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NEWSLETTER

FPRA
FEDERATION OF PRIVATE RESIDENTS' ASSOCIATIONS

FPRA AND MPs WELCOME PROPOSALS TO END THE 'LEGAL TORTURE' OF FLAT OWNERS

FPRA is delighted with the support given by senior MPs from all parties following the publication of the report *New Lease of Life* by the think tank Centre Forum.

Conservative Peer Baroness Gardner of Parkes took up the FPRA campaign calling on the Coalition Government to introduce a minimum standard for private sector property management for blocks of flats and protection for leaseholder's service charge monies. MPs who have welcomed the report and who support reform of leasehold are Mark Field (Westminster and the City, Conservative); Barry Gardiner Brent North, Labour); Simon Hughes, Liberal Democrat Deputy Leader and MP for Southwark and Bermondsey, and Sir Peter Bottomley, who described the leasehold sector as 'legal torture' following a recent LVT case in his Worthing West constituency Centre Forum concludes: "The evidence in this paper supports the overwhelming view of those working in the leasehold sector that regulation of managing agents is urgently needed. By introducing an independent regulator, the Government could lever the interests of leaseholders into the management process and ensure that they all have greater access to redress. In the longer term, direct leasehold empowerment should be promoted through commonhold and RTM. The case studies included in this report show just how serious the shortcomings of the current leasehold system can be. In many ways, these are just the tip of the iceberg because the most vulnerable leaseholders often cannot even get a case to a tribunal. Moreover, in many of the most serious cases, freeholders settle outside the LVT in an effort to avoid negative publicity. It is essential that the Government addresses this problem. Cases taken to LVTs have increased by 400 per cent in the past decade, and problems with connected companies have become increasingly rife. Moreover, the number of leasehold properties will increase significantly in the coming years, precisely because of other government policies – both the right-to-buy and the housing strategy to increase the supply of homes. The Government must therefore seek to integrate policy so that reform of the leasehold system and promotion of commonhold and RTM are pursued alongside the development of new houses."

FPRA Chairman Bob Smytherman said: "This report shines a light on the Coalition Government's current policy to rely on self-regulation, which has resulted in a very patchy level of service to us flat owners, with the sector relying heavily on vested interests. There are however some excellent property managers and managing agents who provide excellent customer service and therefore the FPRA will work constructively with ARMA (Association of Residential Property Managing Agents) and the Royal Institute of Chartered Surveyors (RICS) to raise standards across residential leasehold

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AGM 2012

This year's AGM takes place on 8th November. See back page for more details.

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property management to rid the 'rogues' out of the sector and help to deliver an independent self-regulation ARMA-Q scheme to raise the minimum standards, along with severe penalties for breaches of those required standards.

There are over two million flat owners who need proper protection from the loopholes in the present arrangements and we welcome Centre Forum's report and the intervention of my local MP Sir Peter Bottomley who described the leasehold sector as 'legal torture' following a recent LVT case in his Worthing West constituency.

"A major concern to us is the insurance commissions that many freeholders and their managing agents make at the expense of flat owners who are usually required to pay for insurance of the structure of the building via the service charge.

"Many freeholders and managing agents see this as a profit-making opportunity and the whole insurance market for blocks of flats is, as a result, distorted by the payment of excessively high commissions and quasi-commissions in various guises to brokers, intermediaries and others, often amounting to 30, 40, 50 per cent or even higher percentages; thus, the premium charged to the flat owner is substantially higher than it should be.

"Although legislation requires that service charges, including insurance, must be 'reasonable' (and if not, is referrable to a Leasehold Valuation Tribunal), unlike other charges, such as maintenance, cleaning, etc. in the case of insurance, the protection afforded by the law is ineffective.

"The FPRA has proposed to Government a similar regulation such as in the Life and Pension market so that unfair commissions are banned altogether to protect leasehold flat owners from inflated insurance premiums. We believe the earning capacity of legitimate and responsible insurance brokers and others would not be affected as transparent fees at a reasonable level could still be charged and fully visible to flat owners on their service charge account."

"It is often claimed by some professionals that commissions are already transparent and this may well be the case with good property managers, however we are aware that this is not always the case for all flat owners as 'hidden' commissions are frequently paid direct to freeholders without the knowledge of the flat owner concerned.

"Many property professionals only disclose commissions on request as required by the RICs code and not automatically, therefore the vast majority of flat owners would not even know of this abuse or their right to challenge it.

"Another concern we have in the current unregulated system is for the majority of flat owners who are obliged to pay advance payments and contributions to sinking/reserve funds.

"Despite the Coalition's failure to regulate the sector The FPRA will work constructively with ARMA to ensure the new self-regulation scheme for ARMA-Q for managing agents commands the trust of leaseholders and is not just independent but seen to be so."

Bob recently advised Channel 4 programme *Property Nightmare: The Truth About Leaseholds.*

Legalised bribery

Leaseholders are paying excessive charges for insurance and other services, writes FPRA insurance expert Robert Levene.

Bribery could be defined as:

"The offering, giving, receiving, or soliciting of something of value for the purpose of influencing the action of an official in the discharge of his or her public or legal duties."

The Government, freeholders, insurance companies, insurance brokers and agents, managing agents, members of professional and trade bodies have all either consciously or unconsciously allowed a system to be created where leaseholders are routinely overcharged for the benefit of others. The overcharge is now so embedded that few stop and say "hold on, there's something wrong here".

This practice even affects leaseholders where they've purchased their own freehold, exercised the right to manage or any of the other schemes.

What is being referred to? The answer is insurance commission. It is not limited to insurance commission, but this is the most blatant abuse. Other examples increasingly, are the payments to various parties for collective supply of electricity, digital services etc. where the leaseholder who pays the bill does not receive the benefit of their purchasing power.

This is not to say that there have not been some attempts by some organisations and indeed, some legislation to stop the abuse. The Royal Institute of Chartered Surveyors (RICS) in its code of practice, and the Association of Residential Managing Agents (ARMA) and other similar bodies, do make it clear that the acceptance of insurance commissions by their members is either prohibited or must be disclosed. Such disclosure is only performed sometimes, and only if asked – and how many leaseholders would know to ask.

The problem though is that throughout the insurance industry, commercial pressures have meant that insurers, to win business from freeholders or their agents, in various guises, offer a variety of inducements such as, commission, set-offs, claims to premium rebates, profit commissions and sometimes discounts on other insurances in return for winning business that the leaseholder pays for.

You might ask why this affects all leaseholders, not just those who have independent freeholders or agents who take advantage of this. The answer is that premium levels are now routinely set to incorporate high commission levels whether or not they actually get paid.

The percentage commission paid by different insurance companies varies considerably. But it may be worth noting that if an individual buys a motor car insurance, the typical commission paid to an agent or comparison website is around 7 to 8 per cent. The typical commission allowed for in blocks of flats insurance is typically 30 per cent, and for big landlords and schemes, can be considerably more, although these extras

are often well disguised.

So a resident management company buying their own insurance is paying in effect, 30 per cent of their premium to arrange the policy.

