AQD

Published by

January 2012 Issue 58

The newsletter of the Association of Residential Managing Agents

FAREWELL DAVID

David Hewett retires after 15 years as ARMA's CEO

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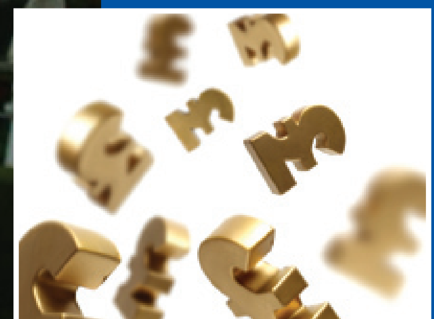

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20th YEAR

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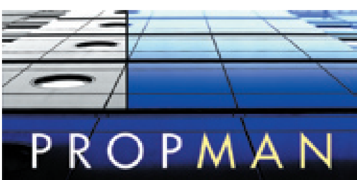

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CHAIRMAN'S NEW YEAR MESSAGE

Firstly may I wish you all a very Happy New Year as we go into 2012 which will be a year of great change for ARMA. There is so much happening at the moment I am not sure where to start. My saddest task is to bid farewell to David Hewett who is leaving ARMA after 15 years as its Chief Executive. David sends you his own message elsewhere in this issue but I wish to add my own thanks to him, echoed by all the other members of Council past and present, for everything he has brought to ARMA to make it the organisation it is today. We have all benefited from his tireless work for ARMA and for our sector and I give a heartfelt "Thank you" to him upon his retirement. We were all so saddened to learn of David's partner, Ann Garland's untimely death in November but despite this David is giving his wholehearted support in this time of transition to the new chief executive which I believe shows the true mark of the man.

David Hewett's departure leaves a large gap in ARMA to fill but I am delighted to welcome Michelle Banks to the role of Chief Executive Officer which she will assume in February. Michelle makes her own remarks elsewhere in this issue and I believe she will bring to ARMA the dedication and skill necessary for the challenges of the next five years and in particular the implementation of the ARMA-Q project, our working title for the long awaited, enhanced self-regulatory regime which has been much discussed in these pages. Michelle's experience in the civil-service, bringing difficult projects from inception to completion, will be invaluable if we are to offer you, our members, a regime that will demonstrate to both your clients and customers a true professional service.

Also in this issue we look forward to another successful year for ARMA and I hope to meet some of you at the regional briefings to be held in May and June and the AGM and Conference in October. I hope you are all taking advantage of the many services offered by ARMA including of course the guidance notes covering a wide range of topics relevant to everyone involved in flat management.

ARMA could not function without the tireless work of its Secretariat and I would like to thank Geraldine, John, Yen, Tim, Laura and Susannah who never cease to amaze me with their enthusiasm and dedication.

I started my second and final year as Chairman last November and cannot believe how quickly the time has gone. There is a great deal of change at the moment but ARMA, with its core values and beliefs intact, will go on working for the benefit of its members and their customers and clients (the lessees) into the future and I am very proud to be involved with such a progressive and dynamic organisation.

Peter Dening FRICS FIRPM
Chairman

2012 DIARY DATES

JANUARY

25th – RICS Residential Essentials Roadshow, Leeds (a comprehensive insight into the RICS Blue Book)
31st - RICS Residential Essentials Roadshow, Cardiff (a comprehensive insight into the RICS Blue Book)

FEBRUARY

1st - RICS Residential Essentials Roadshow, Cambridge (a comprehensive insight into the RICS Blue Book)
7th - RICS Residential Essentials Roadshow, Manchester (a comprehensive insight into the RICS Blue Book)
9th - RICS Residential Essentials Roadshow, Birmingham (a comprehensive insight into the RICS Blue Book)
14th – ARMA Training Course: Residential Service Charge Accounts Guidance (Revised), London
15th – ARMA Practice Committee and Council Meetings, London
22nd - RICS Residential Essentials Roadshow, London (a comprehensive insight into the RICS Blue Book)
28th – ARMA Training Course: Residential Service Charge Accounts Guidance (Revised), Manchester

MARCH

6th – ARMA Training Course: Residential Service Charge Accounts Guidance (Revised), Birmingham
7th – ARMA Training Course: The Procedure and Technicalities of Section 20, London
8th & 9th – ARMA Training Course: Understanding Residential Property Management, London
13th – ARMA Training Course: Introduction to Residential Property Management, Birmingham
16th – ARMA Training Course: Introduction to Residential Property Management, London
28th – ARMA Training Course: Interpreting and Understanding the Implications of Lease Clauses, London
29th – ARMA Training Course: Right to Manage – The Practicalities, London

APRIL

3rd – ARMA Training Course: Residential Service Charge Accounts Guidance (Revised), London
17th – ARMA Training Course: Reading and Interpreting Articles of Associations for RMCs/RTMs, London

DO YOU HAVE PROFESSIONAL ETHICS?

Property Management is, by its very nature, an extremely diverse profession and those who have chosen to follow this path should fully understand the complexities and law that is involved. To some, much of the work may seem to be drudgery, including perhaps dealing with complaining lessees or clients. The IRPM exams may seem daunting to many, but only through professional bodies will further proper regulation be imposed to the benefit of all, both in and out of the profession and perhaps a better understanding by the general public who are increasingly becoming clients through their role as directors of management or right to manage companies.

In amongst all this turmoil, like any member of the IRPM, I decided, albeit with some trepidation, to follow the route to becoming an Associate of the RICS, the pinnacle of surveying professionals with worldwide recognition.

As an MIRPM the stages are quite straightforward and you will be given clear instructions on what to do, one of which is to successfully complete the Professional Ethics module online.

The website is easy to follow and there are no time constraints. After an introduction, there are six case studies that you may study in your own time which incorporate the RICS Ethical Standards, following which you will be given a summary of each case.

Once completed you may progress to take the Ethics Test and once submitted, you will receive the result within a few seconds. Should you be unsuccessful you will be able to retake the Test within 24 hours.

