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NEWS

FPRA
FEDERATION OF PRIVATE RESIDENTS' ASSOCIATIONS

MPs BACK COMMONHOLD

BY THE EDITOR

A committee of MPs has come out strongly in favour of commonhold and the wholesale reform of leasehold.

Welcoming their recent report, FPRA Chairman Bob Smytherman said: "Can I thank the Housing, Communities and Local Government Committee for their excellent report on Leasehold Reform and inviting our own Director Shula Rich to provide evidence on our behalf.

"We will continue to lobby government to ensure the evidence-based recommendations are fully implemented to redress the balance between leaseholders and freeholders to ensure leaseholders have much more control about the running of their blocks."

The House of Commons Committee, made up of Conservative and Labour MPs, reported on its inquiry into the government's progress on leasehold reform, following the conclusion of the government's consultation on tackling unfair practices in the leasehold market.

These are the main recommendations of the committee:

1. That the government should ensure that commonhold becomes the primary model of ownership of flats in England and Wales.
2. The Competition and Markets Authority should investigate mis-selling in the leasehold sector and make recommendations for appropriate compensation.
3. The government should require the use of a standardised key features document, to be provided at the start of the sales process by a developer or estate agent, and which should very clearly outline the tenure of a property, the length of any lease, any ground rent or permission fees, and – where appropriate – a price at which the developer is willing to sell the freehold within six months.
4. The government should prohibit the offering of financial incentives to persuade a customer to use a particular solicitor.
5. That a ground rent is onerous if it becomes disproportionate to the value of a home, such that it materially affects a leaseholder's ability to sell their property or obtain a mortgage. Consequently, existing ground rents should be limited to 0.1 per cent of the present value of a property, up to a maximum of £250 per year. They should not increase above £250 over time, by RPI or any other mechanism.
6. The government should revert to its original plan and require ground rents on newly established leases to be set at a peppercorn (ie zero financial value).

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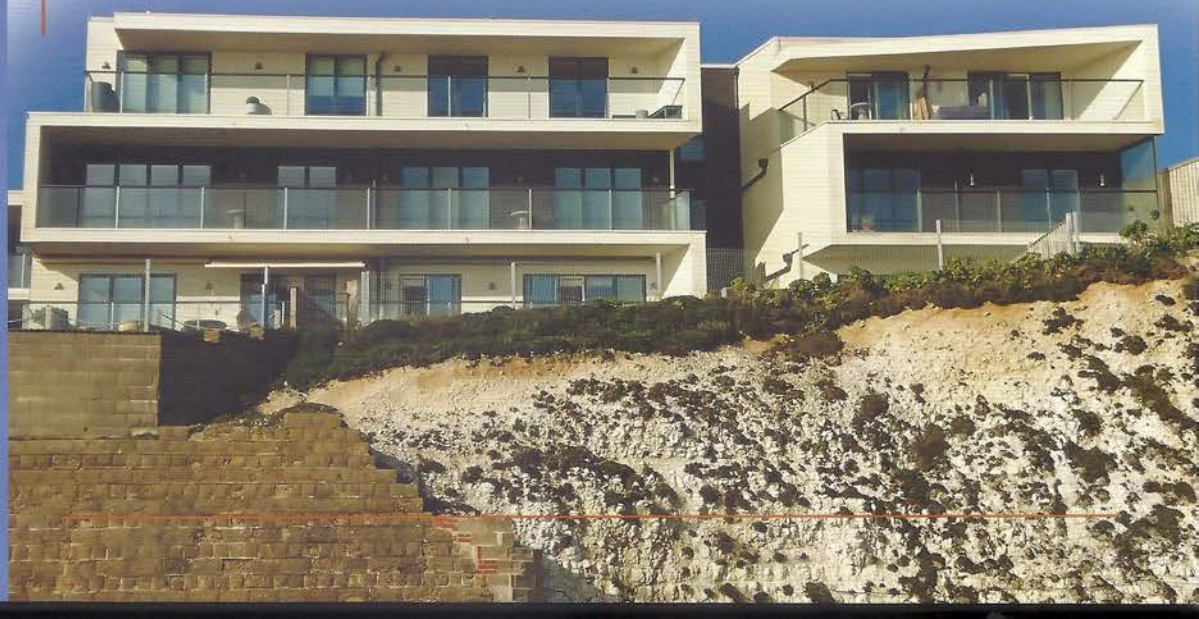

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7. The government should introduce legislation to restrict onerous permission fees in existing leases; and that permission fees are only ever included in the deeds of freehold properties where they are reasonable and absolutely necessary.
8. The Competition and Markets Authority should indicate its view as to whether onerous leasehold terms constitute 'unfair terms' and would be, therefore, unenforceable.
9. The government should require the use of a standardised form for the invoicing of service charges, which clearly identifies the individual parts that make up the overall charge.
10. The government should implement a new consultation process for leaseholders affected by major works in privately-owned buildings. A threshold of £10,000 per leaseholder should be established, above which works should only proceed with the consent of a majority of leaseholders in the building.
11. The government must legislate to require that freeholders' tribunal costs can never be recovered through the service charge, or any other means, when the leaseholder has won the case.
12. The government should immediately take up the Law Commission's 2006 proposals to reform forfeiture, to give leaseholders greater confidence in disputing large bills by reducing the threat of losing a substantial asset to the freeholder.
13. The Law Commission should recommend a process that will make enfranchisement substantially cheaper.
14. The government should introduce low-interest loans – a Help to Buy scheme for leaseholders – so that leaseholders who want to enfranchise or extend their leases, but cannot afford to or obtain the necessary finance, have the opportunity to do so.
15. The government should invite, and fund, the Law Commission to conduct a more comprehensive review of leasehold legislation.

The committee also concluded that the government should undertake a comprehensive review of LEASE and that it should appoint leaseholders to the Board of LEASE.

Bob Smytherman commented: "We welcome the detailed work undertaken by the select committee in producing evidenced-based recommendations. We would especially welcome the opportunity to nominate a representative to serve on the LEASE Board on behalf of leaseholders"

(The report in full, including the details of the 11 MPs, is available on our website.)

AND **AT THE SAME TIME...**

Consultation on Commonhold

FPRA responded to the Law Commission's Consultation Paper *Reinvigorating Commonhold: the Alternative to Leasehold Ownership*.

FPRA is strongly in favour of Commonhold and responded in detail to a large percentage of the 107(!) questions posed by the Leasehold Enfranchisement Team of the Law Commission. You can read FPRA's full response on our website.

FPRA Vice-Chairman Richard Williams told the Law Commission:

"The Overall impression from our members is:

1. We need clear, simple and easy to understand change – too much complexity already exists and for essential changes to be effective and fair, the proposals need to be easy to understand and easy to apply.
2. The legislation needs to wipe away numerous separate and superimposed acts, to give a single well drawn up place for all rights.
3. The government needs to tell all leaseholders of the new changes when finalised, and this needs to be part of a basic process of purchasing a home in the first place, so that buying the freehold/extending the lease is the norm.
4. We have concerns that with the "mass" of consultations from different bodies and organisations, that while change is desperately needed, we could end up with a mess of uncoordinated and possibly conflicting legislation.
5. We have a general concern, that most legislation is designed for a separate and independent freeholder/leaseholder situation, while in reality the leaseholders have often acquired their freehold and there is a more cooperative situation which is hindered by legislation and rules not helped by them.

