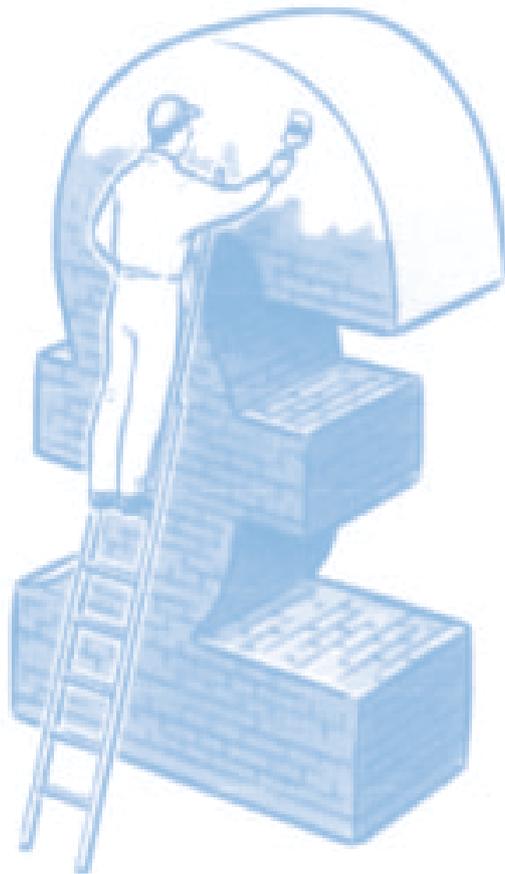




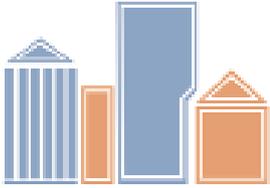
# SERVICE CHARGES

*and other issues*



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This booklet is not meant to describe or give a full interpretation of the law; only the courts can do that. Nor does it cover every case. If you are in any doubt about your rights and duties, then seek specific advice.

## Introduction

This booklet covers the following issues:

- service charges
- administration charges
- insurance
- ground rent
- Estate Management Scheme charges
- Recognised Tenants' Associations
- forfeiture and possession

It is primarily directed towards leaseholders, including tenants, unless expressly provided otherwise, who, for example, may pay variable service charges and administration charges.

The advice provided therefore applies to all tenants whose lease or tenancy agreement provides for payment of a service charge which varies from year to year, or allows the landlord to recover administration charges, or who is subject to an Estate Management Scheme.

The booklet includes, inside the front cover, a copy of *Living in Leasehold Flats*, a basic guide to leaseholders' rights and obligations.

## Service charges

Service charges are one of the principal areas for dispute between leaseholders and their landlords. This booklet sets out the provisions the law has made in relation to various matters, including:

- the setting and recovery of service charges;
- the rights of both the leaseholder and the landlord to challenge or substantiate the charges before a Leasehold Valuation Tribunal;
- the obligations placed upon the landlord to consult the leaseholders before carrying out qualifying works or entering into long-term agreements;
- the statutory controls on demands;
- accounting for the charges.

### *What are service charges?*

Service charges are levied by landlords to recover the costs they incur in providing services to a dwelling. The way in which the service charge is organised is set out in the tenant's lease or tenancy agreement. The charge normally covers the cost of such matters as general maintenance and repairs, insurance of the building and, where the services are provided, central heating, lifts, porterage, lighting and cleaning of common areas etc. The charges may also include

the costs of management by the landlord or by a professional managing agent and for contributions to a reserve fund.

Details of what can and cannot be charged by the landlord and the proportion of the charge to be paid by the individual leaseholder will be set out in the lease. The landlord, or, sometimes, a management company that is party to the lease, provides the services, while the leaseholders pay for them. The landlord will generally make no financial contribution for the services, but sometimes he has to pay for the services before he can recover their costs.

Some landlords levy charges for consents to make alterations or provide information when a property is being sold. These are administration charges and are dealt with separately (*see page 14*).

### *Fixed or variable service charges?*

Originally, the costs of services were included in rental payments, but as costs and inflation escalated, landlords wanted to make sure they recovered all their costs every year. Some old leases still provide for a fixed charge to be levied. These charges cannot be varied, regardless of the actual costs to the landlord. However, most service charges are based on the actual or estimated cost of the services and thus vary from year to year. These are known as variable service charges.

### *Service charge structure*

Generally, the landlord is under an obligation under the lease to provide certain services, and in return has the ability to levy a service charge for doing so.

The lease will dictate the format of the charge. It will usually give the dates of the service charge period and how often payments are to be made. More often than not the service charge period is a year, but payments may be required on a half-yearly or a quarter-yearly basis, or in some cases in arrears.

The lease will usually set out the percentage or proportion of the service charge payable by the lessee, but sometimes the lease just stipulates a 'fair' or 'just' proportion. If different groups of occupiers benefit from different services, there may be provision for more than one percentage or proportion to be paid.

The lease will say whether advance payments are to be made and, if so, whether they are based on the previous year's cost or an estimate of the cost in the year to come, for example. There will always be provision for a final charge at the year end when the actual costs are known. If interim payments have been made, and they exceed expenditure, the final 'charge' will be a credit.

If the leases in a block do not provide for interim payments, that can present a real difficulty for all concerned. Theoretically, the landlord has to buy all the services before he is reimbursed. If the lease allows him to recover interest, then at least he can afford to fund the costs, but if not, the landlord must finance the services, which may make him reluctant to fulfil his obligations.