The process, and especially the learning modules, are as you would expect from the RICS, quite thought provoking and inspiring to the point where you are more than likely to reflect on anything you are doing during your usual working day and consider the Ethical solution befitting an RICS member.

Study is always worthwhile and brings rewards. You will have worked hard to attain your MIRPM so don't let this opportunity slip you by to become an AssocRICS.

John Thwaites MIRPM AssocRICS
HML Hathaways

ARMA APPOINTS NEW TECHNICAL OFFICER

ARMA has appointed a new Technical Officer to join the secretariat team at Battersea Park Road. Helen Christie, who has been running ARMA training courses and has served on Council and the Technical Committee, joins ARMA with experience as Head of Estate Management at Trinity Estates and Associate Director of Harrods Estates. Helen will be working alongside Geraldine Shortall and John Mills in the Technical department. You can email Helen on helen@arma.org.uk.

Remember, as members you can call the office at any time for technical advice over the phone on 020 7978 2609 or use the dedicated members email address: member_enquiries@arma.org.uk. For health and safety advice, please email the helpline healthandsafety@arma.org.uk and your query will be passed on to ARMA's health and safety consultant Rob Lane. And don't forget your answer could lie in one of nearly 100 guidance notes available to download from the members only area (MOA) of the ARMA website!

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2012 REGIONAL BRIEFINGS ANNOUNCED!

Dates and venues for this year's Regional Briefings have now been set. Full programmes and booking details will follow soon so please keep your eyes on the members circulars but in the meanwhile put these in your diary…

Northern Briefing: 16th May, Manchester
Midlands Briefing: 22nd May, Birmingham
South West Briefing: 30th May, Exeter
Southern Briefing: 13th June, Southampton
London Briefings: 20th & 27th June

MEMBERSHIP MATTERS

The following have been welcomed into Corporate Membership since the last issue:

- Alliance Managing Agents Ltd
- Canbury Management Ltd
- Casserly Property Management
- CPBigwood
- CS2 Residential Management LLP
- Managed Living Partnerships Ltd
- Marr-Johnson Stevens LLP
- Red Rock Estate & Property Management Ltd

The following have been welcomed as Affiliates:

- Caledonian Residents Management Limited
- Hallmark Utility Management Solutions
- Harris Associates
- Littlejohn LLP
- SL Property Consultants Ltd
- Thackray Williams LLP
- Westbury Residential Ltd
- UK Car Park Management Ltd

The following have resigned from Corporate Membership:

- Andrew Louis Property Management Ltd (did not join an Ombudsman)
- Homecare Property Management (merged with Hamilton Townsend)
- MITIE Scotgate Ltd (no longer involved in property management)
- Now Professional Property Management (no longer involved in property management)
- Port Hall Property Management Ltd (merged with Peter Overill Associates)
- Saxons Estate Agents (did not return membership renewal paperwork)

The following have resigned from Affiliate status:

- Temples Block Management
- Towergate Risk Solutions
- Viridian Housing

Disciplinary report:

Walton & Allen have been severely admonished and costs levied for breach of Bye-Law 3.5 and their resignation has been accepted.

OM PROPERTY MANAGEMENT WIN ARMA INNOVATION AWARD

Congratulations to OM Property Management who won this year's ARMA Innovation Award. From entries received, the independent judges Jeff Platt CEO of the IRPM, David Dalby professional groups director at RICS and David Salusbury executive chairman of the National Landlords Association were impressed by their web-based solution to enhance customer communications by providing an online view of when maintenance works will take place at each of its developments in real time. Lee Middleburgh, MD of OM Property Management, collected the prize of £500 to their chosen charity Keech Hospice Care at the Conference in October. For more on the conference turn to page 12.

CIRCULAR SNAPSHOTS

Recent top stories from the members circulars…

ARMA AGREES DISCONNECTION PROTOCOL WITH ENERGY COMPANIES

ARMA has finally reached a major agreement with the big six energy companies to protect leaseholders from power disconnections to the common areas of their property.

Circular: 223

FREQUENCY OF RISK ASSESSMENTS

There is a legal requirement to ensure that once the initial Health, Safety and Fire risk assessment of a block(s) has been completed you are required to ensure that all such risk assessments are subject to regular review. However, less frequent formal reviews are acceptable if there is close management control of the common parts.

Circular: 221

ACCOUNTING FOR SERVICE CHARGES GUIDANCE ISSUED

Joint guidance on best practice for accounting for service charges from ARMA, ICAEW, ACCA & RICS has now been published. This is a key document for managers and reporting accountants.

Circular: 215

EPC CHANGES ANNOUNCED

Energy Performance Certificate (EPC) will change from April 2012. The new document is thought to be a significant improvement on the current version and includes more graphics, improved spacing and less irrelevant text.

Circular: 215

NO HUMAN RIGHT TO A SATELLITE DISH

Contrary to lots of strange reporting in the press, the Equality and Human Rights Commission has confirmed that there is no human right for anyone to have a satellite dish.

Circular: 213

A FAREWELL TO SO MUCH

David Hewett FCA FRICS FIRPM - Chief Executive

At last year's Conference I said my farewells to the sector as a whole. Now as I finally approach retirement after 15 ½ years as ARMA's chief executive I want to say a special, personal farewell to you the members.

As you will read elsewhere in this issue of the AQD, my successor, Michelle Banks, takes over the helm on 6th February. I will continue, for a while, in the background to ensure as smooth a handover as possible but my 'public' role will cease. I am sure you will all join me in welcoming Michelle and will give her the same magnificent support you have given me over the years.

So much has happened over ARMA's 21 years that it would be impossible for me to look back in any detail on what has been achieved by the Association without writing a tome. That being said, in the box below I have listed some of the key moments in ARMA's history so far.

What I do want to say is how proud I have been to serve the membership during my term in office and I can genuinely state that it has been an experience of a lifetime - it is a fine way to finish the 47 years of my working life.

