

## **ARHM BRIEFING NOTE TO MEMBERS**

Note no: BN 19/17

Welcome to the February issue of our Briefing Note.

### **NEWS FROM THE BOARD**

#### **ARHM CODE OF PRACTICE AUDIT PROCESS**

The Code of Practice Compliance Audit project is well underway and we have had a really positive response from members meeting the deadline of 20<sup>th</sup> February. This is much appreciated as we understand the first quarter of the year is very busy for many of you with budget setting and service charge meetings.

The documentation you have submitted will be reviewed and feedback will be provided at a face to face meeting; we will be in touch to arrange a mutually convenient date.

#### **LAW COMMISSION EVENT FEES UPDATE**

The Event Fees study continues and the final report is anticipated to be published early Spring. The ARHM has continued to be involved in discussions with the Law Commission during the process and we await publication of its findings.

#### **REMINDER! ADDED VALUE SERVICE IN PARTNERSHIP WITH LEASE**

As previously advised our 'added value' member service in partnership with LEASE was launched at our conference in October 2016 by LEASE Chief Executive Anthony Essien. By way of a reminder please see below for details. Please do take advantage of the services on offer. It is of course early days and if there are other services that you consider could be beneficial please do get in touch.

**We have attached an easy reference document to help when you are making a booking for any of the services to ensure you receive the appropriate discount.**

In summary the additional benefits are:

- The provision of up to 120 advisor credits (in total) for ARHM members (each credit represents 20 minutes of adviser time)
- LEASE attending the ARHM Regional Training Events held April and October in 3 locations across the country currently, London, Taunton and Leeds
- Access to 3 free library webinars per annum for each ARHM member
- The commissioning of a webinar specifically for ARHM members (subject to be agreed)
- Discounts on other services
  - 20% discount on training services
  - 10% discount on Early Neutral Evaluation and Mediation
  - 10% discount on additional dedicated telephone advice

If you have any questions about the added value services please email us at [enquiries@arhm.org](mailto:enquiries@arhm.org)

## **SECTOR NEWS**

### **CONSULTATION ON HOUSING FOR OLDER PEOPLE**

The Communities and Local Government Committee has launched an inquiry into the suitability and availability of housing for older people.

The inquiry follows research, which indicates pensioners are stuck in oversized properties worth £820 billion due to the lack of availability of more appropriate homes. This comes within a housing shortage in which just 2% of homes are designed for pensioners.

Evidence should be submitted via the Committee's website by Friday 24th March 2017. The ARHM will be making a formal submission.

For more information, [click here](#).

### **MANAGEMENT FEE LIMITS 2017**

No further update available as yet but we will release the information as soon as we receive it.

## EAC AWARDS 2017

As you may be aware we work closely with the Elderly Accommodation Council (EAC) and are delighted to let you know that the ARHM will be presenting 3 awards at the EAC Awards Ceremony to be held in Birmingham on 16<sup>th</sup> May. The awards are specifically aimed at our members who manage leasehold properties and the categories are as follows:

- (i) Quality of Information for Re – Sales
- (ii) The Leaseholder Handbook
- (iii) Extra Mile Award for innovation and best practice

Winners of the categories, based on the information provided by each of the members' submissions from the Compliance Audit will be announced in early April.

For more information about the awards event please follow the attached link [awards.eac.org.uk](http://awards.eac.org.uk)

## LEGAL INTEREST

**We are grateful to Arden Chambers for the following update.**

**[2017] UKUT 58 (LC), 16 February 2017**

**HHJ Behrens**

**The Upper Tribunal (Lands Chamber) has given guidance on the approach to be followed by the First-tier Tribunal (Property Chamber) when considering whether there is an estoppel by convention which prevents a leaseholder from denying the payability of a service charge which has not been demanded in accordance with the terms of the lease.**

**Robert Brown of Arden Chambers, instructed by Guillaumes Solicitors, represented the service company**

### **Service charges**

Long leases of flats typically require the landlord to keep parts of the building comprising the flats in repair, e.g. the structure and exterior. Many long leases also provide that the landlord or some other party may carry out improvements to the building.

