

AFFORDABLE HOMES STRONG COMMUNITIES

GOOD PRACTICE GUIDANCE

Service charges: value for money?

March 2007



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Introduction

Purpose of this guide

The idea for this guide grew from a realisation that, although there are a number of publications about legislation on service charges, no one guide has pulled together the threads of customer expectation and service provision, with an analysis of how landlords set and manage service charges.

This guide:

- sets out what customers – both tenants and leaseholders – want, based on survey findings;
- explains what good practice is, why landlords should implement good practice, and what landlords will gain from good practice;
- sets out the regulatory and legal framework for service charges;
- explains customers' remedies, such as the Leasehold Valuation Tribunal;
- helps to promote efficiency for landlords, for example by establishing good practice and reasonable charges in advance; and
- encourages continuous improvement in service delivery to service charge payers in the housing association sector, to increase customer satisfaction.

Who this guide is for

This guide is for senior managers, directors, all staff who work with leaseholders – maintenance staff, housing managers, leasehold managers, finance staff – and others. Effective service charge setting should be part of a housing association's financial strategy. We hope that you don't just put this publication away on a bookshelf, but disseminate it to staff and throughout your organisation. Organisations that are committed to genuine dialogue with tenants and leaseholders will share this guide with them.

What to do with this guide

You should adopt this good practice guide because effective structuring and managing of service charges makes good business sense. Knowing what your customers want will ensure that services are correctly targeted and help you to maximise your income. You also should bear in mind the consequences of not getting this aspect of your business right – increased arrears, collection costs, a poor relationship with your customers and the scrutiny and possible sanction of your regulator.

How we put this guide together

The information in this guide has been gathered from a range of sources:

- a direct postal survey of 113 housing associations;
- a telephone survey of 237 housing associations;
- a telephone survey of 55 local authorities;
- an e-mail survey of Housing Corporation regulators;
- a focus group of service charge payers (both tenants and leaseholders);
- two telephone conferences of service charge payers (both tenants and leaseholders); and
- an analysis of Leasehold Valuation Tribunal cases and outcomes.

The housing associations and local authorities we contacted were based in England and of various types and sizes, ranging from large local authorities to small co-operatives. The service charge payers we contacted for research were from different types and sizes of landlord and were a balanced mixture of leaseholders and tenants. We took the good practice examples in this guide from those who responded to our surveys.

Some organisations have changed their names since they participated in this research, we have indicated the change where we are aware of this.

What customers want

From the service charge payers' point of view the key issues can be broken down into three main areas:

- making payments;
- service delivery and value for money;
- consultation and involvement.

Under each of these headings, we look at what customers said to us during our research.

Making payments – what customers say

“Our association’s area offices are closing, so we won’t be able to make payments there any more, but that’s not a problem if we have other options.”

“I pay by direct debit – it may be possible to use other methods, but I don’t know what they are.”

“Our local post office closed, so we have to go to the main post office now.”

“Telephone banking is easy.”

“I like using the swipe card at my newsagent.”

“The Halifax has a pay-point machine – it’s easy to use and good for me.”

“Having a direct debit arrangement means I don’t have to worry that I might forget to pay.”

“Different people have different incomes, we should be able to pay in the way that suits us best.”

“I’ve heard about extended or interest-free payment periods and one association gives a discount for early payment – they sound like good ideas.”

What’s important to customers

- To have a choice of methods of payment and to keep their options open.
- The post office is still a key place to pay.
- To be able to pay into local banks at no extra charge.
- Letters and information to residents should state clearly what are estimates and what are actual costs.
- Older and vulnerable residents may need help to understand invoices and make payments.
- Some tenants still feel happier if they can pay in cash.
- For major works, enable interest-free payments over longer periods.
- Incentives for making prompt early payments.

Service delivery and value for money – what customers said

“I judge value for money on the evidence that my landlord is monitoring the service they provide and how they respond to complaints.”

“The charges are very low compared to other leaseholders.”

“Value for money is in the speed of service and dovetailing of contracts so that they tie in with each other.”

“We have estate walkabouts every three months, when we agree action plans.”

“It’s hard to challenge your landlord about whether work is necessary or not.”

“Pro-rata costs spread across all service charge payers are not good value for money.”

“We should be informed exactly what charges are for. I’m the Resident Association chair and it’s not clear to me, so it must be worse for ethnic minority residents.”

“I receive a very comprehensive list of works from my landlord, but it’s a ‘fait accompli’ – it’s not necessarily what, where or how I want it.”

“There is no control or balance. For example a cleaner might be paid to visit fortnightly but there are no checks that this is what actually happens.”

“Cheapest is not always the best – I think we should look at what is a reasonable price.”

