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1. Introduction

In an ideal world, social landlords would all have a clear service charge setting policy, developed in consultation with tenants and leaseholders. Many landlords are reviewing their service charge framework to maximise income and ensure charging is fair.

This guide offers some pointers on what to take into consideration when reviewing service charges.

There is no 'one size fits all' approach to setting and making service charges - housing associations, arm's length management organisations (ALMOs) and local authorities manage differently and have unique constraints as well as their own mix of fixed and variable arrangements. Tenure differences also oblige landlords to have different approaches.

In this guide we set out the legal and regulatory context for England, outline what good service charge management looks like, include some case studies and list sources of further information.

2. Operating environment and regulatory context

The Homes and Communities Agency (HCA) is responsible for the regulation of social landlords in England. The new regulatory approach for social housing, effective from April 2012, focuses on economic regulation with the bulk of consumer protection expected to take place locally, through co-regulation.

Since the economic downturn the operating environment for social landlords has become increasingly challenging. Both cuts to government welfare expenditure and, with the introduction of Affordable Rent, the reduction in grant funding for new build have meant social landlords have had to reevaluate their business plans.

2.1 Ensuring VFM in service charges

The regulatory framework for social housing¹ places an explicit obligation on the HCA to be proactive in ensuring greater value for money (VFM) from landlords.

For housing associations (not local authority providers), the regulator has set a new VFM standard, which places an increased onus on boards to develop and deliver a clear strategy to drive VFM (or business effectiveness) improvements. Housing associations must understand the costs and outcomes of delivering specific services and recognise which underlying factors influence these costs.

Many landlords are taking a fresh look at their services, business processes and business plans as a result of government cut backs, changes to the housing finance subsidy system for local authorities, and major changes in housing benefit and other welfare reforms.

Some landlords are also looking at 'depooling' the cost of services where these costs have previously been shared across all tenants. Depooling can make charging fairer,

¹ The regulatory framework for social housing in England from April 2012, Homes and Communities Agency - www.homesandcommunities.co.uk/sites/default/files/our-work/regfwk-2012.pdf

services more sustainable and, crucially, make VFM much more transparent. It is discussed further in Section 3.4.

Maximising income from service charges and avoiding or minimising deficits is a key issue for landlords in ensuring their business is viable in the long term. A full understanding of the process an organisation needs to go through, including extensive consultation with tenants and leaseholders and an open dialogue regarding the costs and benefits of introducing or changing service charges, is crucial.

2.2 Consumer regulation

The primary responsibility for resolving consumer issues rests with landlords and their tenants at a local level, under the HCA's 'consumer standards'.

Landlords now need to take responsibility for their performance and service improvement, without regulatory compulsion or periodic inspection. Co-regulation necessitates a greater emphasis on local mechanisms to scrutinise performance and stronger tools for tenants to hold landlords to account on service delivery. Clearly, effective complaints management in relation to service charges is a crucial element of this.

Since 1 April 2013, the Localism Act 2013 has amended the way in which tenants' complaints about their landlord's services are handled, with the introduction of 'designated persons' and the creation of a single Ombudsman for all social landlords.

The Housing Ombudsman Service can provide leaseholders, shared owners and periodic tenants with an independent assessment of complaints about the calculation or administration of service charge cases, if these are not resolved locally.

If a tenant believes a fixed or a variable service charge is too high, it may be assessed as part of an appeal to the Rent Assessment Committee (RAC) in relation to the overall rent charge. Appeals about the increase in or reasonableness of levels of fixed or variable leasehold service charges can be considered by the Leasehold Valuation Tribunal (LVT).

Both the RAC and the LVT are independent decision making bodies, completely unconnected to the parties involved in a case. From the 1 July 2013 the LVT became part of the First-tier Tribunal (Property Chamber)² in England.

2.3 Impact of Universal Credit on service charge benefits

Ahead of the introduction of Universal Credit in 2013, the Department for Work and Pensions published its landlord guidance³ for Universal Credit service charges.

