



# Right to Buy & Leaseholder Services Policy



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INVESTOR IN PEOPLE

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**Contents**

1.0 Introduction ..... 3  
2.0 Purpose..... 3  
3.0 Customer Care..... 3  
4.0 Equality & Diversity ..... 3

**Chapter 1 - Right to Buy**

5.0 The Right to Buy ..... 4

**Chapter 2 - Leasehold Services**

6.0 Customer Care & Leaseholder Involvement: ..... 8  
7.0 Mediation ..... 11  
8.0 Leasehold Services - Legal Requirements ..... 13  
9.0 Commonhold and Leasehold Reform Act 2002 (the 2002 Act)..... 13  
10.0 Leaseholder Service Charges..... 14

**Chapter 3 - Major Works**

11.0 SLH’s Maintenance Responsibility..... 23  
12.0 Leaseholder’ s Maintenance Responsibilities ..... 23

## **1.0 Introduction**

Three thousand six hundred and one properties have been sold through the tenants' right to buy scheme since it was first introduced in 1980. In 2005/06 17 tenants bought their homes under the Right to Buy; in 2006/07 this reduced to just 8 completed sales. The reduction in Right to Buy completions is due to rising property prices which means that the maximum discount available of £26,000 is not a significant enough reduction to make properties affordable to local tenants. Currently there are 226 leaseholders in South Lakeland.

The leases are owned by South Lakeland District Council but South Lakes Housing (The ALMO) manages those leases on behalf of the Council and also administers the Right to Buy application process.

When a qualifying secure tenant buys their flat or maisonette from the Council, they buy it on a long lease, usually 125 years. The lease is the legal agreement with the Council and sets out rights and responsibilities as a leaseholder. Another word sometimes used for leaseholder is lessee.

The block or building lived in is still owned by the Council and leaseholders have to pay towards the cost of managing, maintaining and improving the building, its services, and communal areas. This payment is called the service charge.

## **2.0 Purpose**

This policy outlines South Lakes Housing's approach to dealing with Right to Buy applications and also dealing with leaseholders and their homes. It aims to provide clarity on the way we manage leaseholds, deal with leaseholder enquires and how we comply with relevant legislation. We welcome comment from any interested stakeholders which will be discussed at our regular Leasehold Club.

## **3.0 Customer Care**

SLH is committed to ensuring that it offers excellent customer care to all its customers including leaseholders in line with contractual and legal requirements and best practice nationally. At the same time we must ensure that the value for money of the service is demonstrated for both the leaseholder paying for the service through service charges and also for our tenants by ensuring that equitable service charges are raised and that we maximise the income recovered through eligible service charge collection.

We will carry out regular satisfaction surveys of leaseholders and tenants exercising the Right to Buy to monitor satisfaction and how we are achieving our objectives to increase customer satisfaction through the provision of excellent customer services.

This policy has been consulted upon with our Leaseholder Club.

## **4.0 Equality & Diversity**

SLH has a diversity strategy and will ensure that this policy is clearly linked to it in order to ensure that it contributes fully with our Equality and Diversity objectives.

An Equality Impact Assessment has been carried out on this policy.

## Chapter 1 – Right to Buy

### 5.0 The Right to Buy

SLH manages the Right to Buy (RTB) service on behalf of South Lakeland District Council. We will comply with statutory requirements in relation to the RTB.

**We have agreed the following service standards with the Leaseholder Club:**

| <b>Right to Buy</b>   |
|---|
| We will acknowledge receipt of your application within 20 working days and will acknowledge receipt of your application within 20 working days and send a house/freehold offer letter within 12 weeks of receipt of an application. |
| We will explain the implications of becoming a leaseholder to you in an induction Interview as soon as is practicable after your application is received.   |
| We will send a flat/lease-hold offer within 16 weeks of receipt of an application.  |
| We will instruct the Councils' Legal Section within 10 working days of receipt of tenant's instruction to proceed with the sale.  |

#### **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 sufficient time as a public sector tenant
- The property is their only or principal home.

Public sector tenancy includes any time spent as a tenant of a public sector landlord such as the District Council or other local authority, Housing Associations, and certain other public bodies.

If the secure tenancy started before 18 January 2005 the applicant must have been a public sector tenant for at least two years.

If the secure tenancy started on or after 18 January 2005 the applicant must have been a public sector tenant for at least five years.

If the secure tenancy started on or after 18 January 2005, but immediately before that date they had been a public sector tenant, for example on an introductory tenancy, the applicant would need two years public sector tenancy.

