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NEWS

FPRA
FEDERATION OF PRIVATE RESIDENTS' ASSOCIATIONS

IMPASSE OR OPPORTUNITY?

By the Editor

The announcement of a snap general election in June can have the effect of paralysing progress on legislation, including improvements to leasehold and movement on commonhold.

FPRA has no allegiance to any particular political party, and its directors, committee members and hon consultants cover a wide range of outlooks.

But all want improvements to leasehold.

Recently we've had Gavin Barwell, Minister of State for Housing and Planning, Department for Communities and Local Government, who has made encouraging noises on reform. Will he be in place post June 8?

We've had the Government White Paper on Housing *Fixing our Broken Housing Market*, which referred to leasehold and commonhold, and stated: "We will consult on a range of measures to tackle all unfair and unreasonable abuses of leasehold, and that we will also consider further reforms through the consultation to improve consumer choice and fairness in leasehold.

"The White Paper also refers to our ongoing work with the Law Commission to inform their 13th Programme of Law Reform and that we will look into whether and how to reinvigorate commonhold.

"The Government will act to promote fairness and transparency for the growing number of leaseholders. Leasehold has been a traditional part of the housing market in this country but there are areas where urgent reform may be needed, particularly when buying a house on a leasehold basis. New leasehold houses can be marketed at a reduced price compared to freehold. But some purchasers are not aware at the point of sale that the associated costs of buying a new leasehold house can make it more expensive in the long run. Some freeholds and ground rents of leasehold houses are sold on and traded, with leaseholders left in the dark, and facing increasing and onerous payments. This is not in consumers' best interests.

"In particular, ground rents with short review periods and the potential to increase significantly throughout the lease period may not be offering a fair deal. We are absolutely determined to address this. We will therefore consult on a range of measures to tackle all unfair and unreasonable abuses of leasehold.

"We will consider further reforms through the consultation to improve consumer choice and fairness in leasehold, and whether and how to reinvigorate Commonhold. We will also work with the Law Commission to identify opportunities to incorporate additional leasehold reforms as part of their 13th Programme of Law Reform, and will take account of the work of the All-Party Parliamentary Group on Leasehold and Commonhold.

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We would encourage all of our members and all the people in their estates to write to and speak to candidates to raise leasehold as an issue and seek support for improvement to the sector

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"The DCLG Leasehold and Rentcharges Team look forward to continuing to work with you to improve leaseholders' experience of home ownership."

The recent Law Commission report on Exit Fees in Retirement Housing did not address all our concerns in this area, recommending a code of practice and more transparency.

The All-Party Parliamentary Group on Leasehold and Commonhold reform, now has 71 members, including a number of Lords who are not subject to the election, so it is to be hoped the vast majority of them will return to Parliament and carry on the good work. You can find out if your MP is on this group by visiting the Leasehold Knowledge Partnership website, www.leaseholdknowledge.com.

Read the recent APPG report on the opposite page.

The danger is that now there is an impasse while everyone, politicians and civil servants alike, are caught up in the election campaign. Of course, as individual voters, you have the chance to put leasehold issues to your candidates for MP and take their answers into account when making your choice.

This is what FPRA Hon Consultant Ken Allcock, who specialises in retirement leasehold, has written to all the candidates in his constituency:

"The leasehold housing sector, especially for the elderly, is a sector with a poor reputation that has been the subject of highly critical tribunal rulings, two investigations by the Office of Fair Trading and debated in Parliament. It is scandalous that the most vulnerable in our society have been beset by sneaky and dishonest practices widespread in leasehold, or systematically cheated.

"Currently there is an All-Party Parliamentary Group on Leasehold Reform, with some 70 MPs aiming to reduce opportunities for exploitation, alleviate the distress and hardship of leaseholders and publicise scandalous behaviour of professions involved in the leasehold sector.

"What stand does your Party have on this and what is included in the Party's manifesto that will bring about reforming leasehold 'law'?"

UPDATE ON THE GAS 'MOT'

FPRA Committee Member Shaun O'Sullivan, who represented the FPRA at a Health and Safety Executive (HSE) Workshop at the end of October, reports on progress.

Bob Smytherman alerted members to planned changes to The Gas Safety (Installation and Use) Regulations (GSIUR) and, in particular, the possible changes to Landlords' Gas Safety Certificates, in Issue 116 of the *Newsletter* (Spring 2016). This particular change, the introduction of an 'MOT- style' arrangement for Gas Safety Certificates and the only proposal which will be of interest to members, is just one of a package of measures being planned.

The changes, if ratified, will allow landlords a degree of flexibility as to when checks are undertaken. Currently any gas appliance has to be checked at an interval of no more than 12 months since it was last checked for safety and a copy of the certificate provided to the tenant within 28 days of the check having been carried out. This means that landlords have to arrange for the check to be made on exactly the same day each year if they are not to 'lose out' (research shows that most landlords do, in practice, begin the process 10.5 months after the last inspection).

The new regulations will introduce a 'deemed date' – which will, on introduction, be the date of the last annual check or the day of the first check for a new letting. Although landlords will still be required to provide tenants with a copy of the certificate within 28 days of the check having been carried out, landlords will be permitted to have the check undertaken from between 10 and 12 months from the deemed date but without this date changing. Thus it is possible that there could be a 14-month gap between checks. (The only time this check date is likely to change is if there were a void in letting and the landlord decided not to have the check undertaken until new tenants moved in; in these circumstances the date the check was undertaken would become the new 'deemed date'.)

The HSE, in driving forward this, and the other planned changes, has wisely drawn in a wide spectrum of stakeholders and the workshop at the end of October had representatives from across the gas industry as well as those representing landlords' groups. Nevertheless, the package of proposals were promulgated for even wider consultation on 7 November 2016. Subject to what emerges from this 12-week consultation, it is hoped that the changes will be able to be introduced by October 2017. Certainly, the mood of those attending the workshop was that the change would be welcomed by landlords, but without compromising safety, and this was the essence of the FPRA's input to the wider consultation launched in November. We should become aware of the outcome of the wider consultation shortly.

Nevertheless, and although the Federation does not object to what is seen as a pragmatic development with potential cost savings in the longer term, we will continue to press for what we believe would be more positive, yet arguably more contentious and more fundamental, changes to the GSIUR. It remains the case that neither landlords nor owner-occupiers have a statutory requirement to install carbon monoxide (CO) detectors (although the latter group are now required to install smoke alarms and are encouraged 'to ensure that working carbon monoxide alarms are installed'), and owner-occupiers (unlike landlords) have no statutory requirement to have an annual gas safety check – nor even to have any gas appliances regularly serviced, let alone a CO detector installed. This, to us, remains a concern particularly so in blocks of flats where the effects of CO can so easily be felt by others in the block.

Unless leases require those managing their blocks (RMCs and RTM companies who self-manage) to be provided with details of gas safety checks (and such leases are few and far between) lessees have no obligation to provide details and block managers have no right to ask for them. Some blocks have, however, established informal arrangements to give them some level of assurance that all is well.

