

Submission from Lambeth Homeowners Association (LHA) to the Strengthening Leaseholder Protections over Charges and Services consultation.

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Introduction

- 1) The LHA was founded in 2017 and now consists of well over 1000 leaseholders paying service charges to the London Borough of Lambeth. Our response is therefore focusing on the special situation of local authority leaseholders.
- 2) We are a properly constituted body with a volunteer Committee, elected at each AGM. Out of about 30,000 council-owned properties in Lambeth there are some 9000 leasehold properties. The LHA would have more members if Lambeth would let us know who their leaseholders are.
- 3) It should be borne in mind throughout that most local authority leaseholders are either the original tenants or first-time buyers who do not have the time, knowledge or confidence to challenge their freeholder, let alone the money to litigate.
- 4) Although we speak for leaseholders it should not be forgotten that where a local authority is being overcharged by a contractor, public money in the tenants' HRA account is also being overcharged for work done on estates of mixed tenure, although the tenants will not be aware of this.
- 5) The proposals laid out in the consultation document are fair enough as far as they go, but they do not go far enough to address the fundamental weaknesses of the law that lead to landlords overcharging their leaseholders and getting away with mismanagement. Please see below our comments and suggestions that would not fit into the questionnaire.

7) **Section 2.3: Notice of further service charge demands** paras 61 ff. 18-month rule and S20b

8) What is the perceived issue:

9) Freeholders are using Section 20B notices to write themselves an indefinite amount of time to charge leaseholders an undefined amount of money for major works.

10) The time limit of 18 months to request leaseholder payment can be overridden by an S20B, meaning that freeholders routinely issue these instead of getting fixed costs at the outset.

11) The information required for an S20 is limited, and not enough detail is provided to leaseholders.

12) No evidence of the requirement for the major works in the first place is supplied by freeholders, making the process opaque.

13) No evidence is required from freeholders of the cost being properly market tested and therefore value for money.

14) Leaseholders frequently have to wait months or years to receive final bills. This is a big problem when trying to sell a flat with unknown debt.

15) Actions suggested by 2024 Act

16) 'Future demand notice' – outlining future service charge costs and more detail to be given.

17) Do the actions mitigate the issues?

18) The 'Future Demand Notice' doesn't appear to add anything that leaseholders don't already receive. All details outlined in the FDN are already provided in an S20. There is nothing to commit the freeholder to making the FDN accurate.

19) Landlords are still allowed to extend the demand date and can issue any number of subsequent FDNs to extend the 18-month period. This system negates the benefit of having an 18-month limit and is already being abused by landlords/freeholders under the S20B scheme.

20) What power will the Secretary of state and Welsh ministers have to limit the amount landlords charge and how does this work in practice? Will these departments be involved in every S20 notice?

22) Suggested actions

- 23) Major works should be agreed on a fixed cost for contractual purposes. This fixed cost should be made known to leaseholders, including the full scope of works.
- 24) A change control process should be used to manage any change of works or cost arising when works are underway. Documentation should be to industry standard and supplied to leaseholders with the final cost so that any changes are transparent.
- 25) Freeholders should go through some form of procurement process (which could just be 3 quotes depending on the size and value of works) to appoint a contractor for major works. They should be responsible for showing value for money and quality of the selected contractor.
- 26) Landlords will object that this would be to reveal commercially sensitive information, but there should be transparency once the contract has been concluded, particularly where local authorities are concerned.
- 27) In Lambeth we have experienced a major problem when a bill is not payable (e.g. for work charged for but not done) and the landlord (Lambeth) refuses to acknowledge this. When the leaseholder comes to sell their flat, they block the sale or force the leaseholder to pay what is not due before they will allow the sale to proceed. It needs to be a criminal offence for the landlord to persist with demand for payment in these circumstances.
- 28) The time limit on charging leaseholders once final invoices have been paid by the landlord should be set in stone. Invoices are usually paid within 30 days so freeholders have all the necessary information and should charge leaseholders within the financial year that works are completed.
- 29) This should retrospectively apply to all major works.

