Darren Coleran Podcast

Hi, I'm Michael. Uh, I'm the Managing Director of Strangford Management Limited, uh, a block management company based in the heart of the city of London. Um, over the next few weeks, we have decided to interview some key personnel in the industry, uh, to help educate Leaseholders property managers, freeholders.

So, our first interview today is Mr. Darren Coleran. Uh, he is a partner at Bolt Burdon Solicitors heads up the real estate dispute team, as well as the Enfranchisement team. So welcome to our very first interview. How are you doing? I'm very well. Thank you for having me, Pleasure. Pleasure. First one. So I'm, uh, yeah, I'm glad you could be here with us today.

So, um, I wanted to talk through, um, a few issues. Obviously, block management at the moment is, uh, a hot topic with the government. You know, I think there's, there's a lot of talk around freeholders, around landlords in general, and, uh, I thought being, as you are heading up the real estate dispute team and the enfranchisement team, it would be, [00:01:00] uh, great to touch upon and hear your opinions on, uh, enfranchisement and right to manage.

So, uh, why don't you go ahead and, uh, tell us first and foremost, um, about enfranchisement. So, enfranchisement typically, is the name given to proceedings commenced by tenants when they are looking to take control of their block, from the Landlord. Mm-hmm. It does differ to Right to manage in the sense that with an enfranchisement claim, the lessees are looking to acquire for value, the, the freehold interest in the property, whereas the right to manage recognises simply just the right to manage the building.

So if, if you can imagine. This lovely building that we're, that we're in today comprises of 20 flats. Mm. Now of the 20 flats, if 15 of us are thoroughly annoyed and frustrated with our freeholder and the building qualifies and, and, and, and by that I mean there isn't an excessive [00:02:00] amount of commercial space, then we can through a solicitor serve a notice under section 13 of the 1993 Leasehold Reform Act, which essentially puts the landlord on notice that we want to acquire the building and we want to acquire the freehold, which of course would be subject to the the 20 flats making up the interest.

Simply put it's sort of the ultimate process to buy over the entire building and you take complete control and liability. Uh, and it will go through to whom? It'll just go through to the individuals or how do you, how would you set it up?

Just going back to our example, so the 15 of us decide that we're going to get together and we want to collectively enfranchise the building.

So the first. The first stage and that stage passed, ascertaining qualification criteria would be to set up a, a company vehicle, a nominate purchase, a vehicle to acquire the Freehold. Land Registry rules are such that the 20 [00:03:00] of us couldn't be individual owners, and in fact, if we could, that might cause more difficulty.

Yeah. Than, than not. So what we may do is we may set up a company, Let's call us 20 St. Pauls building limited, and the 15 of us who are members of the, the group collectively enfranchising would become shareholders in that building. And ultimately, at the point of completion, the Freehold would vest in the name of the, of the company that has been set up to acquire the interest.

Right. So you have to run it like a formal company, like a normal company so it would, have to have company accounts and all sorts. Oh yes. company secretarial and have, and those little bits. It's very much all singing and dancing. So you, you would need directors, company secretary. It is incredibly important that all of the, the necessary company returns and what one has to, has to make, can continue to be made on the inception of the company and the registration outline registry because of course what you don't want to happen is to, to go through this. [00:04:00] Very lengthy and often costly experience, acquire the freehold and then be in a position where ultimately because you've not find, filed your returns in company service.

That's the possibility of strike off. Yeah. And then of course the, the, the, the really nuclear position is the, the freehold investing in the crown. Okay. So how does that differ from a right to manage claim? So, uh, right to manage typically. Used one of the lessees, again, looking now a building where we, we may not have the funds immediately available to acquire the Freehold from the, from the Landlord.

So if we assume from a collective enfranchisement perspective, each lessee just as a, just as a, as an example, may have to contribute between, yeah, 5,000 and 7,000 pounds each towards purchase price. With the right to manage, that doesn't exist. So what we are doing in that setting is simply exercising our right to [00:05:00] manage the building.

Right, but as long as the qualification criteria are met, then there is, from the landlord's perspective, no defense, you know, it is a, a straight from application through to management process. So it's a sort of no blame process. They, the, the, the company that's set up for the right to manage, um, to do the right to manage and take over the management of responsibilities.

