



Department for
Communities and
Local Government

Protecting local authority leaseholders from unreasonable charges

Analysis of consultation responses and next steps

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1. Introduction

- 1.1 Ministers are aware of cases of unreasonable service charge demands on leaseholders. To help to protect against this, on 7 October 2013 the Department for Communities and Local Government issued the consultation document “Protecting Local Authority Leaseholders from Unreasonable Charges”.
- 1.2 The consultation was on a proposal to update the Mandatory Directions to councils to include in the programmes described in the 1997 Directions all central government funding for repair, maintenance or improvement, including Decent Homes Grant from the 2013 Spending Review. The proposal was to have a £10,000 cap on leaseholder works on homes outside London, and £15,000 on homes within London.
- 1.3 To offer social landlords certainty that they could legitimately reduce service charges for leaseholders who face hardship, the consultation also proposed that the Discretionary Directions should be updated to achieve this.
- 1.4 The consultation posed four questions:
 - Question 1: Do you believe that the right balance will be struck between the interests of leaseholders and those of the councils and their other residents if:
 - A We update the Mandatory Directions as proposed, and;
 - B We update the Discretionary Directions as proposed?
 - Question 2: Do councils eligible to bid for Decent Homes Funding have evidence that a cap of £10,000 outside London, or £15,000 in the capital, will prevent them achieving the Decent Homes Standard on homes where the works are part or wholly funded by Government?
 - Question 3: If a council believes that it would have to cap the leaseholder charges, how much of the costs will be borne by the council, and how would it pay for this?
 - Question 4: Are there any other comments on the draft Mandatory and Discretionary Directions?
- 1.5 We would like to thank all those who took the time to respond to the consultation.

2. About the responses

2.1 A total of 129 responses were received from a variety of organisations and individuals, falling into the following broad categories:

Broad groupings	Organisation type	Number of respondents
Local authority and housing associations	Local authorities	20
	Private registered providers	2
Leaseholders and groups	Leaseholder groups	7
	Individual leaseholders	88
Others	Consultants	3
	Other	9
Total		129

2.2 Leaseholders and leaseholder groups provided the greatest number of responses to the consultation (74%). Not all respondents answered every question and many responses contained information that went beyond the scope of the consultation. We have tried to analyse the responses in a quantified way but the numbers could be subject to different interpretations given the variations in style and topics compared to the questions posed.

2.3 Generally, the responses reflected two different perspectives:

- Local authorities, private registered providers and their representatives were concerned about subsidising leaseholders; and
- leaseholders were concerned about the costs of works and wanted further protections.

Examples of some figures provided by leaseholders:

- Leaseholders who owned a four bedroom flat on one estate were being charged £53,000 each for improvement works;
- One council required advanced payment of £3,000 to £6,000 a month; and
- One leaseholder was paying about £1,000 a month on an ongoing basis to the council for various service charges.

2.4 There was some common ground as leaseholders expected to pay their fair share of the upkeep of their homes (as with any other owner-occupier) and thought that it was in their interests to have assets that maintained their value.

3. Summary of responses

Question 1: Do you believe that the right balance will be struck between the interests of leaseholders and those of the councils and their other residents if:

- A We update the Mandatory Directions as proposed, and;
- B We update the Discretionary Directions as proposed?

3.1 58 organisations provided responses pertinent to this question. Of the quantifiable responses, 16 agreed that the proposals struck the right balance; 24 thought the proposals went too far, 16 thought the proposals did not go far enough:

Question 1				
Types of organisation	Number of responses	Agree	Disagree	
			Proposals are excessive	Proposals are insufficient
Local authority and housing associations	21		21	0
Leaseholders and groups	28	15		13
Others	9	1	3	3
Totals	58	16	24	16
			40	

3.2 The responses generally reflected the two different viewpoints between local authorities and leaseholders, as outlined in paragraph 2.3. Key additional points included:

- as the caps would only apply to future government funding, this could create inequity for leaseholders paying for existing government funded works, and for leaseholders where works were carried out with different funding sources; and
- there was a widespread feeling that it would be unfair that charges to leasehold homes that were sub-let, often by buy to let landlords or companies, should be capped at all. Their owners were already setting works costs against tax liabilities.

- 3.3 There were also some suggestions on either narrowing or broadening the scope of the cap, such as:
- the cap should only apply if the work costs more than any increase in capital value of the home;
 - the cap should only apply to people in extreme financial hardship;
 - the cap should apply to all chargeable works,¹ not just major works; and
 - the cap should be applied retrospectively and to programmes not funded by the government.

