

## Proposed review of service charges in London

### Planning and Housing Committee

#### The issues

Service charges are payable by most people who live in leasehold properties and also by some private rented sector tenants. In London there are more than 500,000 households that pay these charges.

Service charges cover the cost of services provided by a landlord such as maintenance, repairs and buildings insurance, and may also include things like lifts, lighting, cleaning and gardening.

#### Level of service charges

If planned and managed carefully these charges are relatively low, predictable and can be budgeted for by households. However, occasionally the cost of major estate repairs or the need for refurbishment to meet Decent Homes standards for example, have resulted in tenants and homeowners receiving bills for thousands of pounds.

Informal discussions with one London borough reveal that, while on average service charges are around £950 per year, where “major works” are required it could result in bills of several thousands of pounds for each property. There have been cases where service charges have reached tens of thousands of pounds per property.

In London “leasehold” normally applies to flats where one party buys the right to occupy land or a building for a given

length of time from the freeholder (or landlord). The landlord can be a person or a company as well as a social landlord.

In London there are around 500,000 flats in owner occupation. These will include properties in local authority owned blocks bought under Right to Buy, acquired under Social Homebuy, in housing association developments that have components of mixed tenure as well as in private blocks.

Preliminary discussions with stakeholders and leaseholders suggest that there are a number of factors surrounding the levying and payment of service charges that are proving problematic. These include:

- The level of service charges that are variable and depend on the level of work undertaken;
- Poor awareness of the need to pay service charges;
- Those on low incomes or struggling with mortgage/rent payments may not be able to cover large bills; and
- The transparency of the programming of repairs and the services charged for may not be great.

All of these issues can cause problems for leaseholders.

#### Background

Under English law, anyone who occupies land or a property is either a freeholder (they own the land) or a tenant (they own an interest in the land, but do not own the freehold title to it).

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#### Freehold and leasehold property

All residential properties in English law are either occupied “freehold” - ordinarily the most complete ownership interest that can be had in real property – or leasehold where one party buys the right to occupy land or a building for a given length of time from the freeholder (or landlord). The landlord can be a person or a company, including a local authority or a housing association.

A lease is a contract between the leaseholder and the landlord giving conditional ownership for a fixed period of time - typically for 99 to 125 years, although some leases run for 999 years. Once a lease has expired, ownership of the property reverts to the freeholder, but the tenant is permitted to stay in the property, paying a market rent.

Even though a leaseholder owns the property on a lease, the owner of the freehold retains ownership of the external and structural walls, as well as any common parts of the structure. The owner of the building is also responsible for the maintenance and repair of the building.

#### 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 above are those required to be reasonable and on which a Leasehold Valuation Tribunal may make a determination of reasonableness.

Various other pieces of legislation are relevant including: The Housing Act 1980 (introduced the Right to Buy); The Housing Act 1996 (some limited powers for local authorities to reduce service charges for major works); Commonhold and Leasehold Reform Act 2002 (changes in the procedures concerning the notification of major works; Housing Act 2004 (changes in the calculation of discount repayment for service charges); and the Law of Property Act 1925 (termination of leases for non-payment of service charges).

#### Service charges

Leaseholders are required to pay ground rent (which is usually nominal), as well as service charges (which are not). Service

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charges are the fees charged by the freeholder of a property to the leaseholder to cover the cost of services provided such as maintenance, repairs and buildings insurance, and may also include things like lifts, lighting, cleaning and gardening. Service charges are also payable for "major works" such as renewing roofs, windows, lifts, concrete or brickwork repairs, external decorations and resurfacing estate roads. Appendix 1 illustrates the range and cost of service charges levied by one London borough in one year.

Service charges can go up or down without any limit (depending on the costs incurred by the landlord), but the landlord can only recover those costs which are reasonable. Leaseholders have rights to challenge service charges they feel are unreasonable at the Leasehold Valuation Tribunal.

