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metroSTOR Webinar

A Legal Perspective on E-mobility, The Fire Safety Act and The Building Safety Act
16.03.23

Guest Speakers: Mark London, Mark Foxcroft and Yaasica Hamilton-Haye from Devonshires LLP

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- Most e-mobility incidents and fatalities have occurred within individual flats, and while RPs duties under the Regulatory Reform Order are applicable to common parts only, the Building Safety Act places duties on APs in respect of the whole building (only 18m+ at present).
- It is considered likely that the storage and charging of e-mobility devices in individual flats will have to be banned, save where it's a life-safety or mobility device, but even then, conditions for inspection and testing will have to be very clearly set out.
- The Building Safety Act also places a fundamentally new duty on residents not to do or bring into their properties, anything that might give rise to a building safety risk, so residents' responsibilities in respect of e-mobility devices must be very clear.
- Section 1 of the ASB, Crime & Policing Act 2014 gives an RP the power to apply for an injunction specifically to regulate what is defined as anti-social behaviour, such as a resident storing a mobility scooter in communal areas or within their premises.
- A non-RP landlord can seek an injunction to enforce the terms of a tenancy or lease such as not causing nuisance or doing anything which may invalidate or increase the insurance premium or any other reasonable regulations they put in place.
- Before awarding an injunction, the Court would expect the landlord to have evidence of the policy they have in place for dealing with such scenarios, and that that policy has been publicized to residents and followed by the landlord.
- A landlord does have a contractual right of access to inspect individual flats, and if e-mobility devices need to be removed as a matter of urgency then they can obtain an ex-parte injunction, allowing them to force access the premises and remove it.
- An AP can issue a contravention notice requiring anybody in the property over the age of 16 to stop acting in a way which creates a significant risk of building safety risk materializing, and if this fails, they can then apply for a court order to enforce it.
- The Equalities Act requires us to balance the rights of people who may have mobility issues with those of the other residents who have a right to live in a safe building and ensuring that what we are asking the resident to do is reasonable and proportionate.
- E-mobility devices represent a significant risk of fire so banning the use of them is likely to be considered proportionate, but will depend on the very specific facts involved in the relation to the building, the residents and their particular needs.

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Nigel Deacon
So welcome, everyone; thank you for joining the webinar that we set up today between metroSTOR and Devonshires kindly assisting, looking at a legal perspective on E-Mobility, The Building Safety Act and The Fire Safety Act. So, I'm joined today by Mark London, Mark Foxcroft and Yaasica Hamilton-Haye of Devonshires. So, thanks for joining us and great to see so many on the call. I was just going to start with a quick overview on the fire risk from lithium-ion batteries commonly used today in e-mobility devices such as e-bikes, e-scooters, hoverboards, mobility scooters. Of course, they're fitted to nearly everything we use now from mobile phones and batteries to domestic devices, because they're so good at what they do. High power and small size, small weight, but what's becoming increasingly evident over the last year or two is that lithium-ion batteries are susceptible to damage, overheating, overcharging, and when this occurs, you can get some pretty serious outcomes in terms of toxic gas release, fire and explosion, a process called thermal runaway.

So why does this happen? It can be as a result of poor-quality products; the sale of these products are not carefully controlled in the UK, and it could be impacts in normal use. If you can picture an e-scooter crashing on and off kerbs, physical damage can cause that. I think one of the most common is replacing batteries or chargers with a non-standard components. Many incidents have occurred where people have actually built their own e-bikes or scooters, so I think, don't just assume that it's something that only applies to poor quality products, it's something that can occur as they degrade over time. So certainly something that we need to be aware of.

What actually happens during a thermal runaway event? You generally get a popping noise as the end caps come off the cells and gas starts to discharge. Now, that is a vapor cloud. It looks like smoke, but it's some nasty stuff, if inhaled or it comes in contact with your skin it will kill you. Yeah, you keep away from that if you see smoke coming from a battery, that's for sure. Now, if it ignites quickly, you'll get a fierce fire. If it doesn't ignite straight away and those gases will build up and you likely get an explosion, and you'll see that in a minute, it is a pretty serious event. This one was set up as a re-enactment of an incident. You've got the toxic cloud and then you've got an explosion, which is typical of the size of battery fitted to say, a mobility scooter or an e-bike. Now, this is more showing the actual duration, that number there, 17 seconds from the gas cloud discharge to that explosion. Again, that is typical. You really don't have much time to get out of the property if a thermal runaway is occurring.

How many incidents? Not easy to get data on this, but it's been a big increase over the last year or two. The stats from London Fire Brigade, It was 32 in 2020 and 102 in 2021 and significantly higher than this in 2022. There's been quite a few deaths globally. There's been three fatalities in the UK rising from e-mobility fires. Now I've used this graphic, yes, it's from New York City, but it's a good graphic and it shows almost this exponential increase in incidents. I think this is certainly not something that we can ignore.

So, in terms of methods of reducing risk, can we ban e-mobility devices? Well, yeah, we could do. The Transport for London, they've banned them from the tube lines. But if you picture this within a residential environment, you could be stopping people with restricted mobility from getting around. You could be stopping people from getting to work. So, I

think the genie is out of the bottle. I don't really think that this is an option to ban them altogether, but we can find ways of reducing those risks. There's a lot more we can do, I think, to make users aware of those risks. There are provisions for maybe registering who's got one and making sure they're regularly checked even. That's got disadvantages, of course. Then I think it's important that we consider provision of external charging lockers. But we're going to look now at legal obligations and the tools that you can use in order to discharge them. So, over to the team from Devonshires, thank you.

Mark London

Great. Thank you, Nigel. Good morning, everyone. Welcome to this somewhat niche subject, which is the risk posed by the use and storage of lithium-ion batteries in predominantly residential properties and just to reiterate a couple of points that Nigel has made, we have become involved as solicitors in a number of cases. One, unfortunately, where there has been a death involving lithium-ion battery fires. And I cannot stress enough the fact that this is becoming an increasingly widespread issue and it is only going to get worse, it seems to me. Nigel referred you to some interesting information from the New York Fire Brigade. And the New York Fire Brigade have been extremely proactive in the last couple of years, lobbying federal governments in the US side to introduce legislation to effectively ban the use of these devices within residential buildings, or at the very least to ensure that the products available in terms of batteries and charging equipment pass certain federal tests for safety.

Now in the UK it is becoming an increasingly significant problem as we use more and more of these devices every year. One walks down a high street and you will inevitably pass a retail outlet selling electric scooters, electric bikes, different unicycles, you name it. All of these devices require lithium-ion batteries, and they have all been manufactured to various states of quality. Some are extremely well manufactured, using exceptionally well-engineered pieces of equipment, others less so. And it's the fact that these are largely unregulated in the UK that is causing us one of the major issues that we are encountering with these fires starting in residential properties and indeed in other parts of buildings. So, what we're going to look at today is, is what the law requires us to do and how we go about assessing and dealing with the risk posed by devices that use lithium-ion batteries and in particular e-mobility devices.

I mean, as Nigel said, we have them on our mobile phones, etc., but the risks in relation to those are minor compared to those in mobility devices, we're going to look at fire safety law generally and the obligations that imposes on us to assess risks in buildings. Now, as most of you will be aware, the obligation to assess risk only applies generally to the non-domestic parts of otherwise domestic premises. The law generally has no business going into people's individual domestic premises and risk assessing what they do. So how do we deal with that, given that most people who own these devices are going to be charging them within their own homes? We'll have a look and see what the NFCC guidance says about lithium-ion mobility devices and their recommendations.