Long leases usually provide for the tenant to bear a proportion of the expenditure on the building. It is not uncommon for the tenant's liability to pay to be predicated upon

the fulfilment of some condition by the landlord or other party, such as the provision of certified accounts.

### **Estoppel by convention**

An estoppel by convention may arise where parties to a transaction act on an assumed state of facts or law: *Republic of India v India Steam Ship Co Ltd* [1998] AC 878, HL. The effect of an estoppel by convention is to prevent one party from denying the common assumption if it would be unjust to allow them to go back on it.

In *Blindley Heath Investments Ltd v Bass* [2015] EWCA Civ 1023, the Court of Appeal set out five principles applicable to estoppel by convention.

First, it is not enough that the common assumption upon which the estoppel is based is merely understood by the parties in the same way. It must be expressly shared between them. Agreement to the assumption may be inferred from conduct or even silence.

Secondly, the expression of the common assumption by the party alleged to be estopped must be such that he may properly be said to have assumed some element of responsibility for it, in the sense of conveying to the other party an understanding that he expected the other party to rely on it.

Thirdly, the person alleging the estoppel must in fact have relied upon the common assumption, to a sufficient extent, rather than merely upon his own independent view of the matter.

Fourthly, that reliance must have occurred in connection with some subsequent mutual dealing between the parties.

Finally, some detriment must thereby have been suffered by the person alleging the estoppel, or benefit thereby have been conferred upon the person alleged to be estopped, sufficient to make it unjust or unconscionable for the latter to assert the true position.

In two recent Upper Tribunal (Lands Chamber) decisions, it has been held that the tenants were estopped by convention from disputing the payability of service charges even though they had not been demanded in accordance with the terms of the leases: *Clacy v Sanchez* [2015] UKUT 387 (LC); and, *Admiralty Park Management Co Ltd v Ojo* [2016] UKUT 421 (LC). In another UT(LC) decision, decided after the first instance decision in the present case, it was, however, held that estoppel by convention did not apply on the facts of that case: *Bucklitsch v Merchant Exchange Management Co Ltd* [2016] UKUT 527 (LC).

### **Facts**

The respondent was the service company under tripartite leases of flats in a block in London. The leaseholders of the flats were all members of the respondent. By separate deeds of covenant, each leaseholder covenanted to pay to the respondent

a service charge and contributions to a sinking fund in such sum and “in advance or arrear as the Service Company shall at its annual general meeting by majority agree”.

The appellants acquired the long leases of 11 flats between 2003 and 2011. They entered into deeds of covenant for each flat. The respondent issued demands for on-account payments of service charges in advance of each year and for contributions to a sinking fund. The appellants paid these demands until 2014. The appellants did not pay for 2014 and 2015. The respondent issued proceedings for the unpaid demands. The appellants contended that the on-account demands and sinking fund contributions had not been agreed at an AGM, as required by the deeds of covenant.

The proceedings were transferred to the First-tier Tribunal (Property Chamber). The F-TT(PC) held that the appellants had not received notices or minutes of the AGMs and that the demands had not been agreed at an AGM. The appellants were, nonetheless, still liable to pay them because there was an estoppel by convention based on the appellants’ payments over several years of the service charge and sinking fund demands without previously challenging the failure to agree the demands at an AGM. The appellants appealed to the Upper Tribunal (Lands Chamber).

### **Decision**

The UT(LC) referred to the decision of the Court of Appeal in *Blindley v Bass*, which set out the steps necessary to establish an estoppel by convention. In particular, the FTT(PC) needed to identify what common assumption is shared between the parties, especially where the parties could be proceeding on the basis of different assumptions. The FTT(PC) also needed to determine whether it could be said that the appellants had “crossed the line” and assumed some responsibility for the common assumption. Mere payment of invoices over time was not sufficient where, as here, the appellants had not known that the demands were not being agreed at an AGM. Any detriment suffered by the respondent was insufficient to make it unjust or unconscionable for the appellants to assert the true position as there was nothing to prevent the respondent from proposing and passing appropriate resolutions in respect of the 2014 and 2015 demands, at which point the appellants would have to pay them. The appeal was therefore allowed.