That's it. They don't have to blame the landlord. There's no, it's just simply a paperwork process. They don't, they don't have to prove that there's some sort of mismanagement is happening, I mean, If you'll get collective enfranchisement or Right to Manage there is, they are both no fault based. Okay.

Applications. So typically they tend to be made. Um, lesses are frustrated with the management of the building. Insurance costs, maintenance costs, whereas if you are looking at a fault based application mm-hmm. You might then be looking at the appointment of a, a manager, which tends to [00:06:00] be a little less frequently used.

Right. Okay. So that's, that's getting quite into the technicality of it, but I think yeah, I think it's important because I think certainly the claims that I've seen around enfranchisement and Right to manage, it's, it comes from, like you said, from frustration and, um, there's a lot of emotion around it, but it doesn't have to contain that.

It's just simply a paperwork process that they can go through and it's, and it's actively available so long as they're qualifying. It's not a, a massively complicated process to navigate. If all of the eyes have been dotted and the Ts crossed. Yeah, it's quite a well-trodden path as well, isn't it? I think it's must been.

This is not a new thing, so, um, it may be new to people, but it's not a new thing in, in terms of the law. And, and there's been lots and lots and lots of buildings that have enfranchised or, or gone through the right to manage process. Um, This might be a difficult question, but in, in terms of your opinion, is it possible for you to say which groups of people or which types of people or which types of buildings would be more suited to right, to manage [00:07:00] versus enfranchisement?

Or does it just purely come down to money? Yeah, I think in lots of instances it does come down to, to finance how much are the individual lessees having to, to, to contribute, outside of cost, toward the, toward the process. You know, you can look at different areas and you know, the, the, it, it's always possible to, you know, to, if you have to, to guess what building might go right to manage what building might go enfranchisement, in my experience, it tends to be driven by, by cost and the level of frustration with the landlord. Sure. If it is simply a question about acquiring the right to manage and to take the building in a different direction, then a right to manage application tends to be used much more often than not. Whereas with enfranchisement, yes, you do have that, that element, but you also have elements of perhaps the lessees looking at areas of the building that could be further [00:08:00] developed for commercial purposes, which does unfortunately come with its complications.

Yeah. When you are looking at the premium, ultimately payable to the, to the landlord. In today's, in today's some cost of living crisis. If, if, if you want. Right to manage represents the most cost efficient way of lesses, securing management of the building, and being able to implement some of the changes that they consider the, the current landlord is, you know, not capable of.

Which is quicker in your experience, I know it's difficult to sort of judge the call some things like that, but it'd be interesting though cause we covered sort of costs and a little bit about the process, but which do you think is really the quicker route for people to say, I think right to manage, given that it is not something that opens itself up to being defended outside of qualification of the technicalities, which are attached to, to every claim, right to manage in my [00:09:00] experience typically is quicker. And that is because you've not got this business of serving a notice of claim on, on the the Landlord, the Landlord then serving a counter notice and then having this six month period when the parties are negotiating.

Now do remember if in that six month period, the premium in an enfranchisement claim isn't, agreed then you might still have a further period where the matter has been determined by a tribunal, right, so that six months could very quickly become a year with current deadlines and um, backlogs with, with HMCTS, whereas right to manage, you know, typically you'd expect to be out of that process and managing the building, within that, well, well, within that time.

Do you, um, so just, just to clarify for everyone as well, you, there's no reason why you can't do the right to manage process and then go into enfranchisement at a later date, yes? Absolutely none at all. So it could be a sort of first step. It could be a nice first step for people to [00:10:00] take because it's more cost effective, it's quicker just to guess, and it's going to be roughly, you know, the same people logically, I suppose.

Um, To go through the right to manage process and then at a later date costs pending and see how the companies sort of run and, and getting on and see how they like having the control over the management of the building, um, they could then go to enfranchise, the building thereafter. There's nothing to stop them, is there?

