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NEWS

FPRA
FEDERATION OF PRIVATE RESIDENTS' ASSOCIATIONS

CHEAPER AND EASIER?

BY THE EDITOR

The Law Commission has published its report on *Leasehold home ownership: buying your freehold or extending your lease* and has given various options to reduce the price payable.

Professor Nick Hopkins said: 'The Law Commission has published a report setting out options for government to reduce the price payable by leaseholders to buy the freehold or extend the lease of their homes.

'This report puts forward three alternative schemes for determining the premium, which would make enfranchisement cheaper, saving leaseholders of houses and flats money, whilst ensuring sufficient compensation is paid to landlords to reflect their legitimate property interests. Each scheme uses a different basis to determine the price of enfranchisement, and facilitates further reforms to make the process simpler and to reduce uncertainty.

'Alongside the three schemes, we put forward a range of further options for reform. These include:

• Prescribing the rates used in calculating the price, to remove a key source of disputes, and make the process simpler, more certain and predictable.

• Helping leaseholders with onerous ground rents, by capping the level of ground rent used to calculate the premium.

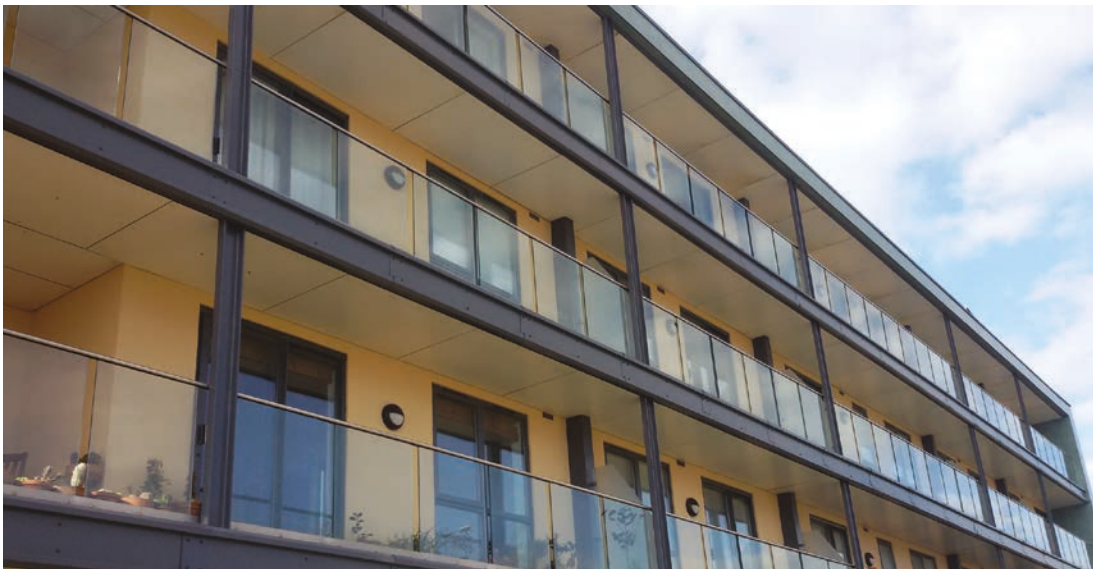
• The creation of an online calculator for determining the premium to make it easier to find out the cost of enfranchisement, and reduce uncertainty around the process.

• Enabling leaseholders who are collectively enfranchising a block of flats to avoid paying "development value" to the landlord unless and until they actually undertake further development.

'As well as reducing the price, these options could clarify and simplify the law, making the process of leasehold enfranchisement easier and less expensive to operate. The report also explains the limited role that simple formulae – such as a multiple of ground rent – could play in delivering reforms, while explaining that their wider use is not possible under the UK's human rights laws.

'This report does not express a view on which scheme and which options for reform should be adopted, as this is ultimately a decision for government and parliament. We will, however, be making recommendations in the coming months for reforms to improve all other aspects of the current complex enfranchisement system, such as those who qualify for enfranchisement rights and

Continued on page two, with comments from leasehold specialist lawyer Yashmin Mistry, FPRA Committee Member



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the procedure that must be followed in order to exercise those rights.'

(The full report cam be found on the Law Commission website, www.lawcom.gov.uk).

The All-Party Parliamentary Group on leasehold reform recognises the efforts of the Law Commission and welcomes efforts to make leasehold enfranchisement – extending leases and leaseholders' buying the freehold – easier, simpler and more cost-effective. However, while the proposals may be seen as a step in the right direction it still leaves in place many aspects of what is a fundamentally unjust system.

The Law Commission proposes to government a number of options for reform, and the APPG naturally favours the options that assist leaseholders, who do not have the resources of commercial residential freeholders to dispute enfranchisement valuations through the courts (occasionally, the highest courts).

The Leasehold Knowledge Partnership warns that: 'Yet again, leaseholders must mobilise to push for the most favourable option in the reforms, as the choice is ultimately a political one by government. And the human rights – even of anonymous offshore speculators in residential ground rents – have to be respected.'

FPRA Committee Member Yashmin Mistry, a lawyer specialising in leasehold, comments on the proposals:

January 2020 saw the publication of the anticipated Law Commission report setting out options for reducing the cost leaseholders would have to pay when they are either purchasing the freehold or extending their leases.

Due to the current leasehold process, there is generally a difficulty in finding a fair compromise between the two interested parties – the landlord and the tenant.

The report has suggested three potential routes for reform to help reduce potential premiums payable for lease extensions and freeholds, namely:

Option One: a calculation based on the leaseholder never being in the market, including at the time the premium is calculated and bases the cost exclusively on the reversion and the term.

Option Two: a calculation based on the leaseholder not being in the market when the premium is calculated but could seek to sell their property in the future. This option would include "hope value" but exclude marriage value.

Option Three: a calculation similar to what currently exists – a calculation based on the leaseholder being in the market at the time of premium calculation. The premium would be calculated on the term, reversion and marriage value.

Clearly the proposed reform routes set out in options 1 and 2 would immediately reduce enfranchisement premiums as marriage value would not form part of the overall cost of either the freehold or lease extension premium. However, the Law Commission is suggesting there may be some scope for the third option, using a similar calculation to the existing law, benefitting leaseholders if they are used as a framework to implement other reforms.

Now while the proposed reform options seem to be a step in the right direction in striking a fair and reasonable balance between landlord and tenant, the proposed options are still only suggestions as ultimately reform and which route (if any) is a decision for parliament and government. The Law Commission in its report has not favoured one option over another. Consequently, is the lack of a definitive conclusion potential to provide yet more uncertainty in an already confused leasehold market?

ARMA INSURANCE PARTNERS

A new insurance partnership has been announced between ARMA (the Association of Residential Managing Agents) and Insurety Ltd (specialists in insurance for residential managing agents)...