The regulations relating to service charges can be divided into two categories: a legal definition of what is meant by a service charge for the purposes of Universal Credit; and broad definitions of the eligible service charge categories with some additional specific exclusion criteria.

² The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 - www.legislation.gov.uk/ukSI/2013/1169/contents/made

³ Universal Credit service charges – guidance for landlords, Department for Work and Pensions, April 2103 - www.dwp.gov.uk/docs/universal-credit-service-charges-guidance-landlords.pdf

There are four conditions for eligible service charges payments:

1. The right to occupy the accommodation is dependent upon the tenant paying service charges, for example where it forms part of the tenancy agreement.
2. The service charge wholly falls into one or more of the following categories:
 - *Category A*: Maintaining the general standard of the accommodation
 - *Category B*: Areas of communal use
 - *Category C*: Basic communal services
 - *Category D*: Tenant accommodation-specific charges
3. The costs or charges are reasonable and that they relate to such services as it is reasonable to provide.
4. There are a number of exclusions, which include any charges for meals, medical services, and personal services of any description.

The guidance is intended for social landlords of Universal Credit claimants, but is not intended to cover Supported Exempt Accommodation, which is to be administered outside of Universal Credit.

The National Housing Federation published a briefing note⁴ setting out how the reform of benefits to cover housing costs will affect people living in supported and sheltered housing.

2.4 New developments

The HCA's Rent Standard Guidance⁵, published in March 2012, consolidates all of the previous guidance issued on rent setting for social landlords.

Service charges, other than for provision of core services, are not included within the social rent framework. Landlords are, instead, expected to ensure that service charges closely reflect what is being provided to tenants; costs such as repair and maintenance of special facilities – lifts, door entry systems and extra services such as care and support provided by, or on behalf of, the landlord.

Thames Valley Housing (TVH) now has one Service Charge team – integrating its rent and leasehold income. This gives it the benefit of a consistent team with experience. Someone from the team goes out with the Development Team to look at proposed/new sites. At the design stage the team also has input into removing potential service charge costs, such as reducing grounds and communal areas, omitting lifts, and clarifying boundary responsibilities.

TVH believe, firstly, that it is necessary to put these resources in place, in order to maximise their income and, secondly, that an organisation must know its potential service charge income in order to charge correctly.

⁴ Benefits for people living in supported and sheltered housing, National Housing Federation - www.housing.org.uk/idoc.ashx?docid=e5f0153d-77e9-4e90-a328-5638eebd58d4&version=-1

⁵ The regulatory framework for social housing in England from April 2012 - Annex A: Rent Standard Guidance, Homes & Communities Agency - www.homesandcommunities.co.uk/sites/default/files/our-work/regulatory_framework_annex_a.pdf

The HCA requires **affordable rent** tenancies to include service charges in the set rent (up to 80 per cent of market rent). Its Capital Funding Guide⁶ says that market rent comparables (including service charges) should be based on similar levels and types of service provision available in that area. A House of Commons Library document⁷ sets out how the affordable rent model is intended to work.

The Chartered Institute of Housing⁸ is concerned about the impact of service charges on the viability of the affordable rent model:

“For example because affordable rent is capped at 80 per cent of market rent including service charges, some property types where there are likely to be substantial service charges may be impractical for conversion to affordable rent.”

In setting rents for grant funded **low cost home ownership** properties, the HCA says social landlords must have regard for the affordability of the total housing expenditure of the residents, including:

- mortgage costs
- rent
- service charges (including the cost of management and insurance).

The HCA requires social landlords to use its Affordability Good Practice Guide and model affordability calculators⁹ or a methodology of comparable standard, to determine applicants' ability to afford and sustain home ownership. The level of service charge must be affordable for the intended client group and not vary from the proposed service charge at bid stage.

As service charges are likely to be lower in year one (due to defects liability, guarantees, developers' ongoing maintenance requirements etc), it is good practice to be clear with prospective tenants and leaseholders if subsequent years' service charges are likely to increase by more than inflation.

Social landlords are advised by the HCA to set up and maintain sinking funds for the long term upkeep of flats.

