

Briefing Paper

Rents and Service Charges

June 2013

Rents

Before 1989 the system of 'secure' tenancies included the determination of 'fair rents' by the rent officer. In 1989 the system of assured tenancies was introduced. Between 1989 and 2002 rents for assured tenancies were set by the individual Housing Association on the basis of:

- Below market rents
- Affordable rents for low paid employees
- Some relationship to asset values
- Allowing the landlord to meet current financial commitments, historic costs and provide for future commitments

Until 2002/03 local authorities had their own local policies for setting rents. Since then authorities have been re-structuring their rents in accordance with government guidance that is aimed at achieving a coherent structure of social rents between 2002 and 2015. Government guidance is for authorities to move all rents from the current levels to the formula in equal annual instalments from 2002 to 2015.

Management of rent collection and rent arrears is an important part of housing management. In reviewing rent arrears management, consideration should be given to the following key areas:

- | | |
|---------------------------|---------------------------|
| • Policies and Procedures | • Former Tenants' Arrears |
| • Arrears Prevention | • Performance Review and |
| • Arrears Recovery | Continuous Improvement |
| • Legal Action | |

Rent Restructuring

Since April 2002, councils and housing associations have generally set their rents based on a national formula that reflects a property size, location and condition. The government's objective is to achieve a structure of social rents where:

- Social rents are affordable and well below those in the private sector
- Social rents are fairer and less confusing for tenants
- There is a closer link between rents and the qualities that tenants value in properties
- There is a reduction in unjustifiable differences between the rents set by local authorities and by registered social landlords.

Formula rents are based 70% on local earnings and 30% on property values. There is also an element to reflect bedroom numbers. Local discretion is limited to setting rents within a band of 5% above or below the target rent derived from the formula – although authorities must not use this discretion to increase or reduce average rents.

The rent formula works in the same way in all local authority areas and is based on comparing local data with national averages. For example, a property owned by a Local Authority and valued at £100,000 in 1999 located in London would have attracted the following formula rent in 2000/01:

Average value of Council properties:	£41,350	(1999 data is used)
Value of example property:	£100,000	(1999 data is used)
National average weekly earnings:	£318.10	
London average weekly earnings:	£358.10	
National average weekly Council rent:	£45.61	(2000/01 figure)

Weekly Rent = $((358.10/318.10) \times 45.61 \times 0.7) = £35.94$

Plus $((100,000/41,350) \times 45.61 \times 0.3) = £33.09$

So Weekly Rent = $£35.94 + £33.09 = £69.03$

The rent in the illustration is at 2000/2001 values. The average rent is increased each year to reflect inflation and the national average real terms increase. In 2006/07 the data was amended to refer to housing association data as outlined below but the operation of the formula remains the same. There are only small rent changes on refurbishment. Improvements do not greatly increase rents, as the value element is only 30%. Rent increases for items including new central heating are only possible through use of the 5% discretion.

The 'bedroom weightings' are now: Bed sits 0.8, One-bedroom 0.9, Two-bedroom and houses in multiple occupation 1.0, Three-bedroom 1.1, Four-bedroom 1.2, Five-bedroom 1.3, Six or more bedrooms 1.4.

The intention of Rent restructuring is that similar social tenants renting similar homes in the same area would have similar rents regardless of their landlord. It was intended gradually to put an end to the pre-2002 situation in which the rents charged by neighbouring councils for similar properties could vary by a third or more, and housing associations could charge over half as much again as councils for similar properties in the same area.

The Government recognised concerns that these policies would result in large increases for some tenants and therefore introduced 'caps' and 'limits':

- The 'Limit' is that real terms increases in rents for individual tenants are limited to 0.5% plus £2 per week in any year above the normal inflation-linked increase.
- The 'Caps' are absolute limits in place for dwellings dependant on the number to bedrooms.

The 'caps' depend on the number of bedrooms and are increased by 1% in real terms each year. Where rents are already higher than this, they should be gradually reduced in real terms.