### *Limits on service charges*

Service charges can go up or down without any limit, but the landlord can only recover those costs which are reasonable. Leaseholders have rights to challenge service charges that they feel are unreasonable at the Leasehold Valuation Tribunal.

When considering the purchase of a leasehold flat, it is important

to find out, for personal budgetary purposes, what the current and future service charges are likely to be.

### *What are reserve funds?*

Many leases provide for the landlord to collect sums in advance to create one or more reserve or 'sinking' funds. The purpose of such funds is to build up a sum of money to cover the cost of irregular and expensive works such as external decorations, structural repairs or lift replacement.

There are usually two reasons for maintaining such a fund. The first is to ensure that all occupiers contribute to major works, not just those who are in occupation at the time they are carried out. The second is to even out the annual charges, avoiding large one-off bills, and to assist with leaseholders' budgeting.

Leases sometimes say how much is to be contributed each year, but usually they do not and it is left to the landlord to determine the contributions. However, they must be reasonable and, because these are just like any other service charges, leaseholders have the same rights to challenge these charges, if they believe they are unreasonable, at the LVT.

Reserve funds should earn interest because they are generally held for a longer period than day-to-day service charges, which goes some way to meet increasing budget costs. Information on the holding of service charges and reserve funds can be found in the paragraph 'Holding of service charges – Trust Accounts' (see page 8).

Contributions to the reserve fund are generally not repayable when a flat is sold, but may be if the lease so provides.

### *The power to recover service charges*

It is important to understand that the landlord's power to levy a service charge and a leaseholder's obligation to pay it are governed by the provisions of the lease. The lease is a contract between the leaseholder and the landlord and there is **no obligation to pay anything other than what is provided for in the lease**.

The lease may contain specific terms obliging the landlord to carry out certain works or provide certain services and, if a service charge is to be payable, the lease must contain a power for the landlord to recover the cost of those works or services from the leaseholder. It must specify whether the charge is recoverable in advance or in arrears of the provision of works or services, and whether it is to be collected on a regular basis, perhaps annually or on a specified quarter-day, or whether it is to be levied as costs arise. The lease may be very specific in its wording, setting out quite precisely the works or services to be chargeable. Alternatively, the clauses may be very general, simply referring to costs of the repair and maintenance of the structure of building.

It can generally be assumed that a service charge will be payable and will cover the repair and maintenance of the fabric of the building and the fittings, the lift or the boilers etc, as well as cleaning, lighting and maintenance of common areas. Other obligations depend on the scope of services provided. In some cases this is done simply by referring to the landlord's costs in meeting his obligations, as set out in one of the schedules to the lease.

**There are a number of issues to be considered if the landlord is to be able to recover the costs:**

- **works of improvement:** as a general rule, leases in the private sector do not oblige leaseholders to contribute to costs of works of improvement

to the building. However, leases from local authorities and housing associations often do contain such provision.

- **management costs:** the fact that the landlord manages the building, either himself or through a managing agent, does not automatically mean that he can recover management charges. This must be provided for in the lease.
- **legal costs:** as with management costs, these must be referred to in the lease. If recoverable, they can include the cost of recovering arrears or for repossession in case of another breach of the lease.
- **caretaking and portering:** where these are recoverable, the lease should be clear as to what is included in the charge: a resident or non-resident service, and, if resident, whether accommodation must be provided rent-free or not. The cost of a resident caretaker or porter will normally be higher than for a non-resident.
- **heating, cleaning, garden maintenance, alarm systems:** again, the landlord's obligation to provide such services and the leaseholder's obligation to pay are usually referred to in the lease. In some cases this may be done simply by reference to the landlord's obligations, as set out in one of the schedules to the lease.

**The general principle of a lease is that the landlord is not obliged to provide any service which is not covered by the lease, and the leaseholder is not responsible for payment where there is no specific obligation set out in the lease.**

Where any doubt arises, reference should be made to the wording of the lease and advice should be sought if necessary.

### *The requirement for reasonableness*

Usually the lease simply provides for the landlord to recover his outlay for maintenance, repair and upkeep of the building, including management costs, from the leaseholders. The landlord is reimbursed for his expenditure, but is not given the opportunity to make a profit from the management. Where the landlord wishes financial reward for his expertise or agency, he must make sure the lease makes the necessary provision.

The law also expects the landlord to behave in a 'reasonable' manner with regard to his expenditure on the building. The landlord has a long-term interest in maintaining the condition and the value of his investment. The leaseholder may have a much shorter-term view, only intending to remain in the property for a few years. These different viewpoints often lead to dispute.

A landlord is not usually bound to minimise the costs. However, the law states that service charges must be 'reasonable'.

### *Application to the Leasehold Valuation Tribunal*

Both landlords and leaseholders have a right to ask a Leasehold Valuation Tribunal whether a charge, or a proposed charge, is reasonable; however, there is no statutory definition of what is 'reasonable'. The Tribunal will consider the evidence presented and then make a determination on the matter.

An application may be made to the LVT whether or not the charge has already been paid. It can be in respect of costs already incurred for works, services or other charges, or in respect of an estimate or budget. However, if the charges have been agreed by the parties or finally determined by a court or tribunal, or by post-dispute arbitration, no application to an LVT can be made.

The questions the LVT are likely to ask are:

- was it, or would it be, in the circumstances, reasonable for the costs to be incurred and, if so:
  - were or will the works or services provided be to a reasonable standard?
  - what are the landlord's procedures for assessing and controlling the costs, including supervision?