⁶ Capital Funding Guide, Homes & Communities Agency - www.homesandcommunities.co.uk/cfg?page_id=5585&page=42

⁷ Affordable Rent Model, House of Commons Library, March 2013 - www.parliament.uk/briefing-papers/SN05933.pdf

⁸ Affordable Homes Programme, Chartered Institute of Housing - www.cih.co.uk/policy/display/vpathDCR/templatedata/cih/policy/data/Affordable_rent

⁹ Affordability Calculators, Homes & Communities Agency - www.homesandcommunities.co.uk/cfg?page_id=5874&page=170

3. Service charge management – getting it right

A landlord can charge for property and property management related services. The services provided depend on the type of accommodation and tenure. A landlord does not have to provide all the services itself; is not obliged to provide any service that is not covered by a lease or tenancy; and leaseholders or tenants do not have to pay where there is no specific obligation set out in the lease or tenancy.

Leaseholders, will typically, pay additional amounts for buildings insurance, day-to-day repairs, major repairs and a sinking fund contribution (where this is set up).

3.1 Ten top tips

- Involve tenants and leaseholders at an early stage in setting the service charges and agreeing appropriate arrangements of monitoring estate service delivery.
- Provide user-friendly information about service charges that explains how they are set, what services they are for and how service delivery is monitored.
- Ensure you comply with legislative requirements for consultation with leaseholders.
- On multi-landlord and multi-tenure estates it is good practice (and helpful for community cohesion) to consult tenants and leaseholders in a similar way, especially where everyone is receiving the same services.
- Create sub-accounts for service charges in order to separate service charge elements from the rent, ground rent, sinking fund etc.
- Explore, with residents, the options to include or exclude services or change services so as to get better VFM.
- On multi-landlord and multi-tenure estates, liaise with other landlords and their tenants to consider whether an estate-wide service contract for some communal work is feasible and whether it will achieve a better value for money service.
- Ensure that any information about tenders and contracts for the work is in plain language so that all residents can understand what this will mean for them; this will help the consultation process to be effective.
- Consider people who will need information in other languages or formats.
- Consult individual tenants and residents as well as their recognised residents' association (under Section 29, Landlord and Tenant Act 1985).

The **Longhurst Group**, each year, selects a number of schemes to review actual service charge expenditure and goes out on site to establish the exact services.

The intention is to make sure charges are fairly apportioned according to the services received. If the proposed annual increase is less than £3 the Group sends a letter to its residents. If it is in the region of £5, it follows up the letter with a consultation meeting where it explores with tenants whether there is scope for savings through reducing services. For instance, one small block of 12 flats decided to decommission a lift.

3.2 Scrutiny of service charges

Resident scrutiny aims to give tenants and leaseholders more power in holding their landlords to account for their decisions, performance and conduct. Landlords should be developing an approach to service delivery which formally incorporates residents' views and is transparently accountable to them. Residents need to be actively involved in setting priorities and evaluating performance.

In 2009 **Thames Valley Housing (TVH)** set up a Resident Auditors Group to audit, assess, report and ensure delivery of the best possible service to residents. It is made up of 16 TVH resident members from a range of ages, genders and ethnic backgrounds.

The Resident Auditors Group has produced a range of reports and its recommendations have been fully accepted by the TVH Board. These have led to improvements in core service areas, including anti-social behaviour procedures, reactive repairs, service charges, the complaints procedures and customer care.

In response to the Resident Auditors Group report on service charges, TVH carried out a review of its service charge process and improved the way it listens and responds to residents.

HouseMark has developed a peer review exercise for members of its Estate Services Club¹⁰ that involves residents and staff from one organisation visiting a partner organisation and scoring the quality of its estate services, using an estate services quality photo book.

The purpose of the peer review exercise is to acquire a balanced, independent, resident led appraisal on the quality of the estate service's functions, including grounds maintenance, cleaning and caretaking.

A scorecard is used for collecting the results of the peer review visits, and these results can then be compared with other HouseMark members, using the estate services benchmarking service¹¹.