While rent restructuring has been introduced through guidance rather than legislation there were strong incentives for authorities to follow the guidance and as a result most authorities are doing so. If authorities set their rents below the level of the guidance they would lose resources while if they set them above the guidance they would incur subsidy penalties. The Inspection regime also encouraged authorities to adopt good practice as defined by government. However, with the abolition of the audit commission and the housing subsidy system there are now fewer constraints on the setting of rents by local authorities.

When the rent restructuring formula was designed, it was decided to use 1999 as the valuation year because it was argued that the significant increases in property values following 1999 that particularly affected London were aberrational. Since 2001 these trends have continued and the gap between property values in London and other parts of England has increased further. An updating of the valuation year used would therefore increase relative rents in London and reduce them in areas where increases in market values have been more modest. However, the government has continued with 1999 as the base year thus preventing even greater increases in rents being made in some of the higher value areas.

It is now assumed that rent restructuring will be completed in 2015/16. This assumption underpins the self-financing settlement and is the basis of most local authority housing revenue account business plans.

The ability of a Housing Association to borrow depends on future rent levels and so many Housing Associations find that the rent influencing regime acts as a constraint. The Housing Finance Corporation has called for a date to be set for an end to restrictions on rent increases with a view to allowing Housing Associations to prepare business plans based on long-term rent increases that could fund short-term investment. However, such a policy would have an impact on the government's housing benefit budget and implications for the government's policy of achieving 'convergence' between Housing Association and local authority rents.

The Government has not given a commitment to continue current social rent policy beyond 2015 and has floated the idea of moving away from using the Retail Price Index to calculate rent increases to using the Consumer Price Index, and also to ending the policy of increasing rents by 0.5% a year above inflation. If this were to happen rent increases would probably be lower as the Consumer Price Index tends to rise slower than the Retail Price Index. However, housing association business plans are based on real term increases in rents generating resources for revenue costs, improvements, new build and the provision of services to communities.

In November 2012, Riverside Housing Association calculated that switching to the Consumer Price Index to determine rents would have a significant effect on its income and therefore its capacity for development. It calculated that the change would result in a reduction in its rent of £38.8million and a reduction in its development programme of 5,000 units over five years.

Local Authority Rent Increases 2013/14

The increase in the retail price index from September 2011 to September 2012 was 2.6% so rent increases of 3.1% could be expected in April 2013. However, different local authorities are taking different approaches.

In December 2012, Southwark Borough Council consulted on recommendations that would see an average 4.85% rise in council housing rents for 2013/14 whilst other charges would be frozen for a year to help tenants.

The proposed rise equates to £4.46 a week on average, with an average weekly rent of £96.40 from April 2013, pending a final decision in January 2013.

The increase would be in line with government guidelines and national formulae, and would form part of the council's long-term strategy to build and develop a solid financial base for the delivery of social housing in Southwark.

Council rents in Sandwell are to rise following the Government's scrapping of Decent Homes cash for housing improvements (see section on capital programmes). Government changes to the way housing benefit is paid and rules that have led to more people buying their council home are also forcing up rent bills.

Sandwell Borough Council froze rents in 2011 - but say they now have no choice but to increase rents. The Council is being recommended to approve an average rent rise of 9.6% from April 2013.

Wolverhampton City Council's rents will increase by more than twice the rate of inflation in April 2013. Wolverhampton Homes, that manages 23,500 properties for Wolverhampton City Council, consulted with residents on three proposed increases - five, six or seven per cent - and said the 'narrow' majority had opted for the middle one. Inflation is currently 2.7%. However, a report from Wolverhampton Homes reveals that just 101 tenants attended consultation meetings and took the opportunity to express a preference. The average rent is currently £72.39 per home per week following a 5.6% rise imposed in April 2012 but will go up to around £76.72 per week.

David Poyner, Chairman of the Vauxhall Residents Association in Wolverhampton told the local *Express and Star* newspaper:

"Most people's income will not be increasing by six per cent to cover this."