Do you think it would be quicker for a group if they went, uh, through the right to manage and then enfranchise? Or, you know, is there really just nothing in it? With absolutely no experience whatsoever outside of your appointed professionals, then the right to manage experience would give you a better sense of how the building is going to operate once you've acquired the right to manage, and by that I mean the directors of the rtm, the, the members, how does everybody get on? What is that chemistry with the managing agent, which is massively, massively important. What is the dynamic [00:11:00] daily? Now it might be that once you, if you've gone right to manage that, that that dynamic and, and that relationship between the participating, um, lessees is, you know, is perfectly fine, there isn't a need to take it forward. If, however, Whilst you've, you, you know, you've gone through that right to manage process, it becomes very clear that getting any sort of decision made is very political and, and these things can be within blocks. Yeah. Then that's a pretty good indicator that a collective enfranchisement claim, is likely to be much more complicated and is likely to lend itself in that setting to there being some disappointed, um, some disappointed lessees.

Do you ever see any right to manage companies, be dissolved, struck off? Um, not very often, not very often. Enfranchisement companies, slightly different. Um, we, we, we are often consulted by, um, enfranchisement companies. Mm-hmm. Um, who haven't, [00:12:00] uh, Maintained all of the, the necessary returns, et cetera, with company's house. Right to manage not, not really. It tends to be once the lessees had gone through that process, and actually in my experience, I have found that those who want to enter into right to manage tend to be a little bit more focused. Yeah. Because it is all about the management of the building. Sure. And if you are approaching it just from that perspective, then I think you've got a much clearer head.

Whereas if you start talking about airspace and , you know, garden ground development and all of that sort of, all of that sort of nonsense, then, what tends to happen is the pound signs get in the way and that starts to color people's vision of what, of what, you know, why they actually started the process in the first place.

Yeah, that's a good point. I think. Um, in your opinion, do you think that the right to manage process or enfranchisement, do you think it makes any impact on the value of people's flats or because we're talking more [00:13:00] specifically about the common parts and the structure of the building, it doesn't actually have a huge amount of change, you know, on their actual apartments themselves.

Uh, my position, it, you know, it is very much that we, we, we live in a country where we have this, this leasehold system, there is absolutely 100% place for professional landlords. Mm-hmm. Um, and not for any of the reasons you, you may read in the, in the the press simply because they are, they are experts in what we do. Sure.

And whether they do it well or do it badly, you know, they, the, the fact is in many instances, many of these companies are professional and this is what they is what they, what they do, I mean, Do you know, I think if, if you're a group of lessees and you, you're frustrated and you are wanting to take management of the building, you are wanting to, to change things, then collectively, I think you've, you've got to [00:14:00] sit down and, and look at what you're doing and why you're doing it.

If you're looking at this process as one to potentially generate income, From the, from the freeholds in the future, whether that by way of, you know, short leases within the building or developing common areas, then collective enfranchisement is perhaps the, the way forward. If it's simply about management delivering sensible budgets for, you know, for people in difficult times then right to manage, in my views, the, the, the way forward.

What. If we don't see a great deal of, if I'm honest is conflict between the two. So it's very rare that we have clients come to us and say, we can't decide whether it's right to manage or, or, or collective. Mm-hmm. In the vast majority of instances that they've come to us, they've been meeting and talking and they've got in their mind an idea of what they're wanting to, what the what to achieve.

Right. And if that experience has been tempered by having, you know, a sort of awful [00:15:00] landlord, then collective enfranchisement is much more likely. Sure. Whereas if it's just about the service charge the insurance costs. The, you know, the state of the, the, the corridors and right to manage tends to be the, tends to be the favoured, the favoured approach.

Okay? So it doesn't necessarily mean, you know, by, by buying your freehold or taking over the managements that you know, you all of a sudden have. You know, a lot of value placed onto near the price of your apartment. However, a good point that you just mentioned there was, was the specific budget. And certainly from my experience, I think we've seen where people, I'd say more right to manage where right to manage companies approach us the, I don't wanna say money, money saving, but a lot more sort of financial control will be over the budgets.

So instead of them just saying, hey, you know, this year we paid 3000 pounds per year for the cleaning. You know, they have the ability to then, sort of renegotiate that contract, you know, using their agents and, and that's where they can make potential savings or, you know, the [00:16:00] insurance is a big topic at the moment as well.

So, you know, these sort of big headline elements within the budgets, that's where they get control back and that's where they can perhaps get some, spend, some spending on the control as well. So it's not necessarily it's adding value, but it might be bringing some spending under control.