THE RECOMMENDATIONS OF THE ALL-PARTY PARLIAMENTARY GROUP ON LEASEHOLD AND COMMONHOLD

Commonhold:

1) Government quickly decides if it should reform or abandon the defective existing commonhold legislation.

2) Commonhold be seen as a housing matter, not just as a third form of land tenure. Responsibility be moved to the housing department without delay.

3) Government to develop work already undertaken by the APPG. We encourage the Minister to support the proposal that the APPG, supported by its secretariat, impartially oversee a sector-wide initiative to review a range of commonhold options for consideration by the Department leading to future change in the law.

Leasehold houses:

1) APPG supports the proposal to ban the sale of new build houses unless there is a legitimate reason why the land can only be owned under a leasehold.

2) Government brings forward the Law Commission recommendations to allow the effective management of estates with freehold houses.

3) To limit onerous terms on existing leasehold homes. There seems no reason why the current size of the ground rent should represent any higher price than the original ground rent term as defined at the start of the lease, perhaps adjusted for an accepted index of inflation.

4) Government supports a super complaint to challenge the terms of a lease such that: a) It might be established that such terms can be legitimately challenged under consumer legislation for leasehold homes built both before and after 2015 Act came into force, and b) That the general types of terms within a lease that might be subject to such a challenge can be established.

5) It is accepted that many issues concerning lease terms apply to both flats and houses and that caution is taken in creating unforeseen consequences if Government seeks to differentiate between the rules that apply to house and flats lease terms.

6) For those existing leasehold houses the current two-year moratorium on the leaseholders right to buy their freehold be removed.

7) Government urgently looks to ways to reduce the legal costs and to remove incentives for landlords to impose onerous terms in selling the leaseholder the freehold to their house on an informal basis.

8) The costs of a formal purchase be limited.

Transfer fees

1) DCLG to work with DWP, the APPG on Care for Older People and other stakeholders such as AgeUK, ARHM, ARCO and CARLEX to consider the wider needs of older peoples' housing and the need for wider regulation of this part of the housing market.

2) The Department to consider the alternative funding models for retirement living as set out in Older Persons Housing APPG report, the Demos report and elsewhere.

3) If transfer fees are to be retained there must always be an option of not deferring charges such that they always remain challengeable under s27A of the Landlord and Tenant Act; and that this right to challenge applies to those paying in full and to those deferring an element of their charges.

4) That any element of a fee allocated for helping to sell the flat to a subsequent buyer and any evaluation charge for assessing the suitability of a prospective, must remain subject to challenge under s27A as must any sublet fees.

5) No element of a fee should be allowed unless it contributes to the service costs or leaseholders' share of the sinking fund for longer term building maintenance.

6) Fees should not be based on an actuarial gamble by the pensioner and should either be a single fee charged regardless of occupancy period or a fee which rises with each year of occupancy.

7) A sublet fee should be charged on the basis of it being a reasonable free challengeable at the tribunal rather than being linked to the level of transfer fee at the end of the tenancy.

8) A model be created such that commercial firms letting individual retirement properties be charged at a rate that ensures they pay no more and no less per year than that the contributions that might be expected by an average pensioner living at that site.

Forfeiture

1) Government move forward with adopting the Law Commission report on replacing residential forfeiture entitled *Termination of tenancies for tenant default*.

2) Government considers how the use of the forced sale applies in commonhold regimes around the world and looks to consider if the LC wording might be adopted to any future review of commonhold in England.

Lease extensions

1) To move the cost of enfranchisement and leasehold extensions to a formulaic model that does not require mediation by the tribunals.

2) The right to extend no longer requires ownership of the lease for a period of two years.

3) The landlord be prevented from introducing terms into the lease any more onerous that the current lease.

RTM and enfranchisement

1) Technical deficiencies in the legislation be reviewed and consideration given to ending the ability of landlords to delay and add costs to the process.

2) Review the legislation such that it works for multi-site blocks and those sites with freehold and leasehold houses.

3) Consideration given to why the commercial element has relevance to the RTM. Since the commercial element is excluded from the RTM's role, the 25 per cent limit seems to serve no purpose.

4) The right to enfranchise has the two-year moratorium removed.

Continued on page seven

"A Member Writes".....

Continuing our series in which members write in with experiences of leasehold life, here our reader writes about retirement living. Increasingly, these are mixed developments. Not everyone is happy.

We welcome articles from our members and invite you to write in with your experiences. If you have sent in a contribution already, it should appear soon.

RETIREMENT VILLAGE FRUSTRATION

As a pensioner, I think it fair to admit that many of my neighbours and I are very confused about all our legal rights and worried and frustrated about the treatment by our landlord. We occupy a three-year-old 'retirement village,' a development of apartments, with facilities and services, costing about £0.5 million per annum. Of about 150 residents, about 50 per cent pay fixed service charges and 50 per cent pay variable charges. We understand that the Homes & Communities Agency has set standards for Registered Social Landlords (RSL) to adhere to. These appear to be very vague, non-specific and therefore open to interpretation and conflict. Apparently, the only time that the H&CA will intervene is where failure of the standard could lead to risk of serious harm to tenants – who determines that?

A few landlords appear to be 'regulated' by the Association of Retirement Home Managers and other trade associations whose main purpose seems to promote 'confidence in the sector' and lobby politicians with self-interested aims. It seems that the only way to challenge landlords, who are not committed to fair and respectful treatment of tenants, is via long-winded internal complaints processes, which often break down; external designated persons, who in our experience haven't a clue about mediation; and the Housing Ombudsman. Apparently, of 16,000 cases referred, only about 1,000 were determined by the Ombudsman.

Recently we have been told by Tenant Participation Advisory Service (TPAS) *that the HCA regulatory standards do not apply to leaseholders, only to tenants.* Is this true?

We have received advice recommending that we follow the formal complaints process, which was not truthfully explained by the landlord in the Residents' Handbook. In doing so, we made several formal complaints – one has never been investigated in about two years, another has been referred several months ago to a Complaints Panel for a second review (so we suspect that the panel doesn't exist) and several were referred unsuccessfully to a local councillor, as a 'designated person' with no resolution. One complaint has been referred to the Housing Ombudsman last autumn, the Housing Ombudsman that states *"both tenants and landlords should try to find a resolution, rather than simply passing complaints through the landlord complaints procedure."* All well and good if our landlord has reasonable intentions.

We have discovered financial errors and challenged the landlord over other complicated issues.

It seems that the landlord spends much more time 'dressing their window,' presenting a 'professional' website and 're-interpreting the truth' than recognising and correcting poor performance. It holds all the trump and royal cards and tenants play a 'dead hand' in a game of hide and seek in dense smoke and surrounded by mirrors, risking the devaluation of an investment in property if the full story becomes public. Were we warned of the onerous and powerless position we would find ourselves in by our solicitor?