30) Section 2.4 Right to obtain information

31) What is the perceived issue:

- 32) Leaseholders must request further information on service charges within 6 months of receiving request for payment.
- 33) Information that landlords are obliged to supply is restrictive.
- 34) Leaseholders are not issued with information; they must attend a location of the landlord's choosing to view documents. Leaseholders are frequently not allowed to photograph or take copies of documents; they can only make notes when

viewing documents. In order to review documents as described above a leaseholder who works full time would have to take time off work to review documents, it is very unlikely therefore that they will do this

- 35) Our experience is that this right of inspection is invariably denied, in that just a few pieces of unhelpful paper are provided.
- 36) **The major problem here with local authorities is that although it is an offence to fail to comply with section 22, local authorities are exempt (section 25 of the Act) from the offence, so have nothing to fear from not complying. This needs to be put right.**
- 37) There is no agreed level of detail to which landlords must provide information.
- 38) Leaseholders are forced to have recourse to using FOI process to access information.
- 39) Landlords complain that they cannot be expected to reply to vexatious requests for information, yet many of these requests arise from the failure of the landlord to give a proper reply to the questions in the first place. If a landlord fails to understand the question, rather than ignore the request he should be required to ask the leaseholder to give further explanation.

40) Actions suggested by 2024 Act

- 41) The table of information to be provided, but without financial information.
- 42) There is to be no limit on the time period leaseholders have to request information.
- 43) Leaseholders can take the landlord to FTT if they do not respond within the relevant time frame to a request for further information.
- 44) Landlords have 28 days to respond to a request for information.

45) Do the actions mitigate the issues?

- 46) The proposal states: *"We believe leaseholders should have access to key documents (e.g. fire risk assessments) at any time"*. However, the legislation does not change the process; the onus remains on the leaseholder to request further information from the landlord.
- 47) In the case of local authority landlords, all documents listed in the table are currently available to leaseholders through FOI process, or available online due to public procurement process. There is no change from what is currently in place.

- 48) It does not mention whether leaseholders can be issued these documents digitally, so the process of leaseholders having to go to landlord's premises remains.
- 49) The information being provided without financial information negates the point of issuing information; it will be impossible for leaseholders to understand whether the contracts and works they are being charged for are value for money without knowing the financial information.
- 50) The leaseholder is still expected to have the experience and knowledge to check these documents and understand what they are looking at. There is no requirement for the landlord to make these documents accessible.
- 51) There is no mention or comment on whether a leaseholder still needs to physically go to a location of the landlords choosing to view the documents.
- 52) The removal of time limit for leaseholders to request information is positive.

53) Suggested actions

- 54) Documents should be supplied automatically to all leaseholders. This information is relevant to the properties that leaseholders own.
- 55) It is leaseholders' money that is paying for these contracts, so financial information is not sensitive. In the case of local authorities it is public money that is being spent, which requires full transparency.
- 56) Documents should be supplied in a shared folder with the service charge summary. These documents should be properly indexed so that leaseholders can find relevant information and understand what they are looking at. There are plenty of secure document sharing platforms which could be used and where access can be controlled.
- 57) The onus should be on the landlord to ensure their documentation is complete and up to date, especially with regard to the safety of buildings and fire risk, which many of the documents listed in the table relate to. If landlords are managing a property properly, this information should already exist.
- 58) Landlords should comply with ISO9001 documentation standards.
- 59) One solution might be to provide that a landlord who fails to comply with section 22 will not be entitled to any payment and will be required to refund any estimates already paid.

60) **The major problem is that although it is an offence to fail to comply with section 22, local authorities are exempt (section 25 of the Act) from the offence, so have nothing to fear from not complying. This needs to be put right.**

61) **Our view is, in principle, that if a landlord cannot, or will not produce adequate documentation to support a service charge bill, that bill is baseless and should be unpayable, as it would be in normal commercial practice.**

62) **Section 2.7 (101) Insurance**

63) **What is the perceived issue:**

64) Landlords or managing agents receive commission from insurance companies meaning that the buildings insurance procured for a property does not represent best value but is favoured by best level of commission.

65) Landlords have no duty to pro-actively share buildings insurance information

66) Local authority landlords enter into LTAs for buildings insurance, so costs spiral and are not competitive when insurance is renewed each year.

67) Local authority buildings insurance is not specific to the building. The contract is for the whole estate, so there is no information relating to specific buildings. This leads to the cost being inflated to cover the risk to the insurer. It turns out that, in Lambeth's case, the policy was not properly scrutinised. One estate was built in the 1920s and is Grade II listed. The buildings insurers provided by Lambeth specifically state that they do not insure listed buildings, or any building built prior to 1960. If indeed this estate is not covered by the policy, then Lambeth is in serious breach of its lease. We have questioned Lambeth about this several times and have never received acknowledgment of our query or a response.

68) In mixed tenure local authority housing the landlord insures the building structure, while the leaseholder is forced to buy the landlord's insurance covering the interior. This gives rise to constant conflict when e.g. water ingress from a tenanted flat damages a leaseholder's flat. Separate policies cover them. Although Lambeth is responsible for the damage, they insist that the leaseholder's insurance has to pay. The leaseholder insurance carries a heavy excess, leaving him having to pay the first £500 of the repair costs. When this happens two or three times a year the leaseholder's insurance is effectively valueless.

