Cambridge Centre
for Housing &
Planning Research

Leasehold and Freehold Charges

Summary of research findings

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Contents

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This report summarises the findings of the research carried out by CCHPR's research team. This document is not a statement of policy or views of MHCLG.

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1. Introduction

1.1. Summary

The Ministry of Housing, Communities and Local Government (MHCLG) commissioned the Cambridge Centre for Housing & Planning Research to examine the issues of the levels of leasehold and freehold charges being charged, and the variation within these, in order to inform the development of the Ministry's leasehold reform policy and future programme of work. This report summarises the main findings of the research, carried out between December 2018 and May 2019.

Qualitative and quantitative research methods were used to address research questions and the Ministry's objectives. A desk-based review, secondary data analysis, interviews with key stakeholders, and a survey of leaseholders and interviews with leaseholders were conducted to provide relevant primary data. The findings from the different sources of data are contained in the appendices.

Leaseholder charges are complex and will vary based on the terms of a lease. This can mean leaseholders often have a poor understanding of the charges they pay, what they are for and how they differ from other charges. Because of this, where we have identified unusual, potentially erroneous or unexpected findings, we have sought to offer explanations of why such responses may have been provided by leaseholders.

1.2. Research aims

The aim of the research was to provide evidence from a range of sources about leasehold and freehold charges.

The research explored:

- The nature of different charges, how and why they vary, how they are calculated, and how they are justified;
- How charges are presented to leaseholders/freeholders, and the extent to which those homeowners are aware of their rights and obligations in relation to service, administration, estate rent and other charges;
- The impact of charges on leaseholders or freeholders subject to estate rentcharges, including whether they were considered to be fair, reasonable and/or economically justified;

- The nature of any enforcement action that is taken if a charge is not paid, and how leaseholders or those subject to estate rentcharges experience enforcement action;
- Whether and how leaseholders, or those subject to estate rentcharges, can monitor and enforce performance of the services for which advance charges are made;
- The use of restrictive covenants, their justifications and the effectiveness of existing routes of redress or challenge for leaseholders and freeholders; and
- The extent of available evidence about doubling ground rent clauses within lease contracts and typical rent review terms.

1.3. Methods

The research used both qualitative and quantitative methods.

A desk-based review was carried out to collate the existing information and evidence about leasehold service charges, administration charges, permission fees and freehold estate rentcharges. **Appendix A** presents the findings of the desk-based review. The review looked at different kinds of ownership and the various charges that leaseholders and freeholders may be liable to pay. It reviews the law relating to service charges, administration charges, permission fees and freehold estate rentcharges. Relevant case law is briefly discussed. The review summarises some of the key challenges discussed in the literature around the level of service charges, how they are calculated, what residents think about them and what the potential complications are. It reviews relevant recommendations proposed by the Competition and Markets Authority in 2014[1] and by the Housing, Communities and Local Government Select Committee.[2] The final section concludes the report by outlining the gaps in knowledge concerning the charges that leaseholders and, in some cases, freeholders have to pay.

Semi-structured interviews with 27 key stakeholders (national umbrella organisations representing both leaseholders and the wider industry, local authorities, house builders and managing agents) were conducted to develop an evidence base about the current processes and issues relating to service and other charges associated with leasehold properties, and freehold estate rentcharges. Interviews with stakeholders gave those working across all parts of the sector a chance to feed in views on the current use and operation of service charges and other fees and charges. **Appendix B** presents the key findings of the interviews carried out with these stakeholders.

[1] CMA, Residential property management services: A market study, 2014

[2] Housing, Communities and Local Government Committee, Leasehold Reform: Twelfth Report of Session 2017–19, 2019, London: House of Commons

A survey of 1,000 owner occupier leaseholders (i.e. leaseholders who live in their leasehold property) was carried out by ComRes to generate new data and to provide verification of the desk based review, secondary data and key stakeholder interviews. A 10-minute online survey with approximately 20 questions was sent to a national sample of leaseholders, collecting data on a range of issues, including the extent of charges, whether the leaseholder has a doubling ground rent clause within their lease, how any major works were dealt with, and how charges are presented. The survey did not include landlords/leaseholders who rent their properties in the private rented sector. The survey report and tables can be found in **Appendix C**.

Follow up telephone interviews were conducted with 17 of the leaseholders who responded to the survey. Interviewed leaseholders were asked for their views on the transparency of service charges, consultations for major works, permission fees, restrictions on their leases, paying for large bills and sinking funds. **Appendix D** presents the findings of these interviews.

MHCLG conducted analysis of the English Housing Survey (EHS), a national survey of people's housing circumstances and the condition and energy efficiency of housing in England. It is one the longest standing government surveys and was first run in 1967.[3] The EHS analysis provides findings on leaseholder properties in the owner occupied sector. It is split into two sections. The first examines owner occupied leasehold dwellings, and their prevalence by property type and region. The second looks at service charges and ground rents. This analysis can be found in on the MHCLG website.

[3] MHCLG, English Housing Survey, see https://www.gov.uk/government/collections/english-housing-survey

2. Definitions

This section briefly defines the key terms used in this report. **Appendix A** contains detailed definitions of these terms.

Freehold ownership – freeholders own both the land and the building that sits on it. This is typically the case for most houses, but some houses, mostly new-build homes, may be leasehold.

Leasehold ownership – leaseholders have the right to occupy and use a flat or house, and to share the use of other areas of the building or estate, for a given number of years.

Lease – the written contract between the freeholder and the leaseholder, giving the leaseholder the right to live in and use the property. The terms of the lease sets out the rights and obligations between the freeholder and leaseholder.

Ground rent – an annual payment made by the leaseholder to the freeholder under the terms of a lease and not connected with the provision of services.

Service charge – a contribution payable by a leaseholder to the freeholder, or their managing agent, for a share of the cost of insuring, maintaining, repairing and cleaning the building.

Sinking fund[4] – a sum of money collected from leaseholders, as part of their service charge, to cover the cost of future items of expenditure, such as a new roof, or replacement of lift.

Administration charge – an amount payable by a leaseholder to the freeholder, or their managing agent, for granting approvals under the lease, for the provision of information or documents, for dealing with a failure by the leaseholder to pay ground rent or service charges, or in connection with a breach of the lease.

Permission fee - an amount payable by a leaseholder for the landlord's costs of dealing with applications for approvals, such as to make a structural alteration to a property.

[4] The term sinking fund is often used interchangeably with the term reserve fund. Sinking funds refer specifically to money collected to cover the cost of future large individual items of planned expenditure while reserve funds are sometimes used to help pay for unexpected costs such as overspends on planned work.

Estate rentcharge - an estate rentcharge may be paid by a freehold homeowner whose house lies within a private or mixed tenure estate. The estate rentcharge may be used for the maintenance of estate roads, drainage and other common areas.

3. Leasehold ownership

3.1. Types of ownership

There are two main ways of owning property in England and Wales: freehold and leasehold. Freehold means that one owns the land and the building that sits on it. Leasehold means that one has the right to occupy and use a flat or house, and to share the use of other areas of the building or estate, for a given number of years.

The patterns of property ownership, and of property rights, in blocks of flats can be complex. Some flats will be owned by owner-occupying leaseholders, others by buy-to-let landlords, and still others by housing associations and local authorities. The latter groups (housing associations and local authorities) will let their flats to tenants, either on short term lets as assured shorthold tenancies (as in the case of buy-to-let landlords), as assured tenancies in the case of housing associations, or, in the case of local authorities, as secure tenancies. Housing associations also sell flats and houses on long leases with shared ownership arrangements.

Commonhold was introduced in 2002 as a new way to own property. Commonhold enables a person to own the freehold of a "unit" (such as a flat) within a building or development and to also become a member of a company which owns and manages the shared areas. To date, few commonhold properties have been established and the Government is looking at what more it can do to help support commonhold to get up and running to provide greater choice for consumers as an alternative to leasehold. The Government is currently working with the Law Commission to explore reforms to commonhold.[5]

3.1.1. Freehold ownership

A freeholder, usually an individual or a company, owns the freehold title, i.e. the freeholder owns both the land that the building is on and the building itself. If a freeholder grants a lease, they become a landlord. The freeholder is normally responsible for the upkeep of the property, although this may not apply for all leasehold houses, which may be maintained by the leaseholder. Alternatively, freeholders may appoint a property manager to perform their management responsibilities on their behalf.