Dr Nigel Glen, CEO of ARMA, said: 'We are delighted to have secured Insurety as our new ARMA INSURE partner, as we believe this will allow us to bring a wealth of benefits to our members. We are always looking for ways we can innovate, and features such as an improved claims management process that takes away the headache of having to keep a handle on the progress of claims, will help drive value for money for ARMA members and their clients.'

Rob Mayo, CEO and co-founder of Insurety said: 'The team and I are extremely proud and excited to be working with ARMA as its selected broker partner for insurance. Our business has been founded on the principle of working in partnership with members, in order to improve their experiences of dealing with insurance, through the use of technology and genuine expertise.'

FPRA Chairman Bob Smytherman commented: 'We would always recommend to our members to find out what commission is being paid to the insurance broker and compare policies to ensure that they meet the needs of their block. We also urge members to seek an independent valuation for insurance purposes every five years. We will continue to lobby government for an outright ban on insurance commissions which we believe distort the market and make comparisons more difficult.'

CLADDING NIGHTMARE

The sorry plight of leaseholders given a value of nil for their flats because of cladding confusion has been highlighted by MPs, ARMA and the Leasehold Knowledge Partnership.

ARMA explains: 'In December 2018, the government issued Advice Note 14 (AN14) for anyone responsible for, or advising on, the fire safety of external wall cladding systems on residential buildings over 18m in height that do not incorporate Aluminium Composite Material (ACM), such as that found in Grenfell. The emphasis was on combustible systems such as wood and High-Pressure Laminate (HPL) installations. Although only an Advice Note this document is causing issues in the sale and re-mortgage of leasehold flats in affected buildings as some valuers are returning a £0 value on flats, thereby holding up sales.

'ARMA (the Association of Residential Managing Agents) has been very active on the matter, taking the issue up with the Prime Minister's Special Adviser, MPs and the Ministry for Housing, Communities and Local Government (MHCLG). It is a member of the cross-industry working group on valuations set up by RICS to address the matter.'

Dr Nigel Glen, CEO of ARMA, who also raised this matter at FPRA's AGM, said: 'The unfortunate and unintended consequence of Advice Note 14 has meant that people trying to sell or re-mortgage their flats are finding that it is impossible to do so. This obviously causes a great deal of heartache and anguish to people. As the first point of contact with leaseholders managing agents are finding themselves blamed for matters that are not their fault, dating back, as they do, to when the building was first constructed.

'There is a huge cross-industry effort in collaboration with the government to unblock the valuations process. The release of the External Wall System (EWS1) form will serve to help unblock the sales process.

'It may be some small comfort for people to realise that the valuer putting a £0 value on a home doesn't necessarily mean that a property is considered worthless - it is simply a technique used by valuers to place a hold on a valuation pending further information. Not all valuers and lenders are taking this approach and people trying to sell or re-mortgage would be advised to shop around.'

The Leasehold Knowledge Partnership and All-Party Parliamentary Group on leasehold reform recently held a standing-room only meeting at the House of Commons where calls were made for urgent action on the cladding scandal.

Hilary Benn, Labour MP for Leeds Central, called for government to intervene to help leaseholders whose lives are on hold as a result of the cladding scandal. This was echoed by LKP patron Sir Peter Bottomley and other MPs present.

Martin Boyd LKP Chair and FPRA committee member who chaired the meeting, said there has been some progress in sorting out the cladding that contributed to the Grenfell disaster: a third of social housing sites have had the combustible cladding removed and the rest still in progress.

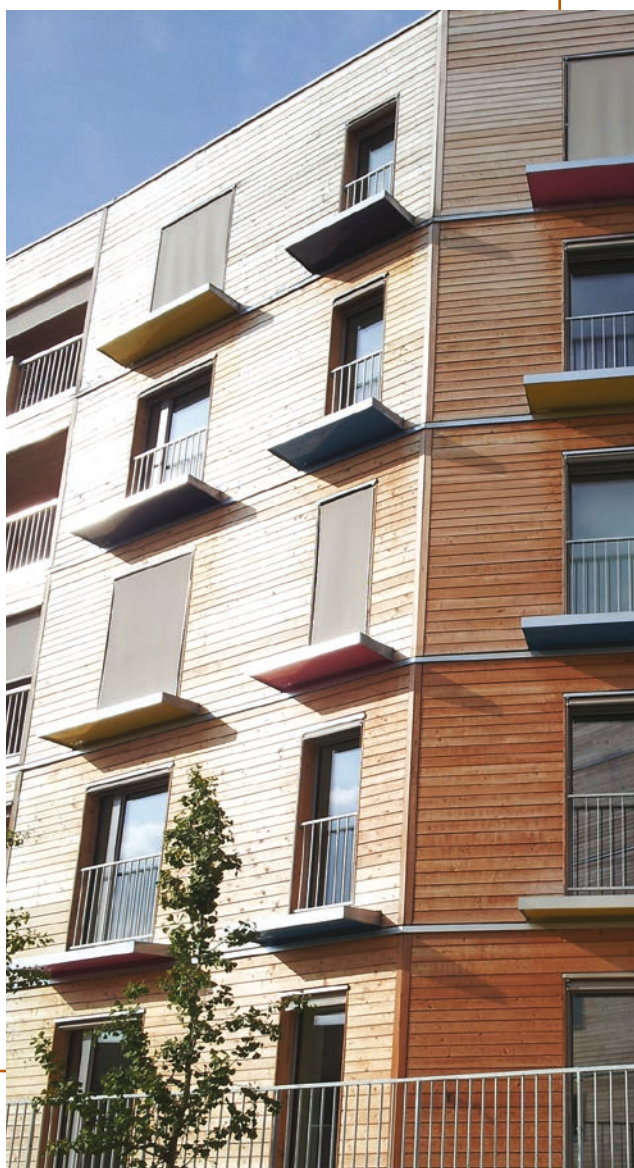
'But the position is much bleaker in the private sector,' he said. 'Government figures show less than 10 per cent of private cladding sites have been remediated. About 15 per cent have had work started, but that leaves about 75 per cent where nothing has happened.

'For leaseholders, that means the anxiety of living in a high-rise with cladding; of not being able to sell their home or not being able to borrow the money to pay for the cladding remediation; of not being able to move job; or, in some cases, not even able to move on with their lives, perhaps when a relationship has broken down.

'Three Secretaries of State and numerous Housing Ministers have spent all this time saying that the "building owner" – the owners of the freehold, or the income streams of blocks of flats – must pay to remediate these buildings and the leaseholder should not.'

He said the LKP had warned the government that most so called "building owners" would not pay up. He said: 'We warned that most leases would make the leaseholder pay and that if matters went to court the leaseholders would lose.'

(A full report of the LKP meeting, and details of new joint meetings between LKP and the UK Cladding Group can be found on the LKP website www.leaseholdknowledge.com)



'A Member Writes'....

We continue our series in which members write in with their experiences of leasehold life. Contributions from members are welcome – please consider sharing yours with our readers.