"FPRA considers that a major advantage of commonhold for a block of leasehold flats or an estate of such blocks owned by the leaseholders will be management stability. There will no longer be the risk of the freehold being acquired by groups of leaseholders through the enfranchisement process.

"FPRA considers that the main issue preventing the uptake of commonhold has been the practical impossibility of converting existing leaseholder-owned properties to commonhold by reason of the requirement to obtain the agreement of every single leaseholder. What is most likely to result in commonhold being used instead of leasehold is its widespread adoption so that it becomes the usual way in which flats are owned. This may seem an unhelpful circular argument, but the point is that developers, who face significant financial risks are likely to be reluctant to adopt commonhold until they have seen that it works so that they can reassure their customers that they will not be venturing into uncharted legal waters when buying a commonhold flat. Leaseholder-owned blocks of flats, already being run successfully under the leasehold system, will be the best pioneers to lead the way into the new system."

WHY AGENTS NEED TO **STOP BEING THE BLOCK POLICEMEN**

Disputes between occupiers can take up too much management time, writes FPRA Director Shula Rich.

In my experience too much management time is wasted policing disputes between occupants when in many cases any interference is actually outside the terms of the lease.

Unfortunately Block Management has often attracted 'authoritarian personalities'. Prior to 2002 and Right to Manage legislation, these underqualified managers could operate freely as leaseholders had no rights to replace them.

Unfortunately, there is also some lack of understanding among RMCs and RTM companies as to their rights and duties in relation to these disputes.

There is widespread ignorance of the role of a managing agent in handling disputes between occupiers.

Let us put ourselves in the position of the freeholder. It is they who originally drafted the lease, and it will not include any onerous terms for them.

Why would a freeholder allow a clause to be in a lease that obliged her to spend her own funds on a dispute between occupiers? She can't dig into the service charges as disputes between occupiers do not come under the heads of expenditure.

The typical lease has neatly solved this – but this is almost universally ignored.

If for example leaseholder A has issues with noise from leaseholder B how is this to be resolved?

First a complaint to the managing agent, sometimes a request to 'enforce the conditions in the lease.'

The old RICS guide was very misleading in its guidance on disputes – even suggesting that an agent should 'enforce the conditions of occupancy' and 'remind complainants about counter arguments'.

Procedures which remind me more of a headmistress than a professional agent with a clear-cut role.

That role is to act on behalf of the freeholder/RMC/or RTM company in accordance with the terms of the lease.

In the case of disputes between occupiers, if the freeholder could not intervene nor can their agent.

Freeholders were never intended to act a block policemen. In 2015 the RICS convened a Working Party to discuss the new Code of Conduct published in 2016.

I was part of this on behalf of FPRA. It gave me the opportunity to make RICS aware that their previous Code was misleading and, all credit to them, the new Code more than makes up for this by completely re-writing that guidance.

A typical lease will require the freeholder to uphold the covenants in the lease but there will be a caveat. These are the magic words that can in many cases halve an agent's work on that least popular of tasks – disputes between occupiers

The caveat: The lessee must indemnify the lessor against all costs and expenses of such enforcement.

In addition many leases will also say that the freeholder (eg agent) does not even have to take up the complaint at all unless she believes it is *in the interests of good estate management* or 'satisfied that the lessee would be prejudiced by the lessor's failure to enforce such covenants'.

Without extra funds, where is the money to come from to pursue a leaseholder who has – for example – a piano playing habit after 11pm which bothers a neighbour?

I remember one well known surveyor now retired, who when he saw the light round the RICS table at the working party said 'if only I had known that long ago'!

If only more managing agents were aware of these clauses, so many errors could be avoided especially in using service charge money to pursue these disputes or shareholders/ members funds with a flat management company, and so much work could be saved.

In response to the leaseholder who says – 'do you mean the lease is worthless' the answer is 'no – but under the lease our hands are tied – subject to your indemnifying us'.

UP-TO-DATE RICS GUIDANCE

5.2 Disputes between occupiers

You should always refer to the lease when dealing with disputes between occupiers. You cannot go further in dealing with the parties than the landlords' remit under the lease.

Most leases will not allow you to recover any costs from the service charge in connection with disputes between occupiers.

The local authority may help in establishing evidence of noise, anti-social behaviour or keeping animals in unsuitable conditions.

You should always have regard to the enforceability clause in the lease before embarking on any action which involves expense from the service charge.

Leases typically contain a mutual enforceability clause requiring landlords to seek an indemnity for their costs from leaseholders requesting enforcement. This may also

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PENSIONERS FUNDING THE HOUSING CRISIS [?]

By an FPRA member who lives in a retirement block

When there is no legislation and statutory regulation, ordinary citizens are open to neglect, abuse, exploitation and criminality. Voluntary codes of practice and guidelines are only followed by those with integrity. The powerless, children and the elderly are more at risk. In 2014, Age UK bluntly rejected any further efforts at self-regulation by the trade bodies such as ARHM, ARMA, RICS, as they had very limited effect protecting tenants.

Following the leasehold inquiry by the Competition and Markets Authority, the government introduced some new measures. Have these sufficiently protected all tenants?

A member of FPRA, who wishes to remain anonymous, has reported some very disturbing experiences over a period, regarding buying a place and living at a retirement community operated by a registered housing association. This tarnishes the reputation of mixed tenure retirement properties and social housing providers that manage them. It questions whether all housing associations are 'fair landlords of affordable housing' and indicates that dubious practices still operate in some complexes:

The sales promotion: Selected information to potential buyers, regarding the benefits of the scheme, including advice in downsizing and presentations to overcome every problem, was provided over many months before the project was finished. Key information regarding costs and obligations was initially very sketchy and contracts of sale were provided very late in the process. In retrospect, some key information was withheld. This meant that prospects and incentives were highly attractive. The scheme was virtually fully occupied within six months of completion, with 50 per cent leaseholds purchased and 50 per cent rented. After less than a year, discontent grew and some tenants considered themselves unfairly enticed into legally binding contracts, even though they had sought legal advice before signing as solicitors recommended by the landlord had failed to adequately warn potential buyers of onerous conditions and risks.

Other initial problems: After occupation, key information, regarding the scheme and the new building warranty was withheld, or considered misleading. The landlord failed to adequately inspect common areas after two years, leaving tenants to report defects and challenge the developer and warranty provider. The landlord also failed to ensure that all defects were remedied to a reasonable standard. Tenants were unfairly charged for the repair of those defects.

Information and involvement: A plethora of information, some conflicting, was issued by the landlord either in meetings or in writing. Its approach to reasonable requests from tenants for information was mixed. Prevarication and denial were common, causing confusion and exasperation in some quarters. Involvement in decision making and 'consultation' was meaningless and merely for decorative and tokenistic reasons. Links to senior officers and executives at head office were blocked and discouraged. Many questions were passed 'up the line' to unknown officers in departments miles away, where they were swept under carpets or lost in long grass. Customer standards have still to be published!

Statutory rights conferred on tenants and leaseholders are still a mystery to all residents except one or two that have an idea that they exist.