“I’d like to know what the exact costs are as well as what I’m expected to pay.”

“To assess value for money I need to know if they are doing what they are supposed to.”

“Value for money is about checking durability and maintaining standards.”

“Service charges went up 130% last year.”

“Take things like ground rent and communal lighting, I don’t have the right information to decide if they are value for money – but I feel they aren’t.”

“Management charges seem so high – how can we see that we are getting value for money?”

“Contractors should notify residents when they come to do work – we are often told we must let workmen in whenever they call.”

What’s important to customers

- Landlords need to understand that tenants and leaseholders may have different opinions and different liabilities for service charges.
- Service charges should be itemised and clearly stated.
- Customer-care awareness by staff leads to customer satisfaction.
- Service providers should show reasonable care and skill, use correct materials for the job, and complete it in a reasonable time and at a reasonable price.
- Landlords should involve residents in deciding what services are needed.
- Residents should be involved in assessing value for money.
- Landlords should give residents a specification of the works so they can make an informed judgement of the services they receive.
- Use a commonsense approach to assessing value for money – consider what is important to most residents.
- Give feedback to residents on the performance of contractors.

Consultation and involvement – what customers said

“We need information in good time, so we can give informed opinions.”

“Let ordinary residents go on estate walkabouts, not just the Resident Association representatives.”

“Pensioners can sometimes find forms and other paperwork confusing or difficult so it’s much better to have face-to-face discussions.”

“If we say that a contractor is not very good, the association should have the flexibility to change them.”

“If we haven’t been given enough time to respond, we can’t make effective comment – that’s information giving, not consultation.”

“Our Residents’ Association is given information two weeks before a meeting so we have chance to prepare properly.”

“We have no choice or involvement in either works to be carried out or who the contractors to be used are.”

“I like to have information in writing as well as the chance to discuss proposals at meetings.”

“Forums in each of our areas are consulted and the results are fed into area committees and then represented at board meetings.”

“Some services are compulsory, but we would like the chance to opt out of others. For example, we have to contribute towards lift maintenance, but if we want to have a rota to clean the communal areas ourselves, we should be allowed to and costs could be reduced.”

“We should be consulted at the contract stage as residents may have experience to contribute.”

“Our estate transferred from the council to a housing association; leaseholders were not consulted about the change of landlord. The council said the law doesn’t require them do this – they admitted it would have been good to but they forgot, which was honest.”

“Our estate is owned by five different housing associations who all work in different ways. We have no effective consultation over things that affect us, like what works are to be done or which contractor to use. You can tell that different contractors cover different areas as there is no consistency in the quality of work.”

“Our Community Initiative officer involves the whole community. We get the chance to let the landlord know if contractors are doing well or not at an early stage, when there is a good chance of putting things right.”

“An estate agreement is being introduced which will cover longer-term maintenance and will be reviewed every 12 months.”

What's important to customers

- Consult all tenants, not just committees.
- Include leaseholders in all consultation including contractor selection, not just about the level of charges.
- Give full information to residents in advance of meetings to give them adequate time to read through it.
- Have well-managed estate agreements.
- Service charge information should show the breakdown of payment responsibilities for tenants and leaseholders.
- Give feedback on how the results of consultation have affected service charge arrangements.
- Landlords should work together where they have properties on estates with other landlords.
- Whilst there is no legal requirement to consult leaseholders about stock transfer, it is good practice to do so. The Communities and Local Government Housing Transfer Manual recommends it.

What customers should get – good practice

This section is about what is expected of housing associations and includes some good practice examples from various organisations. We have arranged this in sections on:

- payments;
- consultation;
- charging structures.

In each of these sections, we will look at:

- why we need good practice and what its advantages are;
- the legal and regulatory framework;
- good practice case studies;
- a summary of why these examples are effective.

Payment and collection arrangements

The implications for landlords and residents of unpaid service charges are wide-ranging. Residents in debt can become anxious and concerned for their security; landlords who fail to maximise their income put their business at risk. The Housing Corporation recommends John Kruse's *Recovering Housing Debt* (published by the Chartered Institute of Housing), as a practical step-by-step guide to enable landlords confidently to take action to tackle rent arrears.

The Housing Corporation Regulatory Code expects that housing associations will be responsive to the needs and circumstances of individuals and that housing associations will manage debt proactively.

Section 3.1b of the Housing Corporation's Regulatory Code and Guidance says:

...All residents have information about their service charges including the costs that their charges cover, how charges are budgeted and increases calculated.

Under the Commonhold and Leasehold Reform Act 2002, service charge bills must be accompanied by a summary of the rights and obligations of service charge payers.

Section 2.1 of the Housing Corporation's Regulatory Code and Guidance says:

Housing associations must operate according to the law and their constitutions.