Affordable or Intermediate Rents

In 2011 the government introduced a new policy of encouraging housing associations to set rents at 80% of market rents. This level of rents they described as 'affordable rents'. This policy is linked to the government's approach to new build where they have reduced the budget and are looking for housing associations to develop with a lower level of grants or even with no grants. The national affordable housing programme is considered in more detail below but the government calculates that if housing associations let new homes and a proportion of re-lets at the new 'affordable' level then it will be possible for them to achieve the government's target for new build.

Affordable Rent can be set at up to 80% of the gross market rent, including service charges. Tenants in Affordable Rent properties will be eligible for housing benefit, rather than Local Housing Allowance. Housing associations will retain the option to offer lifetime tenancies under Affordable Rent, should they wish to do so. At the end of an Affordable Rent tenancy, housing associations and their tenant may choose to convert it to shared ownership. It will be for housing associations to decide what proportion of their re-lets they propose to convert to Affordable Rent to fund new supply. Housing associations using Affordable Rent will be encouraged to reinvest in new supply within the same wider housing market area. However, funding will not be ring-fenced to particular areas.

The Homes & Communities Agency expect that housing associations will use the flexibility to charge rents of up to 80% of market rent. Where housing associations choose to charge lower rates the Homes & Communities Agency will need to understand how the proposal helps to meet particular housing needs while still delivering value for money for the taxpayer and generating the capacity required to deliver new supply. There is a presumption that grant will not be available unless all new homes and a proportion of re-lets are let at the 80% intermediate rents.

Affordable Rent cannot be lower than the rent calculated on the current target rent regime. This is likely to apply in some low value areas where market rents are so low that social rents already exceed 80% of market rents.

Tenants in Affordable Rent properties will be eligible for Housing Benefit, rather than Local Housing Allowance.

The maximum annual rent increase on an Affordable Rent property will be Retail Price Index (RPI) +0.5%. Additionally there is a requirement to rebase the rent each time a new Affordable Rent tenancy is issued or renewed.

It is difficult to determine what 80% market rent should be for supported housing, given the absence of comparable schemes charged at a market rate to use as the basis for any calculation. In many cases supported housing, targeted specifically at the most vulnerable in society, may not be affordable at 80% market rent. However, there is a view that as intermediate rent housing will be targeted at working groups there is not likely to be much supported housing being developed.

In many high cost areas, rent set at 80% of market rent is unaffordable for many tenants. Housing associations need to consider affordability based on local incomes when setting levels for Affordable Rent and, where necessary, make a case for setting rent at lower than 80% of market rate. Otherwise the result will be to force more tenants to rely on benefits.

There is a danger that at 80% of the market rent, larger properties may remain unaffordable to many, particularly given the government's plans to cap benefits at £26,000 per year.

However, Intermediate rent housing is likely to be sought by a different group of tenants than social housing. Traditionally, intermediate rent schemes have been developed for the benefit of key workers who are unable to afford market housing to buy or rent in high value areas. These tenants are unlikely to claim full benefit.

Family Mosaic Housing Association published a study of the effects of intermediate rents on housing benefits in London and the Southeast in February 2011. It considered the position of fifty tenants and concluded that their housing benefits would increase by 151% if intermediate rents were introduced. However, a spokesperson for Communities & Local Government was quoted in 'Inside Housing' as saying:

"Many of the households that will benefit from these homes will have been living previously in the private rented sector paying 100% of market rents.

"This confirms the view that intermediate rents are intended for a different group of tenants to social tenants."

Pegging rents to market rents exposes housing providers to a new level of risk – where rental income could fall because local private rent levels fall. These risks will need to be addressed in business plans.

The Homes & Communities Agency has published data on the difference between intermediate and social rents by region as shown below:

Region	Intermediate Rent £/week	Social Rent £/week	Difference £/week
London	£248	£102	£146
Southeast	£149	£91	£58
Southwest	£120	£77	£43
East	£118	£82	£36
Yorkshire & Humberside	£96	£67	£29
Northwest	£97	£69	£28
Northeast	£91	£66	£25
West Midlands	£97	£75	£22
East Midlands	£90	£73	£17

However, these regional figures mask significant differences within regions. For example, in Cumbria there are significant differences between Intermediate and Social rents in Eden and South Lakeland and no significant differences in Allerdale, Barrow or Copeland.