#### **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.

### **Under what circumstances can a tenant lose the Right to Buy?**

You 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 the 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
- The Council or its agent obtains a suspension order
- The tenancy becomes demoted as a result of action taken in respect of anti-social behaviour.

### **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)

SLH will also issue an information booklet 'Right to Buy – Information for Tenants of SLH' SLH also asks applicants to fill in an 'additional customer profile information form', which contains questions relating to your ethnicity and personal circumstances to ensure that there is equality in the delivery of services and tailor our services to customer needs. These forms are sent out to the applicant by second class post within 10 days of receipt in order to comply with statutory timescales and our customer service standards

### **General information about the RTB (1):**

- If there are joint tenants they have the right to apply jointly, and can still do so even if one of the joint tenants is not living at the property as their only or principal home.
- If there are joint tenants they also have the right to agree that one of you can apply in sole name (the other joint tenant who does not wish to apply must still complete the application form in order to give their agreement).
- they have the right to share the right to buy with members of their family. A member of the family includes son (s), daughter (s), and husband or wife, or a person with whom the applicant 'live together as husband or wife' including gay couples.
- The member(s) of the family must live at the property as their only or principal home, and apart from the husband or wife, must have been doing so for the previous twelve months. In some cases the Council may agree to a shorter period.

## **Receipt of RTB(1) process:**

Upon receipt of the application form (RTB(1) the Housing Manager at SLH will be notified of the application and required to complete tenancy checks to ensure eligibility.

Subject to basic eligibility being evidenced, SLH will contact the applicant to make an appointment to discuss the application using the proforma information checklist to guide the interview. A leaflet 'Should I buy my home' will 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.

Once tenancy eligibility checks and interview have been completed, SLH will reply to the applicant with a formal written notice (Form RTB 2) to admit or deny the right to buy. If the right to buy is denied the reason(s) must be given in writing.

SLH will continue dealing with the application and will instruct a Valuer to value the property. The valuation is the open market value of your home at the date of application. The valuation is determined by the Council. If the applicant disagrees with the valuation they have the right to ask for a determination of value by the District Valuer and they should be able to give their reasons directly to the District Valuer. The decision of the District Valuer is final. The price is calculated by deducting the discount from the valuation. Once SLH receives a copy of the valuation we will issue the tenant with a formal offer notice (Section 125 Notice). The price that tenants will be asked to pay for their home will be stated in the notice.

## **The Offer**

We will send a house/freehold offer letter within 12 weeks of receipt of an application (RTB(1))

We will send a flat/lease-hold offer within 16 weeks of receipt of an application RTB(1)

If the tenant decides to proceed with the purchase they must complete the purchase within the time allowed by the right to buy regulations. We will instruct the Councils' Legal Section within 10 working days of receipt of tenant's instruction.

The Council can serve a 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). This notice lasts for fifty-six days, and if the tenant have not completed within this period a further and 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.

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. In the notice they must specify why they think the Council is causing delay and state a period, which must not be less than one month, within which the Council must respond. If the Council does not respond within the required time they 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.

*N.B. prior to actual completion, at no time during the application is the tenant under any obligation, and can withdraw at any time.*

## What discount is available?

The discount depends on whether they are buying a flat/maisonette or a house. The length of the public sector tenancy initially determines the discount. For a House the discount start at 32% and increases by 1% every year up to a maximum of 60% and for a flat starts at 44% 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 South Lakes area the maximum discount currently allowable is £26,000.

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.

Where the home is a flat or a maisonette, the offer notice will include a schedule of works (repairs and improvements) that may be carried out to the building in the initial period (approximately five years) after completion, along with estimated costs that could be charged. The valuation takes into account these expected works and charges. The valuation also disregards the value of any improvements that tenants have carried out to their home and assumes a reasonable standard of internal decorations in accordance with the terms of the tenancy.

## Repayment of discount

If the lessee/freeholder decide to sell their property within 5 years of completing the purchase under the Right to Buy they must pay back some or all of the 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 discounts. **In exceptional cases the Council may waive the requirement to repay discount.**

## Chapter 2 - Leasehold Services

### 6.0 Customer Care & Leaseholder Involvement:

#### a. Recognised Tenants Associations (RTA)

Leaseholders have a right to join with other SLH tenants in a tenants' association. The association can then seek formal recognition from either SLH 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. RTAs have certain additional rights to information over and above those available to the individual tenant (see list above for the rights enjoyed by an individual tenant).

