

# Leasehold Update

Jeff Platt

Chief Executive IRPM

# What shall we cover?

- Update on leasehold matters over last year (or so)
- Regulation
- Professionalism / Qualifications
- Residential Property Tribunal Service (LVTs)
- Legal Update (Courtesy of Justin Bates, Arden Chambers)

# Regulation / Accreditation

Grant Schapps: Parliament 28<sup>th</sup> March 2011

*The Government recognises the need to strike the correct balance of rights and responsibilities between freeholders (landlords) and leaseholders...*

*Having considered the issue of regulation in the leasehold management sector, we believe that the current legislative framework can deliver that balance, if matched by an increasingly pro-active and positive approach by the professionals in the sector. We are therefore not convinced by the case for regulating managing agents in the leasehold sector ...*

# Accounting Regulations

- Section 21 Landlord & Tenant Act 1985
- CLRA 2002 S152
- Housing & Regeneration Act 2008 S303 & Sch 12
- Dead in the water?
- Good Practice-
- Joint Guidance: ICAEW, RICS & ARMA

# Non-statutory Regulation

- Trade Bodies
  - ARHM, ARMA, RICS, NFoPP(?)
- Any scheme will require a proportion of “suitably qualified” persons
  - At Director level?
  - In each office?
  - Threshold minimum proportion of staff or
  - Minimum per property managed?

# Professionalism / Qualifications

- IRPM
- 2,000 Members
- Ongoing development of exam structure and syllabus
- AssocRICS
  - Opens up route to full membership RICS

# Residential Property Tribunal Service – reorganisation from 1 July

- From 1 July 2011 RPTS becomes part of Her Majesty's Courts and Tribunals Services (HMCTS).
- The name RPTS will remain in use until April 2012 when it will become part of what is called
- The First Tier Property, Land and Housing Chamber.
- The RPTS is not a tribunal in itself. It is an umbrella administration service that organises a number of tribunals set up under various Acts of Parliament relating to residential property.
  - Leasehold Valuation Tribunals (LVTs)
  - Rent Assessment Committees and
  - Residential Property Tribunals.
- These tribunals are named in statute and so the names will be retained until legislation is amended. Users of LVTs should not see any difference for now.
- From 30 April 2011 the Residential Property Tribunals also took over jurisdictions for most types of dispute arising from Park Homes.

# Legal Update

Developments in legislation, policy and case-law since 1.1.11

- (i) Legislative and policy developments;
- (ii) Service charges cases in the Upper Tribunal and Court of Appeal;
- (iii) Right to Manage implications that can be derived from the Leasehold Reform, Housing and Urban Development Act 1993;
- (iv) Forthcoming cases that may be of interest.

# Legislative and policy developments

- Amendment to the English form of Ground Rent demands
- Amendment to (English) Summary of Rights & Obligations
- County court litigation reforms and expansion of the small claims track
- Updating financial limits for security of tenure and lease extensions

# Service charges

## ➤ Dispensation

- *Dajeau*
- Dispensation after Dajeau? Unlikely?

## ➤ Section 20B

- *Holding & Management (solitaire) Limited v Miss S Sherwin [2010] UKUT 412 (LC):*
  - When does 18 months end
- *LRX/67/2009 Jean-Paul v LB Southwark*
- Incurred when paid? Estimates as s.20B(2) notices?
- What about *Hyams* and *Capital & Counties*?

