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Planning and Housing Committee

Highly charged

Residential leasehold service charges in London

March 2012

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On 6 July 2011 the Planning and Housing Committee agreed to appoint Steve O'Connell AM as a rapporteur on its behalf to carry out a review of service charges in London.

Terms of reference

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

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Rapporteur's foreword

As an Assembly Member I, along with my colleagues, often receive letters from constituents who are leaseholders expressing concern over the way the service charge system operates in London.

While many express dissatisfaction with aspects of the system, and a few allege malpractice, others offer harrowing accounts from ordinary people, with limited financial means, that have received bills for tens of thousands of pounds for unexpected works.

When buying leasehold property many people are not aware of the rights and obligations that come with this form of tenure and so, for many, the complexity of the service charges regime comes as a shock.

Our call for views prompted great public interest and more than one hundred individuals and organisations submitted their thoughts – in several hundred pages of written views and information.

Clearly something that involves peoples' homes and often substantial and rising bills in a time when money is tight will arouse interest. And this interest is heightened when people perceive there is an unbalanced power relationship between landlord or their managing agents and individual leaseholders. The whole issue has become highly charged.

What I sought to do in this review was to look at ways to re-balance the relationship between leaseholders and landlords and in particular to look at the way the transparency of service charges can be improved and leaseholders can be given greater control over the way services to their homes are provided.

Nationally, there is little immediate prospect of further legislative reform, although some feel that this may be necessary in future. Nevertheless this report sets out a number of actions that can be taken by the Mayor, landlords in London, those involved in the legal aspects of service charges and leaseholders themselves to make the present system operate more equitably.

Steve O'Connell AM
March 2012

Executive summary

Service charges in London – more than half a billion pounds

This report considers one particular aspect of English property law, the freeholder- leaseholder relationship, and the way that service charges on residential leasehold property are determined and charged by landlords, and paid for by more than 500,000 London leaseholders. Most of these leaseholders are in the private sector, but there are significant numbers with social landlords, many as a result of the right to buy. We estimate that Londoners pay more than half a billion pounds annually in service charges.

Is the system working?

It is ten years since the last major piece of leasehold legislation came onto the statute book. In that time concerns over how service charges are levied and their scale have grown. The Minister for Housing is aware of the concerns raised by leaseholders: "service charges top the list of leasehold complaints… and it is accepted that there is some poor practice."

Our review has identified a number of aspects of the system that London leaseholders find particularly problematic and our report sets out a number of pragmatic steps that should be taken to help rebalance the relationship between landlord and leaseholder to deliver a fair and transparent way for service charges to be levied.

The consultation process

The law requires that leaseholders paying variable service charges must be consulted before a landlord carries out works above a certain value. Landlords must describe the work or services proposed and obtain at least two estimates. Leaseholders must be able to comment on both the works and estimates and even nominate alternative contractors. However, landlords are not obliged to enter into the lowest price estimate nor use a contractor nominated by the leaseholder.

The law is complex and prescribes the minimum consultation needed. In the private sector there is a code of practice that recommends landlords consult over and above the legal requirement. In the public sector however we have seen practice that goes further still. Overall it appears public landlords in London have developed a depth and breadth to their consultation on service charges that is far less evident in the private sector.

It is almost always beneficial to landlords to secure the buy-in of those who have to pay service charges. In future, landlords and those with other responsibilities may need to rethink past practice and improve their consultation with leaseholders from a very early stage. We recommend that the private sector management associations should review how their advice on service charge consultation is being implemented and, if improvements are found to be warranted, it should work with the best performing London social landlords to raise the standard of consultation.

How transparent are the charges?

Perhaps the most controversial aspect of service charges across all sectors is the transparency of charges. Perceptions exist among some leaseholders that charges are unnecessarily high and are inflated through a variety of mechanisms, meaning the landlord or managing agent benefits at the expense of leaseholders. Some Leasehold Valuation Tribunal (LVT) decisions confirm that this type of malpractice does occasionally happen: some landlords take substantial commissions for providing services from third parties; others have been found to award contracts to subsidiaries of their own company at inflated prices.

Despite a broad consensus that regulations to ensure greater transparency need tightening, we welcome voluntary moves from the private sector to improve this aspect of the system. There are lessons to be learned from moves toward greater clarity in the management of leasehold properties. An increasing number of managing agents are promoting their services as "highly transparent and open to leaseholder scrutiny". Such companies seem to be boosting confidence in the way leaseholders can access and understand all the information they need about how their services are procured and charged for. They are throwing out a challenge to the property management industry in general. These best practice principles should be adopted across the sector.

Adjudication and dispute resolution

The Leasehold Valuation Tribunal gives the opportunity for leaseholders to gain redress if they feel their service charges are not justified. Service charge related cases in London increased more than 54 per cent between 2005 and 2010. It is not just leaseholders using the system however – half the cases involve landlords trying to recover

costs they have incurred from leaseholders. The LVT acknowledges that cases will increase in the future.

But leaseholders cite the increasing complexity of the tribunal process, landlord intransigence in providing information, costs involved to assemble cases and the fact that landlords increasingly employ Counsel that disadvantages individuals who do not have access to legal advice.

To continue to provide a fair and balanced adjudication service, the LVT might develop in a number of ways in order to meet the challenge. It should review whether leaseholders are disadvantaged from either applying to tribunal, or in conducting their own cases, and it should set out plans for providing mediation or pre-application advice as a cost effective method of improving the dispute resolution process. Government needs to review whether it is possible to make making mediation a compulsory first step of settling disputes.

Leaseholders' right to manage

Legislation gives a right for leaseholders to force the transfer of the landlord's management functions to a company set up by them – a right to manage company. In London there are barriers to achieving the right to manage. This may explain the relatively low proportion of leaseholders that have taken up the option to date. Obstacles include the large numbers of absentee flat owners that make achieving the 50 per cent of residents needed to secure the right problematic. The high proportion of mixed use developments means the residential element is often below the 75 per cent level needed for right to manage.

Government should review whether barriers to achieving the right to manage in London means that the existing legislation is less effective here than elsewhere in England.

Do leaseholders have all the information they require?

The law is complex but nothing is more complex than the leases themselves. It appears from our review that buyers rarely consider the obligations to pay service charges when purchasing their property. Leaseholders need access to better information if problems are to be minimised. Some public landlords have established the practice of giving prospective leaseholders a range of advice and information on their rights and obligations - including service charges. All those involved in conveyancing leasehold property should supply much more

information to prospective leaseholders including: estimated service charges for the next five years; planned major works and details of the previous three years' service charges - as a minimum.

The way forward

The Government is confident that the current legislative framework can deliver the balance required to make the leasehold service charge system work. However, a significant number of London leaseholders feel that further reform may become necessary. Our report makes a number of pragmatic proposals for improving the way service charges are levied and calls for review in a number of key areas.

1 Introduction – leasehold and service charges

1.1 In 1998 a Minister of State felt able to say that "leasehold … has its roots in the feudal system and gives great powers and privileges to landowners. It is totally unsuited to the society of the twentieth - yet alone the twenty-first - century."[1]

1.2 This report sets out the findings of our review into how the leaseholder/freeholder relationship is operating in London today. The report looks at ways of trying to re-balance that relationship. Specifically, it looks at the way service charges are determined and how, by improving transparency, leaseholders can be given greater control over the way the communal services to their homes are maintained.

Leasehold tenure and service charges

1.3 Most residential property in English law is either occupied 'freehold' or 'leasehold' - where one party buys the right to occupy land or a building for a given length of time from a landlord (the freeholder).

1.4 Technically long leasehold is a form of tenure. The leaseholder does not 'own' the property but is paying a premium for the right to reside - the freeholder retains ownership. The lease transfers the 'repairing obligations' of the two parties which typically sees the freeholder retain responsibility for structural parts of the building (eg walls and roof), the exterior (communal land), services (eg water supply, sewers, gas and electric) and installations (eg lifts and door entry systems).

1.5 Freeholders incur annual costs for maintaining and repairing the communal elements and leaseholders have the obligation to recompense them through service charges. This freeholder/leaseholder relationship differs from the 'condominium' system common elsewhere in the world where the owners of flats are collectively responsible for the common areas.

1.6 Appendix 1 sets out in more detail the background to the relevant legislation, the way service charges are levied, and examples of service charge demands. Appendix 2 sets out details of 'commonhold' an alternative system of property tenure that some believe overcomes many of the problems associated with leasehold.

The evidence base

1.7 Over one hundred organisations and individuals provided written views to our review, including 30 landlords in the social rented sector, 16 leaseholder organisations and nearly 50 individual leaseholders. In all, over 700 pages of data and views were submitted to the review.

1.8 As well as holding meetings with Department for Communities and Local Government (DCLG), the Residential Property Tribunal Service and the Camden Leaseholders Forum, a meeting was held in public where a range of landlords, both public and private, managing agents and the Government advisory service LEASE were asked for their views on what leaseholders had told us through the first stage of evidence gathering. Our recommendations draw on their opinions.

1.9 Appendix 3 lists all those that contributed to the review.

Target audience

1.10 The report is aimed at everyone involved in levying and paying variable service charges especially for flats.[2] It will be of interest to those who are responsible for regulating the regime and those who seek to resolve disputes and provide information.

1.11 The Mayor is also relevant insofar as he is promoting shared home ownership (thereby increasing the number of leaseholders in London) and is responsible for funding home improvements, thereby potentially increasing the bills that will be levied on leaseholders. Section 3 sets out the challenges for the Mayor in more detail.

London's 500,000 service charge payers

1.12 Leaseholds most commonly apply to flats that can be in purpose-built blocks, in converted houses or above commercial or retail premises. The landlords of these properties can be private, local authorities or housing associations. For flats and maisonettes that have been sold under the 'right to buy' the freeholds are still owned by the council.[3] Occasionally houses may also be subject to the leaseholder/freeholder distinction.

1.13 Confusingly, all of the legislation does not apply to all leaseholders. Various aspects of legislation apply just to the

private sector; some just to the public sector and some to both (see Appendix 1 for clarification).

1.14 London has by far the highest proportion of flats (and so leaseholds) in England with over 40 per cent of properties being flats (the average for England is 17 per cent). There are over 500,000 leaseholders in owner occupation, including those who have exercised right to buy or are in shared ownership, that will be paying service charges.

1.15 The Mayor's London Plan forecasts an additional 320,000 new homes over the next ten years. The majority of these new homes will be flats and the ones built for owner occupation or shared ownership will be leasehold. These new homes will be added to the more than 500,000 leasehold properties that currently exist in London.

1.16 The Government's "reinvigorated right to buy scheme"[4] that increases the cap on discounts to £50,000 (trebling discounts in most of London) might also result in substantially more local authority tenants becoming leaseholders - and so liable to pay service charges.

1.17 London local authorities and housing associations submitted sample data reflecting the scale of the costs of services incurred by them and recovered from leaseholders. The data we have from 14 boroughs indicates that London local authorities levy charges averaging around £850 annually per leaseholder per flat.[5] However service charges will exceed many thousands of pounds if properties are subject to major works.

1.18 In the private sector, ARMA (the Association of Residential Managing Agents)[6] estimates the average service charge bill to be around £1,800 – £2,000 per annum in London, although they can reach up to £5,000.[7] One of the reasons for the higher level of charges in the private sector is that usually there is the provision for a regular contribution to a reserve, or 'sinking' fund.[8] Local authority landlords cannot run 'sinking funds'.

1.19 Only one private landlord submitted evidence setting out the charges they levy (a range from £2,000 to £5,000)[9], however

many private individuals sent details of the charges they are asked to pay each year.[10]

1.20 These figures suggest that considerably more than £500 million a year of service charges are levied by landlords in London.[11]

2 Is the system working?

2.1 Leasehold tenure is complex, and there is a statutory framework in place which aims to deliver the appropriate balance between providing leaseholders with the rights and protections they need and recognising the legitimate interests of freeholders.

2.2 Mechanisms are in place that set out the process of consultation, procurement, right to manage and adjudication of disputes.

2.3 This section sets out to assess the levels of satisfaction with the way the system is working in London and identifies a number of specific areas of concern.

Disputes over service charges

2.4 The Government acknowledges that some level of dispute is inevitable, given that different people have different interests in the same property. Unsurprisingly, disputes over service charges dominate DCLG leasehold complaints.[12]

2.5 One way of measuring the way the system is working is to look at the number of disputes over service charges that make it to the appropriate tribunal service.

2.6 Disputes between leaseholders and freeholders are settled at the Leasehold Valuation Tribunal[13] (LVT), a statutory tribunal in England, which determines various types of disputes involving residential property in the private sector. A LVT consists of a panel of three; one with a background in property law (generally a solicitor); one with a background in property valuation (generally a qualified surveyor), and a layperson.[14]

2.7 Service charge disputes in London increased by more than 54 per cent between 2005 and 2010[15] and the London LVT caseload increased relative to the rest of England. The London region's caseload is about 4,000 per annum, of which about 1,500 are service charge related. The remaining cases will concern issues such as enfranchisement and lease extension.

