

# Briefing Paper

## Leaseholder Service Charges

### September 2010

#### Introduction

Where a local authority or housing association 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.

Landlords 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 service charges and may inspect the accounts on which the charges are based. They can challenge service charges if they believe these are unreasonable.

It is the central principle of service charges that it is the landlord who takes the decisions as to how to commit the expenditure of the leaseholders' money. This applies in all situations where flats are centrally managed and applies equally where the leaseholders themselves manage their building. However, legislation provides protection to the service charge payer and imposes rigorous obligations upon the provider.

Charges must be reasonable and may be challenged at the Leasehold Valuation Tribunal.

#### Capital Service Costs

Service charge payers must be consulted before the landlord commences qualifying works, other than under a long-term agreement, which 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 (a 'qualifying long-term agreement').

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

Service charge funds are deemed to be held in trust. In 2007 Communities & Local Government consulted on regular statements of accounts and client accounts for leaseholders. It is expected that regulations issued following this may require funds to be held in a designated trust account and that the service charge payers will have rights to information about the account and to withhold payment of a service charge where they genuinely believe the landlord is not holding the money in accordance with the legislation.

The landlord must account for all annual expenditure through a summary of relevant costs following a written request from a leaseholder or secretary of the Recognised Tenants' Association. After the summary is provided a leaseholder or secretary of the Recognised Tenants' Association can inspect the relevant documents.

The Leasehold and Commonhold Reform Act of 2002 provides that a Council must bill leaseholders for works within eighteen months of the works having been carried out. The Statute of Limitations 1980 as amended also prevents a landlord from pursuing debts that are over five years' old.

As a general rule for works of improvement, leases in the private sector do not oblige leaseholders to contribute to costs of works of improvement to the building. However, leases from local authorities and housing associations often do contain such provision.

### **Revenue Service Costs**

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 could be levied under the terms of the lease.

Usually the lease simply provides for the landlord to recover his outlay for maintenance, repair and upkeep of the building, including management costs, from the leaseholders. The landlord is reimbursed for his 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 his expenditure on the building. The landlord has a long-term interest in maintaining the condition and the value of his 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 his costs must be reasonable.

### **Options for Leasehold Service Charges**

Options to consider 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.

There are a number of issues to be considered if the landlord is to be able to recover the costs:

- Management costs: The fact that the landlord manages the building, either directly or through a managing agent, does not automatically mean that he can recover management charges. This must be provided for in the lease.
- Legal costs: As with management costs, these must be referred to in the lease. If recoverable, they can include the cost of recovering arrears or for repossession in case of another breach of the lease.
- Caretaking and portering: Where these are recoverable, the lease should be clear as to what is included in the charge: a resident or non-resident service, and, if resident, whether accommodation must be provided rent-free or not. The cost of a resident caretaker or porter will normally be higher than for a non-resident.

- Heating, cleaning, garden maintenance, alarm systems: Again, the landlord's obligation to provide such services and the leaseholder's obligation to pay are usually referred to in the lease. In some cases this may be done simply by reference to the landlord's obligations, as set out in one of the schedules to the lease.

### **Legal and Accounting Position**

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. The situation is similar where a Housing Association leases a property.

Landlords 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 if they believe these are unreasonable.

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

The Landlord and Tenant Act 1985 sets out the basic ground rules for service charges, defining what is considered a service charge, setting out requirements for reasonableness and for prior consultation of leaseholders. Section 18 (1) of the Act defines a service charge as 'an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable directly or indirectly for services, repairs, maintenance, improvements or insurance or the landlord's costs of management and the whole or part of which varies or may vary according to the relevant costs'. The items included are those required to be reasonable and on which a Leasehold Valuation Tribunal may make a determination of reasonableness.

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.

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 proposed service charges could be levied under the terms of the existing leases or that leases could be varied to accommodate the proposed service charges. It is possible that some changes to leaseholder service charges could only be made in the case of new leases.

The 2002 Commonhold and Leasehold Reform Act also expects the landlord to behave in a 'reasonable' manner with regard to his expenditure on the building. The landlord has a long-term interest in maintaining the condition and the value of his 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.

Landlords and leaseholders both have a right to ask a Leasehold Valuation Tribunal whether a charge, or a proposed charge, is reasonable; however, there is no statutory definition of what is 'reasonable'. The Tribunal will consider the evidence presented and then make a determination on the matter. The questions the Leasehold Valuation Tribunal would be likely to ask are:

- Was it, or would it be, in the circumstances, reasonable for the costs to be incurred and, if so:
  - Were or will the works or services provided be to a reasonable standard?
  - What are the landlord's procedures for assessing and controlling the costs, including supervision?