If you're entering the process to add value, the your individual property, you know, taking a half a million pound flat, for instance, you know, increasing the value by, you know, 10, 15, 25%. Mm-hmm. Then, you know, perhaps you, you're better served by not doing that. Sure. Because there isn't a, a necessary. Necessarily there isn't any sort of correlation between enfranchising then this enhanced value.

Yeah. Typically what you'll see lessees, lessees do with collective enfranchising, for instance, is once they've acquired the freehold, they will look to extend the leases, their, their leases to 999 years and, and kill the ground rent, now in some buildings that kills value in the freehold, but it [00:17:00] doesn't necessarily transfer to an increasing, purchase value. Yeah. Um, and equally with Right to manage, you know, there isn't, you know, I'm not aware of there being any direct correlation between how in the ability to merge your building and the value of your property. What both instances do, however, is to give you control. And if you're on a block, As a shareholder, you have a say in the insurance and the the, the maintenance costs of your building and what happens to the communal areas.

Then I think you measure your flat against a building immediately next door, then it's much more likely. Mm-hmm. Where, you know, rather, it's much more likely that if you've got two identical flats, two identical buildings, one landlord controlled, and one you know, those perhaps controlled by lessee, that the, the block with the right to manage or that has been collectively enfranchised, might, might, I think secure [00:18:00] a little bit of, uh, um, an advantage in the, in the marketplace if only because there will be a perception, Sure, that the lessees are able to determine what their insurance and maintenance costs are. Yeah. But of course, the flips side to that. That is, the building has been managed, you know, thoroughly, awfully.

Mm-hmm. And you've got a board of directors who, who, you know, don't get on, can't make a decision. Then you can end up get in a position. We do see quite often where the, the value is being affected, pushed downward if, if you like or not. That is because the, the, the block is, is, is hampered by internal politics.

So it really depends on. Your neighbors, your, it's, it's entirely. It you, if if it's an exercise you're doing to add value, then don't. Yeah. You know, put your money somewhere else. If it's an exercise that you're, you, you're entering into to secure control, of your building. To give yourself a better, or in your view, what [00:19:00] might be a better steer of maintenance and management costs. then that's really the only, the only setting under which you should be looking at it. Okay. Yeah, that makes sense.

Um, let's talk pitfalls. Pitfalls on the process. Um, let's start with right to manage. Um, or unless, you know, the pitfalls maybe are quite similar in each or they're, they're, they're very similar.

Both, both processes. Commenced with the service of the service of notices and what we, we, we sometimes see. I mean, you know, a lot of my clients, um, come to me certainly the real estate litigation sense, because previous solicitors haven't drafted the notices correctly, haven't allowed sufficient time for a response as a result of all of these, all of these, all of these deficiencies where unnecessary costs of be if, have been incurred.

It is a process that is rooted, um, in and of all processes are rooted in statute. [00:20:00] There are generous timeframes allowed for the parties to undertake the various steps. I mean, I think it tends to be pretty straightforward, but I do it every day where we do see issues of where you have lawyers who perhaps, and surveyors who perhaps don't specialize and practice in the areas.

Yeah. And there is this crossover unfortunately, I don't mean this disrespectfully to my conveyancing colleagues because for many years I was, I was in conveyancing. But there is this crossover where occasionally you may have a conveyancing lawyer, who thinks, well, actually I can do this and start banging notices. Sure. Out and, and that's fine if they get it right.

Because it's such a complex area. More often than not we see that that isn't the case, and then we end up having to either start again or the, the, the lessees of the group have, have incurred costs unnecessarily. So I think the first pit fall really is to, to make sure that you've got somebody looking after us who is familiar with the. claim, familiar with [00:21:00] the legislation and the valuation methodology that is attached to it. And then I think the, the other really significant, um, pitfall is going into it blindly and not having any expectation on where it might end. So, for instance, a collective enfranchisement claim you may have in your head a figure in, in, in terms of what that top level of settlement may look like.

It is much, it is, much more likely to be the case that landlord will have a figure also. But that exceeds even your figure, right, so if you're going into this, you know, thinking my cost exposure is limited to X, right, then that is, you know, very definitely the wrong mindset. So you need to be a little bit flexible in how you, though you're going into this thinking, you need to be financially very, very, very aware.