Forming a tenants' association: Initial proposals to form an association were discouraged and unsupported by the landlord. Forming the association with a proper constitution and recruiting willing and able elderly tenants, then managing conflicting interests, was constantly problematic. Gaining formal recognition was difficult and took nearly a year.

Dealing with dissatisfaction: Numerous dissatisfactions were raised with the landlord and a small proportion of minor problems sorted. Details of the Complaints Procedures provided were eventually discovered to be incomplete and misleading. Later they were changed without notice. A number of formal complaints and petitions were not conducted in accordance with policy, including those regarding safety concerns and the actual complaints policy. Cases were either ignored, seriously delayed, not fairly investigated or escalated. Referrals to independent 'designated persons' for conciliation were unsuccessful. Two cases, both regarding 'truthful information' haven't been satisfactorily resolved in nearly four years. Those to the Housing Ombudsman took five months before they were formally acknowledged and another five or six months are likely to pass, due to the Ombudsman's volume of work, before a determination is expected. It is unpredictable, considering the intransigence of the landlord, as to when some complaints will be resolved by rulings and orders to make amends. So much for the Homes and Communities Agency's requirement that *'providers shall have an approach to complaints that is clear, simple, and accessible that ensures complaints are resolved promptly, politely and fairly'* and the landlord's declaration that it was *"constantly reviewing and revising the way we deliver excellent services"!*

Financial scrutiny: Estimates of service charges for the first two annual periods were considered by some tenants to be unreasonably inflated. Annual service charge accounts (totalling about £0.5 million) were presented to leaseholders in a very unorthodox format, indecipherable to the average person, let alone pensioners. There apparently is no statutory prescription for the form of service charge accounts that landlords must adhere to. The government 'approves' of the Royal Institute of Chartered Surveyors (RICS) management code, but this is voluntary and some landlords refuse to work towards this.

Certificates from the landlord's accountant

were of no value, merely complying with the landlord's requirements, not providing evidence that the service charge accounts complied with any code. Most charities are obliged to adhere to strict audit rules, yet it appears that annual scrutiny by auditors and examiners are extremely woolly and are not legally required for each complex managed by housing associations. Many errors in the first few annual periods, discovered by tenants, resulted in refunds to those tenants, who were charged variable costs, of over £1,500 each! For tenants on fixed rents and service charges, there was no refund as they were not legally entitled to them. Requests to examine financial documentation (contracts, registers, time/worksheets, reconciliations, etc.) regarding 2015-16 and 2016-17 have been repeatedly made but still not yet fully granted. So much for equality and transparency!

Considerable losses, proved some services were not actually financially viable or efficiently managed. These deficits were unfairly charged to tenants, many of whom were not well enough to use the facilities and services or able to state their needs and preferences.

Some services were provided by the landlord's subsidiary company, without evidence of regular competitive tendering or actual costs.

Profits made from these services were 'gift aided' to the parent body. Might this be considered a 'cartel,' an abuse of a dominant market position and contrary to Competition and Marketing Authority regulations?

Relations between tenants and landlord: Trust and confidence, vital in any relationship, in the landlord has been seriously damaged by the landlord's uncooperative, duplicitous and intransigent attitude during years of feedback, scrutiny and negotiations. Following repairs and other services failing to be properly monitored and regularly reviewed for quality and competitiveness, increasing numbers of commitments, plans and promises failed to deliver significant improvements to services and discontent has increased.

Elderly tenants are trapped at the mercy of the housing association with little or no voice of protest.

Conclusion:

This report raises great concerns that adds to the strong suspicion that the housing crisis has been, and still is, enveloped in the 'dark arts' or some highly dubious yet lawful practices. This strongly points towards scandalous practices being rife in 'mixed tenure' retirement housing over the last 10 years. Practices are so poorly regulated as far as customer standards are concerned.

Retirement communities are currently very big business, a major contributor to the building industry and national economy. Schemes and operators are getting bigger.

Retirement communities (also called independent/assisted living, retirement villages, extra care housing, housing-with-care and close care apartments) are self-contained homes (usually between 60 and 250 units) for leasehold sale, shared-ownership or rent, to those over 55 years of age. Registered social housing providers, who are Community Benefit Societies and exempt charities, have joined the business in recent years. They usually work in partnership with local authorities and care providers as do some private commercial operators do. They provide what some call affordable, contemporary, person-centred housing and care. A vague 'life-style,' with a variety of services and amenities, which generally include 24-hour on-site care, a restaurant or café, leisure and wellbeing facilities – such as entertainment, activities, a gym, hairdresser, shop, lounge, library, conservatory, gardens, greenhouse, domestic and personal care, etc – all commendably designed to enable the elderly, including those of modest means, to 'get more out of life.' Some are managed by agents and some directly by the landlord, including housing associations.

Local housing associations were mainly set up as charities, to replace council housing departments in the 1980s, initially managed by local voluntary trustees. Today, some have morphed into massive housing groups – the largest housing association in the United Kingdom has 125,000 properties across more than 170 local authorities. They generally are now governed by paid executives, without tenant representatives, and controlled by central government. Calling themselves **'not-for-profit'** social housing providers, they have been returned to the commercial sector and are encouraged to become financially stronger and **return a profit.** This is re-invested into building more 'affordable' homes, a very sneaky form of taxation. The system effectively allows the cross-subsidy to effectively 'tax' pensioners living in retirement communities, including some of the poorest and vulnerable citizens on Housing Benefit or Universal Credit Secrecy. Complexity, confusion and lack of involvement with existing tenants and local authority representation is 'pulling the wool' over many eyes.

The Social Housing Regulator promotes a viable, efficient and well-governed social housing sector able to deliver homes that meet a range of needs. Its priorities, prime objectives and controls are economic. Consumers 'standards' are secondary and vague:

- to support the provision of social

housing that is well-managed and of appropriate quality

- to ensure that actual or potential tenants of social housing have an appropriate degree of choice and protection
- to ensure that tenants of social housing have the opportunity to be involved in its management and hold their landlords to account.

What also is vague is that the Regulator "encourages RPs to contribute to the environmental, social and economic well-being of the areas in which the housing is situated." So, from revenue raised from rents and services, funding to tasks previously provided by local and national authorities and charities!

Effectively, the government incentivises providers to achieve strength and profit, at the expense of those least able to pay – another case of unsavoury capitalism?

Some associations are still not playing fair with tenants and a very weak 'Regulator' leaves very many pensioners in exposed positions.

Some commercial associations have attempted to give the appearance of correcting matters by issuing 'codes of best practice.' The Homes & Communities Agency created a Tenant Involvement and Empowerment Standard, including customer standards, for registered social housing providers in 2012, and the Regulator of Social Housing in 2018. The objectives of the regulator were set out earlier in the Housing and Regeneration Act 2008.