There have been so many highs sometimes balanced with a number of frustrations. Not least of these is the current government's decision not to introduce statutory regulation of the whole residential leasehold sector. That being said I am sure, with your support, your Association can fill the void through the effective implementation of the 'ARMA-Q' project.

There have naturally been some lows, for example when a member has failed to deliver the professional service that their client and customers (the lessees) have a right to expect. And it is not comforting to see some new entrants come into the sector (not members) who are 'abusing' the system for commercial gain.

They say that behind every good man there is an even better woman and in my case this is more than true. Ann Garland, my partner for over 27 years, gave me unstinting support and help in my role as chief executive. Sadly Ann died suddenly in November after a short illness so will not be able to experience the long awaited fruits of retirement.

Ann, along with myself, believed passionately in ARMA and the Institute of Residential Property Management (IRPM). What more can I say than quote part of her obituary, written by Jeff Platt who is CEO of the IRPM, recently published by the Institute:

"Ann ran the secretariat for the IRPM from its inception until her retirement in 2009. The IRPM would not be in anywhere near its current position without Ann as a driving force and her huge contributions over our first 8 years.

"I am pleased to have been able to call Ann a friend as well as a colleague. She will be hugely missed by all who knew her but the IRPM's continued success will forever be a testimony to her achievements".

Finally, I must thank all the chairmen and Council members I have served under and all those who have and do work on the various committees – they are all volunteers giving of their time for free and all have made my job so much easier.

And to you the members, if you want to provide me with a legacy then work hard on making leasehold management a truly recognised profession alongside accountants and lawyers.

KEY DATES IN ARMA'S HISTORY

1991 - ARMA formed by a group of chartered surveyors involved in block management

1993 - Leasehold Reform, Housing and Urban Development Act which boosts membership

1996 - Housing Act which boosts membership
- ARMA's first annual conference sells out with 80+ delegates
- David Hewett appointed Chief Executive

2000 - Corporate Membership passes the 100 mark

2002 - Commonhold and Leasehold Reform Act which boosts membership
- In depth technical support for members introduced
- ARMA forms the Institute of Residential Property Management (IRPM)

GREETINGS FROM THE NEW CEO – MICHELLE BANKS

I am delighted to be joining ARMA at this important point in the Association's progress. Clearly David Hewett will be a very hard act to follow, but I am very much looking forward to the challenge and to working with your chairman Peter Dening and the rest of the Council, as well as with the secretariat and you the members.

I come to ARMA from a lengthy career in the civil service, which I joined after graduating from Oxford university with a degree in geography. During this time I have worked in a wide variety of policy sectors, most recently in housing and planning. My expertise lies in developing policy and strategies for change, from start to finish. In my most recent position, I initiated a major independent review of the planning application system, the recommendations of which were accepted as a blue-print for change. My team has been responsible for bringing these changes to fruition, to reduce the complexity of the current system.

I believe that my understanding of government policy development and of the expectations that Ministers have of external partners such as ARMA, will be valuable in charting a way forward as our Association expands its activities and influence. I am also accustomed to dealing with complex legislation, at both development and implementation stages, which I think will be relevant in helping ARMA respond to the current legislative and policy climate and in developing its own role.

I plan to get to grips rapidly with the issues that ARMA is facing, particularly the development of an enhanced self-regulatory role and a five year plan to put this into effect. My aim is to build on the excellent foundation provided by the existing organisation. My approach is open and collaborative and I am looking forward to establishing constructive working relationships with the council and membership and with external bodies. I hope to meet as many members as possible at the Regional Briefing events to be held around the country in the Spring and I look forward to the AGM and conference in October, as I know that the secretariat is working to ensure that this year's conference will be special, marking 21 years since ARMA was established.

I realise that there is a great deal to learn about the residential leasehold management sector and, I am keen to tap in to members' views, particularly during this opening phase of my tenure. Please feel free to contact me on my appointment, by phone (020 7622 6123) or e-mail (michelle@arma.org.uk) if there is anything that you want to put to me directly.

I am lucky to be inheriting very effective secretariat and technical staff, and David has been hugely helpful in organising our handover. I am grateful for the support that they have already given to me and will no doubt continue to provide. All that remains is for me to acknowledge and accept the "duty of care" that David has placed on me; to make sure that ARMA, that he is so proud of, flourishes and grows from the strong foundation that he has established.

[Michelle commences her post as CEO of ARMA on 6th February]

2003 - First bespoke training courses developed

2004 - ARMA incorporates

2007 - The construction of new leasehold flats hits 80,000+ pa

2008 - Corporate membership hits the 200 mark

2009 - It becomes mandatory for ARMA members to belong to a recognised ombudsman scheme

2011
- ARMA's 16th annual conference sells out with 500+ delegates
- David Hewett formally announces his retirement
- Membership exceeds 260 firms managing some 900,000 units in more than 34,000 blocks
- Over 40 bespoke training courses available
- The IRPM exceeds 2000 individual members
- The RICS introduces AssocRICS for block managers

LESSEES WANT SOLAR PANELS?

Yashmin Mistry and *Julian Davies* shine some light on the topic

Over the last few months we have seen an increase in enquiries from RTM Directors and Management Companies requesting information on the practicalities of installing solar panels on residential blocks.

Solar photovoltaic (PV) panels can offer a reduction in electricity prices and income can be generated through the tax-free government subsidy (Feed in Tariff or FiT).

Landlords/Freeholders and leaseholders can benefit by having solar generated electricity; it can be used to power the electricity serving communal areas and as a potential source of income by feeding unused electricity into the grid, although news at the end of October of a proposed reduction in the FiT may render the financial incentive for installing panels less attractive.

Aside from the capital expenditure, the main installation issues with installing solar panels in a residential block, as opposed to an individual domestic dwelling, are that of design and technicality and also the legal implications under the lease.

THE BUILDING SURVEYORS PERSPECTIVE – *BY JULIAN DAVIES OF EARL KENDRICK ASSOCIATES*

PLANNING PERMISSION

With important exceptions, installing solar panels to the roof of a dwelling house is considered 'permitted development' under planning law with no requirement to apply for planning permission. Installing panels on residential blocks will usually require planning permission, although amendments that are currently being considered to planning policy (due early December) will include "blocks of flats" under permitted development rights.

