Newsletter No 23 April 2015

SOUTHERN LANDLORDS ASSOCIATION

This edition's featured Corporate Member

SEEKING POSSESION

Seeking possession should be a simple procedure but is it really that simple? In 1988 when assured shorthold tenancies were first introduced the procedure for obtaining possession without giving reason was by using a Section 21 Notice following the expiration of any fixed term. The notice was for two months followed by a straightforward court procedure in which the landlord did not normally have to attend court. The other form of obtaining possession was by using a Section 8 Notice for a breach of the tenancy, i.e. rent arrears, and could be served at any time during the tenancy. The notice period was two weeks and thereafter application could be made to the court for a possession hearing and in these particular cases the landlord had to attend the court. Over the years most landlords requiring possession used the Section 21 Notice and not the Section 8 Notice, even though that notice may well have been appropriate.

The question today is the Section 21 Notice as simple to use in 2015 as it was in 1988? It must be said straightaway that it certainly isn't, and the reason is the deposit regulation requirements brought in by government in April 2007. In the 8 years since deposits were required to be regulated there has been a mass of legal cases owing to the appalling drafting of the regulations by the parliamentary draftsmen which has changed the ability to use the Section 21 Notice beyond all recognition, and more importantly beyond the original purpose, which was to give all landlords

Cont on page 4

Inside This Issue

SMOKE ALARMS

It has just been announced that as from October this year, all rental properties will have to have smoke alarms, and Carbon Monoxide (CO) alarms fitted. Failure to do so can result in a £5,000 civil penalty.
Landlords/agents will be responsible for testing them on tenancy changeover, and I would suggest also on mid-term visits. It remains the tenant's responsibility to test them on a regular basis.

THE SLA APOLOGISES

The admin office makes every effort to ensure mistakes are not made, but we are sorry that we have failed recently.
Firstly, we had problems with the Accounts telephone line, where incoming calls were going into the ether, never to be seen again. This has now been fixed.
Secondly, we recently had a problem where the letters asking members to renew were swapped around with receipts. This meant that members who had just paid got a request to pay; and those due to pay got a receipt and card - both shortly to expire.
If you were affected, we would like to apologise, and believe that both problems have been fixed.
Note that at no time were members' records incorrect or compromised.

LANDLORDS' REPAIRING OBLIGATIONS

Members will be well aware of their obligations in ensuring that their property is in good condition and that they observe the landlord's statutory repairing obligations (Section 11 of the Landlord and Tenant Act 1985). This case however concerns a claim against a landlord by his tenant, the landlord being a lessee in a block of flats where the normal external repairs, etc. would be carried out by the freeholder/managing agent of the block. In this particular case a claim was made by the tenant against the landlord in respect of personal injury caused by the tenant tripping on a slightly raised pavement (80mm) in the area where the dustbins were situated. The landlord represented himself in the County Court, claiming that the raised pavement was not of sufficient height to commence a personal injury claim in law, and the decision of the County Court went in favour of the tenant. The landlord then took the case to the High Court and won.

Cont on page 2

Landlords1 repairing obligation from page 1

The tenant, who was represented by no win no fee lawyers, then appealed to the Court of Appeal, who decided that the landlord was liable for the repair and hence the injury to his tenant.

In his defence the landlord said that he did not own the block and defended on the basis that:

1) he was not liable under the landlord's statutory repairing covenants (Section 11 of the Landlord and Tenant Act 1985).

2) the tenant had not given him notice of the disrepair.

However the Court of Appeal held that as the landlord had a right to use the path under his lease from the freeholder, he had a sufficient 'estate or interest' in the area to satisfy Section 11, and was so liable for the repair, and the case law regarding the need for a tenant to give notice of repair was in situations where the repair was within the rented property where the landlord did not have access. Section 11 does not actually require notice for areas outside the property where the landlord had access.

This is a very important case for both landlords and tenants. It means that landlords and agents, when doing inspections, need to monitor the exterior areas of properties to ensure that they are safe and that any necessary repairs are done or reported to freeholders promptly.

Mike Stimpson comments, 'Many members will be leaseholders who have let their leasehold properties to tenants. Those landlords will believe that all common part obligations, i.e. paths, common staircases, etc. are the responsibility of the freeholder, however this case makes quite clear that all parts that a tenant has access to, along with other occupiers of the property, the landlord has a duty to ensure that they are in good condition and safe. Members should note carefully this situation and should ensure that they have insurance cover in the eventuality that a claim is made. Over many years I have emphasised the need for landlords to get the correct insurance cover and not the cheapest; this is a good example where a significant claim, and costs, has been made against the landlord and where appropriate insurance cover is necessary. Members should note not only the need to ensure that common parts are safe for their tenants, but also that the landlord has the proper insurance cover now.'

PERMITTED DEVELOPMENT RIGHTS EXEMPTION FOR ACTIVITY PUBLIC HOUSES

Members with an interest in developments will wish to know that public houses listed as an asset of community value in England will be exempt from the permitted development rights for change of use or demolition, meaning that in such cases a planning application would be required. Government intends to bring forward secondary legislation on this matter.

IMMIGRATION CHECKS

As mentioned in the last newsletter, the trial in the West Midlands has now been running for approximately three months and we understand that some landlords have been caught for non-compliance. Government is tendering for the commissioning of research of the trial and of course the situation may change with the result of an election. Some guidance for landlords can be found on the BPF website www.bpf.org.uk. We shall keep members informed of developments.

COURT FEES

On Monday March 9th Civil court fees rose substantially, especially for larger claims. This will only affect you if you are making a money claim against someone – e.g. rent due.