The major flaw of codes and standards is that both are fundamentally voluntary, relying on goodwill, promises and self-regulation. To the great disadvantage of tenants, the Regulator only has a 'statutory duty to perform its functions in a way that minimises interference (to social landlords) and is proportionate, consistent, transparent and accountable.' It is economic regulation that is the prime function of the RSH and this focusses on governance, financial viability and value-for-money that maintains lender confidence and protects the taxpayer. Tenants are virtually unprotected and at a huge disadvantage as consumer standards are of a lesser importance – **the Regulator only 'may take action if these standards are breached and there is a significant risk of serious detriment to tenants or potential tenants'.**

Lease and rental agreements: These normally contain a 'representation' clause which prevents tenants from claiming mis-selling, requiring the buyer or renter to be entirely responsible for understanding and agreeing to the obligations and risks associated with purchasing a lease or renting a property. If the customer's solicitor fails to provide a warning, the bait is taken and the customer hooked. Some customers are desperate for a home or financially struggling that they choose not to seek expert advice.

Contracts also generally give landlords unbridled power to provide property and other services in whatever way they think is

appropriate, without any consideration for tenants (provided all services and associated costs are 'reasonable.') The possible effect sometimes being likened to a thief having constant access to someone's bank account. The only possible ways out are to move, to challenge unlawfulness at a property tribunal or death. For most pensioners, the stress, time and energy required is a 'no brainer.'

Small communities of tired, naïve, vulnerable pensioners, coping with various stages of debilitating/terminal health conditions and disabilities, and having very limited means, are soft targets. They are no match for long-established groups of social housing professionals, almost working with 'partners in crime,' with their profitable, subsidiary property maintenance companies, other housing associations, managing agents, care providers, large home builders, warranty providers, land owners, lawyers and auditors.

The right of tenants to effectively scrutinise vast amounts of financial documents each year, purporting to substantiate up to one million pounds or more, is an impossible time-consuming task. Employing a surveyor or accountant to do so is so costly as to be prohibitive for very many elderly tenants (most of whom do not understand the onerous situation they live in.)

Some landlords and agents in the retirement home sector are more scrupulous that others. Some have had appalling reputations. Some have been the subject of critical tribunal rulings, investigations by the Office of Fair Trading and one Law Commission report. Landlord and Tenant legislation, developed over hundreds of years, is so complicated, that lawyers become confused and disputes are so incredibly time-consuming and expensive as to preclude most tenants from justice. The government (DCLG) is conducting a consultation on the possible regulation of letting and managing agents and an All-Party Parliamentary Group is receiving evidence and considering proposals for ways to reform leases and better protect leaseholders. All because of unscrupulous policies and conduct of some landlords and their agents over many decades. The whole retirement home business is still enveloped in murk and treacle and still not adequately regulated to protect tenants.

This report suggests that most pensioners in some of these complexes are virtually captive and passive customers, some are aggressively 'managed as mushrooms,' and too weak to escape. A worrying report, called *Breaking down the Barriers*, produced by the Parliamentary and Health Service Ombudsman, revealed that people over the age of 75 often lack the knowledge and confidence to complain, and worry about the impact it might have on their future care and treatment.

- Retirement community businesses are able to present spurious or even false promotional/advertising information with impunity, and rely on buyer's solicitors failing to warn elders of the onerous conditions.
- Operators not only provide housing services, they provide on-going care, catering, entertainment services and activities directly, by 'partners' or contractors without mandatory competition and can charge costs that are nominally certified by surveyors, accountants or auditors with little or no credibility.
- Some claim they are constantly reviewing and refining processes to

provide excellent services, when in truth they are intransigent and not adhering to stated policies and practices, covering the truth by manipulating the statistics in annual reports.

- Operators can claim they are accountable, 'regulated' and self-regulated by codes of practice, meeting their legal obligations, even when they clearly are not, and rely on elders not challenging them at property tribunals.
- Customer regulation might only protect tenants when there is serious harm. Self-regulation is wide open to manipulation.

Effectively, some powerful businesses have clear, continuing opportunities to exploit powerless pensioners to assist the Government in tackling the housing crisis.

Five years ago, Age UK argued that *"Problems with the leasehold system disempower all residents and increase their costs ..."* and called the Competition and Marketing Authority for *"improved regulation to offer better protection to older leaseholders ..."* The government has failed to listen and grasp the seriousness of housing abuses and especially failed to act to protect vulnerable pensioners in retirement communities.

Elders, buying or renting retirement apartments, facilities and services must be protected against unfair (and misleading) practices. Therefore, key material information must be provided in a clear, intelligible and unambiguous manner, so that they, like other consumers, may make informed decisions and are not induced unfairly into legally binding transactions.

The Social Housing Regulator must have a statutory duty to better protect customers and perform its functions in a rigorous and fair way, by introducing statutory customer and financial standards that are scrutinised by totally independent auditors.

Since the deregulation of social housing in April 2017, government encourages Tenant Involvement and Empowerment. **Empowering pensioners to challenge some landlords might be likened to empowering a flock of sheep against a pack of wolves and a few circling vultures!**

Until robust regulation happens, this dark and dirty plot will endure and more and more pensioners will be 'hung out to dry.'

HOW TO **AVOID LEGAL HEADACHES OF RUNNING A RMC**

FPRA committee member Yashmin Mistry, Partner and Head of the Property Practice Group at JPC Law and Andrew Morgan, Company/Commercial Partner, unveil some of the mysteries of the Residents Management Company (RMC), how they operate and how RMC directors can avoid the legal headaches that RMC directorships can bring...

What is a Residents Management Company ('RMC')?

Historically, a RMC is a private company limited by shares and its main objective is to manage and maintain the common parts (entrances, lifts, car-parks, gardens as well as the main structure of the block itself) for the general benefit of the lessees. The full responsibilities of any RMC will be set out in the RMC's Constitution otherwise known as the Memorandum and Articles of Association as well as being contained in the leases themselves.

The majority of RMCs are limited by shares, although some blocks favour an RMC limited by guarantee. Typically however, each flat owner will be a member or shareholder in the RMC and members will be appointed from amongst their number to become directors. RMCs are in turn managed by these directors.

Advantage of an RMC:

A formal RMC is very different from an informal residents' association as it has legal status, being an independent legal 'person' in its own right. An RMC also offers greater protections for example, a member of an RMC will be entitled to take part in general meetings of the company and have their say accordingly. Further, if a member thinks the Board of the RMC has wrongfully exceeded its powers, then there are different protections and rights of action afforded to them at law. A member may also take the RMC to the First-tier Tribunal or County Court for breach of its obligations under the lease and they can do this irrespective of membership.

Disadvantage of an RMC:

There are many advantages of having an RMC; however, running an RMC is not a straightforward matter. Directors of RMCs are usually unpaid, however the obligations the directors are obligated to adhere to are extensive, not to mention the statutory duties. For example, during the course of running an RMC, directors will invariably employ a variety of contractors such as caretakers, porters or gardeners. Directors will need to be familiar with the distinction between a contract for services (self-employed) and a contract of service (employee) and the different rights and duties that are attached to each form of contract.

Directors may also become personally liable for breaches of their so called 'fiduciary duties' under the Companies Act 2006 or Trustees Act 2000 (in relation to service charge funds which are held on trust for the lessees).

Running an RMC can be a complex task. The directors will need to comply with the Company Law formalities imposed by Companies House for example: the Directors of the RMC will, amongst other things, need to ensure that the RMC's Memorandum and Articles of Association are properly used and adhered to, make the appropriate filings on time, keep up-to-date the RMC's statutory books and registers and keep Companies House updated on members of the RMC, deal with Change of Name formalities and filing of certain Resolutions.

