

# Service Charges

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Christopher Last  
Leaseholder Webinar  
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# Key statutes

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- Landlord and Tenant Act 1985
    - Sections 18-30
  
  - Landlord and Tenant Act 1987
    - Sections 42, 47 and 48
  
  - Commonhold and Leasehold Reform Act 2002
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# Crucial questions

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- Are the costs *payable*?
  - Are the costs *reasonable*?
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# What is a service charge?

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## Section 18 Landlord and Tenant Act 1985

- (1)...an amount payable by a tenant of a dwelling as part of or in addition to the rent—
    - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
    - (b) the whole or part of which varies or may vary according to the relevant costs.
  - (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
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# What to expect in your lease

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- Landlord's covenants
    - What the landlord is obliged to do
      - Repairs / maintenance
  - Lessee's covenants
    - What the lessee is obliged to do
      - Pay the service charge
  - Every lease is unique – make use of its terms
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# What is in the lease?

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- When is payment due?
    - In advance?
  - Are audited / certified accounts required ?
    - Audited / certified by whom?
  - When do final accounts have to be sent out?
  - *Leonora Investment Co.Ltd.v.Mott Macdonald Ltd.[2008]*  
*EWCA Civ 857*
    - “The leases prescribe the contractual route down which the landlord must travel to be entitled to payment.”
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# Information

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- Section 48 Landlord and Tenant Act 1987
    - Name and address of landlord on every demand
  - Section 47 Landlord and Tenant Act 1987
    - Name and address of landlord for service of notices by notice
  - *Beitov Properties Limited v Elliston Bentley Martin* [2012] UKUT 133 (LC)
    - Name and address of agent is insufficient
  - Payment not due until compliance
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# Summary of tenants' rights and obligations

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## Section 21B Landlord and Tenant Act 1985

- Details of service charge rules and entitlements
- Prescribed form
  - Twelve numbered paragraphs (thirteen for Wales)
  - Printed or typewritten in a font no smaller than 10-point

<http://www.lease-advice.org/publications/documents/document.asp?item=13>

[http://www.lease-advice.org/documents/Summaries\\_of\\_rights\\_and\\_obligations\\_Wales.pdf](http://www.lease-advice.org/documents/Summaries_of_rights_and_obligations_Wales.pdf)

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# Summary of tenants' rights and obligations

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- Summary must accompany service charge demands
- *Tingdene Holiday Parks Ltd v Cox and others* [2011] UKUT 310(LC)
  - Section 21B information must be sent with the demand
- Payment may be withheld where demand served without summary
  - Non-payment provisions in lease have no effect

# Demands must be in time

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## Section 20B Landlord and Tenant Act 1985

- Costs cannot be recovered if incurred more than 18 months before demand for payment
    - Unless a s20B(ii) notice is served in the interim
  - *London Borough of Brent v Shulem B Association Limited* [2011] EWHC 1663 (Ch)
    - Demand for payment must be in accordance with the terms of the lease
  - *OM Property Management Limited v Burr* [2012] UKUT 2(LC)
    - When are costs incurred?
    - Date of bill or date of payment?
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# Demands must be in time

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## Section 20B Landlord and Tenant Act 1985

- Section 20B(ii) notice will ‘stop the clock’
  - Notice must:
    - State that a cost has been incurred;
    - State what that cost is;
      - Minimum?;
    - That a demand will be issued at a later date for the recovery of that cost
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# Reasonableness

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## Section 19 Landlord and Tenant Act 1985

- Service charges will be payable:
    - Only to the extent that they are reasonably incurred; and
    - Where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard
  - No requirement they are best value for money
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# Consultation for major works

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- Section 20 LTA 1985
    - As amended by Section 151 of the 2002 Act
  - Provision of information and costs to tenants
  - Requirement to seek views and nomination of contractors before proceeding
  
  - Major works - £250 threshold
  - Qualifying long-term agreement - £100 / over 1 year
  
  - [http://www.lease-advice.org/documents/S20\\_Consultation\\_Private\\_Landlords.pdf](http://www.lease-advice.org/documents/S20_Consultation_Private_Landlords.pdf)
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# Consent for dispensation

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- Section 20ZA(i) LTA 1985
  - Jurisdiction of the First-tier Tribunal (Property Chamber)
  - Urgent works
  - Advance applications
  - Impracticality of obtaining more than one estimate, etc
  
  - *Phillips & Goddard v Francis* [2012] EWHC 3650 (Ch)
    - Any works over £250 per leaseholder
  
  - *Daejan v Benson* [2013] UKSC 14
    - Dispensation likely
    - Limitation according to prejudice suffered
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# Recovering service charges

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- Check compliance with Sections 47 and 48 LTA 1987
  - Check summary of rights and obligations accompanies the service charge demand
  - In time?
    - Section 20B of the LTA 1985
  - Proper consultation under Section 20 of the LTA 1985
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# Challenging service charges

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- Section 27A of the LTA 1985
  - First-tier Tribunal (Property Chamber)
    - [http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court\\_for\\_ms\\_id=3087](http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court_for_ms_id=3087)
  - Appeal lies to Upper Tribunal (Lands Chamber) with leave of the FTT and/or the Upper Tribunal
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# Service charge information

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- Sections 21 and 22 Landlord and Tenant Act 1985
  - Summary of relevant costs
    - Within one month *or* six months of the end of the relevant accounting period
  - Supporting documents
    - Within six months of receipt of summary of relevant costs
    - Comply within one month, made available for two months
  - Criminal offence
  - Civil remedy
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# Forfeiture of lease-service charges

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- Taking the flat back
  - Cannot forfeit unless
    - Admission that service charges are payable
    - Final determination of payability by court or arbitral tribunal
  - £350 or more than three years
  
  - Section 146 notice served where not reserved as rent
    - Service not less than 14 days after final determination
  - Is a default judgment in county court such a final determination?
    - Yes - *Church Commissioners for England v. Koyale Enterprises Limited and another* (2011) in the Central London County Court
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# Southall Court ( Residents) Limited v Tiwari & Others [2011] UKUT 218 (LC)

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“It is strongly to be hoped that any future disagreements about service charges payable will be resolved by negotiation rather than litigation, if necessary with the assistance of mediation. For all landlords and tenants, recourse to courts or tribunals should be a last resort and certainly not an inevitability.”

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## The Leasehold Advisory Service

020 7383 9800

[info@lease-advice.org](mailto:info@lease-advice.org)

[www.lease-advice.org](http://www.lease-advice.org)

Maple House, 149 Tottenham Court Road

London W1T 7BN

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