The parties may present evidence on any of these matters and question the evidence given by the other party.

The LVT may also determine:

- whether the service charge is payable under the lease;
- by whom and to whom it is payable;
- the date on which it may be payable; and
- the manner of payment (for example, if it may be paid by direct debit or standing order).

Full details of the procedures and requirements for applying to the LVT are set out in our leaflet *Application to the Leasehold Valuation Tribunal*.

## The law

The Landlord and Tenant Act 1985 sets out the basic ground rules for service charges, defining what is considered a service charge, setting out requirements for reasonableness and for prior consultation of leaseholders.

Section 18 (1) of the Act defines a service charge as 'an amount payable by a tenant of a dwelling as part of or in addition to the rent

- (1) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management; and
- (2) the whole or part of which varies or may vary according to the relevant costs.'

The items included in (1) above are those required to be reasonable and on which a LVT may make a determination of reasonableness.

*Note that the definition in section 18(1) does not overrule the lease. The item or service must still be included in the lease in order to be chargeable.*

## Demands for service charges

All demands for service charges must be in writing and must contain the landlord's name and address. The service charge is not payable until this information is given and if the landlord's address is outside England or Wales, the demand must contain an address in England or Wales at which notices may be served by the leaseholder.

Normally the lease will provide for the service charge to be demanded in advance, but occasions will arise when the demands are issued after completion of the works or provision of the service. In these cases a statutory time limit applies: the landlord must issue the demand within 18 months of his incurring the cost. If the demand is provided later than this, the landlord cannot recover the costs at all, unless a notice is served during the 18 months stating that costs have been incurred and that the tenant will be required to contribute to them by payment of a service charge.

## *The holding of service charges – Trust Accounts*

In collecting service charges or in holding sinking funds or reserve accounts, the landlord holds the leaseholders' money for purposes of future expenditure to their benefit – in other words, acting as trustee for the funds. Section 42 of the Landlord & Tenant Act 1987 requires that, where leaseholders are required under the terms of their leases to contribute towards the same costs, the monies must be held in one or more accounts, and be held in a trust.

## *Summary of service charges accounts*

Leaseholders have a statutory right to seek a summary of the service charge account from the landlord under section 21 of the Landlord and Tenant Act 1985. The request must be in writing and can be sent direct to the landlord or to the managing agent. It can require a summary of the 'relevant costs in relating to the service charges payable' in respect of the last accounting year, or where accounts are not kept by accounting years, the past 12 months preceding the request.

Where a landlord has received such a demand he must provide the summary within one month (or within six months of the end of the 12-month accounting period, whichever is the later).

**The summary should show:**

- how the costs relate to the service charge demand, or if they will be included in a later demand;
- any items for which the landlord did not receive a demand for payment during the accounting period;
- any items for which a demand was received and for which no payment was made during the accounting period;
- any items for which a demand was received and for which payment was made during the accounting period; and
- whether any of the costs relate to works for which an improvement grant has been or is to be paid.

Where the service charge is payable by the leaseholders of more than four dwellings, the summary must be certified by a qualified accountant as a fair summary and sufficiently supported by accounts, receipts and other documents produced to the accountant. Where the landlord is a public sector body, one of their officers who is a qualified accountant may certify the summary, but otherwise the accountant must be independent of your landlord.

## *Rights to further information (inspecting accounts and receipts)*

As well as receiving the summary, the leaseholder has the right under section 22 of the Landlord and Tenant Act 1985 to inspect documents relating to his service charge as a follow-up to provide more detail on the summary. **Within a period of six months from receipt of the summary**, the service charge payer (or the secretary of a Recognised Tenants' Association) may write to the landlord requiring him to allow access to and inspection of the accounts, receipts and any other documents relevant to the service charge information in the summary and to provide facilities for them to be copied.

Facilities for inspection must be provided within one month of the request, and must be available for a period of two months.

*There are further rights of investigation of service charges and management provided by the right to a management audit under the Leasehold Reform Act 1993 and the right to appoint a surveyor under the Housing Act 1996.*

*Full details of those rights are set out in our leaflet 'Appointment of a Surveyor, Management Audits'.*

### *Failure to provide a summary or allow access to further information*

Where a landlord fails without reasonable excuse to comply with either a request for a summary or to inspect supporting documents they commit a summary offence on conviction and are liable for a fine of up to £2,500 (level 4 on the standard scale). The local housing authority has the power to bring proceedings, or they can be brought by the leaseholder. Local authorities are exempt from prosecution.

### *Consultation*

The law requires that the leaseholder must be consulted before the landlord carries out works above a certain value or enters into a long-term agreement for the provision of services.

All the new provisions relating to consultation on service charges commenced on 31st October 2003 (England) and 31st March 2004 (Wales).

### *EU implications for consultation*

Some very large contracts may come within the rules for tendering within the European Union (the EU procurement rules), which require public advertisement in the Official Journal of the European Communities. In these cases the above procedures are a little different, with no right for the nomination of a contractor. The issue is too complicated to cover in a general note and, where the situation applies, individual advice should be sought from LEASE or a solicitor. Information is also available in our booklet on s.20 consultation procedures.

### *Consultation on major works*

Where a landlord proposes to carry out works of repair, maintenance or improvement which would cost an individual service charge payer more than £250, he must, before proceeding, **formally consult** all those expected to contribute to the cost (under Section 20 of Landlord and Tenant Act 1985). This has the dual effect of giving notice of his intentions to the leaseholders and seeking their view on the proposed works.