2.8 The LVT recognises that leaseholders have three main areas of complaint: high levels of service charges, unprofessional conduct by landlords in relation to transparency and accountability.[16]

2.9 The LVT, as an independent decision making body, formally has no view on whether regulations need reform. It has however identified a number of areas where reform or review may be appropriate dependent on political decisions or budget changes. These areas include:

- Freehold service charges (normally estate charges) are not regulated under ss.18-30 of the Landlord and Tenant Act 1985 and cannot be referred to the LVT;
- Service charges for secure tenants in local authority homes cannot be challenged (although housing association tenants can) and are often not covered by benefits;
- Consultation requirements are complex and limits (eg £250) have not been reviewed for a time;
- Sections 21-23 of the Landlord and Tenant Act (replaced by the Commonhold and Leasehold Reform Act 2002) have not been brought into effect; and
- Pre-application advice and assistance could be reviewed in terms of improving dispute resolution.[17]

Increasing numbers of service charge disputes

2.10 The growth in the number of LVT cases does not however just reflect disputes over service charges: the LVT took more jurisdictions from the courts after the Commonhold and Leasehold Reform Act 2002 became law and many more landlords are going to the LVT to recover debts. LVTs are also a more accessible place than the previously used courts.

2.11 It is ARMA's view that "there is no doubt we have better informed lessees... The 2002 Act required every demand for a service charge and a ground rent to be accompanied by a statement of leaseholders' rights… In addition managing agents and ARMA give out better information to new leaseholders.

2.12 "The power of the web is helping leaseholders who can now exchange knowledge about good and bad landlords and agents more easily. This is a helpful thing. Better informed lessees means more enquiries and complaints; and more enquiries and complaints mean landlords and agents will improve the service that they give. The landlords and managers with most complaints are not the worst performers. The worst ones are

where leaseholders feel so let down that they do not complain."[18]

2.13 Section 5 of this report analyses the adjudication and dispute resolution process in more detail.

Leaseholder satisfaction surveys

2.14 Another indicator of how the system is viewed are the leaseholder satisfaction surveys that most public sector landlords (local authorities and housing associations) carry out.

2.15 Satisfaction rates vary of course, and in many cases improvement is evident, but the overall picture seems to support the Audit Commission's conclusion that "[nationally] leaseholder satisfaction is generally lower than for tenants… and satisfaction rates for service charges are generally significantly lower."[19] A sample of quotes from some of the London borough surveys are set out below:

- "Value for money of service charges and the repairs and maintenance service are the areas of service which are of most importance to leaseholders… as key drivers of overall satisfaction. It is therefore significant that these are the two areas that leaseholders indicate are the most in need of improvement."[20]
- "There is a high level of dissatisfaction from leaseholders with their services… This level of dissatisfaction means that [there is] some way to go before they can demonstrate to leaseholders that they are providing services of an acceptable standard."[21]
- "Leaseholders are facing high and increasing service charges and satisfaction with this service is low."[22]
- "Nine per cent of leaseholders were satisfied with aspects of major works and the level of service charges."[23]
- "Satisfaction was low amongst many leaseholders. The survey identified the three most important areas for leaseholders as being value for money, overall quality of their estates and having their views taken into account."[24]
- "The results show that a lower proportion of leaseholders than tenants are satisfied with the services provided… This pattern of lower leaseholder satisfaction matches that found by other landlords [in London].[25]

Leaseholder contributions to the review

2.16 The views expressed in the borough satisfaction surveys are reflected in the views that leaseholders submitted to our review. Drawing on these surveys and leaseholder comments we have identified the following major issues of concern to leaseholders.[26]

The consultation process

2.17 There are complaints that landlords submit bills for works, and services such as cleaning and grounds maintenance, that have not been agreed, seem unnecessary, or have been objected to by leaseholders. This is particularly important when large works are proposed.

2.18 Landlords, on the other hand, find difficulties in gaining agreement from different types of residents in the same block – tenants and leaseholders have different interests. This situation will become more common as planning and housing policy encourages more mixed development and shared ownership and as the Government's and Mayor's climate change policies facilitates, and in some cases necessitates, more refurbishment works on leasehold flats (see paragraph 3.31).

Inadequate transparency

2.19 Leaseholders frequently question how the contracts for the works or services that they have been billed for have been procured. Disputes can arise over concerns that these contracts are poor value or concerns that contracts are awarded to companies that are related to the landlord. More seriously are individual leaseholder concerns about excessive commissions for services that leaseholders are charged for – most commonly in relation to building insurance or maintenance contracts.

2.20 Many of the public sector landlords (local authorities and housing associations) point to the legal requirements arising from EU legislation meaning they have to undergo lengthy and complicated procurement processes for major works. This can seem opaque from a leaseholder point of view. Public landlords are also subject to a variety of 'internal audits' because they are spending public money, which often add complexities to the process.

Adjudication and dispute resolution

2.21 For many individual leaseholders, redress through the tribunal system is difficult to access; it is "inordinately complex and weighted in favour of landlords that can afford legal resources".[27] Many complain that they are put off from engaging in the process because of the time and effort it involves. There is further dissatisfaction with inconsistent decisions from individual tribunals and the inability of the tribunals to develop case law or precedent that would enable leaseholders to construct cases based on knowledge of the treatment of similar complaints.

Leaseholder control of their buildings

2.22 Many leaseholders see gaining control of the management of their property as a way forward. Legislation provides a right for leaseholders to force the transfer of the landlord's management functions to a special company set up by them – a right to manage company (although this is not applicable to local authority leaseholders[28]). However, there are a number of obstacles to achieving this such as securing the agreement of enough leaseholders.

2.23 Legislation requires that 50 per cent of leaseholders must be contacted and agree to take over the management of a block. The existence of absentee leaseholders and commercial tenants makes achieving this threshold problematic. Mixed use developments provide further obstacles especially where commercial uses make up more than 25 per cent of the development (paragraphs 6.6 – 6.7 below discuss this issue in more detail).

Awareness of leasehold and the requirements of leases

2.24 The lease will (subject to statutory provisions) dictate the format of the charge, the landlord's power to levy a service charge and the leaseholder's obligation to pay it. Once a leaseholder signs the lease it becomes a legal contract between landlord and leaseholder. However, "leasehold is complex and buyers never regard this as an issue when purchasing."[29]

2.25 Generally, there appears to be a poor awareness of the issues involved with service charges. Leaseholders do not prioritise this when purchasing a property. Freeholders and managing agents

show variable levels of interest in publicising it. There is scant understanding of the law or of the means of redress and many leaseholders now think that better information is essential if problems are to be minimised.

Retirement homes

2.26 Around 200,000 pensioners nationally own retirement homes. The flats often come with wardens (and can include office and residential accommodation for staff) and communal areas such as gardens. A limited number of submissions to the review highlighted the fact that the sector has particular problems, not least because the residents have far fewer resources to challenge the landlord.[30]

2.27 Lessees in retirement homes are tied into leases that cannot be amended when a lessee dies. The estate of the deceased lessee is responsible for service charges and ground rents until the lease is assigned (ie the property is sold). Taking control of the services provided is another problem. Clearly, if the issue of right to manage is proving difficult for many, then leaseholders in retirement properties, as a group, will struggle to work together to understand the intricacies of law and confront landlords.

2.28 The issues raised throughout this report are equally, if not more, applicable to retirement leaseholders, and will affect a growing number of the most vulnerable as time goes on.

The next sections of this report

2.29 The remaining sections of the report set out ways to assess the identified leaseholder concerns and so rebalance the leaseholder and freeholder relationship.

3 The consultation process

3.1 The list of works and services that can be re-charged to leaseholders is extensive. For example London local authorities that submitted evidence cite day to day service provision covering ten, twelve or even sixteen different major works headings.[31]

3.2 To the day-to-day service can be added cyclical maintenance works such as redecoration of the exterior and communal parts as well as 'one-off' major works covering repairs of the exterior and the communal areas, the replacement of roofs, new windows and doors, replacement of lifts, and new door entry systems.

3.3 For all of these services and works, a management fee is added to cover the costs of calculating service charges, producing estimates and 'actuals', billing, dealing with queries, collection and recovery and consultation.

Consultation

3.4 The law requires that leaseholders paying variable service charges[32] must be consulted before a landlord (either private, public landlord or housing association) carries out works above a certain value or enters into a long-term agreement for the provision of services. [33]

3.5 Leaseholders must be consulted by their landlords on any proposal to undertake works, or to provide services, in excess of £250.[34] If consultation is not undertaken, the landlord may not be able to recover service charges over £250 from any tenant.

3.6 Consultation is a three-stage process requiring the landlord to:

- Serve a notice describing initial work/agreement proposals seeking observations, and nominations from whom the landlord should try to obtain an estimate (where this is possible within the consultation procedures);
- Obtain at least two estimates for works and notify leaseholders of the estimates and other prescribed information – inviting further observations. In doing so landlords also need to identify instances where there is a connection between the contractor and the landlord; and
- Give reasons to leaseholders for entering into a contract where they have not used the lowest estimate or not used

a contractor nominated by the leaseholders (where nomination was possible by the leaseholders). This stage rarely applies to London local authorities because of the scale of the works - OJEU notices (Official Journal of the European Union) are normally required to be served under European Union tendering legislation.[35]

3.7 Case law is clear that if new works are needed the leaseholders must be consulted or LVT dispensation sought.[36] Freeholders can get dispensation from the LVT.[37] Examples of cases where the LVT has been known to consider granting dispensation are:

- Very urgent works (on the grounds of safety etc);
- Advance applications, where the landlord gives a full description of the relevant reasons;
- Works for which it is difficult to obtain more than one estimate.
- Long-term utility contracts where prices have a very limited lifespan.[38]

Consulting on future major works

3.8 Problems arise with the practice of consulting on future works. Public sector landlords need to provide and estimate major works for the coming six years – this assists budgeting, but the problem of urgent repairs remains. There are issues concerning the difference between start of year 'estimates' and end of year 'actuals' that might include works not consulted on. For example, there may be a problem where works required are more extensive than first estimated eg substantial concrete repairs.[39]

3.9 The difficulty in estimating costs can result in unwelcome shocks for leaseholders: "the council consulted me on decent homes works. Originally, the bill was £9,000 but during the building contract this rose due to unforeseen works to approximately £23,000."[40]

3.10 A number of local authorities have tried to mitigate the effects of large service demands by offering interest free loan periods, payment for major works over periods of up to 10 years, or accepting a share in the property to cover service charges that can be recovered when the property is sold.[41]

3.11 Local authorities and housing associations have set up leaseholder forums to discuss forthcoming maintenance and repair programmes. This type of 'advance consultation' appears to be effective in giving leaseholders a say in what works are commissioned and also gives them advance notice of likely future bills to aid budgeting.

3.12 One Arms Length Management Organisation (ALMO)[42] told the Committee: "you will find that most [public sector freehlders] go way, way beyond that [statutory consultation levels]. It is a matter of devising a methodology that will engage most leaseholders... We have been running a consultation process, once work is proposed on an estate and that might be 12 or 18 months before the works start on site."[43]

3.13 Other authorities engage in consultation processes for major works lasting years: "where 46 leaseholders of one block are facing service charges in the region of £40,000… there has been consultation over several years as to how the project should be progressed."[44]

3.14 There are inevitably increased costs involved with such extensive consultation and these must be recovered by the landlord through increased service charges. However, better consultation and involvement in decision making can result in higher satisfaction levels overall (see paragraph 4.24 below).

Leaseholder and tenant differences

3.15 Despite the recognised good practice that has evolved in the public sector disputes often arise in blocks between tenants and leaseholders. Tenants may want improvements and more services as their share is paid through weekly rents (or even covered by benefits). Leaseholders have to pay the bill upfront.

3.16 In the main, weekly tenants pay fixed service charges. Some tenants get their rent paid in full by housing benefit. Weekly tenants have no direct interest in challenging the service charges of their landlords.[45]

3.17 Despite efforts made by public landlords to engage, problems persist. "Leaseholders are encouraged to attend various panels run by the managing agents… However… as the majority of

leaseholders either work full time, sub-let their properties and simply do not have spare time or are older and do not understand their leases at all."[46]

3.18 Not only is consultation on works that lead to service charges a statutory duty, it is almost always beneficial to landlords in securing the buy-in of those who will have to pay the charges.

3.19 In the future there may be a number of circumstances in which landlords and those with other responsibilities may need to rethink past practice in the implementation of their improvement programmes and raise this in consultation with leaseholders at a very early stage. This is especially true for any programme that involves major improvement works.

