

LEEDS CITY COUNCIL AND
ARMS LENGTH
MANAGEMENT
ORGANISATIONS

**Right to Buy &
Leaseholder
Services
Policy 2008/10**

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1.0 Introduction

Tenants of Social Landlords have been able to purchase their homes under the Right to Buy since the introduction of Right to Buy legislation in 1980. Since its introduction almost 30,000 properties have been sold by the City Council. The numbers of sales in each year has fluctuated since the Right To Buy was introduced. At its peak in 1989/90 over 3,000 properties were sold during the year. In 2006/07 this has reduced to just 665 completed sales. The reduction in Right to Buy completions is largely believed to be due to rising property prices, which means that the maximum discount available of £24,000 is not as significant as in previous years to make properties affordable to tenants.

Properties purchased by tenants include both houses and flats. As at January 2008 there are 1667 flats or maisonettes which have been sold on leasehold terms. The analysis of leaseholders across the 3 Arms Length Management Organisations is:

West North West Homes (WNWh)	- 740
East North East Homes (ENEh)	- 598
Aire Valley Homes (AVH)	- 306
Belle Isle Management Organisation (BITMO)	- 23

The Council administers the Right to Buy application process, whilst the Arms Length Management Organisations (ALMOs) and The Belle Isle Tenant Management Organisation (BITMO) are responsible for the management of the Housing stock, including the flats and maisonettes sold under the RTB on a leasehold basis.

2.0 Purpose

This policy outlines the Council's approach to managing the Right to Buy process and dealing with Leaseholders and their homes in partnership with the ALMOs and BITMO. The Policy aims to provide clarity in the way leasehold properties are managed, leaseholder enquires are to be dealt with and compliance with relevant legislation.

This policy is not and should not be construed as a legal agreement between the Council, Arms Length Management Organisations and/or Leaseholders. Where any party requires an interpretation of the legislation they should seek their own independent legal advice.

3.0 Customer Care

The Council, ALMOs and BITMO are committed to ensuring that excellent customer care is offered to all customers including leaseholders in line with contractual and legal requirements and best practice nationally. At the same time ensuring value for money is achieved in providing the service. That this is demonstrated for both leaseholders paying for services through their service charges and for tenants by ensuring that equitable service charges are raised. That income is maximised through collection of eligible service charges.

Regular satisfaction surveys will be undertaken with leaseholders and tenants exercising their Right to Buy, to monitor satisfaction, to determine how we are achieving our objectives and to increase customer satisfaction, through the provision of excellent customer services.

4.0 Equality & Diversity

The Council, ALMOs and BITMO have Equality and Diversity Strategies and will ensure that this policy is clearly linked to it in order to ensure that it contributes fully with the Equality and Diversity objectives of the organisations.

5.0 The Right to Buy

The Council manages the Right to Buy (RTB) service on behalf of all Leeds City Council tenants and aims to comply with all statutory requirements and timescales in relation to the RTB.

Service Standards

Right to Buy
We will acknowledge receipt of an application within 15 working days
We will send a freehold offer letter within 12 weeks of receipt of an application
We will send a leasehold offer within 16 weeks of receipt of an application
We will aim comply with all statutory timescales in processing an application
We will be courteous and helpful at all times, listening to our customers and partners
All literature can be made available in different languages, large print and braille. An interpreter can be provided by appointment in most instances if required.
We will aim to respond to all correspondence/enquiries within 10 working days
We will comply with Data protection regulations and all personal details will be treated in strict confidence and will not be disclosed to any other parties without the written agreement of the applicant.

Who has the Right to Buy?

Tenants will usually have the right to buy their home provided that they meet the following conditions:

- The tenancy is secure
- They have spent the relevant qualifying period of time as a public sector tenant
- The property is their only or principal home and they occupy it as such

Where a tenant qualifies to purchase their home under the Right to Buy the Council will issue the Notice (RTB2) to the tenant admitting their Right to Buy.

Exceptions to the Right to Buy

A tenant cannot exercise the Right to Buy under the following circumstances:

- If the Council is a leaseholder of the property and its lease is less than 50 years in the case of a flat and 21 years in the case of a house
- If the property was let in connection with a contract of employment and if the property is within the boundaries of non-housing premises (e.g. a school)
- If the home is sheltered housing for the elderly
- If the home is deemed to be particularly suitable for occupation by the elderly
- If the home is part of a group of properties that is deemed to be:
 - Particularly suitable for people who are physically disabled or
 - Particularly suitable for people suffering from mental disorder
- If the Council intends to demolish the property and serves a final demolition notice. If it serves an initial demolition notice, the Council is not obliged to complete the sale although a tenant can make an application for right to buy and the sale can complete if the demolition does not actually take place.