The Housing Corporation expects that housing associations will offer help with debt. This can range from:

- the minimal – a note accompanying the bill, telling leaseholders to seek more advice if they have trouble paying; to

- more formal arrangements – for example, some housing associations fund money advice centres or have arrangements with local Citizens Advice Bureaux for a specified service and number of referrals each year.

The Housing Corporation is also clear that housing associations should refer residents in arrears to good-quality debt counselling services as soon as possible after the debt has arisen and should continue to do so at every stage of the recovery procedure. Possession action should not be taken where a resident has maintained an agreement to pay the arrears. Distraint should not be used to recover property from indebted tenants.

Bracknell Forest Borough Council – helping leaseholders in need

Bracknell has a system for ‘hardship cases’ for major works service charges. If a leaseholder can prove severe hardship, e.g. a pensioner, they can arrange interest-free payment over three years. The council will also consider requests to put the debt as a charge on the property or offer a council mortgage.

London Borough of Brent – many ways to pay

Brent offers a range of payment options:

- leaseholders must tell the landlord how they wish to pay within 21 days of receiving the notification of charges;
- a list of payment options is sent with the invoice;
- payment in full attracts a 5% discount;
- they can pay by ten monthly instalments;
- they can pay by cash, cheque, credit/debit card, standing order; and
- there is a loan facility and an offer of 24 months interest free for major works charges over £600.

Basildon District Council – flexible payment arrangements

Basildon is preparing to introduce a ‘pay-as-you-like’ scheme.

Invoices will be issued annually, and leaseholders will be able to pay as much as they like each week/month or in a lump sum, so long as the whole bill is paid within that financial year.

Basildon feel that this will help by:

- having flexible payment arrangements to suit individuals;
- keeping management costs down by reducing the number of invoices and reminders sent; and
- lessening the likelihood of court action by helping leaseholders to pay and only having to apply to court for one amount of debt at the end of the year.

Southern Housing Group – providing advice

Arrears are usually dealt with by letter and home visits. Where necessary, service charge payers are referred to an organisation that gives advice on debt payments.

Elmbridge Housing Trust – 21st-century payment

Elmbridge leaseholders can pay their service charges over the Internet (as well as by more traditional methods).

These good practice examples illustrate practical ways that councils and housing associations are working to comply with the law and regulations in a customer-friendly way.

Consultation and involvement

Involving customers is not just something to do because housing associations are social housing providers, or have a moral obligation – it makes good business sense to make sure you understand what your customers want and involve them as far as possible in your decision making.

The Involvement Business was published as part of the Housing Corporation's bIGPicture series and has clear case studies that show why listening to and involving customers is good for business.

The Housing Corporation expects housing associations to put residents at the heart of their business (see panel on next page).

In February 2004, the Housing Corporation launched the Involvement Policy for the Housing Association Sector (consultation for a new framework is underway in 2007). It has a list of expectations including:

- resident involvement should be at the heart of housing associations' corporate strategy, decision making and ethos;
- every housing association will be required to draw up a resident involvement statement over the next year in partnership with residents; and
- housing associations should disseminate the policy throughout their organisations and their boards should be fully committed to it.

The Involvement Policy for the housing association sector is effective from 1 April 2004. Circular 01/04 sets out the Housing Corporation's expectations of housing associations and how compliance will be assessed.

In addition to this, the Commonhold and Leasehold Reform Act 2002 sets out the legal framework for how leaseholders must be consulted over services and major works.

Raglan Housing Association – residents have the chance to get together to make their point

Raglan look at the wider context. As well as consulting over specific works they consult forums in each area on more general issues.

The opinions of area forums are fed into area committee meetings and are in turn reported to board meetings.

Gosport Borough Council – going beyond the statutory requirements

Gosport has both residents associations and a leasehold forum. They consult on most things, e.g. grounds maintenance contracts, extra landscaping, improvements.

They involve tenants and leaseholders in the process of choosing contractors by inviting volunteers to go through copies of the

The Housing Corporation Regulatory Code and Guidance says:

- Section 2.5** Housing associations must seek and be responsive to residents' views and priorities:
- Section 2.5.2** ...giving residents and other stakeholders opportunities to comment on their performance
- Section 2.5.3** ...enabling residents to play their part in decision making
- Section 2.5.4** ...providing opportunities for residents to explore and play their part in how services are managed and provided.

applications/tenders, then hold a meeting to discuss the applications and consider questions and comments. Finally, tenants and leaseholders are invited to give their views on who should be selected.

Waverley District Council – involving residents in decisions

If major works are proposed, Waverley send a questionnaire to tenants and leaseholders asking what they think needs doing, e.g. their front door may need painting or replacing, one of their windows might be rotten.