DE-REGULATION ACT 2015 – AN UNHOLY ALLIANCE TO FLEECE TENANTS?

This member is an expert on living in a mixed/retirement community.

From a tenant's point of view and after more than five years' experience of living in a mixed tenure retirement/"extracare" community, managed by a registered housing provider (previously termed a housing association) my conclusion is that the Regulator of Social Housing does extremely little or nothing to protect tenants from exploitation.

I consider that the government, via Section 108 of the Deregulation Act 2015, has influenced the "affordable housing" sector by a mandatory requirement – **any person exercising a regulatory function must have regard to the desirability of promoting economic growth**.

I've no idea as to how many millions of retired tenants are trapped in leasehold and rental contracts, which include various unspecified "lifestyle choices," that tie them to rising and unregulated fees.

Economic objectives and three economic standards set by the Homes & Communities Agency: (from April 2012) are therefore paramount:

- Governance and financial viability
- Value for money – (and returning a profit to reinvest in new affordable homes)
- Rent.

Consumer objectives and four consumer standards are not other than aspirations, guidelines and wide open to interpretation:

- the tenant involvement and empowerment standard
- the home standard
- the tenancy standard
- the neighbourhood and community standard.

The Regulator having virtually no powers to challenge providers regarding failed standards or redress tenants for non-compliance – and no sanctions to apply when standards have seriously failed. The only possible intervention might occur if the Regulator thinks that a standard has failed and there are reasonable grounds to suspect that this has resulted in (or there is a significant risk of) serious detriment to tenants. The Regulator's determination is final and **moderate financial harm to tenants is permissible!**

Before that happens, the Housing Ombudsman has to determine a service failure. We had a complaint, first raised in 2016, determined three years later after an appeal, as outside the Ombudsman's jurisdiction. In retrospect, the Ombudsman is bound to "promote economic growth" and is probably biased against tenants. The Ombudsman's determination after an appeal is final.

The Neighbourhood and Community standard, requires providers to co-operate with relevant partners (other commercial providers and public bodies – local authorities, social services, traders and others) to *'help promote social, environmental and economic wellbeing in the areas where they own properties.'* Related costs, previously recovered by national and community taxation, may be (and sometimes are) charged to tenants, some of whom are in receipt of Housing Benefit or Universal Credit.

Both the Regulator and Housing Ombudsman, as regulatory authorities, may now be biased against tenants, having regard to the desirability of promoting economic growth of social housing providers.

The Regulator's stated primary focus is to promote a viable, efficient and well-governed social housing sector able to deliver homes that meet a range of needs. In theory, it's co-regulatory approach means:

- it regards board members and councillors as responsible for ensuring that providers' businesses are managed effectively and that providers comply with all regulatory requirements
- providers must "support tenants to shape and scrutinise service delivery and to hold boards and councillors to account"
- it operates as an assurance-based regulator, seeking assurance from providers as to compliance with the standards. In other words, the onus is on providers to demonstrate their compliance to the Regulator and tenants to be burdened with presenting material evidence.

In practice, some providers (who are more remote from their tenants) have very few interested local councillors and very few tenants to shape and scrutinise service delivery. It's exactly like giving pupils and students the task of marking their own homework!

Referring to Loui Burns, of LKP (Leasehold Knowledge Partnership) to the 10 things he recommends the government needs to do to create a fairer society, may I suggest the following additional remedies:

- protect future tenants against mis-selling of homes and 'extracare' services – so tenants are not enticed unfairly into legally binding and exploitative transactions by glowing sales

and rental promotions and promises (which have no worth). This can be achieved by mandating key pre-contract information to be provided by social landlords in a clear, intelligible, unambiguous or untimely manner, so that tenants may make informed decisions, the same as the 2008 Regulations for Consumer Protection against Unfair (and Misleading) Practices and the 2003 New Zealand's Retirement Villages Act.

• repeal the Deregulation Act 2015 and stringently regulate social housing providers by the same terms and conditions as managing agents of private retirement schemes, including accountancy for each village that complies with the government approved RICS Service Charge Residential Management Code.

• introduce right to manage for tenants of mixed tenure retirement properties.

The notion of a fairer society is currently a "pipe dream," with what some might term a "legal cartel" dominating vulnerable citizens (Government, Regulator, Ombudsmen, local authorities, the British Property Federation, the National Housing Federation, developers, housing associations and various professional agents, such as lawyers, accountants, surveyors, trade/professional bodies, building warranty providers, approved building inspectors, etc). A collusive alliance all turning a blind eye and deaf ear to help solve the housing crisis, mainly in the interests of the nation's economic growth and commercial practices, but to the financial disadvantage of tenants.

LOOKING FORWARD

2020: The Law Commission and leasehold reform by Nicholas Kissen, Senior Legal Adviser at LEASE

This year we are looking forward to the publication of three reports from the Law Commission.

On 9 January 2020 the Law Commission published its report on valuation in enfranchisement following on from its consultation paper entitled *Leasehold home ownership: buying your freehold or extending your lease*.

The Commission was originally tasked to review the enfranchisement process to make it simpler, easier, quicker and more cost effective and to examine options to lower the price leaseholders pay to enfranchise.

The provisional proposals for reform made in the Commission's consultation paper published in September 2018 included:

- removing separate rules for houses and flats
- simplifying and reducing legal and other professional costs for acquiring a freehold or an extended lease.

The Commission is continuing to put together its final report and recommendations for reforms to all other aspects of the enfranchisement process and aim to report on those issues in Spring 2020.

The Law Commission is also working on its final report on reforming right to manage. This report too is expected to be published in Spring 2020 and follows on from the Commission's consultation paper *Leasehold home ownership: exercising the right to manage* which closed on 30 April 2019.

Following on from the government's brief to review the right to manage legislation to make it simpler, quicker and more accessible, particularly for leaseholders, that consultation paper provisionally proposed:

- relaxing the qualifying criteria to enable leasehold houses and buildings with over 25 per cent non-residential area to qualify for right to manage
- reducing the number of notices leaseholders must serve
- giving the tribunal the ability to ignore procedural mistakes
- providing clearer rules for transferring information regarding management functions
- obliging each party to pay their own costs of any tribunal litigation and looking at options in respect of the landlord's non-litigation costs.

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Legal Jottings

Compiled by Nicholas Kissen, Senior Legal Adviser at LEASE

Management orders and service charges – the implications

Oung Lin Chaun-Hui and others v. K Group Holdings Inc and others [2019] UKUT 0371(LC)

If a leaseholder or more than one is dissatisfied with the way their building containing flats is being managed Section 24 of the Landlord and Tenant Act 1987 provides a right to apply to the First-tier Tribunal (Property Chamber) in England or the Leasehold Valuation Tribunal in Wales for a manager to be appointed to run the building. To obtain such a management order one must prove certain grounds and satisfy the Tribunal that it is just and convenient to make the order.

The effect of the order is to take away from the landlord their right to manage the building.