Of course, the NFCC guidance is not the law, but it's probably the most helpful piece of guidance out there. And in the absence of any specific law or regulation governing these devices, it's the best we've got for the time being. And I'm going to talk about building safety and in particular The Building Safety Act. And the Building Safety Act imposes new obligations on residents to deal with their properties safely in relation to fire and structural safety. And I'm going to talk about how that can be useful. I'm also going to talk about the obligations of the principal accountable person and the accountable persons in relation to buildings over 80 meters of height. And precisely how do these people assess the risk of lithium-ion battery devices? And then Mark is going to come in. Mark is a specialist property lawyer, so he deals with leaseholder issues and estate management issues all the time. So, this really is a burning issue, excuse the pun, that Mark is having to deal with at the moment. So he's going to talk to you about how landlords can mitigate the risk posed by these devices.

So, let's set the groundwork in terms of the legislative framework. So, I've taken you through a few bullet points there. We now have two regimes, essentially one regime set up by the home Office and the other by the Department of DLUHC, as we as we as we call it. And in respect of the Home Office, we have The Regulatory Reform Fire Safety Order, which you will hopefully be familiar with. We have The Fire Safety Act that became law in 2021. We have the new fire

safety regulations that, of course, became law in January of this year. And on the other side of the equation, which I'm going to talk about, we have the Building Regulations, so we have the CDM regs and we have the Building Safety Act and all of the myriad of different bits of regulation that flow from there. So, in circumstances where the law doesn't actually have anything specific to say about lithium-ion battery risks and mobility device risks, we have to, in a sense, look at the existing legal framework and try and work out where within that framework we have the obligation to assess the risk of these devices and possibly do something about them.

I'm going to make the point right off the bat, and I know Mark is going to make the point as well, that our very clear advice to people who are listening to this seminar is that in so far as you don't already, you should certainly take steps within your leases and other estate management arrangements to not so much to ban the use of these things because obviously some people absolutely require the use of mobility devices to get around, it's an essential part of their lives. It's a property regulator's duty to know what's in the building and to provide facilities, if possible, to allow people to safely store and charge their devices where that does not create a fire risk for the rest of the building. And one of the other issues that we have to bear in mind here as well is that we live in an age where we are constantly having to deal with buildings that are not being constructed strictly in accordance with the functional requirements of the Building Regulations. I don't think I'm going to be offending anybody when I say that it's quite rare to come across a multi occupancy building where all the fire stopping is as it should be and all the compartmentalization is precisely as it should be in accordance with Part B of the Building Regulations. So the risk, of course, of these devices and the possibility that they may end up causing a fire is one that we really do have to think about when we're managing and risk assessing and managing the risks in these buildings. So, without further ado, I'm going to hand over to Yaasica, who's going to talk about fire safety law and the things that we have to think about. She's also going to talk about the NFCC guidance.

Yaasica Hamilton-Haye

Thanks, Mark. So, yes, I'm going to be talking about the Regulatory Reform Fire Safety Order first, which is a bit of a mouthful so I'll just refer to it as the Order. So as Mark said, it was originally designed for non-domestic premises and that was to provide minimum fire safety standards for those. However, communal areas of residential buildings with multiple homes, so for example common parts, were also covered by the Order. And historically, and to note, the enforcing authority is the fire and rescue service and they have the power to issue enforcement notices and prohibition notices. And prosecutions for breach of the Order can be brought by the courts and very large fines can be issued.

So, under the order, who is the Responsible Person? So, in relation to a workplace, it's the Employer to the extent the workplace is under their control. But if it's not a workplace and it's a residential building, then the RP is any person who has control of that premises. So as Owner, Occupier or otherwise, for the purpose of carrying on a trade or business or undertaking. And so, it's important to remember that there can be multiple Responsible Persons for the same building. For example, the Freeholder and the management company can both be RPs in terms of their Responsible Person's duties on the Order. So there's a number of articles I've found in the legislation, I've just picked out some of the most pertinent ones for this presentation. So, Article 8 is the duty to provide general fire precautions, and that's sort of a catch-all clause that will, if you are caught under the Order or breach of the Order that is usually Article 8 that is raised because it's a duty to take general precautions to ensure the premises are safe for employees and other relevant persons, so for example, residents.

Article 9 requires that RPs make a suitable and sufficient assessment of the risks for the purpose of identifying general fire precautions again needed to comply with the Order. So, it is important that fire risk assessments of the buildings suitably assess all fire risks and the carried out by competent assessor. With regards to Article 11 that requires the RP to make and give effect to fire safety arrangements, and that is to ensure the effective planning, monitoring and review of the preventative and protective fire safety measures. And then finally, Article 14 requires the RP to ensure that emergency exit routes and the exits themselves are clear at all times. So, concerns with the existing legislation were raised by Dame Judith Hackett in her review, Building a Safer Future, following the Grenfell Tower tragedy. In particular,

there was an issue with the definition of common parts. It was not sufficient because it only applied to areas such as common corridors, staircases, etc. and it didn't include any aspect of fire safety within flats or on the outside of the building, such as cladding and cavity barriers. And given the vast amount of buildings that had defective external wall systems which had been seemingly undetected, as Mark said, buildings that were not in accordance with the functional requirements of the building regulations, there were clearly needs to be some further reform.

So, it followed then that the Fire Safety Act was introduced. So, the Fire Safety Act gained Royal Assent in April 2021 and then the Fire Safety Regulations recently came into force on 23rd January 2023. So previously, as mentioned, fire risk assessments only assessed the risk within the common parts of the buildings. But now you need to consider more areas. So firstly, you have to consider the structure and the external walls of the building, including cladding, balconies and windows, along with the common parts. And secondly, you have to assess all doors between the domestic premises and the common parts, including entrance doors to individual flats which open out onto common parts, which again were not previously included. So, the expansion then of the Order has created a huge new undertaking for building owners and other RPs to manage. I know that many of you will have already factored those changes into your fire risk assessments.

With regards to the regulations, again, these bring in a number of recommendations from the Grenfell Inquiry Phase one report. So now RPs must now provide the fire and rescue service with up-to-date information concerning the status and location of that fire safety equipment. And you must also ensure that the fire and rescue service are able to easily identify where they are in the building, and importantly, where residents are located. So that might mean clear fluorescent floor numbers and door numbers as well. And the Grenfell report highlighted that fire safety information should be provided to residents in the form that they can reasonably expect be expected to understand. So that could mean translating it into other languages. But what the regulations say is the Responsible Persons need to ensure that residents are provided with fire safety instructions, which sets out how they should respond to a fire and include a reminder of the building's evacuation strategy.

So, turning now to the National Fire Chiefs Council guidance. So, they are the official voice of the UK Fire and Rescue Service and the NFCC provides guidance and advice in relation to fire safety issues. So, for example, they've recently released guidance on the implementing of evacuation strategies, the use of waking watch, so on and so forth. So, in May 2018, the NFCC published their mobility scooter guidance for residential buildings. So, this covered a range of relevant factors for responsible persons to consider, so as to assist in developing proportionate and risk-based policies to essentially try to prevent injuries and reduce risk to all relevant persons in the event of a fire. So, with regards to storage, responsible persons should ensure that there is a policy in place so that tenants can store and charge their scooters safely. They should conduct a thorough risk assessment of the storage of scooters so that residents are not put to undue risk, and a record should be kept of all mobility scooters stored within the building, and that tenants should first request permission to store their mobility scooter, and I can completely appreciate the difficulty that building owners and landlords may face putting that into practice. Residents also should be aware that mobility scooters should not be stored on escape routes outside or anywhere unsecured. With regards to charging, the NFCC advised that responsible persons implement a maintenance and testing regime to ensure that charging facilities are actually fit for purpose. And again, scooter users should ensure that they comply with manufacturer's instructions on use and charging.