### Failure to pay service charges

It is the leaseholder's obligation to pay the service charges and ground rent promptly under the terms of the lease. If they are not paid and the landlord is able to satisfy a LVT that the charges are properly due and reasonable, then he can begin forfeiture proceedings by applying for a court order. The court has wide discretion where forfeiture is concerned, but if forfeiture is approved by a court, this can lead to the landlord repossessing the flat.

The landlord may also seek a county court judgment for payment, which can affect a leaseholder's ability to obtain credit.

### Leasehold properties in London

Leaseholds most commonly apply to flats that can be in purpose-built blocks, in converted houses or above commercial or retail premises. For flats and maisonettes that have been sold under the "Right to Buy" the freeholds are still owned by the Council. Occasionally houses may also be subject to the freehold/leasehold distinction.

London has by far the highest proportion of flats (and so leaseholds) in England with over 40 per cent of properties being flats [2007] (the average for England is 17 per cent).

Region	% Houses	% Flats	Number of Flats	Total Dwellings
<b>London</b>	<b>55</b>	<b>43</b>	<b>1,397,285</b>	<b>3,220,000</b>
South East	83	16	574,343	3,571,000
East	84	14	338,168	2,438,000
South West	86	13	297,585	2,317,000
North West	87	12	365,995	3,050,000
W Midlands	88	11	263,869	2,309,000
Yorks and Humber	88	11	250,305	2,237,000
North East	89	11	127,449	1,144,000
E Midlands	92	7	134,384	1,902,000
<b>England</b>	<b>82</b>	<b>17</b>	<b>3,730,313</b>	<b>22,189,000</b>

<http://www.communities.gov.uk/documents/housing/xls/table-117.xls>

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While all flats are leasehold, a number will not be subject to separate service charges. Most social housing rents include elements of service charges within the overall rent payable. In private rented housing service charges may be incorporated in the rent or charged for separately. In most cases owner occupiers of flats, as leaseholders, will be eligible to pay service charges. The number of households in London living in flats (across the various housing tenures) are set out below. There are nearly 500,000 leaseholders in owner occupation that will be paying service charges as well as a number from the private rented sector (currently 365,000 in London).

	London	London %
Total flats	1,432,845	
Owner occupied	487,313	34.0
Council rented	385,300	26.9
Other social rent	194,613	13.6
Private rented	365,619	25.5

<https://www.nomisweb.co.uk/query/construct/submit.asp?forward=yes&menuopt=201&subcomp=> [Check date of source and replace link]

### Leasehold disputes

Disputes over service charges are, in the main, dealt with by the LVT. The LVT London region's caseload is about 4,000 of which about 1,500 are service charge related. London's caseload is increasing relative to the rest of England. In relation to service charges the LVT is mainly involved with:

- Adjudicating in disputes about service charges, administration charges, insurance and the appointment of managers;
- Determining whether the requirements upon landlords to consult tenants about service charge expenditure can be waived;
- Deciding disputes between landlords and leasehold Right to Manage companies.

According to the Chair of the London Region LVT, key aspects of service charge disputes relate to:

- Management charges
- Historic neglect disputes
- Consultation over service charges
- Aspects of service charge costs (e.g. caretaking)
- Insurance
- Repossessions (homes can be repossessed for non payment of service charges)

### Focus, terms of reference and key questions to be answered by the review

Landlords incur costs as part of the annual maintenance and management of leasehold properties and so service charges are

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an inevitable consequence of this kind of property tenure. However, the extent to which the level of maintenance, management of works, consultation on works and the way charges are levelled all vary.