3.20 **Overall it appears public landlords in London have developed a depth and breadth to their consultation on service charges that is far less evident in the private sector.**

Consultation by private sector landlords

3.21 Such extensive levels of consultation appear less common in the private sector, unless resident associations have lobbied for it. However, the Royal Institute of Chartered Surveyors (RICS) recommends private landlords and managing agents consult over and above the legal requirements: "It is better to keep in touch with tenants than to remain silent and the legislative requirements to consult where qualifying works and long term agreements are concerned should be regarded as the minimum standard required, not the optimum."[47]

3.22 RICS advises consultation with a recognised tenants' association (where one exists) as it brings "advantages to management in general, and in particular can ease communication with the tenants to establish what they want and to appreciate the differing points of view."[48]

3.23 One housing association believes this guidance could go further: "I think the RICS guidance is very useful but it concentrates, understandably, on a limited part of the overall range of functions that certainly some of the [social] landlords sitting here undertake. I think we should not underestimate how

potentially influential London can be with the proportion of leasehold properties as a part of the national total and also the experience that a lot of London landlords have built up."[49]

3.24 Separately, the Association of Retirement Housing Managers[50] (ARHM) operates the ARHM Code of Practice for England, which was approved by the Government under the Leasehold, Housing and Urban Development Act 1993. This "aims to promote best practice in the management of leasehold retirement housing... It not only sets out the statutory obligations that apply to the management of leasehold properties, but also sets out additional requirements which should be followed as a matter of good practice."

3.25 There are other lessons to learn, and issues surrounding tenant and leaseholder involvement in management are discussed in more detail in section 6 below.

Recommendation 1

By the end of 2012 RICS, ARMA and ARHM should review how effectively the guidance given to the private sector on service charge consultation is being implemented.

If improvements are found to be warranted then the Committee recommends the private sector works with the best performing London social landlords to adopt best practice consultation guidance.

Decent Homes and other improvement programmes

3.26 Historically, many London local authorities had not received sufficient financial resources to undertake the required works to maintain expensive housing. The Decent Homes programme[51], (that did not contain provisions for considering the financial impact on those who had bought ex-local authority property), resulted in many leaseholders in local authority owned blocks receiving bills of many thousands of pounds for major refurbishment (paragraph 3.9 above). Local authorities, embarked on major repair and improvement programmes often on blocks that had been neglected long-term and were difficult and expensive to repair. As a result, service charge bills of over £32,000 per flat were not uncommon and they did exceed £50,000 on occasions.

3.27 Most London local authority property has now been improved through the 'Decent Homes' programme. However, DCLG statistics show that London still has a relatively high proportion of non-decent homes (26 per cent at the end of the financial year 2009/10) and so the need for huge service charge bills to cover the cost of improvements through Decent Homes has not yet passed.[52]

3.28 A substantial number of local authority owned blocks that will have leaseholders resident, are yet to receive the improvements under decent homes: "three London boroughs top the list of councils with the highest number of non-decent homes. More than a third of the social homes owned by Southwark, Lambeth and Camden do not reach the standard… in Havering 57 per cent of homes failed to meet the standard by April 2010."[53]

3.29 In the past some of the delay in implementing the Decent Homes programme was a result of the need to obtain ALMO status, however this is no longer a requirement and the programme can move forward.

3.30 As part of the 2010 Spending Review, the government made available a total of £1.6 billion to local authorities nationally towards meeting the decent homes standard over the next four years. London was allocated £821 million.[54] The Mayor proposes to take responsibility for the allocation and monitoring of decent homes funding in London, when his new housing and regeneration powers come into effect in April 2012 and will work with boroughs to ensure this funding is spent.

Affordability and the financial impact of service charges

3.31 It will be difficult for the Mayor to manage his priorities. Mayoral programmes that aim to make improvements in the standard of peoples' homes could provide significant benefits to leaseholders; however they may also result in additional bills for them.

3.32 In the future some of the Mayor's decisions will have a direct impact on the size of some leaseholders' service charge bills and he will need to have regard to the financial impact of his decisions on the affordability of service charges. There appears to be some support in law for this view. A recent case in the

Lands Tribunal centred on the question of how far a landlord should have to consider the financial impact on leaseholders of its plans for major repairs. The Lands Tribunal stated that the financial impact on lessees was a factor to be taken into account when deciding the reasonableness of service charges for major works.[55]

3.33 While local authorities have a duty to meet the current statutory minimum standards for housing through the decent homes programme, there is scope for reducing the impact of high or unexpected costs incurred by some leaseholders as a result of major works service charges. For example, in some cases it may be possible to negotiate a longer repayment period or alternatively to exchange an equity share of property in lieu of cash payment.

3.34 The clear aim must be to offer a range of payment options which better reflect the individual circumstance of each leaseholder while allowing for necessary major works to proceed without delay.

Recommendation 2
The Mayor should, in allocating Decent Homes funding in London under his new housing powers, make an assessment on the potential effects on leaseholders and in conjunction with the boroughs review how the financial impact on leaseholders – in terms of potentially large bills arising from Decent Homes improvements - should be managed without delaying the programme.

Recommendation 3
Where the Mayor allocates grants or funding for housing improvements in the future (for example energy efficiency), the financial effects (in the form of service charges) on leaseholders should be considered as part of the impact appraisal and should be managed without delaying the programme.

4 Transparency of service charges

4.1 Unlike the provision of most other services, where consumers can 'switch' providers, for many leaseholders this is not an option and the risks of inadequate service or poor value for money are hard to mitigate.

4.2 The Commonhold and Leasehold Reform Act 2002 provides a right for leaseholders to force the transfer of the landlord's management functions to a special company set up by them – a right to manage company. For local authority leaseholders or for those that do not qualify for right to manage they are obliged to accept services provided by their landlords.

4.3 One important issue raised by leaseholders in both the private and social sector relates to the transparency of the charges they are required to pay. There is a perception among some leaseholders that charges are unnecessarily high and are inflated through a variety of mechanisms in order for the landlord or managing agent to benefit at the expense of leaseholders.

4.4 This section explores those concerns in more detail and highlights moves to improve transparency in the public and private sectors.

Recent LVT adjudications

4.5 There have been some recent LVT decisions on high profile cases that illustrate the nature of these concerns. For example:

- In September 2011 the LVT awarded St George Wharf (Vauxhall) leaseholders £1 million to recover "management charges stretching back over a decade, as well as the company's practice of employing its own subsidiaries to provide CCTV and insurance services."[56]
- In November 2011 the LVT awarded Charter Quay (Kingston) leaseholders £185,000 and criticised the landlord for entering into contracts with related party companies and taking excessive insurance commissions. The LVT determined that the landlord must repay 75 per cent of 2009 management fee (and 50 per cent for 2008) and that insurance commissions for the landlord be reduced from over 30 per cent to 10 percent.[57]

Excessive commissions and linked company contracts

4.6 One of the biggest areas of concern relates to buildings insurance. ARMA states that insurance commissions and all other sources of income to the managing agent arising out of management should be declared to the client and to tenants.[58] However, a number of written submissions to our review claim that some landlords or managing agents take large undeclared commissions, on building insurance for example, and the higher costs are passed to leaseholders.

4.7 ARMA confirms that "there are now many LVT cases where lessees have successfully challenged insurance premiums levied by landlords, including where the landlord has refused to declare whether it is taking a commission or not. The LVT has taken the view that a commission is therefore being taken and made further deductions [from the service charge bill]."[59]

4.8 Some leaseholders are convinced that "the practice of offering maintenance contracts to same group companies is widespread and leads to excessive charging. There is a requirement for transparent competitive tendering. We know that kick backs or disguised commission payments are not uncommon, but a struggle to prove because it is so difficult to obtain the required information from the landlords. Insurance and energy charges are the two areas of most concern."[60]

4.9 Other leaseholders have seen reductions in their bills by changing insurers: "one easy change [for us to make] was to change the insurer for the building insurance and to cut out the £3,000 a year we were paying for terrorism insurance; what a waste of money that was! Others may be unwittingly paying for this too."[61]

4.10 Equally, through LVT decisions, there is evidence that some large property companies have awarded contracts to subsidiaries of their own company at inflated prices. The Charter Quay LVT decision (paragraph 4.5 above) noted the complex structure of inter-related companies was of "quasi-Biblical" proportions. This is not against the law – but the landlord must obtain quotes from 'independent' contractors. In labyrinthine property management structures it is often impossible to know if subsidiaries are involved.

4.11 Leaseholders have the right to nominate alternative contractors – but landlords are not required to accept this. However, leaseholders do not have the right to nominate alternative contractors if an OJEU notice is served.

4.12 There is also concern over the use of 'percentage' management fees that provide no incentive to reduce costs. Percentage management fees seem to be more common in the social sector, for example: "we charge a management fee which is 15 per cent of the leaseholder's total service charges with a minimum charge of £50 capped at £500."[62]

Codes of practice

4.13 The Royal Institute of Chartered Surveyors (RICS) has a code of practice that recommends commissions are identified and passed on, and that management fees are not levied as a percentage. However, a breach of this code is not an offence, although it can be taken into account by an LVT when deciding claims.

4.14 Some leaseholders question the effectiveness of the code: "whilst the RICS publishes a Code of Practice… it serves as guidance only for its members. Managers and landlords, particularly those who are not members of the RICS, ignore many of its recommendations. Such a code needs to be given legal or regulatory status to help ensure that high standards of management including the provision of detailed relevant information by managing agents can be enforced by tenants."[63]

4.15 ARMA however counters the argument that it has not moved sufficiently to improve its recommended practices to promote transparency after the Government announced it would not be introducing further regulation: "consultation draft guidance on accounting for service charges was issued last November [2010] and the final version will be issued this autumn [2011]. The guidance will create greater consistency of statements and more transparency for leaseholders. There is no buy-in from the social housing sector for this new guidance, although it is always difficult to produce meaningful statements of account for right to buy leaseholders within a predominantly rented block."[64]

4.16 ARMA further suggests it is ahead of the game than other sectors: "the social sector should have produced recommended best practice for accounting for service charges but it has not."[65]

Sanctions for poor practice

4.17 All ARMA members endorse, accept and undertake to comply with the RICS code of practice "*Service Charge Residential Management Code*" approved by the Secretaries of State for England and Wales under the terms of Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993.[66]

4.18 ARMA has sought to improve the way that its members handle complaints from leaseholders: "we issue guidance to members on this topic. In 2010 we made all members send in copies of their complaint handling procedures for vetting. Members are now required to make their complaint handling procedure available to their clients and leaseholders on request; the procedure must refer to access to an ombudsman and have the ombudsman's logo on it."[67]

4.19 There are a number of cases where leaseholder complaints have brought sanctions from ARMA against their members for poor practice: "following success at the LVT we did report the managing agent to ARMA who did eventually fine them the maximum amount allowed under the ARMA code. However the investigation took six months, the very short decision was published … and the maximum fine turned out to be £2,500 and the decision confidential."[68]

The increasing complexity of contracts

4.20 Some leaseholders have raised concerns that the move toward partnering and framework contracts has caused a potential tension between the need for transparency and the desire for efficiency.[69] The work being undertaken by the Efficiency and Reform Group[70] is tending to lead to large and complex procurement contracts that are difficult to monitor and analyse for service charge payers.

4.21 These contracts can give landlords the opportunity to ask for dispensations on consultation requirements due to the complexity of contracting. The existence of penalty clauses in

these contracts also makes independent or democratic scrutiny of these contracts difficult.[71]

4.22 Social landlords, who are not the 'freeholder', have noted the complexity that the policy requirements for mixed use developments bring to their management of homes: "on much larger mixed tenure developments sites where there is a section 106 planning requirement for social housing. It is not uncommon for management of such schemes to be handled by the main developer or a managing agent. In such circumstances the ability of the Association involved to determine or influence the level and cost of service provision is severely restricted."[72]

4.23 With such multi-layers of leases and management responsibility it is not surprising that confusion and frustration at a seeming lack of transparency can occur.

Improving transparency in the public sector

4.24 One model that has been suggested to improve the transparency of the service charge regime in the public sector is that employed by Tenant Management Organisations (TMO). A TMO is a means by which council or housing association tenants and leaseholders can collectively take on responsibility for managing the homes they live in. Those resident members of the TMO create an independent legal body and usually elect a tenant led management committee to run the organisation. The TMO can then enter into a legal management agreement (contract) with the landlord. The TMO is paid annual management and maintenance allowances in order to carry out the management duties that are delegated to them.[73]

4.25 Southwark Council has 14 TMOs that get up to £7 million a year and employ 60 staff to manage their estates; some of them are high-rise and complex blocks. "They are very successful, and they are very successful because of their transparency, because any resident can walk in and go to their board meetings and see how the money is spent… Service charges on TMO-managed estates in Southwark are slightly higher than the service charges on the rest of the self-managed blocks. [But] what is really interesting is that you have 10-15 per cent higher satisfaction levels on the tenant management organisations."[74]

4.26 Ways of increasing leaseholder involvement in the management of their own properties are discussed in section 6 of this report.

