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Leaseholders in social housing: paying for major works (England)

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Summary

Despite several legislative attempts by Governments over the years to increase the statutory protection available to long leaseholders in blocks of flats, complaints about a lack of redress in relation to service charge demands and demands for carrying out major works are still rife. The position of long leaseholders in blocks of flats owned by social landlords has attracted particular attention.

All social landlords were required to bring their stock up to the decent home standard by 2010. Although funding for this programme has largely ended, social landlords are still required to carry out works to maintain their stock.

Where major works are carried out by social landlords to blocks of flats, this can result in long leaseholders receiving substantial bills in respect of their contribution towards the cost of this work. In response, in August 2014 the Coalition Government brought in a cap on service charges for social sector leaseholders which applies where the work is carried out with central Government funding. This cap has been referred to as “Florrie’s law” following the case of an elderly long leaseholder who challenged a bill for major works amounting to £49,000.

The issue of high one-off bills has attracted additional media attention in the wake of the Grenfell Tower fire and the remedial work required to remove and replace ACM cladding. There is a separate Library paper on this issue: [Leasehold high-rise flats: who pays for fire safety work?](#)

The Housing White Paper, [Fixing our broken housing market](#) (February 2017), included a commitment to “improve consumer choice and fairness in leasehold”. The Government, along with the Law Commission, has embarked upon a wide-ranging programme work concerning leaseholders’ rights and redress mechanisms. Full details of this work can be found in the Library paper: [Leasehold and commonhold reform](#).

The Housing, Communities and Local Government (HCLG) Select Committee launched [an inquiry into leasehold reform](#) on 24 July 2018 with a focus on the position of existing leaseholders. The [Committee’s report](#) was published on 19 March 2019 – the inquiry considered the imposition of one-off bills, describing them as “a source of great distress for leaseholders.” The Committee recommended the introduction of a Code of Practice for local authorities and housing associations which would provide best practice guidance on the conduct of major works. The [Government’s response](#) was published on 3 July 2019 and is covered in section 5 of this paper. The Housing Green Paper, a [New deal for social housing](#) (August 2018), also asked what more could be done to support social housing leaseholders. Responses are being analysed – the outcome and action plan is expected to be published in September 2019.

This note outlines the assistance available to leaseholders in social housing faced with bills for major works and goes on to discuss efforts to strengthen their rights and Government responses.

The legal provisions described in this note apply in Wales and in England but the maximum cap from August 2014 applies only in England.

1. Background

Long leaseholders in blocks of flats buy the right to live in their property but the management of the block, including its maintenance and insurance, normally remains in the hands of the freeholder. The lease agreement usually makes provision for the costs of the freeholder or his/her agent in discharging these management functions, to be met in full by the leaseholders; these payments are referred to as service charges. There are two kinds of service charges: annual charges for day-to-day maintenance and 'one-off' charges for major works which tend to take the form of a lump sum demand.

The Labour Governments' drive to bring all social housing stock up to the decent homes standard by 2010¹ resulted in an increased level of work being carried out on these blocks.² Although the decent homes programme has largely finished, social landlords are continuing with works to maintain and improve their stock. One effect of this is that some long leaseholders are facing substantial bills for their contribution towards the cost of these major works. A frequent complaint of leaseholders is that they are facing higher costs because of the failure of landlords to maintain these blocks in the past. The decent homes standard is not the key driver behind all of the large bills being issued to leaseholders in flatted accommodation. For example, achieving the standard does not require work to lifts or external cladding – these works are expensive and are being carried out as social landlords have, in recent years, gained increased capacity, in the form of additional funding, to deal with the backlog of disrepair in their stock.³

Jim Fitzpatrick, then Parliamentary Under-Secretary of State at the Office of the Deputy Prime Minister (ODPM)⁴ acknowledged that high charges faced by social sector leaseholders when responding to an adjournment debate on the Right to Buy in January 2006:

Several Members have contacted my ministerial colleagues to inform them that some of their constituents who have bought flats are finding it hard to pay service charges for major works such as putting a new roof on the block. The bills for such work come all at once and can be large, sometimes as much as £40,000 or more.⁵

There has been long standing pressure from social sector leaseholders to remedy this situation. April 2006 saw the launch of a new lobby group, the Alliance of Social Housing Leaseholders, who called for a cap of £10,000 on service charge bills. The Labour Government resisted the imposition of such a cap, but the Coalition Government did introduce a cap in 2014 (see section 4).

¹ The programme has largely finished but there is some residual decent homes funding - £160 million was allocated for 2015-16.

² The sort of work this covers includes window or roof replacement.

³ DCLG, [Assessment of the impact of the cost of repairs for Right to Buy leaseholders](#), Research Summary 227, November 2006

⁴ Communities and Local Government (CLG) took over responsibility for housing matters on the disbandment of the ODPM in May 2006.