Where a tenant does not qualify to purchase their home the Council will issue the required **Notice (RTB2)** advising the tenant of the decision and providing the reason why their application has been denied.

Circumstances where a tenant loses the Right to Buy?

A Tenant will lose the Right to Buy if the tenancy ceases to be secure. This happens under the following circumstances:

- If the tenant stops living in the property as their only or principal home
- If they sub-let the whole of the home
- If they are ordered by the Court to give up possession of the home
- If they do not comply with the terms of an order made by the Court
- If they become bankrupt and remain un-discharged
- The Council or its agent obtains a suspended possession order/postponed possession order
- The tenancy becomes demoted as a result of action taken in respect of anti-social behaviour
- Service of a final Demolition Notice or Compulsory Purchase Order

Where a tenants Right to Buy is denied as a result of the above the Council will issue a Notice **(RTB2)** advising of the reason why there application has been denied.

How to claim the Right to Buy - The procedure:

If a tenant wants to apply for the right to buy they will need to submit an application form. This form is called Form RTB 1 (notice claiming the right to buy). These forms along with a Right to Buy information Pack are available from Leeds City Council's Home Ownership Team, One Stop Centres or from any ALMO office.

The Right to Buy information Pack also contains a questionnaire which asks applicants to fill in customer profile information, which contains questions relating to the ethnicity and personal circumstances. This information will assist the Council/ALMOs to ensure that there is equality in the delivery of services and enable the changes to the services to meet customer needs.

Tenants are required to submit their completed application form (RTB (1)) to the Home Ownership Team where all necessary checks will be undertaken to ensure the integrity of the application. Information will be required from ALMOs relating to tenancy matters and ALMOs may be requested to undertake investigations into occupation issues.

The Home Ownership Team will provide schedules of names and addresses to the relevant ALMOs of applications from tenants within their areas. This will enable the ALMOs to contact the applicant to make an appointment to discuss the application, as appropriate. Literature provided by the ALMOs can be left with the tenant post interview. This is to ensure that the tenant is fully aware of their rights and responsibilities before continuing with the application and possibly incurring costs.

Issue of Admittance/Denial Notices

Once tenancy eligibility checks have been completed, the Council will reply to the applicant with a formal written notice (Form RTB 2) to admit or deny the right to buy.

Property Valuations

The Council will arrange for a valuation of the tenants property to be undertaken. If the applicant disagrees with the valuation they have the right to ask for a determination of value by the District Valuer. The decision of the District Valuer is final.

Valuing Agents employed to undertake Right to Buy valuations are employed under contract. The contract is periodically renewed and the Council will undertake the tendering exercise.

Tenants Discount

The discount depends on whether the property is a flat/maisonette or a house. The length of the public sector tenancy initially determines the discount. For a House the discount starts at 35% for 5 years qualifying time and increases by 1% every completed year up to a maximum of 60% and for a flat starts at 50% and increases 2% for every year up to a maximum of 70%.

However, it is subject to a maximum prescribed by the Secretary of State. In the Leeds area the maximum discount currently allowable is £24,000.

In some cases discount may be restricted by the total costs incurred by the Council in acquiring and/or repairing/improving your home. This is called the Cost Floor.

The Offer

The Council through the Legal Services Division will issue the details of the valuation, sale price and discount entitlement in the formal Notice (Section 125 Notice). If the tenant decides to proceed with the purchase they must complete the purchase within the time allowed by the right to buy regulations.

The Council will serve a Prior Notice to complete three months after the right to buy offer has been served (or three months after the notice following the determination of value by the District Valuer). If the tenant has not completed the purchase within this period a final fifty-six day notice is served.

If the final notice to complete expires the application will be deemed withdrawn and the tenant will need to reapply if they wish to exercise the Right to Buy.

Tenants Delay Notices

If the tenant thinks the Council is causing delay in dealing with the application they have the right to serve an initial notice of delay on the Council. The Council must respond within 1 month with the relevant Notice or serve a counter Notice. If the Council does not respond within the required time the tenants have the right to serve an operative notice of delay. Following this, rent paid during the delay period will have the effect of reducing the purchase price should the tenant go on to complete the purchase of the property.