Health Warning!

The consequences of failing to comply with Companies House requirements can be potentially disastrous and could lead to the RMC being struck off the Companies Register – the management reverting back to the landlord and directors becoming liable for breaches, personally.

Specialist legal advice should always be obtained.

Legal Jottings

Compiled by Nikki Carr

A bagful of cases from the Upper Tribunal this quarter

Car-veat emptor

Park v Morgan & Morgan [2019] UKUT 20 (LC)

Mr and Mrs Morgan sought, on their exercise of their right to acquire a new long lease of their flat pursuant to Part I Chapter 2 of the Leasehold Reform, Housing and Urban Development Act 1993, to have their existing lease amended under section 57(6)(a) to exclude a clause permitting them access to a garage only by foot, on the grounds that the lease was in that way 'defective'. They were the leaseholders of the first floor flat, and the freeholder, Mr Park, occupied the ground floor flat. Two garages were at the property, the further one of which was inaccessible by car due to the poorly thought-out space between the rear corner of the building and the garages. The nearest one was demised to the Morgans.

The lease specifically provided them: *"[t]he right in common with the lessor and owners and occupiers of the other flat in the property and all others having the right to pass and repass at all time (on foot only) and for all reasonable purposes in connection with the use and enjoyment of the premises over and along [the] common driveway hatched black on the plan..."*. Mr and Mrs Morgan argued that this must be a defect, as a garage was naturally for the use of a car, and they needed to use the driveway to park their car in it. Running somewhat roughshod, it appears, over Mr Park's clear argument that the access issues caused by cars coming across or parking on the drive, and the lack of the ground floor flat's ability to use the furthest garage, meant that the restriction was both intentional and necessary, the FTT determined that the whole point of a garage was for car-parking, and allowed the Morgans' application.

In overturning that decision, Deputy President Martin Rodger QC, with his usual acuity determined that the right was granted in deliberately restricted terms. Far from being a mistake or defect, even if somewhat surprising in the context of a garage, there was a good explanation for the restriction which, had the FTT looked at matters objectively, ought to have been its conclusion. The physical restraints of the property were a perfectly rational explanation. And, of course, a garage could be used for other purposes.

Reprise: READ THE LEASE!

London Borough of Southwark v Michelle Baharier [2019] UKUT 73 (LC)

This case is yet another example of the difficulties into which one runs when not reading a lease properly. In this case, in 2008 Ms Baharier had purchased her long leasehold from LBS under the Right to Buy scheme. Her flat was one of 40 in a 1968 purpose-built block. At the time of building, the "Parker Morris" standards had been recently stated (although not yet put into full force), in which recommendation were made that new dwelling should be fitted with heating systems that maintained kitchen and circulation spaces at 13C and living and dining spaces at 18C. No doubt thinking how modern it was at the time, LBS's builders had installed communal space and water heating facilities. By the time Ms Baharier purchased her long leasehold, these facilities were approximately 40 years old and at the end of their economically reparable lifespan. In 2015 LBS served on Ms Baharier notice of intention to replace it, and thereafter sought to recover an advanced service charge in the sum of £24,486.88 for her contribution (the total anticipated amount of the works being £800,000).

The FTT decided that the work was an improvement, not a repair, and therefore allowed Ms Baharier's application and decided the sum was irrecoverable against her. In the course of that hearing, both parties (each of whom was not professionally represented) agreed that Ms Baharier was not liable for improvements, only repairs.

On appeal to the UT (Deputy President Martin Rodger QC presiding again), LBS pointed out that the works were not in fact within the repair clauses. Clause 4(5) obliged LBS to *"provide the services more particularly hereinbefore set out under the definition of "services" to or for the flat and to ensure so far as reasonably practicable that they are maintained at a reasonable level and to keep in repair any installation connected with the provision of those services."* Within the definition of those services were specifically included both central heating and hot water supply.

For her part, Ms Baharier covenanted pursuant to Clause 2(3)(a) to pay the service charge contribution as specified in the Third Schedule. These included at paragraph 7 *"the costs and expenses of and incidental to (1) the carrying out of all works required by sub-clause (2) to (4) inclusive of Clause 4 of this lease (2) Providing the services hereinbefore defined... (6) The maintenance and management of the building..."*.

The UT determined that the provision of services was not the same as a covenant of repair – the obligation imposed was wider and potentially more onerous, such that the covenant "may require the covenantor to carry out whatever work is necessary to provide the service, even though that work goes beyond what would ordinarily be called repair". The covenant was aimed at the service, and not the installations by which it was provided.

One suspects that, given there must by now be a final account for the works, Ms Baharier may bring a further appeal to the FTT in terms of reasonableness. This is of course a further salutary tale in terms of the ease with which one may purchase a leasehold without fully understanding the obligation that comes with it, and it is difficult not to feel empathy with Ms Baharier's position, legally correct as that position may be.

All rules are created equal, except statute which is more equal than others

The Lough's Property Management Ltd v Robert Court RTM Company Ltd [2019] UKUT 105 (LC)

In this case, the solicitors acting for the RTM company in trying to acquire the statutory right to manage (under Chapter 1 of Part II of the Commonhold and Leasehold Reform Act 2002), not to put too fine a point on it, right royally stuffed up. Notice and Counternotice were served, and an application was therefore due to the Tribunal pursuant to section 84(3) – (4) by 9 June 2017. On 1 June 2017, the solicitors sent to the FTT a partially completed copy of the correct Form, with a cover letter. Unfortunately, neither of those documents assisted the Tribunal to ascertain what kind of application was being made, since basic things like the right tick-box *hadn't been ticked* and the cover letter referred only generally to "application form for determination". No further documents, including the notices or a copy of a claim form, were appended (although they did remember to write a cheque...). On 8 June 2017 the Tribunal staff returned the form to the Solicitors for the RTM, and asked them to tick the relevant box in the annexes, and to provide any relevant notices. On 12 June 2017 the solicitors returned the application with a box

ticked. On 13 June it was returned as no claim notice or counternotice had been included. On 15 June 2017, the solicitors finally provided a properly completed application form with a ticked box on the annexe and notice and counternotice included.

The problem, of course, was this: section 84(4) provides that an application under subsection (3) MUST be made no later than two months beginning with the date on which the counternotice was given. Whether the 12 June or 15 June 2017 date was the one on which the application had been 'made', it was out of time and the notice to acquire was deemed, by section 87(1)(a), withdrawn.

Nevertheless, the FTT came to hear the application. It determined that all of this could be rescued by the fact that an application, which must have been for one of six different determinations, had been received on 1 June 2017. The remainder could be rescued by the FTT's own procedural rules, in particular rule 8. The deficiencies of the application had been corrected, and it didn't matter that those actions had been out of time.

The freeholder appealed on the basis that the statutory requirements were clear and non-compliance had an automatic effect. The Tribunal's own rules could not validate the later steps. No application had been made to the FTT within the statutory timeframe and ex poste facto 'correction' could not make up for the basic point that, at the date that the first application was received it could not be valid as applications had to have a basis. The decision that an application could be 'at large' until later clarification was simply wrong and outside of the statutory framework.