Average social rent levels are 73% of market levels across England. However, there are regional variations from 65% in London to 80% in the Northwest. Moving to affordable (80% of market) rents therefore represents a larger change in London than other areas.

In London there is a 'stand-off' in many areas with local authorities refusing to agree schemes that include affordable (80% of market) rents and stipulating that all rents should be at 60% of market rents (i.e. social rents).

In October 2012 the Parliamentary Committee of Public Accounts found that affordable rents would add £1.4billion a year to the housing benefit bill. Margaret Hodge MP, Chair of the Committee, stated:

"The programme therefore shifts costs from one government department to another, and it is unclear whether this will provide better value for money in the long term... Where higher rents are paid through increased housing benefit, tenants may find it even harder to find work that pays enough to be worthwhile, undermining the government's objective of ensuring that the benefit system makes work pay."

During 2012 the government consulted on a proposal that rents should be increased for tenants whose annual income exceeds £60,000. They have also suggested using the Consumer Price Index to calculate future rent increases that would result in lower increases than continuing to use the Retail Price Index.

In contrast, housing associations have argued that there should be more flexibility surrounding rent setting so that they can raise additional resources to fund development.

The Rent Standard

Upon taking over responsibility for the regulation of registered providers in April 2012 the Homes & Communities Agency issued a rent standard as follows:

The required outcomes are:

Registered providers shall charge rents in accordance with the objectives and framework set out in the Government's direction to the regulator of November 2011.

Specific expectations are:

- Registered providers shall ensure they meet the following requirements, which derive from the Government's direction to the regulator of November 2011, and the 'key requirements' set out in the Rent Standard Guidance that accompanies this standard.
- Subject to paragraphs 1.3 and 1.5, registered providers shall set rents with a view to achieving the following so far as possible:
 - Rents conform with the pattern produced by the rent formula set out in rent influencing regime guidance¹² ('target rents') with a 5% tolerance in individual rents (10% for supported and sheltered housing) ('rent flexibility level') but subject to the maximum rent levels specified in that guidance ('rent caps').
 - Weekly rent for accommodation increases each year by an amount which is no more than $RPI + 0.5\% + £2$ until it reaches the upper limit of the rent flexibility level or the rent cap, whichever is lower.
 - Weekly rent for accommodation that has reached or is above the upper limit of the rent flexibility level increases each year by an amount that is no more than the increase to the target rents. 1.2.4 Rent caps increase annually by $RPI + 1\%$.
 - Target rents increase annually by $RPI + 0.5\%$.
- The requirements (above) do not apply to homes let on Affordable Rent terms... Where accommodation is let on Affordable Rent terms, registered providers shall set rents with a view to achieving the following, so far as possible:
 - Rent for accommodation (inclusive of service charges) is set at a level which is no more than 80% of the estimated market rent for the accommodation (inclusive of service charges), based on a valuation in accordance with a method recognised by the Royal Institution of Chartered Surveyors.
 - Rent for accommodation increases each year by an amount which is no more than $RPI + 0.5\%$.
 - Rent for accommodation is re-set, based on a new valuation, each time the accommodation is:
 - (i) Let to a new tenant, or
 - (ii) Re-let to the same tenant (but where a probationary tenancy comes to an end and the registered provider re-lets the accommodation to the same tenant the provider is not required to re-set the rent).
- Affordable Rent terms can only be used where a delivery agreement for new supply of social housing has been agreed under a new supply agreement entered into between a private registered provider and the Homes and Communities Agency or the Greater London Authority under the 2011-15 Affordable Homes Programme Framework.
- Where the application of the Rent standard would cause registered providers to be unable to meet other standards, particularly in respect of financial viability including the risk that a reduction in overall rental income causes them to risk failing to meet existing commitments such as banking or lending covenants, the regulator may allow extensions to the period over which the requirements of the rent standard are met.
- Registered providers shall provide clear information to tenants that explains how their rent and any service charge is set, and how it is changed, including reference to the RPI benchmark to which annual changes to rents should be linked (except where rents are controlled under different legislation).