3.3 Resident satisfaction

In the era of co-regulation and resident-led self-regulation, access to satisfaction data has become even more important to landlords. The absence of either close regulatory scrutiny or housing inspection means satisfaction measurement is the single most useful source of data for measuring and reporting resident-focused outcomes and engaging residents in what their landlord does.

Satisfaction measurement is also about gathering robust, actionable data to inform business decisions on changes to service delivery. Without subsequent action,

¹⁰ Further information about HouseMark's Estate Services Club - www.housemark.co.uk/hm.nsf/all/Estate+services+club

¹¹ Further information about HouseMark's estate services benchmarking service - www.housemark.co.uk/hm.nsf/all/Estate+services+benchmarking

satisfaction measurement has no purpose; without robustness, any action may be misdirected.

Thames Valley Housing (TVH) completed a customer journey mapping exercise for service charges, from pre-sale to first audited accounts. TVH found the pinch points to be interest and satisfaction at point of service delivery, not at sale or charging, and that quality of service is what increases satisfaction levels.

HouseMark provides a free voluntary approach to tenant and resident satisfaction measurement for the social housing sector: STAR¹². This 'Survey of Tenants and Residents', launched in July 2011, provides landlords with the means to compare satisfaction results with each other.

STAR covers satisfaction with seven core questions, including one for service charges. Developed specially for the STAR survey, this question asks "How satisfied or dissatisfied are you that your service charges provide value for money?"

This is an area where residents may directly relate the amount they are charged to the efficiency and effectiveness of the service.

The analysis of the 2011/12 STAR benchmarking data¹³ found that tenants are less satisfied with value for money of their service charges than with their rents. This is also an area of particular dissatisfaction for leaseholders – with the lowest median scores of any question in the survey.

3.4 Depooling service charges

Increasingly social landlords are considering separating service charges from their rents, and more accurately charging tenants for the services that they actually receive: known as depooling.

Rent restructuring allows landlords to identify property-specific rent levels through formula or target rents, have a firm understanding of what actually covers the 'bricks and mortar' and set out which services received by tenants should be additionally and fairly charged for.

The financial benefits

There are an estimated 60 local authorities and over 150 housing associations that have not depooled their rents yet.

The government's welfare reforms will undoubtedly impact on business plans through the potential loss of regular cash flow. Depooling rents offers the ability for landlords to charge fairly for services that are being provided.

¹² STAR (Survey of Tenants and Residents), HouseMark - www.housemark.co.uk/hm.nsf/all/STAR

¹³ STAR benchmarking service: Analysis of findings 2011/12, HouseMark - [www.housemark.co.uk/hmresour.nsf/lookup/STAR_BM_summary_2011-12.pdf/\\$File/STAR_BM_summary_2011-12.pdf](http://www.housemark.co.uk/hmresour.nsf/lookup/STAR_BM_summary_2011-12.pdf/$File/STAR_BM_summary_2011-12.pdf)

The identification of all services that should be charged for will also help landlords identify if they are eligible for benefits, based on latest guidance for Universal Credit. There could be many services that are not fully charged for, including (but not exclusive to) caretaking, communal electricity and grounds maintenance.

In 2011 a medium-sized housing provider went through the depooling process and identified potential recovery costs of:

- Over £225,000 per annum with weekly charges ranging between £0.11 to £4.92 for the caretaking service
- Over £153,000 per annum for communal electricity with weekly charges between £0.04 and £3.22
- Over £892,000 for grounds maintenance with an average weekly charge of £1.40.

The service benefits

By depooling rents, a landlord can ensure that its tenants receive services at a fair price. In addition, there is the potential to increase the quality of the service provided. This could lead to improvements in resident satisfaction and also provide an additional opportunity to engage with tenants about other issues, when consulting on service standards.

When staff understand the services that are being charged for and the agreed standards for them they can more easily ensure those services are provided and that customers are kept satisfied.

Gedling Homes (part of the New Charter Group) depooled its general needs service charges from its rent element for the 2011/12 financial year. In doing this, Gedling Homes agreed with its tenants that their rent and service charge would be no higher than their unpooled rent payments, and remain as a fixed service charge.