So what could be different? Commercial landlords and businesses buying insurance do not pay commission at all, but instead they pay a fee for the service, just like a managing agent might charge a fee for their services. It is negotiated and agreed as a separate item to the cost of the services provided. You do not expect the window cleaner, the plumber, the gardener to be paying a commission or dare we say bribe, to the freeholder or agent and indeed, such a thing would be illegal under the Bribery Act, so why is it acceptable for commissions to be paid on insurance or energy supplies. Is this not just another form of bribe?

What is and what is not a bribe is of course decided by the courts and we would like to see some of our members come forward who are willing to participate in actions to clarify this issue. But also, we call upon the regulators such as the Financial Services Authority and its successors, to act now, not wait.

The present system of challenging excessive insurance premiums through the Leasehold Valuation Tribunal (LVT) (whilst working for individual challenges against extreme excessive charging) has not stopped case after case after case appearing before the LVTs and being won, but still not creating a change in the system. Also, if you obtain an alternative quotation for consideration by the LVT, these alternative quotations will be after allowing for 'standard commission', so even though they may be lower than you are being charged, sometimes by a considerable margin, they are still higher than they need to be.

Some specialists obtain quotations from insurance companies based on 'net premiums' i.e. the net amount the insurer requires to underwrite the risk with no commission, but it is then left to the client be they an insurance broker, freeholder or other, to decide the gross premium charged to the lessee or RMC and the true difference is often hidden as claims handling fees, administration fees, policy enquiry fees, documentation charges and a mass of other names.

So how can we change? I start these suggestions on the basis that it is unlikely that Government will legislate, regardless of party politics, but there has been little interest from any politicians in seriously addressing some of the fundamental abuses of the leasehold system.

The Financial Services Authority has the power to act but doesn't use it.

The Royal Institute of Chartered Surveyors has the power to act but doesn't use it.

The Association of Residential Managing Agents has the power to act but doesn't use it.

The Association of Retirement Housing Managers has the power to act but doesn't use it.

The Association of British Insurers has the power to act but doesn't use it.

The Serious Fraud Squad has the power to act but doesn't use it.

The FPRA, intends to act and in conjunction with its members, and we hope some of the legal profession, who are willing to act for the benefit of leaseholders to take this to the courts to set a precedent that will change the whole way the market works.

Do we have to wait for the scandals of the scale of LIBOR/ Barclays before this massive abuse is dealt with?

What are your views? Before the FPRA committee takes this forward, which will be a massive commitment of time and limited resources, we need to know what you think.

Please email or write to the office with your reaction to this article. We really want to know what your experience is; positive or negative, and we would be particularly interested to know if you've requested to know the commission on your block and if any members have a managing agent or insurance broker who rebates the commission to them.

We will be asking for comments from the following organisations and will publish these in a future newsletter: ARMA, RICS, FSA, ABI, ARHM.

"The key principle is that service charges should not incorporate a profit for landlords or anyone other than those genuinely providing a necessary service or product. Insurance is a particular problem because insurance brokers were traditionally paid by way of a commission on the premium. It's a sad fact that moves to 'cut out the middle man' were in many cases more about 'taking the middle man's cut'. So while traditional broking has declined, 'commissions' have proliferated under various guises, and now seem to be spreading to other services. Any initiative to ensure that lessees pay the true cost of insurance deserves the fullest support, and I hope that all FPRA members will rally behind the Committee."
Philip Rainey QC of Tanfield Chambers

I should mention that I'm 'a poacher turned game-keeper' because over a decade ago I used to be a director of an insurance brokers and was involved in starting a scheme for RMCs and other freeholders and not once did we think that it's the leaseholder, not the RMC/freeholder, who was our client – our client was the company giving us instructions to insure – who ultimately pays the premium. Indeed, a company with which I work, still receives commission on some old connections.

FLATS AND THE GREEN DEAL

Anthony Breslin, the author of this article, worked for some years as a quantity surveyor for a housing developer, and worked previously and since as a domestic builder. Last year he wrote an MSc (Architecture) Advanced Energy and Environmental Studies thesis which examined the potential for applying external insulation to low rise, purpose-built, privately-owned flats – one of the measures available under the Green Deal.

The Green Deal is a system of property assessments and loans tied to the property rather than the occupant. This allows people to improve the energy efficiency of their homes but – and this is the key advantage of the scheme – move house and allow the new occupant to continue with the repayments.

The thesis's conclusion contained caveats, ifs and buts, and an attempted explanation of the interaction of the four main elements involved:

- The technical case for external insulation
- The financial case
- The legal position of the flat's occupant
- The sociological challenges involved in gaining consent from all the other occupants or interested parties in your block; be they leaseholders, freeholders, landlords, and/or the maintenance/ management company, housing associations.

Potentially complicated! But let's start at the beginning.

The technical justification for carrying out Green Deal measures is clear: If your home becomes more energy efficient – you use less energy, emit less CO_2, and your house is toasty warm.

The financial justification should be equally clear – if you use less energy, you save money. Well… maybe. The Green Deal employs a 'Golden Rule' which states that only measures which will save enough money to pay for themselves will be allowed, but whether or not they pay for themselves depends on how much energy you use. Flats occupied all day long will save more than flats only occupied a couple of hours a day. The latter occupants may find themselves with a larger bill than before. However, one should add to this that occupants of flats automatically find themselves in a better position than owners of houses though, as research by Forum for the Future shows that work on groups of homes can attract savings of up to 55 per cent. Whether or not Green Deal measures will save you money as well as improve your home can only be properly calculated with a detailed assessment of your property.

The legal aspect of Green Deal works for flats is where things become a little more complicated, and the FPRA has already submitted evidence to the Government. Suffice to say, English law does not yet easily allow Green Deal measures to easily be applied to whole blocks of flats, including valuable measures such as external wall insulation. Scottish law is ahead I think, in that it allows insulation to be treated separately from 'improvements', and thus installed and paid for via the communal service charge. This is, I think, something we should aim for. Compulsory improvements have been considered and may or may not appear in the coming years, hopefully properly funded or subsidised.

The social element of the Green Deal as regards flats is something residents' associations will have to approach carefully. Refusal rates for even free insulation can vary from 10 per cent to 30 per cent, and so gaining the consent of the necessary majority of occupants may not be as simple as just explaining the benefits of a warmer house and potentially lower bills. Even though the majority of people in Europe believe climate change is a real threat, rather fewer people believe that there is an individual responsibility to take measures to reduce it.

In conclusion, the Green Deal can make your home more energy efficient and comfortable in the winter. Blocks of flats can have work done at a lower cost than individual houses through their natural economies of scale, and so the probability of making a real saving on energy bills may be greater than with houses. Legislation needs to be changed so that insulation is not defined as an 'improvement' and can thus be paid for under the service charges. And to then gain consent from a majority of occupants there needs to be lots of clear communication about what the Green Deal is for, and how it can improve your home.

