



Department for  
Communities and  
Local Government

# Government Approved Redress Schemes (Property management work)

Residential Leaseholder Awareness

Discussion Paper



© Crown copyright, 2015

*Copyright in the typographical arrangement rests with the Crown.*

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/> or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

This document/publication is also available on our website at [www.gov.uk/dclg](http://www.gov.uk/dclg)

If you have any enquiries regarding this document/publication, complete the form at <http://forms.communities.gov.uk/> or write to us at:

Department for Communities and Local Government  
Fry Building  
2 Marsham Street  
London  
SW1P 4DF  
Telephone: 030 3444 0000

For all our latest news and updates follow us on Twitter: <https://twitter.com/CommunitiesUK>

March 2015

ISBN: 978-1-4098-4587-4

# Contents

Scope, basic information and responding	4
Foreword	6
Introduction	7
The Approved redress schemes	8
Proposal	9
How will this be done?	9
Impact and Equality	10
The questions?	11
Summaries of Rights and Obligations (existing content)	12

## Scope of the Discussion Paper

Topic of this paper :	Improving residential leaseholder's awareness of their right to take a complaint about their property manager to a Government approved redress scheme, to encourage use of the schemes.
Scope of this Paper:	To seek comments on the inclusion of a reference to the right to take a complaint about a property manager to a Government approved redress scheme, in the existing (prescribed) summaries of rights and obligations served on leaseholders in respect of demands for service charges, and administration charges.
Geographical scope:	England

### Basic Information

To:	This paper will be of particular interest to residential leaseholders in the private sector; property managers and landlords; and those advising on residential leaseholders' rights.
Body/bodies responsible for the paper:	The Residential Leasehold and Rentcharges Team at the Department for Communities and Local Government is responsible for this discussion paper.
Duration:	Responses to be received by CoP on Friday 22 May 2015
Enquiries:	For further information please email: <a href="mailto:leasehold.reform@communities.gsi.gov.uk">leasehold.reform@communities.gsi.gov.uk</a>
How to respond:	<p>Responses should be submitted by email to: <a href="mailto:leasehold.reform@communities.gsi.gov.uk">leasehold.reform@communities.gsi.gov.uk</a></p> <p>Or by post to:</p> <p>Mr I Fuell Private Sector Property Residential Leasehold and Rentcharges Team Department for Communities and Local Government 3<sup>rd</sup> Floor, South West Quarter Fry Building 2 Marsham Street London SW1P 4DF</p> <p>When you provide feedback it would be helpful if you could confirm the capacity in which you are replying (e.g. leaseholder, landlord, property manager, trade or representative body, or other organisation).</p>

After the discussion paper:	<p>The Government may publish a summary of responses to the discussion paper.</p> <p>You should assume that individual responses will be made publicly available unless specifically marked confidential when submitted.</p>
-----------------------------	--

## Background

Getting to this stage:	<p>Since 1 October 2007 it has been a requirement that a demand for service charges or administration charges sent by a landlord must be accompanied by a summary of rights and obligations, the content of which are prescribed by law.</p> <p>Since 1 October 2014 it has been a requirement for managers of residential leasehold property in the private sector to belong to one of three redress schemes approved by the Government. This provides leaseholders with the ability to take a complaint about their property manager to the relevant scheme.</p> <p>During development of this policy attention was given to ensuring that property managers were fully aware of this requirement, where failure to belong could result in a financial penalty being incurred.</p> <p>The Government is now considering how best to ensure residential leaseholders are made aware of their right to complain to the relevant redress scheme, where a dispute or complaint cannot otherwise be resolved.</p>
Previous engagement:	<p>The Department for Communities and Local Government has had initial discussions on how to create greater awareness of the redress schemes with some key partners in the residential leasehold sector, including the Association of Residential Managing Agents.</p>