Moving on then to e-Scooters and e-bikes, the NFCC published some guidance in January 2022, and they also said with these they should avoid storing or charging them on escape routes or in communal areas of multiple occupied buildings. Again, users need to follow manufacturer's instructions when charging that device. And importantly, batteries should not be charged at night or left charging after fully charged, sockets should not be overloaded, and most importantly, batteries should not be charged near combustible or flammable materials. So, the London Fire Brigade have also published some guidance in relation to e-scooters and e-bikes. It's similar to the NFCC guidance and LFB have confirmed that the majority of e-scooter and e-bike fires happened in homes and that are often caused when charging the

batteries, and so they're advising that users of these vehicles try to reduce the risk of overheating. Again, they reiterate the advice that manufacturer's instructions need to be followed. Never leave the vehicle charging unattended or while people are sleeping and charge some way away from escape routes and exits. So that guidance is very much aligned with the NFCC guidance. As Nigel mentioned, the LFB attended over 100 fires involving these devices in 2021. No doubt that increased in 2022, and that's just one of many enforcing authorities in the country that attended those fires. So given the growing number of the E-Scooter fires in the news, we do anticipate further guidance will be issued in due course. I'm now going to pass back to Mark London who'll be discussing the Building Safety law in a bit further detail today.

Mark London

I've given you quite a few quite a few slides, but I'm not I'm not going to take you through every single one because a lot of them are really by way of background. But I want to focus on three things, really. The first is the general duty that a building owner has in relation to Health and Safety law. Now we've done lots of seminars, no doubt a lot of you attending today have come to those seminars and read articles we've published about the various bits of regulation that have been passed and legislation to be passed in the last couple of years and the specific duties that those impose. But there is one overriding duty that we all have as registered providers of social housing, as building managers, or as building owners. And that is the duty set out in the Health and Safety at Work Act 1974. And it's this, it is the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, the persons not in his employment, i.e. residents and those visiting properties that we are in who may be affected, are not thereby exposed to risks to their health or safety. So that is an obligation that overrides absolutely everything that we do, and it's often one that's forgotten in the mix when one is talking about the RO or the Fire Safety Act or indeed any fire safety regulations, but actually, this is the obligation that is the cornerstone of Health and Safety law and is the cornerstone of our obligations to our residents. And I can tell you now that if anything were to happen in a property that you own, where there was some degree of culpability on the part of the building owner, you're unlikely to be prosecuted under the RFO. If so, the chances are that you will be prosecuted under this section of the Health and Safety at Work Act, and the reason that the section is often used is because it creates what lawyers call a reverse burden of proof. If somebody charges me with an offence under the section, it is for me to demonstrate that I have taken all reasonable, practicable steps to mitigate, reduce, or otherwise eradicate the risk that has exposed residents to a risk to their health and safety. So when we talk about risk assessments and of course, one of the things that we have to do in order to comply with the section is to carry out risk assessments, as Yaasica has said, we have to carry out risk assessments under the RRO, we have to carry out risk assessments, as we'll come on to see in relation to the specific obligations under the Building Safety Act.

But how do we practically carry out those risk assessments in relation to e-mobility devices? It's very easy to do so in circumstances where residents are storing perhaps or leaving their mobility devices in the common parts. Well, in those circumstances you can identify the risk straightaway because that forms part of the requirement for carrying out a suitable and sufficient risk assessment for the purposes of the regulatory reform order. It is far more difficult to assess risk and to therefore do anything about it when the e-mobility devices are being stored in residential properties and are being charged. And when Yaasica took us through the various things that the NFCC and the London Fire Brigade say we ought not to be doing, while I'm sure most of you, like me, struggle with some of that, because I know perfectly well that the vast majority of people are going to charge their devices at night. I might put my like my iPad before I go to bed so in the morning it's there, it's charged. I'll do the same thing for my phone. I'll do the same thing for other devices in my in my house. Why wouldn't I do that for the e-mobility devices? We all live in an age where everything is electric and so it's quite common to see socket points with three or four or five or six plugs in them. And so therefore, although the NFCC guidance is entirely right and practical and sensible, the chances are that the vast majority of people who own these devices are going to do what most people do, which is they're going to plug them in whenever it's convenient to do so, and the chances are that it's going to be in the evening and they're not necessarily going to concern themselves

with where the device is being charged. They may, for example, charge some in the kitchen, they may charge them elsewhere. No one is going to be sitting down with their e-mobility device, thumbing through the NFCC guidance and say to themselves, this is what I'm going to do. So, the risk is there. And as I say, the risk is far easier to deal with when you can see it. So any competent fire risk assessor carrying out a fire risk assessment for the purposes of the regulatory reform order, who identifies the storage of e-mobility devices within the common parts will inevitably say that gives rise to a risk and they will inevitably say as part of their recommendation in respect of that fire risk assessment that something needs to be done to ensure that those devices are safely stored and safely charged.

Now, as I say, what do we do about the storage of these devices in domestic premises? That's where the vast majority of fires start. That, unfortunately, is where the majority of people die when these fires do cause fatalities. And the answer to that is not easy, because the law doesn't like us going into people's houses and checking on what they're doing. But we do have some interesting new developments in the law, which I'm going to I'm going to talk about. So I've included a number of slides on the Accountable Person and the Principal Accountable Person. So, these are new duty holders. This is not the law yet, but it's going to become the law later in the year for buildings over 18 meters in height or seven stories. And what I'm going to do is I'm going to take you straight to the duties that these new duty-holders have. So, if you are a building owner and you have responsibility for either parts of the common parts or the external wall system, you're either going to be an Accountable Person or Principal Accountable Person. And if you're unsure about which of these things you are, then you need to speak to your advisers because it's very, very important that if you own or manage a tall building you've identified whether you are an Accountable Person or a Principal Accountable Person.

Now the duties of the Accountable Persons and Principal Accountable Persons are where all of this comes into play because as we've discussed, the duties under the Regulatory Reform Order, although on one level a fire risk assessor might say in their fire risk assessments, I'm aware that some residents are using and charging e-mobility devices within their homes, there isn't a great deal other than what Mark is going to talk about that building owners can do about that because the Regulatory Reform Order doesn't provide the building owners with the power to go into an individual domestic premises and remove that e-mobility device or to inspect it. And we have a slightly similar position with the duties of the Accountable Person and the Principal Accountable Person that apply in buildings over 80 meters on height. Fundamentally, the Accountable Person and the Principal Accountable Person have to assess risk and in particular a building safety risk, which is a risk of fire or structural collapse. And both of them have obligations to prevent a building safety risk from materializing or mitigating its effects should it arise. Now, the way in which the language of the Building Safety Act is framed is it doesn't limit it to individual domestic premises, it doesn't limit it to just the common parts. It talks about the building as a whole, and therefore it's going to be incumbent on Accountable Persons and Principal Accountable Persons when exercising their duties under the Building Safety Act to take into account the sort of risks that are posed by e-mobility devices.