Planning permission is partly concerned with the visual impact of the PV installations. The following basic rules apply to fitting PV panels on buildings:

- The installation should minimise the effect on the appearance of the building, and the effect on the amenity of the building
- They should be removed when no longer required for micro-generation.
- Panels should not be installed above the ridgeline or project no more than 200mm from the roof.
- If the property is a listed building, installation is likely to require an application for listed building consent even where planning permission is not needed.
- Generally, conservation areas require that PV panels are installed where not visible from the main aspect i.e. rear slope of roof, although flat roofs are an exception requiring further consideration.

BUILDING REGULATIONS

The installation of solar panels primarily falls within the category "Installation of a controlled service of Fitting" and will also involve a "Material Alteration" for the structural element.

The predominant effect of installing panels is an increase in dead load of around 15% and the ability of the existing roof to carry the load (weight) of the new panels will need to be assessed by a structural engineer and proven. Strengthening works may be needed, particularly on older roofs of traditional cut-roof construction.

The panels will also need to be fitted securely to prevent wind uplift. The electrical works will also be covered under Part P.

ROOF PENETRATION

On pitched roofs the tiles or slates are removed at approximately one metre intervals, hooks are attached to the roof beams, the tiles or slates are replaced, the mounting system which look like railway lines are then fitted to the roof and the panels are fixed to the mounting system.

On flat roofs this is more of an issue. The solutions available for large-scale commercial flat roofs are often too expensive for smaller/domestic flat roofs, but here it is possible to purchase specially-built troughs that can be filled with ballast, onto which the solar panels are fixed, and these are stable enough not to require roof penetration.

It is recommended that the building's insurance company are informed of the fitting of solar PV panels.

ONGOING MAINTENANCE

Solar panels usually come with a 25-year warranty. The ongoing maintenance costs are low, but will need to include for annual checks and cleaning. The inverter will need to be changed before 25 years.

It is important to consider the life expectancy of the roof coverings over which the panels may be installed. It may be uneconomic to install panels now only for the roof to require replacing in the short-mid term.

If you are installing a new roof but have not yet considered the installation of solar panels, consideration could be given to "designing-in" suitable supports/mounts to accommodate solar panels in the future and to prevent any alterations to the roof at a later date.

It is important to check that any guarantees for the existing roof weatherings will not be adversely affected by the installation of the panel.

Consideration should also be given to installing panels in areas that will not affect access for maintenance, such as the areas that may be needed to support scaffolding (for example to access chimney areas).

Safe access will also need to be provided for maintenance, which may require alterations to or installation of new roof safety systems such as handrails.

THE SOLICITORS PERSPECTIVE – *YASHMIN MISTRY OF JPC LAW.*

FLAT RESPONSIBILITY V BLOCK RESPONSIBILITY

One must first and foremost always consider the provisions of the lease. Most solar panel installations will be installed on the roof of the block. It is therefore important to identify which party, under the lease, is responsible for maintenance of which parts of the block.

IMPROVEMENTS

Whilst most leases permit a landlord to recover a service charge cost for repairs done to the block, it is somewhat more unusual for leases to allow for the recovery of costs for works that go beyond a mere repair and would instead be classed as "improvements".

Through the considerable body of case law the courts have emphasised that there is no single test to determine whether particular works are improvements or repairs.

The most useful guideline is the question: "*is the repair so radical and extravagant as to amount to creating a new thing in place of what was there and not a mere replacement?*" (Minja Properties Limited v Cussins Property Group [1998] 2 EGLR 52, HC per Harman J)

From the above it would seem likely that the courts/tribunals would hold a new installation of solar panels to be works of "improvements". This is of course subject to what the lease specifically states.

ON-GOING MAINTENANCE RESPONSIBILITIES

Another important thing to remember is responsibility for on-going maintenance. Which party to the lease will be responsible for the maintenance of the installation, cables etc once completed? It is highly unlikely that the lease as currently drafted will incorporate such provisions and again, lease variations may need to be considered prior to installation. In addition, the installation is likely to be connected to the mains and cables will need to be run around the development. Does the lease contain rights and reservation for the running of such cables?

RESERVE FUND

Consideration must also be given to the Reserve Fund. Invariably leaseholders would pursue the installation on the basis that any "returns" will in time help baluster the Reserve Fund. The lease will need to be checked to see (i) whether it contains provision for a Reserve Fund in the first instance and (ii) whether, which is unlikely, the Reserve Fund permits such "returns" to be placed into such a Fund.

HEALTH WARNING! LEASE IS KING!

Whilst the idea of solar panel installations may sound attractive to leaseholders due to the potential "returns", given the above legal consideration, the actual process may not be so simple and straightforward; deeds of variations may need to be considered prior to embarking upon the installation project. Either way, before commencing works for the installation of solar panelling, as far as possible specialist legal advice should always be taken on the terms of the lease for the block.

Julian Davies runs Earl Kendrick Associates, a firm of charted building surveyors specialising in the residential block sector. Tel: 0207 284 1438 or email: julian@earlkendrick.com

Yashmin Mistry is Partner at JPC Law, Omni House, 252 Belsize Road, London, NW6 4BT; Tel: 0207 625 4424 or email: YMistry@jpclaw.co.uk

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THE GARSIDE DECISION AND RESERVE FUNDS

Bruce Maunder Taylor, member of ARMA's Council, gives his views on the recent Upper Chamber (Lands Tribunal) decision that could profoundly affect the way in which money is collected to carry out major works.