The Home Ownership Team will respond to all Delay Notices.

Selling Your Home - Right of First Refusal

If the leaseholder/freeholder decides to sell their property within 10 years of the initial purchase date the property must first be offered back to the Council at market value before trying to sell on the open market.

The Council/ALMOs have 8 weeks to decide, after which the owner can proceed to sell.

Repayment of Discount

If the lessee/freeholder decides to sell their property within 5 years of completing the purchase under the Right to Buy they must pay back some or all discount that they received on the original purchase price.

The amount of discount that they must pay back is based on the resale value of the property. If they received a 10% discount on the original purchase, they would be required to pay back:

- 10% of the resale value if they sold in the first year
- 8% of the resale value if they sold in the second year
- 6% of the resale value if they sold in the third year
- 4% of the resale value if they sold in the fourth year
- 2% of the resale value if they sold in the fifth year

After 5 years the owner would not have to pay back any of the discount.

6.0 Leasehold Services

Customer Care & Leaseholder Involvement:

Service Standards:

Leeds City and the Arms Length Management Organisations will endeavour to provide a high standard of service to all their leaseholders.

Leaseholders
<p><u>Property Maintenance/Improvement</u></p> <p>The ALMOs</p> <ul style="list-style-type: none"> - will maintain, repair and improve the building structure and communal areas of blocks containing leasehold flats/maisonettes - will consult with leaseholders on major repairs and improvements to the block - will provide contact points and emergency numbers whilst major repairs and improvements are being undertaken - will investigate complaints of poor quality repairs/improvements - will undertake emergency repairs to the block within 24 hours, priority repairs within 4 working days and general repairs within 4 weeks - will ensure that leaseholders have contact information of how to order repairs to the block/communal areas - will provide leaseholders with details of programmes of planned works and improvements to the estate and arrange for contact to discuss carrying out works <p><u>The Council</u></p> <ul style="list-style-type: none"> - will ensure that buildings insurance is in place for all leasehold flats/maisonettes
<p><u>Enquiries/Complaints</u></p> <p>The ALMOs and Council</p> <ul style="list-style-type: none"> - will acknowledge enquiries and complaints within 3 working days and respond fully within 15 working days
<p><u>Services</u></p> <p>The ALMO</p> <ul style="list-style-type: none"> - will provide caretaking, cleaning and any others services they consider are required for the block of flats/maisonettes and as detailed within the Service Charges - will ensure that the services provided are to a high standard and address any issues of non-performance - will provide gas servicing to leaseholders at a competitive price where this service is offered by the individual ALMO

Service Charges

The Council

- will issue Service Charge Estimates in March each year advising leaseholders of charges for the coming financial year
- will issue quarterly invoices in April, July, October and January of each year, or as agreed separately with the leaseholder
- will provide an annual statement in October of the actual costs incurred and rechargeable which have been incurred for the previous financial year. Advising of any under or overpayment
- will provide instalment facilities to allow payment of service charge invoices either monthly or quarterly in advance
- will discuss with leaseholders financial options available to meet Service Charges issued for major works

Information and Leaseholder Forums/Focus Groups

The ALMOs

- will hold regular Leaseholder Forum Meetings , or convene Focus Groups as determined by each ALMO. These to be held at least ½ yearly
- will provide information to leaseholders on the work of their organisation through a copy of their newsletter and other media used by the ALMOs
- will involve leaseholders in establishing leasehold service standards

The Council

- will issue to leaseholders all Notices and information required by statute
- will advise leaseholders of changes to leasehold legislation

Recognised Tenants/Residents Group

Leaseholders have a right to join with other tenants in a tenants' association. The association can then seek formal recognition from either their ALMO or a Rent Assessment Panel. Rent Assessment Panels in England are part of the Residential Property Tribunal Service. This right applies whether one owns a house or a flat. RTGs have certain additional rights to information over and above those available to the individual tenant.

An RTG can:

- ask for a summary of service charge costs incurred;
- inspect accounts and receipts for the property in relation to service charge costs;
- ask to be consulted about the appointment or reappointment of a managing agent; and
- appoint a surveyor to advise on any matter relating to service charges. The surveyor will have the right to see and copy supporting documents held by the landlord, to inspect common parts, and to appoint assistants.