The reduced rent would increase as per the target rent arrangements and the service charge would increase at the same rate as the target rents; at RPI plus half per cent.

Gedling Homes did not consider moving to variable service charges as it found the cost in managing and operating such charges would outweigh any financial benefit they may have received.

3.5 Service charge business support

HouseMark and CIH Consultancy have worked together to develop a comprehensive support service relating to maximising service charge income, providing effective customer consultation, service development, increasing tenant satisfaction and monitoring.

We have a strong track record of achieving value for money savings for organisations and can help you with:

- risk assessment, gap analysis and action planning for general needs and leasehold service charges
- comprehensive reviews of service charge policy, procedure and process
- service charge MOTs – health checks
- VFM audits of service charges and estate management costs

- exploring your benchmarking information and other performance data to identify areas for improvement in service charge collection
- identifying how service charges link to local offers
- assisting with tenant and leaseholder consultation about service charges, service standards and service satisfaction
- developing service charge information and other communication materials about service charges with tenants and leaseholders
- sourcing good practice from other organisations
- developing services that deliver greater VFM and are more responsive to customer needs and aspirations
- developing effective service monitoring using staff and customers in line with wider tenant scrutiny arrangements
- full multi-disciplinary project management service for service charge de-pooling.

More information about service charge and leasehold support services is available from the HouseMark website¹⁴ or, contact consultancy@housemark.co.uk or by telephone at 024 7647 2703. You can also contact CIH consultancy on info@cih.org or by telephone at 0844 561 1758.

4. Legal framework for service charges

The statutory framework for variable service charges has developed over time, through a number of acts of parliament. An in-depth coverage of leasehold and tenant service charge legislation can be found in a range of Chartered Institute of Housing, National Housing Federation, Leasehold Advisory Service and Royal Institution of Chartered Surveyors publications (see section 5: Useful resources and information). The principal legislation is outlined in this section.

In summary, the law says that landlords should **accurately** identify the costs of managing services provided to tenants and leaseholders. The **reasonable** costs of managing services should be passed on to tenants and leaseholders. **Clear** explanations of management costs should be made available to tenants and leaseholders.

There is no statutory requirement for the routine preparation and content of service charge accounts but the accounts should comply with the provisions of the lease/tenancy agreement as otherwise there may be difficulty in recovering the expenditure.

In addition, landlords should monitor relevant case law as each decision may set a precedent in the management of leasehold properties.

4.1 Fixed and variable

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.

¹⁴ Maximising income from service charges, HouseMark - www.housemark.co.uk/hm.nsf/all/Leasehold+and+service+charges

Some old leases and tenancy agreements still provide for a **fixed service charge** to be levied. These charges cannot be varied, regardless of the actual costs to the landlord, without the tenant's consent, and the risk of any underspend or overspend is carried by 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**.

A landmark decision by the Lands Tribunal in **Home Group Limited v Lewis and Others (3 January 2008)**¹⁵ held that, where a tenancy agreement did not link any alteration in the service charge with an alteration in the cost of providing the services and there was no year-end accounting requiring a payment of a balancing charge, the service charge was not a "variable" charge within the meaning of Section 18(1) Landlord and Tenant Act 1985.

Variable service charges are based on both the actual and estimated cost of services, and thus vary from year to year. They can be increased or decreased in accordance with the terms of any agreement (normally with one month's notice) giving the landlord greater certainty in cost recovery. A variable service charge does not mean that the landlord can vary the services; only the charge for them.

Thames Valley Housing (TVH) has a range of detailed information leaflets on how it sets and collects service charges. The leaflets for each tenure type explain everything to do with service charges and have been approved by their Resident Auditors' Group.

For example, TVH's *Guide to variable service charges for tenants* gives a detailed explanation of how each service charge item is calculated with an example of a typical service charge breakdown. TVH has a target that 90 per cent of service charge demands are within 10 per cent of the estimates. It has found that getting the actuals closer to the estimates, and making visits and holding meetings, result in fewer calls and queries from customers.