Frognal Estate comprises 54 flats which had been neglected for decades. Local Authority Enforcement Notices had been served, insurance cover had been limited and there had been a history of multiple litigation. A Manager was appointed in mid 2009 to restore reasonable management and reasonable repair. Some work was deferred (e.g. 4 lifts had been decommissioned and their shafts boarded up) but a specification of works was prepared for what the manager considered to be the important work needing immediate attention. The cost was £630,000. The money was demanded. There were those people who were pleased that the work was proceeding and paid, there were those who would not, or could not, pay. In recovery actions for those in arrears, it was necessary to obtain a determination of reasonableness and payability from the LVT. That was obtained but some lessees objected on the grounds that their inability to pay in one year was an aspect of reasonableness which the LVT should take into account, and suggested that the work should be spread over 5 years but gave no evidence as to how that might be achieved. The LVT doubted that it had the jurisdiction to consider the question of impecuniosity and the objecting lessees appealed.

The Upper Chamber asked if the Management Order contained reserve fund provisions. Yes. The decision was, effectively, that the personal impecuniosity of a lessee is not an aspect of reasonableness, but if the cost has not been spread over a few years by using the reserve fund, that is an aspect of reasonableness on which the objecting lessees were entitled to rely. The Upper Chamber was only concerned with the principle: the actual works at Frognal Estate is a question for the LVT to whom the detailed issues must return. The Upper Chamber had looked at the previous years' service charge expenditure and passed a comment to the effect that the object of a reserve fund is to even out expenditure rather than impose a large obligation to pay in one financial year.

So, where will the threats come from? Confrontational lessees who want an excuse not to pay, clients who feel that the managing agent has not properly advised them about this, Tribunals who are not satisfied that long term maintenance plans have been adequately prepared and costings spread over a few years. This decision has the capacity to cause major problems for any major works which have not been properly programmed and provided for. Merely relying on the statutory consultation process under Section 20 which requires only a few months'

This decision has the capacity to cause major problems for any major works which have not been properly programmed and provided for.

notification is not going to be sufficient.

No matter whether the leases of a block of flats have reserve fund provisions or not, managing agents are going to have to develop a credible long term maintenance plan with some estimate of costings. If the leases have a reserve fund provision, then that will have to be properly operated so that funds for forthcoming major works are collected over a few years and not demanded in one lump sum. If there is no reserve provision, lessees will still claim that they should have been notified to give them the opportunity to save the money over a few years (whether you believe that or not!). Those blocks without provision for reserve funds may decide that it is now appropriate to apply to the LVT to vary the leases (Sections 35/37 of the 1987 Act) so that there is a reserve fund provision for the future.

From the managing agents' point of view, I guess we will all now identify those blocks which have reserve fund provisions and those which do not (if not already recorded). If no reserve fund in the lease, I suggest that managing agents will write to their clients advising them of this Upper Tribunal decision, the effect of it and proposed action. Planned maintenance programmes over, say, 10 years will be checked and tightened up. Letters of advice will go to our clients.

To anybody not involved in block management, that sounds straight forward, easy, no trouble: go and do it. For those of us closely involved with block management, we know that in many blocks that just is not going to happen for a variety of reasons. Lessees just do not accept that they should pay their liquid cash into the managing agents' bank account to sit there for a few years until the managing agent might get on and do the major works. There are far more important things in their life which require their cash resources.

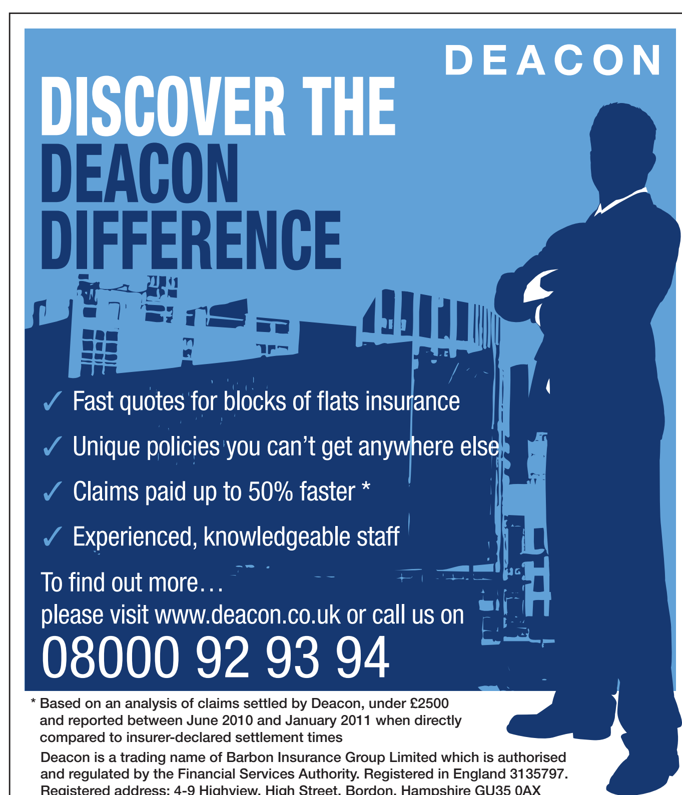
Let us put the blocks of flats with trusting and compliant leaseholders on one side, and concentrate on the difficult blocks where we will be meeting resistance.

Our long term maintenance plan will be critically analysed. Let's face it, we may have reasonably stable building costs at the moment, nobody expects that to last indefinitely, future inflationary risks are a real worry. It would be prudent to have a meeting of the lessees, put the plan to that meeting, and keep accurate records of the views expressed and any majority view which emerges. Those minutes will be a valuable piece of evidence at any subsequent Tribunal hearing. What I suggest is likely to develop is a system by which the reserve fund monies are demanded in a manner which would satisfy a Tribunal's scrutiny of this point but, how the managing agent demands the money, and how he collects the money may be different. There are likely to be a significant number of blocks in which, as long as the lessees pay all other service charges due, no recovery action will be taken for the reserve fund monies by agreement. If a lessee sells, the unpaid reserve fund demands will probably be paid at the time of sale. If a lessee does not even pay the ordinary service charges, recovery action will probably cover all monies demanded, including the reserve fund monies.

Deals will be done. Of course there will be claims of unfairness. Those who pay when the demands come in will resent what they see as soft option deals with those lessees who refuse to pay until the work is definitely programmed to proceed and the cost known.