OPPORTUNITY

There is an opportunity to participate in the running and campaigns of FPRA and we are looking for volunteers who can assist other members with their experience and who have views on how leasehold could be improved. You do not have to have any particular qualifications just an interest in leasehold issues and a willingness to participate. This involves four early evening meetings in central London per annum, as well as our AGM and participation in email discussions etc. If you are interested please contact the office. This is a voluntary role but all expenses are reimbursed. The Committee is very sociable and friendly and you can be certain of a warm welcome. (This is not to be one of our honorary advisers but to help run the organisation).

SHARE YOUR EXPERIENCES

One of the great benefits of FPRA memberships is that you rarely come across a problem that another member hasn't already experience, therefore, we like to share experiences as much as possible (good and bad) and we urgently need some of our more recent members to write/email in with their experience of running their blocks or dealing with whatever aspects led to the formation of their association in the first place. We would also greatly appreciate photographs of your blocks.
Please help us to help others.

New Parking Appeals Service aids Motorists but not Flat Owners

In a major shake-up of the private parking industry, the British Parking Association (BPA) has appointed London Councils to deliver a new, Independent Appeals Service (IAS) for motorists parking on private land.

The agreement, which has been reached following years of campaigning by the parking industry and months of planning, will provide an appeals service similar to that which is currently available to motorists who receive parking tickets on public land. Currently, if a motorist wants to challenge a parking charge received on private land, they must appeal to the parking company directly and if they still feel that the decision is unfair, they must challenge the charge in court.

> ***"The BPA opposed the Government's plans for banning clamping on private land preferring to see some regulation which would have dealt with the rogues who have given this sector a bad name. As a result of the BPA establishing an independent appeals service to protect consumers' interests, the Government is introducing some reform to make it easier for landowners and leaseholders to enforce tickets on private land so that some protection can be given to leaseholders as they migrate their contracts from clamping to ticketing."***
> Patrick Troy, Chief Executive, British Parking Association

From 1st October 2012, car parking operators who are members of the BPA's Approved Operator Scheme, will be bound by the decision of an independent adjudicator who will review evidence submitted by both the motorist and the operator and determine whether the charge should stand or not.

Car parks managed by operators who are not members of an Accredited Trade Association will not be covered by the IAS.

The parking industry has agreed to meet the cost of the service so that it is completely free to the motorist. However, if the appeal adjudicator finds in favour of the parking operator, no early payment discounts will apply.

FPRA accused the Government of ignoring flat owners and tenants with the announcement of an outright ban on clamping cars on private land, as we believe it will cause major problems for ordinary residents living in blocks of flats with a parking space.

The Protection of Freedom Act which received Royal Assent earlier this year ignores all the issues we raised during the passage of this Bill regarding the car clamping ban and it will now be included in the Coalition's The Protection of Freedoms Act which comes in to force on 1st October.

The Government's response to our concerns is that landowners can erect barriers around their property to control illegal parking. This might be fine for well-heeled companies, the landed gentry and government departments, but it displays a dismal ignorance of how this can be achieved in blocks of flats.

The FPRA pointed out to the Home Office that:

1. Residents and leaseholders of blocks of flats may not be able to install barriers because the terms of the lease will not allow them.

2. If the lease does allow or if it is amended to allow (a very complicated and costly process) the installation of barriers, the cost of installing and maintaining them will fall on the ordinary leaseholder, which includes pensioners and the not-so-well-off. Will the Government contribute to this cost?

3. Barriers are restrictive and inconvenient to residents, visitors and trade vehicles interfering with the free movement in and out of where they live, work or visit.

Federation Chairman Bob Smytherman said: "The Coalition Government's understanding of car clamping is depressingly naive as they seem to just think that it's a black and white issue of drivers as victims, when in fact victims are also residents whose lives are plagued by illegally parked cars.

"Ministers naively think 'landowners' can just erect barriers, having no understanding that 'landowners' also includes ordinary people – leaseholders – in blocks of flats who could be forced to pay for the installation and management of barriers, if the lease allows it. And most likely the lease will not allow it, in which case there is little that those residents can do to effectively keep out unwanted cars.

"This new law will bring misery to a lot of people and certainly not the 'Freedom' the Government claims."

The FPRA argued that the real problem with the system was the rogue car clampers, and the solution should have been to regulate them, not ban the practice.

Bob, who represents leasehold flat owners on the BPA (AOS Board) added: "While we are very disappointed that the Government ignored our concerns about banning wheel clamping, we must comply with the law of the land and therefore we strongly recommend to leasehold flat owners that you cease wheel clamping on your land as soon as possible and instruct a BPA (Approved Operator) to manage your site to comply with the new Protection of Freedom Act 2012 and to benefit from the new Independent Appeals Service after 1st October. Not only must this scheme be totally independent of the operators but be seen to be independent too."

The FPRA will be attending a meeting to learn more about the plans for exactly how the appeals process will work as these are still being finalised by London Councils, who will be delivering the service and once it is finalised, any tickets issued by members of the Approved Operator Scheme will clearly explain the motorist's right to appeal, and how the process will work.

For further information contact Steve Clark. Email steve.c@britishparking.co.uk or call 01444 447307.

You can view and download copies of Parking Appeals Service via the Members' Area of the FPRA website.

ASK THE FPRA

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

Security after Burglary

Q **Please could you advise us on the usual security in a mansion block. We have had a burglary and need to put in place some new measures. Some residents want to cancel the 'tradesmen entry'. Others do not, as that will disrupt all the deliveries (such as the postman).**

A FPRA Chairman Bob Smytherman replies:

We had similar discussions in my block after an 'event'. One solution we used was to provide the postman with keys for the front doors. This enabled us to restrict other tradesman using the trade button.

I think initially I would recommend contacting the crime prevention adviser at the police who will be able to provide some impartial and professional advice to assist your directors balance the need for security while at the same time not being too restrictive for residents going about their normal business.

In addition, if there is to be an insurance claim following the burglary you may want to seek advice from your insurance provider to enable you to be confident that you are taking appropriate mitigating actions to avoid a repeat.

If the burglary is totally random then you may want to adopt a different approach to security than if the burglary has been committed by someone know to the victim. You may wish to consider measures such as security lighting, CCTV, and/or parking barriers.

You will need to consult the lease to see who would be responsible for such measures and Section 20 consultation may also be required.

Since the rise of online shopping, more and more flat owners and tenants use the services of a variety of couriers that deliver goods at all times of the day. Therefore the traditional early morning times for 'trades' is no longer fit for purpose in most blocks. Therefore your directors will need to reach a balanced approach to security.

Threats from Landlord

Q **Some of the tenants at our block have disputed a number of items in their service charges and have explained their reason for doing so. The landlord has since failed to adequately explain its charges and has instead hired lawyers to threaten us, instead of using an LVT as we suggested.**

What is the point of pursuing this through the courts when we have already stated that we will abide by the outcome of an LVT at a considerably reduced cost?

A FPRA replies:

If the landlord commences legal proceedings, through the County Court or wherever, at that point write to point out that the correct body to deal with this dispute is the LVT and consequently the matter must be transferred to them. Then sit back and wait for the case to be transferred. Let the landlord do the running and incur the LVT application fees.