⁵ HC Deb 11 January 2006 c402

1.1 The rights of leaseholders: an overview

There has been quite a lot of legislation aimed at strengthening the rights of leaseholders since the mid-1980s.⁶ Long leaseholders of houses gained the right of enfranchisement under the *Leasehold Reform Act 1967*. The *Leasehold Reform, Housing and Urban Development Act 1993* gave long leaseholders in blocks of flats the collective right to buy the freehold of their block and the individual right to buy a lease extension. The Labour Governments acted to further strengthen the rights of leaseholders to challenge poor management by freeholders with the introduction of the *Commonhold and Leasehold Reform Act 2002*. At the time of its introduction the Government said:

...the landlord's monopoly over the supply of the services in the property is not justified. In most cases the financial value of the landlord's interest in the building is very small in comparison with that of leaseholders.⁷

The Explanatory Notes to the 2002 Act stated that the protection afforded by the law "remains incomplete and the remedies available to leaseholders are considered to be difficult and costly to use."⁸ The *Draft Commonhold and Leasehold Reform Bill* (with attached consultation paper) of August 2000 described proposals that were intended to:

...redress the uneven balance between landlords and leaseholders, and give leaseholders a greater degree of control over the management of their homes which reflects the substantial investment they have made. They are also intended to prevent unreasonable or oppressive behaviour by unscrupulous landlords, and would provide flexibility to tackle any new forms of abuse that may arise in the future.⁹

Part 2 of the 2002 Act made some key changes to leaseholder legislation with a view to assisting the large number of leaseholders who are unable or unwilling to convert to commonhold ownership. The main changes included:

- making enfranchisement easier for both leaseholders of flats and houses;
- making lease extensions easier to obtain;
- allowing leaseholders of houses who had previously extended their lease the right to buy the freehold of their property;
- improving the rights of those who inherit a leasehold house from a deceased leaseholder who qualify for the right to extend and/or enfranchise;
- strengthening leaseholders' rights against unreasonable charges levied under their lease;
- making lease variations easier to obtain;
- preventing landlords taking any action for unpaid ground rent unless it has been first demanded in writing;

⁶ *Landlord and Tenant Act 1985; Landlord and Tenant Act 1987; Leasehold Reform, Housing and Urban Development Act 1993; Housing Act 1996; Commonhold and Leasehold Reform Act 2002.*

⁷ Cm 4843, p115

⁸ HL Bill 51-EN para 24

⁹ Cm 4843, p107

- preventing landlords from starting forfeiture proceedings until facts have been determined; and
- consolidating and amending the existing Leasehold Valuation Tribunal provisions to make the Leasehold Valuation Tribunals more effective and efficient.

The 6th Commencement Order under the 2002 Act (*The Commonhold and Leasehold Reform Act 2002 (Commencement No.6 and Transitional Provisions) (England) Order 2007*, SI 2007/1256) and associated Regulations were laid before Parliament on 24 April 2007 and came into force on 1 October 2007. These Regulations brought into force provisions in the 2002 Act to:

- Require landlords to send a summary of a tenant's rights and obligations relating to service charges to tenants each time a demand for payment is made (section 153).
- Require landlords to use particular information for the summary of a tenant's rights and obligations relating to administration charges that must be sent when demanding payment of an administration charge (Schedule 11.4(2)).

These summaries must contain information set out in the *Service Charges (Summary of Rights and Obligations) (England) Regulations 2007* (SI 2007/1257) and the *Administration Charges (Summary of Rights and Obligations) (England) Regulations 2007* (SI 2007/1258).¹⁰

The 2002 Act introduced some rights for leaseholders in flats which do not apply to leaseholders of social landlords; for example, a right to manage, which enables leaseholders to take over the management of their building without having to prove fault on the part of the landlord or pay any compensation. On the other hand, there is also some assistance open to leaseholders of social landlords which is not available to leaseholders in privately owned blocks (see section **1.3** below).

Two sections in the 2002 Act which were aimed at strengthening leaseholders' rights in relation to service charges were not implemented¹¹ – provision was subsequently made in the *Housing and Regeneration Act 2008* to make these changes. Section 303 and Schedule 12 to the 2008 Act established new requirements for landlords to provide long leaseholders with regular service charge statements containing specific accounting information. The section and Schedule came into force on 1 December 2008.¹²

Information on the consultation processes that social landlords must follow in order to be able to recover charges for major works from long leaseholders can be found on the website of the Leasehold Advisory Service: [Consultation for council and other public sector landlords](#).

Although landlords are required to consult on work costing over £250, they are not required to consult on the accumulation of charges for

¹⁰ CLG press release 2007/0085, 27 April 2007

¹¹ Section 152, regular statement of account, and section 156, designated client account provisions.

¹² [The Housing and Regeneration Act 2008 \(Commencement No. 2 and Transitional, Saving and Transitory Provisions\) Order 2008](#), Article 4

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works totalling over £250 in a year. This follows a ruling in October 2014 by the Court of Appeal in the case of [Philips vs Francis](#).¹³ Another significant court case affecting long leaseholders' rights in relation to consultation requirements prior to major works, is [Daejan Investments Ltd v Benson and others](#) [2013] UKSC 14. By a majority, the Supreme Court allowed the landlord's appeal against a reduction in the amount recoverable for the cost of major works:

The consultation process is a means to an end rather than an end in itself. The purpose of the statutory consultation process is to ensure that leaseholders are protected from paying for inappropriate works or paying more than would be appropriate. The LVT should focus on how any breach of the consultation regulations had impacted on those matters. If the extent, quality or cost of the works were not affected by the failure to consult, dispensation should normally be granted; it was not appropriate to approach the issue of dispensation by considering whether the breach was minor, technical or serious; the focus should be on prejudice to the leaseholders, the factual burden of identifying which lay on them - once they had done so, it was for the landlord to rebut it. The LVT could, however, grant dispensation on terms which could include imposing less onerous consultation requirements or a requirement that the landlord agrees to reduce the recoverable costs and/or to pay the leaseholders' reasonable costs of the dispensation application.¹⁴

Thus long leaseholders in blocks of flats have gained a lot of statutory protection in recent years. In addition, because the leaseholder/freeholder relationship is based on contract, (i.e. the lease agreement) leaseholders have always had the right to sue the freeholder for breach of contract if they fail to carry out their obligations under the lease.