Surpluses and deficits can be carried forward to the next accounting period. Alternatively they can be collected or refunded through a one-off payment.

Service charges can go up or down without any limit, but the landlord can only recover reasonable costs. Leaseholders have rights to challenge service charges that they feel are unreasonable at the Leasehold Valuation Tribunal and tenants can appeal to an independent body called the Rent Assessment Committee.

Subject to the lease or tenancy agreement, service charges for both tenants and leaseholders may include such items as:

- cleaning and lighting of common parts
- grounds maintenance of communal areas
- provision and maintenance of: lifts, entry phones, rubbish disposal, security lighting, fire alarms, communal aerials, etc
- the landlord's costs of managing the services or an allowance for the costs.

¹⁵ Home Group Limited v Lewis and Others (3 January 2008) - www.landtribunal.gov.uk/judgmentfiles/j485/LRX-176-2006.pdf

In addition, a lease will usually include items that would be a landlord's responsibility under the terms of a tenancy, such as:

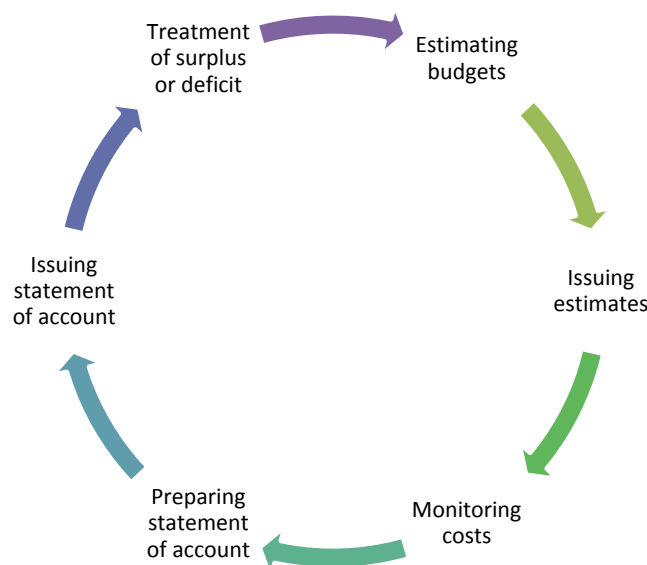
- repairs (and, if included in the lease, improvements) to the structure and common parts of the building
- insurance of the structure, common parts, public liability, etc.

The lease or tenancy agreement should be explicit on the method of apportionment. Services may be charged at different levels with different rates of contribution. Whatever the method of apportionment used, it should be easy to administer.

4.2 Variable service charge cycle

The lease or tenancy agreement must be the first point of consideration in setting variable service charges and the cycle for them to be charged. Some leases or tenancies make provision for payment on estimates, some do not; leases and tenancies vary on payment terms, ranging from monthly to annually, in arrears or in advance.

Leases or tenancies may also state an actual amount to be charged, a percentage proportion, or just require the landlord to be fair and reasonable. This can be complex for landlords who may have several different leases or tenancies with which they must comply. Generally, the cycle will operate along the following lines:



4.3 Landlord and Tenant Act 1985 (as amended)

This Act¹⁶, as amended by subsequent legislation, sets out the main provisions for managing variable service charges under secure and assured tenancies, and under lease and freehold transfer terms. It also applies to leasehold schemes for the elderly.

There is no presumption in law that service charges are due: landlords are constrained by what the lease and tenancy agreement allows. This legislation defines a service charge as:

¹⁶ Landlord and Tenant Act 1985 (as amended) - www.legislation.gov.uk/ukpga/1985/70

- An amount payable by a tenant of a dwelling as part of or in addition to the rent.
- Payment directly or indirectly for services, repairs, maintenance, improvements (where the lease allows), insurance, and the landlord's costs of management.
- The service charges may vary according to the relevant costs.

But note that the definition in Section 18 (1) does not overrule a tenancy or lease - the item or service must still be included in the tenancy or lease in order to be chargeable.