'Transparent' private sector management companies

4.27 There are an increasing number of commercial managing agents and companies (although still small in number) that sell themselves as '100 per cent transparent 24/7'. Moving to one of these types of commercial managing agents may be an option for many leaseholders if they can obtain right to manage.

4.28 BlocNet is one such company that actively spells out "what we won't do in terms of not taking referral fees, not owning insurance brokers, not undertaking major works without consultation and not providing unclear information".[75]

4.29 Transparency appears to be the 'unique selling point' of this kind of company, a fact that ARMA agrees with: "after all, the landlord or the resident management company or their managing agent are spending the leaseholder's money, so therefore they should be accounting for it."[76]

4.30 ARMA however, questions the price that comes with this transparency: "the only thing I would say is, given the leasehold structure, to inform lessees regularly, constantly, non-stop about expenditure that is going on and giving the opportunity to comment in certain circumstances could create an enormous burden on the manager or on the Residents' Management Company and increase the workload."[77]

Conclusions

4.31 Leaseholders want the bills they receive to reflect the actual services provided and to be able to understand the precise make up of their bills.

4.32 Section 152 of the Commonhold and Leasehold Reform Act 2002 would have required a landlord to automatically provide at least a minimum of service charge information, on a regular basis together with an independent accountants' report where required but in 2005 the Government decided that this provision was not fully workable.

4.33 A balance must be found between the level of information needed to scrutinise accounts and the cost involved in producing accounts. Publishing as much information as possible on the internet would enable leaseholders to be "armchair auditors".[78]

4.34 **The key stakeholders in the private sector, such as ARMA, ARHM and RICS need to commit to undertaking regular reviews of the transparency of their procedures based on an analysis of the reasons for LVT findings against landlords and managing agents.**

4.35 **The Government may consider it appropriate to review leasehold legislation, specifically the reinstatement of measures to provide minimum levels of information about service charges and some kind of 'sign off' in accountancy terms should be a priority.**

4.36 **This might assist leaseholders in being satisfied that the service charge demands they receive accurately reflect the services they are being charged for.**

5 The adjudication and dispute resolution process

5.1 The ability to challenge a service charge and have any dispute resolved by the Leasehold Valuation Tribunal (LVT) is, from the Government's point of view, a key safeguard of the existing system.[79]

5.2 A LVT makes decisions on various types of dispute relating to residential leasehold property. It is an independent decision making body which is completely unconnected to the parties or any other public agency. A Tribunal will look at the matter of the leasehold dispute for the property following an application to it. The LVT is binding and can adjudicate on matters such as insuring the building, how much leaseholders pay in service charges and the quality of services provided by the landlord/managing agent. It costs up to £500 to appeal.

5.3 LVT is a 'no costs' jurisdiction meaning that no costs are awarded against either side at that end of a case (barring unreasonable conduct). A leaseholder can make an application under section 20C of the Landlord and Tenant Act 1985 to prevent landlords from passing their costs of the Tribunal proceedings back to leaseholders through service charges, but this is not always granted.

5.4 According to the Residential Property Tribunal Service the main areas of dispute include very high service charge demands for ex-local authority property – mainly arising out of major works; the unprofessional approach of some private landlords in relation to a lack of transparency or accountability and landlords making profits out of charges such as insurance through undisclosed commissions. [80]

5.5 The number of cases submitted to the LVT in London has been rising steadily since 2008 and London's caseload is increasing relative to the rest of England. Service charge related cases in the London region LVT increased more than 54 per cent between 2005 and 2010.[81]

London region LVT service charge related cases

Year	Cases	% change
2005 - 06	1059	
2006 - 07	1174	10.9
2007 - 08	1058	-9.9
2008 - 09	1265	19.6
2009 - 10	1634	29.2

Source: Residential Property Tribunal Service

5.6 ARMA points out that of the LVT cases relating to service charges only half are brought by lessees, the rest by landlords. "Because to chase a service charge debtor the landlord has been forced in many cases in recent years to go to the LVT – a change brought about by the 2002 Commonhold and Leasehold Reform Act to protect lessees."

5.7 ARMA considers other reasons for the growth in LVT cases include the fact that the 2002 Act extended the role of the LVT in service charge disputes. "But the biggest [factor] has been that more and more cases for non-payment of service charges have been transferred from the county courts, at a time when leaseholders are finding it harder to pay their bills."[82]

Leaseholder views

5.8 Many leaseholder submissions to our review describe a range of difficulties with the system: "we did consider challenging [the landlord] but the onus would be on leaseholders to 'prove' mismanagement, poor workmanship, unreasonable costs – and we didn't have the capital required to pay for the legal expertise needed."[83]

5.9 Some leaseholders are not satisfied with the LVT as the principal means of recourse, for example highlighting the issue of unequal resources: "whilst we conducted our case from our front room, the freeholder with unlimited funds engaged formidable legal teams and two leading QCs… The trajectory of this case - leaseholders applying to a low cost tribunal [LVT] with a maximum liability of £500 though to the Supreme Court – has resulted in a potential leaseholder liability for the freeholder's costs of over a hundred thousand pounds… How can this be considered a just system for ordinary home owners?"[84]

5.10 Some access to free legal support does exist. The College of Law centre in London offers a variety of services providing free legal advice/assistance to members of the public and this includes leaseholders that are in dispute with freeholders over service charges, major works and the appointment of managing agents. Law students can represent leaseholders at the Leasehold Valuation Tribunal.[85]

5.11 The Committee would encourage leaseholders who want legal help with their cases to contact organisations such as the College of Law legal advice centre[86] or the National Pro Bono Centre.[87]

5.12 The inability of the LVT to put together 'case law'[88] means it is difficult to understand the legal position or to establish precedent – even with the same landlord using the same practices in many properties. The LVT does, however, publish a list of its decisions that can be useful to leaseholders in determining how to structure their cases and arguments.[89]

5.13 The LVT acknowledges that "occasionally simple cases become over complex" and the LVT is reviewing cases involving similar issues to try to improve the handling of them and standardising procedures and decisions with the aim of improving consistency.[90]

5.14 LVT acknowledges that legal costs are more easily borne by landlords and so legal representation is often sought by landlords. Appeals can be made to the Upper Tribunal, Court of Appeal and even the Supreme Court; this can be intimidating for leaseholders. If there was a limit on appeals beyond the Upper Tribunal this might assist leaseholders, by removing the fear of escalating costs.[91]

5.15 Furthermore "If the landlord does not comply with a decision made by the LVT the tenant must take a case for judgement to the County Court. Again this disadvantages the tenant because of the difficulty in funding the action whereas the landlord may be able to recover costs through the service charge."[92]

5.16 There is growing concern that the number of cases will increase and the pace of judgement will slow further. The increasing

tendency for landlords to appeal adds costs on leaseholders along with the disincentive of taking on appeals to higher courts that may award costs to landlords. The LVT acknowledges that cases will increase in the future, but as long as the increase is steady and budgets are not significantly reduced the LVT is confident that the service can be maintained.[93]

Mediation

5.17 Mediation should be a good first step to avoid having to litigate either in the courts or in the Leasehold Valuation Tribunals.[94] "The more cases that can be removed from the tribunal… and dealt with in a more informal forum where parties are prepared to negotiate … is a positive step… We try to encourage people to mediate their disputes where possible."[95]

5.18 Some public sector landlords appear to go to considerable lengths to resolve disputes at an early stage: "I would be disappointed if within an organisation there have not been a range of measures designed to resolve matters and not get them to the LVT. As an example, when we send service charge bills out, we offer a one-to-one surgery with every leaseholder to come and discuss their charges."[96]

5.19 LEASE (the Leasehold Advisory Service) is a government funded service providing advice to anyone with a question on the rights and obligations arising from residential leasehold law in England and Wales. LEASE provides advice by telephone, by letter or email, or in person at the office; it arranges seminars and group meetings where large numbers of leaseholders want to discuss a joint issue. It also publishes a wide range of free advice notes.

5.20 LEASE started a pilot in 2007 to assess if mediation would be a valuable service for leaseholders but in January 2011 it withdrew the service saying "demand for this service has not justified the cost and attention the organisation has given it".[97]

5.21 However, the LVT views mediation as a sensible way forward in relation to reducing costs and increasing the speed of dispute resolution - it has a success rate of more than 70 per cent and while it has resource implications, overall it is cost-neutral, as it reduces the number of expensive LVT hearings.[98]

Conclusions

5.22 **It seems far better that cases do not reach tribunal - where many leaseholders feel at a disadvantage - and if mediation services could be expanded evidence shows that much more satisfactory outcomes can be expected. Mediation appears to be cost neutral and this is an added advantage in terms of tightening public budgets.**

5.23 **Given the increasing number of leasehold disputes, the LVT cannot stand still if it is to continue to provide the fair and balanced adjudication service it offers. The Committee therefore recommends a number of ways that the LVT might develop in order to meet this growing challenge.**

Recommendation 4
By the end of 2012 the LVT should review the impact of differential levels of professional legal support, advice and representation between parties at tribunals and introduce appropriate protocols if leaseholders are found to be disadvantaged from either applying to tribunal, or in conducting their own cases.

Recommendation 5
The Committee recommends that by the end of 2012 the LVT, in conjunction with LEASE, set out plans for providing an expanded service offering mediation, pre-application advice and assistance as a cost effective method of improving the dispute resolution process.

Recommendation 6
By the end of 2012 Government should review whether it is possible to make mediation a compulsory first step of the dispute resolution process.

Recommendation 7
By the end of 2012 the LVT should review how its rulings are enforced and whether there are suitable redress options for leaseholders if LVT decisions are not complied with within an appropriate period of time.

6 The 'right to manage'

6.1 As described in section 4 of the report, the Commonhold and Leasehold Reform Act 2002 provides a right for leaseholders to force the transfer of the landlord's management functions to a special company set up by them – a right to manage company. The right to manage does not apply to leaseholders with local authority freeholders.[99]

6.2 ARMA estimates that 60 per cent of private leasehold flats are managed by a professional managing agent; the other 40 per cent are self-managed by lessees in over 50,000 resident management companies. Of these just under 3,000 right to manage companies are registered at Companies House.[100]

6.3 Right to manage is an obvious way for leaseholders that do not have local authorities as landlords who are concerned with this issue. However, there are a number of obstacles to achieving this and this may explain the relatively low proportion of leaseholders that have taken up the option to manage to date.

6.4 The Commonhold and Leasehold Reform Act 2002 allows leaseholders to form right to manage companies and take over the management of their property where 50 per cent of leaseholders sign up to assert their right to manage.

6.5 Complaints from leaseholders suggest the prevalence of absentee property owners makes this difficult: "[the landlord] has taken full advantage of the demand for property to let in London and through successful marketing campaigns in places like Hong Kong… has sold large numbers of flats to foreign investors. As a result, there is no hope of bringing lessees/tenants together to exercise their rights under the Landlord and Tenant Acts."[101]

6.6 A further complication arises from the fact that 75 per cent of the block must be residential before right to manage is possible and this limit poses problems for the many mixed use blocks (a mix of residential and commercial) now being built.

6.7 "An increasing number of apartments, particularly in London, are now in mixed use (and, indeed, mixed tenure) blocks. The mix of uses and tenures is actively encouraged by the planning system... However the building does not qualify [for right to

manage] if more than 25 per cent of the floor area is in non-residential use ie for many developments. In London this does not work".[102]

6.8 Once a right to manage company has been formed evidence suggests that there can be substantial savings on service charges: "last year [as a result of securing right to manage] our service charges went down by a staggering 18 per cent… the budget for 2012 will go down, to a level not seen since 2005."[103]

6.9 "[Some of the] results of the first year of right to manage are: managing agent fees are now fixed annually per flat rather than 15 per cent plus VAT of costs; building insurance premium was reduced by 65 per cent; electricity costs are the lowest since 1998 despite huge increases in national prices… and [the] service charge reduced by 11 per cent."[104]

Conclusions

6.10 **In London there are particular legislative barriers to achieving right to manage. These include the existence of large numbers of absentee landlords that make achieving the 50 per cent of residents figure problematic, and the high proportion of mixed use developments that mean the residential element is often below 75 per cent.**

6.11 **The Committee will write to the Secretary of State for Communities and Local Government setting out our findings in relation to the situation in London that appears to be limiting the effectiveness of right to manage. The Committee will ask DCLG for its views on whether this is an issue that is hindering Government intentions for promoting right to manage in London.**

Recommendation 8

By the end of 2012 the Government should review whether the barriers to achieving the right to manage in London is meaning that the existing legislation (the Commonhold and Leasehold Reform Act 2002) is less effective in the capital than elsewhere in England.