New Approaches to Rents

The government believes that tenants with high incomes should not continue to benefit from relatively low social rents. In September 2012 they issued a consultation paper. In it they have proposed that there should be an income threshold above which tenants would pay a higher rent. Their suggested threshold is £60,000 a year but there is no proposal to take into account the savings of tenants or their relative outgoings. It is estimated that between 12,000 and 34,000 social tenants have an annual income in excess of £60,000. If this change were to occur it could result in increased administrative costs for local authorities as they would have to gather and validate information about the incomes of tenants.

In September 2012 the Office for National Statistics consulted on options for changing the calculation of the retail price index to move it closer to the consumer prices index. The consumer prices index tends to increase by less than the retail price index and as the rent formula is based on the retail price index any change would result in lower increases in rents than those assumed in the self-financing settlement.

In August 2012, Hammersmith & Fulham Borough Council asked the government for the same freedom as housing associations to let void or new build homes at market rents. This would enable the Council to raise more rent and help them to balance the housing revenue account and invest in more affordable housing. The Council also considers that it could help tenants to move out of social housing.

In January 2013, Westminster City Council announced that the length of new council tenancies and the way in which their rents are calculated would change. The changes are scheduled to come into effect from April 2013. Rent charged for new fixed-term tenants will allow for increases up to market rent value, if the income of the tenant and their spouse exceeds the Mayor's thresholds for eligibility for affordable housing, currently set at £77,200 for households living in three bedroom homes.

Service Charges

Service Charges can be made on tenants or leaseholders. Tenants would not pay for repairs & maintenance or capital costs as these are met by the landlord and paid for through rents. However, leaseholders do pay their share of these costs.

Some tenancies involve a charge for services. This is for services that are not covered by the rent. Examples could include: Caretaking, Lifts, Door entry phones, gardening in communal areas, Lighting in communal areas or Communal TV aerials.

Housing Benefit usually covers these communal charges. However, it does not cover charges for services to individual homes such as heating and hot water, lighting and water charges within a dwelling or TV licences. A tenant needs to pay for these separately through the service charge. Neither does housing benefit cover services of a personal nature such as cleaning nor services where the tenant can opt out of the service and therefore the charge.

Landlords usually review service charges once a year and tenants and leaseholders have the right to see a summary of the costs that make up the bill.

The Landlord and Tenant Act 1985 sets out the basic ground rules for service charges. It:

- Defines what is considered a service charge
- Sets out requirements for reasonableness and for prior consultation of leaseholders
- Defines a service charge as 'an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable directly or indirectly for services, repairs, maintenance, improvements or insurance or the landlord's costs of management and the whole or part of which varies or may vary according to the relevant costs'

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- Provides that the items included are those required to be reasonable and on which a Leasehold Valuation Tribunal may make a determination of reasonableness.

Service Charges for Tenants

Historically, Council tenants have had their service charges included with their rents, but tenants of housing associations usually have their rents and service charges assessed separately. However, during recent years most councils have introduced service charges for tenants.

The Landlord and Tenant Act 1985 sets out the basic ground rules for service charges, defining what is considered a service charge and setting out requirements for reasonableness. Section 18 (1) of the Act defines a service charge as 'an amount payable by a tenant of a dwelling as part of or in addition to the rent:

- Which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management; and
- The whole or part of which varies or may vary according to the relevant costs.'

What is rent and what is a service is not clearly or fully defined in law. Fixed service charges may be part of rent whilst variable service charges, because they can be changed between rent reviews, are not. Traditionally, a service charge is viewed as something over and above what a tenant normally pays for occupying a home.

Tenants do not pay service charges for capital costs as these are the costs of the landlord and are recovered through the rent, but often pay service charges for revenue costs that could include: Boiler Maintenance, Lift Maintenance, Heating, Lighting, Cleaning and Grounds Maintenance.