Sections 18-30 define the requirements for operating a variable service charge and gives tenants and leaseholders rights:

- in relation to service charges
- in relation to consultation about any 'long term agreements'
- to information about service charges and to challenge them
- to have a recognised tenants' association.

Section 19 states that costs are only to be taken into account when determining the amount payable to the extent that they are **reasonably incurred** and that the services provided are of a **reasonable standard**.

4.4 Leasehold Reform, Housing and Urban Development Act 1993

This legislation¹⁷ gives leaseholders the right to a management audit and the Secretary of State power to approve codes of good practice relating to the management of residential property. Two codes of practice are relevant to leasehold management:

- *Code of Practice for Retirement Housing*¹⁸, Association of Retirement Housing Managers – applies to retirement housing provided by housing associations.
- *Service Charge Residential Management Code*¹⁹, Royal Institution of Chartered Surveyors – applies to properties where a service charge is payable, and the landlord is not a public sector authority or housing association.

4.5 Housing Act 1996

This Act²⁰ makes it easier for leaseholders to challenge unreasonable service charges and restricts the landlord's right to forfeit where an item or items of service charges are disputed. It also gives jurisdiction for Leasehold Valuation Tribunals (LVT)²¹ to determine leaseholder service charge disputes.

¹⁷ Leasehold Reform, Housing and Urban Development Act 1993 - www.legislation.gov.uk/ukpga/1993/28

¹⁸ The ARHM Code of Practice for England - www.arhm.org/code_of_practice.cfm

¹⁹ The RICS Service Charge Residential Management Code - www.legislation.gov.uk/uksi/2009/512/pdfs/uksiem_20090512_en_001.pdf

²⁰ Housing Act 1996 - www.legislation.gov.uk/ukpga/1996/52

²¹ Leasehold Valuation Tribunals, Ministry of Justice - www.justice.gov.uk/tribunals/residential-property#leasehold

4.6 Commonhold and Leasehold Reform Act 2002

This legislation²² amends the provision of variable service charges under the Landlord and Tenant Act 1985. The Commonhold and Leasehold Reform Act 2002 includes:

- improvements in the definition of variable service charges
- a widening of the jurisdiction of the LVT to determine the liability to pay service charges, the reasonableness of administration charges and variation of leases
- improvements in the rights of leaseholders and tenants paying variable service charges to be consulted about 'qualifying works' and 'qualifying long term agreements'.

The Act also outlines the meaning and reasonableness of leaseholder **administration charges** in Schedule 11. The landlord must supply the leaseholder with the information set out in Administration Charges (Summary of Rights and Obligations) (England) Regulations 2007²³ every time that a demand for an administration charge is made. An administration charge is defined as an amount payable by a leaseholder, under their lease, directly or indirectly for:

- the grant of approvals under the lease or applications for approvals
- the provision of information or documents (to the leaseholder or someone acting on their behalf)
- costs arising from non-payment/arrears
- costs arising in connection with a breach (or alleged breach) of the lease.

If there is a dispute, the leaseholder has two options.

1. Where the charge is variable, the leaseholder may make an application to the LVT for a determination of reasonableness. 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.
2. 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.

4.7 The Service Charges (Consultation Requirements) (England) Regulations 2003

These regulations²⁴ set out what consultation **must** be made in order that a landlord can lawfully charge for 'qualifying works' or services under 'qualifying long term agreements' over the minimum amounts of £250 per contract or £100 a year, per contract, respectively.

²² Commonhold and Leasehold Reform Act 2002 - www.legislation.gov.uk/ukpga/2002/15/contents/enacted

²³ Administration Charges (Summary of Rights and Obligations) (England) Regulations 2007 - www.legislation.gov.uk/uksi/2007/1258/introduction/made

²⁴ The Service Charges (Consultation Requirements) (England) Regulations 2003 - www.legislation.gov.uk/uksi/2003/1987/contents/made

4.8 The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007

These regulations²⁵ set out the requirements for the **content and format of service charge demands**. This requires that where a demand for payment of a variable service charge is made, the demand must be accompanied by a summary of the rights and obligations of leaseholders in relation to service charges. Failure to comply with this requirement can result in leaseholders having the right to withhold payment of service charges.