7 Better information and advice

7.1 The lease itself dictates the scope of the charge, the landlord's power to levy a charge and the leaseholder's legal obligation to pay it. "The provision of a service by a landlord, and the likely (although not inevitable) right for a landlord to be able to recover the cost of providing that service, is purely a matter of contract, ie the terms of the relevant lease".[105]

7.2 "Leasehold law is very complex; but nothing is more complex than the leases themselves that vary wildly".[106] Many buyers never regard this as an issue when purchasing and so better information is essential if problems are to be minimised.

Complexity of leases

7.3 The fact that leases vary so considerably is a source of confusion and frustration. Leases will vary from one flat to another even in the same block as a result of the lease being acquired under different legislation: "when you are selling properties over 30 or 40 years, we in a local authority do not have the advantage of developing an estate and then selling all the properties at once and them all being on roughly the same lease terms. We have leases sold under different legislation that actually affects the different lease terms as well."[107]

7.4 "My neighbour's annual bill in the current financial year will be £1,232; my total bill as a leaseholder will be £2,013… for an identical range of service provided to similar properties within the same building."[108]

7.5 Leaseholders are often surprised to find out the nature of services that are 'pooled' across estates and recharged in the form of service charges: "we are being charged for Citizens Advice, planning [applications] for windows and doors elsewhere in the borough and a general charge for ASBO/Neighbourhood disputes, which are not itemised and are averaged out across all properties in the borough."[109]

7.6 "The "area office" charge is annoying since leaseholders do not use area offices, they use… the Home Ownership address. From sub-divided charges of burial costs, council tenants compensation etc etc, to being even charged a shareout of the borough's street lighting under the misnomer of 'communal lighting' leaseholders take quite a hit."[110]

7.7 The Law Commission has looked at the complexity of tenancy agreements in the recent past[111] and now it might be time to review the potential of simplifying leases by standardising long lease terms.[112]

7.8 **The Committee will write to the Law Commission to obtain the organisation's views on the potential of reviewing long leases in order to standardise or simplify them to improve leaseholders' understanding of their contractual rights and responsibilities.**

Understanding leases and the obligations of leasehold

7.9 Many leaseholders submitted the same view – that leasehold is an outmoded form of property ownership: "we know that the freehold system in this country is an historic anomaly, a feudal system that must not be allowed to continue.."[113] They argue that if leasehold did not exist, and was replaced by commonhold, with everyone owning a share of the freehold and responsible for the management of their own buildings, many of the problems outlined in this report would not exist. However, it does, and there is no immediate prospect of this changing.

7.10 For now it is paramount that new leaseholders understand their rights and obligations.

7.11 LEASE and ARMA have co-produced a publication called "Living in Leasehold Flats: Your Rights and Responsibilities". It has been written for the layperson, specifically for first-time buyers, people new to the leasehold system. It sets out the contractual rights and responsibilities of landlords and leaseholders as well as issues such as service charges and managing agents.

7.12 It is difficult for purchasers of leasehold property to obtain information relating to service charges 'from the estate agent's window'. This kind of information has to be specifically asked for at the conveyancing stage.

7.13 The Law Society represents solicitors in England and Wales and provides guidance that sets out the Society's preferred practice for residential conveyancing transactions of freehold and leasehold property. It also promotes a recognised quality

standard for residential conveyancing practices. In March 2011 it published an updated conveyancing protocol.

7.14 When a property is purchased under right to buy local authorities are under a statutory obligation [SI 2005 1735] to provide information on all the costs that go with that right to buy; from stamp duty to service charges.[114] This contrasts significantly with the lack of information asked for, and given, to buyers in the private sector.

7.15 Some public landlords have established the practice of encouraging all prospective leaseholders to attend a meeting where they are given a range of advice and information on the rights and obligations relating to their leasehold property – and this includes service charges.[115] This is excellent practice.

Recommendation 9
The Committee recommends that by the end of 2012 the Law Society reviews the impact of its revised conveyancing protocol in terms of the quantity and quality of information that its members provide to prospective leaseholders. In particular, the Committee recommends that the Law Society reviews whether information relating to; served section 20 notices; estimates of service charges for the next five years; any planned major works and details of the previous three years' service charges are given to prospective leaseholders as standard practice.

The Leasehold Advisory Service and leasehold information networks

7.14 Some leaseholders are of the view that LEASE is actually too even handed or independent: "provision of information by LEASE is helpful, but limited by their role as an independent provider of information to both leaseholders and landlords rather than as an advisor. For example LEASE is not able to offer advice on the practice of landlords taking large commissions on insurance and how best to challenge these."[116]

7.15 In response there are a growing number of informal or virtual networks that seek to help leaseholders understand the law relating to rights and obligations as well as sharing knowledge and experiences that will assist other leaseholders in solving their leasehold problems.

7.16 Some are relatively well established groups such as CARL (Campaign Against Residential Leasehold) or CarlEX (Campaign against Residential Leasehold Exploitation). To these can be added newer organisations, such as LKP (Leasehold Knowledge Partnership) that specialise in advising managing agents in order to promote best practice in leasehold block or development management.

7.17 These kinds of groups and informal networks will grow as leaseholders attempt to get a working knowledge of the arcane regulations and the common issues faced by other leaseholders.

7.18 **The Committee welcomes the development of such networks as an important mechanism for enhancing leaseholder understanding and providing better information and advice.**

8 The way forward

8.1 This review has heard many stakeholders calling for tighter regulation – these include leaseholders and even the managing agent's body ARMA.[117]

8.2 Some leaseholders are demanding a wholesale review of the existing regulations: "as a consequence of our experience [we] are wholly unconvinced that the current legal system and lack of regulatory framework acts in a way that is fair and balanced, contrary to the claims of the current Housing Minister. We would go so far as to argue that a number of aspects of the legislation actively encourage landlords to seek to gain unfair profits from leaseholders."[118]

8.3 For the Government, the fact that the LVT gives the opportunity for redress and that there is evidence that leaseholders are able to make successful challenges, means that the balance is there for the system to operate.

8.4 There is therefore little realistic prospect that new regulation of the leasehold sector might be forthcoming. In March 2011 the Housing Minister said "we have considered the issue of regulation in the leasehold management sector and believe that the current legislative framework can deliver that balance, if matched by an increasingly pro-active and positive approach by the professionals in the sector."[119]

8.5 While Ministers are therefore not persuaded of the need for additional regulation at this stage, Government will keep a close watching brief.[120]

8.6 Furthermore, there have been calls for the consolidation of the complex leaseholder/freeholder legislation which would simplify the operation of the system so that "ordinary leaseholders and tenants might be able to check on their own duties and responsibilities", but these have recently been rejected in the House of Lords.[121]

8.7 Nevertheless, pressure on the Government for reform is growing.

8.8 There are at least ten live 'e-Petitions'[122] calling for change to various aspects of leasehold legislation. For example, the most recent one is "calling for the Government to step in and

implement regulation of the [leasehold/freehold] property management sector."[123]

8.9 While Government maybe confident that the current legislative framework can deliver the balance required to make the leasehold service charge system work, this report shows a significant number of leaseholders are not convinced of this.

Conclusions

8.10 It is ten years since the Commonhold and Leasehold Reform Act came onto the statute book. In that time there is evidence that not every aspect of the residential leasehold service charge regime is working satisfactorily.

8.11 We have identified a number of aspects to the system that are particularly problematic and London Members of Parliament may wish to take this opportunity to raise these issues with Government.

8.12 The Committee welcomes the Government's intention to keep this issue under constant review and to assess whether there is evidence that reform of leasehold legislation is required. The Committee would expect that the House of Commons Backbench Business Committee recommend a debate on the need for leasehold reform if any of the current e-Petitions reach the required number of signatures.

8.13 At our January meeting with relevant experts a consensus emerged that there needs to be a cultural change in the approach to managing service charges, and landlords that do not embrace this deserve to be exposed and challenged. One of the encouraging signs is that leaseholders, where they can manage to gain control of managing their own properties, will have an increasing number of options in relation to agents selling their services on the basis of transparency and accountability.

Recommendations

Recommendation 1

By the end of 2012 RICS, ARMA and ARHM should review how effectively the guidance given to the private sector on service charge consultation is being implemented.
If improvements are found to be warranted then the Committee recommends the private sector works with the best performing London social landlords to adopt best practice consultation guidance.

Recommendation 2

The Mayor should, in allocating Decent Homes funding in London under his new housing powers, make an assessment on the potential effects on leaseholders and in conjunction with the boroughs review how the financial impact on leaseholders – in terms of potentially large bills arising from Decent Homes improvements - should be managed without delaying the programme.

Recommendation 3

Where the Mayor allocates grants or funding for housing improvements in the future (for example energy efficiency), the financial effects (in the form of service charges) on leaseholders should be considered as part of the impact appraisal and should be managed without delaying the programme.

Recommendation 4

By the end of 2012 the LVT should review the impact of differential levels of professional legal support, advice and representation between parties at tribunals and introduce appropriate protocols if leaseholders are found to be disadvantaged from either applying to tribunal, or in conducting their own cases.

Recommendation 5

The Committee recommends that by the end of 2012 the LVT, in conjunction with LEASE, set out plans for providing an expanded service offering mediation, pre-application advice and assistance as a cost effective method of improving the dispute resolution process.

Recommendation 6

By the end of 2012 Government should review whether it is possible to make mediation a compulsory first step of the dispute resolution process.

Recommendation 7

By the end of 2012 the LVT should review how its rulings are enforced and whether there are suitable redress options for leaseholders if LVT decisions are not complied with within an appropriate period of time.

Recommendation 8

By the end of 2012 the Government should review whether the barriers to achieving the right to manage in London is meaning that the existing legislation (the Commonhold and Leasehold Reform Act 2002) is less effective in the capital than elsewhere in England.

Recommendation 9

The Committee recommends that by the end of 2012 the Law Society reviews the impact of its revised conveyancing protocol in terms of the quantity and quality of information that its members provide to prospective leaseholders. In particular, the Committee recommends that the Law Society reviews whether information relating to; served section 20 notices; estimates of service charges for the next five years; any planned major works and details of the previous three years' service charges are given to prospective leaseholders as standard practice.

Appendix 1 - Legislation, operation and scale of service charge demands

Leasehold tenure

Service charges are a product of property law. All residential properties in English law are either occupied 'freehold' 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 the contract between the leaseholder and the landlord giving conditional right to reside 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.

Service charges

Landlords incur annual costs for maintaining and repairing their property and leaseholders have to recompense them through service charges.

There are two kinds of services charges – annual charges for regular maintenance and insurance and specific charges for 'one-off' expenditure such as major improvements or repairs that usually take the form of a single lump sum charge. Under many leases no distinction is made between major works and annual charges - although some landlords choose to make this distinction for ease of administration.

There is also the distinction between fixed and 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. These charges are 'fixed' and cannot be varied, 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.

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, the landlord's power to levy a service charge and the leaseholder's obligation to pay it. 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.

Variable service charges can go up or down, without any limit, reflecting the costs incurred in providing the services by the landlord, but the landlord can only recover those costs which are reasonable.

There is not, however, any useful definition of reasonableness. "The general direction taken is from the judgement in the case of Finchbourne v Rodrigues in the Court of Appeal 1976 that the parties to a lease could not have intended that the landlord should have an unfettered discretion to adopt the highest conceivable standard and to charge the tenants for it. The implication is that the leaseholders are to be protected from the potential extravagance of the landlord who is bound to be reasonable in his proposals and demands."[124]

It is the leaseholder's obligation to pay the service charges promptly under the terms of the lease. If they are not paid the landlord can begin proceedings by applying for a court order. If a county court judgement is obtained there are a range of options as to how any debt is pursued. Forfeiture is an option but only if the lease has an express clause allowing forfeiture. Other options for recovering debt include an order for sale or attachment of earnings.

Level of service charges

Leasehold service charges data was provided by 25 public landlords (including boroughs, ALMOs and housing associations). Very few provided data for more than one year. Averages for property size and type vary considerably – as do estates or blocks that were subject to major repairs. For example, average service charges for 14 boroughs in 2010/11 were:

London borough	Average annual service charge
Kingston	£1,331
Tower Hamlets	£1,237
Kensington and Chelsea	£1,171
Southwark	£1,085
Haringey	£1,023
Newham	£1,012
Hammersmith	£827
City of London	£775
Greenwich	£766
Barking and Dagenham	£650
Hillingdon	£562
Croydon	£557
Waltham Forest	£446
Harrow	£378

As service charges are supposed to reflect actual expenditure incurred by landlords it is impossible to calculate a meaningful 'average' service charge, however, with the exception of the highest charges in Kingston, generally, inner London boroughs (where expensive to maintain tower blocks are more common) appear to levy higher charges than outer London landlords.