OR:

Be proactive and submit an application to the LVT as leaseholders. This incurs costs which you may not be able to recover – but you'll ask the LVT for a costs order in the hope that you do get some money back.

In either case, be clear about the legal position:

- What does the lease say the landlord should have done? And what did the landlord actually do (or not do)?
- What does the lease say the leaseholders should have done? And what have the leaseholders actually done (or not done)?
- What Landlord & Tenant law has a bearing on this dispute?
- Have the charges been correctly demanded?
- Was the accompanying documentation correct?
- Have the leaseholders exercised their right to inspect the 'supporting documentation'? If yes, what did they find of interest and did they take copies?
- Are the charges 'reasonable'? If not, why not?

Troublesome Trees

Q **A situation has arisen whereby one of our trees situated at the rear of the property was recently snapped in half during the high winds of early July.**

The top half, while falling, managed to uproot three trees in its path. One of these fell onto a neighbour's fence and caused approximately £350.00 worth of damage.

He has now approached our management company requesting that we claim for this repair under our current insurance policy. This we have now done. This claim was rejected on the grounds that there was no 'negligence' involved. He is now stating that it is a public liability claim as we were negligent in not maintaining this tree and all our other trees on a regular basis.

Could you advise as to the necessity of having our trees checked annually by a tree surgeon and if there is a legal requirements for us to do so.

A FPRA Chairman Bob Smytherman replies:

I too am chairman of a self-managed block with gardens, including trees, which are managed and maintained by excellent gardening contractors that we have had for many years. Their contract includes maintaining the trees on at least an annual basis, or more frequently if required due to health and safety and other concerns.

If the trees are the subject of a formal tree preservation order' (TPO) by the local council, then this will usually set down clearly as a requirement of that order and enforceable by the council what needs to be done by the tree owners. This will usually including annual pruning, crowning or similar.

If there is a TPO, it should be very clear who is responsible to do what and when to comply with the order. If not, this will probably be down to who is responsible for the management of your development, which could be yourselves, or perhaps

the freeholder (this is where you will need to check the lease closely). Our legal advisers can assist, if necessary.

I am somewhat surprised that your buildings insurance/public liability policy did not accept the claim. If you are responsible legally for trees in question you need to find a policy that will cover the situation that you have described, in my view.

This will no doubt come with certain restrictions like annual maintenance by a suitably qualified person. If the trees are not subject to any order, then a competent gardener should be able to carry out this work for you.

If, however, the trees are the subject of an order, then it would be advisable certainly in the first instance, to get a report on the condition of the trees from a specialist tree surgeon who will be able to advise of any legal requirements with managing the protected trees. Unprotected trees on your land will still need to be properly health and safety risk assessed. This need not be onerous, but must be done to protect all those involved (residents, visitors and contractors etc).

Should you require more specific insurance or legal advice please us know.

New Water Tanks

Q **As part of an inspection, we were advised that our water tanks on the roof needed replacing to meet current legalisation. A number of quotes have come in around £6,500. We discussed this at our AGM and agreed that part of this cost would be met by the service charge and the residents would be invoiced for about £165 (depending on the contractor).**

However, we are not sure whether or not because the total costs per leaseholder would be £361, regardless of where this money comes from (service charges and one off payment below £250), if we are still required to carry out a Section 20 consultation? And if so, what would be the quickest way to do this?

There are 18 flats. The water tanks are on the roof which is why we would like to do the work before the end of summer. At our AGM where the proposal was agreed, not all flats were present.

A FPRA Hon Consultant Yashmin Mistry replies:

You would need to be slightly careful as, if the proposal is challenged, it could very possibly be seen by the court/tribunals as a 'sham' arrangement to get around the Section 20 consultation requirements.

In addition, it is not clear why, the whole costs is not being put through the service charge as the water tanks would generally be 'communal facilities' for the purpose of the lease?

There is the option to make an application for dispensation for all or part of the Section 20 process, however, as a result of the *Daejan Investments Limited v Benson and Others* is seems the Tribunals are only likely to grant dispensation in very limited circumstances these days, such as where:

- works need to be carried out urgently due to an emergency situation
- works are of a very specialist nature, and there may only be one contractor to appoint
- there is only a minor breach of the Section 20 consultation procedure which did not cause any prejudice to the tenants.

Unless the works are emergency works it would be difficult to argue that dispensation should be granted from all or part of the works.

The safest option would be to consult and go through the procedure correctly.

Refusing to Recycle

Q **I am on the resident committee which manages our block. All members of the committee are flat-owners and in turn have a share in the freehold that was purchased a few years back. We have 30 flats of which about 4/5 are let. It has been increasingly difficult to encourage a number of these tenants to take note of the Rules & Regulations (based on the lease) that are in place in order that all residents can enjoy living in the blocks. Some of these simple considerations, such as not leaving rubbish in the hallway have not always been carried out.**

One of the out-buildings is our bin-shed. We are in the process of installing a new set of doors with a combi-lock. We haven't had a lock on the doors previously and they're normally left open, but due to increased residential development in the area and the subsequent increase in foot traffic, we have decided to put a lock on to prevent dumping and use by local householders who appear to be using the bins, even though they have their own.

The main issue though, is the fact that residents are not splitting out their refuse and their recycling. This means the refuse bins are becoming very full very quickly and at times over-flowing. The council is happy to provide blue recycling bins for free, though further refuse bins and collections will incur extra charges. Obviously we do not wish to incur extra costs unnecessarily and have tried to encourage the residents to recycle by two recent circulars. It appears they have taken little notice of them.

We have been thinking of writing to the flat-owners in the hope they will exert some pressure on their tenants both in respect of the rubbish in the hallway and the issue of recycling.

If you have any other advice as to how we could encourage the residents in respect of both these matters it would be most appreciated.

A FPRA Chairman Bob Smytherman replies:

The issue of tenants not adhering to the requirements of their landlords lease is very common and can often be put down to just poor communication between the two.

In my own block we produce a *Welcome Pack* that sets out in plain English key requirements from the lease that should be observed at all times. We make this available to both new leaseholders (usually before they sign the lease) and tenants via their landlord, letting agent or both. In addition we make this available on notice boards in the common parts so there is no excuse for not knowing the expectations within the lease.

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Having a FREE FPRA website for your block is a useful tool for communicating things like this too.

Breaches of the lease remain breaches by the leaseholder and therefore action should be taken against them and not the tenant, however it is important to ensure the tenant's tenancy agreement includes all the requirements of the lease so action can be taken against the tenants.

It is perfectly reasonable to put measures in place to prevent others using your refuse bins, indeed it may be a requirement on your directors under The Regulatory Reform (Fire Safety) Order 2005.

Responsibility for complying with the Fire Safety Order will rest with the 'responsible person'. In a self-managed block like yours this will be the company directors, or any other person who may have control of the communal parts of the premises. If there is more than one responsible person in your premises, all must take all reasonable steps to work with each other.