By the time the appeal to the UT was listed, the Respondent conceded the appeal point. Considering that, Deputy President Martin Rodger QC's 16 paragraphs on the point are no doubt for the guidance of the FTT in the future. However, in something of a twist, in what appears to be an obiter judgment (as he stated that the issue of costs was not before the UT), the Deputy President determined that despite the fact that the Appellant had had to fight the case to the appeal to get the Respondent to recognise the point, it was somewhat hoisted by its own petard when it came to costs. Because of the deeming provision resulting in the withdrawal of the application for RTM on 9 June 2017, section 89 provides that the liability of the RTM company for costs in the application ceased thereafter. The Appellant could not argue on the one hand that the application was invalid due to the statute, but tantamount to valid for the purposes of the statutory costs.

It would appear, therefore, that the only people coming out of this sorry set of circumstances having felt like they 'won' are the solicitors, who (while no doubt having to consider the position of their own client's costs) are likely breathing a sigh of relief that they do not have to contend with a costs order against their client, to which they would no doubt have had to make substantial contributions.

Satisfactorily unfair

Triplerose Ltd v Stride [2019] UKUT 99 (LC)

This is another case offering a clear reminder that even if something is subjectively unfair, the courts will not interfere unless there is a good objective reason to do so. That is particularly the case of construction of lease documents.

Ms Stride was the long leaseholder of one of four flats in this converted block. She and two others had formed the freehold vehicle "House of Hector" to enable administration of the freehold. The two other directors were 'resident' only insofar as they had not sold their interests, but absent to the extent that there was no quorum for the purpose of decisions about maintenance.

Triplerose was the lessee of the lower ground floor flat. Its obligations towards the maintenance of the building was only as regards external painting. All four leases were different, and each had obvious errors eg cross-references to schedules that did not exist (as counsel said, there was a 'special place in hell' reserved for the drafter/proof-reader). In tabulated form, Ms Stride demonstrated that the recovery of costs to the Freehold was 100% only for insurance. For structural repair and maintenance it was only 75%, as Triplerose had no obligation to contribute. For management, it was only 50%, as only the upper ground and top floor flats had any obligation. And so it went on.

The FTT had considered that this position was unsatisfactory. Despite there being no covenant in its lease to contribute at all, it determined that an amendment must be made to force Triplerose to contribute 25% of the cost or repair/renewal of the structure of the building, and of the cost of staff or agents employed by the Landlord. Despite so finding, the FTT failed to permit Triplerose to obtain expert evidence regarding compensation, and determined that none was payable.

The Appeal came before His Honour Judge John Behrens. It turned on whether the lease 'failed to make satisfactory provision' in the terms provided for within section 35 of the Landlord and Tenant Act 1987, such that an order should be made pursuant to section 38. In the event, the leases, although a 'mess', could not be described to provide 'unsatisfactory provision' for repairs, and at the time of the consideration of the application itself, the contributions to be made by Triplerose could also not be described as 'unsatisfactory' in context of the relatively minimal work required given the building was in a reasonable condition. Indeed, readers will be familiar with the principle that just because different leaseholders have struck different bargains that have resulted in more or less favourable terms does not automatically render the position unsatisfactory (Cleary v Lakeside Developments Ltd [2011] UKUT 264 (LC)).

Although technically ground two of the appeal therefore fell away, Judge Behrens also took the time to remind the FTT that, in considering prejudice and compensation, it was obliged to permit a party to bring expert evidence and take a fair approach. It had completely failed to recognise that what had been imposed on Triplerose was an immediate liability which was not outweighed by 'standardising' the leases. While it would have been preferable to have some clearer guidance on the vexed questions of prejudice and compensation, which continue to be something of a nebulous issue to many practitioners, nevertheless there is some useful guidance to be gleaned from the expert's approach to the technical sums in this case even if not the principles.

Silence is just... silence

New Crane Wharf Freehold Ltd v Dovener [2019]

In this next case before His Honour Judge Behrens, the point was a short one. Where a landlord had written to a tenant requiring access, and then its contractors had not turned up because the tenant had not confirmed the appointment, was that refusal of a reasonable request for access?

It should really be of no surprise that the answer was no – a refusal is only a refusal when it is communicated. If your agents don't turn up to do the repair on the day appointed because there has been no previously indicated consent, then on your own head be it. You can't blame the tenant, and the court will not uphold this as a breach of obligation, unless there is a specific requirement on the tenant as part of that obligation to confirm permission. Given some of the media coverage in the social housing sector recently regarding attendance by contractors for repairs, both landlords and leaseholders may find this of some interest.

ASK THE FPRA

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

Additional cost

Q **Can we pass on bank or additional admin charges to leaseholders paying monthly by cheque or direct debit as our lease requires each to pay twice a year?**
We have one leaseholder paying each month by cheque which has additional cost each time, plus the accountants' additional time to process these.

A FPRA Hon consultant Gordon Whelan replies:
The administration costs arising from a leaseholder paying by cheque and not in accordance with the lease, would seem to come within the definition of administration charges under Schedule 11 of the Commonhold and Leasehold Reform Act 2002. The Act defines administration costs to include costs arising from the non-payment of a sum due to the landlord by the required date. The administration charge made to the lessee must be reasonable and must be accompanied by a summary of leaseholder's rights.
There is also a provision in the lease for interest to be charged on late payment at three per cent above the Bank of England minimum lending rate.
An appropriate way forward would be to notify the lessee of your intentions and then raise the six-monthly service charge demand as normal. A separate demand can be made at a later stage for interest and charges, taking into account the late payment. A summary of the leaseholder rights and obligations should be issued with the demand for administration charges (including interest).

Grappling with GDPR

Q **We are an association of 12 of the 18 non-director lessees and shareholders in the limited company (three directors) that owns a 21-flat, purpose-built block.**
We'd be grateful for advice on the legality of sending copies of emails the two of us have received from the managing agent to all the other association members. If this is not possible because it risks us being sued by the managing agent should he get to know of this, then are we able to quote from his emails in our communication with members, and if so to what extent?
Also, we would like to send a copy of an email that a current director of our company sent to a former managing agent (who had forwarded it to us) to all our members. Could we do this if we obtain the permission of the former managing agent? Or, as above, would one need the permission of the sender, the director?

A FPRA Chairman Bob Smytherman replies:
I am not a legal expert on GDPR legislation which came in to force last year. As a director of my own resident management company we have grappled with this issue to ensure we are compliant with the regulations.
I think if the correspondence from the managing agent is addressed to you in your capacity as a representative of the liaison group then it's perfectly reasonable to share this with other members of the group, unless the content refers to personal information about specific individuals or their properties as this would a breach of the regulations in my opinion.
If the information is just general information relating to all leaseholders and management of the block then I would suggest copying the information in to your own email or newsletter so the information comes from you on behalf of the group, it's also good to give your members the opportunity to opt out of receiving emails from you, this can be done with a simple disclaimer along the lines of:
"You have given us permission to email information to you relating to the management of our block and no other purpose. Should you wish to no longer receive these emails from us, please reply with opt out in the subject line"
You will need to ensure you respect these opt outs by removing them from your email list There are a number of email management programmes that can do this for you. At the FPRA we use mail chimp which we use for mailing information to members such as AGM notices and other general information. This allows the recipients to opt out with a simple click and the system removes their email address automatically.