Now, as I say, it's much, much easier to take that risk into account for example, where you have a designated storage area for these devices, and that may be part of the building, it may be a separate building, they may be stored in underground car parking, all of these things that are easy to see can be properly risk assessed, but it's going to be incumbent on the Accountable Person and the Principal Accountable person to think about e-mobility devices, and the very significant risks that arise from their storage and charging in domestic premises. Now how you deal with that risk will ultimately be a matter for the fire risk assessor, but Mark and I have discussed this many a time and we think it's going to be inevitable that you're going to have to ban the storage and charging in individual domestic premises save where it's a life safety device or it's a device that needs to be used, such as a mobility device, where someone is disabled or otherwise unable to get about without the use of one of these devices. But even there, the strictures that will apply to the storage and charging of those devices will have to be very clearly set out. So, they will have to be the subject of regular inspections and they will have to be the subject of these other things as well. So just to let you know that, you know, you're going to have to think about this stuff if you're an Accountable Person or a Principal Accountable Person.

And there's one other thing I want to mention as well in relation to the Building Safety Act, and that is the duty that is placed on residents now, not to do or bring into their properties, anything that might give rise to a building safety risk. And that is a fundamentally new duty that is placed on residents. The idea being that residents are in this together with the Accountable Person and the Principal Accountable Person, we all have a role to play in understanding the risks that exist on the building and how we can go about mitigating those. So it is going to become incumbent upon building owners, it seems to me, to make very clear to residents what they can and can't do within their properties when it comes to these devices, whether you ban them in your leases or ban them generally or whether you only permit them subject to certain circumstances, such as a commitment from residents to ensure that they use the devices in accordance with the NFCC guidance or other appropriate guidance, that is going to have to be something that you that you consider. So that leads me on to the legal tools available to landlords Mark, so I'm going to hand over to you.

Mark Foxcroft

Yeah. Thanks, Mark. And I've been asked to look at the more practical side of what we can do in these buildings to, as Mark says, either ban or severely regulate the use of these mobility devices and you'll notice on the slide that I've said legal tools available to landlords, and I've done that intentionally because it is the landlord who has the most tools available to them to regulate or prohibit people in a certain way. And that's because they are in contract with the residents through their tenancy or lease, and there will be certain covenants within the lease, the tenancy, about the residents' behaviour. But it's important to note that you have to realise what hat you've got on. Whilst the landlord may also be the Responsible Person under the 2005 order, or they may be the Accountable Person or the Principal Accountable Person under the Building Safety Act, they may not be. And so you have to figure out, as Mark says, or speak to your adviser about what hat you have got on, or how many hats you've got, on in a building, because really it is the landlord who has the tools available to them to regulate this behaviour. So, if the landlord is not the RP or the AP, they need to work closely with those entities to ensure that there is married-up, cohesive approach to the safety of building.

And the other point I want to pick up from what Mark said is, because we don't have an explicit legislative framework that deals with the regulation of these e-mobility devices at the moment, really, we have to use the tools we've got already. And the good news is that from a landlords perspective, there are such tools because it is not entirely novel that there are issues around the safety of items that present a fire safety risk that people have been using in their premises or in communal parts of buildings, we've dealt with this before with barbecues on balconies, or people storing gas canisters, or people storing things in communal areas. So, when we're looking at it from the landlord's perspective it's a case of kind of readjusting our focus and making sure that we're working closely with the other entities involved in the building safety. So, as I said there, really the tools that are going to be available are going to depend on three things, the nature of the landlord, the nature of the residents and the nature of the building, in very broad terms.

So, I wanted to start by dealing with the nature of the landlord. And as I've said, there are different tools that will be available depending on the nature of the landlord. So firstly, where the landlord is a Registered Provider, they have additional statutory tools available to them to regulate such behaviour, than if the landlord is not a Registered Provider. Now, that's not to say that these are necessarily mutually exclusive. What I'm saying is that a landlord who is a Registered Provider of social housing will have additional tools available to them. It doesn't mean they don't have the same tools as the non-RP landlord. And so those of us who work with Registered Providers, who work for Registered Providers, you may be familiar with Section one of the Anti-Social Behaviour Crime and Policing Act 2014. And that is was I wanted to pick up on because this gives a landlord who is a Registered Provider or certain other categories of landlord, the power to apply for an injunction specifically to regulate what is defined as anti-social behaviour. And we'll have a look at what we mean by anti-social behaviour in a minute, but these orders can be very wide. If you establish to the court that anti-social behaviour is being engaged in, and that it is just and inconvenient to make an order, you can get an injunction with very wide terms, as long as those terms are what is necessary to prohibit that behaviour from carrying on or from starting. And so I've just laid out section one there just to give us a flavour that, you see the bits I've

highlighted in bold, there's two conditions. And as I say, firstly that the respondent has engaged or threatens to engage in anti-social behaviour. And secondly, the court is satisfied that it is convenient and just to grant an injunction.

So, what do we mean by anti-social behaviour? Well, that term is defined in section two of the Act, but it varies depending on who is making the application, and of particular relevance to Registered providers of social housing is section 2.1b and c there. So, if we're thinking about the context of a landlord who is a Registered Provider, anti-social behaviour in that context means that they have engaged in conduct which is capable of causing nuisance or annoyance, which of course is very wide, or, particularly relevant to what we're discussing today, conduct capable of causing housing-related nuisance or annoyance. And housing-related is then further defined as being directly or indirectly related to the housing management functions of a housing provider. Now I've picked up on that because that is how you would bring behaviour whereby a resident is storing a mobility scooter in communal areas or is storing it within their premises having been warned not to, this is how you would bring it within the ambit of the act, in my view, is by saying that this is housing-related anti-social behaviour, this is nuisance or conduct which is causing nuisance or annoyance, or is potentially going to cause nuisance or annoyance. So, if you went to the court and said, look, this person has continued to do this, continues to charge in the communal areas, we've told them not to, we've told them not to store them in the premises, we have policies and procedures which specifically prohibit that kind of behaviour, and this tenant, this leaseholder, keeps doing this. Then you think you would be able to construct that and then that you pull yourself within section one. So as I said there, if you go to court, you're an RP, and when I say RP I mean registered provider not responsible person, too many RPs unfortunately, if the landlord can persuade the court that the charging or storing of mobility devices is anti-social behaviour as defined in the Act and that in the circumstance it is just and inconvenient to make an order, then you're likely to get an injunction against the offender. And as I say, that injunction can be very wide, so it can remain in force for the duration of the lease, the duration of the tenancy, and it can be an absolute blanket prohibition on this person using the interior of the premises to charge these devices, to store these devices and say in the communal areas. And the other point I want to pick up on is that can also potentially be obtained against non-residents. So, if you've got somebody's partner or boyfriend or girlfriend that keeps visiting and parking their scooter in or outside the flat in the corridor, charging it when visiting somebody, you could actually get the injunction against that specific person because they're interfering with your housing management functions as a provider.