Government response

- 3.4 The responses showed a fairly even range of views from those that felt the capping proposals were excessively in favour of leaseholders, those who thought they struck the right balance, and those who felt they were insufficient protection for leaseholders.
- 3.5 On balance, we believe that the evidence provided by leaseholders in terms of excessive charges and the range of views expressed means that the government should issue the directions to cap charges to leaseholders for major works.
- 3.6 We will apply the caps only to leaseholders who live in their property, and not to sub-let properties such as those being used as a source of income.
- 3.7 These caps will apply to future government funded programmes for major works, as:
- to narrow the focus to only costs above an increase in capital value would add burdensome complexity, potentially increasing concerns around lack of transparency;
 - we welcome the provisions that some local authorities have put in place to help those in financial hardship. However we do not think this goes far enough in addressing the concerns on over-charging;
 - taxpayers may rightly be concerned if they were asked to subsidise a segment of owner-occupiers for their insurance, grass-cutting and communal cleaning costs, so we do not propose to expand caps beyond major works; and
 - to apply the caps retrospectively or beyond programmes funded by the government would undermine councils'² and private registered providers' financial management.

¹ Leaseholders are charged not just for Major Works (such as roof, heating, window or lift replacement) but also annual service charges (covering insurance, communal cleaning, grass cutting, etc.) and charges relating to day to day maintenance and repairs.

² Throughout, "councils" means either the Council itself or its Arms Length Management Organisation

Question 2: Do councils eligible to bid for Decent Homes Funding have evidence that a cap of £10,000 outside London, or £15,000 in the capital will prevent them achieving the Decent Homes Standard on homes where the works are part or wholly funded by Government?

3.8 This question was mainly of relevance for councils. 20 organisations provided responses pertinent to this question. Six provided evidence whilst 14 did not:

Question 2				
Types of organisation	Number of responses	Yes	No	
			Standard not affected	Evidence not held
Local authority and housing associations	16	5	6	5
Leaseholders and groups				
Others	4	1		3
Totals	20	6	6	8
			14	

3.9 Six councils said that they had no evidence as capping would not impact on their ability to meet the Decent Homes Standard.

3.10 Five councils and three of the 'other' organisations were concerned that a cap would limit councils' ability to carry out necessary works but did not have specific evidence that this would be the case.

3.11 Five councils and one local authority representative group stated that they had evidence which showed the cap would impact on their work to achieve the Decent Homes Standard.

3.12 Other points raised by councils included:

- question about when the five year period would start;
- concern about having different approaches to government part-funded works and works that councils carry out with their own resources;
- question about whether the cap would apply to emergency works, for example unexpected roof repairs identified during Decent Homes programmes; and

- whether the cap would apply to energy efficiency programmes funded by the Department for Energy and Climate Change.

Government response

3.13 We welcome the fact that there are councils confident of achieving the Decent Homes Standard with a leaseholder cap in place.

3.14 To allow councils to manage their finances effectively, the cap will only be applied to future government funding. For decent homes, that means the 2015/16 Decent Homes Backlog Fund. The Greater London Authority will issue a prospectus inviting bids for this funding from eligible councils and will ask for this cap to be taken into account when developing plans and submitting proposals. Councils will also need to take a clear and transparent approach to awarding contracts and calculating the various costs for this funding.

3.15 On the other points raised:

- the cap applies to a rolling five year period. The first five year period will start when the landlord makes the first service charge to which the Directions apply;
- the cap will only apply to government funded improvement programmes as per paragraph 3.7. We urge councils to take a fair, clear and transparent approach to calculating all charges. We also welcome the Competition and Markets Authority's current market study into residential leasehold;
- the cap will apply to emergency works if paid in part or in full from the 2015/16 Decent Homes Backlog fund and where such works of repair are wholly or partly government funded in the future; and
- the cap currently will apply to the 2015/16 Decent Homes Backlog Fund. It can also be applied to future assistance for the purpose of carrying out repair, maintenance or improvement works, as provided by a Secretary of State or the Homes and Communities Agency.

Question 3: If a council believes that it would have to cap the leaseholder charges, how much of the costs will be borne by the council, and how would it pay for this?

3.16 This question was mainly of relevance for councils. 19 organisations provided responses pertinent to this question, as set out in the table overleaf.