# Prejudice to Landlord

- ❑ *London Borough of Waltham forest v. All RTB Leaseholders of LB of Waltham Forest (2008)*  
LON/OOBH/LDC/2007/0065
  - Refusal to grant dispensation Long Term Agreement – retrospectively, detriment to landlord
- ❑ *LB Camden v leaseholders of 30 – 40 Grafton Way*  
LRX/185/2006
  - ❑ Defective notices, whether to take account of extent of detriment to landlord in considering dispensation

## Daejan – What was it about?

- Block of seven flats
- Five leaseholders (Benson and others)
- Daejan are the freeholders
- Major works planned for 2005

# Daejan – What went wrong?

- Only details of one estimate provided, despite requests for the opportunity to see others;
- When finally provided, the contract had, for “all practical purposes” been awarded

## LVT Found:

- Failure to consult
  - Summary of observations and landlords response not provided
  - Estimates not made available for inspection
  - Relevant period for inspection cut short and further representations rendered ineffective
  - Time for observations cut short.
  - Landlord did not have regard to observations

# Daejan – LVT Decision

- LVT declined to grant dispensation
  - Removal of opportunity to make observations was significant
  - Not for leaseholders to explain what they would have wanted to say
  - Loss of opportunity to comment was significant prejudice
  - Offer by Daejan to reduce service charges by £50,000 was irrelevant
  - Financial impact on Daejan was irrelevant
  - Not reasonable to grant dispensation

# Daejan – Court of Appeal decision

- What was being appealed?
  - Focus was on decision of LVT not the UT(LC)
- What of the arguments?
  - Prejudice
    - Single most important factor
    - Proper consultation is a good (and end) in itself
    - Curtailing the consultation process is a “serious failing”
    - Loss of opportunity to make representations is significant prejudice

# Daejan – Court of Appeal decision

- ❑ Financial consequences were irrelevant
  - ❑ Not practical to look at impact on parties
  - ❑ Could not be that the more expensive the works the more likely dispensation would be granted
- ❑ Nature of Landlord
  - ❑ Did not arise in this case, since *Daejan* could not “plead poverty”
  - ❑ Might be appropriate to be more lenient for lessee-owned company
- ❑ Other arguments
  - ❑ Offer of a “discount” was irrelevant
  - ❑ Burden of proof largely irrelevant

# Implications of Daejan

- Get Section 20 right – every time!
- LVT's reluctant to grant dispensation but ...
- Focus is on the LVT – therefore need to get it right first time
- Dispensation rarely granted where there is prejudice
- Dispensation likely to be considered for:
  - Emergency works
  - Only one possible contractor
  - Minor breach of procedure

## Practical suggestions - Landlord

- Back to pre 2003
- Get Section 20 right – every time!
- Plan ahead
- Dispensation
  - In advance
  - Early application
- Tie in S27A application – reasonableness
- Get LVT right – one and only chance!

# Questions for Managing agents

- Do you have adequate PI cover?
- Are your terms of engagement adequate?
- Are you doing too much?
  - For free?
- Is it too risky?
- Is it time to outsource consultation process to specialist with huge PI cover?
- How do you respond to clients who do not want to plan ahead?

## Section 20B

- *Holding & Management (solitaire) Limited v Miss S Sherwin [2010] UKUT 412 (LC):*
  - When does 18 months end
- *LRX/67/2009Jean-Paul v LB Southwark*
  - Incurred when paid?
  - Estimates as s.20B(2) notices?
- What about *Hyams* and *Capital & Counties*?

# Right to Manage

- *Crafrule Ltd v 41-60 Albert Palace Mansions (Freehold) Ltd*
  - No requirement that only the smallest possible unit be enfranchised
  - applicable to RTM cases

## Forthcoming cases

- *LB Southwark v Over 13,000 Leaseholders in the borough* LON/00BE/LDC/2009/0061
- *Lawton v 55 Elgin Crescent* LRX/122/2010
- *Solitaire Property Management and another v Dr Holden and others* LRX/145/2010
- *OM Property Management Ltd v Burr* CHI/43UF/LSC/2010/0190

# Contact Details

- **LEASE**
- [www.lease-advice.org](http://www.lease-advice.org)
  
- **JEFF PLATT**
- [jp@jeffplatt.co.uk](mailto:jp@jeffplatt.co.uk)
- [jeffplatt@irpm.org.uk](mailto:jeffplatt@irpm.org.uk)