[5] Law Commission, Commonhold, see: https://www.lawcom.gov.uk/project/commonhold/

3.1.2. Leasehold ownership

Leasehold is a form of property ownership whereby the purchaser ('the leaseholder') is granted exclusive occupation and use of the property for a period of time, as set out in the lease. This may only be for a very limited number of years or for a longer period of time. However, ultimate ownership of the property remains with the freeholder, who is entitled to recover full ownership rights once the term of the lease has expired. The leaseholder may be permitted to grant a further lease (an 'underlease') to a third party for a shorter time period and become a landlord, but only to the person taking the underlease. In this review, unless otherwise stated, 'landlord' is used to mean the person or company who is the freeholder.

The freehold of a leasehold property might be owned:

- by someone unconnected to the leaseholders (e.g. an individual, a company, a local authority and a housing association); or
- by the leaseholders (share of freehold).

3.1.3. Data about leasehold properties

The data here is drawn from analysis carried out by MHCLG. National level statistics on the number of leasehold dwellings by tenure are based on English Housing Survey (EHS) data matched to HM Land Registry (HMLR) data[6] on the leasehold status of property in England. Statistics on owner occupied leasehold homes and home ownership are based on EHS data only.

There are an estimated 4.3 million leasehold dwellings in England. 1.7 million are privately owned and let in the private rented sector and 249,000 are owned by social landlords and let in the social rented sector. The remaining 2.3 million leasehold dwellings are owner occupied – where, in most cases, the owner of the property will also live there.[7]

Owner occupied leasehold houses are concentrated in the North West. London has the highest proportion of owner occupied leasehold flats. Two thirds (66%) of owner occupied leasehold houses in England are in the North West, whereas owner occupied leasehold houses account for no more than 10% of the total in any other region. London has the greatest proportion of leasehold flats (35%). The predominance of leasehold houses in the North West is likely to be a consequence of longstanding custom and practice in that region,

[6] HM Land Registry National Polygon Service, see: https://www.gov.uk/guidance/national-polygon-service

[7] MHCLG, Estimating the number of leasehold dwellings, see: https://www.gov.uk/government/statistics/estimating-the-number-of-leasehold-dwellings-in-england-2016-to-2017

whereas the relatively high proportion of leasehold flats in London is likely due to the higher proportion of flats more generally.

In 2017-18, 92% of all owner occupied properties were houses or bungalows; 8% were flats.[8] Among owner occupier leasehold properties, 39% were houses and 61% were flats. Nearly half of owner occupied leasehold properties were purpose built, low rise flats (45%). Terraced houses and semi-detached houses each made up 15% of owner occupied leasehold dwellings. The remainder were converted flats, detached properties, purpose built high rise flats and bungalows.

At the time of purchase, the vast majority of owner occupier leaseholders bought leases of 99 years or more. 89% of owner occupier leaseholders in houses and 82% of owner occupier leaseholders in flats bought leases of 99 years or more. More than half (55%) of owner occupier leaseholders had 99 or more years remaining on their lease. Owner occupier leaseholders in houses were more likely than owner occupier leaseholders in flats to have 99 years or more remaining on their lease (63%, compared with 50%).

3.1.4. Residential property management

The landlord, or the leaseholders (through a residents' management company that is a party to the lease), may carry out the management of the maintenance and repair of their building themselves. Property management can, however, be a complex and time-consuming task, and raises significant liabilities and obligations. Often, and especially in larger developments, landlords or resident management companies will engage third party agents (property managers/managing agents) to carry out their management and maintenance duties.

Through this contractual arrangement, a property manager is empowered to carry out the management functions, including the calculation and collection of service charges from the leaseholders. Property management services are typically, but not always, provided by specialist property management agents.

Following the Commonhold and Leasehold Reform Act 2002, leaseholders of flats have the right to take over the management (i.e. to exercise the Right to Manage) of their building by setting up a Right to Manage Company (RTMCo). This does not apply to leasehold house owners, although the Law Commission is considering whether this right should extend to leasehold house owners as part of their current review of the legislation.[9] The company's members are leaseholders and, from the date on which the Right to Manage is acquired, can

[8] MHCLG, Estimating the number of leasehold dwellings, see: https://www.gov.uk/government/statistics/english-housing-survey-2017-to-2018-headline-report

[9] Law Commission, Right to Manage, see: https://www.lawcom.gov.uk/project/right-to-manage/

include landlords under leases of the whole or any part of the premises. The RTMCo can appoint any property manager of its choosing or even undertake management functions itself.

4. Service charges

4.1. What is a service charge?

Service charges, i.e. the ability of a landlord to recover the cost of services provided in relation to a property from a leaseholder, are generally used to ensure the maintenance of common parts and the structure of blocks of flats.

Service charges can be fixed or variable. The statutory framework for variable service charges has developed over time, through a number of Acts of Parliament. The law has developed over time to match the growth in use of leasehold for flats and houses. There was no provision for a service charge until the 1970s. The Housing Finance Act 1972 (Sections 90-91) was the first Act to give tenants the right to obtain a summary of costs from their landlord. The Housing Act 1974 (Section 124) gave leaseholders who paid variable service charges the right to challenge the charge, and made provision for estimates to be obtained by landlords and for consultation to take place with tenants (Rosenthal et al., 2013, pp. 5, 6). The Landlord and Tenant Act 1985, as amended by subsequent legislation, sets out basic ground rules for variable service charges, defining a service charge, setting out requirements for reasonableness, and for prior consultation on major works.

The Landlord and Tenant Act 1985 defines a service charge as 'an amount payable by a tenant of a dwelling as part, of or in addition to, the rent which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and the whole or part of which varies or may vary according to the relevant costs'. Relevant costs are actual 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.

Subject to the lease, service charges for leaseholders may include such items as:

- cleaning and lighting of common parts;
- grounds maintenance of communal areas;
- provision and maintenance of lifts, entry phones, security lighting;
- fire alarms, communal aerials, etc.; and
- the landlord's costs of managing the services or an allowance for the costs.[10]

[10] Webb, R. and Hance, L. Managing your Service Charges Effectively, 2013, Coventry: HouseMark

In addition, a lease usually requires a leaseholder to pay for items that would be a landlord's responsibility under the terms of a tenancy of less than seven years, such as:

- repairs (and, if included in the lease, improvements) to the structure and common parts of the building; and
- insurance of the structure, common parts, public liability, etc.[11]

The lease should be explicit on the method of apportionment. Services may be charged at different levels with different rates of contribution. Whatever the method of apportionment used, it should be set so that it can be easy to administer.[12]

Most service charges are based on the actual or estimated cost of the services and thus vary from year to year. These are known as variable service charges. However, some older leases and tenancy agreements still provide for a fixed service charge to be levied, and they are also sometimes used in retirement leasehold properties. A variable service charge does not mean that the landlord can vary the services, only the charge for them.[13]

Based on the Landlord and Tenant Act 1985 and subsequent legislation, the landlord can recover the costs of provided services, repairs, maintenance and insurance, as well as the landlord's cost of management, from leaseholders, if they are reasonably incurred and the works or services are carried out to a reasonable standard.[14] In England, most landlords recover their costs by way of a service charge.

4.2. How service charges are calculated

There is no formal guidance available to define how service charges should be calculated. However, all service charges must be calculated in the manner provided for in the lease and usually before the beginning of the next financial year. The RICS Residential Code[15] suggests that the best information available (e.g. actual costs where contracts are already in place) should be used to inform the budget estimate, and initial service charge demands should be accompanied by a copy of the approved budget.

[11] Webb, R. and Hance, L. Managing your Service Charges Effectively, 2013, Coventry: HouseMark
[12] Ibid
[13] Ibid
[14] For more information, refer to Appendix A, pages 8 - 10
[15] Pages 24-25 of RICS Residential Code: https://www.rics.org/globalassets/rics-website/media/upholding-professional-standards/sector-standards/real-estate/service-charge-residential-management-code-3rd-edition-rics.pdf

The level of service charge varies on a case by case basis according to the specificities of each development which may include, for example:

- the level of services provided;
- the location of the building;
- the nature of the building (for example, a listed building or a tower block);
- the condition and state of repair of the building;
- the scale of the building (e.g. larger buildings with more communal spaces are more expensive to maintain); and
- the sector of the development (for example, charges are generally higher in the retirement housing sector).[16]

In principle, there should be no difference between how a service charge is calculated for a new or an existing development. It should always begin with an estimate of charges, calculated by the developer, a property management agent, the landlord or a Right to Manage Company (RTMCo).[17]

4.3. The level of service charges

In 2014, the Competition and markets Authority (CMA) gave an estimate of total service charges at £2.5bn to £3.5bn per year in England and Wales[18]. However, coming to a definitive understanding of the amounts paid by leaseholders as service charges is difficult. Service charges vary considerably, they are complex, and leaseholders do not always have a comprehensive understanding of them. Therefore, collecting data from leaseholders about the amount of service charge they pay is challenging.

