

SERVICE CHARGE DIFFICULTIES

By **Graham Kinnear**

Many of you who own leasehold property will no doubt have seen your service charges climbing over the last couple of years. In many cases such increases are justified by the increasing costs of building works and ever-increasing building insurance rates. However, some leaseholders are being subjected to unfair and sometimes unlawful new charges, and increases in existing ones, so this month we are going to look at some of the due diligence you can undertake to ensure that what you are being asked to pay your freeholder or their managing agent is fair.

The first piece of advice I can offer you is rather fundamental – and that is to thoroughly read the lease. The lease will include provision in terms of what the leaseholder is obliged to contribute for, and will detail whether you are obliged to keep something in repair (ie to the condition it was) or whether you are obliged to contribute to put something in repair (ie fix or improve it from its current condition). Furthermore, the lease will detail any provisions in respect of an annual sinking fund (basically a savings facility to pay piecemeal towards expensive items such as lift replacement) and a reserve fund (a fund where, subject to lease provisions, the freeholder can retain any unspent service charge monies from the previous accounting period).

The lease will typically have attached "Schedules", which normally detail the obligations under the lease. The overriding theme in most leases is that any charges should have been reasonably incurred by the landlord.

The next thing to be aware of is that the demand for payment needs to be correct. Attached to it must be a summary of the leaseholders' rights and obligations, and it should state the name of the landlord in accordance with the 1987 Landlord and Tenant Act.

Upon receipt of the demand, you are entitled to ask the freeholder questions about the

service charge demand. I often ask them to confirm whether a commission has been received in respect of the insurance premium and if so, ask that it be removed from my service charge on the basis that this is not reasonable when I am also being asked to pay a management fee. The ability to charge late payment fees is rarely explicitly found in a lease and so any such charges made against you where this is the case can be challenged.

You may also wish to query any large, proposed works as anything that will cost you more than £250 or involves an agreement for more than 12 months, should mean that the landlord first engages in a formal "Section 20" consultation period. Failing to do so will severely impair their ability to recover costs later on.

If you are unhappy with the responses you get to your queries then you still have some options. You have the right to ask the First Tier Tribunal to determine whether you are liable to pay part or all of the service charge and indeed you can make such a submission even after you have paid the service charge, unless you have admitted that you agree the sum was due. This is called a 27a Application.

Alternatively, or in addition, you have the right to request that your landlord provide a written summary of the various costs which make up the service charge, and you are further entitled to see the accounts, receipts, invoices and any other documents that form the basis of the service charge and to take copies of them.



Historically, I made a referral to the First Tier Tribunal when the freeholder sought to charge me for the entire cost of roof replacement for a block of six flats when I only owned one of them. More recently, upon requesting to inspect the invoices and receipts that formed a service charge, I discovered invoices for work which related to a different block of flats managed by the same managing agent. I have also discovered the payment of a managing agent's fee twice for the same period.

We have to accept that there is a cost of managing and maintaining a block of flats and I have no issue in paying my contribution provided it is reasonable, complies with the lease and complies with the legislation. Many of us own our property within a company structure and if nothing else you owe a statutory duty as a company director to ensure that payments you make are correct. Reviewing service charge demands is therefore part of this required due diligence.

I wish you a peaceful holiday season and wish you well with your property endeavours for 2025.

As always, I am happy to assist YPN readers and can be contacted on 01843 583000 or graham@grahamkinnear.com