Despite increased statutory protection, long leaseholders still complain about a lack of redress in relation to service charge demands and demands for carrying out major works. They also complain about the standard of works carried out. The difficulty here is that there is often a means of redress available, e.g. challenging charges and the standard of work via a First Tier Tribunal (Property Chamber) but leaseholders may not be willing to go down this route because of the time and effort involved. Cost is also referred to as a disincentive.¹⁵

1.2 Challenging charges for major works

Leaseholders who wish to challenge their service charges may do so by applying to a First-Tier Tribunal (Property Chamber). Further details are provided in [Application to a First-Tier Tribunal \(Property Chamber\)](#).

There are several grounds on which a challenge may be based, e.g. failure to carry out the required consultation processes in order to recover a sum of over £250 from an individual long leaseholder, see: [Consultation for council and other public sector landlords](#).

¹³ [2014] EWCA Civ 1395

¹⁴ [See the Leasehold Advisory Service's assessment of the impact of this case.](#)

¹⁵ *Inside Housing*, "Action against high bills prevented by legal costs", 16 march 2007

The terms of the lease

The starting point for leaseholders when faced with a substantial service charge demand is usually to ensure that their lease agreement provides for the recovery of the money claimed. In some cases, particularly with older lease agreements, the lease may only allow the landlord to charge the cost of repairs as service charges. Items amounting to improvements (such as new door entry systems) may fall outside the scope of the lease and, as such, cannot be recovered via the service charge.

Set-off

In [Assessment of the impact of the cost of repairs for Right to Buy leaseholders](#) the Government acknowledged that “it is almost certain that most local authorities could be criticised for some failings in the way that they managed properties in the past” and that many had failed to adopt appropriate repair plans leading to disrepair, particularly to common parts.

Where a local authority has failed to carry out its obligations under the repair covenant in a long lease it could amount to a breach of covenant giving rise to a claim in damages, which in turn could operate as an equitable set-off against any claim for service charges. First-Tier Tribunals are empowered to disallow any increase in the level of service charges as a result of a breach of covenant.¹⁶ Convincing evidence that quantifies the increase in the cost of the repair work arising from past neglect would have to be produced by any leaseholder seeking to make this argument.

1.3 Assistance for social sector leaseholders

As noted above, there is some assistance available to leaseholders of social landlords which is not available to leaseholders in privately owned blocks. First, when a tenant of a social landlord is exercising the Right to Buy their home under one of the statutory schemes¹⁷ the landlord must provide them with a five year estimate of the service charge payable. This estimate must include the cost of any planned major works. Once issued, the landlord cannot charge more than the figure provided during the first five years of the lease, except to take account of inflation. However, there is no special limit on charges for repairs carried out after the first five years.

Local authorities have a *duty* in some cases to limit the cost of works to their leaseholders and have *powers* to provide assistance in other cases:

Local authorities can help leaseholders to pay their bills in a number of ways. Firstly, they have discretion to reduce bills to no more than £10,000 in any five year period if specified criteria are met, including whether the purchase price took account of the estimates of the costs of works given to the leaseholder before he or she bought their flat, whether the leaseholder will benefit from the works (eg, whether the value of their flat will increase, and whether energy efficiency or security will be improved), and whether the leaseholder would face exceptional hardship in

¹⁶ Section 27A of the *Landlord and Tenant Act 1985*

¹⁷ The Right to Buy, Right to Acquire or Social HomeBuy Scheme for social tenants.

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paying the bill. In assessing hardship, the landlord must consider the leaseholder's ability to pay, including the funds available to them and their ability to borrow to meet the cost.

Secondly, local authorities must offer loans to leaseholders who have bought their flats under the Right to Buy scheme, provided that they apply within a specified time.¹⁸ The terms of such loans are specified in legislation.¹⁹ Local authorities may also give loans to leaseholders under other circumstances, and may then specify the terms themselves.

Thirdly, local authorities may allow leaseholders to pay their bills by monthly instalments over an extended period (sometimes 3-5 years and including an interest-free period), or they may defer payment (while charging interest) until the property is sold.

Fourthly, local authorities have powers to buy back properties from owners who are in financial difficulties. Since 1999, we have given them financial assistance if they do this. In effect, the Government meets 35 per cent of the cost of buy backs where this exceeds £50,000 in any year.²⁰

Finally, some local authorities offer leaseholders the HouseProud equity release scheme managed by the Home Improvement Trust. A number of lenders also offer a variety of separate equity release products that can be tailored to the needs of, in particular, older leaseholders.²¹

Housing associations also offer similar assistance to their leaseholders – where loans are issued they take the form of an advance.²²

Additional provisions to assist public sector leaseholders were included in the *Housing and Regeneration Act 2008*:

- Section 308 enables local authorities to offer loans for service charge payments to leaseholders who have bought under the RTB on terms other than an interest bearing loan.
- Section 309 gives local authority landlords and Registered Social Landlords the power to buy a share, i.e. an equitable interest, in flats which they hold on long leases. This power will be used to assist owners of these flats to meet some or all of the service charges that they are liable to pay. The purchase price of these “shares” will be met by the landlord cancelling part or all of the leaseholder’s service charge liability.²³

¹⁸ The specified time is within 10 years of exercising the Right to Buy (*Housing Act 1985* section 450A(2))

¹⁹ *Housing (Service Charge Loans) Regulations 1992* (SI 1992/1708)

²⁰ Provision was made as part of the Coalition Government’s policy of reinvigorating the Right to Buy to allow authorities to fund up to 50% of the cost of re-purchasing a former council home, up to a maximum of 6.5% of any additional net receipts (i.e. receipts available to support one-for-one replacement). Details are contained in the *Local Authorities (Capital Finance and Accounting) (England) (Amendment) (no. 2) Regulations 2012*.