Any service charge demand and reminder letter after 1<sup>st</sup> October 2007 must be accompanied by a formal summary of rights and obligations, the content and form of which is prescribed by Parliament.

Where the landlord proposes to let a contract for the provision of services for a period of more than twelve months and the apportioned cost to any individual leaseholder is more than £100 a year he must also consult the service charge payers before proceeding.

The Best Value Accounting Code of Practice (2008) published by the Chartered Institute of Public Finance and Accountancy states that:

*“The large number of flats and maisonettes sold under Right to Buy now means that many local authorities have a sizeable proportion of leasehold property within their Housing Revenue Accounts. The costs of services provided to leaseholders under Supervision and Management, Repairs and Maintenance and Special Services need to be recovered from leaseholders. Authorities must ensure that they accurately identify such costs and that they have procedures in place to ensure their recovery. Particular care needs to be taken in assessing the costs of management and administration to be recharged to leaseholders. Organisations providing leaseholder services must provide cost information sufficient to enable enforceable service charges to be raised.”*

In collecting service charges or in holding sinking funds or reserve accounts the landlord holds the leaseholders' money for purposes of future expenditure to their benefit – in other words acting as trustee for the funds. Section 42 of the Landlord and Tenant Act 1987 requires that, where leaseholders are required under the terms of their leases to contribute towards the same costs the monies must be held in one or more accounts and be held in a trust. It is expected that Communities & Local Government will issue regulations that will require funds to be held in a designated trust account and the service charge payers will have rights to information about the account and to withhold payment of a service charge where they believe the landlord is not holding money in accordance with the legislation. The Communities & Local Government consultation paper on Reform of Council Housing Finance approves of sinking funds and proposes legislation to promote their introduction in local government. I am informed that 'Communities & Local Government' is currently working on these regulations.

Leaseholders have a statutory right to seek a summary of the service charge account from the landlord under section 21 of the Landlord and Tenant Act 1985. The summary should contain 'relevant costs in relating to the service charges payable'. Where the service charge is payable by the leaseholders of more than four dwellings, the summary must be certified by a qualified accountant as a fair summary and must be sufficiently supported by accounts, receipts and other documents produced to the accountant. As well as receiving the summary, the leaseholder has the right under section 22 of the Landlord and Tenant Act 1985 to inspect documents relating to his service charge.

Guidance on the accountant's report on service charge accounts prepared in accordance with section 21 of the Landlord and Tenant Act 1985 is currently in draft. It includes the following:

*"The accounting records are the responsibility of the Landlord... The records need to be sufficient to show all transactions involving service charges monies and to enable the person preparing the information to be satisfied that the information complies with the legislation. The accounting records would be expected to contain:*

*"a) Details of all sums of money received and expended by the landlord... and the matters to which the receipts and expenditure relate*

*"b) Documents such as invoices to support all the figures entered in the accounts*

*"c) Details of longer term contracts and income and expenditure in relation to these contracts."*

The draft guidance also specifies the information to be provided in the statement of account, the responsibilities of the local authority and the accountant, the basis of the financial report and the statements that the accountant would be expected to sign.

In May 2009 the Institute of Chartered Accountants of England & Wales on behalf of 'Communities & Local Government' issued draft guidelines on 'The Accountant's Report on Service Charge Accounts prepared in accordance with section 21 Landlord and Tenant Act 1985 (as amended)'. The guidance states the following with regard to accounting records:

*"The accounting records are the responsibility of the Landlord... The records need to be sufficient to show all transactions involving service charge monies and to enable the person preparing the Information to be satisfied that the Information complies with the Legislation. The accounting records would be expected to contain:*

- Details of all sums of money received and expended by the Landlord/Managing Agent and the matters to which the receipt and expenditure relate;*
- Documents such as invoices to support all the figures entered in the accounts; and*
- Details of longer term contracts and income and expenditure in relation to these contracts.*

*"The sophistication of the records will depend on the extent and complexity of the transactions undertaken.*

The guidance suggests that the accountant should be in a position to certify the financial statement as follows:

*"(Legislation) obliges the landlord to provide the tenant or leaseholder with information about the service charges relating to their dwelling ('the information') that explains with a prescribed minimum level of detail the costs towards which they have received demands for payment and any balances that should be held on their behalf. It also requires the landlord to provide the tenant with an accountant's report on the information about the service charges. It is my duty to perform the procedures set out in the guidance issued by (name of issuing body) and agreed with the Department for Communities and Local Government (the guidance) with respect to the information and to report my findings from those procedures to the landlord, in accordance with the provisions of (legislation).*

*"As a practising member (member firm of) of (name of accounting body), I am subject to its ethical and other professional requirements which are detailed at (web address).*

*"In summary, the procedures I carried out with respect to the information for the year ended (date) on pages n to n were:*

- To check whether the figures contained in the information was extracted correctly from the accounting records maintained by or on behalf of the landlord*
- To check whether entries in the accounting records were supported by receipts, other documentation or evidence that I inspected, and*
- To check whether the accounts information provided by the landlord contains the information required by the legislation*

*"A more detailed description of the procedures is available for inspection by the tenants at (state location).*

- The procedures performed did not constitute an audit and were not designed to provide any assurance regarding whether the amounts charged are a reasonable amount for the services, or whether those services were provided effectively*

*"(Other than as noted in the following paragraph, no exceptions were noted from my performance of the procedures set out in the guidance.*

*“(The exceptions noted were as follows)*

*“Reporting Accountant’s Signature, Individual’s name, qualification, job title and department. Date.”*

Where there are inadequate or unavailable records the guidance suggests that:

*“A course of action that would provide better protection for the tenants would be for the reporting accountants to make a statement to the tenants that, because of the poor quality of the accounting records (or other factors, as appropriate), the accountants are unable to make the report required by section 21. This would mean that the service charge information prepared by the landlord would not comply with the legislation, and the tenants could exercise their right to withhold payment of service charges as set out in the legislation.”*

In 2007 the Leaseholder Valuation Tribunal considered the case of Silver versus Hackney Borough Council. Hackney Borough Council apportioned service charges by the amount of living space available in the property, so that a one bedroom flat would pay less than a four bedroom flat. Silver (a leaseholder) contended that this was unfair and the Tribunal found against the Council.

### **Sinking Funds and Reserve Accounts**

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.

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.

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.

Leases sometimes say how much is to be contributed each year, but usually they do not and it is left to the landlord to determine the contributions. However, they must be reasonable. Because these are just like any other service charges, leaseholders have the same rights to challenge these charges at the Leasehold Valuation Tribunal if they believe they are unreasonable.

Reserve accounts and sinking funds usually earn interest because they are generally held for a longer period than day-to-day service charges, which goes some way to meet increasing budget costs.

Contributions to the reserve account or sinking fund are generally not repayable when a flat is sold, but may be if the lease so provides.

Unless the existing leases provide for the use of sinking funds or reserve accounts, it may prove difficult to introduce them without considering alterations to the lease.

Legislation is anticipated that will require landlords (including local authorities) to establish designated trust funds.

Typical major repairs and replacements for which the sinking fund would be used are:

- Roofs, guttering, pointing
- External drainage
- Footpaths, parking areas, access roads (where not adopted)
- Communal lighting and power
- TV aerial systems
- Door entry systems and warden call systems (where fitted)

Expenditure on minor repairs to any of the above would normally be met out of the service charge account.

### **Reform of Council Housing Finance: Consultation**

The Consultation Paper on Housing Revenue Account Finance that was issued by 'Communities and Local Government' in July 2009 made reference to leaseholder service charges and sinking funds as follows:

*"The review looked at the issue of leaseholders and the substantial costs that some have incurred from improvements to meet the Decent Homes Standard.*

*"A sinking fund is a reserve of funds that can be built up from contributions from leaseholders (service charges) and used for a number of purposes. Whilst often used to cover expenditure which may be incurred fairly infrequently, such as large scale works, it can also be used to meet other costs that are incurred more frequently, such as redecoration of the common parts. The use of sinking funds allow contributions from leaseholders towards the cost of such works to be spread more evenly over a longer period rather than the full amount being demanded all in one go.*

*"The legislation does not expressly prevent the operation of sinking funds but we are not aware of any local authorities that operate them. There are a number of reasons for this*

- *Technical issues related to the Housing Revenue Account rules*
- *Early local authority leases do not provide for the operation of sinking funds*
- *It is difficult to set contributions at a level that is both affordable and realistic in terms of meeting the costs of works*
- *There is no guarantee of work being carried out as scheduled (some earlier sinking funds lapsed because leaseholders were reluctant to make further contributions after work was not carried out on schedule).*