So, Section one, it seems to me, is a very useful pre-existing tool which can be manipulated, as it were, to address this issue of the mobility devices. But what happens if you are not a Registered Provider? That is, the 2014 act provides a statutory power for the court to make an order in those circumstances which are described. So, what happens when you don't have that ability because you're not a Registered Provider but you're still a landlord with a multi-occupancy building? Well, the good news is that that's obviously not the end of the road. You can still potentially seek an injunction, but it won't be under the Act. Instead, what you're applying for is what we call as lawyers, an order for specific orders whereby you would be saying to the courts, look, the terms of this individual's tenancy, terms of this individual's lease require them to do certain things or not do certain things, they are doing those things and I want you to make an order compelling them not to do those things. So, it is basically getting the court to enforce the terms of the contract. And in this sense, the contract is the tenancy or the lease. So obviously each tenancy in its lease must be considered on its own terms, they will vary, but that being said, we will often find again and again, this same or very similar terms are included within tenancies and leases, and I think there's a number of them which would be able to assist landlords in these circumstances.

So yeah, as I said, that's summarizing what I said before, the tenancy agreement or the lease is a form of contract, it will contain contractual obligations on behalf of each party, in that notice covenants and the tenants covenants will vary from agreement to agreement, in our experience in leases as being for a longer term, and as that's possibly a more significant proprietary interest, will usually have more onerous covenants than those on behalf of a tenant in a tenancy agreement. But that is by no means to say that they are not still going to be useful covenants which can be

relied upon by a landlord in seeking an injunction. So, as I say, caveated by saying you have to check the terms of the individual agreements, but, very common covenants that we would be very surprised if they weren't included within a tenancy or a lease, would be a covenant not to cause nuisance, and we've already thought about how this behaviour can be a nuisance in terms looking at Section one of the ASB Act, there may be a covenant not doing anything which may invalidate or increase the insurance premium paid by the building, by the landlord. And there may be a kind of sweeping-up covenant that require that the residents comply with reasonable regulations put in place by the landlord, and that's something I'm going to come back to later. And also, very often you'll actually find a specific covenant not to store flammable material in the property. If you've got that kind of covenant, then you're halfway there, because all you have to do is persuade the court that somebody is storing material and showing them that these lithium-ion batteries are flammable material and that they have done it again and again, despite you telling them not to. Then you can see how a court is going to want to assist the landlord, and by extension, the other parties who are responsible for the safety in ensuring that building is safe. So, you'd think that the court is going to be predisposed to assist the landlord where you've got somebody who continues to engage in this in this dangerous behaviour.

So, to summarize, slightly different test to Section one, but if you are non-RP landlord, if you are an RP landlord, you would also have ability you also have the additional potential of going down section one of the ASB Act. But if you just have a breach of covenant, you would have to convince the court that the charging and storing e-mobility devices is a breach of one of more covenants, the tenant, the sale or lease, and that it is equitable to make an order because injunctions are an equitable remedy. And what we mean by that is that just because you show that there is a breach does not necessarily mean the court's going to give you an injunction. You have to also show that in the circumstances it's right, it's equitable, it's just for that order to be made. And in order to do that, you would obviously have to show that there had been a kind of pattern of behaviour, I would suggest, by the individual in continuing to engage in the behaviour you're trying to stop. And the final point, I just want to point out that different to the ASB Act, you cannot take these against non-residents in this way because obviously it has to be a part of the contract because you are asking the court to specifically perform a term of that contract. But again, tenancy lease terms are almost invariably drafted that they will make the tenant or leaseholder responsible for others' behaviour who live in the property or visit the property. So, your route of redress would be against the individual resident, but you would be able to take action against a connected person that continues to engage in that behaviour.

So the next thing I wanted to talk about is about escalation. And this kind of feeds back into what Mark was saying, and Yaasica was saying, about the NFCC guidance, about policies and procedures. So, as I say, before awarding an injunction, the Court would expect the landlord to have evidence of the steps the landlord has tried to take to compel the resident to stop the offending behaviour. And this is likely going to include evidence of multiple letters, visits to the property, informing the resident of the issue what is required to avoid further action being taken. And really, I think the key point is to have evidence to show that the Landlord has a policy in place dealing with such scenarios, and that that policy has been publicized to residents and followed by the landlord. And again, lots of landlords do already have fire safety policies and policies about storage of items in communal areas of buildings. I just think these would need to be re-looked at, specifically look through the lens of the mobility device issue, because as we say with the guidance from the NFCC, the guidance for the London Fire Brigade, that's already talking about policies and procedures. So we fully expect landlords in conjunction with RPs, by which I mean Responsible Persons and potentially Accountable Persons if they're not also those roles already, to have really clear, well publicized policies or regulations about the use of these issues, if not outright banning these items being used.

So, injunctions, in my view, are going to remain the most expeditious and cost-effective way to deal with issues arising out of the storage and charging of the mobility devices. However, that isn't a panacea, it is not going to be a one size fits all, because there may also be other eventualities which arise. And the first one, where there is a case where there is an urgent need to address the issues, where it has been identified that say there is a particularly prevalent use, or we know that there is a particular type of device which represents a greater risk than some of the other to maybe some of

the manufacturing issues. The landlord or the risk assessor says this needs to be dealt with now. We don't have time to send letters, you don't have time to engage with the residents, we don't have time to go to court to get an injunction. So, you need to deal with this now, what do we do in those circumstances? And secondly, what happens if you go down the injunction route, but the behaviour continues, so it is a persistent ongoing problem. So, dealing with the urgency points first, and in these circumstances, if it's being stored in the communal areas, I must stress that point, if the issue is about communal areas and the landlord can take steps to remove the offending item from the communal areas of the building. So, as I say, if you're in that situation, but your risk assessment says I've just seen that particular brand of scooter and we know that they are basically a time bomb. You need to get that out of there sharpish. Then it's a risk balance scenario and they will say, well, okay, we think the risk of fire is so great that we are going to take that out of the building and basically the problem with doing that is that in doing so, you're committing what is known as the tort of unlawful interference with goods, and you become what's known as a bailiff in possession of the goods. Now, these are legal terms and just say you're trespassing on somebody else's stuff or taking somebody's goods without their consent. They've left it in the communal area charging and they come out of it is gone because you take it away. So, where you do that without consent then you then can potentially be liable to the owner of the goods. Now obviously these items are not cheap. I know that they are more prevalent than they once were, but they still can be of significant value when we're talking about e-bikes and e-scooters. So, a landlord might say, well, I don't want to put myself on the hook for the potential cost of this item if I remove it from the building and take it somewhere else. So, it's, as I say, that balancing act between the risk posed by that item and the risk the landlord opens himself up to by interfering with those goods. Now the best way to deal with that, although not a perfect way, but the best way is to serve what we call a tort notice, which is basically a notice which can be served pursuant to what's referred to as the Torting (interference with Goods) Act 1977 and basically what this notice does is it says to the owner, we are interfering with your goods because of X reason, we've taking it out of the building it's going to be somewhere else. And so, you can see how the service of that notice, assists the landlord in protecting themselves to a certain degree, from any allegations of interference with damaged goods. So, the notice has to be served on the owner of the goods ideally. But again, if we're taking the communal areas, we may not be able to identify the individual who actually owns it because it's just being left in a commercial area. So, if that's the circumstance and we'd say put the notice in a prominent area, notice board, went above where the scooter was being stored, etc., and once you serve that notice in principle, it allows you to interfere with the goods by removing them.