There are different available sources for the average annual service charges paid by leaseholders in England, however, and differences in research methods mean that these are not directly comparable. This is because they report on different years, areas and consumers, and use different measures of 'average' service charge. Data from these different and limited samples reflects this diversity.

This report considers data on service charges from two sources. One is English Housing Survey (EHS) data analysis conducted by MHCLG.[19] The EHS is a representative survey of over

[16] For more information, refer to Appendix A, pages 8 - 9

[17] For more information regarding how in practice the service charge is calculated for a new or an existing development, refer to Appendix A, pages 8 - 12

[18] CMA, Residential property management services: A market study, 2014

[19] EHS MHCLG published secondary data report

13,000 households in England. The EHS collects service charge data from all home owners who report owning their home through a lease. The other data source is a survey of 1,000 owner occupier leaseholders carried out by ComRes and commissioned specifically for this research.

4.3.1. English Housing Survey (EHS) service charge data

According to the EHS, about half (52%) of owner occupier leaseholders reported paying a regular service charge. Owner occupier leaseholders in flats were more likely to report this than owner occupier leaseholders in houses (78%, compared with 10%).

Owner occupier leaseholders typically reported an annual service charge of less than £2,000; 42% of owner occupier leaseholders pay less than £1,000 per year and 42% of owner occupier leaseholders pay from £1,000 to £1,999 per year. Lower proportions of owner occupier leaseholders pay service charges of more than £2,000 a year (8%) or more than £3,000 a year (8%).

Owner occupier leaseholders in flats tend to pay more than those in houses. For example, 70% of owner occupier leaseholders in houses pay a service charge of less than £1,000 a year, compared with 40% of owner occupier leaseholders in flats.

The annual median service charge paid by owner occupier leaseholders from this survey is £1,200. Annual median yearly service charges range from £870 in the West Midlands to £1,500 in London.

Of owner occupier leaseholders who reported paying a service charge, over half (55%) also contributed towards 'one off' repairs or maintenance costs. This was the case for both leaseholders in houses (56%) and leaseholders in flats (55%).

4.3.2. ComRes leaseholder survey service charge data

The leaseholder survey conducted for this research suggested that five in six (84%) leaseholders reported paying a service charge compared to 12% who said they never pay a service charge. It could be that some leaseholders do pay towards costs such as buildings insurance but do not necessarily recognise such a payment as a service charge, but further research would be required to better understand this issue. The survey of leaseholders found that:

- nearly nine in ten (88%) leasehold flat owners and 77% of leasehold house owners pay a service charge;

- 9% of leasehold flat owners and 18% of leasehold house owners had never paid a service charge; [20]
- a third (34%) of leaseholders pay a service charge monthly, a fifth (22%) pay every quarter, 15% pay every half year, and 14% pay annually; and
- a fifth (19%) of leaseholders in the North said they never pay a service charge, whilst one in ten in the Midlands (8%) and the South (including London) (11%) said the same.[21]

Surveyed leaseholders who pay a service charge reported paying a median amount of £600 per year.

The survey of leaseholders also found that, among those who reported paying a service charge:

- those living in flats said they pay a median of £877 per year, compared to £300 for those who live in a house;
- 18% of those surveyed who live in a house say they pay up to £50 per year in a regular service or maintenance charge, compared to 7% of those who live in a flat.
- leaseholders surveyed in the South of England reported a larger service charge than those living in the Midlands and the North. For example, the median amount in the South (excluding London) was £840 per year, compared to £635 in the Midlands and £500 in the North.[22]

[20] For more information, refer to Appendix C, page 16
[21] For more information, refer to Appendix C, page 16
[22] For more information, refer to Appendix C, page 19

Q8b. You mentioned that your household pays a regular service or maintenance charge to cover the costs of repair and maintenance of the building or its communal areas. Approximately, how much do you pay per year?

Up to £50	10%
£51-£100	7%
£101-£250	14%
NET: Up to £250	**32%**
£251-£500	15%
£501-£750	7%
£751-£1,000	12%
£1,001-£1,500	13%
£1,501-£2,000	7%
£2,001-£5,000	9%
£5,001+	6%
Median All	**£600**
Median Flat	**£877**
Median House	**£300**

Figure 1: Service charge costs

Base: All respondents who pay a service charge (n=843)[23]

4.3.3. Understanding differences between data sources

To understand leasehold charges, a number of different data sources are used. Some show quite different results for what appears to be the same thing. This is most apparent when

[23] For more information, refer to Appendix C, page 18

comparing data on annual service charge data from the ComRes survey and the English Housing Survey.

According to the ComRes survey, 84% of leaseholders report paying a service charge; the median annual service charge reported is £600. According to the EHS, 52% of leaseholders report paying a service charge; the median annual service charge reported is £1,200.

The differences between the ComRes and EHS figures are most likely due to the differences in the sampling method that was used to find survey respondents. The EHS interviewed around 13,000 households in England. Much attention is paid to ensuring that the sample of survey respondents is representative of the English population. After the households are randomly selected, they are asked to participate in the survey. In 2017-18, 513 households reported that they were leaseholders and the EHS analysis of leaseholders is based on this sample. Like the ComRes survey of leaseholders, the EHS only collects data on owner occupier leaseholders, i.e. leaseholders who live in a leasehold property. It does not record information on leaseholders who own leasehold property/ies that they rent out. Research undertaken for MHCLG[24] has also found that some leaseholders are not aware that they are leaseholders, and that leaseholders are often not aware of what service charges are and how much they pay.

The ComRes survey is based on a self-selecting sample of 1,000 leaseholders which was drawn from ComRes's existing panel of homeowners. All of the respondents that opted into the survey self-identified as a leaseholder, and were thus eligible to take part. This is therefore not a representative sample of all leaseholders.

In addition to differences in sampling approaches, the EHS and ComRes survey used different survey methodologies. The ComRes figures are based on a self-completion survey administered online while the EHS figures are based on a face-to-face interview. Although the questions asked in each survey are broadly similar, the EHS allows for survey respondents to ask their interviewer for further clarification if they are unsure of what the question is referring to.

Achieving a representative sample of leaseholders is challenging, given the size and complexity of the leasehold sector, and the lack of knowledge many leaseholders have. Moreover, the two data sources report on something slightly different. More data, possibly from wider samples that include landlords/those who rent out leasehold properties, would

[24] MHCLG, English Housing Survey methodology paper: cognitive testing of leasehold questions, see: https://www.gov.uk/government/publications/english-housing-survey-methodology-paper-cognitive-testing-of-leasehold-questions

be needed to have a clear national view on service charge payments. In particular, further research is needed to better understand why some leaseholders do not pay a service charge, and why the number of leaseholders who report paying a service charges varies so much between different sources.

4.4. Management arrangements

According to the EHS, owner occupier leaseholders who reported paying a service charge were also asked who had responsibility for the regular service or maintenance of the whole house or building. The majority of owner occupier leaseholders reported that the regular service or maintenance of the property was the responsibility of the freeholder, or a body appointed by the freeholder. Flats were more likely than houses to be managed by the freeholder or a body appointed by the freeholder; 78% of flats were managed in this way, compared with 54% of houses. Conversely, houses were more likely than flats to be managed by the leaseholder or a body appointed by the leaseholder. Nearly half (46%) of houses were managed by the leaseholder or a body appointed by the leaseholder, compared with 22% of flats.

In the ComRes survey of leaseholders, 45% of surveyed leaseholders who do not own a share of the freehold said it is owned by a private company, whilst one in five (18%) said it is owned by a private individual. Over half (53%) of surveyed leaseholders said a managing agent or property management company that works for the freeholder/landlord manages and looks after the common and/or external parts of their building and sends requests for payment of the service charge.