Solicitors making pre-contract enquiries will ask more searching questions, managing agents will develop ways of covering their replies with disclaimers and, when major works turn out to cost far more than was expected, there will be claims against the managing agent before the ombudsman.

We are all going to have to work out strategies and procedures for getting it right, maintaining good relationships as best we can, and protecting ourselves from future negligence claims when the actual works turn out to be a lot more than we advised. It is inevitable that a few managing agents will find themselves on the wrong end of an adverse Tribunal determination. ARMA Techcom will be checking their existing Guidance Notes, revising some, and possibly drawing up one or two new ones.



NOT JUST ANOTHER CONFERENCE!

ARMA's 16th Annual Conference was one of milestones and major announcements. Some of the most important initiatives in the Association's history were outlined. It was also the fastest selling ever with all tickets going in a record four weeks!

The AGM and members dinner were held the night before the Conference itself. The former being a good opportunity for the membership to have their say on how the Association is run, the latter providing the ideal environment for some relaxed networking.

At the AGM, members voted Helen Christie of Harrods Estates and Jane Forsyth of The Flat Managers onto Council and Neil Maloney of My Home Surveyor was subsequently coopted. Then, following the official business, members were given an informrative presentation by Martin Perry of West of England Estate Management Co. who is chair of ARMA's Technical Committee. Martin gave an insight to the workings and importance of the Committee which is responsible for writing Guidance Notes, providing the most up to date technical information to members and identifying specific topics for training courses. This was followed by an indepth insight into online reputation management by specialist consultant Sholto Ramsay – online reputation is something that is becoming more and more important; an issue that is clearly needing to be addressed by members in the future.

Into more informal settings, the members dinner, sponsored by Deacon Insurance, then got underway giving those attending a whole evening to relax with their colleagues and make new connections. Magicians Nic Einhorn and Richard Pinner have become a traditional part of the event over the years and this year they were on particular form with their gripping table magic and superb after dinner cabaret. To add further excitement there was the ARMA prize draw and Decaon raffle in aid of the New Forest Nightstop charity. Congratulations to Noella Moreton of ARIM Ltd who won the ARMA prize draw of a free ARMA training course and to Alan Walker, Oliver Quarrell (Banner Property Services Ltd) and Neil Gregory (Western Permanent Property) who scooped the Deacon prizes. Through members' generosity that night Deacon were able to raise nearly £500 for New Forest Nightstop.

The ARMA Conference always has a firm focus on raising standards and bringing members the most up to date information to enable them to deliver them; this year it focused even more on making life better for people living in blocks of flats.

Baroness Dianne Hayter of Kentish Town, a well known consumer champion and expert in property matters gave the keynote speech at the Conference by delivering the results of her independent review of ARMA's regulatory processes. She had been asked by ARMA's council to do this so the Association can best position itself to fill the gap left by the coalition deciding not to proceed with statutory regulation of the sector and to move leasehold management into even more of a profession driven by quality standards. The major element of her report was the recommendation that ARMA separates its regulatory and representative roles - project name, "ARMA Q". This is something ARMA's executive committee will be working on over the coming year in conjunction with the new chief executive and the membership will be kept fully informed as to its development.

ARMA's CEO David Hewett followed Dianne by addressing some of the practical implications of ARMA-Q and the form it is likely to take. David concluded by formally announcing his retirement as CEO of ARMA after 15 years. Delegates showed their appreciation of David's dedication to ARMA and his tireless work in growing the Association into the thriving and important organisation it is today with a sustained applause.

Carrying on the theme of professionalism, David Dalby, Group Director at the RICS outlined the importance of the new AssocRICS qualification in block management and the revision of the RICS Blue Book that underpins it.

New Council Member Jane Forsyth followed with a clear technical and legal update. The importance of this session cannot be underestimated in terms of equipping property managers with the most up to date knowledge: Fire Safety, disability adaptations for common parts, electrical safety, the Green Deal and utility disconnections were just some of the topics covered by Jane.

Sticking very much with the theme of raising standards, Andrew Bond of Nexia Smith and Williamson updated delegates on the ICAEW Tech 03/11 document on service charge accounting and what it contains. Andrew chaired the joint working group made up of the accountancy bodies, ARMA and RICS that produced the best practice guidance and the final edition was published just a few days after the Conference. This could be some of the most important guidance the leasehold sector has had for sometime on the preparation and presentation of service charge accounts, given the current government's decision not to introduce the relevant legislation in this area under CLRA 2002.

Encouraging professionalism and high standards is not just about educating frontline staff; it is also about listening to the needs of the client and especially the customer. Alan Walker, an RMC Director, was given the opportunity to put his views on managing agents directly to the delegates through a personal interview with the moderator, Martin Roberts. The information he imparted was as invaluable as it was entertaining and the session gave everyone plenty to take away to help improve their client and customer interactions.

Often in the leasehold sector a piece of legislation comes along that indirectly affects leaseholders and practitioners. The latest is the Freedoms Bill which is going to outlaw clamping and towing away of illegally parked vehicles on private land. The implications of this on leaseholders and managing agents are massive, meaning car owners will practically be able park where they like on private land without effective means of controlling this. Patrick Troy who is CEO of the British Parking Association spoke about the contents of the Bill and what it will mean for property managers.

One of the highlights of the day was a live LVT cross examination. Barrister Justin Bates demonstrated to delegates how they should conduct themselves during an LVT hearing and what pitfalls to avoid. A couple of excellent actors played the roles of good and poor property managers during an LVT case and Justin cross examined both of them, stopping the action every now and again to explain what was going wrong or what was positive about the property managers' conduct.

Lead Ombudsman of Ombudsman Services Property (OS:P), Gillian Fleming, took the penultimate session to review the number and types of cases the OS:P have dealt with since it has been a requirement for ARMA members to belong to a recognised ombudsman scheme.

Finally the day was rounded off with a panel session tackling some of the burning issues affecting the sector balancing the opinions of property managers Ben Jordan of Premier Estates and Sue Petri of Mainstay, RMC Director Alan Walker, Tony Essien CEO of LEASE and barrister Justin Bates.