The responsible person must carry out a fire risk assessment, which must focus on the safety in case of fire of all 'relevant persons'. In your case that will be residents and ALL visitors to your building. It should pay particular attention to those at special risk, such as the disabled and those with special needs, and must include consideration of any dangerous substance likely to be on the premises; this could include things left in the hallways.

Your fire risk assessment will help you identify these risks that can be removed or reduced and to decide the nature and extent of the general fire precautions you need to take to protect people against the fire risks that remain.

You may therefore want to contact your local fire service who has responsibility for enforcing the Act; they will then be able to provide some very practical solutions to meet the requirements of the law and even serve notice on anyone who is causing a fire hazard by their actions.

As for the practical issue of sorting refuse from recycling I would suggest discussing this problem with your council, we had a similar problem that was resolved by simply providing additional recycling bins and information leaflets/stickers on bins etc. about what can and can't be put in the recycling. There may also be an issue about strategically placing the recycling bins to make it easier for residents to do the right thing.

I would certainly suggest you write to all concerned about rubbish in the hallways as this will be no doubt a means of escape in the event of a fire and therefore not only is the rubbish a fire hazard in itself but also creating an obstacle preventing a safe egress from the building.

Deficit of Directors

Q The Articles of the Company require at least one director and a company secretary to be appointed. To date we have managed to appoint two or three directors and a company secretary. Unfortunately it is very difficult to appoint new directors when any leave.

Is it necessary for directors and company secretary to be shareholders/flat owners in our block?

Is it permissible to appoint from non-residents who might have appropriate experience?

A FPRA replies:

I suggest that the members see whether the Articles of Association actually say that directors have to be members of the company. If not, anyone can be appointed. While the articles might be require the directors to be members of the company, I would be very surprised if there were such a limitation on the appointment of a secretary.

Disability Modifications

Q One of our flats is rented by the owner to an elderly couple. The wife is very ill (Alzheimer's) and receives a large amount of care from visiting nurses etc.

Last week workmen arrived and started to construct a large wooden temporary ramp. This was the first I (the secretary) or the other directors were aware of this. One of the directors in particular was adamant that such a construction violated the terms of the lease. Could you advise us if this is the case.

The occupier of the flat, elderly husband, has been to see me and said that this ramp is necessary for his wife's access: suggesting that disability legislation entitles them to install such temporary access. Again would you advise us if this is true and if so does such a right override any provisions in the lease?

This issue is obviously causing some tension.

A FPRA replies:

BACKGROUND

The Disability Discrimination Act 1995 (as amended 2005) makes it unlawful for service providers to discriminate against disabled people in certain circumstances.

The Disability Discrimination Act, as applied to residential blocks of flats, is a grey area because this law, the DDA, is not fully 'tested' and is at present being formed by case law.

Advising, therefore, on complex law that was formed for the broad premise of non-discrimination and is still going through various legal stages, is not easy. However, there are pointers that will make dealing with the issues raised a little easier to incorporate into policies.

The requirements of the DDA have been implemented in stages:

- In 1996, it became unlawful for service providers to treat disabled people less favourably for a reason related to their disability
- Since 1999, service providers have been required to make 'reasonable adjustments' for disabled people by providing extra help or making adjustments to the way that services are provided
- From October 2004, service providers have had to make 'reasonable adjustments' to the physical features of their premises to overcome physical barriers to access
- In April 2005 the Disability Discrimination Act 2005 (DDA)

received Royal Assent. This extended the definition of disability to include people with HIV/AIDS, multiple sclerosis and some forms of cancer. It also strengthened tenant's rights in relations to the making of reasonable alterations.

It must be remembered that the DDA and the accompanying guidance provide a framework but do not address all and every situation. Situations will arise that have not been contemplated or for which the guidance does not provide a model or solution. In such cases it is possible that there will be a lack of agreement between the firm and the disabled person, perhaps a pressure group or even the Disability Rights Commission. In such circumstances it is possible that a landlord may be taken to Tribunal in order to establish what the law requires.

As set out above, the third and final phase of the Disability Discrimination Act 1995 (the DDA) came into force in October 2004, bringing with it far reaching implications for all service providers.

However, from 4th December 2006, with the introduction of the Code of Practice on access of the Disability Rights Commission (DRC), all managers, landlords including RMCs are now subject to new duties regarding disabled persons who may require assistance or alterations to enjoy their homes. The new duties DO impact on common parts of blocks of flats.

DEFINITION OF DISABILITY

Under the legislation, 'disability' is a physical or mental impairment which has a substantial or long term (more than 12 months) adverse effect on a person's ability to carry out normal day-to-day activities. The definition includes HIV, cancer, mental illness and diabetes.

FORMS OF DISCRIMINATION

The Act identified two main forms of discrimination. The first is called the 'giving of less favourable treatment' and the second is the 'failure to make reasonable adjustments' if requested by a disabled person.

'Less favourable treatment' arises if the disabled person would not have received that treatment or service but for his/her disability, for example, a landlord refusing to allow a leaseholder with an attention deficit disorder to use the communal gardens/lounge.

The 'duty to make reasonable adjustments' arises only if an adjustment is requested.

From the email it is not clear whether or not the request to make a reasonable adjustment has been made?

The duty is not anticipatory however but once a request is made (which need not be in writing) the landlord/manager is under a duty to take reasonable steps to address the matter complained off by the disabled person.

The DDA has identified three main types of adjustments which apply to residential premises:

- Auxiliary aids and services i.e. the replacement of taps/door handles
- Policies, procedures and practices; and
- Change to a term of a letting or lease.

It is this most likely to be the first and last adjustment that is of particular relevance to our scenario.

DUTY TO MAKE CHANGE TO LEASE TERMS

If a term in a lease makes it unreasonably difficult or impossible for a disabled person to enjoy the flat or the benefits and facilities in a block, a duty to adjust may arise.

As we can see from above, the Landlord is under a duty once a request has been made to make a reasonable adjustment.

In addition, another factor the landlord will need to take into consideration is the costs:

- Are the costs of undertaking the 'reasonable adjustments' permitted through the service charge?
- If the costs of undertaking the adjustment can be put through the service charge, would those costs be 'reasonable'?
- Who has the request to make the reasonable adjustments come from? The sub-tenants or the leaseholder themselves? For example, if the request to make the reasonable adjustment has come from a leaseholder who is renting out their property to sub-tenants, it may be that the landlord take the view that the costs of undertaking the reasonable adjustment should be borne wholly or partly by the leaseholder on the grounds that it is the leaseholder that is 'benefiting' from the adjustments as the adjustments will mean their tenants will remain in the rented property. From the email it is not clear whether the cost of placing the ramp is an issue? Rather the fact that the ramp is there.

In general terms does this mean landlords will have to put in ramps in buildings where the visiting public do not have rights of access per se?

Not necessarily. Options have to be examined and design solutions made that will allow reasonable access for disabled people, both tenants and visitors.

This can be done, for the most part, inexpensively. A ramp, for example, will add value to most properties: for delivery firms using trolleys, for people pushing prams and for those who find steps a little bit challenging.