²¹ CLG Press Release, Government helps local authority leaseholders to pay major works bills, 29 March 2007

²² *Housing Act 1985* section 450A(4)(a)

²³ Both sections came into force on 6 April 2009 (SI 2009/601 & 2009/602)

The *Housing Act 2004* strengthened the duty on social landlords to provide information to their tenants in regard to the Right to Buy, Jim Fitzpatrick explained:

Under the Housing Act 2004, landlords must give tenants both a written explanation of the key features of the right-to-buy scheme and information about the costs involved. They must be told about stamp duty, survey fees, paying off a mortgage, buying annual insurance and paying for gas, water and electricity. They must also be told about the costs of maintaining their homes, which crucially includes the service charges that the owners of leasehold flats must pay to their landlords.²⁴

See section **4** of this note for information on caps on charges for major works in certain circumstances.

²⁴ HC Deb 11 January 2006 c402

2. Social Sector Leaseholders Working Party (2005)

Largely in response to complaints raised by leaseholders of social landlords who had received substantial bills for major works to their blocks, the Labour Government reconstituted the Social Sector Leaseholders Working Party in 2005 (the group had not met since 2003) under the Chairmanship of the Leasehold Advisory Service. The Working Party's terms of reference were:

To identify and review problems faced by social sector long leaseholders and to establish an understanding of the issues raised.

To recognise the different groups of social sector leaseholders and their landlords and to identify issues those issues that are (i) common to all groups and (ii) relevant to one or more particular groups.

To review procedures and identify whether these need to be developed and if so how. In particular, issues arising from:

Service Charges

- Social sector accounting practices; the practical application of requirements for regular statements of account for service charges (Landlord & Tenant Act 1985, section 21 & 21A as amended and inserted by the Commonhold & Leasehold Reform Act, 2002, section 152).
- Practical application of consultation procedures with leaseholders, including consultation procedures for major works and long term contracts set out in the Landlord & Tenant Act 1985, section.21 as amended by the Commonhold & Leasehold Reform Act 2002, section 151).
- The impact of current funding arrangements for social sector landlords on the maintenance, repair and/or renovation of homes and on repair bills for leaseholders, with particular regard to neglect and dilapidation that has occurred.
- High major works bills for social sector leaseholders and current and potential measures to help leaseholders pay these bills.

Management

- The management of mixed tenure stock, including social sector tenants, leaseholders who were former social sector tenants and leaseholders who have purchased their home on the open market.

Levels of management staff and training requirements for social sector managers

Code of practice and monitoring

- Current monitoring arrangements and codes of practice for the management of social sector and private leaseholders.²⁵

The Working Party submitted a report, *Major works charges for social sector leaseholders*, to Baroness Andrews, then Parliamentary Under-Secretary of State at Communities and Local Government in January 2007. The Chairman's introduction said:

There can be no question as to the seriousness of the substantial service-charges now being faced by a great many social-sector leaseholders and the potential hardship arising; this has been acknowledged both in Parliamentary debate and by recently – commissioned research. Nor is there a question that the root causes of much of the present distress must be laid at the Government's door, both present and previous administrations. The issue for the Minister is whether this should be remedied by direct, financial and legislative, intervention, or by other means, or at all.²⁶

The Working Party acknowledged that the majority of works for which leaseholders were being billed "are necessary, and in many cases, urgent; buildings require maintenance and components deteriorate. In most cases they cannot be avoided, or delayed. These works must be carried out, within the near future, and must be paid for, by the leaseholders, by Government or through some other means."

The Working Party came up with a list of recommendations and issues for further consideration, these are summarised below:

- The question of having separate legislation for social sector leaseholders is posed on the grounds that "the increasing complexities to social sector leasehold management occasioned by Government restrictions, policies and funding arrangements justify separation of leasehold legislation to provide a separate, discrete, legislative regime for the sector."
- The report argued for "public works" costs, such as upkeep of footpaths and play areas on estates which are generally used by the public, to be charged to the General Fund and not to authorities' Housing Revenue Accounts (HRAs). Were this to happen the cost of this work could not be recharged to lessees.
- Amendments to the statutory consultation process under section 20 of the Landlord and Tenant Act 1985 were proposed on the grounds that this process does not work well in the social sector. "The statutory consultation procedures are essentially incompatible with social sector procurement of services, specifically in terms of PFI/partnering arrangements which Government is directing social landlords toward."
- The report suggested that capping major works service charges may be the "only immediate solution to present problems." The following method was suggested: the council caps the leaseholder's bill at the designated level, reports the consequences

²⁵ *Major works charges for social sector leaseholders*, Social Sector Leaseholders Working Party, 2005

²⁶ Ibid.