When landlords do not adhere to regulatory standards or codes of practice or when the landlord claims to be meeting its legal obligations, it seems that justice only might possibly prevail after going to a First Tier Tribunal. This means collecting evidence and paying for 'expert advice' and possibly our landlords costs? Is that justice? Are we being treated (according to the Homes & Communities Agency standards) with fairness and respect?

Most elders haven't got the key information or their legal rights, let alone the energy and time to set up a residents' association and pursue justice. Most are very tired, coping with their own or their partners' geriatric ailments. They want a quiet life and to trust a landlord to be respectful and fair; to perform the management of the property and facilities to a reasonable standard. How naïve in this 'post truth' world? Holding landlords to account is highly complex and requires a great deal of time, knowledge, determination and persistence in an opaque world. How many elders have this capacity for the long run?

To **AGM** or **not to AGM**.....

An alternative view by FPRA Committee Member, Bob Slee

In the Spring 2017 edition of the *News* (issue 120) our chairman, Bob Smytherman, responded to a query from a member concerned about poor attendance at their AGM. Besides anything else, this apparent lack of interest and support was understandably causing despondency among committee members. Bob recommended that they should persevere, not least on the basis that the AGM can be important for holding directors to account.

Coincidentally, in the *A Member Writes* section in the same issue of the newsletter another member mentions that no-one turns up to their AGMs other than the directors. It is sometimes suggested that poorly attended AGMs should be regarded as a vote of confidence in the committee as disgruntled residents would surely turn up to complain.

I'd like to suggest coming at this issue from another angle. A contented leasehold community should, among other things, feel consulted and informed. If your AGM is the main focus for that participation, and members are not showing up in any numbers, it might be unwise to assume that this is because they already feel sufficiently engaged.

The committee that I chair grappled with this about eight years ago and decided then to take advantage of new provisions in the Companies Act 2006 for smaller companies to opt out of the requirement to routinely hold AGMs. Our Articles of Association mandated an AGM so it was necessary for the Articles to be amended by special resolution and re-registered at Companies House. The new Articles still provide for the directors to convene a general meeting when they consider it necessary and there is also provision for 10 per cent of the membership to demand a general meeting to be held for a specific purpose. In the eight years since we introduced the change no-one has called for a general meeting.

Where formal voting is required we generally undertake this by written resolution. But more generally I believe we have made a success of this change by ensuring that we regularly communicate with members over proposals, plans and outcomes – mostly by email – and we also have our own website. Most importantly, the directors go out of their way to informally engage with their neighbours.

Our approach may not be appropriate in every situation or circumstance but it is worth considering – especially if your AGMs have come to resemble, as ours once did, party night aboard the Mary Celeste!

ANTI-SOCIAL BEHAVIOUR

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

I am sure we can all get frustrated and display bad behaviour at times. Something in our lives can cause upset or frustration and that can spill over to unrelated conversations, communications and situations. Of course there is never any excuse for rudeness. Any form of customer service can find the staff members on the receiving end of abusive behaviour. That can be understandable, doesn't excuse it, but understandable. If you have got frustrated because you are not getting an answer you want then it can cause bad reaction.

We are seeing a number of service providers taking zero tolerance on anti-social behaviour. Transport for London are very overt in their condemnation as is the National Health Service. Quite rightly. I am sure none of us feel that people doing their job should bear the brunt of abuse and frustration. However for some reason property management doesn't seem to create the same sympathies.

Whatever is felt about the lease or the property, property managers are generally doing their best and providing a service for the building and to the leaseholders. However there can be some outrageous accusations levelled at the managers who are just doing their job.

To look from the other side of the fence, the pressures of property management can cause delays in correspondence. A lack of communication can cause suspicion and an apparent lack of transparency can cause unrest. Is it right that a leaseholder has to wait for an answer? Of course not. The service charge is the leaseholder's money being spent, of course the leaseholders should know where it is being spent. The levels of information supplied will vary agent from agent. This is one of the biggest challenges because generally management is an art not a science. In spite of the legislative framework it is the soft side of management that can cause problems.

We should all be on the same side of the table working together to improve standards and service. To have courtesy and respect to achieve the best service and ensure the buildings are managed effectively and efficiently. But everyone is different and therein lies the challenges and the issues in effect. We all handle matters differently but generally respect and courtesy will get further than abuse.

Of course it is impossible to have any form of discussion or debate on this subject without having accusations of being partisan. However the sole issue here is abuse and anti-social behaviour. Surely no one can think it right to be continually abusive without rationality or reason. Some folks just seem to go through life that way and it is a wonder how they can. Surely common courtesy and decency would dictate a modicum of good behaviour.

'Airbnb' – A peaceful night's sleep or a potential nightmare?

By FPRA Committee Member Shaun O'Sullivan

Based on a recent judgement by the Upper Tribunal (Lands Chamber) the answer, depending on the wording of the lease, could be the latter. Indeed, the judgement could have significant implications for members who would be well advised not to ignore any instances of flats being let on this basis.

Sub-letting of flats is a common theme of many questions received in the FPRA office. Mostly such questions surround the problems sometimes thrown up by tenants of sub-let flats or the desire on the part of the management company, often as the result of such problems, to inject a degree of control over, or even banning of, the sub-letting of flats.

As ever, the lease is the guiding light. Very few leases have an absolute ban on sub-letting. Some, perhaps most, require approval of the Management Company/ Freeholder, but case law would lead us to the view that approval should not unreasonably be withheld. As mentioned by Bob Slee in his article on self-management in Issue 117 (Summer 2016), some leases even require the additional safeguard of a Deed of Covenant to be entered into between lessee and sub-tenant. Others remain largely silent on the subject of sub-letting. But, in essence, sub-letting is a feature of flat-living in the 21st century and I suspect that most blocks these days are occupied by about 50 per cent sub-tenants on Assured Short-hold Tenancies.

But what of Airbnb? Is it permissible? Is it sub-letting by some other name and what might be the insurance implications?

Avid readers of Philippa Turner's regular *Legal Jottings* column might have noticed her refer, in Issue 119 (Winter 2016), to a judgement in the case of *Nemcova v Fairfield Rents (2016 UKUT 438)* in which the Upper Tribunal (UT) upheld a decision of the First Tier Tribunal (FTT) in respect of an appeal with regard to the letting of a flat for a few days or weeks and which had been advertised on the Internet for occupation on that basis – or, to use the name of one of the main providers in the sector and by which the concept is often known, **'Airbnb'**.

The lease, in this particular case, contained a number of what might be described as 'the usual covenants' with which many members will be familiar and which they will probably see in one form or another in their leases:

- During the last seven years of the term hereby granted not to assign underlet or part with the possession of the Demised Premises or any part of them without the previous consent in writing of the Lessor such consent not to be unreasonably withheld.
- Not to assign underlet or part with the possession of part only of the Demised Premises.
- At all times after the date of this lease to observe and perform any restrictions covenants and stipulations contained or referred to in Part III of the Schedule.