Question 3					
Types of organisation	Number of responses	Alternative funding sources as given			
		Reduced works	Housing Revenue Account	Other non-housing funding source	Not known
Local authority and housing associations	14	2	6	2	4
Leaseholders and groups					
Others	5	1	4		
Totals	19	3	10	2	4

- 3.17 The majority of respondents to this question thought that any shortfall would be made up from the Housing Revenue Account. Two of the councils went on to say that this was not actually relevant to them, however, as they did not receive government funding.
- 3.18 One of the responses by an 'other' organisation suggested that councils would simply find other ways to charge leaseholders to make up for the shortfall.
- 3.19 Leaseholders did not express views about this question but many made a general point that councils could achieve better value for money from their contracts and eliminate unnecessary work, which would mean that the caps were less of an issue. This would also be a good outcome for tenants.

Government response

- 3.20 There needs to be a fair balance between costs to tenants and costs to leaseholders. We strongly urge councils to scrutinise their contracts to make sure they deliver good value for money, avoid perverse incentives, and put in place strong performance management to ensure work is carried out efficiently, effectively and only when necessary.
- 3.21 As set out in paragraph 3.15, the cap will only be applied to future government funding. For decent homes, that means the 2015/16 Decent Homes Backlog Fund.

Question 4: Are there any other comments on the draft Mandatory and Discretionary Directions?

3.22 84 organisations provided responses under this question. However, all but seven of these were general comments rather than specifically referring to the text of the draft Directions. Of the seven responses:

Question 4							
Types of organisation	Number of responses	Themes					
		Does draft apply to private registered providers	Define 'reasonable'	exclude wider regeneration social works	Clarify partly-funded and "Such works" .	Allow reduction below cap level	Draft will not work
Local authority and housing associations	3			1	2		
Leaseholders and groups	2		1				1
Others	2	1			1	1	
Totals	7	1	1	1	3	1	1

3.23 One 'other' organisation covered two different drafting points in their response. One leaseholder simply responded that the "draft will not work."

3.24 Specific suggestions on revisions to the draft Directions included:

- that the draft Discretionary Directions should allow for a reduction below the mandatory cap; and
- that there be further clarification on whether the revised Directions would apply to private registered providers as well as councils.

Government response

3.25 The Mandatory and Discretionary Directions will apply to private registered providers of social housing as well as councils. Only councils in England will be eligible to bid for 2015/16 Decent Homes Backlog funding.

3.26 We have changed the wording of the Discretionary Directions to permit landlords to reduce service charges (however the work is funded) below the mandatory cap level. The service charges may be reduced by any amount the landlord considers "reasonable".

3.27 It is not possible to define “reasonable” in the Directions as this will vary depending on specific circumstances. However, the Directions specify criteria which the landlord must consider when deciding whether to reduce the service charges. These include any estimate of the costs of the works notified to the lessee before they, or their predecessor, bought the lease, and any benefit which the landlord thinks the lessee has received or will receive as a result of the works.

3.28 We believe the reference to “such works” in paragraph 3(1)(b) of the Mandatory Directions is clear as it relates to the text immediately prior to this in paragraph 3(1)(a).

General comments

3.29 There were a large number of responses which went beyond the scope of the consultation. In these, there were some main reoccurring themes and suggestions which have been summarised in the table below:

Overview of general comments						
Types of organisation	Reoccurring themes					
	Government to pay leaseholders' costs	There are already sufficient protections for leaseholders	Sinking fund	Improved contract management and transparency	Stop profit sharing arrangements	Encourage Small and Medium Enterprises
Local authority and housing associations	1	5	1			
Leaseholders and groups	1		4	41	3	3
Others	1	3	1	1	1	
Totals	3	8	6	42	4	3

3.30 In particular, leaseholders raised a number of points around procurement and contracts and performance management, including:

- some works seemed unnecessary, over-engineered, and badly done;

- some improvement works can be prevented through regular maintenance;
- the apportionment of costs between tenants and leaseholders is not always clear; and
- rationale and information provided can be very brief even when charging large amounts.

3.31 A number of organisations raised concerns about the existence of profit-sharing arrangements and some suggested setting up sinking funds³ into which leaseholders could pay.

3.32 Some leaseholders were concerned about taking a case to the First-tier Tribunal as they would need to instruct professionals and may be up against a large local authority legal team.

Government response

3.33 There needs to be a fair balance between costs to tenants and costs to leaseholders. We strongly urge councils to scrutinise their contracts to make sure they deliver good value for money, avoid perverse incentives, and put in place strong performance management to ensure work is carried out efficiently, effectively and only when necessary.

3.34 We are committed to transparency within government, including in local government. We welcome the Competition and Markets Authority's market study which is likely to make recommendations on transparency of costs. We will consider any recommendations carefully.

