds of change are blowing and the Government has the desire to make sweeping reform in leasehold. These are exciting times and long overdue. When I entered leasehold it was apparent that regulation was needed. Looking at the disciplines and requirements in commercial management it is easy to see why they haven't managed to filter across as swiftly or effectively into residential arenas. There has been an announcement that regulation of property managers is on its way and that is a good thing.

With commercial property management the buildings are largely owned by institutions and property companies whose returns are driven from the rental income. IF the commercial occupiers don't want the space or pay the rent then the property sees its returns diminish. This is a world of difference to residential.

The freeholders do not have the same expediency because there are long leases and the ground rent will come in regardless of the standard of management. That said there are very capable and competent managers who deliver customer service professionally. Equally there are those that are not capable or competent. The market is wide open to non-qualified operators and this is wrong, it is what needs addressing. Leaseholders should have more say and more control. It is their money the managers are spending after all.

I just hope that we see expediency and the implementation of legislation and regulation within the life of this Parliament, which of course is having its time dominated by the intricacies and foibles of Brexit. The next step is a working party and that should have a wide membership to give perspectives and objectives for the task in hand. Let us hope they can work together for a common good and outcome that gives balance and comfort to leaseholders.

Having opened referencing commercial property management, another major difference is commercial premises by and large are only handled during the working day. When the company goes home any issues wait until the next day. With residential, the owners and occupiers go to the premises after work. Any frustrations or issues can be compounded from the day's activities and be vented on the residential managers. This is not a criticism but merely highlighting and something that needs to be overtly appreciated.

It is a good thing regulation is coming and long overdue. Let us all make sure we work together to make the implementation and design the best solution for everyone.

URGENT ACTION REQUIRED

Members, have you signed and returned the back page of your 2018/19 renewal notice? This is essential so that we can continue to contact you following the new Data Protection laws operating from May.

More good news for FPRA members

The Parking (Code of Practice) Bill has passed its First Reading to become law following all-party support to tackle 'rogue' private parking companies that have continued to operate in an unscrupulous manner following the clamping ban we warned about some years ago.

We will fully support Greg Knight MP during the passage of Bill to become law.

FPRA also supports the British Parking Association in its bid to introduce Regulation in the Private Parking Sector.

(See the website for more details).

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

Contact details:
The Federation of Private Residents' Associations Limited, Box 10271, Epping CM16 9DB
Tel: 0371 200 3324 Email: info@fpra.org.uk
Website: www.fpra.org.uk
If telephoning the office please do so weekday mornings.

www.linkedin.com/grp/home?gid=3721009
www.facebook.com/FoPRA
@FoPRA https://twitter.com/FoPRA