69) **Actions suggested by 2024 Act**

70) Landlords are required to pro-actively share information on buildings insurance.

71) The incentive model for buildings insurance is being reviewed separately.

- 72) Landlords are required to declare conflict of interest.
- 73) Templated information for the landlord to be provided to leaseholders.
- 74) Information is to be sent via email
- 75) Information is to be provided within 30 days.

76) Do the actions mitigate the issues?

- 77) There is a reliance on the FCA 2024 regulations, instead of adding something specific to this bill. This leaves the level of information required open to interpretation or ignored by landlords. Leaseholders would have to go to FTT to prove their case, which would require, time, knowledge and money that the average leaseholder does not have.
- 78) FCA rules say the insurance company has to pass information to the customer. In the case of leaseholds, this is to the landlord rather than the individual leaseholders.
- 79) There are no rules about landlords not receiving commissions which, according to the report, can be as high as 40%.
- 80) Local authority landlords bulk procure buildings insurance for the entire borough estate, and in the case of Lambeth Council, through a consortium of several councils under one contract. This makes the size and value of the contract too large for all but a very few buildings insurance companies to undertake. The result is non-competitive pricing and failed procurement process.
- 81) Anecdotal evidence from within the industry is that insurers love local authority contracts, where they can charge as much as they like without challenge.
- 82) Under procurement regulations the supplier (insurance company) and client (landlord) are already required to declare conflict of interest.
- 83) There is nothing in the proposal about mixed tenure properties.

84) Suggested actions

- 85) The value of an insurance contract for leasehold properties should be capped, in order to have a wider pool of companies who could provide the insurance and therefore keep costs competitive.
- 86) Long Term Agreements for leaseholder insurance should be banned. Landlords should review and procure buildings insurance yearly to ensure costs are competitive.

87) Incentives for landlords purchasing insurance for freehold properties should be banned.

88) Leaseholders should have the option to opt out of the leaseholders' (as opposed to buildings) insurance and provide their own. It is acknowledged that insurance must be in place, so if leaseholders wish to take this on themselves they would be legally required to provide it and supply the landlord with details.

89) In mixed tenure properties where leaseholders have separate insurance and damage is caused by tenanted property to a neighbouring leasehold property, the landlord should be liable to pay, possibly through his insurance.

90) **Section 2.9 Litigation costs**

91) **What is the perceived issue:**

92) Landlords are able to recoup litigation costs through service charges or by charging an individual leaseholder, whereas leaseholders must apply through court to limit their liability and have little prospect of recovering costs.

93) There is an imbalance of power over legal costs.

94) Leaseholders are at a disadvantage if they wish to withhold service charge payments due to a landlord not completing building maintenance work to a good standard or in a timely manner. They often have no choice but to pay.

95) The legal process to challenge service charges is costly, complex and takes a lot of time.

96) The landlord will almost never apply to the FTT for a ruling that its service charge is reasonable because if it did that it would have to prove reasonableness, which it often cannot do.

97) Instead, when there is a dispute, the landlord typically tells leaseholders that if they are unhappy with the charges they must apply to the FTT for a ruling that the charge was unreasonable. This is a costly and intimidating process for most people.

98) **Actions suggested by 2024 Act**

99) Landlords will be required to apply to the relevant court or tribunal to recover litigation costs.

100) There are exemptions to the above.

101) **Do the actions mitigate the issues?**

102) It will not be automatic for landlords to recoup litigation costs from leaseholders, which is good. However, it is not clear whether these costs will be claimed from the leaseholder in question, or from all leaseholders in the building. It is proposed as an 'initial view' that this should be against the individual leaseholder; this should be clarified.

103) It should be noted that leaseholders are lay people often without the necessary time, skills, or money to fight a landlord in court. This should not be the automatic or threatened action for any disputed service charges; otherwise it will always remain unfairly balanced.

104) Suggested action

105) Where a leaseholder is awarded their litigation costs repaid by the landlord, the landlord should not be able to recoup the cost by using administrative or other charges to other leaseholders. This would discourage landlords from bringing cases that are weak in order to intimidate leaseholders into paying up.

106) Tendering for Services and Major Works:

107) What is the perceived issue:

108) The present Major Works system for large estates is flawed, in that tenders are put out in such a way that only a few contractors have the capacity to respond. This creates a virtual monopoly where they can charge much more than a smaller company would charge for similar work within its capacity.