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- to Government which then allocates specific subsidy to cover the ensuing extra interest and capital repayment costs.
- The report recommended other types of assistance and improvements to existing schemes for leaseholders:
 - The re-introduction of the Exchange Sale Scheme which enabled councils to purchase the flat, subject to the sale to the leaseholder of a more suitable flat, with preservation of discounts;
 - Improve the incentives to councils to buy-back leasehold properties.
 - Offer reverse staircasing to all social sector resident lessees.
 - Encourage local government in the sponsorship of a new national company to provide equity release monies from private finance.
 - Standardise schemes for discretionary and mandatory loans for service charges and to require compliance by social sector landlords.
 - Encourage authorities to use existing powers to provide equity reversion loans.
 - The definition of “essential works” to be expanded to include works that are part of decent homes programmes for the purpose of payments by the Benefits Agency toward interest on loans.
 - The mandatory application of a code of management practice, approved under 1993 Act powers, to social landlords; compliance to be through Audit Commission Housing Inspectorate.²⁷
 - That social sector landlords be required to fund local leaseholder advice and support services, ideally through a service charge levy from leaseholders. There is a precedent for this in the funding arrangements for the Housing Ombudsman whereby the service is funded by the end-user.
 - That every case relating to Housing Revenue Account expenditure arising from Government directives, initiatives or new legislation be accompanied by a formal leasehold impact assessment as an integral part of the process.

The Working Party did not achieve agreement on all the recommendations listed above. For example, landlords and leaseholders failed to agree on how to take forward the issue of capping.

²⁷ Note that the Audit Commission no longer exists.

3. The Government response (2007)

The Labour Governments, when faced with questions about the difficulties experienced by social sector leaseholders, tended to argue that there were relatively few leaseholders who were being asked to pay very large bills and pointed out that many of these leaseholders had benefited from substantial discounts when they bought their homes. Angela E Smith, then Parliamentary Under-Secretary of State at DCLG, made the following statement during a Westminster Hall debate on leaseholder charges:

Most leaseholders are required by the terms of their leases to pay annual service charges for general maintenance and major works charges towards the cost of works of repair or refurbishment of their blocks. It is the major works costs that people now find difficult to afford. The scale of that should be seen in context, however. A survey of 23 London boroughs showed that only 5 per cent of the more than 100,000 local authority leaseholders there face bills of £10,000 or more, but large bills, which can come all at once, as my hon. Friend said, can exceed £50,000. Those can be extraordinarily daunting and frightening. Although the scale of the problem is not huge overall, it is concentrated in specific areas and there are pockets where it is most acute. *[Interruption.]* That was probably a leaseholder trying to gain entrance. The fact that fewer people are involved does not in any way diminish the scale of the problem or the worry felt by those affected.

I shall say something about the context. There is no dispute that right-to-buy leaseholders bought their flats at a significant discount, and at a valuation that reflected the condition of the property. Values have increased significantly. In 1980, the maximum discount was £25,000, a big proportion of the average market value in those days. That was raised to £35,000 in 1987; between 1989 and 1999, it went up to £50,000.

Recent open market sales show that flats in some of the blocks being refurbished are now worth more than £220,000. Major refurbishment may in some cases increase values further. Leaseholders, therefore, own valuable assets, but unless they are in a position to realise them, or they are assisted in doing so, they will have no help in paying their bills.²⁸

While accepting that some leaseholders were facing large bills, the then Government said that “a balance needs to be struck between leaseholders’ interests and the benefits of those works to others, such as tenants and the local community generally.”²⁹ The Government also responded to the charge that social sector landlords were going beyond the decent homes standard, resulting in more expense for leaseholders:

...There are some complaints that local authorities are going too far in their repairs. However, many local authorities believe, quite properly, that refurbishment should not simply meet the decent homes standard and that other works should be undertaken to

²⁸ HC Deb 1 November 2006 c95-96WH

²⁹ Ibid.

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ensure that properties are sustainable in the longer term and do not lead to larger bills in future. For example, the decent homes standard does not include things such as lifts, but lifts have to be maintained and sometimes replaced to meet the needs of residents.

Local authorities are also having to continue to carry out work in a relatively short time to address problems accumulated over decades. That is ultimately more cost-effective than doing the work piecemeal. However, it imposes pressures and in the short term, service charges for such major works will be higher. Although in the longer term, maintenance costs are likely to be lower, there is currently a problem of particularly high costs.³⁰

After the publication of the Social Sector Leaseholders Working Party report, the Government said that it was reviewing the charges faced by social sector leaseholders and that it aimed to publish the results of the review by Easter 2007:

Jim Cousins: To ask the Secretary of State for Communities and Local Government (1) what assessment she has made of (a) the adequacy of financial support to lease holders of (i) councils and (ii) housing associations and (b) the case for improvements to the statutory right to a service charge loan; and if she will make a statement; (2) whether (a) Decent Homes Standard funding and (b) other Government funding can be used to assist leaseholders of (i) council and (ii) housing association properties in areas where Decent Homes Standard spending programmes are underway.

Yvette Cooper [holding answer 5 February 2007]: The Government are reviewing the issues raised by high service charges payable by leaseholders of social landlords. The review covers all the means of assistance currently available, including:

- mandatory capping of service charges where the works are funded from specified central programmes;
- discretionary capping by landlords in cases where specified criteria, including exceptional hardship, are met;
- loan and deferred payment schemes, and equity release.