Wheelchair users constitute only a small percentage of disabled people.

Reasonable access has to be made, for example, for blind people, those with other mobility impairments and deaf people.

In dealing with the issue you will also need to consider your tenants. Are they, in the main, in an older age group? We all, by the age of 70 years have a 70 per cent chance of acquiring an impairment. It is advisable to incorporate preparation for change into wider plans.

The Landlord should be aware of the duty to not give less favourable treatment to any of the leaseholders i.e. the refusal to permit the leaseholder to use to the communal areas or their property because of the disability.

All of the above need to be balanced against either each.

Continued on page 10

Ask the FPRA continued from page 9

MANAGEMENT OF PREMISES

As we have already seen from the above, the DDA makes it unlawful for a person managing any premises and/or the landlord to discriminate against a disabled person occupying those premises:

- In the way they permit the disabled person to make use of any benefits or facilities. For example it would be unlawful for a disabled tenant's use of benefits and facilities, such as a communal garden, to be restricted to specified times because of a concern that other tenants may feel uncomfortable with their presence.
- By refusing to permit the disabled person to make use of any facilities. For example it is likely to be unlawful for a child with attention deficit disorder to be refused access to communal garden because of the objections of other tenants.
- By evicting the disabled person or subjecting them to any other detriment.

For example, it would be unlawful for a tenant who has recently been diagnosed with AIDS, who is not in breach of his tenancy, to be given a week's notice to leave the house.

Any other detriment would include harassing disable tenants physically or verbally or failing to prevent them being subjected to harassment by others.

CAN LESS FAVOURABLE TREATMENT EVER BE JUSTIFIED?

The DDA does recognise that there are situations where what appears to be less favourable treatment of a disabled person can be justified. These are:

1. On health or safety grounds

Less favourable treatment on these grounds will only be justifiable if it is reasonably believed that the treatment is necessary in order not to endanger the health or safety of any person, including the disabled person.

For example it may be justifiable, for a landlord to refuse to rent out a fourth floor flat to a single person with severe mobility problems because of the risk to the disabled persons' health and safety in the event of a fire. Their lack of mobility would significantly hinder their ability to vacate the building using the stairs on their own.

2. Incapacity to contract

The less favourable treatment of a disabled person may also be justified if it is reasonably believed that the disabled person is incapable of entering into an enforceable agreement or of giving an informed consent.

For example, it could be acceptable to refuse to rent out a property to a person with a learning disability, who is incapable of understanding the legal obligations contained within the contract and cannot therefore give informed consent.

3. Treatment necessary in order for the disabled person or other occupiers to use a benefit or facility.

For example a landlord could reasonably refuse to allow a disabled tenant with a learning disability to use the shared laundry facilities in a block of flats if the tenant frequently breaks the washing machines, because they do not understand the instructions.

CONCLUSION

From the email it would appear that whilst a formal application to make reasonable adjustments has not been made, if one had been made, the duties implied under the legislation to make reasonable adjustments would apply.

KEY ACTION POINTS

- Familiarise yourself with the content of the Disability Discrimination Act and the accompanying Approved Code of Practice.
- Ensure that policies and procedures are implemented which ensure the landlord operates in a way that is compliant with the requirements of the Act.

If in doubt, advice from a specialist solicitor should always be obtained.

What's in a Name?

Q **I am the lessee of a flat in a block of seven flats which I rent out to tenants. The freehold is owned by a company. We would like to set up a Tenants' Association so that it will be easier to approach the managing agents if we have any problems. We feel we would carry more weight as an association rather than as individuals.**
There are I believe four tenants in the block, the landlords living elsewhere.
I had understood that lessees could form a Tenants' Association which I believe is the old word for a lessee. If we form a Residents' Association doesn't that mean that the tenants also could attend meetings and make their voice known – which we don't really want?
What is the correct title for such an association?

A Committee Member Robert Levene replies:

The actual name of your association is not material other than your own and neighbours' perception of it. You can call yourself a 'Leaseholder Association' or 'Tenants' Association' or indeed just 'XYZ Block Association'. We have many members who use a whole variety of names. In addition to the above you could call yourself '123 Whatever Road Group'. It is what you are that is important not the name.

From an organisational perspective, and to achieve results, it is quite often good to have the lessees as members but to invite all people living there to participate in meetings and decisions that affect their home, even though it is the lessees that have to make final decisions and pay the bills.

The letters above are edited.
The FPRA only advises member associations – we cannot and do not act for them. Opinions and statements offered orally and in writing are given free of charge and in good faith, and as such are offered without legal responsibility on the part of either the maker or of FPRA Ltd.

DISPUTE RESOLUTION

By FPRA Committee Member Robert Levene

FPRA has long supported and recommended to its members that if there's a dispute, whichever way round this may be, the best means of resolving it is by good communication, so that all parties understand the other's point of view and in that way, they can try and resolve problems. Leasehold by its nature is complex and the legislation which governs leasehold is some of the most extensive and complex within the legal system.

We have many requests to the admin office for help in resolving disputes and how to go about it and these range through a massive range of issues, misunderstandings over service charges, neighbour disputes, parking, noise, smells, who owns what, whose responsible for what, who has to maintain, who has to pay, why should I pay, why do we have to do all these bits of paper, why do we have to do Section 20, the list goes on and on.

FPRA has been incredibly successful in improving the situation of leaseholders over its 40 year history, however, in doing so, the complexities have increased and still there is the occasional rogue freeholder, managing agent, and it has to be said, RMC director.

Whilst it would be great if we could get nearly 40 years of legislation tidied into one clear piece of legislation, the political reality is, there is no parliamentary will to do this, or indeed, to really make Commonhold work, so we have to look at what can be achieved within the framework we have. Much of that legislation was designed with the lessee and freeholders being separate and often 'combative' whilst in reality thanks to the success of our campaigns, and legislation which followed, many estimates say that 50 per cent plus of all leasehold blocks are now owned, or managed, by the leaseholders themselves through enfranchisement, Resident Management Companies, Flat Management Companies, Right to Manage Companies and similar. Standards of management amongst freeholders and good managing agents have improved over the years with the support of professional trade bodies, such as The Royal Institute of Chartered Surveyors (RICS), Association of Residential Managing Agents (ARMA), Association of Retirement Housing Managers (ARHM), and the formation of a separate managing agent qualification body – The Institute of Residential Property Management (RIPM), which is all good news, but what about the often unpaid voluntary RMC or RTM director.

FPRA through its new website is providing guidance notes forums, standard forms etc. to help and with its close contacts, with the government funded Leasehold Advisory Service (LEASE), over 50 leaseholder events were held last year by them, as well as events jointly with ourselves and events we held with other groups and sponsors.

Despite all this, it is in the nature of things that disputes arise, and if these cannot be resolved with good communication (stop a moment and think what your communication is like with your fellow lessees? Do you always keep even those who never attend meetings informed, could you do better?). So how are these resolved? Ultimately, often through court or tribunal service, often at large expense with uncertain outcome and often in a completely confrontational way, that does not help relationships going forward, so we recommend that Mediation or Arbitration, the two main forms of Alternative Dispute Resolution are tried before recourse to the tribunal or courts.