The following data is drawn from the ComRes survey of leaseholders.

Q9. Who manages and looks after the common and/or external parts of your building, development or estate (e.g. hallways, stairs, lift, buildings insurance, the roof) and sends you the request for payment of the service charge?

Managing agent or property management company working for freeholder/landlord	53%
Freeholder	21%
Residents, or residents' organisation	18%
Other	2%
Don't know	6%

Figure 2: Management arrangements

Base: All respondents (n=1,000)[25]

Surveyed leaseholders living in a flat are more likely (61%) than those living in a house (36%) to say that a managing agent or property management company looks after the common and/or external parts of their building and sends requests for payment of the service charge. Of those surveyed living in a house, 30% say that the freeholder manages and looks after the common and/or external parts of their building and sends requests for payment of the service charge, and 23% of respondents living in a house say it is done by a residents' organisation. Of those surveyed living in a flat, 16% say that the freeholder manages and looks after the common and/or external parts of their building and sends requests for payment of the service charge, and 16% say this is done by a residents' organisation.

4.4.1. Satisfaction with management arrangements

A 2016 online survey of over 1,200 leaseholders conducted by the Leasehold Advisory Service (LEASE) found that 57% of leaseholders who responded said they regretted buying a leasehold property.[26] The main source of dissatisfaction for leaseholders was related to the performance of their managing agent.

[25] For more information, refer to Appendix C, page 20

[26] Leasehold Advisory Service, National Leasehold Survey 2016 https://www.lease-advice.org/news-item/national-leasehold-survey-2016-report/

58% of leaseholders in the ComRes survey said that they are satisfied with the landlord/freeholder and 52% were satisfied with the managing agent.

Q18. In your current leasehold, to what extent are you satisfied or dissatisfied with:

	The landlord/freeholder, management company or Right to Manage Company	**The managing agent appointed by the landlord/freeholder / company**
NET: Satisfied	**58%**	**52%**
Very satisfied	20%	17%
Somewhat satisfied	37%	35%
Somewhat dissatisfied	23%	19%
Very dissatisfied	11%	11%
NET: Dissatisfied	**34%**	**30%**
Don't know	4%	6%
Not applicable	4%	12%

Figure 3: Levels of satisfaction

Base: All respondents (n=1,000)[27]

While over half were satisfied with the landlord/freeholder and managing agent respectively (58% and 52%), a third (34%) of surveyed leaseholders said they were dissatisfied with the landlord/freeholder, management company or Right to Manage Company, and three in ten (30%) said the same of the managing agent appointed by the landlord/freeholder/company.

38% of leaseholders surveyed who do not own a share of the freehold say that they are dissatisfied with the landlord/freeholder, management company or Right to Manage Company compared to 28% of respondents who do own a share of the freehold.

[27] For more information, refer to Appendix C, page 35

The majority (62%) of surveyed leaseholders who were dissatisfied with their managing agent/freeholder/landlord said one of the reasons is related to cost, however, services being poor comes highest (36%) in the individual breakdowns under the three themes (cost/repairs/communications).

Q19. You mentioned that you are dissatisfied with your managing agent or landlord/freeholder. Which of the following reasons explain why?

Cost of management services is too high	34%
Cost of repairs and maintenance is too high	33%
Cost of management services keeps rising	32%
The cost of insurance is excessive	16%
NET: Cost	**62%**
Repairs and maintenance are not carried out when required	31%
Repair and maintenance are performed to a low standard	27%
Repairs and maintenance are carried out unnecessarily	18%
NET: Repair and maintenance	**53%**
Not kept informed about what is or was going on	28%
Poor transparency and communication about charges	25%
Poor consultation about major works	20%
NET: Communication	**49%**
Services are poor	36%
When repairs are needed, the managing agent does not make much effort to get good value for money on behalf of the residents	26%
The managing agent does not do enough to get good deals on services like cleaning	20%
Other	3%
Don't know	2%
None of the above	2%

Figure 4: Reasons for dissatisfaction

Base: All respondents who are dissatisfied with their managing agent or landlord/freeholder (n=412)[28]

[28] For more information, refer to Appendix C, page 37

Around half of surveyed leaseholders who were dissatisfied with their managing agent/freeholder/landlord selected a reason around repair and maintenance (53%) or communication (49%), suggesting that there may be multiple reasons why leaseholders are dissatisfied.

Around a third of surveyed leaseholders dissatisfied with their managing agent/landlord/freeholder selected services being poor (36%), cost of management being too high (34%) and cost of repairs and maintenance being too high (32%) as reasons for their dissatisfaction.

Those dissatisfied and living in flats were more likely to select each of the reasons tested compared to those living in houses who are dissatisfied. For example, seven in ten (70%) of those surveyed in flats chose a cost related option compared to 45% of those in a house.

According to the survey, 64% of surveyed leaseholders' managing agents, landlord/freeholders or Right to Manage Companies provide a summary of the costs on which the service charge is calculated, 59% provide annual accounts, and 56% provide receipts and other documents which show how the service charge has been spent. The failure to send information such as a summary of the costs on which the service charge is calculated suggests poor practice on the part of some managing agents, landlord/freeholders or Right to Manage Companies. The lack of information received by leaseholders about their service charges was supported by the interview findings. Some of the interviewed leaseholders mentioned that they were not happy with the level of information regarding their service charges as they were not provided with detailed accounts and receipts.

Surveyed leaseholders living in a flat are more likely than those living in a house to be provided with this information. 71% of respondents living in a flat say they are provided with a summary of the costs on which the service charge is calculated, compared to 50% of respondents living in a house. 66% of respondents living in a flat say they are provided with annual accounts, compared to 45% of respondents living in a house. 61% of respondents living in a flat say they are provided with receipts and other documents which show how the service charge has been spent, compared to 46% of respondents living in a house.

Three in ten (30%) surveyed leaseholders who were dissatisfied with their managing agent or the landlord/freeholder said that they have contacted them about the issue. Fifteen percent of dissatisfied leaseholders reported seeking advice from the Leaseholder Advisory Service and fifteen percent also reported making an application to the First-tier Tribunal.

The research suggests that, in the case of new developments, if the service charge is set unrealistically low in the first year by the developer (e.g. to make the property attractive for the buyers), then the managing agent is likely, after taking over the management of the development, to raise the service charge in order to meet the actual costs. According to the interviewed stakeholders, leaseholders do not usually find out about this rise in charges until they have purchased the property, lived there for a period, and then received a higher service charge demand at the beginning of the next charging year.[29]

Some of the interviewed leaseholders were concerned about the high level of service charge, being overcharged or being charged for unnecessary items, as well as the prospect of increases in the amount of service charge over time.[30] Some interviewed leaseholders thought that they did not receive value for money and that the services they received were poor quality:

> *We pay a lot for gardening but the quality is low, we have to phone them all the time about it. The work that is carried out is not of a good standard. The value for money is not good. (Leaseholder 17)*

In some cases, interviewed leaseholders said that they paid for services that had not been provided:

> *We are paying for communal areas to be cleaned. When we checked, the rota said they haven't cleaned it for about three months. And we are paying for window cleaning but none of us have ever seen a window cleaner, and also we pay for ground maintenance for the car park and that has never has happened. (Leaseholder 4)*

One of the main reasons for an increase in the level of service charges, as cited by a number of interviewed leaseholders, was the appointment of a new management company for the building:

> *Our service charge is a little over £170 a month [….] A new management company took over and raised the service charge by £50 per month for pretty much the same service, if not a little bit worse. (Leaseholder 5)*

The interviews with leaseholders and stakeholders showed that the behaviour and level of service provided by managing agents was a source of dissatisfaction and sometimes led to dispute. A lack of transparency and responsiveness from freeholders or their representatives

[29] For more information, refer to Appendix B, page 8

[30] For more information about leaseholders' views on the level of service charge, refer to Appendix D, pages 5 & 6

were cited by a number of interviewed stakeholders and leaseholders as causes for concern.[31]

4.5. Disputes over service charge

As mentioned above, the amount of the service charge, the standard of services and the behaviour of agents might cause dissatisfaction for leaseholders.

In the case of dispute over the reasonableness of charges and quality of services, under Section 27A of the Landlord and Tenant Act 1985, a leaseholder can make an application to the First-tier Tribunal (FTT) Property Chamber to consider the reasonableness of their service charges and their liability to pay them. The FTT determines whether the charge is excessive or not, and whether the quality of work is acceptable or not.