But what is the standing of service charges paid by the leaseholders to the tribunal-appointed manager?

Would they be service charges within the meaning of Section 18 of the Landlord and Tenant Act 1985 and thus benefit from the statutory protections in the 1985 Act?

These statutory protections are considered to be vital ones for leaseholders.

Section 19 provides that relevant costs shall be taken into account in deciding the amount of a service charge payable for a period only to the extent that they are reasonably incurred and, where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard.

Section 20 gives leaseholders the right to be consulted about major works to buildings and about qualifying long term agreements.

Section 20B provides a time limit on the recovery of service charges and Section 27A gives the Tribunal the jurisdiction to decide the "payability" of service charges where costs have been run up or are proposed to be incurred.

Or would the fact of the manager being an appointee of the Tribunal mean that the money paid to the manager is under a self-contained regime with the result being that the service charges are not within the meaning of section 18 and accordingly does not attract the statutory protections?

In addition, what happens when the management order ends and there are any service charge arrears left uncollected?

The facts

This case concerned a mixed-use block including flats and commercial areas situated off Park Lane in Central London.

Each of the flat leases were on tripartite terms with the second party being a maintenance trustee.

In 2011 the then Leasehold Valuation Tribunal made a management order under Section 24 of the 1987 Act in relation to the block. Disputes over management and service charges had been ongoing for over two decades and the block was in a state of disrepair.

The management order ended on 30 June 2011 resulting in management of the block going back to the management trustee.

During the period of the order, arrears of service charge had built up and to enable the maintenance trustee to chase after those arrears, the Tribunal-appointed manager endeavoured to assign those arrears to the trustee through a formal deed of assignment.

The management trustee bought a county court claim for service charge arrears amounting to £1,030,337.31.

This claim included service charges owing during the period of the Tribunal manager's appointment.

The county court claim was ordered to be transferred from the county court to the First-tier Tribunal (Property Chamber).

What happened at the FTT?

The hearing took place in September 2018.The alleged validity of the deed of assignment was argued upon with the leaseholders maintaining that it was not effective resulting in the maintenance trustee not being entitled to recover those amounts owing to the Tribunal-appointed manager that related to the period of the management order.

The FTT decided not to rule on this issue as it had not been properly pleaded.

Dissatisfied with this ruling the leaseholders applied for leave to appeal to the Upper Tribunal (Lands Chamber).

This permission was granted as the case raised a "point of general significance regarding the powers of tribunal appointed managers and the status of sums claimed by them but not paid by the end of their appointment."

What happened at the Upper Tribunal?

There were two issues before the Upper Tribunal, namely:

- whether it was possible to assign service charge arrears accrued during the period of a management order
- whether the FTT had been mistaken in its findings relating to this matter not being properly pleaded.

Dealing with the classification of the sums paid to the manager, the Upper Tribunal decided that they are service charges within the meaning of Section 18 since although they are recovered under the management order they are paid under the lease. The imposition of a Management Order does not displace the lease covenants and the leaseholders remain bound by them.

As for the issue of whether the outstanding service charges can be assigned the Upper Tribunal said a formal deed of assignment was entirely unnecessary.

'The ability of the Maintenance Trustee for the time being, to recover payments due under the leases was suspended by the Order and not extinguished. In those circumstances, there was no need for a Deed of Assignment, although given the entrenched position of the parties in the case; it is understandable why it was executed.'

Guidance was also provided by the Upper Tribunal on the procedure the FTT should follow when a party wants to change their pleaded case late in the day.

ASK THE FPRA

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

RTM responsibilities

Q **Your publication *Running A Block Of Leasehold Flats* advises management companies (that own the freehold). To what degree is the information relevant for RTM companies?**

A FPRA Director Shula Rich replies:

The RTM company steps into the shoes of the freeholder, so all of it is relevant apart from the freeholder's business responsibilities or rights for example:

- not collecting the ground rent
- no ability to threaten or to forfeit flats
- no responsibility for any rent collection from registered tenants etc.

Insulating the loft

Q **Is the RMC legally responsible for loft insulation in common areas, eg loft of a two-storey block? If the answer is in the affirmative, can the cost be recovered in the service charge? Can a tenant obtain a government grant for insulating the common-area loft above his premises?**

A FPRA replies:

Having reviewed the lease annexed to the tribunal decision dated 8 April 2010, it appears that the common parts definition does not include the loft. The definition of the retained parts includes all parts of the building lying below the floor surfaces or above the ceilings. As the flat does not include any of the retained parts, it means that the loft can potentially form the retained part and belong to the landlord. The lease however is silent on who is responsible for the maintenance of the retained parts. Under a schedule the landlord is responsible for providing, operating, maintaining and renewing any appliances or systems which the landlord considers necessary for the safety and security of the occupiers of the building. If loft insulation can be considered necessary for the safety and security of the occupiers, then potentially the landlord can recover costs for loft insulation from the tenants under the terms of the lease as part of the service charge.

The government-led Energy Company Obligation Scheme (ECO) helps families who are on low incomes and in receipt of government benefits to reduce their energy bills. If those families meet the criteria, they could get a free grant towards insulation in their home. It does not appear that grant applies to the loft insulation of the building as a whole and in particular if the loft forms part of the landlord's demise. You may wish however to obtain further information from the website, www.government-grants.co.uk/free-insulation.

Overseas owners and getting recognition

Q **We face a number of challenges because the majority of units are held by overseas leaseholders from the Middle East, China, Singapore, Japan, etc. The level of understanding of English is variable and some documents or emails have to be translated. Our inaugural and further meetings will have to be via a video or telephone conference facility because a physical meeting is not practical as leaseholders are spread over the globe. Collection of a subscription could be very problematic because of the different currencies involved and a trust issue that has arisen because all leaseholders have been subject to fraud and malpractice by letting agents and original developers. Do you think that lack of a subscription would be a major impediment if we apply to the First-tier Tribunal for official recognition?**

A FPRA Chairman Bob Smytherman replies:

Collection of subs from an RA is often problematic. The answer really depends on what you are looking to spend the subscription on: if it's just FPRA membership I think this should be paid by all leaseholders from your service charge as all members will benefit from our advice services; however if you are looking to raise funds for other things then it may not be appropriate to take from the service charge.

The FTT will need evidence that your RA is clearly and democratically representing the interests of the majority of leaseholders if you are able to demonstrate this fact it would be unwise for a freeholder to refuse to recognise your RA.

Home of multiple occupation

Q **Our property is a four-storey detached Victorian house, divided into four self-contained flats. The basement flat has its own entrance. The three other flats have a common entrance (the original front door of the house) and share the entrance lobby and original staircase to the upper floors. The basement flat and the first-floor flat are let to tenants.**

We have had a message from the owner of the basement flat questioning whether we need an HMO licence. As 50 per cent is let, would we need a full licence, or an additional licence for the common parts only?

What does getting the licence entail?