Although the lease in question was silent on the specifics of sub-letting it was recognised that the wording of these covenants contemplates use of the property other than by the lessee.

However in this particular lease Part III of the Schedule, referred to in the covenants, included the words:

- Not to use the Demised Premises or permit them to be used for any illegal or immoral purposes or for any purpose whatsoever other than as a private residence.

Again, members will be familiar with similar clauses which probably appear somewhere in most residential leases. The real issue, therefore, and the one on which the judgement was sought, was whether lets of the type undertaken, which were short term lets of a few days duration and to largely business visitors and advertised on the Internet, breached the covenant relating to the flat as a private residence.

The UT considered, as did the FTT, that the duration of the occupier's occupation is material in such cases and that for a property to be used as the occupier's private residence there must be a degree of permanence going beyond being there for a weekend or a few nights in the week. In this regard the FTT opined that a degree of permanence would be met if the flat were to be let on an Assured Short-hold Tenancy (AST) for a term of, say, six months.

The UT consequently determined that granting short term lettings (days and weeks rather than months) necessarily breached the covenant under consideration.

Although the UT has made it clear that each case must be 'fact-specific' and that the construction of the particular covenant in the lease and its 'factual context' are relevant to the determination as to whether the lease has been breached, my guess is that most leases will require that the flat is not used other than as a private residence and that lessees who let their flats on this basis are probably in breach of their lease.

The lease apart, I believe that there could be insurance implications if flats are let on an Airbnb basis. Although the Insurance Act 2015, in modernising how insurers approach commercial insurance policies, aims to provide a fairer approach for insurers to follow in the event of a breach of policy requirement and/or a policy holder's duty to present information, it does, nevertheless, incorporate a 'duty of fair presentation'. In this regard the insured must disclose material facts which they know or ought to know. It would seem likely that insurers might view 'transient residents', such as those occupying flats on an Airbnb basis, as a greater risk than owner-occupiers or those on an AST of more than six months' duration and that they should be made aware of this 'material fact'. Thus if in the unlikely event that members believe that their leases provide for short term lets on this basis, it would be prudent to ensure that the insurance company is made aware otherwise any claims may not be upheld.

AFTER 45 YEARS IS OUR NAME STILL FIT FOR PURPOSE?

FPRA
FEDERATION OF PRIVATE RESIDENTS' ASSOCIATIONS

This is the question that the FPRA committee has been asked and is considering. The name 'The Federation of Private Residents' Associations' has been used since the organisation was founded, but following last year's AGM and conference the question has been asked: "Does this still reflect what the organisation is about? And does it perhaps put off some people because they think it does not apply to them?"

The committee has therefore, had a look at this and, unsurprisingly, everyone has a different view.

We thought therefore we would ask you the members what you think and ask you to express your views on this issue by sending an email to the admin office at: info@fpra.org.uk

It is the intention to coordinate the various responses, and if a change is proposed to discuss this at this year's AGM with a view to change it in 2018.

To help the process we have summarised below some of the points made during the discussions so far but we hope members will express their own views.

- Our name does not reflect the wide-range of member organisations: self-managed blocks; right to manage; flat management; and perhaps for the future commonhold associations
- Should the term 'dwellings' be used instead of flats or leaseholders?
- Perhaps we should drop the full name and just be called FPRA?
- Our present 'strapline' under our name is 'the voice of leaseholders'. Should this be changed to 'the voice of leasehold property owners' or 'the voice of leasehold homeowners'?
- Change FPRA to FRA – meaning Federation of Residents' Associations?
- Include 'National' in our name : National Federation of Residents' Associations or National Federation of Private Residents' Associations?

- "The Federation of Residents' Associations; supporting you with the challenges of modern-day living"
- "The Federation of Residents' Associations; providing help and guidance for the challenges of modern-day living"
- "The Federation of Residents' Associations; helping you to take control of the challenges of modern-day living"
- "The Federation of Residents' Associations; helping you to take control of modern-day living"
- "The Federation of Residents' Associations; for how we live today"
- "The Federation of Residents' Associations; helping with the challenges of how we live today"
- "The Federation of Residents' Associations; providing support and guidance, whatever your make up of properties may be"
- "I would suggest that for the FPRA our brand would not only cost more money but risks a loss of recognition. Every document and web page logos etc would need to be changed"
- "I agree that a name change is probably undesirable unless there's a real point to it. Many of the suggestions do not, to me, make it clear that our field is mainly advising leaseholders in blocks of flats – "residents' associations" can cover a lot more than that (eg a local group looking after a neighbourhood park)."

Of course we would need to investigate all the costs involved in any change and IF a change would justify this expenditure. The key point being, would this clarify what we do better and attract more members?

What do you think? Tell us on info@fpra.org.uk or via our Facebook, Twitter or Linkedin forums.

Recommendations continued from page three

Simplification of the law

1) The Law Commission be tasked with simplifying and consolidating the existing primary legislation under a single Act as an alternative to seeking to amend the numerous elements of a range of statutes.

2) The sector is burdened with entirely non-standard lease written by the landlord's lawyer for their clients' advantage. There would be considerable consumer benefit by moving to a standard model of lease with appendices where relevant to meet the specific needs of the site.

Court costs

1) Consideration be given to how the cost balance might be changed such that a landlord faces the same prospect of the leaseholder's costs as the leaseholder might face against the landlord were it not for the cost advantage given to the landlord via the terms of the lease.

2) The landlord also faces the deterrent risk of some form of penalty for repeat offences.

3) A system be considered where a standard set of costs might be set on matters such as sublet fees.

ASK THE FPRA

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

Rip-Off Insurance

Q **Our head lease (999 year) was recently sold to a freeholder who is well known in the industry to rip clients off. We are in the process of enfranchisement in order to gain control.**

In the interim they have renewed the insurance through their brokers at the same levels that we were previously insured however the cost has more than doubled. We have requested a copy of the invoice but they have failed to provide this saying it is part of a blanket cover for all the buildings they have. My question is surely they have to produce an invoice for this building as it seems unreasonable and unfair for us to have this huge increase forced on us with no backing invoice just a copy of the policy omitting the premium cost.

A FPRA Hon Consultant Belinda Thorpe replies:

As the freeholder has arranged the insurance, then your member does have the right to request and be provided with the details of what their premium is. If the freeholder does not provide the information requested, then your member can take the freeholder to the First Tier Tribunal. However, they would be expected to pay the fee for this hearing.

Asbestos

Q **We have been in touch with a flooring company as we need to replace the present floor tiles in the communal areas. The company has said that they will visit to give an estimate but that they would not be able to undertake any work without an asbestos survey report.**

I have written to the agents for the landlord to see if they have any record of the materials used in the construction of our blocks of flats – built around 1960. I think it doubtful that they will have this information, but whatever the response, I think we will still need an up-to-date report.