There is no single way to determine the reasonableness of charges, as each case is different. The FTT relies on case law and objectively tests the charges to assess their reasonableness. By visiting the property and seeking expert evidence, the FTT can make an informed judgment about both the reasonableness and the standard of work.[32]

It was reported in interviews with stakeholders that there is an imbalance of power between landlords and leaseholders when it comes to dispute resolution, primarily because landlords usually have funding for legal support while for leaseholders the legal costs can be high.[33]

Alternative dispute resolution (e.g. the Property Ombudsman) is also available for leaseholders whose property management company belongs to one of the government-approved redress schemes. However, redress schemes can only offer dispute resolution for minor disputes which are not about the reasonableness of charges or more complicated issues.[34]

4.6. Enforcement actions

If a leaseholder does not pay their service charge, they may risk forfeiting (losing) their property. However, as mentioned by interviewed stakeholders, forfeiture is not particularly common as managing agents and landlords are required to exhaust all other options before making a court claim to forfeit the lease. They do, however, reportedly use the threat of

[31] For more information, refer to Appendix B, page 16 and Appendix D, pages 6 - 8
[32] For more information regarding FTT procedures refer to Appendix B, pages 44 & 45
[33] For more information, refer to Appendix B, page 44
[34] For more information regarding redress schemes refer to Appendix B, pages 43 & 44

forfeiture. Prior to taking formal action, some managing agents will first try to informally contact the leaseholder to talk to them about their arrears. The first formal action may be to write to the leaseholder with outstanding service charges and inform them about the consequences of not paying their service charges.[35]

Sending a letter of claim is a part of pre-action protocol which should be done prior to commencing a court action for the recovery of outstanding service charges. At this stage, the managing agent provides the leaseholder with all necessary information about the service charge, and gives them 30 days to reply and raise any related enquiry. If the matter is not resolved at this stage, then the agent will usually send another notice before making a court claim.

The First-tier Tribunal, or a court, determines, firstly whether the charge is payable, and then, if it is payable and the leaseholder has still not paid it, either a charging order will be put on the property or, based on a Section 146 Notice of the Law and Property Act 1925, the lease will be forfeited. If there is a mortgage on the property, then it is possible that the mortgage company will become involved and pay the outstanding service charge to avoid forfeiture.

Most interviewed stakeholders believed that forfeiture creates uncertainty for leaseholders, which may make them unwilling to challenge costs or withhold payments, and gives the landlord an upper hand in disputes. They believed that forfeiture should be abolished. The Law Commission published a report regarding the abolition of forfeiture in 2005.[36]

In the ComRes survey of leaseholders, a fifth (21%) of surveyed leaseholders said that they have been unable to pay charges due to the landlord/freeholder, management company or Right to Manage Company, compared to three quarters who said this hasn't happened.

[35] For more information regarding this procedure refer to Appendix B, pages 45 & 46

[36] https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2015/03/lc295_Forfeiture.pdf

Q16. Have you ever been unable to pay any of the charges (service charge, ground rent) due to the landlord/freeholder, management company or Right to Manage Company?

Yes	21%
No	75%
Don't know	4%

Figure 5: Ability to pay charges

Base: All respondents (n=1,000)[37]

33% of leaseholders surveyed living in a house report being unable to pay any of the charges due to the landlord/freeholder, management company or Right to Manage Company, compared to 15% of respondents living in a flat.

28% of leaseholders surveyed aged 18-34 report not being able to pay any of the charges due to the landlord/freeholder, management company or Right to Manage Company, compared to 18% of respondents aged 35-54 and 7% of respondents aged 55 and over.

24% of leaseholders surveyed who pay a ground rent say that they have been unable to pay any of the charges due to the landlord/freeholder, management company or Right to Manage Company compared to 14% of respondents who do not pay a ground rent.

In the ComRes survey of leaseholders, over half (56%) of those who have been unable to pay charges due to the landlord/freeholder, management company or Right to Manage Company said that more than one of the tested actions was taken – for example, two in five (39%) said they were asked to pay the outstanding amount immediately.

[37] For more information, refer to Appendix C, page 32

Q17. Did the landlord/freeholder, management company or Right to Manage Company do any of the following as a result of you being unable to pay charges?

NET: More than one action taken	**56%**
Ask you to pay the outstanding amount immediately	39%
Send a letter about non-payment	38%
Visit you to discuss the situation	34%
Allow you to pay over a period of time	27%
Approach your mortgage company to recover the charges	20%
Refer you to financial advice or other support services	20%
Make a claim against you in the County Court	14%
Write to you to inform you that your lease could be forfeit and the house or flat repossessed if you do not pay the charges (and the legal costs that have been incurred as a result)	13%
None of the above	3%
Don't know	0%

Figure 6: Response to inability to pay charges

Base: All respondents who have been unable to pay charges (n=208)[38]

Similar proportions of those surveyed who have been unable to pay charges due to the landlord/freeholder, management company or Right to Manage Company said that, as a result, they were asked to pay the outstanding amount immediately (39%), sent a letter about non-payment (38%), or were visited to discuss the situation (34%).

Other options tested were less commonly selected – for example, around one in six of those surveyed said that, as a result of being unable to pay charges, their landlord/freeholder, management company or Right to Manage Company made a claim against them in the County Court (14%) or wrote to them to inform them that their lease could be forfeit and the house or flat repossessed (13%).

[38] For more information, refer to Appendix C, page 33

47% of leaseholders surveyed living in flats who have been unable to pay say that the landlord/freeholder, management company or Right to Manage Company sent them a letter about non-payment, compared to 30% of respondents living in houses. 26% of respondents living in a house say that they were referred for financial advice or other support services compared to 13% of respondents living in a flat.[39]

[39] For more information, refer to Appendix C, page 34

5. Sinking funds

Leaseholders may be required to make additional contributions to a sinking fund to cover future major works (e.g. external decoration and replacement of the lift, boiler or roof) at the property at some future date, if the lease allows for the collection of a sinking fund. This enables the cost of major works to be spread over a number of years. As with service charges, sinking fund contributions are subject to the same tests of reasonableness. Payments into these funds are held on trust by the payee, and the leaseholders are not entitled to any refunds on unspent money when they sell their property. New leaseholders can therefore benefit from accumulated past funds.

The ComRes survey of leaseholders found that the majority (57%) of surveyed leaseholders who pay a service charge said this payment includes payment into a sinking fund.

Q10. As far as you are aware, does your service charge include payment into a sinking (or reserve) fund?

Yes	57%
No	22%
Don't know	21%

Figure 7: Knowledge of sinking (or reserve) fund

Base: All respondents who pay a service charge (n=843)[40]

Almost three in ten (28%) of surveyed leaseholders living in a house said their service charge does not include payment into a sinking fund, whilst one fifth (19%) of surveyed leaseholders living in a flat say their service charge does not include payment into a sinking fund. A quarter (24%) of surveyed flat leaseholders whose household pays a service charge said that they don't know if a sinking fund is included, compared to 12% of house leaseholders who said that they don't know if a sinking fund is included.

The majority of interviewed stakeholders thought it prudent to have a sinking fund in place to cover emergency payments and major items of expenditure, and to avoid large one-off bills.[41]

[40] For more information, refer to Appendix C, page 21

[41] For more information about views of the interviewed stakeholders and leaseholders on sinking funds, refer to Appendix B, pages 24 - 28, and Appendix D, pages 17- 18

As discussed by interviewed stakeholders,[42] managing agents have different methods for operating sinking funds. Based on experience, managing agents often forecast what the building will need in the longer term so they can plan ahead:

> *We don't want our customers to worry about having invoices for major works. (Housebuilder 2)*

> *We have sinking funds to ensure there are no surprises. (Housebuilder 3)*

Lift replacements were mentioned as a good example of this:

> *You're probably looking at £40,000 or £50,000 for a lift replacement. If you were to levy that in one year as a service charge on 20 flats, that's a pretty huge amount on top of everything else. (Industry umbrella organisation 2)*

It was reported by interviewed stakeholders that the age and location of the building were also factored into the decision as to what should be included in the estimation of an appropriate sinking fund:

> *Some places are worse than others, for example, the coast of England, with salt spray, and water freezing and melting in winter means that the external parts of building will disintegrate pretty quickly. (Consumer representative 3)*

> *For a new build, we won't include a sinking fund for the roof…. probably the roof won't need to be replaced for 60 years. (Housing association 1)*

In general, in the interviews, leaseholders' knowledge of sinking funds was limited. More than half of the interviewed leaseholders (9 out of 17) said that they had a sinking fund in place. None of the leaseholders knew how the level of sinking fund was calculated, and only one leaseholder (who was a director of the Right to Manage Company) knew how much money was currently held in the sinking fund.