A FPRA Chairman Bob Smytherman replies:

HMO Licensing is a very complicated part of housing regulations, so difficult to advise without seeing the full plans, but essentially the licensing rules have been tightened recently to prevent tenants living in unsafe homes. The local environmental health department of your council should be your first port of call urgently to ensure that if a licence is required you are able to comply.

If a licence is required and you fail to act, your directors will face prosecution. Hopefully the licence process won't be too onerous, but the council will assist through the whole

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Ask the FPRA continued from page 7

process. If a licence is not required, ask the council to put this writing so you can evidence to any future enquires.

Aerials

Q **Since our last AGM I have set up a folder for risk assessment/relevant details for outside contractors, should we employ them. There are a couple of matters that each of our flat owners deals with themselves, ie windows, tv aerials, and it was in this context that we had a discussion. If we were employing a contractor to take down an aerial, we would ask for relevant information ie public liability insurance etc, but if the individual flat owner employs them, then we wouldn't? We kicked it around a bit and decided the best thing was to refer to yourselves for some guidance, and you have always been so very helpful in the past.**

A FPRA Committee Member Bob Slee replies:

This is always desirable but not necessarily always enforceable; much depends on the wording of the lease. In your case, I believe your lease provides the means to do so. The position with regard to aerials is covered in Section 6 of the First Schedule of the lease. Erection of aerials is subject to the written consent of the landlord and such consent might justifiably include a requirement for contractors erecting the aerial, and undertaking any subsequent repairs or removal, to provide evidence of appropriate third-party liability insurance. More generally, the Second Schedule of the lease grants a number of "easements' to the lessee allowing workmen to undertake various cleaning, repair and maintenance functions. Section 7 of the Second Schedule underlines the liability of the lessee, in taking advantage of these easements, to ensure among other things that the landlord is not placed at any risk and, in this respect, the landlord is also given power to specify any reasonable rules and regulations. I would suggest that specifying a requirement for any contractor appointed by the lessee to produce evidence of third-party liability insurance would be a reasonable requirement.

Fire safety

Q **We have just had some fire prevention work carried out in our black. It began in the social housing and is now being carried out in the private area. Essentially, they had to put fire protection materials in any gaps behind the door surrounds and also where there might be gaps in the space above the ceiling between rooms. We understand that there has been a fire risk assessment conducted. Are we entitled to see it?**

The picture is slightly complicated by the fact that we have been served a notice in connection with the freehold purchase/sale. I don't know whether this gives us stronger rights if we go through that purchasing process.

A FPRA Hon Consultant Emily Shepcar replies:

It is difficult to comment on the works specifically without sight of the fire risk assessment (FRA). However, I see no reason why you should not be entitled to see the FRA and I would suggest that you request a copy of this from your managing agent. Ultimately this is the reason and justification for the works being completed and so sight of the FRA is imperative if you have any queries or concerns over the works. I do not believe that your managing agent should refuse to provide the FRA, but if they do I would suggest querying with them not only why they are refusing to provide it to you as a residents' association, but also for a full explanation from them over what works are being carried out, why they are being completed and clarification over the costs of the same.

The FRA and subsequent works should not have any effect or influence over a potential freehold purchase, but for the current freeholder, it would be important for them to demonstrate that the property is fully compliant with fire safety works needed. Sight of the risk assessment will help to give better clarification of why works are being completed.

Liability

Q **I have noticed on our current property owners' policy schedule that employer's liability is not included. We think that this is something we should have, to cover people doing work for us.**

A FPRA Hon Consultant Belinda Thorpe replies:

This is a simple one. Yes, anyone that has an employee must have employer's liability insurance – this is law I am afraid. All employer's liability certificates should be kept for 40 years.

Self-closing fire doors

Q **What liability do we have for installing fire doors with self-closers and thumb locks as well as smoke alarms in individual flats where all owners are basically owners of the freehold? Our fire risk assessment has asked that those doors should be put in, along with emergency lighting. I have advised people of the requirement. But if they don't comply, how liable am I? Is it sufficient that I have advised them of the requirement?**
Also, our insurers advised we should meet requirements of the fire assessment, but I have no control over individuals' ability to put in these fire doors, thumb locks, self-closures as specified.

A FPRA Committee Member Colin Cohen replies:
I am no health and safety expert, but I do come across this a lot now, whereby the freehold company is not liable for the front doors of flats, but the block fire risk assessment has recommended that the doors be changed or upgraded etc. In my opinion, the company would have to take a view they either consider a collective upgrade of all the front doors if the funds held for service charges would allow for this and everyone agrees; alternatively advise every flat owner it is their responsibility to comply within a given time, otherwise the freeholder would have to take legal action and enforce they comply.

Doubling of ground rent

Q **I would like your views on my initial steps to obtain a variation of my deed to remove the doubling of ground rent to my property. We are a development of 61 apartments of one and two bedrooms, the doubling of ground rent is a matter of concern to the vast majority, and individual circumstances do vary between leaseholders. Some purchased from the developers, while others are second time owners/leaseholders. These can all be subdivided into resident owners or buy to let owners.**
The way I have been dealt with is unfair, and it just shows that these superior landlords/freeholders are still taking advantage of really antiquated leasehold laws to make a financial profit without providing any service whatsoever to the leaseholder. Is this meant to be in the spirit of their signature to the government-backed pledge on this subject?

A FPRA Director Shaun O'Sullivan replies:
Although the recent announcement as to the government's intention on the treatment of ground rent on new build leasehold properties is welcomed, it does nothing to address the situation of existing leases, including those which are perceived to have particularly onerous terms. As you are evidently aware, the original developer, having apparently bowed to public pressure in respect of leases with onerous ground rent terms, devised the Ground Rent Review Assistance Scheme (GRRAS). However, as I understand it, the scheme essentially applies to those leaseholders who originally purchased from the developer and not, necessarily, to those to whom leases might subsequently have been assigned; this appears to be the situation in your case, albeit your freeholder is prepared to vary the terms of the lease on a similar basis at a premium. Although in the longer term, and if expected reforms are enacted, investment landlords will be denied any income stream from the payment of ground rents, this is not currently the case and landlords such yours might be expected to be compensated, at least to some degree, for loss of income. Notwithstanding the recent criticism of onerous ground rent clauses, it remains the case that these clauses were not hidden from view and that purchasers would have been fully aware of the conditions of the lease before purchase and would, or should, have been appraised of their rights, obligations and implications by their legal advisers.
I guess in your case, and those of your fellow leaseholders who are not the original owners, it comes down to a matter of judgment as to whether the cost of the offer to vary the lease by replacing the current doubling of the rent every 10 years for the first 50 years of the term to one based on the more usual, but less tangible, RPI is worth it and would make the property more mortgageable. And that judgement must, I would suggest, be influenced by independent financial advice and the views of any mortgage providers.

