
COMMONHOLD & LEASEHOLD REFORM ACT 2002

1 SUMMARY

- 1.1 Members are advised that following the introduction of the Commonhold and Leasehold Reform Act 2002 a number of procedural changes have been made to Leasehold Management.

2 INTRODUCTION

- 2.1 The Commonhold and Leasehold Reform Act 2002 (CLRA) introduced a number of legal requirements to landlords of leasehold properties. Whilst these were introduced to protect leaseholders from unscrupulous private landlords who were overcharging their leaseholders, this legislation also applies to all Local Authorities.
- 2.2 The CLRA updates the Landlord & Tenant Act 1985 & 1987, and also makes changes relating to leaseholders in the Law of Property Act 1925, Housing Act 1996, and Protection from Eviction Act 1977. Most of the duties in the Act commenced 30th October 2003.

3 DETAILED CONSIDERATION

- 3.1 The Act introduced two new rights to leaseholders of Local Authorities, the Right to Consultation and the Right to Challenge the Reasonableness of Service Charges.

3.2 Service Charges

- Extended meaning, now includes ‘improvement’ and ‘administration charges’
- Regular statement of account required at least six months after the end of the financial year
- Leaseholders rights to be included with yearly bill of service charges - to commence ‘Spring’ 2004 (no date yet announced)
- Expanded role of Leasehold Valuation Tribunal (LVT)
- Leaseholders have the right to apply to LVT to determine the reasonableness of a service charge

3.3 Rights to Consultation

- Landlord’s must consult if the cost of qualifying works exceeds £250 per flat and for long term contracts in excess of 12 months, where the cost is over £100 per annum per flat, although only once in the lifetime of the contract.
- When a landlord fails to consult it can only recover costs up to £250.

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- Qualifying works are works and improvements.
 - Council can apply to Leasehold Valuation Tribunal for dispensation to consult 'if satisfied it is reasonable' for very urgent work, advance applications or if it is difficult to obtain more than one estimate i.e. specialist work
 - Council's have to consult leaseholder(s) and any recognised Tenants Association representing some or all of the leaseholders – N.B both can nominate a contractor.
 - Consultation is a three stage process

3.3.1 Notice of Intention

Notice must include:

- Description of proposals
- Statement why necessary
- Invitation to make observations (giving address and final date for observations)
- Invite each tenant and the Tenants Association (if any) to nominate a contractor.

After 30 days landlord must 'have regard' to observations and 'shall try to obtain' estimate from one nominated contractor from the Tenants Association (TA) and an estimate from one (receiving the most votes) from a leaseholder (if any proposed).

Any observations must be replied to in 21 days.

3.3.2 Notice of Proposal

Landlord must prepare at least 2 estimates from a person wholly unconnected with the landlord and a nominated contractor.

Notice to go to leaseholder and TA, must include:

- the Estimates - including the total amount and the leaseholders share
- A summary of observations received and landlord's responses
- Invitation to make further observations (giving address and final date for observations)

Again responses to further observations should be made within 21 days. At the end of 30 days landlord must 'have regard' to observations.

3.3.3 Notification of reasons

Within 21 days after entering into contract, unless the contract is let to someone nominated by a leaseholder, the TA or the person who submitted the lowest estimate must provide

- reasons for awarding the contract
- summary of observations received and landlord's responses.

3.4 **Ground Rent**

- New requirement to notify by a prescribed notice commences 'Spring' 2004 (no date yet announced).

3.5 **Forfeiture of leases**

- Landlord's cannot apply for forfeiture of a lease for non-payment of rent, service charges or admin charges unless the arrears exceeds £500.
- No forfeiture notice of a lease can be served without a determination of breach being confirmed by either the LVT or court.

3.6 **Collective Enfranchisement by tenants of flats**

- Amends the eligibility rights of leaseholders to buy the freehold of their building by reducing the percentage test (but there must be more than 2 tenants unless members of RTE company)

3.7 **Leasehold Valuation Tribunal**

- Applications from leaseholders objecting to 'unreasonable charges' cost £350 but this is payable by the Council if upheld. There are also additional legal costs likely to be incurred by both parties.
- An application for dispensation from the consultation process in emergency or exceptional circumstances is £150 and there will be additional legal costs to comply with the process.

4 **CONCLUSIONS**

- 4.1 That the consultation process must be adhered to in order to ensure that costs to the repair and improvement to leaseholders properties do not fall on the Housing Revenue Account.
- 4.2 That in order to comply with Financial Regulations, whilst leaseholders have the right to nominate contractors, contractors must be suitable for inclusion on the Approved Contractor List. Therefore letters to leaseholders must make them aware of this criteria.
- 4.3 That all documentation must be kept, in order that any application from a leaseholder to the Leaseholder Valuation Tribunal (LVT) for 'unreasonable charges' can be justified and substantiated.
- 4.4 That Housing Management will commence the consultation period when they are initiating the work and the Maintenance Team when the works are part of their normal repair programme.

- 4.5 That there will be no increase to the 15% admin charge that Maintenance Team add to the contract price, (limited to a maximum) to cover the costs of the consultation process as excesses would not be justifiable.
- 4.6 That in the case of 'emergency works' an application will have to be made to the LVT for dispensation costing £150. Care will have to be taken that in an emergency (storm/flood/tempest) this is not forgotten and records kept, whilst at the same time a reasoned judgement will have to be made between the costs of application and re-charge to leaseholders.
- 4.7 That new documentation needs to be produced in order to comply and advise leaseholders of their rights, ready for implementation later this year.
- 4.8 Changes to forfeiture and enfranchisement will have little impact as they are rarely used.
- 4.9 Until there has been a lapse of time it is difficult to assess if and how much of a budget is required for costs to the LVT. If as hoped such instances are a rarity then they can be met on an adhoc basis.
- 4.10 The booklets given to leaseholders about charges and rights will need to be updated.

5 RISK MANAGEMENT

5.1 Operational Risk

Staff need to be aware of the provisions in the act and use the correct consultation process in order to reduce the risks of a successful challenge through the LVT.

5.2 Reputation Risk

It is essential that Rochford District Council does not lose a LVT challenge and is considered a poor landlord.

5.3 Information Risk

Letters, rent notices and information on leaseholders rights must be used when the SI is enforced.

5.4 Regulatory Risk

The new requirements of CLRA will have to be complied with or the Housing Revenue Account will have to bear more financial burden.

6 RESOURCE IMPLICATIONS

- 6.1 As a new member of staff will be taking over Leasehold Management they will be advised of the requirements in CLRA. Although the Council only has 110 Leaseholders, the new regulations place greater onus and responsibility on the Council, which places it open to financial risk.
- 6.2 The Head of Service, together with the new Housing Manager (Service Delivery) will need to examine the existing resources and structure of the Housing Management section to ensure these new services are properly delivered.

7 LEGAL IMPLICATIONS

- 7.1 Compliance with CLRA is essential.

8 RECOMMENDATION

- 8.1 It is proposed that the Committee **RESOLVES**
- (1) That the report be noted.
 - (2) That a report on the service delivery of the Housing Management function be considered by a future meeting of the Policy and Finance Committee.

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Background Papers:

None

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