Normally, you will recover the fees if successful, but you might be successful. As an example the fee for a claim of £200k rose from £1,515 to £10,000 –but this is at the top end of claims.

The message is not to allow claims to get too large before going to court.

DISCRETIONARY LICENSING

As this newsletter is being prepared for publication we note that Hastings Borough Council are proposing to implement selective licensing in 10 wards covering approximately 10,000 properties with a projected income for the council of £4+ million. At the same time Brighton and Hove City Council are proposing to apply additional licensing in a further 7 wards across the city, having claimed that the implementation of additional licensing in 5 wards has been a great success, with the inference that the success is based on safety/fire improvements and application of physical standards. More about these cases later in the newsletter, but it is essential for members to read the purpose of the proposals and reply to consultations, and in addition write to both their local MP and councillor giving their views in order that they can be properly considered when voted upon.

LICENSING FEEES

And on the subject of licensing, there is a very important case going through our legal system at the moment – *Hemming vs Westminster City Council.*

Hemming own a licensable sex shop in Westminster, and has objected to the level of the license (£29k per year), particularly the way it is being used to enforce breaches. Hemming has so far won:-

- the initial case;
- a subsequent court of appeal.

It has now gone to the Supreme Court and was heard on January 13th this year before 5 Lords. They are yet to rule, but Westminster has already said they will take it to Brussels if they lose.

The significance of this strange bed fellow?

If found for Hemmings, Westminster would have to repay the extra incorrect charge back to 2004. This would almost certainly lead to claims for the repayment made for any Council License deemed to have been overcharged – including Additional and Selective Licensing - back to 2004.

It could cost Councils a lot of money!

PRIVATE MEMBERS BILL – HMO'S

Nick de Bois, MP for Enfield North, has tabled a ten-minute rule bill in the Houses of Commons in a bid to change the law to allow the housing ombudsman to intervene between neighbours and landlords.

The Tory MP is campaigning for more rights for the neighbours of anti-social households.

De Bois presented his Housing Ombudsman (*Power to Settle Disputes Between Neighbours and Tenants*) bill to Parliament at the beginning of March. He is seeking new powers for the Housing Ombudsman to intervene in disputes between landlords of HMOs, including hostels, and neighbours. Currently, the rules only allow the ombudsman to step in between a landlord and tenant.

SEEKING POSSESSION from page 1

the right to possession of their property without having to give reasons for so doing. With the introduction of deposit regulations came amendments to the Section 21 requirements in that a landlord could not obtain possession using a Section 21 Notice without first having regulated the deposit and given the correct prescribed information to his/her tenants.

That all sounds extremely straightforward, but Court of Appeal decisions have made what appeared to be a reasonably simple procedure into a nightmare. Firstly, one would have thought that if a landlord takes a deposit regulates it within 30 days and provides the correct information to the tenant, that would be the end of it. Not so. The Court of Appeal have ruled that when a fixed term assured shorthold tenancy changes into a periodic tenancy then the deposit needs to be re-regulated. Most if not all landlords had no idea this was a requirement and consequently did not re-register the deposit when the tenancy changed from a fixed term to a periodic tenancy. They had the opportunity to do so for a short period following the Court of Appeal decision, but many landlords will not have re-regulated the deposit and are unable to do so now, and unless the deposit is returned to the tenant cannot proceed with a Section 21 Notice.

That is not the end of it. If a landlord granted a tenancy, fixed term or periodic, prior to April 2007 there was no requirement to regulate that deposit, and that position still remains, that is until a landlord seeks possession under Section 21. The Section 21 Notice can be issued and after the two month period an application can be made for a possession order, and that is where the trouble starts. The landlord will be required to complete a declaration within the accelerated possession procedure as to whether or not he has taken a deposit, and if the answer to that question is yes, the next question will be, has it been regulated? And the answer to that in all probability is no, as there was no requirement at the time to do so. Because the answer is no then the landlord cannot proceed with the Section 21 Notice, neither can that landlord regulate the deposit as it is out of time.

The only way forward in this particular case is for the landlord to return the deposit to the tenant and then the Section 21 can be proceeded with. In this particular instance the tenant could not bring proceedings against the landlord for not having regulated the deposit because under the law the landlord was not required to do so, but under the wording of the accelerated possession court proceedings, having not done so that landlord cannot proceed with the Section 21 accelerated possession procedure.

Government intends to make the regulation of deposits more straightforward, but until it does the above situation continues to apply.

Members will be aware from the last newsletter of the private member's bill brought forward by Sarah Teather MP in respect of retaliatory evictions; that bill was talked out of time and will not become law, however the government intends to introduce restrictions on the use of the Section 21 procedure where a tenant has complained to the local authority of disrepair. If this becomes law it opens up opportunities for so-minded tenants to claim disrepair in circumstances where a landlord is unable to control the actions of those tenants.

So why do landlords require possession in the first place? The main reason, your association believes, is rent arrears, and the second is probably antisocial behavior. Both of these situations could be proceeded with using a Section 8 Notice. Taking rent arrears as an example, many landlords believe that the only time you can proceed with a Section 8 for rent arrears is when the tenant is over eight weeks in arrears. That is not so. If the tenant is building up significant rent arrears, using grounds 10 and 11 in a Section 8 Notice is normally sufficient when attending court for a judge to give a suspended possession order, which means normally that if the tenant does not pay the arrears at an agreed rate in addition to the current rent as

Cont on page 5

set out in any order, the landlord can then go straight to the bailiffs for possession. It is not normal for a landlord to have to re-attend the court. If however a landlord grants a monthly tenancy with the rent payable monthly in advance, when the rent is one month and one day overdue that is over eight weeks and a Section 8 Notice using grounds 8, 10 and 11 is the way forward, ground 8 being a mandatory ground for possession if at the time of the service of the notice and on the day of the court hearing the rent is still over eight weeks in arrears. In the case of Section 8 Notices the period of notice is only two weeks and then the application for possession can be made either to the court or online when at the time of application the date of hearing will be notified. In this case, unlike the Section 21 procedure, the landlord or his agent etc. must attend court.

