

SERVICE CHARGES

Service charges are probably the principal subject of friction and complaints between flat owners and their landlords or management companies.

Some issues relating to service charges are covered by the lease, others by common or statutory law.

Service charges are payments by the leaseholder to the landlord for all the services the landlord provides. These will include general maintenance and repairs, insurance of the building, lighting and cleaning common areas; they sometimes also include central heating and gardening. The charges will probably also include the cost of the general management of the building by the landlord or a professional managing agent. Details of what can and cannot be paid by the individual leaseholder will be set out in the lease.

Remember the general principle of leasehold is that the landlord arranges provision of the services and the leaseholder pays for them. All costs are down to the leaseholders; the landlord generally makes no financial contribution.

The lease will govern whether the charges are payable in advance or in arrears and whether they are payable on a regular date, for example a quarter day or as they arise. To be recoverable by the landlord the charges must be reasonable. There is not, of course any useful definition of reasonableness - in fact only the old legal adage about what is reasonable to the man on the Clapham omnibus!

The general direction taken is from the judgement in the case of *Finchbourne v Rodrigues* in the Court of Appeal 1976 that the parties to a lease could not have intended that the landlord should have an unfettered discretion to adopt the highest conceivable standard and to charge the tenants for it. The implication is that the leaseholders are to be protected from the potential extravagance of the landlord who is bound to be reasonable in his proposals and demands. This principle applies whether the landlord is an absentee third party or a resident management company; **the fact that the building is owned and managed by the residents provides no mitigation or exemption from the requirement for reasonableness.**

The levying and collection of a service charge pursuant to a lease is an individual arrangement between the landlord and each leaseholder in that the lease is, in effect, a private contract between the two parties. Therefore, the test of reasonableness applies to each individual leaseholder who has a personal right to question whether the charge is reasonable.

It is important that resident management companies appreciate this individual right. the fact that the proposals for the work or costs were discussed and voted on at a residents meeting does not absolve the company from their obligations of reasonableness nor negate an individual leaseholder's right to object or to challenge the charge at a Leasehold Valuation Tribunal (LVT).

Section 20 of the Landlord and Tenant Act 1985 requires a landlord proposing to carry out works of repair to a total cost exceeding £1000 or £50 per flat in the building (This will change to £250 per flat later in the year) whichever is the greater, to serve notices on each leaseholder telling them what he proposes, including at least two estimates of cost and inviting the leaseholders' comments.

He is not in fact bound to do more than have regard to leaseholder's comments but if he fails to serve the notices he is not legally able to recover any costs beyond the statutory limits above.

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Again, the same statutory requirement applies to residents managed buildings and resident companies should ensure that they follow the formal procedures in all cases. It is not sufficient to hold a meeting to discuss the proposals; whilst this is always useful it doesn't remove the legal requirements to serve Section 20 notices. It will be no use complaining when an occupant refuses to pay more than £50 of his service charge that he was invited to a meeting to discuss the proposals but failed to attend because he was watching football. If he didn't get a Section 20 notice then the charge is not legally recoverable beyond the statutory limit.

Any individual leaseholder or the landlord may make an application to their local LVT for a determination of reasonableness of a service charge. This can be a proposed charge or one where the work has been done or the services are already provided. The tribunal is able to determine any aspect that contributes to the disputed charge. It's not simply that the cost is considered too high but why the charge is high. The tribunal can consider, for example, in cases of works or repair: Did the works need doing at all? Should they have been done to that specification? Was the standard of work too high or too low? Should they have been done now or could they have waited? How well was the work supervised and was it done properly? Was the work more extensive than it needed to be because of the landlord's previous neglect? The issues are equally as wide in looking at charges for services including management charges.

It is not of course a simple matter. Whilst the tribunal is a much less formal procedure than a court hearing it does require the collection and presentation of evidence. It is not sufficient just to allege that the cost is not reasonable, it must be so proved to the tribunal's satisfaction. In most cases application to the tribunal will require the assistance of a solicitor and a surveyor to provide technical evidence.

The tribunal's function is to simply determine reasonableness of the cost; he cannot make any order for payment or repayment, that is a separate issue for the County Court.

Going to the tribunal is not without cost, there is a fee on a sliding scale dependent on the number of flats of up to £500 and there will be the professional fees of a solicitor or surveyor and so applications are not to be made lightly. However, the tribunal service has a major advantage over the courts in that it cannot make any order of costs - only in certain cases - to require a respondent to reimburse the applicants application fee.

Service charge monies collected but not yet spent by the landlord must be held in trust by the landlord and may not be used for any other purposes except specifically to pay for those matters chargeable under the lease. **The landlord of the resident management company may not use this reservoir of cash for any other reason, however pressing.** A leaseholder may demand a summary of the service charge position for his or her flat to show money collected against expenditure and **from 2003 there is a requirement that the service charge residues are held in a separate designated trust account and the landlords will be under an obligation to provide a summary of costs at each year end,** whether requested or not.

Peter Haler
Chief Executive, LEASE

For free advice or further information contact the Leasehold Advisory Service website www.lease-advice.org or telephone 020 7490 9580.