However, that's not the end of the matter because just serving the notice doesn't give you carte blanche to basically dispose of those goods. Really, what you're supposed to do is store those goods somewhere else and then tell the owner of the goods where they can find them, who to contact, how they can get them back. Or in a long-term scenario, you're entitled to sell the goods and then deduct your storage and sale cost. You should keep the sale proceeds on trust for six years, so you can see it's very convoluted. So again, in those circumstances the landlord has to weigh up the potential value of the goods when they're deciding whether to just store, sell, dispose of those goods once they remove them. But obviously, in the circumstance we're talking about, we're just talking about a quick fix. We've identified it's something which is dangerous or poses a significant risk of fire, we want out of our building, so we serve the notice, we remove it to one of these secure storage units, for example, and then we tell the owner where they need to come to get the goods and therefore the risk has been mitigated. The person gets their goods back and you can have a full and frank discussion about doing it again in the future.

But as I say, that only relates to community areas because if it's being stored within the premises itself, then that person has a right to quiet, to enjoy it. But the landlord can't just enter carte blanche. But what the landlord does have is, is a contractual implied, a contractual right to access to inspect. So you can go in there and see what's going on, but you can't really go in there and start taking goods out without the permission of the court. So, in those circumstances, then I would suggest you need to look at what's called an urgent or an ex parte injunction, which basically allows you to go to court without telling the individual you're applying for an injunction against. You're going and you're saying to the court,

this is so high risk that we need to take immediate action. And so, we would like the order compelling us to allow it to force access the premises and remove something. We'll make good any damage, etc. we need to just get that behaviour, that item, out of the property. Now, you're only going to get that if you got a very clear evidential trail showing why there is such an urgency. But again, this goes back to the point about having a clear, robust policy, because if you can point to the fact that you've got a policy and the tenant knows about the policy and they have been riding roughshod over it, for want of a better expression, the court is already going to be halfway there in terms of saying, well, actually this is not coming completely out of the clear blue sky, they know what they should be doing and they're not doing it.

And the last point I just put at the bottom is you also just want to check the tenancy in these terms specifically, because sometimes they will say that any items left in a communal area are to be treated as abandoned and in those circumstances you could kind of serve the tort notice, start the tort notice process, because you can say well the tenancy says, you leave it behind, you don't claim it, it's been abandoned, that's what's happened and that's why we've removed the offending item. And the last point I wanted to pick up on was the other point I mentioned, which is what happens if you do get the injunction, or you do engage with the resident and the behaviour just keeps coming and coming and coming. Well, firstly, you could look to enforce in breach of injunction, now if you breach the injunction, that's the offence of contempt of court, but the sanctions for that are a fine or term of imprisonment. So you could send the person's prison for a short period or you fine them and yes, that may be punitive and it may stop them doing it in the future, but it doesn't obviously help you with the immediate issue if they are continuing to store the item while you're going through that process. The other long term remedy that you can use is that injunctions or non-compliance with injunctions can be used as a springboard to seek repossession of the property. So if this person is a repeat offender and you just do not think that this behaviour is going to stop, then you could potentially look to seek possession of the property by the courts. But as I said, it would only really be viable in a most serious case of repeated non-compliance, and it is a long-term process. It's not about identifying the immediate issue, resolving the issue by stopping the behaviour or removing the items from premises.

And the very last thing I want it to do is just to pick up on what Mark was saying. And so, as I say, you as a landlord, you may also have your Accountable Person, Principal Accountable Person hat if the building is a high risk building under the Building Safety Act. And what that Act does is it puts some duties on the residents, so any resident or owner of the property so remember it's not just the owner, the tenancy holder or the leaseholder. Anybody in the property who's over the age of 16 must not act in a way which creates a significant risk of building safety risk materializing. And obviously, if you're saying, well, look, I've identified that they're doing this behaviour, they're charging those items and charging those items is a significant risk. Then the Accountable Person concerned can issue what's called a contravention notice, which requires them to stop acting in that way. So basically the Accountable Person says, no, you can't do that anymore. And if they don't do that, you could apply to court for an order in similar terms to an injunction. So if you're an Accountable Person or if you are an independent landlord who is also an AP, it just gives you another route to potentially addressing the behaviour in those higher risk buildings.

And very lastly, as I said, what the Act also does is it gives the Accountable Person the right to access the premises in order to allow them to inspect and ensure that a building safety risk is not materialized. So again, you will have that as a landlord, a right of access for inspection. But if you are an independent AP you won't have that and if you're an AP and a landlord this just gives you another tool to allow you to get inside the premises and, actually see what's happening.

Mark London

Thank you, Mark. So as you can hopefully see from that sort of trawl through the rights and everything else, there are ways that we can deal with the risks that are posed by the storage and charging of mobility devices. So, Nigel, this is your last slide, I believe. So, I'm going to let you deal with the slide.

Nigel Deacon
Yeah. Thank you. I think we've probably covered most of these during your presentations, and they've been extremely enlightening from my point of view. So I don't think we need to elaborate on these. How do you want to deal with the Q&A?

Mark London
Well, I think we will run through the questions. We've had quite a few of them. So if we can go for Q&A and we'll run through them. So we have a one from Steve Galloway as a certified fire risk assessor sitting on the fire working group on the use and charging of lithium batteries, I'm coming into contact with block management providers and developers who are providing electric bikes and scooters where car parking is not appropriate. The brigade currently do not have any clear policy on what is and is not acceptable, and as such, without clear codes of practice, it is difficult to get people to do the right thing.

Well, that's a very interesting observation, Steve. And I think ultimately insofar as the building managers or owners are allowing people to charge these devices in a way that exposes the building to a risk. So, let's say, for example, they've charged them in a shed. It's attached to the to the wall or an underground carpark. Then I think ultimately in so far as you as a fire risk assessor, believe that as a risk, as it's in the common parts, then it is incumbent upon you, I think, to point that risk out and ask and suggest that the building owner or manager does something in order to mitigate that risk and one of the ways that mitigating that risk is to identify somewhere where it is safe to store and charge these devices or to ban them altogether, there are a number of number of different options.

Mark Foxcroft
I think that's right, I think there has to be a married-up approach between the all the entities who are involved in the building's safety to ensure that there is a clear approach. If there is an absolute ban on the use of these because they can't be safe because of the nature of the building or the nature of the estate then that's just the facts. So, if there has to be an outright ban because the risk is too great to use them, then that's the position that has to be taken. But there needs to be a married-up approach between the Responsible Person, the building manager, any managing agent, any other entity involved, they need to ensure that they sign up to a married-up approach and that should then be communicated to the residents coherently, that's the key thing.

Mark London
Right. Thank you. Question from Cheryl Robinson. Does the new fire regulations override the lease terms? Councils operate with some old leases. We have recently revised our lease, but this doesn't help us retrospectively.

Mark Foxcroft
I would say the short answer is no. The contract is the contract in so far as the terms goes. So, what the parties have agreed whenever that may have been, 1985 or whatever, that is what the obligations of that individual tenant or leaseholder are. But as I say, it seems to me unlikely that there will be no lease covenants which are of assistance. So, if it is about nuisance, that will be a nuisance covenant. If there is a lease, a clause in the lease which requires the leaseholders to comply with reasonable regulations that the landlord puts in place, then that gives you, the landlord, the ability to put such regulations in place for the management of these devices. And what the fire safety regulations do is puts a level of statutory regulation over the existing statutory regime, which, as Yaasica was saying, is dealt with by the Responsible Person of the Fire Safety Order. So it's the Responsible Person who has the obligation under the fire safety regulations, whereas it's the landlord under the lease. Now, they may be one and the same, but that's why I'm saying you have to be clear about which hat you've got on, because if you've got your Responsible Person hat on, all your powers and duties come through that has got to go to fire safety or your landlord hat on all the covenants and the rest of it goes through the leasehold hierarchy. Now you may be able to use the leasehold hierarchy to impose the regulatory requirements, but you still have to do it by the gateway of the lease. So that's where it can get confusing.

