



Transparency in Professional Fees

Response to Consultation Paper

The Leasehold Advisory Service (LEASE) welcomes the opportunity to comment on the residential leasehold matters raised in the RICS's consultation paper on 'Transparency in Professional Fees'.

B. Service charges in leasehold property

Residential

- **Does the package of legislation cover the majority of complaints by leaseholders in this area?**

Yes, section 19 of the Landlord and Tenant Act 1985 (1985 Act) requires that 'relevant costs' that will form service charges must be reasonably incurred, reasonable in amount and that works or services must be provided at a reasonable standard.

- **Is the balance between the rights of leaseholders and the rights of landlords correct?**

On balance, we would say that it is although the tensions that can arise in a landlord-tenant relationship can give a very different impression. We would suggest that the balance of rights does not rule out the need for the licensing of those who manage leasehold flats.

- **Is there enough advice/case law that defines the boundaries of what reasonableness is when considering taking cases to the Leasehold Valuation Tribunal?**

Case law: section 19(1)(a) of the 1985 Act requires that the costs are 'reasonably incurred' this requires one to look (i) whether the landlord's actions are reasonable and (ii) whether the cost incurred in taking that action were reasonable too. Sub-section (1) (b) provides that in relating to services or works they must be of a reasonable standard in order to be payable.

Sub-section (2) requires that if the charges are payable in advance of the landlord incurring the cost that no more than what is a reasonable amount is payable.

In the context of professional fees, and assuming that the lease makes provision for their recovery as service charges, then in order for them to be payable:

1. The landlord's decision to incur them must be a reasonable one;
2. The amounts must be reasonable; and
3. The services provided must be of a reasonable standard

Finally, if payable in advance then only what is a reasonable amount is so payable. If evidence shows that one or more of these criterion is absent then some or all of the cost is not reasonable and will not be payable. Under section 27A of the 1985, Act the Leasehold Valuation Tribunal (LVT) can resolve disputes.

An additional approach worth considering is that in sections 33(2) and 60 (2) of the Leasehold Reform Housing and Urban Development Act 1993 Act. Those sections apply where leaseholder(s) acquiring the freehold of the building containing their flats or extending the lease of the flat, respectively, reimburse the landlord's costs. Such reimbursement is subject to an additional restriction that they are only reasonable if the landlord would have incurred such costs if he had personally been liable to pay them.

- **Are there any issues around the ability or affordability to seek redress by leaseholders in this area?**

In terms of fees, applying to a tribunal is a relatively low-cost exercise when compared to proceedings in the courts. However, the evidential exercise of proving in a tribunal that professional fees are not reasonable can still be expensive. It can often require expert testimony to give weight to the evidence submitted by a leaseholder that the fee is not a reasonable one. Tribunals are expert panels able to rely on their own expertise, however as the case will have been developed and the decision to proceed will have taken place outside of the tribunal the need for an expert view will remain.

The LVT cannot, save in limited circumstances, award costs against a party¹ or order the reimbursement of application and/or hearing fees². This limits the exposure of leaseholders to such costs and fees, but it remains the fact that leases often make provision that costs incurred by the landlord in dealing with matters such as tribunal applications are recoverable as service charges. Section 20C of the 1985 gives the tribunal the power to limit the application of such clauses, but the risk remains for a leaseholder or a group of leaseholders in bringing a case to the LVT as the application of section 20C is by no means automatic.

¹ Paragraph 10 to Schedule 12 of the 2002 Act

² Paragraph 9 to Schedule 12 of the 2002 Act and Regulation 9(1) of the Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

- **Can you share any evidence related to undesirable practices and most common complaints on this issue? Does this show any differences between regulated and unregulated managing agents?**

We are not in a position to disclose particular parties. However, examples of undesirable practices include:

1. A leaseholder in a building containing two flats has an annual service charge where the insurance premium for the building is £1,600. The lessee's own enquiries reveal the likely premium should be £400. The heavy inference is that the disparity is commission related.
2. A leaseholder of a house has taken out his own insurance for the last eleven years. A new landlord acquired the reversion and has now sent a letter saying they want him to insure through a large and well-known insurance company. There has been no suggestion that the customer's insurance was in any way inappropriate, and it appears that the benefit of commission is a significant factor in prompting the change. The customer cannot get the benefit of section 164 of the 2002 Act, to opt for his own insurer, because he did not appreciate that the need to inform his landlord of cover with his existing insurer within 14 days of renewal in October last year.

Our experience is that such practices are more prevalent where the agent is unregulated.

- **Can you share evidence of good practice in this area?**

As an advisory body where the vast majority of enquiries are from leaseholders, we receive mainly allegations of bad practice. However, there are unquestionably practitioners who treat the RICS's and Association of Retirement Housing Managers' respective Codes of Practice as minimum requirements and will, as a matter of everyday business, operate transparently where they can without compromising client confidentiality and commercial sensitivity. These practices include benchmarking fees against competitors.

- **Do you agree with the recommendation put forward by Sir Bryan Carsberg, in his review that landlords, letting agents and managing agents should be subject to appropriate regulatory requirements in order to achieve consumer protection, efficient markets and cost effectiveness?**

The question to pose here is what are "appropriate regulatory requirements"? In our response to the then Department of Transport the regions and Local Government's consultation paper "Improving the standard of residential leasehold management"³ we endorsed the licensing of managing agents saying:

³ April 2002

“We would propose that those who are to operate as professional property managers must be licensed. Experience here shows that the patchwork quilt of legislation only deals with problems after the fact. The management of a building containing an individual’s home is simply too important a responsibility to be left to such remedies.....”