Can you tell me what the process will be? And do you have a list of recommended/qualified professionals that we could approach to carry out such an inspection?

A FPRA Chairman Bob Smytherman replies:

Thank you for your question about Asbestos which has been passed to me as I deal with these matters for the FPRA.

The flooring contractor is quite correct not to carry out any work until they have had a sight of the Asbestos Management Plan which is a legal requirement for your Company and something than should not be ignored.

The fact your Block was built in the 1960s would indicate that it is likely that your Block does contain Asbestos in the common areas such as flooring, fire doors and alike.

As an independent organisation, and in order to protect our impartiality, I am unable to recommend a specific contractor but recommend that you use a specialist contractor with experience in producing asbestos management plans for common areas of blocks of flats.

Your local trading standards department from the council will usually hold a list of approved contractors which is always a good starting point.

Reasonable Charges

Q **What is a reasonable fee to charge for filling in the answers to multiple questions from a solicitor acting for a new purchaser of a flat? We have provided this information free in the past but I was told at your AGM that it is normal to charge!**

A FPRA Chairman Bob Smytherman replies:

Making a charge for completing this information will vary from block to block and will depend firstly what your lease says about making such a charge and, importantly, how you will account for this income by adding to service charge account or company account.

In my own block I complete these enquiries myself as Company Secretary without making a charge for my services although our accountants and solicitor do make a charge for the responses they provide. We debated at our recent directors' meeting whether we should be making a charge which – as you suggested – is a reasonable thing to do. We took the view that it was better for me to do this for which I receive an Honorarium as Company Secretary, rather than make a charge which will require additional administration in itself and income that will need to be accounted for.

As a self-managed block we feel this is not something we should be charging prospective shareholders joining the company. If you do decide to make a charge I suggest asking our legal advisers as to whether this is possible and how the income should be accounted for.

Recognition

Q **We are an association that has gained recognition (reluctantly) from our landlord and in terms of having input into spending decisions, section 20s, maintenance etc, we wish to keep the recognised status. Is our recognition time limited and subject to a resubmission? Is there training available so that we are clear on any obligations we have to the landlord?**

A FPRA Director Shula Rich replies:

In general the recognition lasts until withdrawn formally. The freeholder must give notice of withdrawal. If this were to happen you could apply to a tribunal for recognition. This lasts four years at a time. The FPRA publication *Information Pack* lists all the Rights and Responsibilities of an RA.

Putting Service Charges Right

Q **My question is with regard to Service Charges for both our blocks, A built circa 1985 and B circa 1987.**

At an AGM of the subject company dated 6 July 1988 it was agreed that A and B shareholders would each be responsible for their own service charges etc. The service charges, dependent on the work in each house, have been

carried separately by the shareholders in each house since then.

In the leases the service charges are apportioned by the number of flats: A has seven flats (one of which is considered as two flats as it's a penthouse); B has 11 flats (one of which is also considered as two flats as it's a penthouse). So in essence there are 20 shares and each shareholder is responsible for five per cent of the overall service charges

The service charges are apportioned depending on planned work to each block, and are detailed by each block in the annual returns of the company financial statements.

The question that's been raised is that the July 1988 AGM minutes were not sufficient to change the service charge payments and the leases should have been updated accordingly. Therefore, the way service charges have been apportioned since 1988 is incorrect, and each shareholder should only pay five per cent of the total Service Charge for A and B irrespective of the service charges for each house.

Therefore the question is, are the AGM minutes in conjunction with the leases sufficient to satisfy requirements, or if the procedures haven't been correctly followed, what do we need to do to put things right?

A FPRA Committee Member Mary-Anne Bowring replies:
Sadly, you have fallen foul of the misconception that company resolutions can change leases. This is NEVER the case, so the minutes and intention are not enforceable in law. An AGM should consider only the company accounts to be filed with Companies House. Service charge accounts are a matter of contract law and unless BOTH PARTIES agree to vary the contract the minutes and resolution have no effect.
To vary the contract other than by both parties' agreement (which means changing leases by way of a deed of variation to reflect this) then it is void.
If 75 per cent agreement were achieved, (Section 37 of the 1987 Landlord & Tenant Act) then you could apply to the First Tier Tribunal to change the leases.

Can we Inspect?

Q We are a resident/flat owner run Management Company looking after 92 flats in a block. All the Directors of the Management Company are lease holders and volunteer their time. The flats were built in the 1980s. Some flats have been maintained well, others may be in need of repair, others may have unauthorised installations eg unvented boilers, or something else that poses a danger to the whole block. As no surveys have been conducted since the flats were built, the Management Company feel that it is time to conduct a full dilapidation survey.

Could you please advise whether we (ie our appointed surveyor) do have a right of entry to each flat (with notice) to inspect the work that has been carried out to date? The Management Company will pay for the cost of the survey for the flats.

A FPRA Hon Consultant Yashmin Mistry replies:
You seem to be seeking to rely on the correct clause in your lease to request inspection. The notice period and procedure set out the clause would of course need to be followed. The usual test however for the management company will be – what happens if flats refuse to permit access?

Some Straightforward Questions:

Q I am hoping that you might be able to answer a couple of straightforward questions for us:

1. Could you please let me know if there is any restrictions on the number of Section 20 notices that can be issued to Leaseholders in any financial year?

2. We understand when Section 20 notices must be issued and have used the process several times in recent years. However it has been suggested that more than one notice should not be issued in any year. We have already agreed and completed one Section 20 procedure this year and are expecting to initiate a further one relating to some potentially expensive roof works. Does this contravene any regulations?

3. Our RA was formed some years ago (more than 12) with a constitution. The constitution has not been adhered to in at least the last five years, and probably more. We would like to amend the constitution to reflect the current ways of working. Please let us know how we can do this.

4. The landlord recognises us and we work well with the managing agent. Could we adopt a simplified recommended constitution?

FPRA Director Shula Rich replies:

Continued on page twelve

A

Legal Jottings

Compiled by Philippa Turner

FTT	First Tier Tribunal
UT	Upper Tribunal
EWCA	England & Wales Court of Appeal

Leasehold Reform Housing & Local Development Act 1993

Under the Act the lessee may issue the landlord with a notice applying for a lease extension. The landlord may then serve a counternotice, agreeing, disagreeing or suggesting terms/ modification. If the parties fail, after this procedure, to agree, an application may be made to the FTT for a determination but this must be made not more than six months from the date of the service of the landlord's counternotice. In *Salehabady v Eyre Estates (2017 UKUT 60)* that date was 21st April; the solicitors for the lessee posted the application by first class on 18th April but it was stamped received by the FTT not until 9th May. There was no other evidence of the method of service eg a certificate of posting and the FTT held it had no jurisdiction to consider the application. The UT disagreed: the Act expressly provides that an application can be made by sending or delivering to the Tribunal – there is no mention of date of receipt or method of despatch. The evidence in this case before the Tribunal was the solicitor's letter to the effect that it had been posted and correctly stamped within the time limit. The FTT could, had it wished to query this evidence, have required the solicitor to make a formal statement or to attend for cross-examination. Since the UT remitted the matter to the FTT to determine jurisdiction, it would be open to it to take these steps should it consider it to be necessary.