- The landlord must **serve a notice of intention** on each leaseholder (and on the secretary of the Recognised Tenants' Association, if there is one), which:
  - describes in general terms the proposed works or specifies where a description of the proposed works can be inspected and the hours during which it can be inspected. The inspection facilities must be made available free of charge, at a specified time and place. If, at that time and place, there are no facilities for copying the proposals, then the landlord must, on request, provide a copy of the description;
  - explains why the landlord considers the works necessary;
  - identifies the persons the landlord has asked, or proposes to ask, for an estimate of the costs;
  - invites observations in writing and states where the observation should be sent;
  - invites the leaseholder (and the Recognised Tenants' Association) to nominate a person from whom the landlord should try to obtain an estimate. (This invitation does not apply, however, in cases where a public notice of works is to be made in the Official Journal of the European Union (*see EU implications for consultation above*));

- The leaseholder (and the Recognised Tenants' Association) has a period of 30 days in which to send views to the landlord.
- If it is a case where the leaseholder or Recognised Tenants' Association is able to nominate a contractor and **more than one nomination of an alternative contractor** is made, then the landlord must try to obtain an estimate from:
  - (1) the person who received the most nominations; or
  - (2) if two or more people received the same number of nominations, then he can seek an estimate from any one or more of these nominees;
  - (3) if neither (1) or (2) applies, then he must obtain an estimate from any nominee.

At least one of the estimates must be from a contractor wholly unconnected with the landlord, that is, not an associated or subsidiary company or one in the ownership of the landlord. Where the leaseholders or the association has nominated a contractor, the landlord must try to obtain an estimate from that contractor and must include this in the estimates submitted or made available to the leaseholders.

Next, in most cases the landlord must serve a second notice on the leaseholders, the **Notice of Proposals**. This sets out the details of the proposed works and the likely costs. The landlord must supply a statement setting out the estimated amounts of the proposed work specified in at least two of the estimates, and make available for inspection all of the estimates for the work, without charge.

Where a public notice is required for EU purposes, a contract statement should be provided setting out the name and address of the person with whom the landlord proposes to contract; particulars of any connection between them (apart from the proposed contract); and, where reasonably practicable, an estimated amount of the relevant contribution to be incurred by the leaseholder, or, if this is not possible, the total amount of expenditure for the building to which the contract relates, again where practicable. If neither is possible, reasons should be given as to why this is so.

The notice must include a summary of the leaseholders' observations received by the landlord in response to the first notice, and the landlord's response to them.

Again, he must invite observations and allow 30 days for them to be made.

- The landlord must **'have regard to'** the observations he has received. This does not mean he is obliged to follow or act on the comments, but, if challenged later at the LVT on the reasonableness of the costs, he will need to show that he paid due regard to observations or provide justification as to why he did not.
- **If any leaseholder, or the Recognised Tenants' Association, made any observations or nominated an alternative contractor where they were able to do so, then, within 21 days after entering into the contract, the landlord must serve a further notice on each leaseholder and any Recognised Tenants' Association stating his reasons for awarding the contract, and provide a summary of any observations received and his response to them; or, instead of serving notice, he can specify the place and hours at which a statement of those reasons may be inspected. However, this notice is not necessary where the person to whom the contract has been awarded was nominated by the leaseholders or Recognised Tenants' Association,**

or submitted the lowest estimate. Again, this notice can be referred to in any dispute before an LVT.

In cases where the **works are considered urgent**, for example, a leaking roof or a dangerous structure, or in other cases where the landlord wishes to proceed quickly, the landlord may apply to the LVT for an order to dispense with the consultation procedure. In such a case, the LVT will notify all service charge payers of the proposal.

**If the landlord fails to carry out the consultation process in the correct form or has not sought and been given a dispensation from the LVT, he will be unable to recover the cost of the works from the leaseholders beyond the statutory limit of £250 per leaseholder.**

### *Consultation on long-term agreements*

Where the landlord proposes to let a contract for the provision of services for a period of more than 12 months, and the apportioned cost to any individual leaseholder is more than £100 a year, he must also consult the service charge payers before proceeding.

The contract could be, for example, for maintenance of the lift, a door-entry system or an alarm system in a retirement scheme, for window or other cleaning, for garden maintenance or simply for supplies of materials – ie any contract which will produce a charge upon the leaseholders. (The procedure also relates to long-term contracts for maintenance or building works and this is considered separately below. However, contracts of employment are exempt from the consultation procedure.)

- The process and timescale are similar to those for qualifying works. The landlord must serve the Notice of Intention on each leaseholder (and on the secretary of the Recognised Tenants' Association, if one exists) which:
  - describes in general terms the proposed arrangement or specifies the place and hours where a description of the proposed agreement can be inspected. If facilities for making copies are not made available, on request and free of charge, the landlord must provide a copy of the description;
  - explains why the landlord considers the long-term agreement, and any qualifying works provided for in the agreement, necessary;
  - identifies the proposed contractor, if known at this stage;
  - **invites observations** and states where the observations should be sent;
  - invites the leaseholder and the Recognised Tenants' Association to nominate a person from whom the landlord should try to obtain an estimate, or, in cases where a public notice is required, explain that this is the case and why they are not being invited to nominate a person.
- The time period for providing observations, as for qualifying works, is 30 days. The landlord shall, after considering the leaseholders' or association's observations, proceed to obtain estimates from his chosen contractors. **If a leaseholder or the association nominates an alternative contractor, the landlord must try to obtain an estimate from that contractor.**
- He must then **serve a further notice** on the leaseholders and the association setting out the estimates (as for qualifying works), but in this case must also include a statement which:

- identifies the proposed contractor;
- identifies any connection between the contractor and the landlord;
- where reasonably practicable, sets out the estimate of costs to the service charge payer. If that is not possible, then an estimate for the costs as they relate to the building or other relevant premises must be set out, or, where that is not practicable, an estimate of the unit cost or hourly or daily rate applicable;
- where no public notice is required, includes a statement for the provisions (if any) for variation of any amount specified in or to be determined under the proposed agreement and the duration of the agreement;
- where the proposed agreement relates to the appointment of a managing agent, the statement must indicate whether the agent is a member of a professional body or trade association (for example, RICS (Royal Institution of Chartered Surveyors), ARMA (Association of Residential Managing Agents) or ARHM (Association of Retirement Housing Managers) and whether he subscribes to a code of practice or voluntary accreditation scheme.

The notice must include a summary of the leaseholders' observations received by the landlord in response to the first notice, and the landlord's response to them.

- Again, the notice must invite observations and state the address and timescale (minimum 30 days). As with qualifying works, the landlord must **have regard to the observations** and, where observations or nominations were received from the leaseholders or a Recognised Tenants' Association, give his reasons in writing for awarding the contract, as well as a summary of the observations received and his response to them.
- When entering into the agreement, the landlord must write to each leaseholder and any Recognised Tenants' Association within 21 days with his reasons for entering into the agreement, or specify a place and the hours at which a statement of those reasons may be seen, together with any observations received and his response to them. However, this process is not necessary where the agreement is with someone nominated by the leaseholders or the Recognised Tenants' Association, or who submitted the lowest estimate.

**As with qualifying works, the landlord will not be able to recover charges beyond the statutory amount (£100 per leaseholder per annum) if he fails to carry out the consultation procedure.**

### *Works under long-term agreements*

In some cases, the landlord may wish to enter into a long-term agreement for maintenance, repair and improvement works to the building, and this requires a different consultation process. Such arrangements are becoming increasingly common where the landlord is a local authority or a registered social landlord. In the public sector the Government has encouraged Private Finance Initiatives, where the landlord contracts with a major company for a long period (often up to 30 years) to provide all works to an estate or to all the buildings in the landlord's control.

From the leaseholder's point of view, the position is different from normal arrangements. The initial award of the long-term agreement will be subject to the procedures described above for long-term agreements. For any subsequent proposals for qualifying works, the landlord must still serve the qualifying works consultation notice, but will not invite the nomination of an alternative contractor as one is already in place.

However, the landlord is still obliged to have regard to any observations received before proceeding with the works. Where the landlord receives observations he must reply within 21 days, in writing, stating his response to the observations. The qualifying works notice shall:

- describe in general terms the proposed works or specify the place and hours where a description of the proposed works can be inspected;
- state the landlord's reasons for considering it necessary to carry out the proposed works;
- contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on, and in connection with, the works;
- invite observations in writing in relation to those works or the landlord's estimated expenditure and state the address and time limits for responses.

### *Service charges: summary and conclusions*

It is the central principle of service charges, and perhaps the cause of much of the ill feeling and dispute which often arise, that it is the landlord who takes the decisions as to how to commit the expenditure of the leaseholders' money. This applies in all situations where flats are centrally managed and applies equally where the leaseholders themselves manage their building. However, legislation provides protection to the service charge payer and imposes rigorous obligations upon the provider:

- charges must be reasonable and may be challenged at the LVT.
- service charge payers must be consulted before the landlord commences qualifying works, other than under a long-term agreement, which will cost any leaseholder more than £250, or enters into a long-term contract worth more than £100 for any leaseholder in any accounting year (a 'qualifying long-term agreement').
- demands for payment must be served within time limits (18 months), and in due course new legislation will require a summary of the leaseholder's rights and obligations to accompany such demands.
- service charge funds are deemed to be held in trust. In due course new legislation will require funds to be held in a designated trust account and the service charge payers will have rights to information about the account and to withhold payment of a service charge where they genuinely believe the landlord is not holding the money in accordance with the legislation.
- the landlord must account for all annual expenditure through a summary of relevant costs following a written request from a leaseholder or secretary of the Recognised Tenants' Association. After the summary is provided a leaseholder or secretary of the Recognised Tenants' Association can inspect the relevant documents.

## *Administration charges*

The Commonhold and Leasehold Reform Act 2002 introduced rights in respect of administration charges. These are defined as 'an amount payable by a tenant as part of or in addition to rent, which is payable directly or indirectly for:

- the grant of approvals under the lease or applications for such approvals;
- for or in connection with the provision of information or documents by or on behalf of the landlord or a person party to the lease other than the landlord or tenant;
- costs arising from non-payment of a sum due to the landlord;
- costs arising in connection with a breach (or alleged breach) of the lease.'

Any administration charge demanded by the landlord **must** be reasonable in order for the landlord to recover the charge, and must be accompanied by a summary of the leaseholder's rights and obligations in respect of administration charges. If the summary is not included, the charge is not regarded as being payable.