Interviewed leaseholders mostly thought it prudent to have a sinking fund to pay for major expenditures to avoid large one-off bills:

> *We are happy to have a sinking fund so if some big expenditure comes up like re-roofing, we won't need to pay extra charges. (Leaseholder 6)*

[42] For more information, refer to Appendix B, pages 22-23

If, in ten years' time, the courtyard wall falls down, I don't want to have to pay £1,000 suddenly, especially if I'm not living there anymore and I rent it out to tenants. (Leaseholder 9)

5.1. Social sector sinking funds

Although provision for a sinking fund is well established in the private housing market, it is not prevalent in social housing. In 2009, the Department for Communities and Local Government (DCLG) published a consultation paper which considered the possibility of local authorities establishing sinking funds to cover major works to leasehold properties.[43] The consultation paper concluded that, although the legislation does not prevent the operation of sinking funds, local authorities tend not to operate them for the following reasons:

- technical issues relating to Housing Revenue Account (HRA) 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;
- there is no guarantee of work being carried out as scheduled (some earlier sinking funds lapsed because leaseholders were reluctant to make further contributions after work was not carried out on schedule). [44]

This means that leaseholders who live in properties for which a local authority is the freeholder and the property is subject to HRA rules do not pay into sinking funds. Other arrangements are in place to cover the cost of major works. Where local authority or housing association properties operate outside the HRA, sinking funds are more commonly used.

[43] DCLG, Reform of council housing finance, 2009, London: DCLG

[44] DCLG, Reform of council housing finance, 2009, London: DCLG. Page 29

6. Large one-off bills

If there is no sinking fund in place, then the leaseholders may have to pay large one-off bills to contribute in the costs of major works. However, leaseholder interviewees confirmed that even those who had paid into a sinking fund as part of their service charge sometimes also received large one-off bills mostly because the sinking fund was not enough to cover the cost of the work required. Five interviewed leaseholders had been issued with a large bill. One of the leaseholders who lives in a house, with a local authority as landlord, described her experience:[45]

> *We pay bills of £3,000 to £4,000 for major works. … I know that people have received bills over £10,000. (Leaseholder 11)*

Even leaseholders who paid into a sinking fund as part of their service charge sometimes also received large one-off bills:

> *We have a sinking fund but we don't have much money in it. So for re-doing the roof, everyone had to pay £1,000. (Leaseholder 2)*

Paying a large bill can potentially put a leaseholder in a difficult financial position which can be very distressing:

> *A few years ago, we were each asked to pay £1,000 more for a major work. We had an old neighbour who was crying because she didn't have the money. This is bad management. (Leaseholder 8)*

Although interviewees were asked what support they might want in paying a very large bill, there were no clear views on this issue.

Paying large one-off bills can be difficult for some leaseholders. Social sector leaseholders can benefit from a number of different payment options put in place to help leaseholders. The main options available are offering leaseholders the ability to pay for major works over an interest-free period or to access the required finance through a service charge loan. Some local authorities place a cap on the amount they charge for one-off bills.[46]

[45] For more information, refer to Appendix D, page 16

[46] For more information, refer to Appendix B, page 29

In general, the offer letter (Section 125 notice) given to social sector leaseholders includes a section on the works anticipated by the social landlord in the next five years and their likely costs. Leaseholders' bills will then be limited to the amount shown in the Section 125 notice, plus an allowance for inflation. However, if the property is sold on by the first leaseholder on the open market, the new leaseholder will be given an indication of the programme for the next three to five years, but they may not be given budget estimates for the works. [47]

In 2014, the Social Landlords Mandatory Reduction of Service Charges (England) Directions, known as "Florrie's Law", was approved. These directions only apply when the works carried out by the social landlord are funded wholly or partly by the Decent Homes Backlog Funding or any other assistance provided by any Secretary of State. These directions limit service charge bills to £15,000 for a local authority dwelling located within a London authority, and to £10,000 for a local authority dwelling located elsewhere in England, within any five-year period.

[47] For more information, refer to Appendix B, page 31

7. Consultation on major works

Based on Section 20 of the Landlord and Tenant Act 1985 and Section 151 of the Commonhold and Leasehold Reform Act 2002, leaseholders must be consulted before the landlord/freeholder carries out major works (e.g. roof repairs and redecorating) which will require a leaseholder contribution of above £250 (known as a Section 20 or Major Works Consultation) per lease. There are similar requirements for consultation on any long-term qualifying agreement lasting for over a year and worth over £100 a year.

The Landlord and Tenant Act 1985 (Section 20B) also imposes a time limit of 18 months from the date on which the relevant cost is incurred for making demands to recover payment of service charges. However, Section 20B(2) says that, if the tenant was notified in writing that those costs had been incurred and that they would subsequently be required, under the terms of their lease, to contribute to them by the payment of a service charge, the 18-month rule shall not apply.[48]

Consultation notices must be sent to both individual leaseholders and to any recognised tenants' associations (RTAs); both the leaseholders and the RTAs have a right to nominate an alternative contractor, and the landlord must try to obtain an estimate from such nominees.

According to the ComRes survey, one in ten (10%) surveyed leaseholders said they have not been consulted by their landlord/freeholder about any work that took place and a further quarter (24%) surveyed said they have been consulted some of the time but not every time.

[48] For more information regarding the law on consultation refer to Appendix A, pages 13 -14

Q12. By law, leaseholders must be consulted before the landlord/freeholder carries out works (e.g. roof repairs and redecorating) for which any leaseholder's contribution for those works will be above £250 (known as a Section 20 or Major Works Consultation).

Thinking about your current property, did the landlord/freeholder consult you about any work that took place?

I have been consulted every time this has happened	41%
I have been consulted some of the time this has happened but not every time	26%
I have not been consulted when this has happened	10%
Not applicable – this hasn't happened	20%
Don't know	3%

Figure 8: Knowledge of consultation

Base: All respondents (n=1,000)[49]

44% of surveyed leaseholders living in a flat say that they have been consulted every time before works have been carried out compared to 33% of respondents living in a house.

There are circumstances where consultation is not required. There may be a Qualifying Long Term Agreement (QLTA) consultation around commissioning a framework contract, which can be common in the social sector, to carry out a range of works. Qualifying works as part of that contract may not then subsequently be required to be consulted on, and residents may simply be notified of an intention to carry out such works. Also, formal Section 20 consultations should not be confused with informal ballots and votes for residents that can arise where landlords or managing agents seeking to canvass residents' views on works or provision of services (e.g. see http://www.arhm.org/wp-content/uploads/ARHM_Code-of-Practice_V3.pdf, page 27).

[49] For more information, refer to Appendix C, page 23

Out of 17 interviewed leaseholders, five had been consulted about major works to their property during the time that they have been living there. Most of the interviewed leaseholders who had been consulted about major works were not happy with the consultation process. For example, one leaseholder felt that the consultation process was simply a formality on the part of the landlord in order to satisfy their legal obligations. Two further leaseholders said that, instead of consultation, their management company had only informed them about major works and had not consulted: [50]

> *When there is a major work happening, we just get a letter in our mail boxes saying the work will be done next week. They just inform us. (Leaseholder 16)*

Some interviewed leaseholders thought that the requirement for consultation would be more effective if it was carried out in a manner that enabled them to properly engage with the freeholder or the managing agent, and that this would give more control to leaseholders. Leaseholders also said they would like to be consulted before any increase in the service charge was introduced or before smaller items of expenditure were incurred. They wanted to be more involved in the decision-making process for all charges.[51] Most of the interviewed leaseholders would like to be consulted about any major work:

> *I would like the management company to consult us in the future, because that would give us more of an input into the work that will be carried out. (Leaseholder 12)*

Some leaseholders thought that more consultation could give greater control to leaseholders because not all the undertaken major works were seen as necessary by the leaseholders:

> *I think I would like to be consulted about major expenditure like changing the carpet because as far as I was concerned, there wasn't anything wrong with the carpet. I think it was a waste of money. (Leaseholder 16)*

Failing to properly run the statutory Section 20 consultation process can result in disputes over the performance of managing agents. One of the interviewed leaseholders, who had not been consulted for a repair that would cost each leaseholder more than £250, said that he had complained about the lack of consultation and, as a result, the management company consulted the leaseholders. [52] Failure to appropriately comply with the Section 20

[50] For more information, refer to Appendix D, page 13
[51] For more information, refer to Appendix D, page 13
[52] For more information, refer to Appendix D, page 12

requirements may mean that the landlord will be entitled to recover only the minimum £250 (or £100 for a QLTA) unless granted a dispensation by the FTT.

