



SERVICE CHARGE RIGHTS: A summary for leaseholders

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Leaseholders have important protections under Landlord and Tenant legislation and landlords are required to serve a summary of those rights when issuing service charge demands. Leaseholders can challenge unreasonable charges; challenge poor or unnecessary workmanship; and have the right to be consulted about major works and long term agreements.

As the principal professional membership body for managing agents, ARMA plays an important role in educating and informing leaseholders about their rights and responsibilities. We have produced over 20 leaseholder advice notes specifically on the leasehold system and are currently rebuilding our website to make information for leaseholders as widely accessible as possible.

This paper summarises existing rights in relation to service charges; explains what leaseholders can do to challenge them; and sets out changes being made by ARMA to improve the lives of leaseholders living in managed blocks.

1. What protection do leaseholders currently have?

1.1 Is there a limit to how much landlords can charge lessees?

Leaseholders are given important protection under Section 19 of the Landlord and Tenant Act 1985. This rules that **service charges are only payable to the landlord to the extent that they are reasonable**. So if a leaseholder feels the amount they are paying is unreasonable, they have the right to take their complaint to the First-tier Tribunal (Property Chamber) in England or the Leasehold Valuation tribunal in Wales LVT. Service charges may increase from time to time along with inflation or with increased management demands of the building, but any increase in service charge payments instigated by the landlord must also be reasonable.

1.2 What can leaseholders do if they feel the work done on their property is unnecessary or unsatisfactory?

Leaseholders may be concerned about the quality of the work being carried out on their building. Section 19 offers even more protection: **service charges are only payable for the provision of services or works that are of a reasonable standard.** So if leaseholders are unsatisfied with the level of service they are getting for their service charge payments, once again they have the right to take their landlord to an Tribunal.

If leaseholders feel that work being carried out on their building is unnecessary, they also have the right to take their landlord to the Tribunal under S.27a of the Landlord and Tenant Act 1985. This right will help them to determine whether or not the cost of the disputed works is in fact payable. It is also important to bear in mind that **Landlords or managers named in the lease can only recover costs of expenditure for those items specified in the lease.**

1.3 How can people find out if they are being charged fairly?

Section 21 (Landlord & Tenant Act 1985) gives leaseholders the right to ask their landlord (usually via the managing agent) to supply a summary of relevant costs making up the service charges for the last accounting period. This is an important right for leaseholders if they feel they are being charged too much or for items that are not recoverable. Importantly, they can go further under **Section 22 which gives leaseholders the right to inspect any receipts or invoices** that support the figures obtained under a Section 21 request.

1.4 Do leaseholders get a say on major works carried out on their property?

If a landlord wishes to carry out major works to the building or enter into a long-term agreement with a contractor or supplier, they must consult with the leaseholders. Under Section 20 of the Landlord and Tenant Act 1985, **landlords must consult with the leaseholders if: they are proposing works that will cost any one leaseholder over £250; or £100 if they propose to enter into a long term agreement with a contractor for a period of more than 12 months.** The first stage of the Section 20 consultation serves advance warning and, importantly, allows leaseholders to put forward their own preferred contractor or supplier.

Section 20 is an important protection for leaseholders which is why ARMA worked with the Leasehold Advisory Service to produce a guide to the consultation process – this is free to download from the advice page on the ARMA website: www.arma.org.uk

1.5 Other protections for leaseholders

- A residents' association can be formed which gives leaseholders added power as it allows them to maximize their rights under the terms of their lease. This will also put them in a strong position in the event of disputes with landlords, who will also be obliged to consult with them on management issues, the appointment and performance of the managing agent and service charge issues.
- Leaseholders can also get together to buy the freehold of their own block and form a Resident Management Company, effectively becoming their own landlord. This is known as collective enfranchisement.
- The 'Right to Manage' can be an important way of empowering leaseholders who are unhappy with the way their landlord is managing their block. RTM effectively allows leaseholders to take control without having to prove mismanagement on the part of the landlord. But exercising RTM is not a decision that should be taken lightly.