Trends in the cost of service charges

"Service charges for our modest leasehold have jumped every year, from under £700 in 2005, to over £2000 in 2011. Over this period, there were no corresponding increases in the quality or quantity of services received and no extraordinary or major works."[125]

"Eight years ago I bought an ex-council property [and] service charges have risen… 129 per cent in 5 years. This puts a huge amount of emotional and financial strain on myself and my partner. As prices continue to increase we are at the threat of being priced out of our own home. The route of taking this to a Leasehold Valuation Tribunal is an extremely difficult and lengthy process, practically a full time job in itself."[126]

"Increases in service charges are not only due to rising prices but also due to increased number of repairs as buildings and equipment get older. The affects of legislation also cause increases in costs."[127]

From our data it appears that there is a general trend for service charges to increase over time. This is logical as service charges are supposed to reflect a landlord's actual expenditure on insurance,

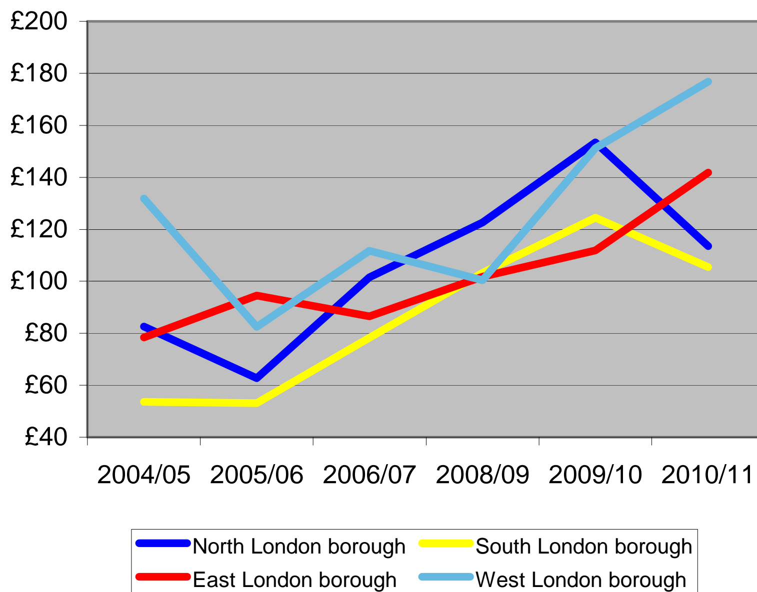
maintenance, energy and services such as concierges. As such service charges will increase in line with inflation, but will probably always outstrip this figure due to the proportion represented by more volatile elements such as energy, wage bills and building repairs – especially when there is a need for major refurbishment programmes such as 'decent homes'.

Some boroughs, however, appear to have leaseholder service charge bills that are 'steadier' than others. This may reflect the fact that their properties are 'low maintenance' or are benefitting from earlier major repair programmes that reduced the need for expenditure in latter years.

Major repairs programmes can have a dramatic effect on service charge bills, these may then return to steadier increases reflecting RPI/CPI. Nevertheless there are examples of charges (excluding major works) that have increased at well over twice the inflation rate.[128]

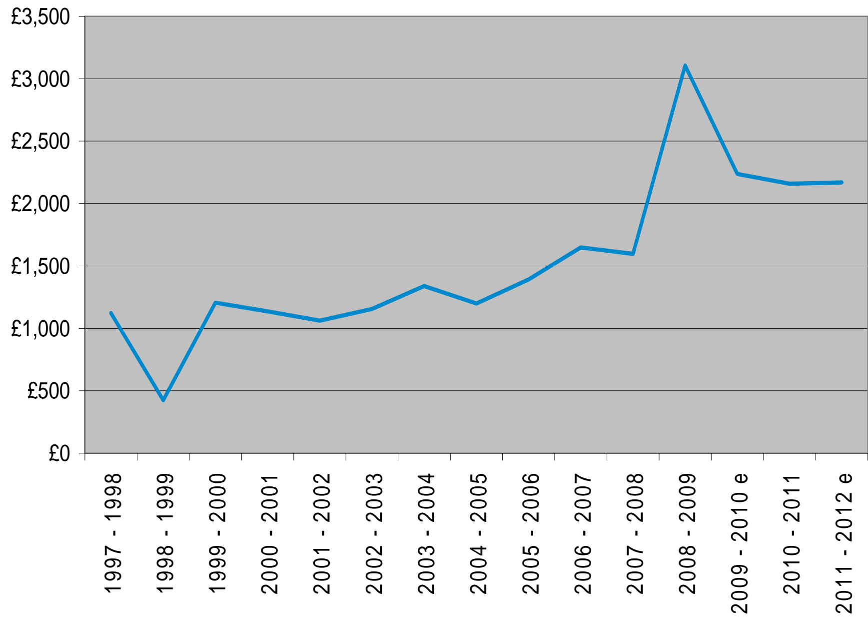
Some examples of service charges are set out below for illustration.

Average monthly service charges - four London boroughs



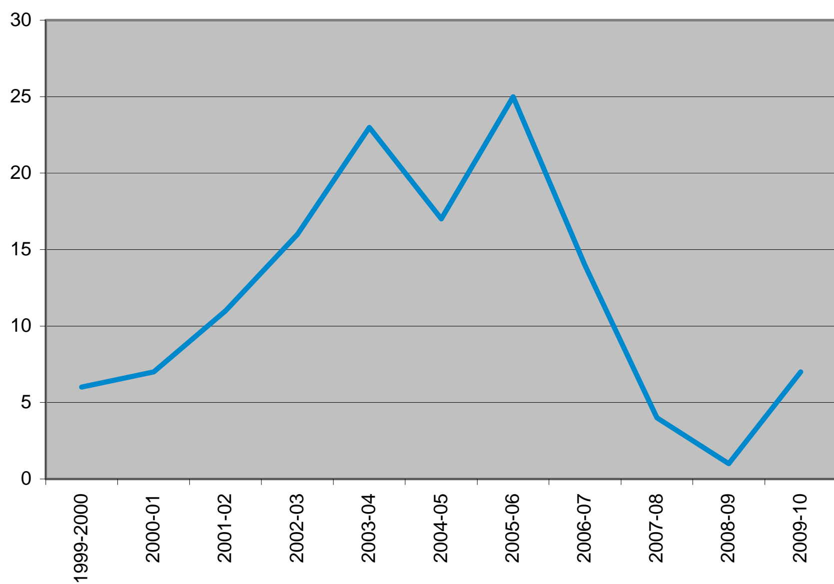
Source: Written submissions from four sample London boroughs

One north London leaseholder's annual service charges



Source: Written submission SC068

Percentage change in service charge – one London borough



Source: Written submission SC009

Management fees

Isolating one aspect of a service charge bill – management fees – reveals no further information or pattern; for example the City of London levies a 24 per cent management fee, whereas Barking and Dagenham's is 9 per cent. 'Management fees' will reflect individual approaches to what services are provided within that category. However, a summary of some of the headline statistics is set out below.

London boroughs	**Management Fee - % of total service charge**
Barking and Dagenham	9
City of London	24
Greenwich	16
Hammersmith	19
Haringey	25
Harrow	10
Hillingdon	31
Kensington & Chelsea	15
Kingston	22
Newham	23
Southwark	10
Tower Hamlets	24
Waltham Forest	34
Housing associations	
Affinity Sutton	15
Catalyst	17
City West Homes	33
Hackney Homes	13
Homes in Havering	18
Hyde Group	8
L&Q	15
One Housing Group	15
Peabody	12
Thames Valley Housing	16
Average for boroughs and housing associations	**18**

Relevant legislation

The Landlord and Tenant Act 1985 sets out the basic ground rules for variable service charges, defining what is considered a service charge, setting out requirements for reasonableness and for prior consultation of leaseholders. Various other pieces of legislation are relevant

including: Housing Act 1980 (introduced the Right to Buy); Housing Act 1996 (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 discounts for service charges).

A key point to note, and one that adds confusion, is that the legislation does not apply to all leaseholders. Various aspects of legislation apply just to the private sector (for example the 'right to manage'); some just to the public sector (usually in the Housing Acts eg the ability to reduce service charges); and some to both (eg the 'reasonableness' test). In some cases the public sector has separate but similar legislation eg the right to manage for secure tenants.

Consulting on future major works

Public sector landlords have a statutory requirement to provide estimates of planned (or 'itemisable'') works over the following 6 -7 years for tenants exercising the Right to Buy (or preserved Right to Buy or Right to Acquire).

The notice offering a tenant the Right to Buy is required to contain binding estimates of planned works in the 'initial period' of the lease. These estimates are the estimated cost of the work at the prices prevailing at the date of the offer notice.

The service charge for itemised works carried out in the 'initial' period of the lease cannot exceed the offer notice estimate, except for an inflation element set by a prescribed formula.

The estimates contained in the offer notices are 'budget estimates' set many years in advance of the works being undertaken and will almost inevitably change as time progresses.

Neighbouring leaseholders, who purchase at different times, may well have different estimated costs, and even those with similar estimates may have different service charges because of the way the inflation element is calculated.

These estimates in turn may well differ from the estimated service charges calculated from the contract tender returns, because the tenders reflect the current market conditions rather than those prevailing some years in the past. In addition any capping of costs allowed by statutory provisions could be removed if works are delayed and are undertaken outside the initial period.

Finally the tender estimates may reflect a provisional sum for, for example, concrete repairs which may have been more extensive when viewed closely with the benefit of scaffolding, than allowed for in the provisional sum.

All of these factors may result in substantial differences between original estimated service charges and the final bills sent once works are complete.

It is hardly surprising that many leaseholders are confused by this process.

Appendix 2 – Commonhold

The Commonhold and Leasehold Reform Act 2002 introduced a new form of tenure in England and Wales – commonhold - it was the first new type of ownership in English law to be created since 1925.

As part of the introduction to the Act it was noted that "as long term residential leasehold has become more and more widely discredited, pressure has grown for the Government to bring forward a scheme which would combine the security of freehold ownership with the management potential of positive covenants which could be made to apply to each owner of an interdependent property. That scheme is commonhold."[129]

"Commonhold will be available for new developments and the Bill contains provisions which will allow existing leaseholders to convert to commonhold. However, conversion from leasehold to commonhold will only be possible where all of the leaseholders agree to participate and buy out any other interests involved."[130]

The Act also introduced a new "right to manage", which enables leaseholders to take over the management of their building without having to prove fault on the part of the landlord or pay him any compensation; it made enfranchisement (the purchase of the freehold) easier for both leaseholders of flats and leaseholders of houses and made lease extensions easier to obtain.

Only a handful of commonholds have been registered compared to the hundreds of thousands of long leases granted during the same period. As of 3 June 2009, there were only 12 commonhold residential developments comprising 97 units in England and one commonhold residential development, comprising 30 units, in Wales.[131]

One contributor to the review suggests that 'commonhold' be promoted in London and the Mayor should make it a condition of planning permission that new developments should be commonhold as opposed to leasehold.