# Ministerial Foreword

1. Residential leaseholders in the private sector who have a complaint about the running of their building by their property manager have, since 1 October 2014, been able to use the services of one of three Government approved redress scheme to resolve complaints.
2. A large number of the issues and complaints about property managers that I see could, I believe, be prevented from escalating in the first place, or be dealt with by means other than the First-tier Tribunal. That is why we made it compulsory for property managers to belong to one of the approved redress schemes.
3. Complaints should firstly be dealt with through the propertymanager's's complaints process, but if the leaseholder remains dissatisfied after the local complaints process has concluded, they may be able to make a complaint to the redress scheme the property management company belongs to.
4. I welcome the efforts that the Leasehold Advisory Service, trade and other representative bodies are making to improve transparency and ensure leaseholders have access to information to enable them to make informed decisions, but more can be done.
5. It has become clear that many of these leaseholders do not yet know that they can take a complaint about their property manager to one of the approved redress schemes, or which scheme they can go to.
6. I want leaseholders to be aware of this right, and am therefore proposing to amend the prescribed content of the summaries of rights and obligations that leaseholders already receive with demands for service and administration charges, to include information about the existence of the redress schemes and the right for leaseholders to seek redress from the relevant scheme.
7. It is important that we continue to work together to bring about positive change within the residential leasehold sector. I would therefore welcome comments on this proposal and the questions contained in this paper.

# Introduction

1. As part of the Government's considerations of what further support can be offered to residential leaseholders, announced by the Secretary of State on 12 August 2014, consideration is being given to the issue of awareness of the right available to leaseholders to seek redress against their property manager, should they need to.
2. Following announcements in April and September 2014 about the need for letting agents and property managers in the private sector to belong to one of three approved redress schemes (from 1 October 2014), it has become apparent that the next stage is to increase knowledge about the right for leaseholders to be able to seek redress against a property manager from one of the three approved schemes.
3. There may be a number of reasons for this. There have been various announcements about the redress schemes, and information is also available from the Government funded Leasehold Advisory Service, and Gov.uk website. However, no campaign targeted at leaseholders has been carried out and there is no statutory requirement for property managers to inform leaseholders of the scheme they belong to. This proposal therefore aims to improve the information provided to leaseholders about their rights. We would hope however, that a proactive approach will be taken by property managers, where this is not already the case, in providing the information leaseholders need to have about the scheme they belong to.
4. Certain complaints may also be better dealt with through a redress scheme than more formal tribunal proceedings, and where a matter does need to go to the tribunal, there may be some benefit gained from having sought to resolve the matter through an approved redress scheme in the first instance, where this is possible.
5. This paper therefore considers how best to ensure that residential long leaseholders are made aware of the existence of their right to take a complaint about their property manager to the relevant redress scheme, where the complaint cannot be resolved through the property manager's complaints process.

# The approved redress schemes

6. The three approved schemes are:

Ombudsman Services Property ([www.ombudsman-services.org/property.html](http://www.ombudsman-services.org/property.html))

Property Redress Scheme ([www.theprs.co.uk](http://www.theprs.co.uk))

The Property Ombudsman ([www.tpos.co.uk](http://www.tpos.co.uk))

7. The requirement for property managers to belong to these schemes means that tenants and landlords with agents in the private rented sector, and leaseholders and freeholders dealing with property managers in the residential sector, will be able to complain to an independent person about the service they have received.
8. These can include for example complaints about unfair treatment, avoidable delays, failure to follow procedures, rudeness or discourtesy, and poor or incompetent service. Ultimately the ability of leaseholders to complain to a redress scheme should help weed out bad agents and property managers and drive up standards
9. Information on the requirement for lettings agents and property managers in England to belong to a Government approved redress scheme is available on the Gov.uk website at <https://www.gov.uk/government/publications/lettings-agents-and-property-managers-redress-schemes>



# Proposal

8. Make it a legal requirement to provide information about the redress schemes by amending the prescribed content of the existing summaries of rights and obligations, and amend approved codes of practice.
9. By making it a legal requirement to include information about the redress schemes in the summary of leaseholders' rights, this would achieve the aim of ensuring that all leaseholders are made aware on a regular basis of the schemes, because summaries of rights and obligations must already accompany every demand for service or administration charges. This will be supported by also amending the approved Codes of Practice.
10. Regular information about the existence of the less formal redress schemes) as a means of resolving complaints, may also encourage use of these schemes as an alternative to the First-tier Tribunal, which is a little more formal in nature and, in most cases, requires an application fee to be paid. (No fees are currently payable by leaseholders to use the Government approved redress schemes).

## Social Sector leaseholders and redress

11. It would also appear to be appropriate to include a reference to the ability of leaseholders in the social sector to make a complaint about their landlord/manager to the Housing Ombudsman, at the same time as including reference to the redress schemes applicable to the private sector. This is believed to be necessary because the summaries of rights and obligations are sent to all leaseholders, including those in the social sector, who also have a route of redress other than the First-tier Tribunal.

