

Briefing Note: Residential Service Charges

An Introduction to the Briefing Note

This briefing note should not be relied upon as legal advice and you should contact us for advice on your specific circumstances.

- Legislation protects residential tenants from excessive service charges. Before entering into contracts to provide services or carry out works relating to residential properties, you should consider whether you need to consult with your tenants.
- If you fail to consult when required, you will only be able to recoup the statutory maximum, unless you receive dispensation from the Leasehold Valuation Tribunal (LVT).

Briefing Note
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For detailed advice on all Commercial Property matters please contact:

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What is a service charge?

A service charge is an amount payable by your tenant as part of, or in addition to, their rent. Service charges may vary according to the costs or estimated costs incurred in connection with the matters for which the service charge is payable.

Service charges must be reasonable

- You can request that your tenant pays you a service charge for costs you incur for:
 - services
 - repairs
 - maintenance
 - insurance and
 - management
- The costs must be reasonably incurred and the work or services must be of a good standard.
- There is no restriction on the factors that can be taken into account when determining if service charge costs have been reasonably incurred. This means that the financial impact on tenants, and whether the works should be phased to spread the costs, can be taken into account alongside other relevant considerations. However, tenants cannot insist that service charges are phased in to spread the cost of major works.

Your tenant can challenge service charge costs

- Your tenant can challenge service charge costs by asking the LVT to determine whether:
 - the service charge costs were reasonably incurred
 - the services or works are of a good standard and
 - an estimated service charge, payable before costs are incurred, is reasonable

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- Tenants cannot avoid liability to pay service charges on the grounds of hardship, even if extreme. If, after weighing up all relevant considerations, particular repair work is reasonably required at a particular time and is carried out at a reasonable cost and to a reasonable standard, the tenant must pay up in accordance with the terms of its lease.

When is a consultation required?

You must consult with your tenants if either:

- The amount payable by any one tenant for services to be provided under a qualifying long-term agreement (QLTA) will exceed £100 in any one year. A QLTA is an agreement entered into by you or a superior landlord for a term of more than 12 months.
- The cost of work on the building or other premises will exceed £250 for any one tenant.

What are the consultation requirements?

You must:

- Give notice to your tenants and to any recognised tenants' association (RTA), explaining why the proposed works are necessary. You must invite written observations on the proposals and take note of any responses.
- Obtain estimates. Your tenants and the RTA have a right to nominate alternative contractors and you are obliged to ask for an estimate from the nominated alternative contractors.
- Issue a statement setting out the estimated costs from at least two of the estimates, with a summary of the written observations you received and your responses to them.
- Provide a notice:
 - setting out when and where all the estimates can be inspected and
 - inviting written observations on the estimates within 30 days of the date of the notice

You must take note of any written observations provided and give reasons for selecting the successful contractor.

The LVT has the power to dispense with the consultation requirements, if it is satisfied it is reasonable to do so.

Time limits for making service charge demands

- When service charge demands are issued after completion of the works, you must issue the demand within 18 months.
- If the demand is provided later than this, you will be unable to recover the costs, unless you have served a notice during the 18 months stating that:
 - costs have been incurred and

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- your tenant will be required to contribute to them by payment of a service charge.
- If you do not know the exact amount of the costs incurred, you should specify a figure for costs that you would be happy to accept as the limit on the costs ultimately recoverable.
- The notification would still be valid if the actual costs claimed in the service charge demand were less than that stated in the notice.

What are the penalties for failing to comply with the consultation requirements?

If you do not comply with the consultation requirements, and the LVT does not decide to dispense with the requirements, your ability to pass on costs to your tenant will be limited. The **maximum** that you will be able to recover is:

- £100 for each tenant for each year for QLTAs
- £250 for each tenant for qualifying works

If you would like to know more about this topic or our other legal services, please contact Melanie Verth mjv@gabyhardwicke.co.uk

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