In the case of antisocial behaviour, which our association believes is the second most common reason for landlords seeking possession then we would strongly advise not using the Section 8 procedure. Even though recently there have been mandatory grounds introduced in respect of antisocial behaviour possessions, they are not simple and were designed for use by social housing providers and not by private landlords. Such is the difficulty in proving antisocial behaviour or for that matter getting witnesses (usually other tenants in the property) to give statements and appear in court is most difficult.

Government often uses the number of evictions by private landlords using Section 21 Notices as being simply putting tenants on the street for no reason. Very few landlords seek possession for no reason at all. Invariably there is a very good reason why a landlord seeks possession. Using the Section 8 procedure for rent arrears would demonstrate to government that landlords are seeking possession for good reason. One good thing about the Section 8 procedures is that no reference to deposits/disrepair can be used in defence.

In summary, it seems today that if you have a good case relating to rent arrears then using the Section 8 procedure is more likely to go unchallenged and possession obtained than with the current Section 21 regulations. Another benefit from using the Section 8 procedure for rent arrears is that the court will automatically make an order against the tenant for the arrears that are owed.

COMMUNUAL HEATING FOR HMO'S

Under new legislation introduced last year (*Heat Network(Metering and Billing) Regulations 2014*) it was proposed that the National Measurement Office be informed by April 30th this year, and at least every 4 years thereafter of all community heating schemes. This information needs to be sent to heatnotifications@nmo.gov.uk.

At first look it appeared to only affect Block Managers/Freeholders for District Heating, as sometimes used in blocks of flats. But the legislation specially mentions Communal Heating systems, and would thus affect HMO's where the boiler supplies heat and hot water for the whole building. Any work that has to be carried out has to be before the end of 2016.

For more information see www.gov.uk/heat-networks.

VOLUNTARY SCHEME FOR LANDLORDS

A website is up and running for landlords to provide voluntarily basic contact information about their tenants so water companies can register them for billing and tackle this major source of water debt.

Customer debt currently adds £15 on to everyone's water bill. By far the biggest source of bad debt comes from tenants of rented properties who leave before settling their water bill.

Unlike other sectors, water companies have no contracts with their consumers because they supply water on a statutory basis and consumers are not obliged to inform their water company when they move in or out of a property.

The website can be found at www.landlordtap.com.

ANT-SOCIAL BEHAVIOUR

We have mentioned the recent changes against Anti-Social Behaviour (ASB) brought about by the Anti-social Behaviour, Crime and Policing Act 2014. This gives the ability to many people, including some social landlords (but not private landlords) to impose sanctions to control ASB.

There has been a knock on for private landlords, in that there is new mandatory ground for the Section 8 notice. Ground 7a will be allowed if one of the following five conditions are met, a member of the tenants' household or a person visiting the property has been:-

1. Convicted of a 'Serious' Housing-Related Offence;
2. Breach of a section 1 injunction in the new ASB Act;
3. Convicted of Breach of a Criminal Behaviour Order;
4. Dwelling-House is subject to a Closure Order;
5. Convicted of Breach of a Noise Abatement Notice/Order.

This is a much distilled summary, and full reading of the grounds should take place if you intend to use it.

There are also new discretionary grounds:-

- 14 aa:-

  The tenant or a person residing in or visiting the dwelling-house has been guilty of conduct causing or likely to cause a nuisance or annoyance to the landlord of the dwelling-house, or a person employed (whether or not by the landlord) in connection with the exercise of the landlord's housing management functions, and that is directly or indirectly related to or affects those functions

  In theory this could be used if the tenant refuses entry to the gas engineer to carry out an annual gas inspection.

- 14 za:-

  The tenant or an adult residing in the dwelling-house has been convicted of an indictable offence which took place during, and at the scene of, a riot in the United Kingdom.

A potential significance of this is that it reinforces the SLA's view that private landlords cannot be responsible for the ASB of their tenants, and the best they can do is to evict them. This makes a mockery of the principal reasons many Councils use as justification to bring in Additional and Selective Licensing –they claim it is to force private landlords to control the ASB of their tenants; but landlords aren't allowed to.

NEW RULES REGARDING FLUES

Just found (the hard way) that boiler flues can no longer flue across your boundary. This applies to all new installations, and changing of old boilers. Presumably applies to wood-burning stoves as well.
In my case, we have an existing boiler fluing into a public alley, so even with the appropriate guards fitted, still can't proceed in this manner.

RETALIATORY EVICTIONS

Sarah Teather, a Lib Dem MP launched a private members bill July last year.

The general reason for this bill was to stop a landlord evicting a tenant if they complained about a serious fault requiring repair. In theory this is very laudable; we none of us want sub-standard property in the Private Rented Sector (PRS), especially any with a Category 1 hazard, as defined in the Housing Health and Rating System (HHSRS). Additionally, no-one want landlords who not carry out their duty of care to rectify serious problems.

The problem – this Bill was badly drafted, and would have allowed a tenant to object to any Section 21 (S21) on the grounds of dis-repair, no matter how small; even if reported after the S21. This would have to be verified by the local Environmental Health Officer (EHO) to determine whether the claim was justified, and whether the fault had been rectified satisfactorily. The tenant then could make another claim, and the whole thing would start again – thus completely nullifying the use of a S21. Additionally, all EHO's are massively stretched, and inspections could take some time.