To gain recognition from the landlord, the Secretary of the association should ask the landlord for a written notice of recognition. Once the association is recognised, the ALMO or Council must give six months' notice should the recognition be withdrawn. Alternatively, the RTA may apply to the local Rent Assessment Panel for a certificate of recognition. This will be granted at their discretion. Usually the certificate will be for four years, but the Panel may cancel it if recognition is no longer appropriate. As a general guide, an association

should represent at least 60 per cent of the flats in the block in respect of which variable service charges are payable.

Leaseholder Forum

The ALMOs will set up Leaseholder Forums/Leaseholder Focus Groups as determined by each ALMO. To enable their leaseholders, to discuss and review policies and information associated with services provided by the ALMOs and to give their views to the ALMO. The meetings of the Groups will be at least ½ yearly.

Financial Support

The Council has adopted a policy to provide loans to leaseholders who cannot afford high charges for major repairs. Leaseholders are advised of the loans available and invited to discuss the options they have. The types of loans made are dependent upon the circumstances of individual leaseholders.

Service Charges - Leaseholders Rights

Rights of leaseholders include:

- **Information:** the landlord must provide his name and a contact address which must be stated on every demand for ground rent and service charges. Leaseholders can demand summaries of the service charges, details of the insurance cover and have the right to inspect accounts and other documents.
- Leaseholders have the right to be consulted about major works and long term agreements. (see further detail below)
 - Consultation on major (qualifying) works: the landlord cannot carry out major works to the building where it costs any leaseholder more than £250 without first consulting the leaseholders in the proper fashion; if the landlord fails to do this, the landlord may not be able to recover all the costs.
 - Consultation on long-term agreements: the landlord cannot enter into certain agreements or contracts for any service over 12 months where the cost to any leaseholder is more than £100 per year without first consulting the leaseholders, or the cost recoverable from leaseholders may be limited to £100.
- **Challenging service charges:** leaseholders can apply to the Leasehold Valuation Tribunal (LVT) to seek a determination of the liability to pay, reasonableness of the charges, or the standard of works or services whether already paid or not. A determination can also be made even where works are proposed.
- **Challenging administration charges:** leaseholders can apply to the LVT to seek a determination of the liability to pay and reasonableness of other charges arising from the lease in addition to the service charge. For example, consents for alterations and subletting, or fees for providing information.
- **Extending a lease:** an individual leaseholder who satisfies certain conditions can demand a new lease from the landlord, adding 90 years to the existing lease, with the price to be agreed between the parties, or, if this is not possible, set by the LVT.
- **Right to vary a lease:** a lease can be varied at any time where it does not make proper provision for such things as the repair or maintenance of the building,

insurance etc. A lease can be varied with the agreement of all interested parties or by application to an LVT. (see further below). In the absence of any provision if both the landlord and the leaseholders want a change then a variation to lease is required. Landlords and leaseholders can ask the courts to vary leases where there is no agreement.

- **Summary of Costs:** Tenants have the right to obtain a summary of the costs on which the service charge is calculated. A reasonable amount of detail must be provided on the service which will be provided and costs can only be charged when the contractor requires the first payment. For recurring and small charges, including management fees, and insurance, this means sending out bills within six months of the end of the financial year in which they were incurred.
- **Right to inspect certain documents** (Insurance). Where a service charge is payable which includes an amount payable directly or indirectly for insurance, tenants may serve a notice in writing on the landlord to allow reasonable facilities for inspecting any relevant policy or associated documents, and for taking extracts from them. Alternatively, the notice can require the landlord to take copies or extracts from the relevant policy or documents, and either send them to the lessee or allow them reasonable facilities for collecting them. If they are represented by a Recognised TA and they consent, the secretary of the RTA may serve the notice instead.
- **Rights and Obligations:** From 1 October 2007 the landlord must send a special prescribed form alongside demands for payment of service charges and administration fees to leaseholders. Under the 2002 Act the landlord is required to provide a summary of the rights and obligations of leaseholders relating to service charges and administration charges. Failure to deliver the summary without reasonable excuse results in giving the leaseholder the right to withhold payment.
- **Right to a Mandatory Loan:** Leaseholders have the statutory right to a loan for the cost of major repairs where the issue of the service charge notice takes place within 10 years of the purchase of the lease and the annual charge is more than £XXXX. Leaseholders are advised of this right. The interest charged on the mandatory loan is the same as the cost of a mortgage to the local authority.

Mediation

Where a leaseholder disputes the Service Charge raised the Council and the ALMO will attempt to reach a solution with the leaseholder prior to any referral to the Leasehold Valuation Tribunal. Where agreement cannot be reached matters will proceed to the LVT.