## **WIDER SECTOR NEWS**

### **Health and Care of Older People in England 2017 – Age UK Briefing Note**

In a briefing note, “*Health and Care of Older People in England 2017*”, published on 16 February Age UK notes the numbers of people aged 85+ in England rose by almost a third over the last decade and will more than double over the next two decades.

By their late 80s, more than one in three have difficulties undertaking five daily living tasks unaided and between a quarter and a half of the 85+ age group are frail and most likely to need health services and care support. Disability free life expectancy at age 65 has been falling from its peak in 2010-12.

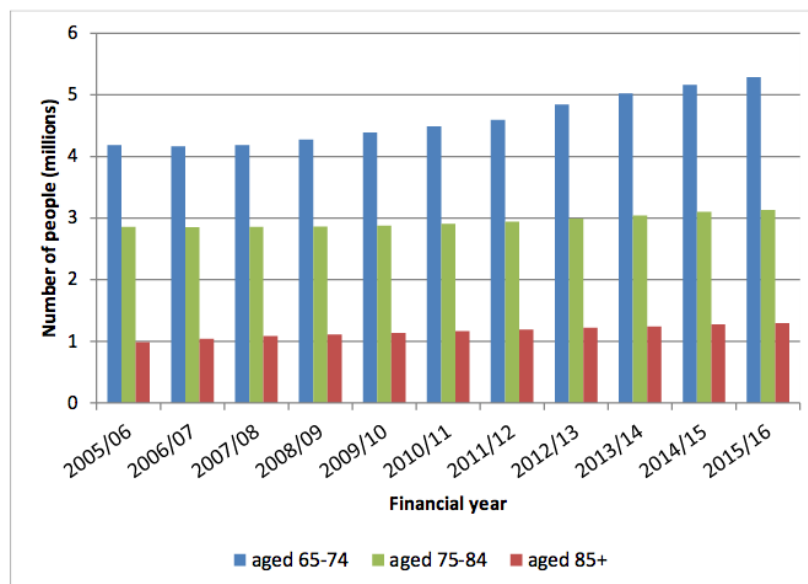
Social care: there has now been a £160 million cut in total spending in real terms on older people's social care in the five years to 2015/16. Cash transferred from the NHS to social care has grown from 2% of the total public spend on older people's social care in 2006/07 to 16% in 2015/16. By 2020/21 public spending on social care would need to increase by a minimum of £1.65 billion to £9.99 billion to manage the impact of demographic and unit cost pressures alone

This year Age UK's analysis shows there are now nearly 1.2 million people aged 65+ who don't receive the help they need with essential daily living activities, 48% higher than 2010. Nearly 1 in 8 older people now live with some level of unmet need. The percentage of older population receiving social care support fell from 15.3% in 2005/06 to 9.2% in 2013/14.

There were 8.2 million carers in 2011 but this rose to over nine million by 2015. Over two million carers were aged 65 and over, 417,000 were 80 and over.

96% of older people who fund their own care home placement paid more than local authorities did for the same type of room in the same home. They paid an extra 43% on average overall.

**Figure 1: Number of people aged 65 and over in England by age group, 2005/06 to 2015/16**



Source: Office for National Statistics (2016<sup>1</sup>)

Further details available from <http://www.ageuk.org.uk/latest-news/borrowed-time-for-care/>

## **NEWS FROM OUR COLLEAGUES AT THE IRPM**

### **APPRENTICESHIP PROGRAMME**

Together with Catch 22 (Ofsted Level 2 and approved apprenticeship and skills provider), Rendall and Rittner (lead employer for this pilot) and CIH (approved end point assessment organisation), the IRPM have been working on a Level 3 (IRPM Associate level) apprenticeship programme which will be launched this month with a pilot cohort of candidates based within the M25. The plan is to go nationwide later in the year. Please see attached information leaflet for further details.