We expect to be able to publish the results of the review by Easter.³¹

The Communities and Local Government Select Committee held an oral evidence session on the issue of leaseholders of social landlords and major works on 5 March 2007.³²

The Government announced the outcome of its review on 29 March 2007. While accepting that some leaseholders were facing large bills, it was felt that this affected only a small percentage of social sector leaseholders:

Works of repair, maintenance and improvement now being undertaken by local authorities and by their associated arms length management organisations (ALMOs) are generating substantial major works bills - some recent ones for as much as

³⁰ *ibid*

³¹ HC Deb 19 February 2007 cc524-5W

³² Communities and Local Government Select Committee oral evidence, *Leasehold and major works*, HC 380, 2006-07

£58,000. However, the number of such bills should not be exaggerated. A recent survey by London Councils showed that of 143,000 council leaseholders in 26 London Boroughs, just over 9,000 (6.3 per cent) were facing major works bills of £10,000 or more.³³

The review also found:

- the Government's Decent Homes policy and other regeneration activities have helped local authorities to address the backlog of repairs to their stock;
- the Decent Homes standard is not the key driver of the level of improvements;
- especially in relation to large blocks of flats, it would be much more expensive to carry out piecemeal repairs (which involve erecting, taking down and re-erecting scaffolding) than to carry out comprehensive repairs and improvements at one time;
- in the short term major works bills will be higher, but in the longer term the quality of work is likely to be higher, resulting in lower maintenance costs in future.³⁴

The review, [Assessment of the impact of the cost of repairs for Right to Buy leaseholders](#), can be accessed online.

The then Minister for Housing and Planning, Yvette Cooper, on publication of the review, described what action the Government intended to take in a written statement:

What the Government Will Do

We think more can be done in the short term to help leaseholders to deal with high major works bills by means of these existing options, with enhancements and additions in the longer term.

But the alternative of simply extending the existing scheme for capping bills would bring severe problems. Capping all major works bills to £10,000 while taking no account of ability to pay would be very expensive—in London, this could, on current figures, cost more than £40 million.

But we recognise that there may be people whose financial resources are so squeezed that more targeted action may be needed. So we will do the following:

We will make it clear to local authorities that they should:

- i. inform and advise all leaseholders who face particularly high major works bills about the available payment options;
- ii. offer the full range of available payment options to help leaseholders pay their bills, and share best practice to ensure that this happens everywhere;

³³ CLG Press Release, *Government helps local authority leaseholders to pay major works bills*, 29 March 2007

³⁴ *ibid*

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iii. use existing resources, such as for private sector renewal which they are already expected to target towards those in need and on low incomes, to assist leaseholders in hardship;

- we have in addition increased funding for LEASE so that social sector leaseholders can obtain authoritative advice and help at an early stage and LEASE can expand its alternative dispute resolution and mediation role in respect of social sector service charge disputes that arise;
- we will work urgently with lenders and independent financial advisers, landlords and leaseholder representatives to develop the use of existing equity release/equity loan schemes (including 'HouseProud');
- in the longer term, we intend to legislate to enable local authorities to offer equity loans to leaseholders, and to buy back shares in properties so that leaseholders in difficulties do not have to revert to being tenants.³⁵

We are continuing to look further at ways to address this complex and sensitive issue. These actions represent work in progress. We will also actively monitor developments, to ensure that all concerned focus on the best ways of tackling these issues both now and in the future.³⁶

Jacqui Lait questioned the Government's estimate of the cost of capping leaseholders' bills:

Mrs. Lait: To ask the Secretary of State for Communities and Local Government what the evidential basis is for her statement that capping leaseholder service charges for ex-council flats would cost £40 million; what timescale that cost was estimated to arise over; and whether there is a distinction between the costs of (a) resident and (b) buy-to-rent leaseholders in the estimates made.

Yvette Cooper: The statement is based on the results of a survey conducted in March 2007 on behalf of the Department for Communities and Local Government by London Councils, the representative body of the London boroughs. No distinction was made between resident and buy-to-rent leaseholders.³⁷

Leaseholder groups criticised the then Government's decision not to put a £10,000 ceiling on bills and questioned the claim that only a small percentage of leaseholders were facing large bills.³⁸

3.1 Consultation on sinking funds (2009)

In July 2009 DCLG published a consultation paper, [Reform of council housing finance](#), which considered the possibility of local authorities establishing sinking funds to cover major works to leasehold properties:

3.36 A sinking fund is a reserve of funds that can be built up from contributions from leaseholders (service charges) and used for a number of purposes. Whilst often used to cover expenditure which may be incurred fairly infrequently, such as large scale

³⁵ This has been done – see section 1.3 on page 7 of this note.

³⁶ HC Deb 29 March 2007 c118-9WS

³⁷ HC Deb 15 June 2007 c1346W

³⁸ "Lobby angry at lack of cap on 'devastating' demands," *Inside Housing*, 6 April 2007

works, it can also be used to meet other costs that are incurred more frequently, such as redecoration of the common parts. The use of sinking funds allow contributions from leaseholders towards the cost of such works to be spread more evenly over a longer period rather than the full amount being demanded all in one go.