Lifts

Q **We are having problems with our lift which needs to be refurbished/replaced. The Estate has to reclaim all the expenses from us under their charitable terms, but some residents are reluctant to pay, as they see the lift as not irretrievably broken down. An impasse has existed for some years on this, which we are now seeking to resolve with the Estate. Is this something that you might be able to advise us on?**

A FPRA Hon consultant Paul Masterson replies:
The freeholder has probably been advised (for some years) by the lift maintenance company that the lift has become problematical and is in need of refurbishment or replacement. The lift maintenance company would have the expertise and knowledge to advise on this.
Consideration to modernisation/replacement is usually based upon a number of factors, which could include all or some of below:

- Age of equipment (20/25 years is normal life cycle)
- Greater than normal malfunctions (greater than four/five per annum)
- Spare part availability (manufacturer no longer exists/ parts no longer available)

It is always best to plan modernisation/replacement rather than wait for the lift to go wrong. The general lead time to obtain the materials for modernisation/replacement would be 12-plus weeks and as a guide, attendance to complete the works could be: one week per floor, one week motor room,

one week lift car and one week to test/commission. (Seven floor lift approx 10 weeks).
Nobody would want to have no lift for 22-plus weeks, so planned modernisation/replacement is always the best route as the lift is still useable whilst materials (12-plus weeks) are being manufactured.

Q We have lived in our new build block of flats for five years. The block has 52 flats. The lifts have been a problem from day one, alongside many other things. We are being served a section 20 for full replacements of both lifts to the tune of £400,000. The lifts are five years old and one which is the fire light has been turned off for two years. We have had three different managing agents and two different freeholders. The lifts were installed by two different companies – of course both are liquidated. We have no option for a repair even though this would save £300,000. Why is this? What can we do? I realise legal action is the only recourse.

A FPRA Director Shula Rich replies:
This sounds a horrendous situation and a huge amount of money to pay for lifts that should last for 30 years or more. In my own block – of which I am chair – our lifts date from 1963 and we have a proper programme of planned maintenance.
Your alternatives are as you say:
1. to pay and query the bill at a First Tier Tribunal
2. to refuse to pay and take the management company to a tribunal
3. to refuse to pay and face legal action from the company
The least risk is (1) but this seems such an extreme case of mismanagement that I hesitate to recommend it.
In my own block we used a lift engineer to assess our lifts.
If you qualify you could consider Right to Manage which means that the block can decide when and how to repair the lifts itself if 50 per cent or more of the lessees are able to form an RTM Company.

Directors – equity release

Q The directors have received a letter regarding equity release in one of our flats. We usually deal with the purchase/sale of flats, but this is something that completely confuses us. We would be most grateful if you could offer us any advice as to how we should proceed.

A FPRA committee member Bob Slee replies:
Equity Release is becoming increasingly common – I dealt with one recently in the block of flats that I help manage. So far as the freeholder or management company is concerned, this is just another form of re-mortgaging. The equity release company will place a charge on the title deeds of the flat at the Land Registry in the same way as any traditional mortgage company would. You should reply to the enquiries raised by the lender in exactly the same way as you would with enquiries in more usual situations – and charge your normal fee for the information..

Excess service charge

Q We are an association of residents, members and shareholders in the freehold owning company of a 21-flat block of which the board and managing agent are problematic for us. We have recently received an excess service charge demand for items about which we would like more detail about actual costs but have had difficulty in obtaining these.
If our association requests an EGM, would we be able to table a resolution which, if passed by the appropriate numbers, had the power to require the management to disclose full details of the costs of the excess service charge demand?

A FPRA committee member Shaun O'Sullivan replies:
Although it is unusual to have both a residents' association and a residents' management company in such a relatively small development, it would appear that your existence has been borne out of dissatisfaction with the current board of directors. It is a pity that cannot be addressed. Your lease is somewhat unusual in the way it defines and describes what you refer to as the Service Charge, although that is, indeed, what it is. The 'Principal Rent' is what most leases would refer to as Ground Rent and the 'Service Rent', further defined in the Sixth Schedule as the Management Charge, is, in essence, the Service Charge. This charge is stated, in Clause 5, to be £500 pa payable in equal quarterly payments of £125, albeit the landlord can 'from time to time' increase the Service Rent by giving one month's notice (by way of an 'Increase Notice') and I assume that the charge would have increased a number of times over the

A member writes:
"Excellent, sensible advice given within 24 hours. Absolutely brilliant service. Thank you."

Continued on page 12

Ask the FPRA continued from page 11

20-year life of the block. Those items which comprise the charge are defined in the Sixth Schedule and are largely maintenance requirements which one might find in most residential leases. I'm unclear as to whether the excess charge to which you refer relates to the issue of an Increase Notice, the general level of service charge or some form of supplementary charge which has had to be levied. On the assumption that your association has not been formally recognised by the board of the RMC (as representing the freeholder) or the agent working on its behalf, your association, as an entity, would not have the right to seek the information you require. However, each individual leaseholder does have the right, under Sections 21 and 22 of the Landlord & Tenant Act 1985 to seek certain information and this is defined in The Service Charges (Summary of Rights and Obligations For England Only) with which you will be familiar as it must accompany every Service Charge demand. This can be viewed on the FPRA website as one of the 'Statutory Notices' under the 'Publications' drop-down menu.

Hard water

Q **Our block was built about five years ago. Within a year, the landlord was obliged to replace all of the boilers and washing machines in the building because, in this notoriously hard water area, they had furred up with limestone deposits. Many residents are now experiencing poor water flow in their bathrooms and kitchens.**
I am corresponding with the landlord in an attempt to persuade them retrospectively to fit a water softener to the building – something which should have been fitted in the first place. They are willing to do so, but only at the expense of the residents. I argue that they should meet the costs involved because the glaring omission of a water softener was their error during the planning/ construction phase.

A FPRA Director Shula Rich replies:
I understand your problem. Because of the hard water not only are you being asked to pay for the replacement of the boilers and washing machines but also a water softener if you want one. From my experience I know that even older blocks such as my own (1963) include water softening plant. This could have been included in your block at the construction stage.
The problem is that even if we were to say – yes the landlord is responsible, would they come up with the funds? How would you force them to do it?
(1) You could ask Building Control at your town hall for the plans to the block explaining the reason. If they cannot supply they will explain why – and you could then consider asking the freeholder for them if necessary. It is possible the softening equipment was included in the plans but not installed. It would be helpful to see the plans and might help you to put the responsibility onto the landlord.
(2) If the plans do not show them, or you cannot obtain them the only other possibility that I can think of is a barrister's opinion on these facts as you have set them out. This is less expensive than a solicitor and will give you definitive guidance and on your possibility of success.
(3) The law generally does not oblige the freeholder to add anything to the building that was not there when it was constructed. ie to install a water softer, which would be an improvement.
(4) In this case we have not only to establish that a water softener should have been installed, but also convince the landlord to pay for it as well as the damage to the boiler and machinery.
This will not be easy. I suggest:

- you try to obtain information on the original intention
- consider briefing a barrister – we can advise
- consider paying for the installation to prevent further damage – this would mean unfortunately 'giving in' but in the long run you may save more.