After some encouragement by FPRA, LEASE has kindly published a guidance note into Alternative Dispute Resolution, giving an outline of these and this guide is available via both the FPRA website and the LEASE website or for those members who don't have access to the website, our admin office can print this and send it to you if you send in an A4 stamped-addressed envelope.

Your committee at its last meeting also discussed if there was a possibility of an Ombudsman-type scheme, such is used by energy suppliers, telephone companies, the RICS and ARMA and many others, and whether this might be of particular use to our RMC and RTM members where they have a dispute with an individual lessee that cannot be resolved by any of the above, but which would have much lower costs than a case going to a court or tribunal .

Were we to introduce an Ombudsman scheme to our members, (we would use an established, independent Ombudsman service) we need to know if this would be of interest to our members. The typical cost of a lessee taking a case to the Ombudsman is around £350 which has to be paid for by the RMC or RTM who have to agree to be bound by the Ombudsman decision and as such disputes, which might affect all lessees in the block, may not be appropriate for this service.

It should be appreciated that where a dispute impacts on other leaseholders who are bound by the same lease then the tribunal or court service may be the better route because an Ombudsman's decision would not be binding on all leaseholders only on the particular one that bought the case.

Your committee need to know what members think of this idea and whether you think it was worth detailed exploration and the time and effort of our volunteers in setting this up.

Please give us your views, positive or negative, as we desperately need the feedback by emailing info@fpra.org.uk putting in the subject line 'Views on an Ombudsman scheme' and including the name of your Association. If you do not have access to the internet, please write in rather than phone, so that your views can be shared by all the committee.

We hope this article is both helpful and thought-provoking and look forward to hearing from you.

Legal jottings

Compiled by Philippa Turner

EG	Estates Gazette
EG(CS)	Estates Gazette Case Summaries
UKUT	United Kingdom Upper Tribunal
EWCA	England & Wales Court of Appeal
LVT	Leasehold Valuation Tribunal
UT	Upper Tribunal
RMC	Residents' Management Company

Landlord & Tenant Act 1987

Under the Act notice to the landlord by the lessees of the intention to apply to appoint a manager is made under Section 22. In *EagleshamProperties v Jeffrey (2012 UKUT 157)* the LVT heard the application and made an order under Section 24 that a manager should be appointed for an interim 12 month period and, because the LVT was not convinced as to the suitability of the proposed new manager, report back on its expiration so that a final decision could then be made. The lessees did not appreciate that the onus was on them to refer the matter back to the LVT for this purpose and the 12 month period passed, resulting in the landlord notifying them that its own manager was reappointed. On the lessees applying for an extension of the original order, the LVT agreed, purporting to exercise its power to vary under Section 24. On appeal by the landlord, the UT held that such a variation would require service of a fresh Section 22 notice and the only ground to dispense with this, namely that it was not reasonably practicable to serve it, was not, on the evidence, the case here. In the circumstances, the LVT had no jurisdiction to revive the original order.

Part IV of the Act covers applications to the Court by any party to the lease to vary its terms. Section 37(5a) provides that at least 75 per cent of the potential applicants (ie the lessees and the landlord) consent and not more than 10 per cent oppose the variation. In *Dixon v Wellington Close (2012 UKUT 95(LC)* it was proposed by the RMC to take over the lessees' existing liability for the repair and maintenance of their own doors and windows so as to enable external cladding of the building to be properly repaired. Over 75 per cent were in favour and the Tribunal found that the 13 who opposed did not constitute 10 per cent of the 133 total. The variation was thus approved.

Landlord & Tenant Act 1985

In *OM Properties v Burr (2012 21 EG 96)* over a period of six years from 2001 – 7, the management company paid the account for gas supplied to the whole block. However, it transpired that the wrong suppliers were being paid; when the mistake was discovered the payment, amounting to £100,289 was recovered and in turn correctly paid to the actual supplier. The residents were then invoiced through the service charge account but one of their number disputed his share (£300) in reliance on Section 20B of the Act arguing that the service charge demand related to costs incurred more than 18 months before. The LT allowed the management company's appeal from the LVT in holding that the gas cost was not 'incurred' at the time the gas was supplied but , at its earliest, when the actual supplier presented its bill in November 2007. 'Cost' must be distinguished from 'liability'.

Leasehold Reform Housing and Urban Development Act 1993

It was the valuations of new leases being sought in accordance with the Act which were in dispute in *Coolrace and others (2012 24 EG 84)*, four cases all before the LVT in the Midlands. The UT upheld the decision to calculate the valuations on the basis of a graph of the relativity between leasehold and freehold values prepared by LEASE (the Leasehold Valuation Tribunal) rather than on graphs prepared on the basis of previous local decisions or on agreed settled figures. It was emphasised that the use of the LEASE graph did not necessarily create a precedent and alternative graphs could be employed in subsequent cases, depending on the individual circumstances.

Commonhold & Leasehold Reform Act 2002

Under Schedule 11 para.1(1) of the Act 'administrative' charges are brought within the ambit of the Landlord & Tenant Act 1985 regime governing challenges to service charges. Fees levied by landlords in granting consents under the lease are such administrative charges. In *H & M Solitaire v Norton and others (2012 UKUT 1 (LC)* there was nothing in the lease to allow recovery of legal and other costs incurred by the landlord in consenting to an assignment. The UT held that the landlord could nonetheless withhold consent if the leaseholder refused reasonable payment; however, the amount demanded was not reasonable and so was reduced from £105 for administrative tasks and from £135 for legal perusal to £40 each.

Charges were also reduced in the case of *Bradmoss re 10 Meadow Court (2012 UKUT 3 (LC):* there was no breakdown of the figures and the indication it would take two hours of administrative time and one hour of legal department time was not justified; £210 was reduced to £40.

Service Charges

The freehold of the block of five flats in *22 Clifton Gardens v Thayer Investments (2012 26 EG 101)* was a leaseholder-owned company which sought to recover through the service charge the cost of employing lawyers and surveyors to recover unpaid service charges from one of the lessees. It was held by the UT that there was nothing in the lease (which was poorly drafted) to enable it to do so and it followed that such costs must fall on the company itself and thus effectively the non-defaulting lessees.

The leaseholders in *Akorita v Marina Heights (St Leonards) (2011 UKUT 255(LC)* managed the block themselves through a RMC. The UT gave guidance (though no actual decision needed to be made on the point and it therefore does not constitute a binding precedent) on the recovery of insurance commission through the service charge. The guidance was to the effect that commission was rightfully payable to the broker, it being a normal component of the cost of insurance, but not to the managing agents since they were not engaged in insuring the building and accordingly a commission did not fall within the items included in the service charges under the lease.