All this information is taken into account when the property is surveyed.

Waverley have found that in consultation exercises, leaseholders prefer quality, even if it will cost them a bit more, so they do not always go for the lowest tender.

Housing associations that go beyond the legal minimum are showing good business sense and a genuine desire to make sure their services are responsive to their customers' needs.

Charging structures

How landlords set their charges and make sure they get value for money can vary. We all have different views of what value for money is, and it is not necessarily just about the cost of a service – quality is important too. The panel on the following page summarises relevant Housing Corporation guidance.

These case studies are examples of different ways to set service charges:

London Borough of Tower Hamlets – matching costs to property

Not everyone pays the same service charge: they pay a percentage of the block costs, depending on property value, floor level and location.

Thanet District Council – matching costs to property

Service charges are based on rateable value.

London Borough of Waltham Forest (now Ascham Homes) – matching costs to property

The service charge for estate services depends on the size of the property: number of bedrooms and floor space.

Adur District Council – charging what it costs

Service charges are based on actual costs. Some contracts have a fixed price and are known in advance.

The Government consulted in 2004 about the service charge information that landlords should provide to leaseholders to tie in with the requirements of the Commonhold and Leasehold Reform Act 2002. It is likely that there will be changes to the content and format of the information that landlords must give.

Although changes have not been announced (at January 2007), landlords should be aware of what is being proposed and start to plan how to incorporate any new requirements, based on the responses to the previous consultation.

The Housing Corporation Regulatory Code and Guidance says:

- Section 2.3** Housing associations must maintain the highest standards of probity in all their dealings:
- Section 2.3.3** ...conducting their business so they are accessible, accountable and transparent to residents and other stakeholders.
- Section 3.2** Housing associations must have management arrangements, resources, skills and systems which are appropriate to their circumstances, scale and scope of operation and ensure that their activities:
 - Section 3.2.1** ...are adequately monitored
 - Section 3.2.2** ...are undertaken efficiently and effectively
 - Section 3.2.3** ...are backed by proper systems of assurance for internal control.
- Section 3.2a** The governing body receives regular reports on all areas of the association's performance. The association benchmarks its performance against other associations and organisations.

The Housing Corporation Regulatory Code and Guidance says:

Section 3.3 Housing associations must aim to deliver continuous improvements and value for money in their services:

Section 3.3.1 Using Best Value techniques, challenging what they do and how they do it, making comparisons with others, consulting people affected by the services and establishing whether they are providing the service, either directly or through a third party, at competitive standards and prices.

Section 3.3a Service provision is subject to challenge and change. The wishes of residents, and others, are balanced against available resources within a clear and transparent framework, according to the principles of Best Value. Progress in working towards improvements against a range of national and local performance indicators will be published by the association.

Value-for-money tests

Here are some examples of housing organisations trying to find ways to agree value for money with their residents in accordance with Housing Corporation code and guidance (left).

London Borough of Southwark – dealing with disputes

Southwark has its own Internal Arbitration Tribunal for leaseholders to go to if they are unhappy with services or works

Bush Housing Association

Bush hold consultation meetings in their housing developments to ‘test the water’ and get approval from residents before going ahead with proposals.

They also consult if leaseholders want a particular service and send estimates and details of other options.

They assess value for money based on the responses they receive from surveys that leaseholders complete before works are done and after they are completed.

Adur District Council – listening to customer feedback

Arrears letters have been rewritten as many leaseholders complained about the wording of the previous letters. In terms of value for money a lot of feedback comes through the leaseholders' group and the tenants' compact. The 2002 leasehold reforms were taken to the leaseholders' forum for discussion and comment.

Crawley Borough Council – comparing performance

Crawley has undertaken a telephone survey with other local authorities to compare administration and management charges.

London Borough of Hammersmith and Fulham – assessing performance

Complaints received are used to help to assess performance.

Hammersmith used to do postal surveys but as the response was low they now carry out random telephone surveys and response rates have improved.

If feedback is about information, e.g. letters or leaflets, they look into redrafting into plain English, different languages or large print.

William Sutton Trust – asking customers about value for money

A MORI poll asked customers' views on value for money and service charges. Over two-thirds of the respondents thought rent and service charges were good value for money. The issues arising from this were discussed with residents at their National Tenants' Conference

Restormel Housing Trust – using a best value approach

Restormel assesses whether services represent value for money as part of its programmed five-year best value plan. It gets feedback through best value reviews, residents groups and general consultation. Service charge collection is assessed with the help of monthly targets.

We can see from all these case studies that there is a huge range of ways of reaching agreement on what value for money is and how to get it.