2. What's being done to tackle bad practice?

2.1 Regulation at present

ARMA has been lobbying for statutory regulation for over 10 years, but the leasehold property management sector remains unregulated by government. ARMA was founded to promote the highest standards of leasehold management and already places regulatory requirements on its own members. To become a member, companies must satisfy a number of stringent entry criteria including:

- demonstrating they have been trading successfully in block management for at least two years
- providing up to date accountants' reports (annually) showing they are holding clients' monies in trust (under Section 42 of the Landlord and Tenant Act 1987)
- having relevant Professional Indemnity insurance.
- agreeing to abide by the Service Charge Residential

Management Code issued by the Royal Institution of Chartered Surveyors.

ARMA also works to raise standards of management by providing advice, training and guidance to its member firms as well as producing advice notes for leaseholders and Resident Management Companies.

All ARMA members must also have a published robust in-house complaints procedure that must be made available on request. ARMA members must also belong to a recognised independent ombudsman scheme so leaseholders who are not satisfied with the outcome of their initial complaint can get independent redress at no cost. When the ombudsman issues their decision, a report is sent back to ARMA and if a member is found to be in breach of the Association's bye-laws ARMA will take disciplinary action. This could be a formal warning about future conduct, a disciplinary sanction such as a fine, or in the most serious cases expulsion from membership.

A full list of ARMA members, searchable by region, can be viewed on the ARMA website: www.arma.org.uk

2.2 Accounting for lessees' money

In spite of ongoing pressure from ARMA, the government decided in 2010 not to introduce the long awaited accounting regulations that would have protected thousands of leaseholders' service charge funds.

Had S152/156 of the Commonhold and Leasehold Reform Act 2002 been implemented, lessees' money would have to be held in separate designated bank accounts and they would have the right to automatically receive a full set of annual service charge accounts along with an accountant's report. ARMA was heavily involved in the drafting of these regulations and it was a major disappointment when they were dropped at the last minute with the Coalition coming to power.

The lack of regulations and the fact that many leases are silent on exactly how service charge accounts should be produced, often leads to inconsistent accounting practices and confusion over how such monies should be accounted for.

To address this issue and to give leaseholders greater confidence in the way their money is handled, ARMA worked with the Institute of Chartered Accountants for England and Wales, the Association of Chartered Certified Accountants and the Royal Institution of Chartered Surveyors in 2010/11 to issue

detailed best practice guidance on accounting for service charges. The guidance aims to clear up the inconsistencies in approach to such accounts and ultimately increase transparency in service charge accounting procedures. In the absence of regulation ARMA encourages its members to follow this guidance.

ARMA also issued an advice note specifically for leaseholders to make them aware of best practice when it comes to how their service charge money is dealt with. Both these guidance documents are free to download from the ARMA advice page on the ARMA website: www.arma.org.uk

2.3 A consumer focused future

ARMA is about to launch one of the most significant initiatives the leasehold sector has seen for many years. Its 'ARMA-Q' project will be a truly independent self-regulatory regime that will bring about greater transparency. The new regime will be based upon compliance with a new Consumer Charter backed by a set of Standards that will guarantee consumers a good and fair service from ARMA members.

The overall aim is **to protect consumers through professional self-regulation that guarantees probity, the highest levels of ethics and best practice in all dealings between residential managing agents, intermediaries, landlords and lessees.**

ARMA-Q is our answer to the failure of government to regulate the leasehold management sector.

Crucially, the new standards will be specific to the managing agent sector. They will be consumer focused and promote **honest, fair, transparent, timely and professional conduct**. All members will have to comply with these standards, provide evidence they continue to do so and will be subject to a three year internal audit check.

Significantly, this new regime will be operated by an independent Chair and supported by an independent Panel that will enforce compliance with the standards. Failure to comply will lead to disciplinary action. True independence will boost consumer confidence.

ARMA: December 2020

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