3.35 We are also taking further actions in relation to residential leaseholders, including on awareness of what it means to be a leaseholder prior to purchase, and access to summaries of determinations made by the First-tier Tribunal. More information is provided in the next section on government next steps.

3.36 A number of responses were received which formed specific complaints about particular councils. These have not been addressed in this document. Individuals should instead pursue their complaints through separate processes, such as the various complaints and redress options available to leaseholders.

³ A sinking fund is created to ensure that sufficient money is available for future scheduled major works, such as external decorations or lift replacement. If there is insufficient money in the reserve fund to deal with the major works, the costs will be shared between leaseholders in the proportions set out in the individual leases.

4. Government next steps

Revised Directions

- 4.1 In the light of the consultation responses, the Department for Communities and Local Government will issue revised service charges Directions in order to cap the charges to leaseholders for future major works funded by government.
- 4.2 The *Social Landlords Mandatory Reduction of Service Charges (England) Directions 2014* are available on www.gov.uk. These set out that:
- where repair, maintenance and improvement works to leaseholders' properties relate to programmes of work on tenanted stock wholly or partly funded by a Secretary of State or the Homes and Communities Agency, the service charge payable by a resident leaseholder over any five year period is capped at £15,000 in London and £10,000 in the rest of England;
 - the cap applies to councils and private registered providers in England;
 - the mandatory cap does not cover any leaseholder who, at the time the work commences, is not occupying their leasehold property as their only or principal home;
 - in the event that an application for assistance from a programme specifies a figure below the cap as the maximum service charge to be made in any five year period, and this is agreed with the Secretary of State, the Directions require that the service charge must not exceed this figure. This also only applies where the service charge is payable by a leaseholder who is occupying the property as his or her only or principal home when the work commences; and
 - the cap applies to the 2015/16 Decent Homes Backlog Fund as well as other relevant future funding.
- 4.3 The *Social Landlords Discretionary Reduction of Service Charges (England) Directions 2014* are also available on www.gov.uk. These permit social landlords to reduce service charges for the costs of repair, maintenance or improvement to below the level of the mandatory cap where they consider it appropriate and reasonable to do so, subject only to certain specified criteria to which the landlord must have regard when making a decision.
- 4.4 Introducing capping represents an important new protection for leaseholders, but we recognise that there are important wider issues for major improvement works on transparency, fairness and value for money that affect council tenants as well as leaseholders.

2015/16 Decent Home Backlog Fund

- 4.5 We have therefore worked closely with the Greater London Authority to ensure that councils bidding to the 2015/16 Decent Homes Backlog Fund will:
- set out the council estimates for the main elements of works to each estate, both for tenanted and leaseholder properties;
 - explain how it would fund the extra costs on each estate if the £15,000 cap is lower than the estimated works costs for leaseholders;
 - state what help it would be giving to leaseholders, such as loans or deferred payment arrangements;
 - offer affordable repayment terms;
 - provide a sample of its documentation showing how it explains estimated charges to leaseholders. This will include: alerting resident leaseholders to the cap; how it describes the works; a breakdown of charges for the main elements of the works; overheads; contingency; dispute protocols; and, how any savings are distributed to leaseholders where profit-sharing arrangements exist; and
 - publish on its website the details of its procurement strategy.

Wider residential leaseholder changes

- 4.6 Responses to this consultation have raised a number of important issues that are relevant to landlord-leaseholder relationships across all tenures, including the private rented sector.
- 4.7 In addition to the introduction of redress, we will go further to address:
- providing access to summaries of the determination of Tribunal cases so people have a better understanding of the outcome;
 - the ability to obtain recognition of a Tenants' Association and the tribunal's use of the non-statutory guidelines;
 - awareness of what it means to be a leaseholder prior to purchase;
 - obtaining information on absentee leaseholders;
 - landlords providing a realistic valuation of the price a leaseholder of a flat would have to pay to buy the freehold or extend their lease in statutory notices and the point at which leaseholders pay the deposit to acquire a lease extension; and
 - the issue of transfer (exit) fee covenants found in the retirement leasehold sector by referring the matter to the Law Commission.
- 4.8 We also welcome the Competition and Markets Authority's market study into residential property management which is investigating similar topics to those raised in the broader consultation responses.

4.9 We urge interested parties to respond to the Competition and Market Authority on their 1 August 2014 update paper, available at:

<https://www.gov.uk/government/news/cma-seeks-views-on-proposals-to-improve-the-residential-property-management-services-market>

We will carefully consider any recommendations in the Competition and Market Authority's final report, due later this year.