I am so sorry that I cannot provide a definitive yes or no at this stage.

Pet problem

Q **We have received an enquiry from a prospective purchaser of one of our flats via an estate agent: "a lady is asking if her 'support' dog is allowed?"**
Our lease regulation states:
"Not to allow or permit any cat dog or other domestic pet in or upon the demised premises or the buildings or grounds used in common with the other lessees".
Having replied to the agent: "No", I wonder whether, in your experience, there is any disability legislation which could overrule our lease.

A FPRA Hon consultant Matthew Lewis replies:
The relevant provisions, relating to common areas of a private block of flats, within the Equality Act 2010 (Act) have been shelved, are not in force. As such, there is currently no duty to review a provision, criterion or practice in light of any person's particular circumstances that are protected by these discrimination provisions.
To reiterate, the relevant provisions within the Act relate to common areas. This enquiry relates to conduct within the demised area. The conduct within the demised area is regulated by the lease. The proposed purchaser has a choice as to whether or not to purchase this flat or another on the market, in the full knowledge of the rules and regulations within the lease and accompanying paperwork. The LPE1 responses assist with that process of informing the proposed purchaser.

Advertisements

OPEN DOOR, DATA SHARING

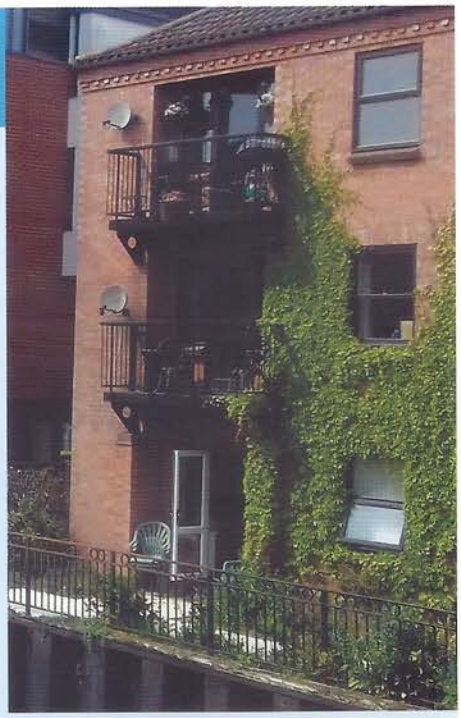
The government-backed Leasehold Advisory Service (LEASE) has announced its "Project Open Door" which will make available data from its extensive database on residential leasehold enquiries.

Data is freely available on LEASE's website (www.lease-advice.org) but neither personal data nor specific data which could be used to identify individuals or individual property addresses will be published.

LEASE says It is the most current, relevant and comprehensive data relating to real issues being experienced by those in residential leasehold properties. In addition to a summary page, summarising the past five year's data for those categories with the largest number of enquiries, the geographic region from which the enquiries originate, and the type of property (flat or house) about which enquiries are made, the underlying data is available to download as a csv file. Following the first release, LEASE intends to publish data quarterly thereafter.

Chief executive Anthony Essien said: "LEASE firmly believes that in sharing the data we will be helping to educate, inform and empower leaseholders".

LEASE's interim chair, Wanda Goldwag, commented: "LEASE in its role as a provider of advice on Residential Leasehold law naturally collates vast amounts of data, some of which is likely to be of interest to a wider audience. With the hard work of our staff, and the invaluable contributions from our Advisory Board, we are now making that data available to the world."



Members of Project Open Door's Advisory Board are drawn from the Law Commission and the National Leasehold Campaign.

REASSURANCE

Reassurance has been received by FPRA that a legal anomaly which could cause leaseholders to lose their flats will be corrected.

FPRA chairman Bob Smytherman wrote to the Ministry for Housing, Communities and Local Government asking for the anomaly to be corrected at the first legislative opportunity.

He wrote: "This arose from unintended effect of legislation intended for Assured Shorthold Tenancies which has the potential to affect long leaseholds if the ground rent is £250 or £1,000 in London.

"The legislation was intended to affect Assured Shorthold Tenancies only, but our legal advisers tell us that it could mean that long leaseholders could lose their flats, bypassing all the leaseholder protections, if their ground rent is unpaid."

The Ministry has replied as follows: "The government is aware that, where ground rents exceed £250 per year or £1,000 per year in London, a leaseholder is classified as an assured tenant. This means, for even small sums of arrears, leaseholders could be subject to a mandatory possession order if they were to default on payment of ground rent.

"As part of our leasehold reform work we are committed to legislating, as soon as Parliamentary time allows, for provisions which ensure that leaseholders will not be subject to mandatory possession orders for arrears of ground rent, whether it is ground rent or rent payable as part of a shared ownership scheme."

Advertisements

Why agents need to stop being the block policemen continued from page 3

leave the landlord the option of choosing not to enforce if it is not 'in the interests of good estate management'.

Any enforcement action should be with your client's authority and confirmation that the client will be responsible for the costs until or unless recovered from the leaseholder. This can be by way of requesting estimated costs in advance as part of the indemnity.

Complainants should be given realistic estimates of the likely time and cost involved in any enforcement. You should also consider other methods of dispute resolution such as mediation, be familiar with local mediation services and suggest this method of dispute resolution, where appropriate. Information on mediation service providers can be obtained from the National Mediation Helpline. (See Part 5.5 Alternative dispute resolution and mediation.)

A typical lease enforceabilty clause:

"The lessor shall if reasonably so required by the lessee enforce covenants and conditions similar to those herein contained in leases entered into or to be entered into by the lessees of the other flats in the building having regard to the terms and conditions in those leases.

SUBJECT to the lessee indemnifying the lessor against all costs and expenses of such enforcement and providing in advance such sums as the lessor shall require as security for such costs and expenses and provided that such enforcement shall in the opinion of the lessor be in the interests of good estate management."

Shula's article first appeared in the Spring edition of the ARMA (The Association of Residential Managing Agents) magazine.

GREAT NEWS ON **CLADDING**

FPRA welcomes the news that the Government will pay for replacement of Grenfell-type cladding on high-rise private blocks.

Communities Secretary James Brokenshire has announced a Government fund of £200 million to replace unsafe aluminium composite material (ACM) cladding on around 170 privately-owned high-rise buildings, calling time on the "delaying tactics" of "reckless" building owners who had refused to take action.

The Government says this work should now take place urgently, eliminating excuses used by some building owners and protecting leaseholders from the costs.

Affected leaseholders have suffered significant stress.

APPEAL

Mixed developments are now the future and the issues are many, says FPRA chairman Bob Smytherman. These will be the FPRA members of the future, he predicts, and we would benefit from some new honorary consultants who specialise in the private, shared ownership estates. If you are in this group, may we appeal for volunteers to join us?

THANK YOU NIKKI

FPRA gives a huge vote of thanks to honorary consultant Nikki Carr, who has found time to voluntarily provide our Legal Jottings while being a very busy barrister at 4-5 Gray's Inn Square. Nikki's last Jottings are on page 8. Now Nikki has been appointed a Deputy District Judge, which means she must give up contributing to the FPRA. We offer her our congratulations and wish her every success in her new role.

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