109) Landlords respond that they do not have time or staff to split up the work into smaller, manageable contracts. Given the scale of difference in pricing between large and smaller contractors, the employment of additional qualified staff to manage things should more than pay for itself. Landlords need to take account of the fact that it is leaseholders' money that they are spending and that they should therefore take care to keep costs to a minimum.

110) The theory is that bulk buying reduces the cost, but in practice the reverse has often turned out to be the case.

111) Suggested action

112) Where practical, landlords should be required to issue tenders in simple form, such that SMEs can respond, e.g. window replacement, where we have often found local contractor prices to be a quarter of the price charged by the landlord.

113) Burden of proof of unreasonableness of charges

114) What is the perceived issue:

115) The burden of proof of unreasonableness of charges is on the leaseholder: We do not dispute that leaseholders must pay reasonable service charges, but when the burden of proof is on leaseholders to show unreasonableness, the case is weighted against them. The Daejan vs Benson (2013) Supreme Court judgement, often invoked by freeholders, has disturbed many legal minds. How does one prove a negative? When the landlord does not produce transparent accounts, the lessee has insufficient information on which to base a challenge and is therefore at a serious disadvantage.

116) Suggested action

117) Legislation should be introduced to amend The Daejan vs Benson (2013) Supreme Court decision, as being grossly unfair to leaseholders in the way it has invariably been interpreted by tribunals and courts. The way the judgment has been applied is that the leaseholder must show that failure to comply with the S20 requirements has led to prejudice against them. They can only do this when the landlord provides full information, which they either do not do, or maybe are not obliged to do. The judgment still troubles legal minds and it is frequently invoked in favour of landlords who have been able to do nothing but sit back and assert that it is up to the leaseholder to show prejudice.

118) Billing:

119) What is the perceived issue:

120) Many items in major works estimates are no more than provisional, which means they are of little use, as the landlord says he will do a proper inspection (e.g. of a roof) when the works begin.

121) There is never anything to say that when the inspection has been done the estimate will become a firm quote. So, works get done, monthly payment certificates are issued, Lambeth checks nothing and pays.

122) Then, often years later, because Lambeth's internal processes are so poor, a bill is sent to leaseholders for an amount that may be as much as 100% or more in excess of the estimate, with no justification, and the leaseholder is given 30 days to pay or the option of entering into an undertaking to pay in 12 monthly instalments.

123) The first thing that follows from the sending of the estimate to the leaseholder is that an invoice for the full amount of the estimate is sent to the leaseholder for

payment in advance. Thus the landlord often gets most of his costs paid up front before works are even started. This may be one reason for them taking as long as they do to issue final bills. With most of the money already in hand, there is little incentive to check the bills.

124) Some leaseholders have paid in advance for work that was never done and have had a struggle to get their money back. This does not happen in the commercial world.

125) **Extra charges:** Another aspect of charges which needs reform is that several extra fees are charged, based on a percentage of overall cost, which means that the more the works cost, the more these charges increase. These charges include preliminaries, overheads and profits, consultants' fees and the management or administration fee payable to the landlord. This gives an incentive to contractor, consultant and landlord alike to maximise costs.

126) Where work is subcontracted perhaps twice, again there is a markup to be added at each level. At 16%-30% per transaction, the cost is quickly doubled.

127) A major problem is that leaseholders suffer from often grossly inflated bills, particularly for major works. Work may be badly done, not done at all, charged for twice, was not even necessary or was egregiously expensive. Lack of transparency makes it extremely difficult and expensive to challenge these bills.

128) Where work is done under a QLTA there will be a schedule of rates that should be available for all leaseholders to see, as should the whole QLTA.

129) The reality is that getting this basic information out of Lambeth is like getting water out of a stone. And when you do get Lambeth to disclose the relevant rates, what you do not get is evidence of how the rates are applied to the actual works. It is not sufficient to be told that the rate is £10 a square metre or £5 a metre. You also need to know what meterage was done, that the work was necessary, and that it was done to the required standard.

130) Suggested actions:

131) There needs to be a cap on additional management fees and uplifts on subcontracted work.

132) Only a proportion of the estimate for major works should be payable in advance, as in normal commercial practice, which will encourage the landlord to submit final bills much more quickly

133) Before the landlord demands payment, he should have available, for all leaseholders to see, a report by a qualified professional setting out all these things and that he is satisfied as to what work was done, that it was

necessary, that it was done to the required standard and that the cost was reasonable. That person should be accountable.

