



Ministry of Housing,  
Communities &  
Local Government

# Limitation of administration charges: costs of proceedings

A guidance note on the changes which came into force on  
6th April 2017



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# Introduction

The Government introduced a package of measures in the Housing and Planning Act 2016 to increase transparency, fairness and efficiency for householders.

Section 131 of the Housing and Planning Act 2016 amends Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (by inserting a new paragraph 5A) to give Courts and Tribunals, on the application of a leaseholder, a discretionary power to restrict the ability of a landlord to recover from the leaseholder the landlord's costs of taking part in legal proceedings as an administrative charge.

Prior to this, the Courts and Tribunals were only able to restrict a landlord from recovering their legal costs through the service charge.

## In what circumstances do the new powers apply?

Leaseholders have the right to make the following applications to a Court or Tribunal:

- Application for a determination of their liability to pay and the reasonableness of service charges;
- Application for an order under Section 20C of the Landlord and Tenant Act 1985 (for consultation of leaseholders in relation to major works to be carried out on a property); and
- Application for an order that a breach of covenant or a condition in their lease has occurred.

Where a lease allows a landlord to recover the costs of legal proceedings through the service charge, a Court or Tribunal has the power to restrict the amount that can be recovered in this way (either reducing or extinguishing it altogether).

However, Courts or Tribunals did not have similar powers where recovery of the costs of proceedings as an *administration charge* is permitted by the lease. From 6<sup>th</sup> April 2017 they have been able to consider the administrative charge as well.

## What do we mean by an administration charge?

Schedule 11 of the Commonhold and Leasehold Reform Act 2002 defines administration charges as 'an amount payable by a tenant as part of or in addition to rent, which is payable directly or indirectly:

- for or in connection with the grant of approvals under the lease, or applications for such approvals;
- for or in connection with the provision of information or documents by or on behalf of the landlord or a person party to the lease other than the landlord or tenant;
- costs arising from non-payment of a sum due from the leaseholder to the landlord;
- costs arising in connection with a breach (or alleged breach) of the lease.'

Any administration charge demanded by the landlord must be reasonable in order for the landlord to recover the charge, and must also be accompanied by a summary of the leaseholder's rights and obligations in respect of administration charges. If the summary is not included, the charge is not regarded as being payable unless, and until, the demand is made with the summary of rights and obligations.

# In which Courts and Tribunals can a leaseholder make an application?

The specific Court or Tribunal in which a leaseholder can make an application to depends on the type of proceedings to which the costs being disputed relate. A summary of the different kinds of proceedings and the appropriate Court or Tribunal to apply to is set out in the table below:

| <i>Proceedings to which costs relate</i> | <i>The relevant Court or Tribunal</i>  |
|--|--|
| Court proceedings                        | The Court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, the County Court |
| First-tier Tribunal proceedings          | The First-tier Tribunal  |
| Upper Tribunal proceedings               | The Upper Tribunal   |
| Arbitration proceedings                  | The arbitral Tribunal or, if the application is made after the proceedings are concluded, the County Court.                                  |

This guidance applies to England only.

## What does this mean for you as a leaseholder or landlord from 6<sup>th</sup> April 2017?

For leaseholders who are considering making an application for determination on a service charge bill, major works or a contract breach, from 6<sup>th</sup> April 2017, they have been able to ask the Courts to reduce or extinguish their liability to pay a particular administration charge in respect of litigation costs incurred, or to be incurred by the landlord in connection with their Court proceedings.

For landlords, it means that litigation costs, such as barristers' and solicitors' fees, cannot automatically be charged back to the tenant as an administration fee (should the lease so permit). From 6<sup>th</sup> April 2017 the Courts have had the power, on the leaseholder's application, to make any order it considers to be just and equitable when reducing or extinguishing the leaseholders liability to pay an administration charge in respect of the landlord's litigation costs.

## What about proceedings which began before 6<sup>th</sup> April 2017?

The new powers introduced by paragraph 5A do not apply in relation to litigation costs incurred, or to be incurred, in connection with any proceedings which began before 6<sup>th</sup> April 2017.

## How can I apply?

Her Majesty's Courts and Tribunal Services have updated its Court and Tribunal form finder pages on its website. Full details of how to apply, as well as the [relevant forms and guidance notes](#) can be found at <https://tinyurl.com/krqk6vd>.

## Where can I get further information?

You can obtain additional information about the changes set out in this guidance note from the following sources:

The Leasehold Advisory Service via their website at <https://www.lease-advice.org/news-item/new-powers-limit-landlords-recovering-cost-litigation-leaseholders/#>

LEASE is a specialist advisory body funded by the Ministry of Housing Communities and Local Government to provide assistance to leaseholders. A telephone appointment can be booked to speak to one of LEASE's legal advisers on 020 7832 2500 (9.30am to 4.30pm Monday to Friday) or you can seek advice by e-mail: [info@lease-advice.org](mailto:info@lease-advice.org).