7. Leasehold Legislation

Acts of Parliament

Rights as a leaseholder are protected by law on a number of issues. There are several Acts of Parliament which do this, the main ones are:

- Housing Act 1985
- Landlord and Tenant Acts 1985 & 1987
- Housing & Planning Act 1986
- Leasehold Reform, Housing and Urban Development Act 1993
- Housing Act 1996
- Common hold and Leasehold Reform Act 2002

Forfeiture

It is the leaseholder's obligation to pay the service charges and ground rent promptly under the terms of the lease which is currently annually in advance. If they are not paid and the landlord is able to satisfy a LVT that the charges are properly due and reasonable, then forfeiture proceedings may begin by applying for a court order. The court has wide discretion where forfeiture is concerned, but if forfeiture is approved by a court, this can lead to the landlord repossessing the flat.

Forfeiture of the lease would be a last resort adopted by the Council. Attempts would be made to assist the leaseholder directly, or make referrals to appropriate organisations. Each case would be dealt with on its own merits.

8.0 Service Charges

General Issues

Charges cover two separate areas; day to day service charges that recur each year, and major works and improvements. The latter is covered in Chapter 3 of this policy.

Service charges can only be recovered for services which are agreed in the terms of the lease. The landlord is obliged to provide the services specified in the lease, costs of additional services may not be recoverable. In order to establish a legal right to payment for service costs, a demand for payment must be made within 18 months of the costs being incurred, or the leaseholder must be advised within 18 months that a payment for named services will be required.

Leaseholders pay variable service charges, which vary according to the cost of the service. Costs are estimated and surpluses and deficits are carried forward to the following year.

Invoice process

Invoices are sent out on the 1st April, 1st July, 1st October and 1st January in each year based upon an estimated cost for the year. The invoice issued in October and January will be adjusted to reflect any under or overpayment from the previous financial year, as appropriate.

The Service Charge Estimate and Service Charge Actuals statement issued in April and October respectively will set out

- The service charges the leaseholder must pay
- The total service charges for the service for that block of flats
- A certificate of a qualified accountant giving the opinion that the accounts are fair, in respect of the Service Charge Actual
- A summary of the rights of the leaseholders

Provision of information on service charges

An individual leaseholder or the secretary of recognised tenants' association (RTA) may ask the landlord for a summary of the costs on which the service charge is based. They may do this at any time. This information need only be provided once for the same period.

The landlord must provide the lessee with a summary of the costs for the last service charge accounting year, or, where accounts are not kept by accounting year, for the 12 months preceding the request.

The summary should be supplied within one month of the request or within six months of the end of the accounting period covered by the summary, whichever is the later. Where the service charge is payable by the tenants of more than four dwellings, the summary must be certified by a qualified accountant as a fair summary and sufficiently supported by accounts, receipts and other documents produced to the accountant.

Because the Council is a public sector body, one of its officers who is a qualified accountant may certify the summary.

Leaseholders' rights to inspect the accounts or receipts

A leaseholder, a tenant paying service charges, or the secretary of a recognised tenants' association, can ask the landlord in writing to see accounts, receipts and other supporting documents. This must be done within six months of receiving the landlord's summary. The landlord must provide an opportunity for the inspection and copying of documents for two months beginning no more than one month after the date of the request.

The leaseholder has the right to inspect and make copies of all accounts, receipts and relevant documentation. The law allows 21 days for this to be made available. There should be no charge but costs can be added to management costs included in the service charge.

A charge cannot be made for inspecting documents, but a reasonable charge can be made for providing copies. A surveyor appointed by a tenants' association has the right to inspect documents free of charge (but, under the terms of some leases, the landlord may be entitled to include in his management costs the cost of providing these inspection facilities). The landlord must allow the surveyor to take copies of documents, subject to a reasonable copying charge.

Challenge at LVT

The leaseholder can refuse to pay a service charge and apply to the Leaseholder Valuation Tribunal (LVT) if they consider that the cost or standard of service is not reasonable. The LVT can also be asked to decide if a charge is payable, when, to whom, by whom and how.

Where tenants pay service charges that are variable and consider that

- they should not have to pay for an item;
- that the quality of work is inadequate; or
- that a charge is not reasonable.

then they may have the right to challenge that part of the service charge at a LVT. They can also seek a determination on works or services that are proposed in the future.