The 2011 Conference was certainly a defining one. It was a Conference where a clear vision for ARMA's future was set out and the first steps were taken; a future driven by high standards, quality practitioners and unwavering professionalism.

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LVT CASE ROUND UP

ACCOUNTANT'S FEES DISALLOWED IF THE LEASE IS NOT CLEAR

This is the case Rettke-Grover v Needleman 2010, case number LRX 59 2010.

The lease required the lessee to pay a service charge for a list of covenants that the landlord would perform plus a management fee of 15% of costs. The lessee challenged amongst other things the cost incurred by the landlord in engaging an accountant to prepare and certify the accounts as required by the lease . The landlord argued that the cost was covered by a covenant that was a sweeping up clause as follows: "any other services and … any other works of whatever nature as the lessor may from time to time deem necessary…"

The LVT allowed the cost and the lessee appealed to the Lands Tribunal.

The LT disallowed the cost. The lease did not envisage that there would be a separate fee for the accountant; that was intended to be a part of the management fee. The sweeping up clause was not sufficient because it referred to services enjoyed by lessees; dealing with the landlord's accounting problems was not such a service.

HIGH COURT ORDERS COSTS OF ACTION TO RECOVER SERVICE CHARGES AGAINST LESSEES

This case gives more hope to those who seek their costs against lessees who refuse to pay service charges unreasonably. The case is Freeholders of 69 Marina, St Leonards-on-Sea v John Oram & Mohammed Ghoorun [2011] EWCA Civ 1258.

The lease contained a very common clause about the costs of legal action against a particular lessees as follows:

Clause 3(12) "To pay all expenses including solicitors' costs and surveyors' fees incurred by the Landlord incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925 or incurred in or in contemplation of proceedings under Section 146 or 147 of the Act notwithstanding in any such case forfeiture is avoided otherwise than by relief granted by the Court and to pay all expenses including solicitors' costs and surveyors' fees incurred by the Landlord of and incidental to the service of all notices and schedules relating to wants of repair of the premises whether the same be served during or after the expiration or sooner determination of the term hereby granted (but relating in all cases to such wants of repair that accrued not later than the expiration or sooner determination of the said term as aforesaid)."

The freehold in this block was owned by 4 of the 6 lessees in the block. Major roof repairs were needed costing over £19,000. The two lessees who were not freeholders refused to pay and went to the LVT. The LVT allowed the costs of the repairs but made no decision on associated costs of recovery. The two lessees still did not pay in full and so the freeholders went to the county court for full payment plus costs.

The county court found in favour of the freeholders and that the clause in the lease about the costs against any individual lessee would apply even though no S146 notice for forfeiture had been served.

This is what the district judge said:

"I am also satisfied, having carefully considered this clause, that it does not pertain only in circumstances where a notice has been served under Section 146 of the Law of Property Act, which it has not in this case. There have been schedules relating to wants of repair that were served and the matter was referred to the LVT, who made determinations in relation to the value of the repairs to be done.

"So in my view this clause falls to be determined quite exclusively from clause 1(b) and it binds the tenants in this case to paying all that they have specifically cost the lessors in terms of dealing with these proceedings, both before the LVT and before this court, in relation to solicitors' costs."

By now costs with interest had mounted up against the two lessees but they appealed this decision on the ground that it was an error of law to find each of them to be liable for half the costs of the hearing before the Tribunal. The two lessees argued that the costs should be recovered as part of the service charge and so the other lessees should also pay. In addition the freeholders did serve by then a s146 notice for breach of failing to pay the costs awarded.

The Court of Appeal found in favour of the freeholders as follows:

"Given that the determination of the Tribunal and a s.146 notice are cumulative conditions precedent to enforcement of the Lessees' liability for the Freeholders' costs of repair as a service charge it is, in my view, clear that the Freeholders' costs before the Tribunal fall within the terms of clause 3(12). If and insofar as any of them may not have been strictly costs of the proceedings they appear to have been incidental to the preparation of the requisite notices and schedules.

"I reach these conclusions without regret. The proceedings before the Tribunal were necessitated by the refusal of the Lessees, two out of the six tenants of the Building, to pay anything in respect of the Freeholders' costs of the repairs. If, as the Lessees contended, the costs of the proceedings were only recoverable by the Freeholders under clause 1(b) then such proportion of the costs as was in excess of the Lessees' rateable proportion would have been payable by the other four tenants who had paid their due share of the cost of the repairs and were not concerned in the proceedings before the Tribunal!"

YOU MUST FOLLOW THE LEASE WHEN PREPARING ANNUAL SERVICE CHARGE ACCOUNTS

This case concerns what happens if you do not follow the requirements of the lease about how to prepare service charge accounts. The case is Rita Akorita v Marina Heights Limited [2011] UKUT 255 (LC) LT Case Number: LRX/134/2009.

The lease required the annual accounts to be certified by the landlord's surveyor and, perhaps unusually, also required that any demands for interim payments must also be certified by the landlord's surveyor. The accounts had been prepared in good fashion and were accompanied by the certificate of a chartered accountant.

One lessee in this block of 7 flats, where the freehold was owned by 6 of the 7 lessees, argued that no service charges were due from her for the period of her ownership from 2002-2008 because no certificate from the landlord's surveyor had been received.

The LVT rejected her argument but she appealed.

The LT found in favour of the lessee.

"In my judgment it is clear on the proper construction of clause… of the lease that it is a condition precedent to any liability of the Lessee to make payment either on account of service charge or by way of final balancing service charge payment that the Respondent (landlord) has obtained a Surveyor's certificate certifying the amount of the payment. This is what the clause plainly states.

"I do not accept that the possible difficulty (if any) under section 20B for the Respondent in serving fresh demands based upon belated Surveyor's certificates is a reason for justifying a construction of clause 4.21 which is contrary to its obvious and natural meaning."