A RTA 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 we have recognised the association, we must give six months' notice should he wish to withdraw recognition. Alternatively, the TA 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.

#### b. Leaseholder Club

South Lakes Housing has been driving service improvement to leaseholders via a Leaseholders' Club set up to discuss and review policies and information associated with leasehold management and to give views to SLH via the Tenants' Committee. From January 2008 the core members of this Club have reformed as a Leasehold Service Improvement Group (Leasehold SIG).

## We have agreed the following Service standards:

| Leaseholders   |
|--|
| We will issue you with an estimated invoice for ground rent and leasehold service charges in April each year and issue a final statement of account in March of the following year and advise of any additional charges or refund due. |
| We will provide instalment facilities to allow payment of service charge invoices over 10 months.  |
| We will provide you with details of programmes of planned works and improvements to your estate and arrange for contractors to contact you to discuss carrying out works to your home at a reasonable cost.                            |
| We will arrange for our gas contractor to provide gas servicing to you at a competitive price.   |
| We will involve leaseholders in setting leasehold service standards. We will hold regular Leasehold Service Improvement Group meetings and include leaseholders in Area Discussion Groups.   |
| We will provide a responsive repairs service to leaseholders for all repairs (both internal and external). This will include a 24-hour, 365 day emergency call out service for emergency repairs.                                      |

### Financial support for major works

Right to Buy leaseholders have the statutory right to a loan for the cost of major repairs from the local authority where the landlord is the local authority<sup>1</sup>; this only applies where the issue of the service charge notice takes place within 10 years of the purchase of the lease. The annual charge must be more than £1,900 and leaseholders must be told of this right. The cost of the loan should be the same as the cost of a mortgage to the local authority.

Where leaseholders cannot afford the costs of major repairs or are in arrears with charges, the debt can be consolidated with the mortgage. This is good practice in supporting leaseholders who are unable to afford large bills for DHS repairs where it is well managed. The process of asking this of the mortgage company can lead to leaseholders paying off debts. It can provide value for money by removing the need to go to court which can cost £500 - £1,000. However, it increases indebtedness so it should not be done early in a debt recovery process.

Mandatory schemes may be available to assist leaseholders with major repair costs of more than £10,000 in housing where capital funding has been made available by the Government for major repairs. **This is usually associated with LSVT, ALMO and regeneration funding.**

Discretionary grants may also be made by landlords where major repairs cost more than £10,000 [Social Landlords Mandatory and Discretionary Reduction of Service Charges (England) Directions 1997] These may be provided to assist leaseholders with major DHP repair costs. This is a particular issue where major repairs are being carried out to meet the Decent Homes Standard.

Councils have the powers to make loans to leaseholders who cannot afford high major repairs charges and which are usually secured with a charge on the property which is being repaired

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<sup>1</sup> Housing (Service Charge Notes) Regulations 1992 SI1992/1708 as amended by SI 2000/163

## Tenant's rights in relation to service charges

Tenants **do not** have the Right to Manage or right to buy the freehold: because SLH is managing agent for a public body – South Lakeland District Council.

Rights SLH tenants do have include:

- Information: the landlord must provide his name and a contact address within England or Wales 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.
- They 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 he fails to do this, he 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.
- Challenging service charges: leaseholders can apply to the LVT to seek a determination of the liability to pay and reasonableness of the charges, whether already paid or not or of the standard of works or services, 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.
- 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<sup>2</sup>. For recurring and small charges, including management charges, and insurance, this means sending out bills within six months of the end of the financial year in which they were incurred.

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<sup>2</sup> Westminster City Council v BJ Hammond and others [1995]

- 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 (as s/he specifies). If they are represented by a Recognised TA and they consent, the secretary of the RTA may serve the notice instead.
- From 1 October 2007 the landlord must send a special prescribed form alongside demands for payment of service charges and administration charges 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 and a possible summary fine on the landlord

## 7.0 Mediation

SLH will use the The LEASE Mediation Service which provides a way to settle a dispute with leaseholders without the need to go to court or the Leasehold Valuation Tribunal (LVT). Mediation provides an opportunity for the two parties to discuss the problem and, together, work out a solution, in an informal setting. Both parties meet with a LEASE mediator who helps them to clarify the issues, to communicate with each other and to reach an agreement.

Disputes between the leaseholder and the landlord or manager, or between leaseholders in the same building, often develop to the point where recourse to the law, the LVT or the court, provides the only practical solution. However, in many cases the problem is capable of resolution at a much earlier stage if the parties involved can simply sit down and discuss the issues. This can be difficult to arrange, emotions may be running high and negotiations may not get very far.