The Housing Act 1996 extended the powers of the LVT to deal with service charge disputes with effect from 1st September 1997. All tenants and leaseholders paying a variable service charge have access to the LVT if they consider that services have not been provided at a reasonable cost and to a reasonable standard.

No application may be made to a LVT if:

- the matter has already been agreed or admitted by the tenant;
- the matter has been determined by a court;
- the matter has been or is to be referred to an arbitral tribunal where agreement to go to arbitration has been reached after a particular dispute has arisen;
- the matter has been the subject of determination by an arbitral tribunal where agreement to go to arbitration was reached after a particular dispute has arisen.

However, the tenant is not to be taken as having agreed or admitted any matter solely because they have made a payment.

Sinking Funds/Reserve Funds

Leeds City Council does not operate a sinking fund. Consideration and consultation with leaseholders will be given to the potential of introducing Sinking Funds/Reserve Funds in the future.

9.0 The Lease

The Council's Lease for flats/maisonettes sold under the Right to Buy provides details of the rights and responsibilities of the leaseholders and the landlord.

Varying the Lease

Leases can be varied at any time with the agreement of all the parties concerned. However, if agreement cannot be reached leaseholders may be able to apply to a LVT to vary their lease. Any party to the lease (including the landlord) can apply to a LVT to vary it if the lease does not make proper provision for (among other things):

- the repair or maintenance of the flat, the building, or any land or building which is let to the tenant under the lease and any installations or services;
- the insurance of the building containing the flat or any land or building let to you under the lease;
- the recovery of expenditure under the lease; or
- the calculation of the service charges payable under the lease.

Two or more leases of flats can be varied by a LVT if a large majority of the leaseholders agree to the change. The application must refer to long leases of flats held from the same landlord, but the flats do not have to be in the same building nor do the leases have to be drafted in identical terms.

The application can be made by any party to the lease, subject to the following conditions. Where the application refers to eight or fewer leases, all, or all but one of the parties to those leases, including the landlord, must consent to the application. Where the

application refers to more than eight leases, at least 75 per cent of the parties concerned must consent to it, and it must not be opposed by more than 10 per cent of them.

10.0 Ground Rent

Is payable by all leaseholders under the terms of their lease in the sum of £10 p.a. A requirement has been placed upon landlords from the Commonhold and Leasehold Reform 2002 Act that:

- a leaseholder will only be liable for any ground rent payable under his or her lease where he or she has received a written notice from the landlord in the prescribed form. The notice must specify the amount due, the date by which payment is to be made and (if different) the date on which the amount would have been payable under the terms of lease;
- the notice must also contain any other information that may be prescribed by regulation;
- the Notice must be issued at least 30 days and not more than 60 days before the commencement of the financial year to which the ground rent relates. the landlord will be prevented from making any additional charge in respect of the rent unless:
 - they have issued a written notice; and
 - the ground rent is still unpaid after the due date.

The Council will need to issue the notice at least 30 days before that date; and the landlord will also be prevented from starting forfeiture action (i.e. to re-enter and take possession of the property) unless they have issued a written notice, and the ground rent is still unpaid after the due date.

11.0 Maintenance Responsibility

ALMOs

The Council and ALMOs are committed to ensuring that all Council properties are maintained to the highest standards. This includes the achievement of decent homes standard for all our tenants within the Government timescales. For leasehold properties we have responsibility for certain external works and the lessee is responsible for internal works. The ALMOs responsibility can be briefly summarised as follows:

Structure	foundations, roofs, timbers, floors, drains & gutters, external pipes, external walls, window frames, external door frames, external communal doors & frames, maintenance of service
Communal	water tanks, pipes, wires, ducts, mechanical ventilation, entry-phone system, rising mains
Communal Areas	common entrances & halls, paths, estate roads, stairways & passageways, lighting

Leaseholders

The leaseholder takes on contractual maintenance responsibilities as part of the lease. These include:

- interior doors and door frames
- all plaster and other surfaces to all floors, walls and ceilings in their home
- any installation serving the flat exclusively, such as service pipes, cables and wires
- fittings (*including kitchen units and built-in cupboards*)
- baths, toilets, sinks
- floorboards
- window panes
- all internal decorations
- external entrance doors
- estate & block repairs; more details below
- grounds maintenance; more details below
- decorating; more details below
- charges; more details below
- maintaining any items fitted or alterations made.

leaseholders in a flat with a communal hallway and/or stairway, are responsible for keeping these areas in a clean and tidy condition (unless there is a cleaner employed to do this for which a service charge is raised).