The leaseholder has two courses of remedy, depending on whether the charge is variable or not:

- where the charge is variable, the leaseholder may make an application to the LVT for a determination of reasonableness, as with service charges. A variable administrative charge is one where the amount of the charge is not specified in the lease or calculated according to a formula specified in the lease.
- where the charge is fixed by the lease or a formula in the lease, the leaseholder may apply to the LVT to vary the lease, on the grounds that the amount specified is unreasonable or that the formula is unreasonable. If the LVT is satisfied, it may make an order to vary the terms of the lease, to substitute a reasonable amount or to amend the formula, either as requested by the leaseholder or as the Tribunal finds appropriate.

However, an application cannot be made to the LVT where the administration charge has been agreed or admitted by the leaseholder, has been or is to be referred to arbitration pursuant to a post-dispute arbitration agreement, or has already been determined by a court, or determined by a Tribunal pursuant to a post-dispute arbitration agreement.

## *Insurance* *Insurance by the landlord*

Usually the lease provides for the landlord to arrange the insurance of the building (not the contents) and charge the cost as a service charge. This is the normal arrangement for buildings divided into flats, since it is important that there should be one single policy covering all risks to the building as a whole. It is normally recovered as part of the service charges and therefore the cost of the insurance may be challenged before or verified by the LVT in the usual way.

Where a service charge consists of or includes an amount payable for insurance, an individual leaseholder or the secretary of a recognised tenants' association may ask the landlord for a written summary of the policy or an opportunity to inspect and take copies of the policy.

The request must be made in writing and the landlord must comply within 21 days of receiving it.

- where the request is for a **written** summary, the summary must show:
  - the sum for which the property is insured;
  - the name of the insurer;
  - the risks covered in the policy.

The landlord can only be required to provide the summary once in each insurance period (usually a year).

- where the request is for **sight** of the policy, the landlord must provide reasonable access for inspection of the policy and any other relevant documents which provide evidence of payment, including receipts, and facilities for copying them. Alternatively, the request may be for the landlord to provide the copies of the policy and specified documents himself and to send them to the leaseholder or association or arrange for them to be collected.

The provision of inspection and copying facilities may be treated as a management cost and therefore may be recovered through service charges.

### *Failure to provide insurance information or reasonable access*

Where a landlord fails without reasonable excuse to comply with either a request for insurance details or to inspect or have copies of the relevant policy or associated documents, they commit a summary offence and are liable for a fine of up to £2,500 (level 4 on the standard scale) on conviction. Advice should be sought where action is contemplated.

### *Insurance through the landlord's nominated or approved insurer*

Some leases, usually of houses, require the leaseholder to insure the property with an insurer nominated or approved by the landlord. Under provisions in the Commonhold and Leasehold Reform Act 2002 the leaseholder of a house is entitled to place the insurance with his own choice of insurer, as long as he gives notice to the landlord and complies with certain requirements relating to the cover arranged.

The insurance arranged by the leaseholder must:

- be with an 'authorised insurer', which means an insurer operating within the requirements of the Financial Services and Markets Act 2000;
- cover the interests of both the leaseholder and the landlord;
- provide cover to a sum not less than the amount required under the lease;
- cover all the risks which the lease requires be covered by insurance.

**As long as these conditions are met, the leaseholder cannot be required to insure through the landlord's nominee.**

He may therefore arrange his own insurance, but must serve a Notice of Cover on the landlord **no later than 14 days** after having placed the insurance (or within 14 days of any request by the landlord).

The notice **must be in the prescribed form** and must specify:

- the name of the insurer;
- the risks covered by the policy;
- the amount and period of the cover;
- the address of the house insured;
- the registered office of the authorised insurer;
- the number of the insurance policy;
- the frequency that premiums are payable;

- the amount of any excess payable under the policy and what the excess applies to;
- whether the policy has been renewed (and the date);
- a statement that the leaseholder is satisfied that the policy covers their interests;
- a statement that the leaseholder has no reason to believe that the policy does not cover the interests of the landlord.

*The prescribed form and contents of the Notice of Cover are set out in SI 2004/3097 and 2005/177, in relation to England, and SI 2005/1534, in relation to Wales.*

## Ground rent

Ground rent is a payment made by the leaseholder to the landlord as a condition of the lease. The payment of ground rent (as with any rent) is specified by the lease and should be paid on the due date. Although it is the leaseholder's responsibility to pay the rent, this must be subject to prior notification from the landlord who must use a form of notice prescribed by Regulations. The rent cannot be legally recovered by the landlord unless he has first asked for it.

### *Notice for payment of ground rent*

The leaseholder is not liable to pay the ground rent unless the landlord has demanded it. The demand must be in the prescribed form and must specify:

- the amount of the rent due;
- the date on which the leaseholder is liable to pay it, or if the demand is sent after the due date, the date on which it would have been payable under the terms of the lease.

The date specified for payment must not be less than 30 days or more than 60 days after date of service of the Notice, or before it is meant to be paid in accordance with the lease. It may be sent by post to the address of the house or flat to which it relates, unless the leaseholder has previously notified the landlord of an alternative address.

The Notice of Demand must also include:

- the name of the leaseholder to whom the notice is given;
- the period for which the rent demanded relates;
- the name and address of the person or company to whom the payment is to be made;
- the name and address of the landlord (or agent if applicable) by whom the notice is given;
- certain supporting information, provided as notes to the Notice.

The landlord cannot begin any legal steps for recovery of the rent, including action for forfeiture and possession, unless he has previously served the demand in the correct format, given the correct period of notice, and the leaseholder has failed to respond.