Commonhold

Q **Last year FPRA provided us with opinions on various resolutions submitted to our AGM. which were very helpful. We are now approaching this year's AGM. While we have received no resolutions to date, the rumour mill now suggests the same group are plotting again. Given the Australian connection of one of our owners we are surmising that commonhold is a likely topic, particularly as the couple concerned already have a dormant management company.**
We are a retirement village owned and managed by a company who also has other similar villages. While commonhold can be presented as allowing us to cast off the shackles of leasehold and become masters of our own destiny and fate by taking over the estate, is this something we collectively wish to embark on at this stage of our lives?

A FPRA Committee Member Bob Slee, Director replies
The LEASE organisation has available a very comprehensive online guide on commonhold which you can access following this link www.lease-advice.org/advice-guide/commonhold. You should also be aware that the government is currently consulting on the future of leasehold and some revitalisation of the concept of commonhold (which has not thus far taken off to any marked degree in the UK) might well arise. Government reaction to that consultation, let alone consequent legislation, is likely to be years rather than months away. Without wishing to prejudge what might eventually emerge, there is a view that a polished-up concept of commonhold

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might well provide a suitable basis for multiple occupancy developments in the future – but it is not necessarily the panacea to shortcomings in existing leasehold developments. An alternative proposition, already available, is enfranchisement, ie common acquisition of the freehold by the lessees. That is the situation in the block that I am involved in managing and we have made it work very well and to our advantage. I can understand the concern about availability of sufficient interest to manage such a proposition, but it would be quite usual for enfranchised companies to appoint managing agents to undertake practical management of the property. The difference of course would be that the agents would be appointed and directed by representatives of leaseholders and not a remote and possibly disinterested freeholder.

Poor performance

Q **I continue to confront the employees of our managing agents with evidence of their poor performance. The root of the problem is their total reliance on sub-contractors to deliver services without supervision or follow up resulting in irregular basic services and poor standards.**
Following a recent visit to their head office I have finally been able to get a list of leaseholders who pay service charges and a copy of the management agreement between the two companies.
There is a problem with the management agreement. They admit that they were given the job some 10 years ago and cannot locate any signed documentation. They have provided me with the standard ARMA management contract that can be downloaded online, with the names of the parties inserted but no signatures. There seems to be no schedule of property services to be provided beyond admin functions.
As there appears to be no agreement in place does this mean this company has no legal basis to charge leaseholders anything and that leaseholders now are entitled to either start from the beginning to set and enforce standards or even appoint another agent?

A FPRA Committee Member Mary-Anne Bowring replies:
There may be a contract by performance, their fee could be construed to be agreed in the initial budget, but this begs the question how or on what basis it has been reviewed since.
It depends on your legal structure as written into the lease what you can do next. It appears that you have a management company, perhaps you could become the directors and appoint your own choice of managing agent. Or, you should write to the freeholder with evidence asking them to appoint your nominated agent.

Fire risk and asbestos

Q **We are the leaseholders of a Victorian house converted into five flats, the fifth of which is a self-contained basement flat. We run our own management company.**
The owner of the basement flat wishes to sell, and his potential purchaser's solicitor has asked for a fire risk assessment of the common areas and an "asbestos survey for the common areas as this is a requirement in a multi-let building".
The building has been inspected by the local fire brigade, who have advised on safety procedures, and smoke detectors have been issued and are regularly tested, and all flats have fire doors. Other than provide these facts, do we need to do anything further in answering the solicitor's question?
Are we in fact a 'multi-let' building (I thought an HMO was six flats and above), and is there a requirement for us to have an asbestos survey of the common areas?
Over the years, many works have been carried out on the internal areas without any asbestos or risk of asbestos being reported by our expert contractors.

A FPRA Hon Consultant Emily Shepcar replies:
It is quite usual for a solicitor to raise these two queries and both documents would need to be provided. To expand further I can clarify the following:

Fire Risk Assessment

It is the responsibility of the party with the responsibility for management of the common areas to complete a fire risk assessment to adequately identify and assess any fire risks within the common area. This may include looking at compartmentation of the building (basically looking at how quickly a fire may spread), any potential causes of fire, and any issues which may hinder an escape from the building in the event of a fire. It should also include identifying a fire action plan for the building.
It may be that this is covered by the document which you have from the fire brigade and this may be sufficient for the solicitor's purposes. However, any assessment should be reviewed regularly and so if this was obtained some time ago, it may need to be re-inspected and re-assessed. You would also need to satisfy yourselves, as the management company with the responsibility for the building, that you are happy that the assessment adequately identifies and deals with all possible risks.

Asbestos

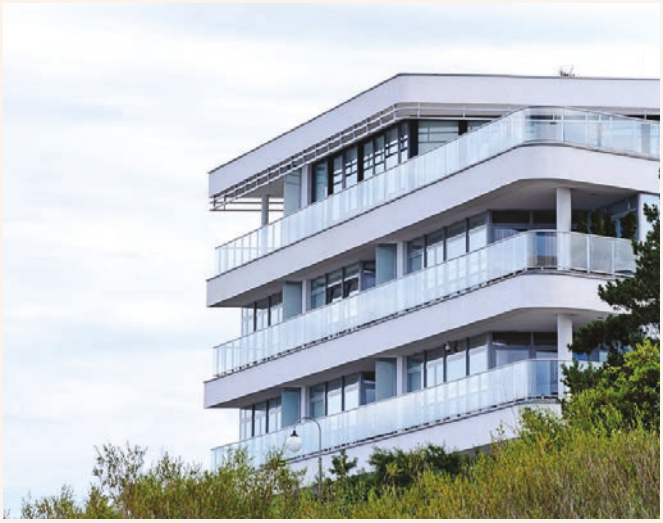
The common areas of a block of flats are classed as a workplace under the Health and Safety at Work Act 1974. As such, you have an obligation to ensure that these areas are free of asbestos, or that any asbestos is identified and managed. The reference to a "multi-let building" is misleading but this refers to the leases for each of the flats. A better explanation would be that the asbestos report is required for the common areas of the property. Where the property is not registered as an HMO (there are some circumstances where it may be even though the flats are completely separate) the responsibility only extends to the communal areas and a Type 2 asbestos management survey would be required. This would be a non-intrusive survey of the common areas by a specialist to identify if

there is any asbestos and if so how it should be managed. If there is no asbestos this will be a one-off exercise. If some asbestos is detected the report may need to be repeated to manage the asbestos but your surveyor would be able to advise you on any frequency.
In summary, both of these assessments are required. You may already have sufficient information to deal with the fire risk assessment, but I would encourage you to satisfy yourselves that this is up-to-date and adequately assesses all risks. You should arrange the asbestos survey of the common areas as soon as possible. Neither should be a significant cost.

