SERVICE CHARGES AND OTHER ISSUES

A GUIDE TO SERVICE CHARGES, ADMINISTRATION CHARGES, GROUND RENT, RECOGNISED TENANTS’ ASSOCIATIONS AND FORFEITURE

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INTRODUCTION

This leaflet 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 you can contact us for further advice, or you may need to consult a specialist solicitor in private practice. Depending on your circumstances, it may be possible to access more detailed advice and representation through the Bar Pro Bono Unit.

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.

References to ‘the Tribunal’ in this guide mean:

The First-tier Tribunal (Property Chamber), in England
The Leasehold Valuation Tribunal, in Wales

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 the 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;
- alternative dispute resolution, such as mediation.

What are service charges?

Service charges are levied by landlords to recover the costs they incur in providing services to a building. 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, porters, 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.

**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, 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. For example, it may require the leaseholder to pay a proportion of the charge based on square footage of the flat as a proportion of the whole building; it may be based on a simple percentage or, in older leases, on the rateable value of the flat as a proportion of the rateable value of the whole building. 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 often be provision for a final charge at the year end when the actual costs are known and exceed any interim payments. In this situation a demand will be sent out for the shortfall. If interim payments have been made, and they exceed expenditure, the lease may provide for a credit to the leaseholder for next year’s charge, occasionally a refund, and sometimes a provision that the excess is put into a reserve fund.

If the leases in a block do not provide for interim, or estimated, 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 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. Your solicitor will, normally, request this information from the seller.
What are reserve or ‘sinking’ 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. However, even if there is a reserve fund in place, this will not always be sufficient to cover the full cost of major works. In this case leaseholders are likely to have to make up the balance via the service charge.

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 Tribunal.

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 below).

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 should 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. The lease may specify a percentage, or may just refer to a ‘reasonable’ amount.
**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 Porterage:** 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, normally, given the opportunity to make a profit from the management of the building.

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’ and where the costs relate to works or services, that those works or services are of a reasonable standard.

**Application to the Tribunal**

Both landlords and leaseholders have a right to ask the 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 Tribunal 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 or admitted by the leaseholder or finally determined by a court or tribunal, or by post-dispute arbitration, no application to a Tribunal can be made.

The questions the Tribunal 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 Tribunal 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 Tribunal are set out in our leaflet *Application to the First-tier Tribunal (Property Chamber)*.

*Application Form - Service Charge*
*Application Form - Section 20C*
*Application Form - Reduction or Waiver of Tribunal Fees*

**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

- which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management; and
- 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 Tribunal 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**

Demands for service charges payable to the landlord must be in writing and must contain the landlord’s name and address. Failure to provide the landlord’s name and address on the demand means the service charge is not payable until this information is given. 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.

This does NOT apply if the service charge is payable to a management company, rather than payable directly to the landlord. The demands must still be writing, but they do not need to contain the landlord’s name and address.

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 issued 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 (section 20B Landlord & Tenant Act 1985).

Any service charge demand and reminder letter must be accompanied by a formal summary of rights and obligations whose content and form is prescribed by Parliament.
The holding of service charges – Trust Accounts (Section 42 of the Landlord & Tenant Act 1987)

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. The law 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 (Section 21 Landlord & Tenant Act 1985)

Leaseholders, or the Secretary of a Recognised Tenants Association, have a statutory right to seek a summary of the service charge account from the landlord. 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 relation 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 the landlord.

Rights to further information (inspecting accounts and receipts) (Section 22 Landlord & Tenant Act 1985)

As well as receiving the summary, the leaseholder has the right 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.

The above right applies even if the summary was provided via an end of year statement of account, rather than in response to a formal request for a summary under section 21.

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 of fines for summary offences). The local housing authority has the power to bring proceedings, or they can be brought by the leaseholder. Local authorities are exempt from prosecution, but not Housing Associations.

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. This is a complex procedure which is discussed in detail in the following guides:

Section 20 Consultation for Private Landlords, Resident Management Companies and their Agents

Section 20 Consultation for Council and other public sector landlords.