Do customers get what they want?

Key points emerging from research

Residents want	Landlords give
<p>Payment arrangements</p> <p>Residents want choice and good accessibility over how and where to pay; clear, easy-to-understand information; the opportunity to pay by instalments, interest free; and incentives for early payment.</p> <p>Residents want debt counselling and advice.</p>	<p>Examples from landlords suggest that although some provide a range of ways for residents to pay their service charges, some still offer limited options.</p> <p>Some provide specialist help and advice contacts and incentives or discounts for early or prompt payment but this is not widespread.</p>
<p>Service delivery and value for money</p> <p>Customer care is an important factor for residents and they would like greater involvement in assessing whether they get value for money.</p> <p>Residents would like clear, easy-to-understand information about the contracts that they pay towards on their estates, and feedback on the performance of the service.</p>	<p>Landlords have different charging policies and practices, mainly for historical reasons.</p> <p>Testing of value for money is not particularly sophisticated. Some rely on the results of feedback from satisfaction surveys and others programme this into best value reviews.</p> <p>Generally, tendering is the only value-for-money test, but it does not necessarily address what leaseholders want, or the quality they are prepared to pay for.</p>

Residents want

Landlords give

Consultation and involvement

Residents are looking for inclusive consultation and involvement arrangements, with involvement at an early stage and in contractor selection.

Estate agreements are seen by some as a good way of deciding on the type and level of services and how to monitor them.

Generally residents want more information about service charges, and feedback on how consultation has affected service delivery and costs.

Landlords generally involve and consult residents via a service charge annual meeting rather than in deciding the level and cost of services.

Although a few involve residents in selecting contractors this is not widespread. Often they tend to rely on residents groups for views on services.

There is not widespread use of estate agreements for designing and monitoring services with residents.

Generally landlords use postal surveys and tenant satisfaction surveys to gather feedback on service delivery.

Landlords should be aware of statutory requirements.

Leasehold Valuation Tribunals

If leaseholders are dissatisfied with a service or charge for it, and they cannot resolve the matter with their landlord, they can go to a Leasehold Valuation Tribunal (LVT).

The LVT can determine the reasonableness and amount of a service charge. It also has the power to consider whether there is a liability to pay at all and has the power to vary leases. It can also consider administration charges and the reasonableness of the charge and the formula in the lease that sets the charge.

LVTs are independent and impartial and consist of three members, typically a lawyer, a valuer, and a layperson. Hearings are semi-formal and evidence is not given on oath. They provide a faster, cheaper and simpler option to court proceedings. The determination (decision) is final and enforceable. Either the leaseholder or the landlord may apply.

By looking at LVT cases heard and decisions made over a period of time, we can see what problems are most common and, more importantly, anticipate the outcomes. Housing associations might choose to build this into policy and procedures, to help develop better customer relations and ultimately save time and money. Another approach might be to apply to the LVT for approval of service charges in advance – provided that this does not close off resident involvement in budget setting.

There is a very evident north/south divide in the number of cases taken to Leasehold Valuation Tribunals, with the south of England having significantly more. The majority of LVT cases are heard in the south and south west of England.

Reasons for this could be that:

- there is a greater proportion of leasehold properties in those regions;
- landlords in those regions are less responsive to resolving disputes before going to a LVT; or
- leaseholders in those regions are more prepared to take further action if they are dissatisfied.

Cases can be considered by an LVT in the following ways:

- by transfer from County Court – where the judge decides to do this, the rest of the claim being heard will be adjourned until the LVT makes its decision;
- by holding a hearing – where applicants and respondents attend to give evidence;
- without a hearing – the LVT will consider only the written evidence submitted to it, usually where issues are not contentious;
- by preliminary hearing – where the LVT has to decide whether it has the power to proceed;
- by fast track – for straightforward cases; the LVT aims to deal with these within ten weeks;
- by standard track – a pre-trial review may be held before a full hearing; and
- by emergency hearing for matters of health, safety, or welfare.

The cases involving social housing most often brought to LVTs are about:

- service charge arrears;
- reasonableness of service charges;
- service charges; and
- statutory consultation.

Learning from LVT cases

All LVT determinations are public documents and are available to view and download from the Residential Property Tribunal Service website: www.rpts.gov.uk

Section 20 Notices (consultation requirements)

A significant number of cases have been taken to leasehold valuation tribunal due to landlords' failure to properly serve Section 20 notices.

On occasion tribunals have felt they can overlook landlord failures in consultation, so long as this has not adversely affected tenants. However, landlords should not rely on this being an LVT approach, particularly as the law in this area is now well established and a registered social landlord is expected to be competent in serving notices.