Leaseholders are responsible for paying a contribution towards all the repairs, maintenance, improvements and services from which they benefit and are provided by the landlord.

12.0 Major Works

Limitations

Under the 1985 Act, the lessee can only be charged for a share of the costs for any major repairs or structural defects if they have been notified in the offer letter (Section 125 Notice) or a period of 5 years has elapsed from the date of purchase. The letter will also provide an estimated costs share (or “recharge”) for each item of work. The Lessee can only be charged up to that limit for the works, with the exception that a management fee can also be added. Therefore, for example, if the share calculates to £2000 but the offer letter limits the share to £1200, the lessee can only be recharged £1200 plus inflation and any relative management fee.

It is important to remember that when the lease or freehold has been assigned to someone else, the initial and reference periods do not change, and do not start again, but continue as per the original sale.

Consultation on major works

Consultation on qualifying long term agreements

Where it is proposed to enter into an agreement for the provision of works and/or services for a period of more than 12 months, and the cost to any individual leaseholder will be £100 a year or more, consultation with leaseholders and RTA’s must be undertaken before proceeding.

The contract could be, for example, for maintenance of the lift, for window or other cleaning, for garden maintenance, or simply for supplies of materials. However, contracts of employment are exempt from the consultation procedure.

The landlord must serve a notice on each leaseholder (and on the secretary of the recognised tenants' association (RTA) if one exists) which:

- must describe in general terms the proposed agreement (or specify the place and hours where a description of the proposed agreement can be inspected. If facilities for making copies are not made available, on request and free of charge, the landlord must provide a copy of the description);
- sets out the landlord's reasons for considering it necessary to enter into the agreement;
- if the agreement consists of or includes qualifying works, sets out the landlord's reason for considering it necessary to carry out those works;
- invites observations in writing, states where the observations should be sent; and states the date by which such observations should be delivered;
- invites the leaseholder and the RTA, to nominate a person from whom the landlord should try to obtain an estimate.

The consultation period should be at least 30 days from the date of the notice. The landlord shall, after considering any observations received, proceed to obtain estimates from his chosen contractors. If a leaseholder or the association nominates an alternative contractor, the landlord must also try to obtain an estimate from that contractor.

Upon receipt of the estimates, the landlord must then serve a further notice on the leaseholders and the RTA, setting out those estimates and include a statement which:

- identifies the proposed contractor;
- identifies any connection between the contractor and the landlord;
- where reasonably practicable, includes an estimate of the relevant contribution for each leaseholder, and where that is not reasonably practicable, an estimate of the landlord's expenditure as regards the building or other relevant premises under the proposed agreement;
- includes a statement as to the provision (if any) for the variation of any amount specified in, or to be determined under, the proposed agreement;
- where the proposed agreement relates to the appointment of a managing agent, includes a statement as to whether the agent is a member of a professional body or trade association, for example, the Royal Institution of Chartered Surveyors, the Association of Residential Managing Agents, or the Association of Retirement Housing Managers, and whether he subscribes to a code of practice or voluntary accreditation scheme;
- contains a statement of the intended duration of the agreement;
- summarises previous observations made by the leaseholders to the landlord and sets out the landlord's response to them.

Again, the notice must invite observations in writing and state the address and timescale (minimum 30 days) for receipt of these observations.

Where the Council or the ALMOs have entered into the agreement, within 21 days of entering into the agreement a Notice will be issued to each tenant and any RTA, stating the reasons for making that agreement, or specify a place and the hours at which a statement of those reasons may be inspected. Where the landlord received observations

to which he was required to have regard, the notice must also provide a summary of the observations and his response to them.

There will be no need to write to each tenant or the RTA upon entering an agreement where the person with whom the agreement is made is a nominated person, or the person with whom the agreement is made submitted the lowest estimate.

The landlord will not be able to recover charges beyond the statutory amount (£100 per service charge payer) if consultation procedure is not followed, unless dispensation has been received from the LVT.

Qualifying works carried out under a qualifying long-term agreement

Where a long term agreement has been entered into there will be a requirement to consult on a more limited basis with all leaseholders where it is **intended to carry out works where the cost exceeds £250 for any individual leaseholder** under that agreement. The Council must still serve a notice of intention on the service charge payers which:

- must describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected
- states the landlord's reasons for considering it necessary to carry out the proposed works
- contains a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by the landlord on, and in connection with, the proposed works
- invites observations in writing in relation to the proposed works, or the landlord's estimated expenditure and states the address and timescale (minimum 30 days).