Housing Act 1996

Section 81 of the Act (as amended by Section 170 of the 2002 Act) restricts the right of the landlord to forfeit for non-payment of service charge unless inter alia it has been previously finally determined by a Court or Tribunal that the service charge is payable. In *Church Commissioners v Koyale Enterprises (2012 21 EG 96)* the landlord obtained a default judgement against the leaseholder for arrears of service charge, no defence having been entered. The leaseholder's challenge to the subsequent forfeiture was rejected by the Court which held that a default judgment was a final judgment for the purpose of Section 81.

Interpretation of Lease

In *Newman v Framewood (2012 23 EG 98)* the landlord was a company owned by the lessees but one of their number took proceedings for breaches of the lease: (1) blocking the door to the swimming pool; (2) removal of the Jacuzzi; (3) tree root damage to the drive; (4) failure to repair/replace gym equipment. The company's defence was in reliance on a clause in the lease which excluded liability for any damage suffered by a lessee through the acts of a servant, agent or contractor of the company save where it was covered by insurance (there was no such insurance here). Meanwhile the door which had been closed due to condensation problems was opened up. The County Court held that the directors' management committee of the company was an 'agent' of the company and thus covered by the clause in question. On appeal, the Court of Appeal held that directors were not agents or employees and did not fall within the definition. In any event, the clause was not designed to apply to a breach of covenant but only to damages arising from a claim in tort. Furthermore, 'damage' referred only to physical damage and not loss of amenity. Specific performance was refused – the door was already open and it would be a disproportionate expense to restore the Jacuzzi – but damages were awarded of £1000 for the door, £2500 for loss of the Jacuzzi, £500 for the gym equipment and nothing for the tree roots.

There is a legal concept which affords to the owner of land the ownership also of the space both above and below, subject to statutory exceptions (eg for aircraft). The lessee of a ground floor and basement flat in *Lejonvam and another v Cromwell Mansions (2012 25 EG 90)* attempted to take advantage of this by seeking to extend his flat downwards by excavating an extra floor below. The Chancery Division of the High Court held that there was a clear presumption against such an interpretation of the lease in that the landlord had retained control of the foundations for repair purposes and reserved the right of passage for utilities below the flat.

Nuisance

All the leases in *Faidi v Elliott (2012 EWCA Civ 287)* contained, as is usual, a clause requiring carpeting of floors. The lessee of an upper flat obtained the landlord's consent to install underfloor heating and new oak floor boards. The lessee of the flat below complained of noise nuisance but the Court of appeal upheld the County Court decision that it would be absurd for the landlord to have granted permission intending that carpeting should cover the new floor, particularly since new sound insulation had been installed at the same time which was superior to the muffling effect of the previous carpets; furthermore, the new heating would not function efficiently if covered in carpeting.

However, the Court of Appeal reversed a County Court decision in *Barr v Biffa Waste Services (20112 13 EG 90 (CS)* where it had dismissed the residents' claim in respect of nuisance caused by smell from a neighbouring rubbish tip. The Court of Appeal held that the nuisance was neither isolated nor trivial and had continued for a period of five years and affected the ordinary enjoyment of the residents' property. The fact that the Defendant had statutory authority to tip rubbish and had complied with the terms of its licence was irrelevant in the absence of express authority to create a smell. The County Court judge's suggestion that common law principles should be modified to "march in step with legislation" was not justified. There was no basis in principle or authority for statute to cut down a private law right. Nor was there any need for the claimants to prove negligence or breach of licence.

Previous Newsletters Legal Jottings

Westbrook Dolphin Square v Friends Provident Life (Newsletter 100) has been further reported at *2012 22EG 85 (CS)*.

Gala Unity v Ariadne Road RTM (2012 5 EG 84) was the name of the case inadvertently omitted from the case reported under the heading 'Commonhold & Leasehold Reform Act 2002' in Newsletter 101.

Advertisements

Advertisements

Tweeting, Facebook, Linkedin, Social Media

The profile and volume of leasehold response to our campaigns and for information has increased dramatically since our chairman, Bob Smytherman, led us into social media communication sites such as Twitter.

If you use these media please follow us and link as appropriate to our addresses.

Follow us on Twitter @FoPRA we have almost a 1,000 followers from across the property management industry.

Or, find us on Facebook by searching for The Federation of Private Residents Associations.

We also have an 'open' discussion forum on Linkedin which has almost 200 members which includes leaseholders and property professionals discussing openly a variety of issues facing our sector.

This of course is no substitute for the independent and impartial, expert advice members receives direct from our advisers based on the unique circumstances of each individual lease but it does provide a useful networking opportunity from the privacy of your own PC or Smartphone.

Please also see the forums on the members' area of our own website which are for the exclusive use of FPRA members.

FPRA CONSULTANT A PRIZEWINNER

The 2012 Outstanding Achievement of the Year award at News on the Block's Enfranchisement and Right to Manage Awards went to FPRA Honorary Consultant, Andrew Pridell.

Andrew Pridell, a chartered surveyor, (on the left) is a very knowledgeable Leasehold Enfranchisement practitioner and committed to raising standards within the valuation profession. On the lecture circuit his passion for the subject and engaging style of delivery, gives him the ability to engage with his audiences and make what is otherwise a rather dry subject, interesting – both to professionals and students.

He has appeared at numerous Leasehold Valuation Tribunal hearings as advocate and expert and he has acted as expert witness in matters of litigation over many years and has given evidence at numerous Court hearings and Tribunals – including some of the leading cases in this area. Through his professional practice he specialises almost exclusively in providing advice and valuations for lease extensions and collective enfranchisement's, under the Leasehold Reform legislation.

Andrew has also lent his extensive professional expertise to other organisations, including the Royal Institution of Chartered Surveyors Working Group, ALEP, the FPRA and the Leasehold Valuation Forum.

A very worthy winner and a joyous celebration at Congress Centre, London. For a full list of winners, photos, a short film and information for the 2013 Enfranchisement and Right to Manage Awards please visit www.theermas.co.uk

THIS YEAR'S AGM

The Federation of Private Residents' Associations (FPRA) Anniversary Event for leaseholders will take place on the 8th of November 2012 at Hamilton House, Mabledon Place, London, Greater London WC1H 9BD.

This year we are celebrating 41 years providing advice and support to long-leasehold home owners as well as helping flat owners set up and run Residents' Associations. The evening will include a Keynote speech by Baroness Gardner of Parkes. As a Life Peeress in the House of Lords, she has actively raised issues concerning residential leasehold property in Parliament including questioning the Government on regulating managing agents and most recently, securing a debate on leasehold service charges. For more information and to reserve your FREE place email events@newsontheblock.com or call 0845 618 7746. You can also reserve your place by filling in our online form.

NEW-LOOK WEBSITE

Please check out the new-look FPRA website, with block case histories and other new items. Members can now add their own blocks as case studies.

FPRA only advises member associations – we cannot and do not act for them. Opinions and statements offered orally and in writing are given free of charge and in good faith and as such are offered without legal responsibility on the part of either the maker or of FPRA Ltd. All questions and answers are passed to our newsletter and website editors and may be published (without name details) to help other members. If you prefer your question and answer not to be used please inform us.

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

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