If, during the process of S20 consultation a landlord finds an error has been made in serving notices, it is advisable to start the process again in order to be able to properly recover the full amount due from leaseholders.

It is possible for a landlord to apply to an LVT for dispensation from S20 consultation requirements.

Case study – Southern region

A city council applied to the Southern LVT on 21 November 2006 to proceed with works to the door entry system on a high rise block without undertaking full S20 consultation.

The tribunal had to test reasonableness – was it reasonable in the circumstances to dispense with all or any of the consultation requirements?

The tribunal inspected the property and held the hearing on 11 December 2006. They saw that the existing door entry system was defective and that there was unrestricted access to the block at all times.

The tribunal heard that there were incidents of rough sleepers spending the night in common parts, that a number of older residents had expressed their concern to the caretaker and the local police force confirmed the property was considered to be in a 'burglary hotspot'. A police officer gave evidence to the tribunal that there had been a number of incidents at the property. The council showed that they had tried to repair the door entry system, but that it was no longer repairable and needed replacement; this was confirmed by the manufacturer.

The council did serve a notice of intention to all leaseholders on 20 November 2006, but applied for dispensation in order to be able to do the work at least two months earlier than if they had to go through the full consultation procedure.

Determination

The tribunal noted that the works were established as properly required, that anti-social behaviour was of real concern, that the council had obtained four tenders to show best value was achieved and that no leaseholders had objected to the application to LVT. The tribunal felt that there were compelling reasons to dispense with consultation requirements and that it was in the best interests of the leaseholders to do so.

Communication

Some tribunals have felt it was appropriate for them to comment on cases where they considered there was inadequate communication between parties.

They also felt that social landlords should be able to defuse resistance and substantially achieve their objectives at reasonable expense, by sympathetic handling of the concerns of leaseholders and the development of flexible packages of financial arrangements.

Case study – Northern region

This case concerned, amongst other things, grounds maintenance issues. The leaseholders were dissatisfied with the service, saying that it was spasmodic, a number of different contractors had been used, the standard of work was not properly monitored by the landlord and they had not been consulted on what works were supposed to be done.

The tribunal found that the service charge statement did not give sufficient information about what works were being charged for. The landlord indicated that they relied on complaints from residents to instigate a check on completed work and did not carry out random checks.

The tribunal inspected the property and noted a number of problems with the grounds maintenance: plants sprouting through tarmac, waterlogged grassed areas, leaves and rubbish under bushes, a pond overgrown with weed and little or no attention to some areas.

Determination

The tribunal had to consider whether the charges being made were reasonable and, without detailed accounts for the service charge items, they had to rely on the statements of the leaseholders and the knowledge and experience of the tribunal panel members. On this basis they decided that the gardening work was ‘very much at the low end of what could be considered as reasonable’ and that another part of the estate was ‘well below the

standards that anyone would reasonably expect.’ The tribunal then stated what a low standard service should cost, which was less than the landlord had charged and required the landlord to charge this amount only.

Of particular interest in this case, was the fact that the tribunal considered the 15% administration charge that the landlord charged for managing the property and concluded that this percentage was not an unreasonable charge to make ‘for good and proactive management.’ However, they could not accept that this amount was reasonable for the administration of this particularly poor service and reduced the administration charge to 7.5% of the costs of works as decided by the tribunal.

Improvements

The Commonhold and Leasehold Reform Act extended service charges so that they can cover improvements, where the lease allows for this.

However, even before this, in most cases LVTs were able to rule that the improvements under consideration were in fact necessary repairs/maintenance so they could make a judgement on ‘reasonableness’.

Case study – Northern region

In this complex case, the applicant was a registered social landlord asking the tribunal to decide on services and service charges relating to district heating schemes and window replacement.

A number of leaseholders were listed as respondents and gave their opinion to the tribunal.

The tribunal considered the extent of the district heating – 48 boiler houses and 89 boilers; the annual charge and how it was apportioned; alternative systems, i.e. individual combi boilers.

Determination

The tribunal rejected the contention that it would be cheaper and/or better to obtain heat on an individual property basis and felt that the apportionment of cost was reasonable, especially as residents had some control over costs via pre-paid individual meters.

One leaseholder made representation to the tribunal that his windows were in poor condition and he claimed that he had been told they would be replaced with uPVC windows and charged to him via his service charge. The landlord declined to do this. The tribunal found that the lease expressly excluded the exterior window frames from ownership by the landlord and that the tribunal had therefore no jurisdiction to require the landlord to replace them.