The mediator is an impartial professional, trained to help parties in a dispute to find a mutually acceptable solution, to unlock the entrenched positions and keep everyone focused on working toward an agreement.

Firstly, both parties must agree to attempt the mediation, it is dependent upon a willingness to explore a solution and can't be imposed on the other party. If it is not successful it won't inhibit or limit in any way your rights to more formal routes to dispute resolution. Where a solution is found an agreement is drawn up and signed by both parties.

The situation is resolved by an organised and civilised discussion of the issues and is enforced simply by a voluntary acceptance that the agreement reached shall be complied with by both sides. This can often be more productive than the confrontational situation of the court or tribunal hearing where a solution is imposed, not necessarily agreed.

The number of applications and their outcomes may be an indicator for the quality of the service. Good and excellent landlords may be those who resolve disputes without recourse to LVTs.

We will continue to provide information to leaseholders about the LVT service but also use mediation services through LEASE to reduce the number of potential cases having to resort

to legal redress. The number of referrals for mediation and LVT will be monitored and reported to stakeholders and the Board.

### **The procedures**

- The LEASE mediator will contact and, where appropriate, meet privately with each party to identify and discuss the issues and to fully appreciate and understand each respective viewpoint. The mediators are also qualified lawyers, specialising in leasehold law, and will be able to separate out issues only capable of legal resolution, but will not give legal advice to either party as a Mediator.
- At the mediation session both parties meet together, with two LEASE mediators. Each party will be asked to confirm a willingness to mediate and to agree some basic ground rules, to ensure a productive discussion.
- Then each party will be invited to present their views of the dispute, uninterrupted by the other; the mediator will summarise the issues and then encourage both sides to come up with possible, mutually acceptable solutions. This will simply be a structured discussion, ensuring each party listens to and understands the other's point of view, and actively attempts to resolve the dispute.
- This may take some time, a session will normally take up to three hours but this depends on how much there is to discuss and each party's willingness to find agreement.
- Where agreement is reached, the LEASE mediator will help the parties to draw up a formal agreement document and will produce the necessary papers for signature. Where agreement is not possible, either or both parties are free to continue toward LVT or court action.

LEASE mediation is subject to an application fee of £100 from each party (£85 plus VAT). We levy a fee because we believe this encourages a commitment from each party to the process.

All mediations will be carried out at the LEASE offices, 31 Worship Street, London EC2A 2DX.

### **Ground rules for mediation**

The ground rules establish the tone for the mediation session and are designed to ensure that the focus is on achieving a mutually satisfactory result.

- We agree to speak one at a time and not interrupt each other.
- We agree not to attack or use personally-abusive language about the other person.
- We agree to listen with respect to the other person and to try to understand their underlying needs and concerns.
- We recognise that each person is entitled to their own perspective even if we do not agree with it.
- We will focus on the future we would like to bring about and not dwell on what failed in the past.
- We agree to think of solutions that will be acceptable to everyone involved with the problem.
- We agree to make productive use of our time during the mediation to move forward to the fairest and most constructive agreement we can achieve.

- We acknowledge that the mediators are impartial and will not pass judgment on what anyone is saying.
- We agree that we or the mediators can call for a break if we need one.
- We agree that either of us or the mediator can ask for a private side meeting if the need arises.
- We agree that the responsibility for settling the dispute rests with the parties, not the mediator.

## **8.0 Leasehold Services - Legal Requirements**

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

## **9.0 Commonhold and Leasehold Reform Act 2002 (the 2002 Act)**

The 2002 Act provides for a number of changes that affect the rights and responsibilities of leaseholders in England and Wales. The Act gained Royal Assent on 1 May 2002. Part 2 of the Act makes key changes to the existing leasehold legislation in England and Wales. The leasehold provisions of the Act are being brought into force in stages, and at different times for England. For leasehold properties in England, the first phase of provisions came into force on 26 July 2002. The second phase came into force in England in two parts, on 30 September 2003 and 31 October 2003. The third stage came into force in England on 28<sup>th</sup> February 2005 and the most recent on 1 October 2007.

### **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 an LVT that the charges are properly due and reasonable, then we can begin forfeiture proceedings 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.