3.37 The legislation does not expressly prevent the operation of sinking funds but we are not aware of any local authorities that operate them. There are a number of reasons for this:

- technical issues related to the Housing Revenue Account rules
- early local authority leases do not provide for the operation of sinking funds
- it is difficult to set contributions at a level that is both affordable and realistic in terms of meeting the costs of works

The consultation paper proposed that Housing Revenue Account rules be amended to expressly allow for sinking funds to be established. There was an intention to encourage authorities to set up these funds where they are supported by leaseholders. In regard to future sales of leasehold dwellings there was an intention to investigate whether:

- the sale price can be adjusted to include a lump sum that covers costs of outstanding work on the property, allowing the local authority to place this element of the sale price in a sinking fund for the property
- provisions allowing for the collection of sinking fund contributions can be introduced into the standard leasehold contract
- more information can be provided for leaseholders on their responsibilities for contributing towards costs of repair and maintenance of the building containing their property and any other estate or communal costs.³⁹

Authorities were asked about potential barriers to them taking sinking funds up voluntarily. The [consultation responses](#) were published on 30 November 2010. Many councils said that they already operated sinking funds with success. The consensus of respondents was that there should be local discretion in setting them up, but that guidance would be helpful.⁴⁰ Following the 2010 General Election, the new Coalition Government did not pursue the proposal to expressly allow for sinking funds to be established. There was some anecdotal evidence that local authorities were amending lease agreements and seeking to establish sinking funds in response to increased take-up of the Right to Buy (following the increase in the maximum discount).⁴¹

³⁹ Ibid.

⁴⁰ DCLG, [Council housing: a real future – Summary of responses to the consultation](#), November 2010

⁴¹ See for example: [Minutes of a Haringey Council Cabinet meeting 18 December 2012](#) [accessed on 28 November 2014]

4. Introduction of service charge caps (August 2014)

4.1 Consultation

June 2013 saw a number of press reports into the case of Florence Bourne, a 93-year-old given a £49,000 bill for internal and roof repairs by Newham Council. Following her death, a Leasehold Valuation Tribunal (now First-Tier Tribunals (Property Chamber)) found the charges were “not reasonable”.⁴²

Following this case, in October 2013 the Coalition Government launched a [consultation paper](#) into proposals to cap maximum leaseholder service charges for all work carried out with central Government funding. Eric Pickles, then Secretary of State for Communities and Local Government, in whose constituency Ms Bourne had lived, alluded to her case in his Ministerial Foreword.

The consultation proposed:

- capping leaseholder service charges at £10,000 over 5 years (£15,000 in London) on works part or wholly funded by Government;
- extending proposals to allow councils discretion to reduce charges below the cap if deemed appropriate.

The cap was not intended to affect any funding already confirmed, and would also not apply to works funded by means other than Government funding.⁴³

The Chartered Institute of Public Finance & Accountancy’s (CIPFA) response criticised the consultation document’s reference to press reports of “wholly unjustified demands on leaseholders,” which it felt did not represent a balanced approach.⁴⁴

The discrepancy between the cap for England as whole and the separate cap for London was due to:

the higher prices in the capital, and that the nature of the stock, with many homes in tower blocks, makes it more expensive to repair and maintain.⁴⁵

Nottingham City Council’s response to the consultation questioned the validity of this discrepancy:

Firstly we do not believe the difference between the figure for London and outside London for such costs is as high as 50% as much again for costs in the capital.

⁴² Romford Recorder, [Victory in debt fight is too late for pensioner](#), 7 June 2013

⁴³ DCLG, [Consultation on protecting local authority leaseholders from unreasonable charges](#), October 2013

⁴⁴ CIPFA, [Consultation on protecting local authority leaseholders from unreasonable charges](#), November 2013

⁴⁵ DCLG, [Consultation on protecting local authority leaseholders from unreasonable charges](#), October 2013

Secondly, many urban authorities outside London also have significant stock that is in tower blocks. Nottingham has 13 tower blocks with approximately 1,500 flats of which a number are owned by leaseholders. Tower blocks do have higher costs associated with certain types of maintenance. If the Government wants to recognise this differential then a higher figure should be applied to all leasehold properties in tower blocks irrespective of whether they are in London or not. This would reflect the higher costs of managing and maintaining such stock across the UK – not just in London.⁴⁶

Leaseholders and leaseholder groups provided 74% of responses to the consultation. The Government's assessment of the consultation responses said:

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.⁴⁷

4.2 'Florrie's Law'

Following the consultation exercise, the Coalition Government brought these proposals into force on 2 August 2014 via [The Social Landlords Mandatory Reduction of Service Charges \(England\) Directions 2014](#) and [The Social Landlords Discretionary Reduction of Service Charges \(England\) Directions 2014](#). These affect all funding, including decent homes funding, allocated from Government after this date.

Capping charges only applies to leaseholders whose principal home is the property facing repairs. Charges are not capped for leaseholders renting out the property.

In a DCLG press release, Mr Pickles referred to these Directions as 'Florrie's Law' in reference to Florence Bourne.⁴⁸

4.3 Financial impact

One of the questions posed as part of the consultation exercise asked about the potential impact of a cap on landlords' ability to meet the decent homes standard:

- Six councils said that... capping would not impact on their ability to meet the Decent Homes Standard;
- 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;
- Five councils and one local authority representative group stated that they had evidence which showed the cap would

⁴⁶ Nottingham City Council, [Response to the consultation on protecting local authority leaseholders from unreasonable charges](#), November 2013

⁴⁷ DCLG, [Protecting local authority leaseholders from unreasonable charges](#), para 3.4, August 2014

⁴⁸ DCLG & Eric Pickles, [Florrie's law: new cap for council house repairs comes into force](#), 12 August 2014

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impact on their work to achieve the Decent Homes Standard.⁴⁹

The Labour Government decided not to implement a £10,000 cap, partially on the basis of an estimated £40 million cost. Freedom of Information requests from *Inside Housing* provided the following estimated shortfalls in 7 local authorities' HRAs:

Estimated shortfalls caused by repairs cap *

Council	Shortfall
Southwark	£6m
Salford	£115,813
Camden	£2.3m
Tower Hamlets	£4.2m
Barking and Dagenham	£1.6m
North East London Council	£45,000
Suburban South London Council	£50,000
TOTAL	£14.3m

* Figures supplied refer to different periods⁵⁰

The Housing Law Practitioners Association (HLPAs) questioned the potential financial impact of the cap given the stage at which the decent homes programme had reached:

We question the practical use of the proposed new directions. Decent Homes funding is winding down and it is hard to see what purpose is served by capping recoverable costs. There are no (published) plans for either central government or the Homes and Communities Agency to provide new funding streams for major works in the near future. It is therefore wholly unclear what these directions will actually achieve.⁵¹

Similarly Giles Peaker, a partner at Anthony Gold Solicitors, believed councils would easily be able to get around the legislation, for example "by fixing a leaking roof at a different time to conducting repair works done with decent homes funding."⁵²

⁴⁹ DCLG, [Protecting local authority leaseholders from unreasonable charges](#), para 3.8-3.11, August 2014

⁵⁰ *Inside Housing*, [Florrie's law to leave £14m funding hole](#), 26 September 2014

⁵¹ HLPAs, [Submission of the HLPAs](#), October 2013

⁵² *Inside Housing*, [Confusion over repairs caps](#), 11 October 2013

5. HCLG Select Committee report 2019

The Housing White Paper, [Fixing our broken housing market](#) (February 2017), included a commitment to “improve consumer choice and fairness in leasehold”. The Government, along with the Law Commission, has embarked upon a wide-ranging programme work concerning leaseholders’ rights and redress mechanisms. Full details of this work can be found in the Library paper: [Leasehold and commonhold reform](#).

The HCLG Select Committee launched [an inquiry into leasehold reform](#) on 24 July 2018 with a focus on the position of existing leaseholders – submissions were invited up to 7 September 2018. The [Committee’s report](#) was published on 19 March 2019.⁵³ The written evidence submitted to the inquiry, together with the oral evidence sessions, can be accessed on the [Committee’s website](#).

One area considered by the Committee was one-off bills for major works. These bills were identified as a “source of great distress for leaseholders.”⁵⁴ Following the Grenfell Tower fire, the potential cost of remedial work to remove and replace ACM cladding, together with the cost of ‘waking watch’ fire patrols, attracted a great deal of media attention. The Committee received evidence of high one-off bills in both the social and private leasehold sectors.

The Committee regretted the fact that local authorities do not always operate sinking funds into which long leaseholders make regular payments to help meet the cost of one-off major works. The Committee was also critical of the use of Qualifying Long-Term Agreements⁵⁵ by social landlords which they said: “reduces the freeholder’s consultation requirements and limits the ability of long leaseholders to nominate alternative contractors.”⁵⁶ When giving evidence to the Committee, Larissa Reed of Brighton and Hove City Council was asked whether Florrie’s Law⁵⁷ should be strengthened, she replied:

If you talked to any of our leaseholders, they would say yes. If you talked to our tenants, they would say no. Any money that we spend that is not leaseholder-paid comes out of our [Housing Revenue Account] and our tenants’ rents. That is something that tenants feel very strongly we should not be doing, because they feel that the leaseholder has the benefit in that, once we have spent the money on the works, the value of the property often increases as a result.⁵⁸

⁵³ [Leasehold Reform, HC 1468, Twelfth Report of 2017-19](#), 19 March 2019

⁵⁴ *Ibid.*, para 164

⁵⁵ Note that leaseholders must be consulted before a landlord enters into a Qualifying Long-Term Agreement. When works are carried out under such a contract the leaseholders receive written notice and observations are invited. There is no requirement on the freeholder to amend their proposals.

⁵⁶ [Leasehold Reform, HC 1468, Twelfth Report of 2017-19](#), 19 March 2019, para 166

⁵⁷ See section 4.2.

⁵⁸ [Leasehold Reform, HC 1468, Twelfth Report of 2017-19](#), 19 March 2019, para 168

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The Committee recommended:

The Government should introduce a Code of Practice for local authorities and housing associations, outlining their responsibilities to leaseholders in social housing blocks and offering guidance on best practice for major works. Local authorities should be required to provide evidence to leaseholders that they are receiving the same value from procurement practices in the public sector as they might reasonably expect in the private sector, and that public procurement rules are not used as an excuse for overcharging. Further, as is common in the private sector, local authorities should also be required to administer sinking funds for each of the buildings or estates they are responsible for, so leaseholders are less at risk of unexpected bills for major works.⁵⁹

The [Government response](#) was published on 3 July 2019. The response points to work being carried out by Lord Best's Regulation of Property Agents working group which is considering standards of transparency of service charges, including major works consultation. The working group is also considering how best to protect leaseholders from "unexpected large one-off bills".⁶⁰ The Government has said that they will consider how the group's recommendations might apply to social leaseholders. A report is expected later in summer 2019.⁶¹

The Housing Green Paper, a [New deal for social housing](#) (August 2018), also asked what more could be done to support social housing leaseholders. Responses are being analysed – the outcome and action plan is expected to be published in September 2019.

⁵⁹ Ibid., para 172

⁶⁰ [CP 99](#), 3 July 2019, para 80

⁶¹ Ibid.

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