### **LAND REGISTRY CONSULTATION**

On 9 February the Land Registry launched consultation on changes to its 2003 rules which would allow it to continue its digital transformation programme to:

- (i) allow for fully digital conveyancing documents with e-signatures.
- (ii) introduce new statutory services as requested by its customers.
- (iii) allow for more flexibility as to when Land Registry is open for business and open to the public.
- (iv) bring the rules up to date to reflect the modernisation and simplification of its services.

It is also proposed to revoke the Proper Office Order 2013 and the Land Registration (Electronic Conveyancing) Rules 2008, since they will no longer be needed. The consultation ends on 5 April.

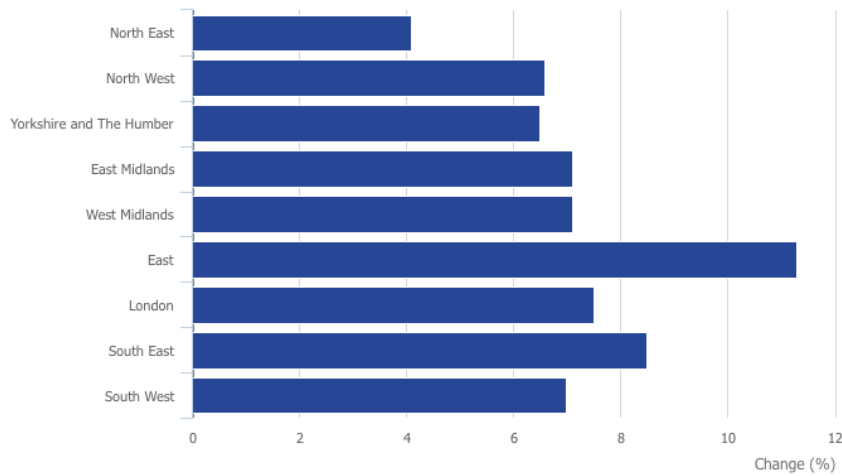
### **The Market**

#### **House Price Index, December**

On 14 February the Office for National Statistics published the House Price Index for December showing:

- UK house prices rose 7.2% in the year to December (up from 6.1% in the year to November), continuing the strong growth seen since the end of 2013 although annual growth was weaker in the second half of 2016 compared with the first half.
- In England house prices rose 7.7%, by 4.7% in Wales, by 3.5% in Scotland and 5.7% in Northern Ireland.

**Figure 5: All dwellings annual house price rates of change, year to December 2016: by English region**



Source: Land Registry and Office for National Statistics

## **Mortgage Lending, December, Qu.4, and 2016**

On 14 February the Council of Mortgage Lenders published data for December, Qu.4 and 2016.

### **December**

There were **63,600** loans to home-owners for house purchase, 5% more than November and 0.2% more than December 2015.

Of these:

- (i) 32,000 were to first-time buyers, 7% higher month-on-month and 8% higher year-on-year.
- (ii) 31,600 were to home movers, 3% higher month-on-month but 7% lower than December 2015.

There were 27,100 remortgages taken out by home-owners. 21% lower compared to November but 7% higher compared to December 2015.

Gross buy-to-let fell 15% month on month to 11,200 loans, 21% lower than November and 7% lower compared to December 2015.

## **NATIONAL MINIMUM WAGE**

Rates are set to increase on 1st April 2017 to:

National Living Wage (25 years and over) - £7.50 per hour

National Minimum Wage:

- 21 to 24-year-olds - £7.05 per hour
- 18 to 20-year-olds - £5.60 per hours
- 16 to 17-year-olds - £4.05 per hour
- Apprentice rate - £3.50 per hour



## **BOARD MEETINGS 2017**

5<sup>th</sup> April  
7<sup>th</sup> June  
16<sup>th</sup> August  
17<sup>th</sup> October (Amended from 18<sup>th</sup> October due to ARMA Conference)  
7<sup>th</sup> December

ENDS