## How will this be done?

12. The existing regulations (as amended) setting out the form and content of the summaries of rights and obligations, will be further amended at the earliest opportunity, and the approved Codes of Practice will be updated. These are:
  - The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007. Statutory Instrument 2007 No.1257.
  - The Administration Charges (Summary of Rights and Obligations) (England) Regulations 2007. Statutory Instrument 2007 No.1258.
  - Residential Service Charge Management Code (published by the Royal Institution of Chartered Surveyors)
  - Private Retirement Housing Code of Practice for England (published by the Association of Retirement Housing Managers).

## Impacts and Equality

13. The content of the summaries of rights and obligations is already prescribed by law, and must already be provided to leaseholders by landlords (or their property manager). The aim is to ensure that the inclusion of a reference in the summaries to this right does not increase the amount of content currently provided. This is likely to require consideration of the existing content but we do not anticipate any additional costs or burdens resulting from this.
14. We also consider that this proposal demonstrates compliance, where relevant, with Section 149 of the Equality Act and that due regard has been made to the need to: eliminate unlawful discrimination; advance equality of opportunity; and foster good relations. We do not consider that including a reference to the redress schemes in the summaries of rights and obligations will have a negative impact on family relationships. We would welcome any views on this issue.

# Questions

We therefore invite views on the following:

**a) What form of words should be included in the Summaries of Rights and Obligations?**

- should it be a simple reference such as:

*“Leaseholders in the private sector may have the right to complain to a Government approved redress scheme about their property manager.”*

*and*

*“Leaseholders in the social sector may have the right to complain to the Housing Ombudsman about the service received from their landlord or property manager.”*

or

- Should more detailed references be made?

**b) How do you think any additional wording will fit in with the wording currently used in the summaries of rights and obligations?**

**c) Do you think there should be any changes to the current prescribed form of wording used in the summaries in light of what is being proposed? If so what changes are needed?**

**d) Do you have any other comments on this proposal?**

Details of how to respond can be found on page 4 of this document.

# Summaries of rights and responsibilities: existing content

## **Service Charges: Sections 21B of the Landlord and Tenant Act 1985.**

“Service Charges – Summary of tenants’ rights and obligations.

1. This summary, which briefly sets out your rights and obligations in relation to variable service charges, must by law accompany a demand for service charges. Unless a summary is sent to you with a demand, you may withhold the service charge. The summary does not give a full interpretation of the law and if you are in any doubt about your rights and obligations you should seek independent advice.

2. Your lease sets out your obligations to pay service charges to your landlord in addition to your rent. Service charges are amounts payable for services, repairs, maintenance, improvements, insurance or the landlord's costs of management, to the extent that the costs have been reasonably incurred.

3. You have the right to ask the First-tier Tribunal to determine whether you are liable to pay service charges for services, repairs, maintenance, improvements, insurance or management. You may make a request before or after you have paid the service charge. If the tribunal determines that the service charge is payable, the tribunal may also determine-

- who should pay the service charge and who it should be paid to;
- the amount;
- the date it should be paid by; and
- how it should be paid.

However, you do not have these rights where-

- a matter has been agreed or admitted by you;
- a matter has already been, or is to be, referred to arbitration or has been determined by arbitration and you agreed to go to arbitration after the disagreement about the service charge or costs arose; or
- a matter has been decided by a court.

4. If your lease allows your landlord to recover costs incurred or that may be incurred in legal proceedings as service charges, you may ask the court or tribunal, before which those proceedings were brought, to rule that your landlord may not do so.

5. Where you seek a determination from the First-tier Tribunal, you will have to pay an application fee and, where the matter proceeds to an oral hearing, a hearing fee, unless you qualify for fee remission or exemption.. Making such an application may incur additional costs, such as professional fees, which you may have to pay.

6. The First-tier Tribunal and the Upper Tribunal (in determining an appeal against a decision of the First-tier Tribunal) have the power to award costs in accordance with Section 29 of the Tribunals, Courts and Enforcement Act 2007.

7. If your landlord -proposes works on a building or any other premises that will cost you or any other tenant more than £250, or

- proposes to enter into an agreement for works or services which will last for more than 12 months and will cost you or any other tenant more than £100 in any 12 month accounting period.