The problem is that it had official Government support, even though it followed a recommendation of the Communities and Local Government Select Committee that 'changing the law to limit the issuing of section 21 notices might be counter-productive and stunt the market'. In his response to that Committee report, Eric Pickles said that 'the government accepts the committee's recommendation about retaliatory eviction, and agrees that legislation is not the preferred approach'.

It went to the House of Commons on Friday November 28th and was 'talked out' by two MP's, i.e. they were able to continue debating so long that the debate exceeded the time allocated to it. Additionally it was a Friday, and most MP's were not present, thus Sarah Teather could not muster 100 MP's to vote to re-schedule.

So far, so good.

But it's not gone away. The Lib Dems have managed to get support to re-introduce this, and at the beginning of February tabled an amendment to the De-Regulation Bill currently going through Parliament. And were successful.

DE–REGULATION BILL

This is a bill that started as non-entity, as far as landlords are concerned. But as is the way with Parliament, it has had all sorts of amendments added to it, which have nothing to do with the original intention of the Bill.

The first thing to note is that this is still making its way through Parliament, so could be subject to further changes, and might not even become an Act. So please read the summary below with the knowledge that it <u>might</u> change. However, it is very near to the end of its passage, and is most likely to become an Act before the end of March, when Parliament is dissolved.

The main area's that this might affect you are:-

1. Tenancy Deposits.
   a. Any AST's that commenced prior to April 6th 2007 will still require the deposit to be protected, and the Prescribed Information (PI) issued. However the Bill (when it becomes an Act) will give landlords 90 days to protect all pre-2007 deposits without any problems. This is likely to be April/May/June – we will inform you.
   b. It will still be a requirement to have issued the PI before issuing a Section 21 (S21), but for pre 2007 AST's (and only these) the deposit can be protected just before issuing the S21.
   c. Any AST that was originally a Fixed Term will

not have to have the PI re-issued when it becomes Statutory Periodic. This overturns the ruling in the Superstrike case. In fact the Bill goes further, in that if a new Fixed Term is issued with all the same landlord/tenants/address as the old one, the PI does not have to be issued;

2. As many members are painfully aware, it is easy to get the S21 wrong, and have it thrown out at court. This is generally due to getting the end date of the period wrong on a Section 21(4)(a), the notice to be used for an AST that commenced as a (Contractual) Periodic.
   A court case last year actually was in the landlords favour, stating that if an AST had commenced as Fixed Term, the Section 21(1)(b) can always be used.
   This is much easier to use, especially as it doesn't ask for the end date.

   The Government are now going further. Under this Bill, it will be possible for the Secretary of State to amend the 'Prescribed Form' of a S21. We are told that it is intended that the two S21's will become the same as the Fixed Term S21.
   Not before time.
3. Retaliatory Evictions:-
   a. If a tenant makes a legitimate complaint, in writing, regarding disrepair, **and** the Local Authority (LA) has issued an appropriate notice within 30 days, then any subsequent S21 will not be valid.
      However, the S21 will NOT be invalid if:-
      i. the tenant failed to use the property in a tenant like manner;
      ii. OR the disrepair is due to a breach of a tenant's obligation in their tenancy agreement;
      iii. OR a mortgagee is seeking recovery of a property under a mortgage that was in place before the tenancy commenced;
      iv. OR when the s21 notice is served the property is genuinely on the market for sale.
   b. This also applies to any complaints made about the common parts of an HMO, or for Block Managers.
4. It is also intended that S21 will not be allowed:-
   a. to be issued in the first 4 months of an AST;
   b. a court order to evict cannot be issued if the property does not have a valid EPC, and/or Gas Safety Certificate. This restriction would be lifted as soon as these documents are provided.
5. Finally , a tenant will be due to be repaid any overpaid rent, if due to the issue of a S21. That includes:-
   a. The S21 ends the AST before the end of a period already paid for;
   b. If the tenant has paid rent in advance.

So it will become even more important for you to keep proper records, especially of maintenance issues. If you are asked for repairs, ensure you respond appropriately, within 14 days, in writing. If there is no dis-repair, you will need to prove why that is so.

STOP PRESS

This received Royal Assent on March 26th and is now an Act.

In summary:-

Deposits taken before April 2007 where the tenancy became periodic after that date

All deposits must now be protected and the prescribed information must be served. You have 90 days to issue the correct PI - i.e. until 23 June 2015.

If you protect and serve the PI within this time, the deposit will be treated as if it had always been protected. If you don't, you will be in breach.

Deposits taken after April 2007 that have been protected and the prescribed information served during the original fixed term

These will be treated as if the prescribed information had been served on every renewal or whenever a statutory periodic tenancy arose - even if the prescribed information was served late initially. Provided the deposit continues to be protected with the same deposit scheme.

So you no longer need to keep re-serving the prescribed information.

Deposits taken before April 2007 which became periodic before that date

Here you are not in breach of the law and you don't have to protect the deposit now.

However the deposit must be protected or the money returned to the tenant (or the person who paid it) before any s21 notice can be served. Landlords will not be liable for any financial penalty for non protection.

Otherwise - the new rules will not help you if you have failed to protect a deposit taken after April 2007. They were passed just to deal with the problems associated with the Superstrike decision.

Letting agents

The prescribed information rules have also been amended to allow for agents' details to be given instead of landlords' details where the agent is dealing with the deposit.

