

Swindon's Leaseholder Link

Housing Options - Leaseholders' Frequently Asked Questions

Over the past few months **DWA** has been talking to leaseholders at various meetings and answering freephone questions. This short report sets out leaseholders' most frequently asked questions. Please remember that if you are not sure about a service you receive or pay for, you should always start by checking to see what your lease says. If you are still in doubt you can find good advice at www.lease-advice.org or speak to your solicitor.

Q: Can my lease change under any of the options?

A: Only if you agree to any proposed changes. Unless the law changes, leases may only be changed by agreement between you and the landlord – this applies to the council as well as any other landlord. If you or the landlord cannot agree, either of you may ask the Leasehold Valuation Tribunal (LVT) whether the changes should be made.

Q: How would the options affect service charges?

A: Whatever happens, any landlord would still have to abide by the terms of your lease. This means you could only be charged for items included in your lease. If you are not sure what you are liable to pay for, check your lease. Any landlord – council or housing association – would have to respect your legal rights and make sure service charges are reasonable.

Q: Could any landlord set up a sinking fund?

A: Only if the lease allows it. Sinking funds can help leaseholders avoid large one-off bills and build up a sum of money to cover the cost of expensive works, such as structural repairs or lift replacements for example. But sinking fund charges must still be reasonable and the leaseholder has the right to challenge them. Sinking funds should be held in trust and normally earn interest. They are usually sold on as part of the flat when you leave.

Q: Could any new landlord raise the cost of management fees?

A: Many leases allow landlords to recover management costs from leaseholders. However the landlord is **not** allowed to increase management fees just for profit and the law requires all costs – including management costs – to be 'reasonable'.

Q: Would a new landlord be able to introduce any new services?

A: The general principle is that the landlord does not have to provide any service that is not covered by the lease and the leaseholder does not have to pay for any service that is not specified in the lease. If a landlord wanted to introduce a new service not covered in the lease *and* charge you for it, this should only happen after you had been properly consulted and after both parties had agreed to the change. If there is a dispute both landlords and tenants have the right to ask the Leasehold Valuation Tribunal to decide if a charge is reasonable.

Q: Would I have to pay VAT on any service charges?

A: It depends.... Day-to-day repairs and management costs for leaseholders are usually exempt from VAT. For major works that improve the lifetime of a property (such as a new roof for example) councils must pay VAT but can recover the cost from HM Revenue & Customs. However, housing associations are not normally able to recover these VAT costs if the service is provided by an outside contractor and so would probably have to pass the extra cost on to the leaseholder. However, if a housing association provides a service 'in-house', VAT is not payable on staff costs. Often, in a stock transfer, the council and the housing association agree an arrangement called a 'VAT shelter'; this avoids the need to pay for any VAT charges for major works for the first 5 years after a transfer.

Q: Would I still have the right to be consulted on service charges?

A: Yes. The law requires landlords to consult leaseholders before carrying out repairs or improvements costing more than £250 per leaseholder. The consultation must follow a formal process set out in the Landlord & Tenant Act 1985 and the landlord must show that the views of leaseholders have been given proper 'regard'. This does not mean that the landlord has to follow the comments received!

If the landlord intends to let a long-term contract for services (such as a service contract lasting more than 12 months for lift maintenance or garden maintenance for example) and the cost to each leaseholder is more than £100 a year, leaseholders should be consulted. Again, the process is set out in law and, again, regard must be given to leaseholders' comments.

Q: Can I be asked to pay for services provided outside my home?

A: Yes, in certain circumstances landlords can ask you to pay towards the upkeep of the area as a whole. This is called an Estate Management charge and these schemes are set out in law. Any charges can still be challenged in a similar way to service charges if they are not reasonable.

Q: Would I have a right to information about my service charge?

A: Yes. All landlords must set out their service charge demands in writing and give you a formal summary of your rights and obligations. You can also ask for a summary showing how the service charge was arrived at and you have a right to inspect any documents relating to the service charge demand. (The landlord may charge you a small administration charge for this). These rights are set out in law and apply to council and housing association leaseholders.

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