"London has a fine history of pioneering and taking advantage of advances in housing legislation going back to the Housing of the Working Classes Act 1890 which led to LCC housing. The Commonhold and Leasehold Reform Act 2002 gives [London boroughs] the opportunity to make it a condition of planning permission that housing developments should always have a residents

association, be freehold or commonhold, and never leasehold. This also applies to land sold by public authorities. This would instantly prevent the widespread and systematic sort of abuse from which … hundreds of other London developments have suffered."[132]

Appendix 3 – Contributors to the review

The rapporteur held the following meetings with experts:

- Dr Peter Wright, **Chair Camden Leaseholders Forum**, 6 December 2011

- Sally Randall, Deputy Director Private Sector Housing Division and Ian Fuell, Private Sector Leasehold and Rentcharges Policy Branch, **Department of Communities and Local Government**, 13 December 2011

- Tim Powell, Vice President, **Residential Property Tribunal Service**, 21 December 2011

On 23 January 2012 the rapporteur held a meeting with key stakeholders to discuss the issues raised in the evidence gathering stage of the review and to explore potential ways forward. The experts attending the discussion were:

- Martin Green, Head of Home Ownership and Tenant Management Initiatives, **Southwark Council** (London's largest landlord with over 15,000 leaseholders in former local authority homes and 1,500 freeholders paying service charges)
- Randall Bevis, Head of Home Ownership, **City West Homes** (Westminster's ALMO that co-ordinates the London & South East ALMO Group and manages 9,000 leaseholds)
- Matthew Saye, Assistant Director – Home Ownership Services, **One Housing Group** (One Housing manages over 1,300 leaseholders and more than 1,700 shared owners now. It additionally levies service charges on 10,000 assured tenants and supported housing tenants across London and the South East)
- Anthony Essien, Chief Executive, **Leasehold Advisory Service** (the government funded service that provides free legal advice to leaseholders and landlords on the law affecting residential leasehold in England and Wales)
- David Hewett, Chief Executive, **Association of Residential Managing Agents** (ARMA has over 250 members managing more than 34,000 blocks of flats)
- Bob Suvan, Managing Director, **BlocNet** (BlocNet is a managing agent that promotes management services with "100 per cent transparency 24/7")

Written submissions were received from the following organisations and individuals

Submission reference	
SC001	Kensington and Chelsea TMO
SC002	Southern Housing Group
SC003	Peabody
SC004	Homes in Havering
SC005	City West Homes
SC006	London and South East ALMO Group
SC007	South east London leaseholder
SC008	Family Mosaic
SC009	Homes for Haringey
SC010	L&Q
SC011	Affinity Sutton
SC012	Russell-Cooke LLP
SC013	London Borough of Newham
SC014	South west London retirement home leaseholder
SC015	Thames Valley Housing
SC016	City of London
SC017	North London leaseholder
SC018	London Borough of Barking and Dagenham
SC019	Association of Residential Managing Agents
SC020	Two north London leaseholders
SC021	Amicus Horizon
SC022	Federation of Private Residents Associations
SC023	Hyde Group
SC024	Group of north London leaseholders
SC025	London Borough of Greenwich
SC026	Central London leaseholder
SC027	A2 Dominion
SC028	Royal Borough of Kingston upon Thames
SC029	London Borough of Harrow

SC030	London Home Ownership Group
SC031	East Thames Housing Group
SC032	Catalyst Housing
SC033	West London leaseholder
SC034	Essex leaseholder
SC035	South west London leaseholder
SC036	London leaseholder
SC037	Haringey Leaseholders' Campaign Group
SC038	West London leaseholder
SC039	One Housing Group
SC040	London Borough of Hillingdon
SC041	London Borough of Hounslow
SC042	Camden Federation of Private Tenants
SC043	Campaign Against Residential Leasehold
SC044	LEASE
SC045	Camden Leaseholders Forum
SC046	Central London leaseholder
SC047	G15
SC048	Hackney Homes
SC049	Residential Property Tribunal Service
SC050	London Borough of Southwark
SC051	Birmingham resident
SC052	Surrey resident
SC053	National Housing Federation
SC054	North London leaseholder
SC055	North west London leaseholder
SC056	North London leaseholder
SC057	Haringey Leaseholders' Association
SC058	North London leaseholder
SC059	East London leaseholder and landlord
SC060	Central London leaseholder
SC061	Central London leaseholder
SC062	London Borough of Bromley

SC063	London Borough of Bexley
SC064	West London leaseholder
SC065	Central London leaseholder
SC066	London Borough of Hammersmith and Fulham
SC067	Central London leaseholder
SC068	North London leaseholder
SC069	North London leaseholder
SC070	London Borough of Croydon
SC071	London Borough of Waltham Forest
SC072	South east London leaseholder
SC073	Tower Hamlets Homes
SC074	LAS 2000
SC075	Property Litigation Association
SC076	West London leaseholder
SC077	Federation of Islington Tenants Association
SC078	Reachview Management Company
SC079	A south west London leaseholder group
SC080	South east London leaseholder
SC081	Riverside Tower Residents' Association
SC082	Brockley Leaseholders' Association
SC083	A south west London leaseholder group
SC084	Essex retirement home leaseholder
SC085	Central London leaseholder
SC086	Peverel Property Management
SC087	London leaseholder
SC088	A central London leaseholder group
SC089	A west London leaseholder group
SC090	A London leaseholder
SC091	A south west London leaseholder group
SC092	Central London leaseholder
SC093	A south London leaseholder group
SC094	East London leaseholder
SC095	South east London leaseholder

SC096	A south west London leaseholder group
SC097	North London leaseholder
SC098	A Hampshire leaseholder group
SC099	North London leaseholder
SC100	South east London leaseholder
SC101	London leaseholder
SC103	A south London leaseholder group
SC104	A London leaseholder group

Appendix 4 – Selected quotes from contributors

This report distils hundreds of pages of views from leaseholders into the main areas of concern. What this does, inevitably, is lose some of the detail of their personal accounts. This section sets out just some leaseholder stories from across London and beyond.

Leaseholder dissatisfaction

"Looking at my horrendous, life destroying experience over the last nine years, and that of other leaseholders, has led me to the conclusion that the residential leasehold sector is a gigantic organised crime operation." A central London leaseholder

"Service charges for our modest leasehold have jumped every year, from under £700 in 2005, to over £2,000 in 2011. Over this period, there were no corresponding increases in the quality or quantity of services received and no extraordinary or major works." A north London leaseholder

"My lease came into operation [in] 1999… Over the period my bills have risen from £952.14 in 2000-01 to an estimated £2,013.25… an increase over the period of 111.4 per cent." A west London leaseholder

Since 2006, my service charges on my 1 bedroom flat has doubled - from £91.13 [a month] to an all time high of £194.17… a rate of increase which, by any measure, is unreasonable, unsustainable and unfair… I am by no means an exception either amongst 108 households, of which 25 are leaseholders (most of whom are part-owned)." A west London leaseholder

Excessive charges?

"In his keynote speech at CARLS's annual conference Bob Suvan sent out a powerful challenge to the property management industry. He estimates that leaseholders are being overcharged by around £700 million a year on service charges." *"Leaseholder"* newsletter, winter 2011/12

"The cost of service charges was approximately £1,200 to £1,300 per year until this was increased to over £2,000 when the managing agents were appointed in 2008; they added health and safety and risk accreditation fees. They also include miscellaneous expenses such as bulbs… in one year they charged £350 for bulbs… There are only

three electric light fittings in the small staircase and there are only six flats in the block." A north west London leaseholder

On poor performing managing agents

"Anyone can become a landlord or a managing agent. No qualification or experience is required. To avoid poor management of residential blocks and prevent abuse of service charges, a system of qualification or regulation is needed and unscrupulous behaviour needs to be punished." A south west London residents association

"The Government must regulate and license this sector, in order to create a system that provides a proper service for a fair price. We need a system where good practice is a minimum requirement, and where exploitation is not tolerated. A regulated regime should cover investor freeholders, managing agents & right to manage companies." A group of north London leaseholders

"Separately we are looking to do an additional LVT to force [the managing agent] into serious talks about the money they spend on our behalf. So far, we have identified in the region of £250,000 in overspending." A south west London leaseholder

Landlord/managing agent relationships

"Leasehold homes are treated as revenue streams by the commercial freehold sector… Our freeholder is a large PLC who specialises in residential property, they also own the management company - in practice they are one and the same company." A group of north London leaseholders

Retirement homes

"We have also become acutely aware of problems in the retirement leasehold sector, where they have far fewer resources to challenge the landlord." A south west London residents association

"Retirement homes, by definition, have lessees who as a group will struggle to work together to understand the intricacies of law and confront landlords." A west London residents association

"My mother-in-law died four years ago… We put the flat on the market [but the] flat has not sold… We are [still] paying for things like the laundry (£250 per year) and Emergency Call Services [but]

there is no one resident in the flat… we do not feel that we should be paying for those services.” An Essex retirement flat leaseholder

Shared ownership

"I have been contacted by residents on shared ownership schemes... who pay 100 per cent of the service charges even though they only own a proportion of the property... Some residents have complained that they are now paying more in service charges than mortgage payments." A Surrey resident

Fighting cases at the LVT

"Our estimate is that, ignoring the thousands of hours given for free by the tenants required to take on our three cases, we have had to incur nearly £40,000 of professional expenses, paying for surveyors, accountants, solicitors and counsel. Our estimate is that the landlord has expended potentially more than £350,000 in costs fighting us. The landlord's costs will of course come from either his profit or from spreading his costs amongst the other sites he controls." A south west London leaseholder group

"The tenant taking a dispute to the LVT is often placed in a disadvantageous position. Not only does the tenant have to either perform his own advocacy or fund the significant cost of legal advisers but the landlord is able to charge the cost in defending his case to the service charge. In my experience this has led to lay tenants being forced to represent themselves in the LVT against solicitors from leading City law firms and QCs from leading chambers… there have been legal costs charged by the landlord to the tenants through the service charge up to £300,000 in a single year." An east London leaseholder and landlord

Non-compliance with LVT decisions

Any order made by the LVT may be enforced, with the permission of the county court, in the same way as a county court order[133], however non-compliance with LVT decisions and late or partial payments may act as a further deterrent for individual leaseholders to take their case to a LVT: "the landlord then often finds a way not to pay the full settlement. An example of this is a site based in Nottingham... The tenants have still not had their money back [some years after the LVT decision] and have now had to go on to seek a court injunction preventing the landlord misspending monies which should have been

passed to their RTM company." A south west London leaseholder group

Complexity of leases

"The tenancy conditions and lease are written in very different styles. The tenancy conditions are written in plain English and give a lot of examples to help tenants….The lease is written in a more traditional style and tends to rely on far fewer, more general clauses. It is my contention that my lease in its entirety fails this plain English test." A north London leaseholder

"My lease is 28 pages long and is baffling. The legal document for [a local authority contract] which concerns all the millions of pounds of assets on our boundary with each Local Authority is only 8 pages long." A leaseholder from Birmingham

"There is no way of telling if the allocation of charges for common parts and plant maintenance is fair and reasonable. The problem is exacerbated by the fact that the landlord is only required in the lease to account for the expenditure on the residential element. Hence, although accounts are produced for the whole development, all information on the commercial element is redacted so it is impossible to see a complete picture." An east London leaseholder and landlord

The need for better information for prospective leaseholders

"Government is considering offering even larger discounts to encourage purchase of flats in social housing... Will the Government warn the potential buyers that they will face bills in the region of over £1,000 plus in addition to their mortgages? What about those in the future who will purchase social landlord properties? They will be left with large service charge bills and with potentially even higher major works bills." A north London leaseholder

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Email 与我们联系。

Hindi

यदि आपको इस दस्तावेज का सारांश अपनी भाषा में चाहिए तो उपर दिये हुए नंबर पर फोन करें या उपर दिये गये डाक पते या ई मेल पते पर हम से संपर्क करें।

Vietnamese

Nếu ông (bà) muốn nội dung văn bản này được dịch sang tiếng Việt, xin vui lòng liên hệ với chúng tôi bằng điện thoại, thư hoặc thư điện tử theo địa chỉ ở trên.

Bengali

আপনি যদি এই দলিলের একটা সারাংশ নিজের ভাষায় পেতে চান, তাহলে দয়া করে ফো করবেন অথবা উল্লেখিত ডাক ঠিকানায় বা ই-মেইল ঠিকানায় আমাদের সাথে যোগাযোগ করবেন।

Greek

Εάν επιθυμείτε περίληψη αυτού του κειμένου στην γλώσσα σας, παρακαλώ καλέστε τον αριθμό ή επικοινωνήστε μαζί μας στην ανωτέρω ταχυδρομική ή την ηλεκτρονική διεύθυνση.

Urdu

اگر آپ کو اس دستاویز کا خلاصہ اپنی زبان میں
درکار ہو تو، براہ کرم نمبر پر فون کریں
یا مذکورہ بالا ڈاک کے پتے یا ای میل
پتے پر ہم سے رابطہ کریں۔

Turkish

Bu belgenin kendi dilinize çevrilmiş bir özetini okumak isterseniz, lütfen yukarıdaki telefon numarasını arayın, veya posta ya da e-posta adresi aracılığıyla bizimle temasa geçin.

Arabic

الحصول على ملخص لهذا المستند بلغتك،
فرجاء الاتصال برقم الهاتف أو الاتصال على
العنوان البريدي العادي أو عنوان البريد
الإلكتروني أعلاه.

Punjabi

ਜੇ ਤੁਸੀਂ ਇਸ ਦਸਤਾਵੇਜ਼ ਦਾ ਸੰਖੇਪ ਆਪਣੀ ਭਾਸ਼ਾ ਵਿਚ ਲੈਣਾ ਚਾਹੋ, ਤਾਂ ਕਿਰਪਾ ਕਰਕੇ ਇਸ ਨੰਬਰ 'ਤੇ ਫ਼ੋਨ ਕਰੋ ਜਾਂ ਉਪਰ ਦਿੱਤੇ ਡਾਕ ਜਾਂ ਈਮੇਲ ਪਤੇ 'ਤੇ ਸਾਨੂੰ ਸੰਪਰਕ ਕਰੋ।

Gujarati

જો તમારે આ દસ્તાવેજનો સાર તમારી ભાષામાં જોઈતો હોય તો ઉપર આપેલ નંબર પર ફોન કરો અથવા ઉપર આપેલ ટપાલ અથવા ઈ-મેઈલ સરનામા પર અમારો સંપર્ક કરો.