The rules regarding Retaliatory Evictions come into force on October 1st 2015. We will write about them in the next newsletter

Licensing – changes to the rules

The Government, in the form of DCLG, have just been announcing changes to Selective Licensing. They have previously (February 2014) stated that they are unhappy with the way that some Local Authorities (LA's) have been using Selective Licensing, and preferred the use of Voluntary Accreditation. In the words of the Housing Minister *'These changes will help local authorities focus their enforcement activity where it is most needed while ensuring that good landlords are not adversely impacted.'*

As from April 1st any LA wishing to implement Selective Licensing will have to seek permission of the Secretary of State (currently Eric Pickles) if the area selected is more than 20% of their geographical area or would affect more than 20% of privately rented homes in the local authority area. This is not retrospective.

Additionally, they have laid before Parliament new conditions that must be met before Licensing can proceed:-

- The area contains a high proportion of properties in the PRS
- The LA deem there to be an issue with housing condition in the area – and they intend to carry out inspections to enforce standards
- There has been an increase in migration (or an expectation of it) and that introducing licensing will improve socio economic conditions – particularly relating to overcrowding
- The area is suffering from high levels of deprivation and licensing and other measures could be used to address it. Deprivation can be judged based on employment levels, average income, health of households, availability of education, housing conditions, the physical environment, crime levels.

It is not known when this will become law.

Note the rules regarding Licensing of HMO's, both Mandatory, and Additional remain unchanged.

For anyone that wants to read more on this, the Government have just put out an excellent paper.

Entitled ' *Selective Licensing of Privately Rented Housing (England & Wales)*

THE BUDGET

The recent budget hid a surprise on page 51 of the Red Book - the document with all the budget details in, published just after the Chancellor makes his speech in the house.

Here it states that the Government will:-

'• make it easier for individuals to sub-let a room through its intention to legislate to prevent the use of clauses in private fixed-term residential tenancy agreements that expressly rule out sub-letting or otherwise sharing space on a short-term basis, and consider extending this prohibition to statutory periodic tenancies'

The SLA has always recommended that landlords do not allow sub-letting, or assignments, as it causes the landlord to lose control. What happens if the agreement between the tenant and the sub-tenant does not contain a clause that is in a lease? The landlord could be in breach of their lease, but are unable to control/enforce as they have no control over the person actually living there.

Advortial feature by HMCA

HMCA are delighted to offer **(name of your Association)** members and their families our range of medical health cover and related products. Hospital and Medical Care Association are specialists in offering voluntary benefits exclusively to members of professional and trades associations and membership groups. The plans are available exclusively to members of an Association and not available to the general public ensuring and maintaining competitive rates for you and your family.

HMCA have over 35 years experience and members can benefit from the following:-

- Transfer Facility available for members of an existing plan with no break in cover
- Free Medical Helpline available 24/7 to help and support your questions and queries
- Additional range of Benefits available once you subscribe to any of the plans
- Personal service provided by trained Helpline Team
- First class claims handling service providing efficient and prompt settlement of claims

On average, HMCA have been proven to save up to 50% savings on similar plans. The transition is seamless with no break in medical cover or moratoriums.

You can visit our website on www.hmca.co.uk for further details and simply click **(your website details /HMCA weblink)** or call us in person on 01423 866985 whereby we will be happy to speak to you and answer your queries.

Dental Plan

Whether you have a Private or NHS Dentist, our Dental Plan allows you to choose the dentist of your choice. World-wide cover is also included along with hospital and day case treatment. Eligibility covers ages 0– 78 for members, their spouses and family.

HMCA Breakdown Recovery Club

Our breakdown recovery club takes the worry out of driving for individuals and companies. Included in the recovery package is Road Side Assistance and either home or destination recovery. There is a 50% discount for a second car and priority is given to lone women drivers. There are no age restrictions on the age of your vehicle, and there is a Home Start option also included. No extra charges for Limousines and Horseboxes.

HMCA Single and Multi-Trip Travel

HMCA provides a flexible package to cover overseas holidays and non-manual business trips for either the individual traveller or the family. Comprehensive cover at competitive prices with first class claims handling service to offer further peace of mind.

Medical Care Plans & Cash Income Protection Plans

HMCA Medical Extra Plan offers no moratorium and no waiting period before eligible claims are payable. Members are given hospital choice, no exclusions for sports activities, overseas cover and special guaranteed transfer facility. No health questions are asked and no medical examination is required. There is no break in protection when you transfer to the Medical Extra Care Plan. We also provide Cash and Income Protection Plans. Details are available upon request.

THE RECENT BPF CONFERENCE

The SLA are members of the British Property Federation (BPF), and we attended their last annual conference at the beginning of February.

Entitled *Reinventing Residential* it was mostly about Institutional Investing in the PRS. This is in stark contrast to the 2013 conference, where the comment at that time was that it was nigh on impossible to get Institutional Investment – what a difference 2 years can make. I don't think we small investors need to worry, the smallest build was 250 units; and most were talking in the thousands.

There was talk about the lack of new builds over the past 30 years leading to the current high prices – due to great demand, and limited supply – especially in the South. A passing comment was that the banks hadn't helped the situation over the past few years, by siphoning off funds (legally) to cover their massive debts – thus making less available to lend.

It was suggested that we need to build some 2 million houses by 2020 to maintain the status quo. And even if the land could be found, there was such a lack of brick-layers, and indeed bricks, that a massive building campaign couldn't start. There was even some discussion about the possibility of taxation to dissuade large corporations form hoarding plots in land banks.

It was also pointed out that the problem is not new. Kate Barker in her *Review of Housing Supply* published in 2004 urged a massive increase in the building programme, especially Social Housing. Actually since then Social Housing has decreased.

Discussion also turned to the problem with local planners, and their tendency to quash reasonable ideas. This lead on to Local Authorities place in the supply of housing.

