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Excessive service charges and what to do about them

Background

Service charges are fees that homeowners often commit to pay under the terms of the lease they enter into when they purchase their homes.[1] They are increasingly common in share-of-freehold properties, and commonly include the costs of insurance, lighting, maintenance, cleaning and the repair of common parts such as lifts and gyms, as well as fees for the purchase, sale, sublet or alteration of a flat. They can also effect the purchase of some freehold properties.

In recent years, such charges have spiralled and are often excessive, both in their amount and in exchange for the quality of service received. Research by Direct Line for Business indicates that a third of management companies hiked service charges in the years 2014 to 2016, pushing the average charge up to £1,863, which is over twice the average monthly rent.[2]

At the time of writing, service charges are unregulated. As such, they are often exploitative and homeowners may be left footing unexpected bills of between £1,000 and £3,000 per year.

What to do about service charges

There are a number of steps that can be taken by homeowners to challenge excessive or unreasonable service charges.

Short of buying the freehold of the property outright, the first step is always to complain directly to the managing agent or freeholder. Homeowners should write to the agent or freeholder, setting out in detail why they think the fees charged are unreasonable. Even if this yields no reduction, it is a useful step in narrowing down the issues and is in compliance with paragraphs 6 and 8 of the *Practice Direction on Pre-Action Conduct and Protocols*.^[3]

If the agent or freeholder is unresponsive to negotiation, the matter may be referred to the First Tier Tribunal (Property Chamber).^[4] This can be done in one of two ways.^[5]

First, homeowners can make a Right to Manage application under the Commonhold and Leasehold Reform Act 2002 to acquire the right to manage the residential block.^[6] Homeowners can either set up their own company to oversee the management or, more often than not, employ a different property management firm under more favourable terms.

Secondly, one can apply to the Tribunal to decide whether the amount charged is reasonable.^[7] Under section 20 of the Landlord and Tenant Act 1985, service charges are limited to a reasonable amount. If the Tribunal determines that a sum claimed is unreasonable, it can be significantly reduced and homeowners may even have returned to them part of the sums already paid.

Reform

The Government is currently analysing responses to a major consultation, entitled "*Tackling unfair practices in the leasehold market*" •, which ran from 25 July to 19 September 2017.^[8] The consultation followed the announcement by Communities Secretary Sajid Javid of plans to cut out unfair abuses of leaseholders, including stamping out unreasonable service charges.

The Law Commission has also recently proposed the introduction of a new framework to regulate the charging of "event fees" •, whereby owners of retirement homes are charged fees on certain events including sale, sub-letting or change of occupancy.

Chambers' Commercial and Chancery Team is able to provide expert advice on the challenging of unreasonable service charges, as well as leasehold disputes generally.

[1] Section 18(1) of the Landlord and Tenant Act 1985 defines a service charge as *"an amount payable by a tenant of a dwelling as part of or in addition to the rent--(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and (b) the whole or part of which varies or may vary according to the relevant costs"*.

[2] https://www.directlinegroup.com/media/news/brand/2016/property_pain_service_charges_increasing_rapidly_14_mar_2016.aspx.

[3] https://www.justice.gov.uk/courts/procedure-rules/civil/rules/pd_pre-action_conduct.

[4] If the management agent is registered with the Association of Residential Managing Agents, ("ARMA" •), homeowners also have the right to complain to an independent ombudsman.

[5] Despite repeated lobbying by ARMA, freeholders cannot refer cases to the First Tier Tribunal (Property Chamber) in the same way as leaseholders.

[6] <https://www.lease-advice.org/documents/form-rtm-eng.doc>.

[7] <https://www.lease-advice.org/files/2016/08/leasehold3-eng.doc>.

[8] <https://www.gov.uk/government/consultations/tackling-unfair-practices-in-the-leasehold-market>.

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