If a leaseholder breaches any other of the terms of the lease we may have a right to forfeit the lease and recover possession of the property. However, legislation provides a range of measures to protect leaseholders. Where property is lawfully occupied as a dwelling, the landlord cannot re-enter the premises without a court order. A landlord is also required to serve a notice before exercising the right to forfeit the lease. This must specify the breach and give the leaseholder the opportunity to remedy the breach or to compensate the landlord for the effects of the breach. In addition, the landlord is prevented from taking forfeiture action in respect of the non-payment of service charges unless the charge has been either agreed or admitted by the leaseholder or determined by a court, or arbitral tribunal. There are also a number of opportunities during the legal proceedings for the leaseholder to put matters right and avoid forfeiture of the lease.

Since 28<sup>th</sup> February 2005 the 2002 Act introduced new restrictions on the commencement of forfeiture proceedings, including the service of notices under section 146 of the Law of

Property Act 1925. Landlords will only be able to take action when a court or LVT has determined that a breach of a covenant or condition of a lease has occurred. Any notice of forfeiture cannot be served until 14 days after a final determination has been made. This will address the problem of landlords who threaten forfeiture proceedings on spurious grounds in order to

- Persuade leaseholders to pay unreasonable charges.
- Prevent the use of forfeiture for outstanding debts that are less than a prescribed amount, unless the amount or any part of it has been outstanding for more than a prescribed period. The prescribed amount cannot exceed £500. This will apply to outstanding debts of rent, service charges and administration charges. The objective is to prevent forfeiture for modest amounts unless they have been outstanding for an extended period. Administration charges for non-payment of an outstanding amount will not be taken into account in determining whether the prescribed sum has been exceeded.

## **10.0 Leaseholder Service Charges**

### **General Issues:**

Charges cover two separate areas; day to day service charges that mainly 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 provide for this. The landlord is obliged to provide the services specified in the lease but 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.

**On mixed tenure estates, the day-to-day charges should be the same for tenants and leaseholders.**

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

### **Invoice process**

We currently send out invoices in November each year for the service costs incurred from the previous April and an estimated spend for the rest of the year to the following March. We are reviewing this to bring invoicing activities in line with the terms of the Lease.

The regular statement of account should set out:

- The service charges the leaseholder must pay
- The total service charges for the group of properties
- The relevant costs relating to those services
- The aggregate amount standing in credit at the beginning and end of the accounting period both for the individual and for the tenants of the dwellings.
- A certificate of a qualified accountant giving the opinion that the accounts are fair
- A summary of the rights of the leaseholders

## **Tenants/leaseholders right to inspect the insurance policy**

Where the tenants notice requires the landlord to allow reasonable facilities for inspecting the policy or associated documents, we shall liaise with South Lakeland District Council to arrange this. We may treat as part of our costs of management any costs incurred by doing so. We may also make a reasonable charge for doing anything else in compliance with a requirement imposed by the notice.

South Lakeland District Council has 21 days from the date of receiving the notice to comply with the notice. If the landlord fails to comply with any of the duties required of them as described above without a reasonable excuse, they commit a criminal offence and are liable on conviction of a level 4 fine on the standard scale (up to £2,500).

## **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 but we need only provide the information once for the same period.

We 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 show:

- how the costs relate to the service charge demand, or if they will be included in a later demand;
- any items for which the landlord did not receive a demand for payment during the accounting period;
- any items for which a demand was received and for which no payment was made during the accounting period;
- any items for which a demand was received and for which payment was made during the accounting period; and
- whether any of the costs relate to works for which an improvement grant has been or is to be paid.

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 SLH is a public sector body, one of our 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.

We cannot charge for inspecting documents, but can make a reasonable charge 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.

## **Tenants rights to challenge service charges**

### **Rights to appeal**

The leaseholder can refuse to pay a service charge and apply to the Leaseholder Valuation Tribunal (LVT) if s/he thinks 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 1<sup>st</sup> September 1997. All SLH 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.