The *Elphicke Housing Review*, published earlier this year has as its main conclusion that councils could, and should, achieve much more by taking a more central role in providing new homes. The reviewers call for councils to become not just statutory providers but Housing Delivery Enablers, setting out and winning support for a vision for their areas with new housing at its heart, actively creating opportunities for new development and working with businesses and partners to ensure they are realized.

The conference also talked about the Community Infrastructure Levy (CIL) and use of a Section 106 (where a developer has to supply infrastructure, and/or affordable housing as part of their planning application). It was felt that both weren't delivering as intended.

An afternoon keynote speaker was Brandon Lewis, the Housing, and Planning Minister. He gave a good barn-storming talk. Anyone would think there was to be an election soon.

He was very bullish about the PRS, and even made a comment aside that he didn't agree with the wholesale use of licensing by Local Authorities. But will he put his money where his mouth is? The final speaker was Sir Michael Lyons, presenting a summary of the *Lyons Housing Review* commissioned by Labour – interestingly enough the Housing Minister dismissed this review last year as *"[Labour] seems to think that just by setting a target – which is something they did for 13 years and never reached any of them – means they fixed the problem.*

But it's about looking at all the different sectors and working out how you get houses built and the Lyons Review doesn't do that."

The Lyons main points were:-

- the problem needs national orchestration, not national control;
- central, and local Government should make more land available;
- local communities should be in the driving seat;
- but there should be more investment in total infrastructure, else other problems will manifest themselves;
- and he pushed the need for Homes For All – not just a few.

And that was the conference. Hot air or genuine thoughts for the future? Ask me after the 2016 conference.

NB – all the reports mentioned are in the documents part of the members section on the web site – www.southernlandlords.org

PERMITTED DEVELOPMENT RIGHTS EXEMPTION FOR ACTIVITY PUBLIC HOUSES

Members with an interest in developments will wish to know that public houses listed as an asset of community value in England will be exempt from the permitted development rights for change of use or demolition, meaning that in such cases a planning application would be required. Government intends to bring forward secondary legislation on this matter.

RENT MAPS FOR THE PRS

The Valuation Office Agency has been trying to improve its market rent statistics and make them more accessible. To this end it recently published rent maps which you can view online.

Advortial feature by Alan Boswel

Do you really know who your tenants are?

Many landlords will have experienced tenants who have turned out to be less reliable than initially perceived. In most cases, this will not result in financial loss but if you are saddled with tenants who turn out to be habitually bad payers, or worse are actually criminals – perhaps planning to use your property for illegal activities such as cannabis growing – you could stand to lose serious money.

Steve Cox Property Insurance Specialist from Alan Boswell Group explains how to help avoid the perils of tricky tenants.

"It is of course possible to buy insurance to help evict troublesome tenants or cover rent if they decide to stop paying you – and I encourage everyone to take out these policies for peace of mind – but often prevention is better than cure. Getting the right kind of tenant in the first place can help you avoid legal wrangles, damage to your property and the general stress of dealing with the unwanted hassle" said Steve.

Appropriate checks

"It is strongly recommended to arrange for tenants to be properly referenced before they move into your property" said Steve. Tenant Referencing can be easily arranged and cover not just income and a six-year credit history, including County Court Judgments and bankruptcy but also validation of references from previous properties they have leased and any history of arrears or repossessions.

"Having this sort of information enables you to make an informed decision regarding whether they are suitable tenants for you" comments Steve. Because the checks are undertaken by a professional organisation on your behalf, they are less susceptible to manipulation. It should be noted however that no system is fool proof, so there is no substitute for also conducting a personal interview either directly, or via a trusted agent.

Taking the precaution of seeking proper references is not only good practice; failure to do so could affect your right to claim under legal expenses insurance. Having the process undertaken professionally gives you an added layer of reassurance that you have done everything possible to protect your investment.

For more information visit the Alan Boswell referencing site

www.alanboswellreferencing.com

Protecting your income

You should aim to have a written tenancy agreement in place, such as an Assured Shorthold Tenancy agreement, which sets out the amount and when the rent is due. If your tenant is constantly failing to pay and you are left with no other options you can follow procedures to evict your tenant and insurance can help you reclaim any unpaid rent.

Your tenants may not deliberately be avoiding their responsibilities of paying rent. Redundancies or relationship breakdowns can mean their lack of income impacts upon yours. In both instances rent guarantee insurance can act as a safety net, protecting your rental income by enabling you to claim back the rent you are owed.

Getting the right advice

It is important to seek independent professional advice before making any decision about what liability insurance to take up in order to protect your financial obligations. Steve is able to provide professional, independent advice and can explain how tenant referencing, rent guarantee and legal expense can protect your investment. **Contact Steve on 01603 216399, 07766 715654, scox@alanboswell.com or visit alanboswell.com/landlords**

AROUND THE BRANCHES

Hastings and Rother

As mentioned elsewhere in this newsletter Hastings Borough Council is proposing to implement selective licensing in 10 wards across the borough. The consultation period has ended but nevertheless members can still write to the local MP/councillors giving their views, hopefully opposing the scheme.

In the case of Hastings, our association decided to host a meeting of landlords which took place in January where it was decided that the scheme should be challenged. A letter setting out our objections was signed by a significant number of landlords and sent to the local MP, all councillors as well as the local authority. On Friday 20 February a further meeting was held, chaired by Peter Littlewood, and the speakers included the local MP and Mike Stimpson, following which it was confirmed that the scheme should be challenged and donations are currently being accepted to seek a public law barrister's opinion prior to the elected representatives making a decision. The cost to date including the legal opinion from our barrister will be approximately £2,500, and if we have to go for a full judicial review the cost could be between £50,000 and £70,000. Although this is a very large sum of money, it is very much lower than the £4+ million that the council will take in fees for no benefit to either landlords or tenants. Members are requested to make a reasonable financial donation made payable to the Southern Landlords Association, and can be sent to either Peter Littlewood or Mike Stimpson at 162 Milner Road, Brighton, BN2 4BQ.