Commonhold & Leasehold Reform Act 2002

A group of lessees in *Elim Court RTM v Avon (2017 EWCA 89)* formed a company with the intention of making an application under the Act to establish the right to manage. The landlord claimed that the preliminary notice to all the other potential participants, as required by Section 78 of the Act, was invalid: (i) the Articles of Association of the RTM company could not be inspected on a Saturday or Sunday; (ii) the intermediate landlord of one of the flats had not been served with the notice and (iii) the notice was signed by one of the directors of the RTM company and did not comply with Section 44 of the Companies Act 2006. The UT agreed but the Court of Appeal allowed the lessees' appeal, holding in respect of (i) the failure was trivial and there were adequate other times for inspection outside normal office hours; of (ii) the person in question had no management responsibility and therefore was not primarily affected by the RTM proposal and of (iii) the director had been authorised by the company to sign on its behalf and did not hold himself out to be the company: there was nothing in the regulations under the Act requiring the notice to be signed by the company. It followed that the UT's finding that the notice was invalid was incorrect.

Repairs

The case of *Waaler v Hounslow LBC (2017 EWCA 45)* was also a decision of the Court of Appeal in favour of a lessee. The Local Authority was the landlord of a 1960s estate consisting of 850 public sector tenancies and 140 private leaseholds. In 2005-6 the landlord carried out a programme of major works including replacing flat with pitched roofs and wood with metal window frames, the latter necessitating replacing cladding and removing asbestos. The lessee was billed for his contribution amounting to £55,195 which the FTT found was payable. The UT allowed his appeal: (i) the window frames and cladding were improvements, not repairs, which the landlord had a discretion, not an obligation, to execute; (ii) the interests of the lessees should have been taken into account when deciding on the extent of the work and the financial impact on them and (iii) there was no evidence that this had occurred. The landlord's appeal to the Court of Appeal was dismissed: where a discretionary decision was made by one party to a contract which has a financial impact on another party to the contract, it must be exercised in a "rational" manner in the public law sense which is a lower standard than objective reasonableness; (ii) if it is not rational it falls outside the contractually recoverable service charge; Section 19 of the Landlord & Tenant Act 1985 also requires the application of a standard of reasonableness in considering the outcome; (iii) different considerations arose where some works were optional and some not; (iv) although the landlord was not bound by the statutory consultation procedure to follow the lessees' views, it nonetheless should be more influenced by them in the case of discretionary works and therefore (iv) the UT had made no error in law when deciding the costs were not reasonably incurred.

The works carried out by the Local Authority landlord in *Southwark LBC v St Saviour's Estate (2017 UKUT 10)* were also challenged by the lessees on the ground that they were improvements; the works consisted of replacement of individual flat front doors and of communal fire doors. At the time of the construction of the building in the 1960s, the doors had complied with the Fire Regulations. Before the FTT, the Local Authority witness gave evidence to the effect that where individual lessees had already replaced their front doors, he considered they were not compliant, were in disrepair and consequently required replacement. The FTT held that the fire risk assessment carried out by the Local Authority was the best available evidence and this had found only a few doors needed replacement or modification and there was little evidence in respect of the communal doors. Consequently, it reduced the overall cost by 50 per cent. The UT dismissed the landlord's appeal: the witness was not an expert and he had not given an explanation to support his conclusion and the FTT was entitled to disregard his evidence. It was also entitled to reduce the cost of the works to the communal doors by 50 per cent which was not an arbitrary figure but relying on the evidence and its own inspection of the premises. Nor was it obliged to authorise further time or expenditure to allow the Local

Authority to adduce further evidence; nor was it obliged to indicate in advance its proposed decision so as to give an opportunity to advance any further arguments.

Service charges

In *Jetha v Basildon Court RA (2017 UKUT 58)* the lease provided that interim service charges payable on account and contributions towards the sinking fund were conditional on prior approval being obtained from the lessees in the residents' company general meeting; no such approval having been given in respect of these items contained in 2014 and 2015 service charges, Mr and Mrs Jetha, lessees of eleven of the 56 flats, withheld payment. But the FTT held that they were estopped from relying on this point, having paid in previous years without objection; meetings had allegedly been held from 1996 onwards authorising the on account payments and from 2004 for the sinking fund. The UT found that there was no evidence that any such resolutions had been passed at any of the meetings and therefore the sole issue was the question of estoppel. The evidence before the tribunal was to the effect that payments were made by the lessees in the past, not having been alerted to the existence of the condition precedent until they sought legal advice in connection with a dispute regarding the level of services provided by management; prior to that they had not attended any company meetings but had assumed all necessary resolutions had been passed. In the circumstances, the lessees could not be said to have "waived" the right to object. Furthermore, no detriment would be suffered by the company since it was authorised by the lease to reissue fresh demands to recover the sums not paid in 2014 and 2015. (see also *Bucklisch v Merchant Exchange* Newsletter 120).

A long-running dispute over service charges in a chalet park for the years 2008-14 (see *Phillips v Francis Newsletters* issues 94, 104 and 111) is still on-going but a further challenge has been mounted by the lessees to the 2015 charges under the title *Knapper (Point Curlew TA) v Francis (2017 UKUT 3).* It was alleged that, by the time the service charge payment was due, certain costs included in the estimated account had not been incurred, namely, £50,000 for a site manager and £36,000 for refurbishment of the children's playground. The FTT held that this expenditure had been properly included in the demand but reduced the site manager's fee to £35,000. The UT dismissed the lessees' appeal holding (i) the question of reasonableness within Section 19 of the Landlord & Tenant Act 1985 did not arise in respect of matters which could not have been known at the time when the estimate was given and (ii) it was not within the jurisdiction of the FTT to order repayment by the landlord of monies already paid on account.

Professional fees were also in issue in *Powell v Patel (217 UKUT 565),* namely, architects of £7,060, surveyors of £3,870 and legal of £6,167; in addition the insurance premium was disputed by the lessees. There was no dispute that in principle these sums had been expended. The FTT sought and had been supplied with further evidence on the insurance which it had approved however, in respect of the remainder, it had held that there was no evidence in the lease authorising recovery through the service charge and accordingly they were not payable. The UT disagreed and held that the FTT had behaved irrationally in not allowing further evidence in respect of the professional fees when it had in the case of the insurance. The landlord's appeal was allowed and the matter was remitted to the FTT for determination as to reasonableness.