## *Estate Management Scheme charges*

An Estate Management Scheme allows landlords to retain some management control over properties, amenities and common areas, where the freehold has been sold to the leaseholders. These schemes were either made under Section 19 of the Leasehold Reform Act 1967, or under Chapter 4 or Section 93 of the Leasehold Reform, Housing and Urban Development Act 1993.

In many cases the aim of a scheme will be to ensure that the appearance and quality of the area as a whole is kept to the same standard. However, a scheme can also provide for the upkeep of communal gardens or other common or shared facilities or areas. In this case it may permit the recovery of certain charges.

Charges made under a scheme can be challenged in a similar way to service charges. An application can be made to a LVT to vary the scheme itself on the grounds that a charge under the scheme is unreasonable or that any formula for the calculation of the charge is unreasonable. An application can also be made to an LVT to determine whether or not a charge is payable, and, if so, by whom and to whom it is payable; the amount that is payable; the date that it is payable and the manner in which it is payable.

However, an application cannot be made to the LVT where the charge has been agreed or admitted by the leaseholder, has been or is to be referred to arbitration pursuant to a post-dispute arbitration agreement; or has already been determined by a court, or determined by a tribunal pursuant to a post-dispute arbitration agreement.

## *Recognised Tenants' Associations*

A tenants' association is a group of tenants (normally leaseholders) who hold houses or flats on leases/tenancies from the same landlord on similar terms, which contain provisions for the payment of service charges etc. A Recognised Tenants' Association is one where the members have come together to represent their common interests so that the association can act on the tenants' behalf, and which has been recognised for the purposes of section 29 of the Landlord and Tenant Act 1985. An association is recognised either by notice in writing from the landlord to the secretary of the association, or by application to a Rent Assessment Panel. There are five Rent Assessment Panels and their addresses can be found at the back of this booklet.

The secretary of a Recognised Tenants' Association can, with the members' consent, act on behalf of its members in respect of a number of issues, some of which are in addition to that of an individual member. These are:

- to ask for a summary of service charge costs incurred by their landlord for which the members have to pay a service charge (section 21 of Landlord and Tenant Act 1985);
- to inspect the relevant accounts and receipts (section 22 of Landlord and Tenant Act 1985);
- to be sent copies of estimates obtained by the landlord for either long-term agreements to be entered into or intended qualifying work on their properties (section 20 of Landlord and Tenant Act 1985);
- to propose names of contractors to be included in any tender list when the landlord wishes to enter a long-term agreement or carry out

qualifying works (section 20 of Landlord and Tenant Act 1985)

- to ask for a written summary of the insurance cover and inspect the policy (Schedule to the Landlord and Tenant Act 1985);
- to be consulted about the appointment or re-appointment of a managing agent (section 30B of Landlord and Tenant Act 1985).

To gain recognition from the landlord the secretary of the association should ask the landlord in writing for a written notice of recognition. Once given, the landlord must give six months notice should he wish to withdraw recognition.

To gain recognition from a Rent Assessment Panel the secretary of the association will need to make a formal application providing certain information including:

- a copy of the association's Constitution. Model rules to help draw up the Constitution can be obtained from the local Panel;
- a list of subscribing members' names and addresses;
- the name and address of the landlord;
- a description of the properties whose leaseholders/tenants will be eligible for membership (ie flats/houses) and their addresses;
- copies of any relevant previous correspondence with the landlord regarding recognition of the association.

The Panel has discretion as to whether recognition will be granted and it will not therefore be given automatically. For example, the Panel will need to be satisfied that the association's rules are fair and democratic and that the actual membership will represent a significant proportion of the potential membership. As a general rule, the Panel would expect membership to be not less than 60% of those eligible to join the association. If recognition is given the Panel has discretion over how long this should be for, but it would usually be for four years. A renewal can be sought at the end of this period, though the Panel may cancel a Certificate of Recognition if it is considered that for some reason the association no longer merits it.

Where estates are concerned, it may be possible for more than one association to be recognised, for example, for separate blocks of flats within the estate, providing there is no duplication and the interests of the leaseholders/tenants can be seen to differ.

Where a Recognised Tenants' Association exists and the landlord changes, a notice should be served on the new landlord indicating the existence of the Certificate of Recognition if the association still wishes to be consulted about issues.

## *Forfeiture and possession*

The final sanction for a landlord faced with a leaseholder in breach of his lease due to the failure to pay the service charges, ground rent or administration charges is to take steps to forfeit the lease and to repossess the house or flat. This is a right in law, but it is not possible to obtain possession without a court order. The process is commenced, generally, by the service of a valid notice under section 146 of the Law of Property Act 1925, the Notice of Seeking Possession.

In practice, very few landlords enforce the procedures up to the point of their gaining possession of the house or flat, but they serve the section 146 Notice as a means of enforcing a payment of arrears, or to correct a breach of a covenant of the lease. The misuse of the process in some instances has led to a significant revision of the procedures. The landlord now has to prove that a breach of a covenant or condition in the lease has occurred before he can serve a valid s146 Notice. There are also controls on the use of forfeiture to recover very small sums.

The landlord cannot serve a valid section 146 notice unless the leaseholder has agreed the arrears or that the breach has occurred or that the breach has been finally determined by a LVT or a court or under a post-dispute arbitration agreement. A determination becomes final at the end of any period provided for appeal and the landlord may not serve the section 146 notice until 14 days after that date.