RIGHT TO MANAGE- A VICTORY FOR COMMON SENSE OR A WRONG TURN

This case dealt with the problems created by RTM on estates made up of more than one building or block of flats. The case is Gala Unity Limited And Ariadne Road Rtm Company Limited, LRX/17/2010.

It is a problem of right to manage that the premises for which the right is exercised must be a self contained building or part of a building, with or without appurtenant property. So what to do when only one of the blocks on a multi block estate want RTM but there are obligations for estate wide charges? What 'appurtenant property' would the RTMCo be allowed to exercise RTM over?

The estate in question was not straight forward. On the land there stand the two blocks of flats to which the RTM claim notices relate and also two free-standing "coach houses", which are first-floor flats with parking spaces underneath. The land is bounded on the north, east and west by estate roads that curve round it and on the south by other residential buildings. There is a short, brick-surfaced road that runs across the land from east to west, providing access on the north side to the 10 flat block and on the south side, where it opens out into a courtyard, to the two-flat block and the coach houses. On its western side the roadway also serves a house that is not within Gala's ownership. There are defined parking spaces on the roadway and the courtyard area and at the front of the 10-flat block. There is a free-standing dustbin store adjacent to the roadway and this serves all the flats on the land. Immediately to the north of the 10-flat block is an area of garden bounded by a wall but with open access. Between the estate roads that curve round the development and the 10-flat block and the garden area is a grassed area of varying width on which trees have been planted. There is also a small grassed area between the 2-flat block and the estate road. On the south side of the coach houses there is a courtyard accessible only on foot.

There five schedules that made up the service charges of the different parts of the estate set out in a three party lease which named a professional management company as the middle party, not a RMCo.

The LVT said that it considered that it was important to clarify what precisely it was that the new company had the right to manage. It went on:

"It seems logical that the new company should have control of all the service-charge categories set out in Categories A, B, C, D, E and F of the leases. This means that they will take on responsibility for all the common areas, both those shared with the coach-houses and those exclusively for the use of those in the other 2 blocks. The insurance of all areas will also be in their hands, but the insurance of all that property defined in the coach house leases will be excluded.

"In effect, there may be some duplication of service provision initially, but nothing in this decision precludes the lessees of the coach-houses from applying to a Leasehold valuation tribunal for variation of their leases, or for a decision as to reasonableness of service charges. Variation could provide that they should pay a lesser percentage of the total service-charge in view of the fact that the majority of the maintenance is being undertaken and paid for by the RTM company, and not by the landlord's managers.

"Similarly, it may make more economic sense for the site to be managed as one whole, and insured as one whole, but this is beyond our jurisdiction."

So the LVT decided that the RTMCo should effectively manage most of the estate. The landlord appealed to the Lands Tribunal. Perhaps surprisingly the Lands Tribunal agreed with the LVT and took a wide view of what could be 'appurtenant property' for RTM as follows:

"Thus the right to manage in the present case extends to the two blocks of flats and to appurtenant property. Property is appurtenant for this purpose, in my view, if it is appurtenant to a flat within the block. The appurtenant property attaching to each flat under the lease of it is of two sorts. Firstly there is the car port or car parking space that is included in the demise, and there can be no doubt, in my judgment, that each flat's car port or parking space is appurtenant property for the purposes of the statutory provisions. The second sort of appurtenant property consists of the incorporeal rights of way and other rights granted under Schedule 2 of each flat's lease. These are rights that are not exclusive to the particular flat but are shared with all or some of the other flats, including flats within the Managed Estate that are not within either of the two blocks in respect of which the claim notices were served. There is, I think, no reason why the right to manage should not extend to the maintenance of land over which tenants have incorporeal rights."

In addition the LT noted that the coach houses which were not a party to the RTM supported the RTMCo and that it clearly makes economic sense for the estate to be managed as a whole.

Notes from Dubai

Greetings ARMA and IRPM members. Sadly, I could not join you at your respective Conferences this year - as you can see I am now a little more than just a hop, skip and jump away. However, I wanted to wish everyone at the IRPM and ARMA well and to say how much I miss the professionalism of you all. I thought instead I would share a few of my experiences here in Dubai and my efforts to bring some IRPM professionalism to property management here.

I am not sure what you might know about property management in Dubai, but the general rule here up to a few years ago, was that the developers run their own buildings. It would seem that the developers took the management fees but did very little management or maintenance! Consequently now the law has changed and apartment owners can now set up owners associations (similar to commonhold or condominium) and manage their own building. They do not of course trust anyone, so all of us who work for these fledgling management companies are viewed as akin to some modern day sandbagger.

Then you come to the boards of these owners associations. Now again I am not sure if anyone is aware how much of Dubai is owned by the Russians (Mafia). I have dealt with some difficult boards in England but I cannot remember being threatened with being **"DEALT WITH"** (with extreme prejudice!) at any board meetings I attended in London. I have had board members physically assault sub-contractors and the names I have been called have certainly extended my vocabulary! And yes I have had to minute the names. So a word of advice to anyone back home with a difficult board - it could be worse, really worse!

And finally, I have been trying hard to bring some IRPM sanity and some of the ways we do things there. It is tough! The government department, who deal with property management and all elements thereof, are quite a group. A very small group, actually. There are about 3 of them for all of Dubai. In England you get used to new laws that affect you coming out about every couple of years or so with plenty, well some anyway, time to introduce the measures that the law/H & S will require. In Dubai they come out with a new edict about once a week. Usually the approach is based on what seems like a good idea at the time! Then in another week or so, when it does not seem quite such a good idea they just drop it. Every time I go to the government department, my standard line is "In England we have found it's good to…" Or "We do it this way back home". So far I have seen a slight influence in at least two edicts! Both since withdrawn!

In Dubai we are called Community Management as part of our role is to foster a sense of Community in our buildings. Now that's an impossible task in itself as everyone seems to suspect we are stealing all that they have. Well, at least what they have left after the property crash has reduced values to only one-third of what was originally paid for it. Quite heartbreaking.

Well, that's all for now - I am off to the next board meeting and who knows what that will bring! I hope to write again soon with property management tales from sunny Dubai.

Brian

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