SERVICE CHARGES: SUMMARY AND CONCLUSIONS

The general principle of service charges, as dictated by the lease, is 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, e.g. where there is a Residents’ Management Company. 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 Tribunal;
- 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 must include a summary of the leaseholder’s rights and obligations to accompany such demands;
- service charge funds are deemed to be held in trust;
- 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 unless, and until, the demand is made with the summary.

In some cases a lease also allows the recovery of legal costs incurred in courts and or tribunals to be recovered from an individual leaseholder. This can arise on occasion from two of the scenarios mentioned above:

1. costs arising from non-payment of a sum due to the landlord; and/or
2. costs arising in connection with a breach (or alleged breach) of the lease

When the costs incurred result from one or other of these they will be classed as an Administration Charge. Such charges should be reasonable and can, if necessary, be challenged at the Tribunal. As with service charges, an application cannot be made to the Tribunal 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 a tribunal.

Application Form - Liability or Variation of an Administrative Charge

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 Tribunal 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 take copies or ‘extracts’ from the policy or 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 – Houses
(Commonhold and Leasehold Reform Act 2002, section 164)

Some leases, usually of houses, require the leaseholder to insure the property with an insurer nominated or approved by the landlord. Under the above Act 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. Please note this only applies to leasehold houses, NOT flats.

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 for England can be found here and the Notice of Cover form for Wales can be found here.

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. A link to the prescribed form is included below.
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 are quite rare and there is no longer scope to create new ones in respect of houses since 1976 and very limited scope to create a new scheme, in respect of flats, since 1999.

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 the Tribunal 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 the Tribunal 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.

As usual, an application cannot be made to the Tribunal 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 Tribunal.
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 formally recognised. An association is recognised either by notice in writing from the landlord to the secretary of the association, or by application to the Tribunal.

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 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 Tribunal;
- 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 (i.e. flats/houses) and their addresses;
- copies of any relevant previous correspondence with the landlord regarding recognition of the association.

The Tribunal has discretion as to whether recognition will be granted and it will not therefore be given automatically. For example, the Tribunal 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 Tribunal/Committee would expect membership to be not less than 60% of those eligible to join the association. If recognition is given the Tribunal/Committee 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 Tribunal/Committee 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**

A leaseholder who fails to pay service charges, ground rent or administration charges which are due, could face sanctions from the landlord. These could include the landlord seeking a county court judgement, approaching the leaseholder’s mortgage company and ultimately the landlord could seek to forfeit the lease and 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, 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 Tribunal 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 Tribunal that the amount is payable, and therefore reasonable.

So, before the landlord can serve a section 146 notice, the steps to be taken are:

- the leaseholder must have agreed that the breach has occurred and that any arrears are duly owing; or
- the landlord must make application to the Tribunal 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 unless the amount of service charges, administration charges or ground rent owed (or a combination of all of these) is more than £350 or consists of, or includes, an amount that has been outstanding for more 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.
ALTERNATIVE DISPUTE RESOLUTION

The preceding paragraphs may give the impression that disputes about service charges will usually end up at the Tribunal or the County Court. This need not be the case, of course.

The Courts and Tribunal should be a last resort and leaseholders and landlords are encouraged to try and resolve their issues by agreement and discussion, if possible.

Formal mediation between the parties can be a good option if both parties are prepared to engage in the process. The mediation process will allow both parties to put forward their views and issues in a less formal setting. A trained mediator(s) will encourage the parties to reach their own agreed resolution to the dispute.

There are many mediation services available. Just a sample can be found by searching LEASE’s Practitioners Directory or the Ministry of Justice civil mediation directory. For more detailed information about alternative dispute resolution services see the LEASE advice guide Alternative Dispute Resolution.

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**LEASEHOLD VALUATION TRIBUNALS**

**Residential Property Tribunal Service (RPTS) National Helpline:**
Tel: 0845 600 3178  Website: [www.justice.gov.uk](http://www.justice.gov.uk)

**Residential Property Tribunal Wales**
1st Floor, West Wing, Southgate House, Wood Street, Cardiff CF10 1EW
Tel: 029 2092 2777  Fax: 029 2023 6146
Email: rpt@wales.gsi.gov.uk  Website: [http://rpt.wales.gov.uk](http://rpt.wales.gov.uk)

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