And then with right to manage, which is of the two, perhaps the most technical, I think. Okay. It's about making. Making certain [00:22:00] those I's are dotted and the t's crossed because where they're not, um, you know, you could be in a very unfortunate position that you've got to start again. Right, but in the backdrop to this, you've incurred lots of unnecessary cost.

So it's all about, making sure really the, the component parts of the act are meticulously adhered to. Right. It's not too difficult to go through the process, but you do need someone to sort of hold your hand, someone like yourself or your firm that, that can hold your hand through it. It sounds like the, the, the tricky part is not necessarily something that someone can create or, you know, put you in a difficult position, but it's more procedural.

Um, and, you know, perhaps certain people that haven't got that much experience with it, may screw it up along the way, and then you start the, the three, six month process, like we said at the start, you have to then go back to the start and reissue everything from the start. It's not a case of, oh, you can just go back and reissue that notice.

You have to kind of go back to the start. I mean, there are, there are [00:23:00] instances when you can, you can make applications to, to vary, to amend orders, but that tends to be in the not very, that's not very common with with collective claims. You know, getting that wrong, you know, that can result in a, in a significant amount of expense because of course, the landlord is entitled to recover their reasonable legal and valuation costs.

Sure. Considering the claim that's in addition to the cost that you've already incurred, right to manage, you know, the cost exposure tends to be, tends to be a little bit, you know, in, in, in my experience, a little bit less, however, It's, it's, yeah, it, it's massively important I think that you are confident that your appointed professionals, mm-hmm, know what the process is because once that process has been started, there are different consequences of stopping it. Sure. So for instance, if with the collective claim, if you decide to [00:24:00] withdraw, then you know, the situation on withdrawal then is then very different, Sure, to the, to the situation with the right to manage.

And of course, it's not just you that might be 20 or 30 other people involved as well. Yeah, exactly. Um, yes, that's, that's quite a tricky thing to, to manage. You know, maybe, maybe you are the sort of primary person for a group of people that are undertaking this, a group of leaseholders gone on to take this process.

Um, we've sort of danced a little bit around costs and, you know, not necessarily saying, you know, how much would you cost or how much would you charge for this, that, and the other. But from a kind of headline point of view, cause I think it's important that we, we sort of really detail out a little bit and say, Don't go into this thinking, oh, I just pay whatever X amounts of money, and all of a sudden someone does the process and we're there.

You know, I think it's important to, to go into a little bit of detail about actually you will be liable for these costs and these costs and these costs. From a headline point of view. You able to go into that a bit? So from a, from a collective claim, [00:25:00] um, And to some degree, right to manage you are responsible for the landlords reasonably incurred legal and valuation costs.

So the, the, their legal costs and the cost of a valuer to come in and value how much that Freehold is worth. Yeah. So in a, in, in a collective enfranchisement setting. Absolutely. And in both instances, collective and right to manage there is an obligation, toward the Landlord's costs. And that obligation, you know, can be subject to oversight by the, by the property tribunal tends not to be, um, as, as often as we we'd expect.

And that's simply because more often than not the costs of, of making the application through lawyers and complying with directions and the like can often exceed what potential saving is, but certainly going into the process. You know, from, from our perspective of we act for landlords and, [00:26:00] and, and tenants. We would break each component part of each application down into stage.

Right. And then we would make a charge per lessee agreed, agreed, at the beginning. Yeah. The, of the matter with the group at the discharge, of that's, of that stage, and because the process typically you're looking at, you know, it's up to six and sometimes six months and beyond that allows everybody to or otherwise the lessees that, in most case, to spread that cost.

Each individual stage, um, depending on your involvement and, and the notices and negotiation with landlords and all sorts, you will break that down and say, this is how much it'll cost at this stage and this stage and this stage and then you'll break it down and say, okay, there's 20 of you, so that'll be X amounts of money per person.

And then you can say, Hey, split over six months. So you know, the cost exposure is split over six months and not saying you have pay everything up front right now and, and, and, uh, you know, deal with it. Then you can deal with it in particular stages. We're very much [00:27:00] stage, stage based as a firm, some firms,. will ask for payment of all of the costs.