## **SLDC Lease in relation to service charges**

The Council's current Lease (2007) requires the leaseholder *"To pay to the Council without any deductions by way of further and additional rent a proportionate part of the expenses and outgoings incurred by the Council in the repair maintenance and renewal and provision of all services including insurance premiums payable by the Council..."* ( Clause 1(b) )

*"...paying during the said term the yearly rent of £10 payable on the first day of April in every year and also the further and additional rent (hereinafter called the Service charge) calculated in accordance with the provisions of clause 1(b) .. and to be paid annually in advance on the first day of April in every year..."*

SLH do not currently operate a sinking fund and it is not referred to in section 125 notices. Some leases allow or require a fund to be created to build up sums to pay for large infrequent items of expenditure. These are referred to as reserve funds, sinking funds or depreciation funds. For local authorities, where a reserve fund exists, this should be referred to in the s125 notice. To work properly, these require careful planning and monitoring as well as reliable estimates of future costs. Where costs are lower or higher than predicted then charges should be amended. Sinking or reserve funds are normally set up to provide adequate funding over time for cyclical and major repairs when required. They are not able to provide funding for homes such as older flats purchased through RTB, RTA or shared ownership where major works are required before reserve funds have had time to grow to the required level. Where there is no sinking or reserve fund, leaseholders should be given an annually updated 5 year forecast for the cost of major works to their homes, and be urged to set money aside to meet the costs. We will review this in consultation with leaseholders and the Council to consider introducing it into our policy.

The lease should set out how costs will be apportioned. We must ensure that the lease does this. The lease is subject to review in 2007 with a view to introducing a new lease for new leaseholders in 2008 and a varied lease for existing leaseholders after consultation and if required review by the Leasehold Valuation Tribunal in 2008.

### **Varying the Lease**

Leases can be varied at any time with the agreement of all the parties concerned. However, if agreement cannot be reached you may be able to apply to a LVT to vary your 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.

### **Ground Rent**

Since 28<sup>th</sup> February 2005 the 2002 Act provides 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 date payment is to be made must be at least 30 days and not more than 60 days after the day the notice is given, and must not be before the date it would normally be payable under the terms of the lease;
- 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.

SLH 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.

South Lakes Housing will decorate the external window frames and other outside woodwork and metal work to your home every five years, or other period as specified in the Lease.

The other flats and maisonettes in blocks of flats will also be decorated at the same time, as will the staircase and landings and hall.

## Chapter 3 - Major Works

### Limitations due to the offer document (sect 125 notice)

The initial period runs from the purchase date onwards for a set time, and the Reference period runs from the date the application to purchase was made to that same period end date. If the purchase was made under the 1980 Housing Act, those periods would normally end ten full financial years after the purchase date. If the purchase was made under the 1985 Housing Act (as revised in 1987) the periods would normally run for five full financial years after the original purchase date. In order to clarify the period end dates, the last day of the financial year within which original purchase date was made is taken, and then ten or five years is added accordingly.

Under the 1980 Act a lessee can normally be charged for their share of the costs of any repairs to the building or estate (as defined by the lease agreement or transfer document). However, with regard to structural defects, they can normally only be charged for a share of the related costs if they have been listed in the offer letter and if they are known about by the landlord within the ten year period.

Under the 1985 Act, within the five year period the lessee can only be charged for a share of the costs to any repairs or structural defects if they have been notified in the offer letter. 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 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

#### a. Consultation on qualifying long term agreements

Where we propose 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, we must consult before proceeding.

The contract could be, for example, for maintenance of the lift, a door-entry system or an alarm system in a retirement scheme, for window or other cleaning, for garden maintenance, or simply for supplies of materials. However, contracts of employment are exempt from the consultation procedure.

SLH must serve a notice on each leaseholder (and on the secretary of the recognized 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 SLH has entered into the agreement we shall within 21 days of entering into the agreement write to each tenant and any RTA, stating our 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.

We will not have 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 we fail to carry out any of the consultation procedure, unless we have received dispensation from the LVT.

## **b. Qualifying works carried out under a qualifying long-term agreement**

Where we have entered into a long term agreement we will still be required to consult on a more limited basis with all leaseholders where we intend to carry out works where the cost exceeds £250 for any individual leaseholder under that agreement. SLH 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 him 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.

## **c. Consultation on qualifying works which is not the subject of a qualifying long-term agreement**

Where we propose 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 terms agreement, we must, before proceeding, formally consult all those expected to contribute to the cost. This has the dual effect of giving notice to the leaseholders of our intentions and seeking their view 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 which he 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 South Lakes Housing 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 will 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.

## 11.0 SLH's Maintenance Responsibility

We are committed to ensuring that all our properties are maintained to the highest standards. This includes the achievement of decent homes standard for all our tenants by 2010. For leasehold properties we have responsibility for certain external works and the lessee is responsible for internal works. SLH's 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   |

## 12.0 Leaseholder's Maintenance Responsibilities

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 your 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
- contributing to the costs of estate & block repairs
- contributing to district wide costs of grounds maintenance
- maintaining any items that you have fitted or alterations you have 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).