There is no right to nominate an alternative contractor as the landlord is already contractually bound with the one that is already in place and the landlord only has to respond in writing within 21 days of receiving any observations to the person that made them.

Consultation on qualifying works which are not the subject of a qualifying long-term agreement

Where it is proposed to carry out works of repair, maintenance or improvement which would cost **any individual service charge payer more than £250** which are not the subject of a qualifying long term agreement a formal consultation process must be undertaken with all leaseholders expected to contribute to the cost. This has the dual effect of giving notice to the leaseholders of the landlords intentions and seeking leaseholders views on the proposed works.

The landlord must serve a notice on each leaseholder (and on the secretary of the RTA if there is one) which:

- must describe in general terms the proposed works or specifies where a description of the proposed works can be inspected and the hours when it can be inspected. The inspection facilities must be made available free of charge, at a specified time and place. If at that time and place there are no facilities for copying, then the landlord must, on request, provide a copy of the description
- must state the landlord's reason for considering it necessary to carry out the proposed works
- invites observations in writing, and state the address and timescale

- invites the leaseholder (and the RTA) to nominate a person from whom the landlord should try to obtain an estimate.

The leaseholder (and the RTA) must be given a period of 30 days in which to send observations to the landlord and, if they choose, to nominate an alternative contractor of their choice.

After this, the landlord must obtain at least two estimates for the work. At least one of the estimates must be from a contractor wholly unconnected with the landlord and, where a contractor has been nominated by the leaseholders or the Secretary of the RTA, the landlord must try to obtain an estimate from that contractor. Having obtained the estimates he must supply, free of charge for at least two of the estimates, a statement setting out both the amount specified in the estimates as the estimated costs of the proposed works, and a summary of the observations to which the landlord is to have regard and his response to them. Any estimate obtained from a person nominated by the leaseholders or the RTA must be included in the statement that is provided free of charge. He shall also make all of the estimates available for inspection by the leaseholders and the secretary of the RTA.

Again, the landlord must invite observations and he must have regard to any observations made.

If any observations are made or alternative contractor nominated, the landlord must, within 21 days of entering into the contract, serve a further notice on all previous recipients stating his reasons for awarding the contract or, instead of serving notice, he can specify the place and hours at which a statement of those reasons may be inspected. This requirement will not apply where the person with whom the contract has been made with was nominated by the leaseholder or submitted the lowest estimate.

European Union implications to consultation on qualifying long term

There may well be some large long term agreements, and some contracts for works that may come within the rules for tendering within the European Union (the EU procurement rules), which require public advertisement in the Official Journal of the European Union. This included the works carried out by the ALMOs for the decent homes programme.

In these cases, there are some important differences, as follows.

- There is no right of nomination of a contractor.
- The landlord must include a statement in the notice of intention that nominations are not being invited because public notice is to be given for the agreement, or contract for works (whichever is applicable).

There is also extra provision for those landlords who are unable to provide an estimate of costs. Where a landlord can provide each leaseholder with an estimate of his/her contribution then he must provide that estimate. Where the landlord cannot provide such an estimate, he must provide an estimate of the cost of the works to the premises. Where the landlord cannot do this he must provide a statement of the hourly/daily rate applicable to the works if possible. Where the landlord cannot even provide this amount, he must provide a statement explaining why he is unable to do so and the date by which he expects to be able to provide it. The landlord must, in writing, inform the tenants of the amount within 21 days of receiving this information.

LVT dispensation from consultation

If the landlord fails to carry out the consultation process in the correct form and has not sought a dispensation from the LVT, he may be unable to recover the cost of the works from the leaseholders beyond the statutory limit of £250 per leaseholder.

However, in cases where the works are considered urgent, for example, a leaking roof or a dangerous structure, or in other cases where the landlord wishes to proceed quickly, the landlord may apply to the LVT for an order to dispense with the consultation procedure. In such a case the LVT will notify service charge payers of the proposal.

This policy is to be adopted by Leeds City Council and the Arms Length Management Organisations acting as agents of the Council. This policy will be subject to change. Wherever possible and as necessary leaseholders will be consulted on any changes made to this policy.

This policy is not, and should not be regarded as a contractual agreement between the Council, ALMOs or leaseholders. Parties should seek their own independent legal advice any issues arising from this policy.