Members with properties in Hastings will also be interested to know that discussions are taking place with Hastings Borough Council seeking more information and in an attempt to get it to withdraw the scheme. We will keep members informed of developments, but the decision as to whether to go forward with the scheme is likely to be made on 30 March 2015.

Brighton and Hove

As mentioned elsewhere, Brighton and Hove City Council are proposing to introduce further additional licensing in 7 more wards and consultation is at present taking place. 5 wards have already been subject to additional licensing and it seems the success claimed is relating to fire safety and physical standards being imposed. Additional licensing should be about antisocial behaviour in one form or another and poor management, certainly not about physical standards/fire safety which the local has an obligation to deal with under Part 1 of the 2004 Housing Act. Your association is most concerned that having a duty under the 2004 Housing Act to carry out inspections in relationship to standards and safety, the council are additionally seeking to use payments made in respect of licensing to carry out these duties when landlords as taxpayers are already paying for the council to carry out such duties under their normal functions. The Brighton committee will be meeting shortly to discuss what it intends to do, and as in Hastings a meeting has already been arranged, which by the time of this newsletter will have taken place, with the housing department manager. We shall report separately as necessary.

LOCAL HOUSING ALLOWANCE RATE INCREASE 2015 (BRIGHTON AND HOVE AREA)

Members will be interested to note that the following increases will be effective from April 2015: Shared room rate increased by 4% to £82.66 weekly; one bed rate increased by 1% to £153.00 per week; two bed rate increased by 1% to £192.47 per week; three bed rate increased by 1% to £230.28; four bed rate increased by 4% to £339.36 per week.

Members having properties in areas other than the Brighton area should make inquiries of their local housing benefit department to ascertain the rates applicable to the areas in

Brighton and Hove Branch Meeting Monday 23rd February 2015

By Gary Waller; Branch Chairman

This meeting was the first meeting in a new venue, The English Language Centre in Salisbury Road, Hove. Our old venue at Langfords Hotel is being converted into a gym. It was decided that our new home was a success, parking is a little easier as the restriction finish at 6pm and there are more spaces in the local roads. We will stay with this venue for the rest of the meetings this year on the 18th May and 2nd November 2015.

We had a full house of over 60 members to listen to two speakers, the first on wall insulation and then our old friend and former Mayor Bill Randall.

The Insta Group (www.instagroup.co.uk) provide insulation and sound proofing products. The InstaClad product is an external cladding. InstaClad EPS boards are fixed both adhesively and mechanically to the outside walls of the property to ensure a strong bond. A thin coat of render is then applied. The customer gets a choice of colours. The insulation boards are approximately 5 inches thick so allowance has to be made for new window boards and reveals, downpipes, guttering etc. The product is well worth considering where there is a solid wall construction, were you are unsure of fitting a cavity wall insulation, or suffer from condensation on the internal cold walls. InstaClad would be particularly useful if you have a rendered property and that render is already cracked and needs replacing. There are government grants available to help with the cost.

The InstaLine product solves the condensation and cold coming from solid walls. It is a solid wall internal insulation board. The product is specifically designed to insulate houses that are often termed 'hard to treat; for example older properties with no cavity or with solid stone. This product would work well were InstarClad could not be fitted. My building manual tells be that cavity walls were not widely used in building construction until 1905, so these products would be of considerable use in the older properties of Brighton and Hove.

The final products are InstaFibre loft insulation and a sound proofing product that is fitted into or over an existing floor or ceiling. Further details please contact Bradley Isaacs : Operations manager: 0118 932 8811.

Our second speaker was Bill Randall. Bill is the Chair of the Brighton & Hove Council Strategic Housing partnership (on which the SLA have a seat). Bill discussed the Register of Landlords in the City and touched on the proposals to extend licensing to additional wards in the City. He discussed rent stabilisation and the problems of people getting on the housing ladder, should rents be capped to Inflation + 2%?

There are 6,460 HMO's in Brighton & Hove. 1040 Licensed as large HMOs. 2,035 additional licenses have been applied for and 1,795 full licenses with condition agreed. As part of additional licensing the council will carry out a door to survey of 1,000 homes to gauge opinion. The council estimates that 7,300 family homes are occupied by students.

We look forward to seeing you on Monday 18th May where one of the speakers will be Rob Fraser, Head of Planning Strategy at Brighton & Hove City Council.

MIKE STIMPSON'S COLUMN

It is most pleasing to be able to report that the weather in southern England has been most favourable and that landlords should have been able to continue with repairs and maintenance instead of being inundated with reports of flooding and leaking roofs.

Once again the newsletter deals with two very important matters that every member needs to take note of, the first being the leading article about the use of the Section 21 and Section 8 Notices. Have no doubt organisations representing tenants are hell bent on reducing the ability of landlords to evict tenants, and the time has come for landlords and their agents to look more closely at the benefits of using the Section 8 procedure where appropriate, rather than the Section 21.

The government, in the opinion of our association, is misguided in wishing to introduce restrictions as a result of what is alleged to be retaliatory evictions, that is where the landlord serves notice rather than carries out repairs. In my opinion, any tenant reporting disrepair to the local authority will be visited very quickly by a member of the Environmental Health department who will issue a notice on the landlord about the disrepair and expect not only a reply but the disrepair to be put right within a certain period, otherwise further action will normally be taken. This should be sufficient in all cases, but it seems that those representing tenants seem to consider that local authorities do not act as they should and that further restrictions on the use of the Section 21 will protect the tenant's position.