*"We propose that Housing Revenue Account rules should be amended so that they expressly allow sinking funds.*

*"On future sales, we will undertake further work to investigate whether:*

- *The sale price can be adjusted to include a lump sum that covers costs of outstanding work on the property, allowing the local authority to place this element of the sale price in a sinking fund for the property*
- *Provisions allowing for the collection of sinking fund contributions can be introduced into the standard leasehold contract*
- *More information can be provided for leaseholders on their responsibilities for contributing towards costs of repair and maintenance of the building containing their property and any other estate or communal costs*

*“We will encourage local authorities to establish sinking funds where they are supported by leaseholders and will provide more information to encourage leaseholders to make use of sinking funds.”*

The consultation paper goes on to ask the following question:

*“We propose allowing local authorities to set up sinking funds for works to leaseholders’ stock and amending housing revenue account rules to permit this. Will there be any barriers to local authorities taking this up voluntarily, or would we need to place an obligation on local authority landlords?”*

The Chartered Institute of Public Finance and Accountancy responded to this element of the consultation as follows:

*“The Chartered Institute of Public Finance and Accountancy would welcome moves from the Government to make financing major repairs easier for leaseholders. It is the Chartered Institute of Public Finance and Accountancy’s understanding, though, that Local Authorities are already able to set up sinking funds, so if the government is intending this as the solution, an obligation might well need to be considered.*

*“Sinking funds work best, however, where major works are some years in the future. Introducing sinking funds would have some practical implications in cases where some leaseholders may already have just paid – or are still in the process of paying – substantial sums for major works through loans or arrears arrangements.”*

Communities & Local Government clearly consider that sinking funds represent best practice and it is possible that legislation will be introduced to oblige Councils to establish sinking funds. However, this was not referred to in the following consultation paper on housing finance reform that was issued in March 2010.

### **Good Practice – Audit Commission**

The Audit Commission’s Key Line of Enquiry on rent and service charging accounting and collection asked:

*“Does the organisation comply with the statutory requirements and adopt good practice methods in terms of rent and service charge setting?”*

It identified the characteristics of an organisation that delivers a good service as one that:

- Provides comprehensive information to all service users that clearly describes the organisation’s rent and service charge setting policy, and how rents and service charges are calculated and collected.
- Delivers accurate and timely information about rent and service charge accounts to service users, for example quarterly rent and service charge statements.
- Minimises and prevents arrears by ensuring that new rent accounts are always set up, and means of payment supplied to new tenants, before tenancies commence.
- Ensures that accounting systems are well integrated with housing management and benefit systems. As a result the organisation can clearly identify arrears due to housing benefit claims or payment in credit or arrears.
- Separately records and accounts for rent arrears, court costs, rechargeable repairs and other debts

It identified the characteristics of an organisation that delivers a fair service as one that:

- Provides information about the organisation's rent and service charge setting policy, and how rents and service charges are calculated and collected, but this is not customer-friendly and in places difficult to understand.
- Does provide information about tenants' and leaseholders' accounts to service users, but this is not always accurate or timely, e.g., annual statements only provided.
- Does not clearly record and account for rent arrears, court costs, and other debts separately. This makes it difficult for service users and staff to manage the debt effectively.
- Is unable always easily and clearly to identify arrears due to Housing Benefit claims or payment in arrears.
- Fails to ensure that new rent accounts are routinely set up, and means of payment supplied to new tenants before tenancies commence.

### **Good Practice – Leasehold Advisory Service**

The Leasehold Advisory Service advises that reserve accounts and sinking funds should earn interest because they are generally held for a longer period than day-to-day service charges which goes some way to meet increasing budget costs.

Where caretaking and portage are recoverable the lease should be clear as to what is included in the charge: a resident or non-resident service, and, if resident, whether accommodation must be provided rent free or not.

### **Good Practice – Housing Corporation (now Tenant Services Authority)**

The Housing Corporation issued good practice guidance in March 2007 in a document entitled 'Service Charges: Value for Money?' This considered good practice in the following areas:

- Payments;
- Consultation;
- Charging structures.

In each of these sections they looked at:

- Why we need good practice and what its advantages are;
- The legal and regulatory framework;
- Good practice case studies;
- A summary of why these examples are effective.

### Payment and collection arrangements

The implications for landlords and residents of unpaid service charges are wide-ranging. Residents in debt can become anxious and concerned for their security; landlords who fail to maximise their income put their business at risk.