The property in *Firstport Properties v Ahmet (2017 UKUT 36)* was a former country house estate developed in two parts, the larger by Laing comprising 218 newly-built dwellings and the smaller by Faulkner consisting of 13 dwellings created out of the refurbishment and conversion of the existing mansion house and related buildings. It was agreed between the two parties that management costs, mainly comprising CCTV and security gates, should be shared, the smaller part of the development to contribute 6.8 per cent of the total. Unfortunately, this arrangement was not incorporated in the eventual management agreement which provided only that costs should be shared and omitted provision to recover from the lessees of the smaller part the 6.8 per cent; the effect was that the 218 dwellings of the larger part were billed for the total amount. One of the lessees, Mrs Ahmet, objected, having been led to believe that the costs would be divided between all and thus merit a contribution of only 1/231 rather than 1/218. The FTT agreed and made an order under Section 20C of the Landlord & Tenant Act 1985 (see *Newsletter* 109 page 8) in respect of the costs of the application to the Tribunal but the UT allowed the manager's appeal and upheld the allocation of 1/218 of the costs; in doing so it relied on the guidance given by the Court of Appeal on interpretation of service charge clauses in *Arnold v Britton* (see *Newsletter*s 104, 107 and 114). So far as Mrs Ahmed was concerned, the practical financial impact was of small significance but the legal costs were considerable and the UT ordered that they should be recoverable through the service charge, thus reversing the FTT's determination.

Costs

It is evident that legal costs in service charge disputes not infrequently dwarf the amounts in issue before tribunals, in particular the UT. In *Mahier v Christchurch Gardens (Epsom) 2017 UKUT 56)* the FTT ordered the lessee to pay the resident-owned landlord company a contribution of £1,250 towards the total costs of £19,000. The question was whether his behaviour was unreasonable (i) by reason of his "intemperate and unjustifiably aggressive" objection to the arrangement of the papers in the case by the landlord's solicitors and (ii) his prolixity in putting forward his argument to the FTT, overrunning by two days the one and half days originally allowed for the hearing: his witness statement ran for 23 pages, his arguments to 50 pages and his closing submissions to 58 pages. The FTT took into account that he was unrepresented but that did not mean that tribunal directions should not apply. His appeal was unsuccessful but he was not ordered to pay the costs thereof because his conduct before the UT did not cross the boundary between reasonableness and unreasonableness. (cf. *Willow Court v Alexander Newsletter* 118)

The lessee, Mr Pratt, in *Bretby Hall Management v Pratt (22017 UKUT 70)* challenged the resident-owned management company claiming that the cleaning and gardening contracts were long term agreements and accordingly required the Section 20 consultation

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Ask the FPRA continued from page nine

1. No restriction.
2. No, it doesn't.
3. The way of changing the rules will be in the constitution itself.
4. I would always recommend using the FPRA constitution available to members (specimen sent).

Formal Complaint

Q **Our residents' committee is eager to make a formal complaint about mismanagement of the service charge account. Previously the managing agents have suggested that such a complaint must be disclosed to potential flat purchasers and could jeopardise sales. Is this reasonable?**

A FPRA Committee Member Shaun O'Sullivan replies:

The solicitor acting for the buyer of any property will raise pre-contract enquiries. These are designed to ensure that the potential purchaser knows exactly what he or she is buying before entering into a contract. In respect of leasehold property, it is usual for potential purchasers to require copies of service charge accounts for the last three years and to be advised if there are any outstanding service charge consultation procedures.

Should there be an ongoing issue over service charge accounts then it is, in my view, not only reasonable but essential that such information should be declared; to withhold relevant information from the potential purchaser would be misleading. However, I do not believe that this should necessarily frustrate you from raising any genuine concerns in respect of service charge accounts with your managing agent.

Minutes

Q **The Board has been asked by two directors appointed in November to see the minutes going back to 2011. In addition, the AGM's and any legal advice obtained over the same period. Are there any issues, ethical or confidential, we need to be aware of?**

A FPRA Director Richard Williams replies:

The new directors are subject to the same duties and have the same entitlement to information as their longer-serving colleagues. In principle there can be no objection to their being provided with all the information they seek, in relation to which they are under a duty to use the information only for the benefit of the company, and of course to maintain confidentiality in relation to matters which are confidential to the Board.

A great deal of information is likely to be available to company members anyway, eg in relation to service charge accounts. Minutes of directors' meetings, which are required to be recorded and kept for 10 years (s. 248 Companies Act 2006), are able to be used as evidence so would need to be able to be produced to company members if demanded.

Perhaps the only area where there might be a difficulty is in relation to a conflict of interest. To take an extreme example, if one or both of the new directors had been in a legal dispute with the company, it might be inappropriate for them to see the company's legal advice in relation to that dispute. The new directors, like the existing directors, are under an obligation to avoid conflict of interest (see s. 175 Companies Act 2006).

Service Charges

Q **We are four flats and each pay a percentage into a limited account each month which are the following: Flat 1, 27.25 per cent; Flat 2, 20.25; Flat 3, 23.25; Flat 4, 29.25**

I understand that the flats are all different in square feet, but we need to have the hallway decorated and need extra money to pay for this work as there is not enough in the account due to extra building work. Do we still have to pay as above or can we pay 25 per cent each as the hallway is used by all?

A FPRA Legal Adviser Nick Roberts replies:

I shall try to answer your question in general terms: if the leases specify proportions, then that is the proportion in which you must split all service charge expenditure. You do not have the power to charge equal proportions simply because it may seem fairer. The only basis upon which you could split the expenditure equally would be if the owners of the two flats who were supposed to pay less than 25 per cent voluntarily agreed that that would be the proportion that they would pay. That agreement would be for this occasion only: if the intention was to vary the proportions for all time in future, then it would be preferable to have formal deeds of variation drawn up. This would involve a fair amount of legal costs, and you would have to pay the fees to have the deeds registered at the Land Registry.

If the proportions payable by three of the flats are fixed, and the proportion payable by the fourth is to be set by the landlord on the basis of what is 'rateable' then in practice you have little choice but to set the proportion payable by the fourth so that it covers whatever the outstanding balance is.

Cockroaches!

Q **We have been informed by a resident (who rents the flat from a relation) that she has seen cockroaches in her flat! To say I was surprised would be an understatement as the tenants are extremely clean and have a cleaner weekly. As the only previous insect problem has been the odd ant ingress in ground floor garden flats, I'm at a loss as to what our responsibility is in this case. The majority of problems within a flat are normally the owner's responsibility, however this tenant gives the impression that the association has the onus. I advised her to get confirmation that they are cockroaches and to have a word with the council for advice. I was informed today by a committee member that the council visited the flat this morning, so any advice you can offer as to what our obligation, if any, might be, before I hear from the council would be much appreciated.**

A FPRA Chairman Bob Smytherman replies:

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Advertisements

Ask the FPRA continued from page twelve

I reply from a practical point of view rather than a legal one. With regards to pest control in flats, it's likely that they have got in from the outside of the flat and therefore it's likely that the association will have at least some level of responsibility. You are quite right getting your local council pest control officer to investigate and establish what the pest is, where it has come from, and how to prevent this infestation spreading to other flats. In my block we usually carry out the initial investigation and meet the cost from the service charge, if applicable. Not all councils charge for this.