There are alternative approaches to this last point about works outside landlord ownership:

- Southwark Council in London now offers gas servicing to leaseholders as part of its overall gas servicing contract and recharges the cost as part of the service charge. Leaseholders are therefore able to benefit from the bulk-buy savings that Southwark achieves:
- the Audit Commission cites this approach in Key Line of Enquiry (KLOE) 12.3 as excellent practice; and
- the same KLOE also recognises that excellent organisations provide ‘flexible options for homeowners who are unable to pay high major repair bills.’

Case study – Midlands region

Service charge disputed by an assured tenant in a sheltered housing scheme of 40 flats and communal facilities in seven blocks.

Part of this case was about the television aerials, the usage charge and anticipated life expectancy of them.

The tenant disputed the reasonableness of the usage charge at £660 based on a 15-year life. He said this equated to a value of £9,900, whilst he had received a quote from a local company of £4,969 for installing 21 aerials. He also felt that

the life expectancy for the aerials of 15 years estimated by the landlord was too short.

The landlord stated that tenants had not been charged the capital costs of installing the aerials. They said the usage charge was for future replacement (similar to a sinking-fund provision), that the aerials had been upgraded to deal with digital changes and that with new technologies developing in the future, aerials were likely to require replacement more frequently than in the past.

Determination

The tribunal recognised the point about new technologies shortening the life of aerials in future. They also reiterated that consultation with individual tenants was not required under the Landlord and Tenant Act 1985, as tenants had not been charged for previous capital costs. The tribunal also mentioned that taking the principals of CLRA 2002 into account, capital costs in the future would have to exceed £10,000 for qualifying works to cost above £250 per tenant in order to trigger consultation.

Partnering

The requirements of the Commonhold and Leasehold Reform Act 2002 have significant implications for landlords contemplating new management arrangements, Private Finance Initiatives, or other forms of partnering.

The following Leasehold Valuation Tribunal case shows the need to consult carefully and properly in line with the Commonhold and Leasehold Reform Act in respect of partnering arrangements.

Case study – Partnering scheme

The dispute concerned major external repair work under a ‘partnering’ scheme.

The tribunal heard that partnering is a scheme that is now fairly widely used for major building projects by some large companies. It involves choosing a contractor on the basis of a number of criteria of which the lowest price is not the most important, the objective being value for money. The intention is, generally, that the arrangement with the chosen builder will be long term.

According to a factsheet prepared by the Construction Industry Board which the landlord produced at the hearing, partnering ‘is only appropriate between organisations who share the fundamental belief that people are honest, want to do things which are valued, and are motivated by challenge.’ The landlord was one of a number of local authorities chosen by government to take

part in a pilot initiative in the use of partnering to refurbish local authority housing.

Determination

Overall, while the tribunal saw that partnering had some advantages from the landlord’s point of view, it said the process:

‘...lacks transparency required by section 20 of the Landlord and Tenant Act 1985 and by the government approved Code of Management Practice. This may well mean (although as the law stands at present this is not a matter for us) that much of the costs incurred under partnering arrangements may be irrecoverable from the leaseholders because of failures to comply with section 20.

‘It has already been acknowledged by the landlord that additional costs arising from the new roof were not recoverable for this reason. We also consider the process unsatisfactory in the circumstances of this case because as appears from our findings, costs are in general too high, with no evidence that any economies of scale have been achieved, the supervision of the work appears to have been inadequate and the standard of some work is not satisfactory.’

The tribunal went on to deal with various costs including steps, management charges, supervision fees, roof works, garden wall, other walls, window overhaul and preliminaries.

Consultation arrangements

The legislation affects organisations achieving value for money in their contracts and this inevitably affects service charges. Associations need to be able to achieve best value principles and consult leaseholders effectively.

Details of how consultation must be conducted are set out in Commencement Order No. 2, issued 4 August 2003. The revised S20 procedures were effective from 31 October 2003.

Commencement Order No 5, issued on 16 November 2004, set out the rules on forfeiture; a further Commencement Order is due on accounting for leaseholders' money, but no firm date has yet been set for this.

Community Housing Association – preparing for leasehold reform

In preparing for the proposed changes to the Commonhold Act, this association has created sub-accounts for service charges in order to separate this element from the rent. They wrote to the leaseholders to explain why they now have to pay two separate standing orders.

When to consult?

This is not a definitive guide on how to consult, but to put leasehold consultation arrangements into context:

- the format and content of section 20 notices is set out in Statutory Instrument 2002 No 1987, available from www.hmso.gov.uk;
- the financial trigger for consulting on qualifying works is when any one leaseholder would be required to contribute more than £250;
- the financial trigger for consulting on long-term agreements is when any one leaseholder would be required to contribute more than £100 where the contract term is more than 12 months. This does not include employment contracts (i.e. warden or caretaker directly employed by the organisation) or any Tenant Management Organisation;
- special arrangements apply for works under a long-term agreement, which enable the organisation to form partnering arrangements; and
- where a partnering arrangement is made for a contract of services that lasts more than one year and where the cost to each property is over £100 in any year during the contract, a similar process to major works consultation must be followed.