8. Administration or permission fees

Schedule 11 of the Commonhold and Leasehold Reform Act 2002 defines an administration charge as an amount payable by a leaseholder:

- 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;
- arising from non-payment of a sum due from the leaseholder to the landlord; or
- arising in connection with a breach (or alleged breach) of the lease.

Some lease terms are intended to protect the freeholder's interest in a building, to enable efficient administration and to protect other residents, and so approvals may be required before leaseholders can undertake some activities, for example, subletting the property, making alterations to it, or keeping a pet.

Any administration charge that is neither (a) specified in the lease, nor (b) calculated in accordance with a formula specified in the lease, is known as a variable administration charge. Any variable administration charge demanded by the landlord must be reasonable in order to be payable. It 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.

A permission fee is generally understood to be an amount payable by a leaseholder for the landlord's cost of dealing with applications for approvals or consents, for example, permission to remove an internal wall. In most cases, unless specified in the lease, permission fees fall into the administration charges category.

In practice, interviews with stakeholders showed that there are three different categories of fee within the scope of administration charges: standard professional fees (i.e. fees for day-to-day management), professional fees for additional management work (e.g. for managing major works projects), and additional fees for individual leaseholder work (including permission fees). [53]

[53] For more information, refer to Appendix B, pages 1 & 2

The managing agent fee is generally a flat fee per property which will be negotiated with the freeholder or the RTMCo to cover a basic fee for the routine running of the estate. If major works are required, there can be an additional managing agent fee for the procurement and oversight of that work, as this falls outside of the scope of the managing agent fee. The agent will usually charge a negotiated percentage (around 10%) of the value of the contract to procure and supervise the work. [54]

The third type of fee covers additional services requested by leaseholders in accordance with the provisions set out in the lease. Such charges are not quantified in the service charge provisions within a lease, and only those leaseholders who benefit from the service are charged. Consent and permission fees fall into this third category.

Interviewed managing agents believed that people do not realise how much work is involved in property management:

> *The bill will go up if we charge by the time that we spend on a development in the same way as you pay a solicitor by the hour, because the agents do a lot more work than people realise. (Industry umbrella organisation 1)*

In the ComRes survey of leaseholders, over half (55%) of surveyed leaseholders said they have restrictive conditions in place, compared to a third (32%) who said they do not.

[54] For more information, refer to Appendix B, page 14

Q13. Your lease might have some restrictive conditions (called restrictive covenants) in place which will set out what you must not do (e.g. not installing hard floors, not keeping pets, or causing a nuisance etc.)

As far as you are aware, do you have any restrictive conditions (covenants) in place?

Yes	55%
No	32%
Don't know/can't remember	13%

Figure 9: Knowledge of restrictive conditions

Base: All respondents (n=1,000)[55]

Two in five (38%) surveyed leaseholders living in a house do not have any restrictive conditions in place, higher than three in ten (29%) respondents living in a flat who said the same.

In the ComRes survey of leaseholders, a third (34%) of leaseholders reported having to pay administration fees for making property alterations and three in ten (31%) said the same of subletting their property.

[55] For more information, refer to Appendix C, page 24

Q14a. In some leases, and under the law, the landlord/freeholder is entitled to require payment of a charge if you ask for a service, consent or permission, connected with the use of your property.

Do you have to pay administration fees for any of the following?

	Yes	No	Don't know
Making property alterations	34%	45%	22%
Subletting your property	31%	42%	27%
Responding to your query	25%	59%	17%
Keeping a pet	25%	59%	16%

Figure 10: Knowledge of administration fees

Base: All respondents (n=1,000)[56]

Fairly high proportions of surveyed leaseholders reported not knowing whether they have to pay administration fees for each of the tested options; for example, more than a quarter (27%) said they didn't know if they had to pay a fee for subletting their property.

For each option tested, surveyed leaseholders living in a house are more likely than those living in a flat to say they pay administration fees. 38% of respondents living in a house say they have to pay a fee for responding to their query, compared to 18% of respondents living in a flat. 44% of respondents living in a house say they have to pay a fee for subletting their property, compared to 25% of respondents living in a flat. 43% of respondents living in a house say they have to pay a fee for making property alterations, compared to 29% of respondents living in a flat. 36% of respondents living in a house say they have to pay a fee for keeping a pet, compared to 19% of respondents living in a flat.

Those surveyed living in a new build property are generally more likely to report paying for some of the tested administration fees than leaseholders who live in a second hand property. For example, a third (33%) of respondents who live in a new build property say they pay for a response to a query, compared to 17% of respondents who live in a second hand property

[56] For more information, refer to Appendix C, pages 25

and two in five (42%) of respondents who live in a new build property say they pay a fee to sublet their property, compared to 24% of respondents who live in a second hand property.

Surveyed leaseholders were asked the question "Thinking about the most recent time for each of the following administration charges, approximately how much did you pay?". A fifth of surveyed leaseholders paid up to £10 for: responding to a query, subletting a property, making property alterations, and keeping a pet.

Across all four types of administration charges, more than 50% of surveyed leaseholders paid under £100. The median reported amount that surveyed leaseholders most recently paid for subletting their property and making property alterations was £100. Around a third of leaseholders who pay an administration charge for responding to a query or keeping a pet said that, the last time they paid, the cost was between £11 and £50. However, some of the responses looked unrealistically high and suggested that not all the surveyed leaseholders understood the nature of administration charges.

The majority (57%) of surveyed leaseholders who have a restrictive condition in place said they have not done any of the tested actions related to trying to change the restrictive condition.

Q15. You mentioned that you have a restrictive condition (covenant) in place, have you ever tried any of the following?

To lift or change the covenant by obtaining consent from the landlord/freeholder	21%
To lift or change the covenant by obtaining consent from the other leaseholders	20%
To make an application to the First-tier Tribunal for the variation of the lease	8%
Other	0%
NET: More than one action tried	**5%**
None of the above	57%

Figure 11: Leaseholder response to restrictive conditions

Base: All respondents who have a restrictive covenant in place (n=554)[57]

[57] For more information, refer to Appendix C, pages 30-31

A fifth (21%) of those surveyed with a restrictive covenant said that they have tried to lift or change the covenant by obtaining consent from the landlord/freeholder, and a similar proportion (20%) said the same of obtaining consent from other leaseholders.

Just under one in ten (8%) of those surveyed with a restrictive condition said that they have tried to make an application to the First-tier Tribunal for a variation of the lease. Only one in twenty (5%) surveyed said they have tried more than one action in relation to changing the restrictive covenant.

Surveyed leaseholders with a restrictive condition in place who live in a house were more likely than those who live in flats to say that they have tried each of the actions tested. For example, over two in five (43%) of those living in a house said they have tried to lift or change the covenant by obtaining consent from the other leaseholders, compared to one in ten (11%) of those who live in flats.