Okay. Upfront. This is something unique to you guys. It's not necessarily the, everyone in the industry that, no. I mean, I think, you know, quite a lot of firms do have that staged approach to the, to the costs, and it is important, to manage the, to manage people's expectations. Sure. To know each individual component, part of the process, what it's, you know, what it's going to, yeah.

What it's, what it's going to cost, it works for us, and we find that it's easier if you're looking at this from a purely marketing perspective, and I'm not, but if you, if you were. You know, it's, it's not unusual for a group to come looking to enfranchise a to, to write, to manage, to be given the, the, the fee estimate and then to, you know, recoil in horror because you know who has a couple of thousand pounds handy these days, whereas if you're actually saying, well, Peter you know, that's fine, it is [00:28:00] 2000 pounds per lessee as an example, but that's over six to eight months and that is much more digestible. And does lend itself, again, from a purely marketing commercial perspective, to more of those new inquiries converting into real business.

We've gone through what the different types of processes are, um, who, which, which type of process would benefit certain types of people, you know, what the importance is with, with different ones, uh, the different types of, uh, processes, the sort of headline costs involved in it. So, um, you know, I think we've, we, and, and certainly the value, the impact that each would bring, uh, and, and you know, the benefits of those. So I think probably the only thing left is if you were a leaseholder in a, in a block of apartments, how would you get started? Say you're listening to this and you're really, you know, super interested in, say, I really want to go through with Right to manage or enfranchisement, where would you start?

I mean, I think the, the, the starting point is to sit down as a collective, with a lawyer. Okay. [00:29:00] Just talk through what you're hoping to achieve. This is enfranchisement or, um, enfranchisement and right to manage. Both sit down with the lawyer and really you're wanting to, to, to talk about what you're hoping to achieve from the, from the process.

Once you've had that conversation, it will be, I think far easier for the lawyer to provide you with the the right sort of advice, the right sort of information as to costs and the right sort of information to take away and to to read unless there is an immediate pressing need. For instance, lease's falling below 80 years, it is sense one as a group and as a collective.

To really sit there and go through all the material that's be provided. The lawyers, you know, were full of materials, so Sure. You know, if you know, if you're getting an estimate or a cost breakdown from a lawyer who can't provide you with any information, then you know, then should be a real red flag.

Yeah. Take the time to go through the data, to go through [00:30:00] the objectives of, of what you're looking at achieving. To look at the information lawyers have provided speak to surveyors, ascertain what the cost is going to be. And remember that, you know, with an enfranchisement block, if you have a, you know, a, a, an enfranchisement claim, if you have a block of 20 and only 15 are going to proceed.

Who's going to fund the, the five participants, so has an awful lot of information. You need to, to gather and to go through. Once you've, you've, you've undertaken that process and you're at a point where you are ready to make the decision, don't be afraid to have another conversation with the lawyer before instructing and, and proceeding.

Because once you start to incur the cost and once you start to serve notices upon Landlords and you know, To anybody with an interest in the building, then you're very much in the, you're very much in the throw of things, and if you decide at that point, To, to, to pull out or to, [00:31:00] to change course. Then you're going to find it's, going to be costly from a landlord's legal cost perspective, but also your own, because you solicitor.

You know, if you've had the advice front loaded the front load at beginning, it's more than likely to make a charge on an abortive basis. If you pull age of an enfranchisement, and to go right to manage. Okay. But I think the final point that the much, much, much more important. Is to make certain and to be as certain as you can, you and your neighbors get on. Yeah. It is pointless buying the freehold of the building, if you know 15 out of the 20 don't like each. Sure. And if the 15 of the 20 can't, you know, determine or can't decide on, you know, the, the, the color of grass, um, as an example then right to manage equally is, is likely to be fraught.

So it's really, really important that you have that strong management experience within the group. And you have two or three who the group will [00:32:00] gravitate toward and whose and whose opinion and views will like to be respected throughout the process and beyond.

Okay. Well look, I think that's, that's a really good insight into both those processes and, uh, you know, we've covered a lot of information here today.

So I will, uh, make sure I put your contact details at the end of the video, um, so people can get in touch with you if they want to go down that process or even just to have the initial discussions. Uh, and uh, I think that's very good. So thank you so much for coming in, Appreciate it.