#### Draft Terms of reference

Suggested terms of reference for this review are:

- To understand the nature of service charges in London, how they are calculated, charged and administered by landlords, and paid for by leaseholders;

#### Methodology

The review would consist of two distinct phases:

1. A research based exercise analysing data and information from freeholders and other relevant organisations to assess the nature, scale and trends of service charges in London, how they are calculated, charged and administered by landlords, and paid for by leaseholders. This would take place over the summer of 2011.
2. A meeting held in public with a variety of relevant experts to discuss alternative approaches to managing, determining and ways of paying service charges. These experts would include landlords from public and private sectors, leaseholder representatives, LVT members, academics and property experts. Details of that discussion are likely to cover the following key questions:

- The components of service charges in London and how much money is being charged;
- How the range of charges differ between types of housing and types of landlord;
- Emerging practice in terms of good management and the impact on level of service charges
- An assessment of whether service charges are sufficiently transparent and whether those paying services charges get a say in maintenance/repair programmes;
- Trends in disputes over service charges, how service charges are challenged and disputes are resolved, and;
- Alternative approaches to managing, determining and ways of paying service charges.

This meeting would take place in the autumn of 2011.

The output would be expected to be in the form of a short report that sets out a clear picture of the charges that are being levied in London and ways of improving the transparency and equity of these charges. The report would be published in December 2011.

Site visits may be held to specific developments or with organisations that have produced innovative solutions to levying and paying service charges. The London LVT has also

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invited the Assembly to attend tribunal hearings to understand the dispute resolution process in detail. A visit to a leaseholder forum meeting may also yield useful information.

#### Data sources

There are a variety of sources of data relating to service charges. Data from these sources will be collected and analysed over the summer of 2011 as part of the first phase of this review:

- London boroughs are statutorily required to keep a Housing Revenue Account which records all revenue expenditure and income relating to the provision of council dwellings and related services. The service charge elements of this income will be recorded and are available for a series of financial years.
- Housing Associations record sources of revenue and expenditure in Annual Reports
- The larger private landlords may release details of service charges
- Leaseholder groups can provide case studies
- The LVT will have data on types and trends of leasehold disputes
- Citizens Advice Bureau may also record casework involving service charges

#### How to contribute to the review

The Committee is inviting written views and information to its review. Submissions should aim to address the terms of reference outlined above, and any other issues you consider important for the review.

To share your views, please send submissions to Paul Watling, London Assembly, City Hall, The Queen's Walk, London SE1 2AA, or paul.watling@london.gov.uk Please phone 020 7983 4393 with any queries BY XXXXXX

#### About the Committee

The Planning and Housing Committee monitors the way the Mayor delivers on two of London's most important issues – planning the future of the capital and housing its people – in order to ensure his proposals serve the future needs of Londoners. Its Members are:

- Jenny Jones (Chair)
- Nicky Gavron (Deputy Chair)
- Tony Arbour
- Andrew Boff
- Kit Malthouse
- Steve O'Connell
- Navin Shah
- Mike Tuffrey

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Further information about the Committee's work can be found at:

<http://www.london.gov.uk/moderngov/mgCommitteeDetails.aspx?ID=158>

### Appendix 1 – Breakdown of maintenance, insurance costs and service charges levied by one London borough

Service area	Total cost	Service charge	% of Cost Levied Service Charge
Block & Estate Cleaning	11,818,335	2,440,622	21
Grounds Maintenance	2,071,673	439,499	21
Reactive repairs	7,519,419	1,531,730	20
Heating and hot water (including boiler repairs)	12,331,546	2,512,551	20
Lifts	1,444,908	274,145	19
Estate Lighting	1,793,249	386,595	22
TV aerials	166,354	38,002	23
Door entry	305,267	48,991	16
CCTV	505,421	64,659	13
<b>Sub total</b>	<b>37,956,171</b>	<b>10,505,989</b>	
Insurance		1,708,325	
Ground rent		116,350	
Management costs		944,519	
<b>Total</b>	<b>37,956,171</b>	<b>13,275,183</b>	

The £13,275,183 service charge bill was then allocated respectively to around 6,500 individual leaseholders on the basis of **actual** cost of work incurred.

[www.southwark.gov.uk/download/1104/read\\_the\\_full\\_report](http://www.southwark.gov.uk/download/1104/read_the_full_report)