- Your contribution will be limited to these amounts unless your landlord has properly consulted on the proposed works or agreement or the First-tier Tribunal has agreed that consultation is not required.

8. You have the right to apply to the First-tier Tribunal to ask it to determine whether your lease should be varied on the grounds that it does not make satisfactory provision in respect of the calculation of a service charge payable under the lease.

9. You have the right to write to your landlord to request a written summary of the costs which make up the service charges. The summary must-

- cover the last 12 month period used for making up the accounts relating to the service charge ending no later than the date of your request, where the accounts are made up for 12 month periods; or

- cover the 12 month period ending with the date of your request, where the accounts are not made up for 12 month periods.

The summary must be given to you within 1 month of your request or 6 months of the end of the period to which the summary relates whichever is the later.

10. You have the right, within 6 months of receiving a written summary of costs, to require the landlord to provide you with reasonable facilities to inspect the accounts, receipts and other documents supporting the summary and for taking copies or extracts from them.

11. You have the right to ask an accountant or surveyor to carry out an audit of the financial management of the premises containing your dwelling, to establish the obligations of your landlord and the extent to which the service charges you pay are being used efficiently. It will depend on your circumstances whether you can exercise this right alone or only with the support of others living in the premises. You are strongly advised to seek independent advice before exercising this right.

12. Your lease may give your landlord a right of re-entry or forfeiture where you have failed to pay charges which are properly due under the lease. However, to exercise this right, the landlord must meet all the legal requirements and obtain a court order. A court order will only be granted if you have admitted you are liable to pay the amount or it is finally determined by a court, tribunal or by arbitration that the amount is due. The court has a wide discretion in granting such an order and it will take into account all the circumstances of the case.”

## **Administration Charges: Schedule 11(4)(2) to the Commonhold and Leasehold Reform Act 2002)**

“Administration Charges – Summary of tenants’ rights and obligations

1. This summary, which briefly sets out your rights and obligations in relation to administration charges, must by law accompany a demand for administration charges. Unless a summary is sent to you with a demand, you may withhold the administration charge. The summary does not give a full interpretation of the law and if you are in any doubt about your rights and obligations you should seek independent advice.

2. An administration charge is an amount which may be payable by you as part of or in addition to the rent directly or indirectly—

- for or in connection with the grant of an approval under your lease, or an application for such approval;
- for or in connection with the provision of information or documents;
- in respect of your failure to make any payment due under your lease; or
- in connection with a breach of a covenant or condition of your lease.

If you are liable to pay an administration charge, it is payable only to the extent that the amount is reasonable.

3. Any provision contained in a grant of a lease under the right to buy under the Housing Act 1985, which claims to allow the landlord to charge a sum for consent or approval, is void.

4. You have the right to ask the First-tier Tribunal whether an administration charge is payable. You may make a request before or after you have paid the administration charge. If the tribunal determines the charge is payable, the tribunal may also determine—

- who should pay the administration charge and who it should be paid to;
- the amount;
- the date it should be paid by; and
- how it should be paid.

However, you do not have this right where—

- a matter has been agreed to or admitted by you;
- a matter has been, or is to be, referred to arbitration or has been determined by arbitration and you agreed to go to arbitration after the disagreement about the administration charge arose; or
- a matter has been decided by a court.

5. You have the right to apply to the First-tier Tribunal for an order varying the lease on the grounds that any administration charge specified in the lease, or any formula specified in the lease for calculating an administration charge is unreasonable.
6. Where you seek a determination or order from the First-tier Tribunal, you will have to pay an application fee and, where the matter proceeds to an oral hearing, a hearing fee, unless you qualify for fee remission or exemption. Making such an application may incur additional costs, such as professional fees, which you may have to pay.
7. The First-tier Tribunal and the Upper Tribunal (in determining an appeal against a decision of the First-tier Tribunal) have the power to award costs in accordance with Section 29 of the Tribunal, Courts and Enforcement Act 2007.
8. Your lease may give your landlord a right of re-entry or forfeiture where you have failed to pay charges which are properly due under the lease. However, to exercise this right, the landlord must meet all the legal requirements and obtain a court order. A court order will only be granted if you have admitted you are liable to pay the amount or it is finally determined by a court, a tribunal or by arbitration that the amount is due. The court has a wide discretion in granting such an order and it will take into account all the circumstances of the case.”