Mark London
Yeah, I mean, I think the point is that in all of these cases where you're dealing with an issue with e-mobility devices, it is very, important you understand where you sit. Are you a lessee? Are you the lessor? Are you the building manager? Are you the Responsible Person or are you one of a number of these different duty-holders? Because each of them, as we have seen, gives you different rights and different powers.

A very interesting question here. Could we or are we likely to get an injunction that applies across all residents and leaseholders of 900 plus blocks of flats in a single Borough if we could provide evidence that hundreds of residents across the housing stock are systematically ignoring advice not to store charge e-vehicles in properties and communal areas, broadly similar tenancies across all 20,000 properties?

Well, that is a question.

Mark Foxcroft
The difficulty with that is let's say you've got tenant A who may be as good as gold, who's read the policy, who does what they're told, there is no breach. In order to get an injunction, you have to show that there has been a breach of covenant. If you're going to get an injunction under Section one of the act, if you're a provider, you have to show that there's been anti-social behaviour, so the innocent tenant cannot have an injunction made against them. And what you do instead, I think is putting a blanket policy in place which very clearly lays out what they're supposed to do. And then as soon as any of the tenants or leaseholders breach that policy, you then have the springboard to go forward and get an injunction. I think you could potentially get multiple injunctions in one application, as it were, if you have evidence that each of those leaseholders/tenants is breaching the policy or breaching the covenant, but I don't think you'll be able to get a blanket injunction against everyone because not everybody will have engaged in that behaviour.

Mark London
Yeah, that's right. Next question, how do you deal with residents leaving baby prams under the stairs and blocks of flats without a lift? The pram owner living on the upper floor, some will tender a medical list from the GP that they're unable to lift the baby pram to their flat, hence leaving the pram downstairs.

Well, it seems to me that if there is a cogent reason for storing a pram in those circumstances, then that might be okay, but it clearly gives rise to a risk and a fire risk assessor is always going to say to you in those circumstances that pram shouldn't be stored there. So, whether or not you tolerate it is going to come down to a question of how big the actual risk is, if the pram is being stored in such a way that it obstructs use of a fire door or anything of that nature, then clearly it's not going to be acceptable in any circumstances. If it's a relatively discreet location that doesn't interfere with people getting out of the building in the event of a fire, or having access to a stairway or a fire escape, or that doesn't interfere with any passive fire protection system, then it might be okay. But ultimately, it's going to come down to the opinion of the fire risk assessor. If the fire risk assessment tells you that the storage of the pram under the stairs creates a fire safety risk, then you will have to deal with that. And unfortunately, a letter from a GP, in my view, will not justify the continued presence of that device under the stairs.

Mark Foxcroft
This is something that landlords of high rise buildings have been wrestling with since time immemorial. And as I said earlier, this e-mobility device issue is basically the newest facet of that. And over the years we drafted policies for clients where they say, well, it's zero tolerance, nothing in the communal areas and nothing in the riser cupboards, nothing blocking any escape way. We would just serve our tort notice and we'll get it out of there. Then we've had policies whereby you have a low, medium risk, so a pram may be considered to be low risk whereas a barbecue might considered to be higher risk because there'll be a different approach depending on the individual item. it's really about risk tolerance, as Mark said, you know, it is a job for the landlord, together with the Accountable Person, together with the Responsible Person, together with the fire risk assessor to find the particular profile of that building, assessing what

is appropriate, put in a policy which is appropriate in those circumstances. Yeah. The problem with allowing one person with a pram because they've got a specific need for is that, everybody's going to say, well, why can't I have a pram or a bike or a scooter? And it becomes very administratively burdensome to apply that detail to policy. And that's why people tend to go back to having a zero-tolerance approach. So, it's difficult, but it depends on the risk profile of the building.

Mark London
Yeah, the risk profile not only of the building, but where it's located and what is being stored. Another really interesting question. We have concerns about breaching Equalities Act, public sector equalities duties, etc. If we remove mobility scooters, our plan is a grace period where owners of mobility scooters have the opportunity to find storage with our help or replace the device with a smaller version that fits inside their property. However, if neither options are used or work for the resident we fear removing the scooter could constitute discrimination against a disabled person.

Well, that's a very interesting question. I kind of touched on that when I mentioned in my piece that we have to be a little bit careful because these devices are, in fact, life enhancing devices for a number of people. My children, for example, who might have an electric scooter, they don't need the electric scooter, they can do without it. But then someone who requires a mobility device to lead their life, to get about, they clearly need it. This is one of those questions that always arises, which is balancing rights and balancing, trying to find some kind of easy way through, because on the one hand, you have the rights of other people in that building who have a right to live in a safe building, which doesn't have an obvious fire risk within it. But on the other hand, you have people who have rights to get about and to use these devices in order to enable them to live a full life. So I'd be interested in Mark's view on this, but it seems to me that, it's, there is no straightforward answer to this. I'm afraid that's probably very boorish lawyerly thing to say, but there isn't really an answer to this because it's going to come down to whether or not, you know, you're imposing something on the resident that is unreasonable, or whether what you are asking the resident to do is something reasonable and proportionate.

Mark Foxcroft
Yeah. I mean that is probably a webinar session in itself and we would probably come out of it with exactly that answer having gone through the various duties and the rest of it, that it's about balancing competing duties and competing interests. I mean, you know, in relation to discrimination, the Equality Act, if you can show that the behaviour that is being engaged in, is a proportionate means of achieving a legitimate aim, which is lawyer-speak for, the end justifies the means, then the behaviour which may been discriminatory would no longer be discriminatory. So, if you could show that there was a genuine significant risk of fire, then you could say that is proportionate. And we're trying to keep the building safe so banning the use of these scooters, as it were, is proportionate. But that is going to depend on the very specific facts involved in the relation to the building, in relation to the residents and their particular needs. So, it is a really good point, but as Mark says, there is no hard and fast answer to that, each case is going to have to be taken on its own individual facts.

Mark London
Thank you, Mark. And another question from Steve. Do you feel that the considerations of risk and the risk assessment relating to the storage charging of these devices should only be done by a third-party fire risk assessors? Currently, this is not mandatory and is only really being done inside the TPC providers.

Well, I mean, it seems to me that in order to carry out a fire risk assessment, you have to be a suitably qualified person to do it. And although the Government are more than happy for non-professional fire risk assessors or fire engineers to carry out risk assessments of fire doors under the new fire safety regulations, it seems to me that anyone who's carrying out the fire risk assessment for the purposes of the Regulatory Reform Order in relation to common parts or in relation to the external wall system has to be properly qualified. And of course one can be qualified through a number of different ways, either through experience or through actual qualification. So, while there isn't a mandatory set of qualifications or experience that you have to have, my view would be that you shouldn't be allowing anyone to fire risk

assess your building unless they are suitably and sufficiently qualified to do so.

Yaasica Hamilton-Haye
And I would also add to that fire risk assessments often happen once a year, once every two years. So, there is still a management issue. So, your risk assessment might go in and actually everything is clear. But then a few months down the line, residents start storing in the hallway. So, if you do have neighbourhood officers, for example, then you could encourage them to, when they're monitoring the buildings, to actually check that those escape routes are still clear, check whether there's anything being stored in those routes and then report back and then follow the usual processes in getting those cleared.