The government has decided that local authorities should have discretion in whether to implement service charges based on local circumstances. There is a broad definition of what could be classed as a service charge. The service charge can be based on actual costs per property or on a fixed charge to all affected properties.

Where service charges are introduced or increased the amount the tenant actually pays in rent and service charges should be contained within the Retail Prices Index plus 0.5% plus £2 per week limit (except for new services). The local authority has the discretion to decide on the total split between rent and service so long as the service charge is not greater than the cost of the services provided and that the total charge stays within the limit rent. Subsequently, service charges can be increased by no more than Retail Prices Index plus 0.5% in any year. For those authorities that aim to recover the full cost of services provided this objective could be difficult with this limit in place. Where caps on rents are in place a service charge can be implemented in addition to the cap.

Many councils have decided to introduce service charges for tenants. The introduction of service charges for all tenants is a potentially complex matter. In particular there is a need to consider:

- The services for which it would be appropriate to make a service charge. Some areas are controversial. Should tenants be charged for lifts? Leaseholders are charged for lifts but the government believes tenants should not be as a lift is integral to the tenancy.
- The basis on which service charges should be calculated – including whether there should be fixed or variable service charges; and whether there should be advance and interim payments
- The effect of introducing service charges on rents in view of the government guidelines on rent restructuring and service charges
- The effect of introducing service charges on income in the Housing Revenue Account

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Matters that affect tenants include:

- The views of stakeholders (especially tenants) on service charges
- The eligibility of service charges for housing benefit
- The impact of service charges on tenants and affordability.

Service Charges for Leaseholders

Where a local authority has sold a flat under 'right to buy' legislation the new owner becomes a leaseholder and is obliged to pay service charges for services that continue to be received from the landlord such as maintenance of lifts and cleaning of communal areas. Service Charges also apply in other properties with communal services.

Revenue costs that are recovered through service charges could include: Revenue Repairs and Maintenance, Boiler Maintenance, Lift Maintenance, Heating, Lighting, Cleaning and Grounds Maintenance. Such building related service charges are usually eligible for housing benefit.

The Housing Act 1985 Schedule 6 ensures all leases granted under the Act have several features in common:

- the ground rent is set at £10 per annum
- the landlord is responsible for building insurance
- leases are to be for 125 years, with leases in a single block ending at the same date, meaning that after the first sale of a dwelling in a specific block, other "Right to Buy" leases are for less than 125 years
- the landlord must maintain the common parts of the building and estate

It is important to ensure that any service charges made would be considered 'reasonable' under the terms of the 1985 Landlord and Tenant Act (sections 18 – 30) and the 2002 Commonhold and Leasehold Reform Act in the view of a Leasehold Valuation Tribunal. It is also important to ensure that service charges can be levied under the terms of the lease.

Usually the lease simply provides for the landlord to recover their outlay for maintenance, repair and upkeep of the building, including management costs, from the leaseholders. The landlord is reimbursed for their expenditure, but is not given the opportunity to make a profit from the management. Landlords may also collect charges for administration, insurance, ground rent or estate management.

The 2002 Commonhold and Leasehold Reform Act expects the landlord to behave in a 'reasonable' manner with regard to their expenditure on the building. The landlord has a long-term interest in maintaining the condition and the value of their investment. The leaseholder may have a much shorter-term view, only intending to remain in the property for a few years. These different viewpoints need to be reconciled. A landlord is not usually bound to minimise the costs but their costs must be reasonable.

Service charge payers must be consulted before the landlord commences capital works that will cost any leaseholder more than £250, or enters into a long-term contract worth more than £100 for any leaseholder in any accounting year. Landlords must also issue leaseholders with a section twenty notice that includes an estimate of costs prior to the works starting.

Demands for payment must be served within time limits (18 months), and new legislation that came into force on 1st October 2007, requires a summary of the leaseholder's rights and obligations to accompany such demands.