What it will not do is to protect the landlord's position, for example a tenant occupying any property has full control over that property whilst in occupation. Tenants can do many things that cause disrepair, and a landlord will find, if this restriction to the Section 21 takes place, that bad tenants will cause disrepair and thereby make it very difficult for a landlord to obtain possession. What will also happen is that law centres will be advising tenants to seek compensation on a no win no fee basis or on legal aid, and what for? Because there are a few isolated landlords who will not carry out the works and then all landlords suffer, particularly at the hands of unscrupulous tenants which appear never to be mentioned, only rogue landlords, but there are far more tenants who abuse their situation than there are rogue landlords who abuse tenants. Both are unacceptable and to make laws against the few rogue landlords and encourage litigation/disrepair by unscrupulous tenants is unacceptable indeed.

The second article which I consider is very significant for our members is the one relating to landlords repair obligations. It is most appropriate for landlords of leasehold properties where there is a freeholder/managing agent who normally takes responsibility for the communal/public areas of the property. What has happened with this Court of Appeal decision makes clear that a landlord of a leasehold property who has let it has a responsibility to his/her tenant to ensure that the public areas for which the landlord has access are in good condition and should not be susceptible to a claim by a tenant. One would have normally expected the freeholder to be responsible, but this Court of Appeal decision makes it absolutely clear that a landlord of a leasehold flat that has been let out could be equally responsible and that any claim made by a tenant for personal injury would be made against the landlord and not necessarily the managing agent/freeholder.

The second but most important point in respect of this

Cont on last page

appeal decision, and a matter that I have been promoting with landlords over many years, is that as a landlord of a property that is let you should ensure that you have public liability cover that is appropriate for such situations, or that the managing agent/ freeholder holds that cover as part of the buildings insurance. It is no good in these situations saying that the law is unfair. The fact is that the Court of Appeal have made a decision, it is now for members who own leasehold flats that are let to ensure both that the common areas used by their tenants are in good condition, and secondly that they have appropriate insurance to cover the eventuality of a claim. We all know that there are lawyers out there regularly advertising on a no win no fee basis for people who suffer personal injury. To give an example, I have a private car park in which a member of the public parked on a Sunday afternoon, slipped, broke her leg and is claiming against my public liability insurance using solicitors on a no win no fee basis, and members will be surprised, if not amazed, to hear that the claim has not yet been settled after some three years and now stands at over £200,000 for what in effect was a trespass on my private property where the person concerned should have apologised for trespassing rather than instructing solicitors to claim, but unfortunately the law doesn't necessarily support fairness or common sense.

Turning now to pension freedom, members will be aware, as I have mentioned over many years that as a landlord we are expected to act as professional businesses, but for tax purposes are treated similar as investors and cannot from our income buy a personal pension. However, many people who are engaged in business activities have pension pots which from April will be able to be used for any purpose that they wish. It has been mooted that many see property buy-to-lets as the best source of investment. We shall see over the next few months whether there is a significant increase in properties being purchased as investments. If that is the case one would only hope that those landlords would join the landlords' associations and ensure that they understand not only the potential benefits from renting property, but also the obligations and regulations in carrying out what is in effect a business. Too many will seek management by agents at the cheapest cost possible and should be warned now that the cheapest may not provide the best or even a quality service.

Mike Stimpson

SOCIAL MEETINGS

The regular London and Thanet socials will be:-

• London, the first Monday of every month (bar August) commencing February. To be held upstairs at the Constitution - 42 Churton Street, SW1V 2LP. 020 7834 3651. Commencing 6.30 pm

• Thanet, the first Thursday of every month (bar August) commencing February. To be held in the newly re-furbished, and renamed Botany Bay Hotel (formerly the Fayreness), Marine Drive, Kingsgate, Broadstairs, Kent CT10 3LG. 01843 868 641. Commencing 7.00 pm .
If using Sat Nav put CT10 3LH.

Meetings/exhibitions for next quarter.

Make a note in your diary, details on the web:-

- Thurs April 9th - Thanet Social
- Mon April 13th - Southampton branch meeting
- Mon April 13th – London Social
- Tues April 21st – Medway forum
- Thurs April 22nd - Landlord Investment Show – Reading
- Thurs May 7th - Thanet Social
- Mon May 11th - London Social
- Thurs May 14th - Landlord Investment Show – Croydon
- Thurs June 4th - Landlord Investment Show – Olympia
- Mon May 18th – Brighton & Hove branch meeting
- Mon June 1st – London Social
- Thurs June 4th - Thanet Social
- Thurs June 11th – Dover & Folkestone forum
- Thurs July 2nd - Thanet Social
- Mon July 6th – London Social

Riverside Centre, River Lawn Road, Tonbridge, TN9 1EP
Tel: 0845 475 3583 / 0845 475 3283 (fax) /
0845 475 2483 (help-line)
0845 475 5583(accounts) / 0845 475 1383 (insurance) /
0845 475 2383 (Private Health Insurance)
info@SouthernLandlords.Org /
www.SouthernLandlords.Org

PLEASE SUPPORT OUR CORPORATE MEMBERS:

Alan Boswell Insurance Brokers Limited
Moore Blatch LLP
Trade Point (B&Q)
Orchard Shipman
Upad Ltd
Hospital & Medical Care Association
Houseen Lettings & Property Service
Palgrave Properties
Helgor Trading Ltd