Expensive balconies

Q **The development has been issued with two Section 20 notices for the initial phases of the management company's balcony refurbishment. These are for two separate blocks on the development. Can we apply to the First-tier Tribunal on the grounds that the management company are proposing improvements rather than repairs and are therefore unfair?**
Just in 2020 alone the additional charges will be up to £2,000, in addition to the management company's "normal" management charges of just under £2,000. The year after that it gets worse, with additional charges of up to £3,000.
People trying to sell their properties are accepting offers of around £8,000 below their list price.
We have looked at the RTM route but don't have at the moment sufficient numbers of people to support that approach. Part of the reason is that there are different balcony sizes and the costs vary wildly.
We think the balcony refurbishment is over the top as they are proposing (indeed it's specified on the section 20 notice) to take all the steelwork off site to be galvanized. It was not galvanized when the flats were built in 2005 and the management company admits that. It's that specification that seems to be incurring all the costs, with multiple contractors proposed on the section 20 notices, e.g. scaffolders, decking specialists, glass work blast cleaning, galvanize specialists.

A FPRA Hon Consultant Shabnam Ali-Khan replies:
You ask if we start an appeal to the FTT on the grounds that the managing agents proposed works constitute improvements and that the charges they intend making are disproportionate to the work required, will such an appeal stall the Section 20 notice, which we were issued with on 2 December 2019?
When you refer to an appeal it you mean an actual application to the FTT, this can be made pursuant to S27A of the Landlord and Tenant Act 1985 as amended. Firstly, you need to ensure you have sufficient grounds to challenge the liability to pay towards the works. You mention they are improvements. You will need to see if on the face of it your lease allows the landlord to carry out improvements AND recover the cost from the leaseholders.



I also note you feel the costs are too high. Unfortunately, an application to the FTT will not have the power to suspend the S20 notice procedure. Therefore, the landlord will have a right to carry on. Of course, a sensible landlord will be advised to stop and await the outcome of the FTT.
You ask how long on average (if it's possible to determine) would an appeal to a FTT take?
This is difficult to say. It might be worth speaking to the FTT directly. I am not sure what their current turnaround time frame is. It could be several months as they will need to process the application first and potentially issue directions to both sides. This will be a list of conditions/requirements to be fulfilled. They may also want to carry out a site visit especially where works have begun to help assess the case.
You ask if you can commence an appeal to a FTT as a group even if it doesn't constitute a right to manage?
It is a good idea to make an application as a group as there is strength in numbers. You could set yourselves up as a residents' association. Various people can help with the application in terms of collating information and other evidence to support your case.

AGM in the garden

Q **We usually have our AGM in a local church hall. One of our committee members was keen to investigate having this in our garden to increase attendance. Where do we stand from a liability perspective? If someone has a trip, falls and hurts themselves while at the church, presumably this comes under their insurances/liability? If we do have the event on our grounds (with approval from the managing agent), do we need public liability insurance, risk assessments etc, or would this all be covered by the freeholder/managing agent insurances?**

A FPRA Chairman Bob Smytherman replies:
Changing venues for an AGM to increase attendance is a common issue facing our members. Providing a convenient and comfortable venue should be the main priority. If you decide to hold on your premises, such as a communal garden, I suggest asking the managing agent to carry out a

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risk assessment which would need to cover the issues you have raised.

Your estate should have Public Liability Insurance which should cover such issues as an AGM. The church hall should also have a P & L insurance which would cover you and the cost passed to you in the hire cost. The managing agent will be able to provide you a copy of your insurance for you to check the cover but £5m would be a usual cover for this.

Electric vehicle charging

Q **You had a newsletter article on the move to ultra-low emission vehicles and implications for leasehold properties. We have received a number of enquires as to what if anything is being done on our estate to address the issue and at this year's AGM a decision was taken to, in principle and depending upon cost, do a pilot study into the requirements looking at such issues as:**

Do we need to do anything as it may be cheap and easy enough to use public charging points or because Lithium ion batteries may be dead-end technology that will be superseded by fuel cell or hydrogen powered engines?

Is there currently a legal requirement to install EV stations or is there likely to be a requirement in say the next five years as we move towards the 2030 date or at a later date?

Going ahead is a chicken and egg issue. Nobody wants to invest too early, but if left too late may impact value of properties on the estate. At what point is the lack of EV charging points on the estate going to start affecting the saleability of properties on the estate?

Parking spaces on our estate are allocated not demised. How many would need to be installed? Every parking space/every visitors parking space/some visitors' parking spaces?

What are the available technologies?

Who needs to give approval? Freeholder/RMC/highways authority? Some of the estate allocated parking spaces are surrounded by adopted roads and pavements (don't ask why!)

If go-ahead is given, how should it be funded and what are the long term cost implications for maintenance and upgrade of systems?

Should electricity be charged at cost or at a premium until cost are recovered (financial model for the investment)?

We need to identify an organisation or company that is able to do such studies. Unfortunately, searching the internet has drawn a blank.

A FPRA Director Shaun O'Sullivan replies:

Even if you could find an organisation willing to undertake such a study (and I am not aware of any), I rather fear that in the current stage of development, so far as charging points for Electrified Vehicles (EVs) in existing leasehold developments is concerned, you would be wasting your members' money. The provision of charging points on the retained part of the property (ie that which has not been demised to leaseholders) would be considered an improvement/enhancement and very few leases (with the notable exception of some local authority leases) provide for improvements. I can see nothing in your lease which explicitly refers to improvements or enhancements. The inability to fund improvements is one of the central points made in the article to which you refer.

That said, there is something of a glimmer of hope in the guise of a consultation document issued by the Department of Transport in July 2019: *Electric Vehicle Charging in Residential and Non-Residential Buildings*. The outline proposals, if implemented, would, so far as new residential buildings are concerned, see charging points associated with any car parking space and cable routes for EVs being provided in residential buildings undergoing major renovation and with more than 10 parking spaces. What the consultation does not address is provision in existing residential leasehold developments. The FPRA response to this consultation can be found on the FPRA website and an article outlining the essence of the response was included in the Winter 2019 (Issue 131) of the newsletter.

My personal feeling is that the difficulties and complications of providing charging points in existing leasehold properties and, in particular and in consequence, the need to retrospectively change leases and leasehold law will prove too much of a challenge in the short term and I rather fear, as was indicated in the article to which you refer, that **existing** flat-dwellers will largely be reliant on public charging points. In my own area the local council have partnered with other London boroughs and are seeking nominations from residents with the aim of installing public points where they are most needed, and particularly in areas where there is a concentration of flats. This seems to have elicited a huge response and in my own small road alone there have been two areas nominated for lamppost charging points. As I suggested in my response to your earlier question and on the premise that existing leasehold property is unlikely to be addressed in the short term, I would encourage you to determine from your local authority their policy with regard to the provision of public charging points.

Estimated costs

Q **We have received a letter with regard to major works on the building that we were told were to be flooring and decorations to the communal areas of the block. The areas of concern are:**

1. They have estimated a cost. My understanding was in a Section 20 the costs could not be estimated, plus they have also given a contingency amount.