Where the dispute is about arrears, the landlord must also obtain a determination from the LVT that the amount is payable, and therefore reasonable.

So, where the landlord wishes to commence forfeiture action, the steps to be taken are:

- the leaseholder must agree that the breach has occurred and that any arrears are duly owing; or
- the landlord must make application to the LVT for a determination that the breach has occurred; and
- where the breach involves arrears, that the sum is payable and reasonable;
- after the determination becomes final, the leaseholder must be allowed a further 14 days in which to resolve the breach or settle the arrears;
- where, after 14 days the leaseholder has not resolved the breach, the landlord may proceed with service of the section 146 notice. This will require separate determination by the county court.

## *Failure to pay a small amount of charges for a short period*

The landlord cannot serve a valid section 146 notice where the amount of service charges, administration charges or ground rent owed (or a combination of all of these) total less than £350, or have been outstanding for less than three years.

Of course, while forfeiture or action seeking repossession may not take place, a landlord may seek to recover monies through other means, such as the small claims court. This should not therefore be used as a means of withholding sums of money that are lawfully and reasonably payable under the terms of the lease.

## Useful addresses

### *Leasehold Valuation Tribunals*

#### London

10 Alfred Place, London WC1E 7LR  
Tel: 020 7446 7700 Fax: 020 7637 1250  
Email: london.rap@communities.gsi.gov.uk

#### Northern

1st Floor, 5 New York Street, Manchester M1 4JB  
Tel: 0845 100 2614 or 0161 237 9491 Fax: 0161 237 3656  
Email: northern.rap@communities.gsi.gov.uk

#### Southern

1st Floor, Midland House, 1 Market Avenue, Chichester PO19 1JU  
Tel: 0845 100 2617 or 01243 779394 Fax: 01243 779389  
Email: southern.rap@communities.gsi.gov.uk

#### Midlands

2nd Floor, Louisa House, 92-93 Edward Street, Birmingham B1 2RA  
Tel: 0845 100 2615 or 0121 236 7837 Fax: 0121 236 9337  
Email: midland.rap@communities.gsi.gov.uk

#### Eastern

Unit 4C, Quern House, Mill Court, Great Shelford, Cambridge,  
CB22 5LD,  
Tel: 0845 100 2616 or 01223 841 524 Fax: 01223 843 224  
Email: eastern.rap@communities.gsi.gov.uk ;

#### Wales

1st Floor, West Wing, Southgate House, Wood Street, Cardiff CF10 1EW  
Tel: 029 2023 1687 Fax: 029 2023 6146  
Email: sjr.enquiries@wales.gsi.gov.uk

### *Other useful addresses*

#### Her Majesty's Stationery Office (HMSO)

Printed copies of all legislation and other official publications produced by HMSO are obtainable from:

The Stationery Office Ltd (TSO), PO Box 29, St Crispins, Duke St  
London NR3 1GN

Tel: 0870 600 5522 Fax: 0870 600 5533

Email: book.orders@tso.co.uk

Online ordering: [www.tso.co.uk/bookshop](http://www.tso.co.uk/bookshop)

#### Association of Residential Managing Agents (ARMA)

178 Battersea Park Road, SW11 4ND

Tel: 020 7978 2607 Fax: 0207 498 6153

Email: [info@arma.org.uk](mailto:info@arma.org.uk) Website: [www.arma.org.uk](http://www.arma.org.uk)

#### Association of Retirement Housing Managers (ARHM)

Southbank House, Black Prince Road, London SE1 7SJ

Tel: 020 7463 0660 Fax: 020 7463 0661

Email: [enquirers@arhm.org](mailto:enquirers@arhm.org) Website: [www.arhm.org](http://www.arhm.org)

#### The Royal Institution of Chartered Surveyors (RICS)

12 Great George Street, Parliament Square, London SW1P 3AD

Tel: 020 7222 7000

#### The Federation of Private Residents' Associations

PO Box 10271, Epping CM16 9DB

Tel: 0871 200 3324 Email: [www.fpra.org.uk](http://www.fpra.org.uk)

#### Residential Property Tribunal Service (RPTS) National Helpline:

Tel: 0845 600 3178

#### The Leasehold Advisory Service (LEASE)

31 Worship Street, London EC2A 2DX

Tel: 0845 345 1993 or 020 7374 5380 Fax: 020 7374 5373

Email: [info@lease-advice.org](mailto:info@lease-advice.org) Website: [www.lease-advice.org](http://www.lease-advice.org)

LEASE, 31 Worship Street, London EC2A 2DX Tel: 0845 345 1993 or 020 7374 5380 Fax: 020 7374 5373  
Email: [info@lease-advice.org](mailto:info@lease-advice.org) Website: [www.lease-advice.org](http://www.lease-advice.org)

DCLG, Leasehold Reform Team, Zone 2/H10, Eland House, Bressenden Place, London SW1E 5DU  
Tel: 020 7944 4287 Fax: 020 7944 4287 Email: [enquiry@dclg.gsi.gov.uk](mailto:enquiry@dclg.gsi.gov.uk) Website: [www.communities.gov.uk](http://www.communities.gov.uk)

Welsh Assembly Government, Cathays Park, Cardiff CF10 3NQ (Llywodraeth Cynulliad Cymru, Parc Cathays, Caerdydd CF10 3NQ)  
Tel(Ffon): 029 20 82 3025 Fax(Ffacs): 029 20 82 5136