The Leasehold Advisory Service has a useful fact sheet on its website: www.lease-advice.org

Who to consult?

Landlords must consult by serving legal notices to:

- a recognised residents/tenants association if there is one as defined in section 29 of the Landlord and Tenant Act 1985; and

- each individual service charge payer who will be affected by the works or contract.

How to consult?

The Commonhold legislation requires two main stages in the consultation process: before and after tendering.

1 Before tendering/obtaining estimates

The consultation must allow enough time for leaseholders to make comments and that there is adequate time for the landlord to consider their views and respond.

The Housing Corporation has told its regulators that the new consultation arrangements extend the procurement process and increase risk if landlords do not consult genuinely. In addition, landlords should have formal mechanisms for considering responses properly.

City of London Almshouses Trust – early involvement

Each estate has a residents association and a pre-tender consultation takes place, allowing the association an opportunity to nominate a contractor and make any comments. Tenders can be viewed at local offices.

A meeting should be organised with the leaseholders if the proposed works are ‘significant’ – this does not only mean in terms of cost, but where works may be controversial, are complex,

where there are choices for residents to make, or where greater explanation about the work is needed.

London Borough of Waltham Forest (now Ascham Homes) – consulting on major works

Waltham Forest holds an initial meeting before any formal consultation.

The council sends out newsletters advertising the proposed works and meetings. Leaseholders can nominate their own contractors. A breakdown of what the work might cost is provided to give leaseholders some idea of what they may be charged.

2 After tendering/obtaining estimates

Estimates must be obtained that identify the cost to each building and identify the internal works that are not rechargeable to leaseholders. Apportionment of costs in a contract can be challenged by leaseholders taking their case to a Leasehold Valuation Tribunal.

Again, the Housing Corporation will want to see that consultation is genuine and that service charge payers’ comments are properly taken into consideration.

Generally, housing associations must take into account the number of notices they now need to serve and the additional time this involves

– the effect will be seen on spending plans and budgeting.

More good practice examples

Brighton & Hove Council – focusing on leasehold

Brighton & Hove have a leasehold focus group that meets quarterly to discuss leasehold issues in general. A councillor and housing officers usually attend the meetings. The focus group also provides feedback on all major works schemes.

The council also produces a leaflet for leaseholders, *Your Service Charge Explained*, which is brief, easy to understand, and shows an example of how service charges are broken down and itemised per block and per property.

London Borough of Tower Hamlets – information in alternative languages

This council produces leaflets in local community languages explaining the actual adjustments to the service charge statement. It explains the difference between estimated and actual adjusted service charges, how to pay, how it is calculated, and who to contact for more help or information.

Ten tips for getting it right

- Provide user-friendly information about service charges that explains how they are set, what services they are for, and how service delivery is monitored.
- Involve tenants and leaseholders at an early stage in setting the service charges and agreeing appropriate arrangements of monitoring estate service delivery.
- Ensure you comply with legislative requirements for consultation with leaseholders.
- On multi-landlord/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.
- 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.
- Explore with residents the options to include or exclude services for which service charges are made.
- 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 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.

Further information

Here are some pointers for sources of further and more detailed information on particular aspects of service charges:

Publications

Leasehold Management: A Good Practice Guide
Peter Robinson, for CIH

Recovering Housing Debt: A Legal Guide (Third Edition) – John Kruse, for CIH

Principles of Council Leasehold Management
Steve Michaux, for London Housing Unit

Housing Management Standards Manual CIH

Service Charges – A Guide For Registered Social Landlords – Derek Rawson, for NHF

CLRA2002 Consultation for Council and Other Public Sector Landlords – Lease/ALG

Codes

- Code of Practice for Service Charge Residential Management, RICS
- Code of Practice and Good Practice Notes, ARHM
- Code of Practice, ARMA
- Regulatory Code and Guidance, Housing Corporation
- The Involvement Policy for the Housing Association Sector

Useful websites

Leasehold Advisory Service
www.lease-advice.org.uk

Residential Property Tribunal Service
www.rpts.gov.uk

Association of Residential Managing Agents
www.arma.org.uk

Chartered Institute of Housing
www.cih.org

Association of Retirement Housing Managers
www.arhm.org

Royal Institution of Chartered Surveyors
www.rics.org.uk

Department for Communities and Local Government
www.communities.gov.uk

Housing Corporation
www.housingcorp.gov.uk

National Housing Federation
www.housing.org.uk

Training Plus Consultancy
www.trainingplusconsultancy.com

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