2. They are also saying they do not have the tenders in for the flooring.

3. Notwithstanding the above, they have already issued an invoice. My understanding was they could only do this after the consultation period and when all the tenders had been put in for the total amount.

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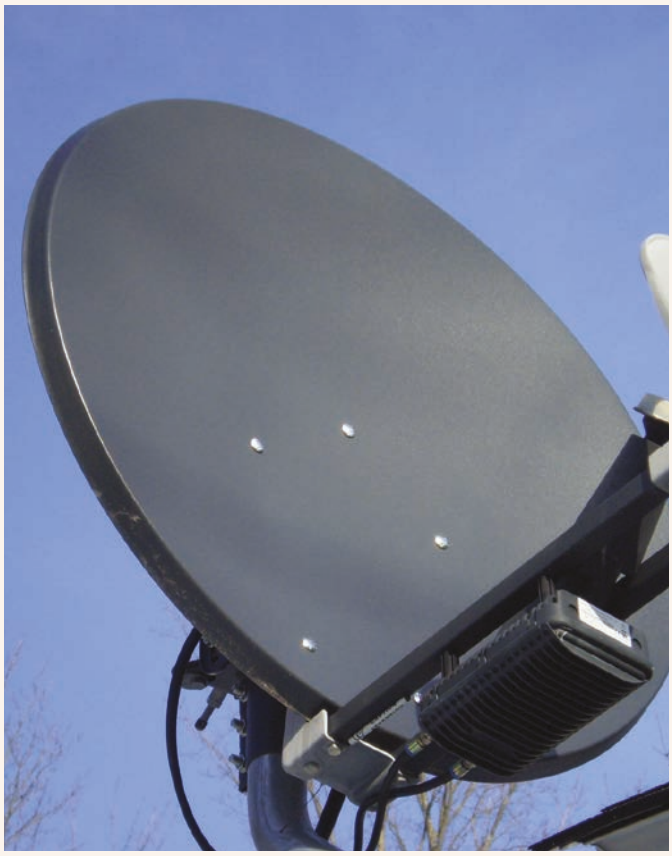
A FPRA Director Bob Slee replies:
My reading of the processes that your managing agents have followed suggests that they are compliant with the requirements of the Section 20 procedure. To take your areas of concern in turn:
1. The only estimated cost in the managing agents' calculations relates to the contingency element for minor works arising from the Fire Door Inspection. In Section 20 terms this would be regarded as separate work from the redecorating project and at £1,000 plus VAT would fall below the Section 20 threshold in its own right. It is relevant that the agents' supervision fee relates only to the redecorating project and not the additional minor works. It is perfectly reasonable therefore to estimate these costs and they have provided an assurance that adjustments will be made once the work has actually been completed. The amount included in the calculation for redecorating itself related to the lowest tender received. The final cost following the current phase of consultation can only therefore be higher in the very unlikely event that a majority of lessees insist that a contractor who has tendered with a higher quote than the lowest should be selected.
2. Again, in Section 20 terms, the floor covering project is separate from the redecorating project. Once the agents have received tenders for flooring (presumably from contractors other than the decorators who have bid to do the painting work) they will consult with lessees again specifically on that element. It should be noted that if the identified cost of the flooring is less than £250 per flat then the Section 20 procedures will not strictly be relevant to that element.
3. The invoice issued clearly relates only to those matters for which an appropriate stage in the section 20 procedure has been reached, ie the lowest tender in relation to redecorating plus the agents' supervision fee on that amount plus an element for minor works arising from the Fire Door Inspection which in any case falls outside of Section 20 procedures.

Can we say no?

Q **A resident has asked if he can have a separate satellite dish on his terrace/balcony. The purpose of this is to bypass our main tv/satellite system so that he can receive Sky Q (an add-on service offered by Sky TV) and in effect be independent of the main system. The company we are contracted to for tv/satellite services who own, supply, maintain and run the system for which we pay an annual fee are offering the Sky Q service to all residents for a one-off connection charge of £300. This has to be paid for individually because not all residents want the extra service, and we therefore cannot take it out of service charges. One resident to date has paid to have this connected through our contractors.**
The new request is solely so that the resident can avoid paying £300 as Sky have offered this to him free.
However, our concern is that if we allow one resident to do this then others may wish to do the same; but not everyone has a terrace, some only have balconies in full view of all. Because satellite dishes have to be positioned to receive the signal and need to be clear of any obstruction, it could mean that some dishes are installed on the wall either front or back of the building. We think this will look unsightly.
In addition, we believe our lease has specific conditions re what can be on terraces/balconies. We also voted unanimously as freeholders a year or so back that no new fixtures or additions would be allowed in communal areas, which is recorded in our AGM minutes.
We are not in favour of allowing a dish which would have to be fixed to the main wall of the building anywhere. We do not see the need for it as we have a central system which provides all of the tv/satellite to all residents, other than Sky Q, but this is also being offered as a separate add on. The main satellite dish is positioned out of sight on the roof of the building.
We have just paid a large amount to have our tv/satellite cables renewed because there was some deterioration and the cost of this renewal and the annual contract charge to the company to maintain the system is part of the service charge which all residents pay.
We want to say no to this request and are asking if we are able to do this.



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Looking Forward continued from page 5

Finally, the Commission is analysing responses to their Consultation Paper entitled *Reinvigorating Commonhold: the alternative to leasehold ownership* and also intend to publish their final report in Spring 2020.

The consultation paper included proposals to:

- permit commonhold to be used for larger, mixed-use developments accommodating not only residential properties but also shops, restaurants and leisure facilities
- allowing within commonhold shared ownership leases and other forms of affordable housing
- making it easier for existing leaseholders to convert to commonhold and gain greater control over their properties
- provide homeowners with greater input into how the costs of running the commonhold are met
- improving mortgage lenders' confidence in commonhold with a view to increasing the range of financing available for home buyers.

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A **FPRA Director Shula Rich replies:**

In my opinion you are able to say no if its attached to the outside of the building and you have very good reasons – which you have.

However, if it is inside the balcony and the balcony is part of the lessees' demise and it is not attached to the exterior, then you might have more difficulty trying to prevent it. You can see if it's their demise by looking at the red line in the lease plan. Is it outside or inside the balcony?

I hope this helps, and that there is no dispute. I suggest you try the first approach, giving your reasons which I list below:

1. Satellite dishes have to be positioned to receive the signal and need to be clear of any obstruction. It could mean that some dishes are installed on the wall either front or back of the building. This will look unsightly.

2. We also voted unanimously as freeholders in..... that no new fixtures or additions would be allowed in communal areas, which is recorded in our AGM minutes.

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.

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'Thank you for helping us set up our residents' association. We are making good progress and we appreciate your help and advice.'

'I am the administrator for two blocks of flats – in total 124 flats. I have used FPRA for advice on a number of occasions and they have been so helpful every time, providing detailed guidance/a way forward with my queries. Marvellous office and all volunteers. Thank you very much.'

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