Mark London
A good question here from Rosie. Can I ask if tort notices are used by local authorities managing communal areas, or if there is something else that we should use? I'm getting conflicting information. We currently use tort notices.

Mark Foxcroft
Yeah, and this is a good question. I thought this might come up. I can't remember the other piece of legislation, but there is another piece of legislation which specifically relates to local authorities, and I don't think it means that you're precluded from using the tort (Interference of Goods) Act 1957 that exists. But it is worth noting that there is that additional layer of legislation and apologies that I don't know it off the top of my head.

Mark London
I think it is the local government miscellaneous provisions Act 1982.

Mark Foxcroft
That's it! I would have said 1989, so yes. So, I'm aware of that, but I can't give you a comprehensive answer because it's some time since I looked at it, but I remember having dealt with it historically, my instinct is that local authorities can use both. But I can't give you a comprehensive answer.

Mark London
Another question for you Mark, they're coming in left, right and centre here. What powers are available to registered providers to manage ASB, which is anti-social behaviour in residential settings with excluded license agreements?

Mark Foxcroft
Well, I mean, I think if we're talking about excluded license agreements, what we mean by that is that they are excluded from the provisions of the Protection from Eviction Act 1977. And so when we use these basically licenses, we're talking about licenses being provided in hostel accommodation on a short term basis, to meet homelessness duties or things like that. So I mean, if you are an RP, you still have the ability to use the Anti-social Behaviour Act, in so far as it is interfering with your housing management functions, you are allowed to use the Act to manage behaviour. The other point is, if somebody is genuinely excluded, sorry that license is genuinely excluded, then what that means is that you don't have to go through due process of law in order to remove somebody from the property or to take possession. So don't have to get a court order. You can merely serve with a notice to quit and then change the locks when they are away from the property. Now we wouldn't necessarily advise you do that, but it is worth you knowing that you have that ability to manage behaviour. And what you need to look at is the license terms themselves and if the license terms themselves say that in the circumstance of somebody acting in an anti-social manner and they are significantly serious that the licensor can immediately terminate the license without having to give a notice period of serving notice. Then you should be aware of that because in the most serious instance, you can rely on that to maybe take possession back. However, in the context of what we're discussing today, I would suggest that the use of these, charging of these devices in communal areas or within the licensed premises itself is unlikely to get to that threshold. So, what you should be doing in those circumstances is engaging with the licensee, informing them of their duty not to not to do this and if they

continue to do it, serve a 28-day notice, as is commonly the case on the license terms or go down the injunction under the ASB Act.

Mark London

Thank you, Mark. A really good question from Neil Smith. How can you possibly ban charging in an individual dwelling? Surely education is the key or the landlord can mitigate the risk through the use of sprinklers, for instance? Well, just, I'll hand over to Mark in a second, Neil, but just dealing with that, I mean, having been into properties that have been gutted literally as a result of lithium-ion battery fires, I'm not entirely convinced, and Nigel will probably know the answer to this better than I, that a domestic sprinkler system is actually going to make much difference. It may well slow down the fire, but it's unlikely to extinguish it. The question how can you possibly ban charging in individual dwellings? Well, you can if you if you make it an express term of your lease or license, the charging and storage of e-mobility devices is against the terms of the lease. Then you can effectively ban it; you can possibly try and fit it within one of the exclusions in the lease that Mark talked about.

Mark Foxcroft

Yeah, I think that's right. I think for new leases it is not problematic at all. I mean, to me it's akin to a covenants and leases we see very commonly for them not to have or use barbecues on balconies or not to store propane canisters, and we see those covenants and leases, and lease is a contract, privity of contract, each party agrees to the terms, if the landlord puts it in terms saying you can't charge a mobility scooter within this premises, if the person doesn't like that then they don't buy the premises, they don't enter into the tenancy. It is potentially more problematic where the lease is already up and running, tenancies will be up and running, and those terms are set unless both parties agree to change them, the landlord can't unilaterally change them. So, in those circumstances, you're going to have to rely on covenants, so you'd have to say this behaviour is a nuisance, or if you've got one of those useful clauses which says the landlord can impose reasonable regulations about the management of the building and the leaseholder agrees to comply with those regulations whenever they are introduced, then you can then introduce regulations which say we're not allowing the charging of these devices in premises. That's a regulation, you have to comply with the regulations of lease and the leaseholder might push back, but again, my view is that the courts are going to be predisposed to assist landlords in regulating the use of these devices once the risk is made clear to the court. So again, you have to have evidence to show that these items do pose a risk. But I'm saying that if you showed a judge some of those videos that Nigel showed us at the beginning of the talk, that's pretty persuasive evidence of the role of these devices I suggest.

Mark London

Yeah absolutely. And we also have to bear in mind that there is no right to own and store any mobility device. It's not a human right. Therefore, in circumstances where, as Mark has said, you wish to ban it under a new lease and you're perfectly entitled to do so. Well, we'll have one more question, I think, and what we will do, because we've had so many questions, what we will do is that where we have not addressed the question this morning, we'll address it and what we'll do is we will circulate to all the attendees with answers to the questions.

And this is from Elizabeth Chan, very good question. Have you had many cases where the court has been willing to make an injunction under the ASB CPA 2014, and readily accepted the charging of the scooter risk is an ASB? Have you found that the court requires some form of expert assessment re the risk and the specific property of the charging the scooter or do they just accept reference to NFCC guidance in the landlords fire risk assessment?

Mark Foxcroft

Yeah, I mean, in our experience, no, you don't need expert evidence, I would suggest that you do need persuasive evidence that the person is doing the thing that you're complaining about and that the thing that you're complaining about is an issue. As I say, that brings you back right at the beginning of my section, I was talking about trying to get this within the definition of housing-related conduct. And I did one relatively recently, an injunction, it wasn't specifically about these devices, but it was about somebody having reed screening around their balcony, which is even less

offensive, you would suggest, than actually having one of these devices in the premises, and they wanted to put up this bamboo reed screening for privacy, and the landlord said that we have a zero tolerance approach on flammable material being stored on balcony, and there was lots of back and forth but the outcome was that we were able to persuade the court that because they had been told about it repeatedly and not done anything about it, they were engaging in housing-related conduct which fell within the definition of ASB under the 2014 Act. And therefore, the judge was persuaded it was equitable to make an injunction requiring the person to take that screening down and keep it down. And to me, the situation is directly analogous to what we're talking about here. As long as you can show that you get within the definition of ASB, then I think you're going to be 85% right there.

Mark London

Okay, well, I think we'll draw it to an end, everyone. Thank you so much for attending this seminar. I suspect we probably raised more questions than we've answered, but it's a fascinating area, and of course, as these devices become more popular and more frequent, the risk rises in proportion to that. And as I hope we've demonstrated today, it's not something that we can ignore, we have to think about it and we have to identify how we're going to manage it in the buildings that we own or manage. So, Nigel, any final comments from you?

Nigel Deacon

Yeah. Thank you, Mark, a big thank you to yourself, Mark and Yaasica for assisting with the presentation and those answers, I think that has been massively helpful and I really appreciate your assistance and willingness to, you know, provide additional answers and responses going forward. Thanks, everybody, for attending and we'll keep in touch and provide details of further events. Thank you.

Mark London

Lovely. Well, thank you very much, everyone. I have a lovely rest of your Thursday and hopefully we'll see you all very shortly. Goodbye.