Once we have received their report it is usually clear where the responsibility for the removal lies and how to prevent further infestation.

Subletting

Q **As a private residential management company, acting as landlord for 82 leasehold properties, we would like to clarify what our obligations are regarding the collection of information from leaseholders wishing to sublet their properties with our permission.**

To gain our permission we ask for contact details of the landlord (our lessee) and their proposed tenants, suitable references for the tenants (work, previous landlord, etc), a copy of the proposed AST (to ensure they are complying with the terms of the lease), a copy of the Gas Safety certificate and the EPC. I have attached a copy of our current *Subletting Conditions* that also details the fees that we charge. These conditions form part of the written permission we grant, usually by email (rather than a formal licence), and have proved acceptable for a number of years.

However our question is, do we now require copies of the tenants 'original identification documents' as obtained by the landlord in line with the 'Right to Rent' scheme?

In addition, as the Landlord responsible for enforcing the terms of the lease, are we liable to prosecution (as the leaseholder subletting the property), as codes of practice clearly state that landlords or agents in England could be charged with a criminal offence if they know, or have reasonable cause to believe, that they are letting to an illegal immigrant?

A Stuart Merrison of Bishop and Sewell replies:

Private landlords and agents are required by law to comply with certain immigration checks and have confirmation that prospective tenants have the right to reside in the UK. The landlord must request sight of original documents that prove that the new tenant can live in the UK. A copy of the original document should be taken and it is also advisable to keep a record of the date the check was made. Failure to comply with identity checks of prospective tenants, and other authorised occupiers can result in criminal conviction. The full extent of the scheme's requirement is summarised in the Home Office *Right to Rent* guidance.

On perusal of the Code of Conduct additionally issued by the Home Office it seems unlikely that a superior landlord unconnected to the subletting will be considered a landlord for the purposes of this legislation. A full analysis of the document though is beyond the scope of this reply and the member should review that Code and satisfy themselves as to who is receiving the rent for the subletting.

It would in any event seem prudent to include a requirement in the current subletting conditions that the identity checks are confirmed to the member and the identification made available to the member in the same way that other conditions of subletting are applied. Whether or not all of the conditions currently being applied to any permission are reasonable ones under the terms of the lease is though something that the member should also consider. Consideration of that point is involved and again beyond the scope of this reply.

Changing Managing Agent

Q **We urgently seek advice on appointing new managing agents – which we have to do urgently – covering issues such as the importance of professional associations (such as ARMA), guidelines on likely management fees for a block of 10 apartments, 16 years old in Surrey (say >£200 per flat per annum plus VAT, and any other pointers that you can kindly provide.**

A FPRA Director Shula Rich replies:

The most important thing on appointing a new managing agent is their contract. ARMA and RICS have standard contracts, some agents have their own. These contracts, especially those composed by the agents themselves, may have clauses which don't suit you.

I suggest that you ask any prospective agent to send you a copy of the contract that they use before you meet them. Mark them down for pages of conditions and endless small print. Read it and see if it suits your circumstances. Suggest alterations if it doesn't. However, agents need to make a profit – otherwise why would they be in business or continue in it? There is no fair price. it depends what service you want.

You may decide to employ surveying services separately – and thus cut down on fees, whilst keeping a good service. Please be aware though of too much micro management – the agent is there to work for you and with you.

Make sure they see you as a team member and that you enjoy working together.

Legal Jottings continued from page eleven

procedure which had not taken place. The FTT failed to make a decision on the point (it being only one of numerous other matters raised by Mr Pratt on which it found against him). The UT remitted the point for further consideration and for a Section 19 decision. Prior to the FTT hearing, Mr Pratt had taken the initial steps in bringing various complaints about the service charges before the County Court but had not in the end proceeded. The management company had incurred considerable legal costs in dealing with the threatened action but the FTT made no order as to the payment of the costs through the service charge; it did authorise recovery from Mr Pratt of a 25 per cent contribution towards legal costs incurred before the tribunal: this in actuality amounted to only £3 (the company having not employed professional representation) and was not appealed. As to the earlier costs, the UT held that these could be recovered under the lease which provided that the service charges would cover "all other expenses incurred ....in or about the ....proper and convenient management and running of the development". These were subject to the Section 19 requirement of reasonableness which should be remitted to the FTT for a determination. A Section 20C order was refused because it applies only to costs incurred in legal proceedings which in this case had never been commenced. An order was also refused in respect of the costs of the UT hearing since it would not be just and equitable that these should be funded through the service charges: Mr Pratt had lost the appeal on almost all points and the management company had no other source of income than the service charge funds.

FPRA welcomes new **Honorary Consultant Alan Wake**. Alan, a Fellow of The Institute of Residential Property Management, has 15 years' experience of property management and leasehold services within housing associations.

A founder member and CEO of National Leasehold Group, a nationwide networking group of leasehold managers in housing associations, Alan has been involved in various cross-sector initiatives to improve education, knowledge and awareness in property management.

Alan, who lives in Sheffield, is a specialist in housing association leasehold management. He has extensive relationships across the sector allowing for liaison and problem solving on mixed tenure issues.

Appeal to members from the FPRA HQ

The FPRA website has recently been updated to bring it up to the latest standards to achieve the following:

- https – which means that the site is the most secure type, with encryption, so that anyone using the site can be confident about its security
- mobile device friendly – we have started updating the pages so that it is easier to download and use from mobile phones
- we have been acknowledged for our security with the 'GeoTrust' padlock
- we have started rewriting some of the pages to make them less wordy and more user friendly.

Please let us know what you think and make any suggestions for further improvements

TrustPilot

Many companies and organisations have found that asking their customers/members to give a review has enabled them to be recognised for their customer service and this has helped potential new customers/members appreciate that they are dealing with a trustworthy organisation. FPRA have joined TrustPilot and we would ask our members to go to our website and follow the TrustPilot link and leave a review of their experience with us. Hopefully Five Stars!

Please note that whenever you buy a publication or receive the answer to a question there will be a link from next month asking you to leave a review – it would really help FPRA if you did this.

If at any time you have any concerns, please let us know direct on: info@fpra.org.uk

Volunteers needed

Can you help FPRA for two hours a month from home?

We need some volunteers who are computer savvy to look at the web, and in particular Government websites, to look for any changes/developments/proposals that may affect the leasehold sector. There are constant changes and proposals from all sorts of organisations and parts of Government that could impact upon our membership. While in some areas we are automatically contacted, occasionally there is a failure to understand that a change proposed can impact on leaseholders. This can cover a massive range of subjects and examples might be: new communal heating rules; changes in safety regulations; local authority plans and so on.

If you can help us with this, even on an adhoc basis, this would be greatly appreciated. Please contact us.

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
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