Endnotes

[1] Minister of State, DETR: Residential leasehold reform in England and Wales, DETR 1998 http://www.communities.gov.uk/documents/housing/rtf/157164.rtf

[2] 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. These charges cannot be varied, 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.
http://www.lease-advice.org/publications/documents/document.asp?item=14#4

[3] The Council might not always have been the freeholder, but it would still need to grant a property the right to buy where it holds an interest of sufficient length to do so

[4] http://www.insidehousing.co.uk/tenancies/right-to-buy-discounts-to-treble/6519742.article

[5] The following boroughs submitted service charge data: Barking and Dagenham, City of London, Croydon, Greenwich, Hammersmith and Fulham, Haringey, Harrow, Hillingdon, Kensington and Chelsea, Kingston, Newham, Southwark, Tower Hamlets and Waltham Forest

[6] ARMA is a trade body for long leasehold residential managing agents working in the private sector. It currently has 260 corporate members. It also has a number of affiliate members which include some social landlords.

[7] ARMA, written submission SC019

[8] A reserve or sinking fund is a fund collected over a period of time to be used for a specific purpose such as a large scheme of work. This could be roof renewal, external redecoration or other large expenditure. The aim is to split the cost over a longer period of time to avoid a very large bill in one service charge year http://www.lease-advice.org/information/faqs/faq.asp?item=41

[9] Peverel Property Management, written submission SC086

[10] Appendix 1 sets out some profiles of service charges for boroughs and individual leaseholders taken from evidence submitted to the review.

[11] £500 million is a conservative estimate based on more than 500,000 leaseholders paying an average of £1,000+ per year in service charges.

[12] Meeting with DCLG, 13 December 2011

[13] The LVT is one part of the Residential Property Tribunal Service which is a part of Her Majesty's Courts and Tribunals Service

[14] LVTs are part of the Residential Property Tribunal Service, a public body charged with providing an affordable, fair, unbiased service
http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/residential-property/#leasehold

[15] Residential Property Tribunal Service, written submission SC049

[16] Meeting with LVT, 21 December 2011 and LVT written submission SC049

[17] Residential Property Tribunal Service meeting 21 December 2011

[18] ARMA, written submission SC019

[19] Audit Commission *Leasehold Management: A different perspective* http://www.audit-commission.gov.uk/nationalstudies/housing/housing-briefings/Pages/leasehold-management.aspx

[20] Enfield Homes, Leaseholder Satisfaction Survey, June 2011 http://www.enfieldhomes.org/enfieldhomes/LinkClick.aspx?fileticket=MMpPtTQQRPo%3D&tabid=398

[21] Newham Homes, May 2010 http://www.audit-commission.gov.uk/SiteCollectionDocuments/InspectionOutput/InspectionReports/2010/newhamhomesalmo20may2010REP.pdf

[22] Homes In Havering, November 2009 www.almos.org.uk/include/getDoc.php?fid=1405&did=1551

[23] Leaseholder satisfaction with Homes for Islington, 2008 http://www.homesforislington.org.uk/About%20us/Performance/Tenant%20Satisfaction%20Survey/Leaseholdersatisfactionsurvey2008.pdf

[24] Hackney Homes, 2008 http://www.hackneyhomes.org.uk/document/LAG_14.12.09_Papers.pdf

[25] Ealing Homes, 2009 http://www2.ealing.gov.uk/ealing3/export/sites/ealingweb/services/council/committees/agendas_minutes_reports/scrutiny/housing_and_regeneration_standing_scrutiny_panel/19may2009-24may2010/_14_Jan_2009/Item_7_Ealing_Homes_Appx3.doc

[26] Appendices 1 and 4 set out these issues and concerns in more detail

[27] Appendix 4 sets out some of the leaseholder frustrations

[28] Local authority leaseholders are covered under the right to manage provisions of the Leasehold Reform, Housing and Urban Development Act 1993

[29] Appendix 4 sets out some of these problems

[30] For example, written submissions SC014, SC079, SC081, SC084 highlight some specific issues

[31] For example London borough of Haringey day to day services include: estate and block cleaning; lift maintenance; heating and lighting costs; grounds maintenance; concierge services; building insurance; communal TV aerials; controlled entry; CCTV; pest control; water pump maintenance; water tanks. Written submission SC009

[32] Appendix 1 sets out the distinction between fixed and variable service charges

[33] Section 20 of the Landlord and Tenant Act 1985 (as amended by S151 of the Commonhold and Leasehold Reform Act 2002) sets out the precise procedures landlords must follow; these are the Service Charges (Consultation Requirements) (England) Regulations 2003 ('the Regulations').

[34] Or over £100 per year under a long-term agreement

[35] Meeting with DCLG 13 December 2011

[36] Note the LVT is unable to make case law – precedent and case law is made by the Upper Tribunal and High Court

[37] Under S20ZA [I]) of the Landlord and Tenant Act 1985 landlords can dispense with the consultation requirements in a particular case 'if satisfied that it is reasonable to dispense with the requirements'

[38] http://www.lease-advice.org/publications/documents/document.asp?item=19#17

[39] Appendix 1 sets out the complexity of the 'future major works' consultation process to illustrate how confusing it can be for leaseholders

[40] Written submission SC007, a north London leaseholder. Some decent homes works have resulted in service charges reaching up to £90,000 - examples can be found here http://www.guardian.co.uk/money/2005/may/14/housingpolicy.society

[41] For example LB Newham (SC013), Royal Borough of Kingston upon Thames (SC028), LB Harrow (SC029) and LB Southwark (SC050)

[42] Arms length management organisations (ALMOs) were first established in 2002. Under an ALMO the local authority retains the housing stock and controls the allocation policy. Central to the ALMO ethos and crucial to their success is the direct involvement of tenants in management. ALMO Boards are made up of tenants, councillors and independent members who reflect the local community

[43] CityWest Homes, 23 January 2012

[44] City of London, written submission SC016

[45] Written submission SC007 - south east London leaseholder

[46] Written submission SC056 – north London leaseholder

[47] Service Charge – Residential Management Code and Additional Advice to Landlords, Tenants and Agents, April 2009

[48] Ibid

[49] One Housing Group, meeting 23 January 2012

[50] The ARHM was founded in 1991 and now represents 56 member organisations who manage 105,000 retirement properties in the UK http://www.arhm.org/

[51] The Decent Homes Programme aimed to provide a minimum standard of housing conditions for all those who are housed in the public sector. The government set out a target in 2000 that it would "ensure that all social housing meets set standards of decency by 2010."

[52] www.londoncouncils.gov.uk/London%20Councils/2010DecentHomesresponse.pdf

[53] http://www.insidehousing.co.uk/100000-council-homes-will-still-be-non-decent-in-2015/6511478.article

[54] Mayor's revised housing strategy, Appendix 2 http://www.london.gov.uk/sites/default/files/London%20Housing%20Strategy%20Dec11.pdf

[55] ARMA written submission SC019 points to the case: Garside & Anson v RFYC Ltd & Maunder Taylor [2011] UKUT 367

[56] http://www.dailymail.co.uk/property/article-2039128/MARKET-WATCH-Flat-owners-win-record-1m-payout.html

[57] http://www.cqra.org/images/stories/PDFS/s27%20decision.pdf

[58] ARMA, written submission SC019

[59] ARMA, written submission SC019

[60] Written submission SC081, a central London leaseholder group

[61] Written submission SC078, west London leaseholders now with share of freehold

[62] Affinity Sutton, written submission SC011

[63] Written submission SC059, a south west London resident association

[64] ARMA, written submission SC019

[65] Ibid

[66] http://www.arma.org.uk/public/h/why_use_a_managing_agent

[67] ARMA, written submission SC019. "We make all members join one of three approved ombudsman schemes so that leaseholders can have independent assessment of their complaints if they are not satisfied with the response of the ARMA member. The schemes do allow for compensation to be paid."

[68] Written submission SC059, a south west London resident association

[69] Camden Leaseholders Forum meeting 6 December 2011

[70] The Government's Efficiency and Reform Group aims to tackle two key priorities: making Government more efficient: reducing operational overheads to give taxpayers better value and allow resources to be focused on key priorities; and radically reforming the way public services are provided to ensure transparency to improve accountability http://www.cabinetoffice.gov.uk/unit/efficiency-and-reform-group

[71] Camden Leaseholders Forum, meeting 6 December 2011

[72] Written submission SC046, G15 – the group of London's largest housing associations

[73] http://www.nftmo.com/tmo.html

[74] Southwark Council, meeting 23 January 2012

[75] http://www.blocnet.co.uk/

[76] ARMA meeting 23 January 2012

[77] Ibid

[78] Camden Leaseholder Forum, meeting 6 December 2011

[79] DCLG meeting 13 December 2011

[80] Residential Property Tribunal Service, written submission SC049

[81] Ibid

[82] ARMA, written submission SC019

[83] Written submission SC020, two north London leaseholders

[84] Written submission SC024 a north London leaseholder group

[85] http://www.college-of-law.co.uk/About-the-College/Legal-advice---London/

[86] Ibid

[87] National Pro Bono Centre, 48 Chancery Lane, London, WC2A 1JF www.lawworks.org.uk/lw_mediation

[88] The Upper Chamber (Lands Tribunal) establishes precedents for the LVT as does the Court of Appeal

[89] http://www.lease-advice.org/lvtdecisions/

[90] Residential Property Tribunal Service meeting 21 December 2011

[91] Ibid

[92] Written submission SC059, east London leaseholder and landlord

[93] Residential Property Tribunal Service meeting 21 December 2011. The Tribunal Service cites customer satisfaction scores of around 76 per cent and performance indicators on speed of decisions (ie within 20 weeks of a service charge application) as evidence that service standards are being maintained

[94] ARMA, meeting 23 January 2012

[95] LEASE, meeting 23 January 2012

[96] CityWest Homes, meeting 23 January 2012

[97] LEASE now refers people who need this type of help to the National Mediation Helpline and the Leasehold Valuation Tribunal. http://www.lease-advice.org/news/story/?item=53

[98] Residential Property Service meeting 21 December 2011

[99] Other options are available for this group of leaseholders – see paragraph 4.24

[100] ARMA written submission SC019 ARMA sets out the distinctions between different forms of management ie differences between simple Resident Management Companies and those arising from exercising the 'right to enfranchise' or 'right to manage' under the 2002 Act.

[101] Written submission SC081 a west London leasehold organisation

[102] Written submission SC059, an east London leaseholder

[103] Written submission SC079, south west London leaseholder group

[104] Written submission SC091, south west London leaseholder group

[105] Written submission SC012, Russell Cooke LLP

[106] Written submission SC049, Residential Property Tribunal Service

[107] Martin Green, Head of Home Ownership and Tenant Management Initiatives, Southwark Council, meeting 23 January 2012

[108] Written submission, SC061, a north London leaseholder

[109] Written submission, SC054, a north London leaseholder

[110] Written submission, SC097, a north London leaseholder

[111] Written submission SC049, Residential Property Tribunal Service

[112] Written submission, SC051, a Birmingham leaseholder

[113] Written submission SC024, a group of north London leaseholders

[114] Southwark Council, meeting 23 January 2012

[115] CityWest Homes, meeting 23 January 2012

[116] Written submission SC079, a south west London leaseholder organisation

[117] ARMA, 23 January 2012

[118] Written submission SC079, south west London leaseholder organisation

[119] Written Answers to Questions, 28 March 2011 http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110328/text/110328w0001.htm

[120] CLG meeting 13 December 2011

[121] House of Lords, 7 November 2011 http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/111107-0001.htm

[122] The Government website says "You can create an e-petition about anything that the government is responsible for and if it gets at least 100,000 signatures, it will be eligible for debate in the House of Commons. Successful e-petitions will be communicated to the Backbench Business Committee. It will decide if your issue will be debated in the House of Commons."

[123] http://epetitions.direct.gov.uk/petitions/2127

[124] Residentsline Newsletter No 6, Summer 2003 - Residentsline provides insurance and associated services to managers of residential properties http://www.residentsline.co.uk/pdf_files/Service_Charges.pdf

[125] Written submission SC069, a north London leaseholder

[126] Written submission SC094, an east London leaseholder

[127] Written submission SC086, Peverel Property Management

[128] Written submission, SC091 – a south west London leaseholder group

[129] House of Commons Research Paper 01/115 , 14 December 2001

[130] Ibid

[131] http://www.theyworkforyou.com/wrans/?id=2009-06-09c.278364.h

[132] Written submission, SC091 – a south west London leaseholder group

[133] http://www.lease-advice.org/documents/Alternative_Dispute_Resolution.pdf

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