Capital costs that are recovered through service charges could include: Major Repairs to Buildings, Lift Replacements and Boiler Replacements.

Landlords have options for making service charges that include:

- Fixed or Variable Service Charges – Fixed charges are set at the start of the year whereas variable charges are based on actual costs.
- Advance, Interim and Final Charges – Landlords can collect charges in advance, through interim payments, as a final charge or through a combination of these.

Councils can only recover costs that have been reasonably incurred and are in accordance with the lease and relevant legislation. Lessees have a right to be given information about variable service charges and may inspect the accounts on which the charges are based. They can challenge service charges at a Leasehold Valuation Tribunal if they believe these are unreasonable.

During 2012 a number of leaseholders took their landlords to the leasehold valuation tribunal to dispute service charges on the grounds that they were not properly consulted, the work was not necessary, the work was poor or the costs were excessive. In the majority of cases they were successful. The case involving the largest amount of money (£2million) concerned Westminster City Council and major repairs to a block of flats that were completed in 2010. The tribunal found in February 2012 that the notice of intention document served to leaseholders was 'confusing, difficult to understand and so flawed it is invalid... Lessees were misled about the nature of the works intended to be carried out... Sums payable under the contract are limited to £250 per lessee'. The Council intends to appeal.

In another case, Islington Borough Council was found to have carried out unnecessary works and consequently service charges were reduced by £210,000. The Council had replaced the roofs on two blocks of flats in 2010/11 as part of its decent homes programme. The roofs were originally installed in 1967 and as the guidance from Communities & Local Government is that roofs should be replaced after thirty years the Council decided to replace them. However, the leaseholders' expert argued that the roofs could be expected to last fifty years and that they had not needed replacing. A similar argument was made about some replaced windows.

The tribunal concluded that the Council was:

"Unable to produce any independent survey of the two relevant roofs and their condition prior to the works being carried out... In the case of these particular roofs, the repairs history showed in relative terms very little by way of expenditure or problem."

Birmingham City Council lost a case at the tribunal when it was ruled that a cost of £7,000 for cleaning a block of flats was 'plainly unreasonable' and that £2,000 'is a sum that would be reasonably incurred'. Dacorum Borough Council lost a case where it was found that repair work was 'very poor'. Harlow Borough Council lost a case where the tribunal found that £16,800 was an 'unreasonably high' cost for preparing and painting front entrance doors. Camden Borough Council lost a case where it had spent £234,000 on new immersion heaters in leaseholders' flats as the Council had gone over and above the terms of the leases.

These cases underline the need for proper consultation and for the work to be necessary and to represent value for money.

The statutory basis for charging service charges is enshrined within each lease. The most recent legislation is the Commonhold and Leasehold Reform Act 2002. The legislation defines the following principles that should be adopted in levying service charges:

- Charges must be based on actual costs incurred, and such costs must have been incurred reasonably;
- Charges may only be made if the services provided or works undertaken are of a reasonable standard; and
- Leaseholders must be billed, or informed of the costs incurred and the intention to bill, within 18 months of costs being incurred.

Many leases provide for the landlord to collect sums in advance to create one or more reserve or 'sinking' funds. The purpose of such funds is to build up a sum of money to cover the cost of irregular and expensive works such as external decorations, structural repairs or lift replacement.

A Sinking fund is a replacement fund where the owner builds up a fund to pay for repair and replacement of major items of plant and equipment such as lifts and boilers for communal areas.

A Reserve fund is a fund built up to equalise expenditure with regularly recurring service items to avoid fluctuations in the amount of service charge payable each year. For example, the roof on a block of flats may need to be replaced every thirty years. To avoid leaseholders facing a large service charge every thirty years and to build up resources to fund a new roof, leaseholders pay a service charge based on a thirtieth of the costs each year that is paid into a reserve fund.

There are usually two reasons for maintaining such funds. The first is to ensure that all occupiers contribute to major works, not just those who are in occupation at the time they are carried out. The second is to even out the annual charges, avoiding large one-off bills, and to assist with leaseholders' budgeting.

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