4.9 Keeping up to date with key case law

Landlords should monitor relevant High Court judgements and Leasehold Valuation Tribunal (LVT) cases that proceed to the Upper Tribunal (Lands Chamber) as the decisions can affect leasehold policies and management. From the 1 July 2013 the LVT becomes part of the First-tier Tribunal (Property Chamber)²⁶ in England. Certain notices and forms relevant to residential leasehold are to be changed to take into account the inception of the First-tier Tribunal (Property Chamber).

Summaries of the most relevant LVT service charge cases and some of the specific issues that often arise at the LVTs can be found on the LEASE website²⁷. Examples of recent cases include:

- *Enforcing rights to service charge information* - In the case of **Di Marco v Morshead Mansions Ltd (30 April 2013)**²⁸ the High Court stated that a leaseholder can now apply to the County Court for an injunction to compel the landlord to provide a summary of service charge costs incurred during the previous year or accounting period, and also to inspect the supporting documentation.
- *Statutory consultation: the meaning of qualifying works* - The High Court in **Phillips & Goddard v Francis (21 December 2012)**²⁹ provided a vital instance of case law regarding statutory consultation with leaseholders. Landlords have until now only served section 20 consultation notices when a particular contract or project means each leaseholder will have to pay over £250. Now a landlord will have to look at the overall expenditure on qualifying works in a year. If the total will mean each leaseholder will have to pay over £250 in the year, then they will need to serve a section 20 Notice.

²⁵ The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 - www.legislation.gov.uk/ukxi/2007/1257/made

²⁶ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 - www.legislation.gov.uk/ukxi/2013/1169/contents/made

²⁷ Leasehold Valuation Tribunal Decisions, LEASE - www.lease-advice.org/lvtdecisions/

²⁸ Di Marco v Morshead Mansions Ltd (30 April 2013) - www.bailii.org/ew/cases/EWHC/Ch/2013/1068.html

²⁹ Phillips & Goddard v Francis (21 December 2012) - www.bailii.org/ew/cases/EWHC/Ch/2012/3650.html

- *Dispensation from statutory consultation under section 20 of the Landlord and Tenant Act 1985 (as amended)* - The Supreme Court has held in **Daejan Investments Ltd v Benson and others (6 March 2013)**³⁰ that, in considering whether to grant dispensation from the consultation requirements in relation to service charges, a LVT should consider the prejudice suffered by the tenants as a result of the landlord's failure.

The LVT has power to impose conditions on the grant of dispensation and, where financial prejudice has been identified, the service charge should be reduced by that amount. The landlord should also be required to pay the tenants' reasonable costs of the application seeking dispensation.

Note that some of these recent cases may yet be subject to further appeal.

³⁰ Daejan Investments Ltd v Benson and others (6 March 2013) - www.supremecourt.gov.uk/decided-cases/docs/UKSC_2011_0057_PressSummary.pdf

5. Useful resources and information

Links to all the documents listed below can be found at: <http://bit.ly/11miBnB>

ARHM Code of Practice for England, Association of Retirement Housing Managers, 2005

Case in Point - Service Charges, 2nd Edition, Royal Institute of Chartered Surveyors, August 2008

Highly charged - Residential leasehold service charges in London, Greater London Authority, March 2012

Managing homeownership - practice brief, Chartered Institute of Housing, June 2011

Residential Long Leaseholders - A guide to your rights and responsibilities, Department for Communities and Local Government department, July 2007

Residential service charge accounts - guidance on accounting and reporting in relation to service charge accounts for residential properties on which variable service charges, Institute of Chartered Accountants of England and Wales, November 2011

Service Charges and other issues, Leasehold Advisory Service (LEASE), August 2012

Service Charge Residential Management Code and Additional Advice to Landlords, Tenants and Agents, 2nd Edition, Royal Institute of Chartered Surveyors, April 2009

Service charges: a guide for housing associations (4th edition), National Housing Federation, March 2010

Further information

For further information visit our website
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