134) It should be written into the legislation that if the landlord has not provided the leaseholder with all relevant information to enable the leaseholder to conclude that the costs are reasonable and that the work is up to a reasonable standard then the leaseholder should not be obliged to pay. After all, the landlord should have satisfied himself on these points before agreeing to pay the contractor in the first place. Therefore the documents must exist.

135) 3.2 (228) Consultation Process Reform (230) Raising the requirement to issue an S20 notice for work costing the individual to £600 (£300 for QLTA jobs).

136) What is the perceived issue:

137) Raising the S20 figure to £600 means that a leaseholder loses even more control over landlord spending. £600 being added to a service charge bill without warning could be financially devastating for leaseholders, since it can be done many times over the course of a year.

138) It should be noted that the figure for S20 is not £250 for the total works value, but (£250 x number of leaseholders), so the threshold for landlords to have to complete an S20 process is already high for high occupancy buildings.

139) The reasoning behind the leasehold reform act is that in many cases landlords are not managing their properties and finances to high enough standards. If the S20 threshold is raised it will make financial mismanagement more likely.

140) Suggested actions

141) Do NOT raise the S20 threshold.

142) Any consultant costs which the landlord wishes to recharge to the leaseholder should also be subject to S20 process.

Non-Disclosure Agreements (NDA)

This subject has not been addressed in the consultation document, but has been frequently aired in the press, television and other media.

143) What is the perceived issue:

144) It is the practice of our landlord, and perhaps of many others, that when a leaseholder or group of leaseholders challenges a bill and obtains a substantial

out of court rebate from a major works charge, this is granted on condition that the leaseholder signs an NDA. Some lessees, after long and expensive litigation, have been conceded rebates of 40%+ of their individual bills, amounting well into five figures each. Many others have been offered an immediate rebate of 30%, which amounts to an admission of overcharging. Some of these persisted in their claims and the rebate was increased to 50%, but on condition they sign an NDA.

145) There are two purposes behind these NDAs: (a) to prevent the leaseholder from informing similarly overcharged neighbours from making a claim and (b) to conceal from the public the mismanagement that has led to the overcharging. The amounts of overcharging that have been shown to us can run into seven figures just for one estate. We have seen one case where over £6m was the total overcharge, but only the handful who fought and won their claim were refunded. Not one of the borough councillors on the Housing Scrutiny Panel where we brought this up was aware of this, or even of the practice of imposing NDAs.

146) It should be borne in mind that many leaseholders, because of age, lack of confidence or because they have been intimidated by the landlord, will not have lodged a challenge. Once the case for overcharging has been proved, there is no case for not recompensing all those affected, irrespective of whether or not they have challenged the bill.

147) It has been said that landlords might face financial difficulties if they recompensed everyone they had overcharged, but the threat of being forced to do so would encourage them to manage their contracts and accounts better so that the situation would not arise.

148) It is not right that leaseholders should be made to pay for a landlord's mismanagement, nor that the cost of the landlord's rebates and litigation be recovered through subsequent service charges.

149) Suggested actions

150) The use of such NDAs to conceal substantial service charge and major works rebates should be prohibited.

151) It is our view that this sort of NDA is reprehensible and also that, where landlords have admitted to an error resulting in a rebate, they should automatically concede an equivalent rebate to all lessees on the same estate or block who have been similarly overcharged, whether they have challenged their bill or not.

152) Not to do so means that the landlord would be knowingly overcharging, which could be considered illegal.

Brief summary

Overall, this legislation falls short of making the leasehold situation work for all of those involved. In some areas it feels as though the proposals make the situation for leaseholders worse.

This is because the structure is fundamentally flawed. The relationship between Leaseholder and Landlord, specifically within local authority properties, does not work in favour of anyone involved. The property portfolios of many local authorities are too large for them to manage efficiently, with the result that service charges, insurance and major works are managed poorly and at inflated costs.

The Leasehold/Freehold agreement can apply to a house split into two flats, or an estate with hundreds of flats. This one size fits all system will never work as it should, due to the fundamentally different nature of leaseholds.

Conclusion:

It is important to bear in mind that when a local authority is overcharging leaseholders for services and repairs it is at the same time overcharging the taxpayer in respect of repairs to its tenanted properties. The very substantial sums of public money thus wasted are not visible to councillors or the public. Forcing local authorities to make the management of their contracts fully transparent and accountable, from procurement through to billing, will result in proper cost control that will make significant savings for the public purse.

Reflection:

In no case that we have looked at has the landlord recovered monies from overpaid contractors who were paid long before the start of any claim of overcharging by leaseholders. Why is this? Public money has gone for ever. Legislation along the lines we have suggested would reduce this waste.