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Subject: The removal of the self closing device on a flat entrance door

Dear Janice

From the e mails I have received and from the conversations with yourself and Abigail Acosta the issue in question is that some elderly tenants are finding it difficult to open their flat entrance doors when the flat entrance door is fitted with a self closing device. You have asked if a self closing device fitted to a flat entrance door located in a protected staircase or a protected corridor can be removed so as to aid the person opening the door.

The answer to your question is that if a self closing device is fitted to a flat entrance door located in a protected staircase or a protected corridor then it should not be removed. The reason for this answer is that.

Regulatory Reform (Fire Safety) Order 2005 (FSO)

Under the Regulatory Reform (Fire Safety) Order 2005 (FSO), Part 4 OFFENCES AND APPEALS Article 32 (1)(a) Offences, it states:

It is an offence for any responsible person or any other person mentioned in article 5(3) to—

- (a) fail to comply with any requirement or prohibition imposed by articles 8 to 22 and 38 (fire safety duties) where that failure places one or more relevant persons at risk of death or serious injury in case of fire;*

I believe that by removing the self closing device from a fire door this could place the other residents of the building at risk, because if a fire was to occur within the flat the entrance door would not close automatically so the smoke and flame could enter the

common parts of the building and would not be confined to the dwelling of origin. This is because there was a device fitted and you have now disabled or removed it. The FSO then goes on to state in Article 32 (3):

- (3) Any person guilty of an offence under paragraph (1)(a) to (d) and (2)(h) is liable—*
(a) on summary conviction to a fine not exceeding the statutory maximum; or
(b) on conviction on indictment, to a fine, or to imprisonment for a term not exceeding two years, or to both.

The “responsible person” for the TMO is the Chief Executive, but in Article 32 (8) it states:

(8) Where an offence under this Order committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate is guilty of that offence, and is liable to be proceeded against and punished accordingly.

The Building Regulations

Under The Building Regulations Approved Document B (Volume 2) incorporating Insurers Requirements for Property Protection it states in Appendix B Fire Doors item 2:

All fire doors should be fitted with a self-closing device except for fire doors to cupboards and to service ducts which are normally kept locked shut and fire doors within flats (self-closing devices are still necessary on flat entrance doors).

Fire Safety in Purpose Built Blocks of Flats

This is a newly released guidance document, 1st August 2011, in Part C The law governing fire safety in blocks of flats it states:

- ∞ *The FSO applies to all parts of a block of flats, other than within the individual flats.*
- ∞ *The FSO imposes duties on persons who may include freeholders, landlords, managing agents and contractors who maintain fire safety measures and those who carry out fire risk assessments.*
- ∞ *All fire safety measures must be adequately maintained.*
- ∞ *An offence is committed if inadequate fire safety measures place people at risk of death or serious injury in case of fire.*

It then goes on to state in items 26.5, 26.6 and 29.2 (this last item has more to do with leaseholders and overlapping of the FSO with the Housing Act):

A common contravention is the replacement of a self-closing, fire-resisting flat entrance door by a non-fire-resisting door or by a door that is not self-closing. This is a particularly serious contravention as it may place other residents at serious risk if a fire occurs in the flat in question.

There is no requirement under the Building Regulations for upgrading existing fire safety measures to current standards. However, existing non-compliances with the current Building Regulations must not be made any worse in the course of alterations or building works.

The flat entrance doors are critical to the safety of the common parts in the event of a fire within a flat. The doors must be self-closing and afford an adequate degree of fire resistance. Where these doors are, under tenancy agreements, the responsibility of the freeholder, the FSO and the Housing Act may both be used to address deficiencies, but, in many cases, it will be the FSO that is more appropriate to apply.

In the case of many existing leasehold flats, the responsibility for maintenance of the flat entrance doors rests with the residents. In this case, the freeholder's power to arrange for defects to be rectified may be limited or non-existent, making enforcement action on the freeholder inappropriate.

Under these circumstances, the residents might be regarded as other persons having control of premises (as defined by Article 5(3) of the FSO), with a duty to ensure the adequacy of the flat entrance doors. However, use of powers under the Housing Act may be a more appropriate and better defined route to achieving compliance with the FSO. In new leases, ideally the freeholder should retain control over all flat entrance doors.

Conclusion

I would advise that self closing devices where fitted to a flat entrance door located in a protected staircase or a protected corridor should not be removed because the existing situation is being made worse, a Building Regulations term, and by removing the self closing device you could be "placing one or more relevant persons at risk of death or serious injury in the case of a fire".

There are alternative solutions to removing the self closing device from the flat entrance door, if you would like me to attend a meeting with the providers of the doors or with yourselves please instruct me.

The above is a personal view only and a definitive answer can only be given by a court of law, but I have undertaken the role of an enforcement officer for the FSO and carried out legal proceedings against owners/occupiers of premises. I would recommend that you seek legal opinion from your solicitors and that your insurers are contacted for their opinion, because by removing the self closing devices this could affect clauses of the buildings insurance. If you so wish the enforcing authority for the FSO, London Fire and Emergency Planning Authority (LFEPA) could be contacted for their opinion.

Please feel free to contact me if you require any further assistance,

Yours Sincerely

Carl Stokes

Cc Abigail Acosta