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

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

The Housing Corporation expects that landlords will offer help with debt. The Housing Corporation is also clear that landlords should refer residents in arrears to good-quality debt counselling services as soon as possible after the debt has arisen and should continue to do so at every stage of the recovery procedure. Possession action should not be taken where a resident has maintained an agreement to pay the arrears.

Examples of good practice in managing service charges are quoted from Basildon District Council, Bracknell Forest Borough Council, Brent Borough Council, the Southern Housing Group and Elmbridge Housing Trust.

#### Bracknell Forest Borough Council – helping leaseholders in need

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

#### London Borough of Brent – many ways to pay

Brent Borough Council offers a range of payment options:

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

#### Basildon District Council – flexible payment arrangements

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

Basildon District Council feel that this will help by:

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

#### Southern Housing Group – providing advice

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

#### Elmbridge Housing Trust – 21st-century payment

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

The Housing Corporation considers that tenants and leaseholders should be consulted about service charges in the following ways and gives examples of good practice as follows. They consider that these good practice examples illustrate practical ways that councils and housing associations are working to comply with the law and regulations in a customer-friendly way.

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

Raglan Housing Association look at the wider context. As well as consulting over specific works they consult forums in each area on more general issues. The opinions of area forums are fed into area committee meetings and are in turn reported to board meetings.

Gosport Borough Council – going beyond the statutory requirements

Gosport Borough Council has both residents' associations and a leasehold forum. They consult on most things, e.g. grounds maintenance contracts, extra landscaping, improvements. They involve tenants and leaseholders in the process of choosing contractors by inviting volunteers to go through copies of the applications/tenders, then hold a meeting to discuss the applications and consider questions and comments. Finally, tenants and leaseholders are invited to give their views on who should be selected.

The Housing Corporation considers that these case studies are examples of different good practice ways to set service charges:

London Borough of Tower Hamlets – matching costs to property

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

Thanet District Council – matching costs to property

Service charges are based on rateable value.

Waverley District Council – involving residents in decisions

If major works are proposed, Waverley District Council sends a questionnaire to tenants and leaseholders asking what they think needs doing, for example their front door may need painting or replacing or one of their windows might be rotten. All this information is taken into account when the property is surveyed. Waverley District Council have found that in consultation exercises, leaseholders prefer quality, even if it will cost them a bit more, so they do not always go for the lowest tender.

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

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

Adur District Council – charging what it costs

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

The Housing Corporation provides some examples of housing organisations trying to find ways to agree value for money with their residents in accordance with Housing Corporation code and guidance.

#### London Borough of Southwark – dealing with disputes

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

#### Bush Housing Association

Bush Housing Association hold consultation meetings in their housing developments to 'test the water' and get approval from residents before going ahead with proposals. They also consult if leaseholders want a particular service and send estimates and details of other options. They assess value for money based on the responses they receive from surveys that leaseholders complete before works are done and after they are completed.

#### Adur District Council – listening to customer feedback

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

#### Crawley Borough Council – comparing performance

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

#### London Borough of Hammersmith and Fulham – assessing performance

Complaints received are used to help to assess performance. Hammersmith & Fulham Borough Council used to do postal surveys but as the response was low they now carry out random telephone surveys and response rates have improved. If feedback is about information, for example letters or leaflets, they look into redrafting into plain English, different languages or large print.

#### William Sutton Trust – asking customers about value for money

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

#### Restormel Housing Trust – using a best value approach

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

## **Conclusions**

Right to buy legislation has led to there being a significant number of local authority and housing association leaseholders principally in blocks of flats. Leaseholders are obliged to pay service charges to meet the costs of capital investment in their homes (for example, works to roofs of flats) and their share of certain revenue costs (such as communal heating schemes, maintenance of lifts and lighting of common areas).

There is a significant body of legislation that governs leasehold service charges including the Housing Act 1985, the Landlord & Tenant Act 1985 and the Commonhold & Leasehold Reform Act 2002. The latter act requires that charges must be based on actual costs and must be reasonable.

Sinking funds or reserve accounts are seen as good practice because they avoid the need for landlords to seek large amounts from leaseholders in years when significant amounts of expenditure are incurred – for example, on a major capital scheme. Communities & Local Government promoted the benefits of sinking funds and reserve accounts in a consultation paper in July 2009.

The Audit Commission, Housing Corporation and others have identified examples of good practice in setting and administering leasehold service charges.

**Adrian Waite**  
**September 2010**