Only two of the 17 leaseholders interviewed were required to pay a permission fee in order to carry out work or to rent their property; six had to ask for permission but were not required to pay for that permission, and the remainder either did not have to ask for permission, or were not sure if they had to because they had not needed to ask for it.[58]

Those interviewed leaseholders who were required to ask for permission without incurring a fee were usually required to write to their management company or landlord to ask for the permission. For many of this group, the process had been straightforward and permission was obtained without any issue. For those leaseholders who had to pay a permission fee, one had to pay a fee in order to let the property, but the other had to pay for any kind of permission.[59]

Interviewed stakeholders expressed a consensus view that information about permission fees should be transparent and upfront for the leaseholders at the time of purchasing their property.[60]

Interviewed stakeholders thought that making leaseholders aware at the point of purchase that they need to get prior consent for certain activities, and which may incur a fee, is key to avoiding issues around consent. Where possible, if the purchaser intends to apply for such

[58] For more information, refer to Appendix D, page 14 & 15
[59] For more information, refer to Appendix D, page 14 & 15
[60] For more information, refer to Appendix B, page 16 & 17

consents, stakeholders thought that enquiries should be made as to the likely cost of obtaining that consent.[61]

> *First of all, you should have been appraised by your conveyancer or your solicitor that this consent is to be sought, for example, if you want to replace the kitchen. And, second, your solicitor should advise you of the likely cost of that, as it's not actually drafted in the lease itself. (Industry umbrella organisation 2)*

> *The lease just says you have to seek permission from the freeholder and there may be a charge for this. (Leaseholder representative 1)*

In interviews, stakeholders reported cases of unreasonable permission fees being charged by managing agents and also that, in some cases, where house builders had transferred the freehold of the development to an investor freeholder, the new freeholder had then inflated the fees as a source of income.[62]

[61] For more information, refer to Appendix B, page 16

[62] For more information, refer to Appendix B, page 16 & 17

9. Ground rents

Ground rent is an annual rent paid under the terms of a lease by the leaseholder of a house or flat to the landlord or freeholder of the land. The landlord or freeholder is not required to perform any services in exchange for payments.

Historically, ground rent was a small sum to cover the landlord's ongoing costs. This practice has changed over time as ground rent became a source of income in some cases.

Modern leases usually contain rent review clauses enabling the rents to rise, usually in line with inflation, at the points specified in the lease. Unlike service charges, there is no legislation for the regulation of ground rents, enabling landlords to increase the ground rent based on lease terms. Based on the lease, the ground rent may:

- stay the same through the term of the lease;
- increase after a period; or
- increase according to a formula.

9.1. Data about ground rent

Similarly to service charges, coming to a definitive understanding of the amounts paid in ground rent is difficult. Ground rent varies, the system of charges is complex, and leaseholders do not always have a comprehensive understanding of them. Therefore collecting data from leaseholders about the amount of ground rent they pay is challenging.

There are different available sources for the average annual ground rent paid by leaseholders in England, but differences in research methods mean that these are not directly comparable. This is because they report on different years, areas and stakeholders, and use different measures of 'average' ground rent. Data from these different and limited samples reflects this diversity.

This report considers data on ground rent from two sources. One is English Housing Survey (EHS) data analysis conducted by MHCLG. The EHS is a representative survey of over 13,000 households in England. The other data source is a survey of 1,000 leaseholders carried out by ComRes and commissioned specifically for this research.

9.1.1. English Housing Survey (EHS) ground rent data

Most (80%) surveyed owner occupier leaseholders reported paying a ground rent. A greater proportion of owner occupier leaseholders in houses reported paying a ground rent than owner occupier leaseholders in flats (88%, compared with 75%).

The majority of owner occupier leaseholders (70%) reported that their ground rent is less than £200 per year; 81% of leaseholders in houses and 61% of leaseholders in flats reported this.

The annual median ground rent is £50. The annual median ground rent for owner occupied leasehold houses is £20; for owner occupied leasehold flats it is £110.

Annual median ground rents range from £15 in the North West to £150 in London, the East and the East Midlands.

9.1.2. ComRes leaseholder survey ground data

Seven in ten (71%) surveyed leaseholders said they pay ground rent on their leasehold property compared to a quarter (25%) who said they do not.

Although this was not explored through the survey, it is possible that leaseholders do not pay a ground rent where they also own the freehold (and would in effect be charging themselves), or where the ground rent is set very low and therefore not collected in practice. It is also possible that leaseholders are unaware of paying ground rent, for example where this is collected with other charges.

Q4. Do you pay a ground rent on your leasehold property? A ground rent is a payment made by the leaseholder to the freeholder under the terms of a lease and is not connected with providing services.

Yes	71%
No	25%
Don't know	4%

Figure 12: Knowledge of ground rent

Base: All respondents (n=1,000)[63]

[63] For more information, refer to Appendix C, page 11

Almost four in five (78%) surveyed leaseholders who do not own a share of the freehold say they pay ground rent on their leasehold property.

Surveyed leaseholders living in flats and houses were equally likely to report paying a ground rent (71% and 70% respectively).

Those surveyed who live in a property whose freehold is owned by a private company (88%) were more likely to say they pay ground rent than those who live in a property whose freehold is owned by a private individual (71%), local authority (78%) or housing association (68%).

Three quarters (76%) of those surveyed who live in a new build property say they pay a ground rent compared to two thirds (67%) of those who live in a second hand property.

Surveyed leaseholders who said they pay a ground rent reported a wide range of costs, from less than £10 to over £5,000. However, the median yearly ground rent cost is £210.

Q5. You mentioned that you pay a ground rent, how much ground rent do you pay per year?

Up to £10	10%
£11-£50	11%
NET: Up to £50	**21%**
£51-£100	11%
£101-£200	18%
£201-£300	12%
£301-£500	9%
£501-£1,000	9%
£1,001-£5,000	12%
£5,001+	8%

Figure 13: Amount of ground rent paid

Base: All respondents who pay a ground rent (n=708)[64]

[64] For more information, refer to Appendix C, page 12

For those surveyed who report paying a ground rent, the median ground rent per year reported by those living in a house (£250) is higher than those living in flats (£200).

Of leaseholders surveyed who live in a house, 13% say they pay more than £5,000 in ground rent per year, compared to 13% of those who live in a flat.

Surveyed leaseholders who pay a ground rent in the North and the Midlands were more likely to report a cheaper cost than their Southern counterparts – 14% of those in the North and 15% of those in the Midlands said they pay up to £10, compared to 5% in the South (including London). Three in ten (28%) Northern and a quarter (24%) of Midlands leaseholders who pay a ground rent pay up to £50, compared to 16% in the South (excluding London).

By contrast, one in six (15%) surveyed leaseholders in London who pay a ground rent said the cost is more than £5,000. There is, however, uncertainty around this figure. Housing costs in London are undoubtedly higher than in other parts of the country, but some reporting of ground rents in excess of £5,000 per year, as for in other parts of the country, may include some estimates where respondents have conflated total costs, including service charges.

As well as being more likely to pay a ground rent, those surveyed who live in new build properties are less likely (8%) than those who live in second hand properties (29%) to pay up to £50 per year for their ground rent.

The median ground rent for new build leaseholders (£300) is double that of second hand property leaseholders (£150).

Over two in five (43%) surveyed leaseholders who pay ground rent on their leasehold property said the payment is reviewed at least every year.

Q6. And how frequently is your ground rent payment reviewed (i.e. increase over time)?

At least every year	43%
Less frequently than every year but at least every 10 years	24%
Less frequently that every 10 years	8%
It is fixed for all time and won't be reviewed	10%
Don't know	16%

Figure 14: Frequency of ground rent review

Base: All respondents who pay a ground rent (n=708)

A quarter (24%) of those surveyed who pay a ground rent said that it is reviewed less frequently than every year, but at least every 10 years. One in six (16%) leaseholders who pay a ground rent did not know how frequently it is reviewed.

More surveyed leaseholders who pay a ground rent and live in a flat said the ground rent is fixed for all time and won't be reviewed (12%), compared to those living in a house (5%). However, a fifth (19%) of those surveyed living in a flat said that they don't know how frequently the ground rent they pay will be reviewed, compared to 8% of those who live in a house.

Of those surveyed who pay a ground rent and think it will double at the next point of review, two in five (40%) said it is reviewed less frequently than every year but at least every 10 years, three in ten (31%) said it is reviewed every year and a quarter (24%) said it is reviewed every 10 years. However, these figures should be treated with caution. Respondents may have confused review periods with payment periods, i.e. most people will pay ground rent annually, which could be conflated with how often the price is changed versus charged. Respondents may also have mixed up ground rents with service charges.

Half (51%) of surveyed leaseholders who pay a ground rent thought that it will increase at the next review point.

Q7. How much, if at all, do you think your ground rent payment will increase at the next review point?

Increase slightly	29%
Increase 100% (double)	9%
Increase based on a formula (e.g. RPI)	14%
NET: Increase	**51%**
Stay the same	31%
Other	1%
Don't know	17%

Figure 15: Ground rent increases at next review period

Base: All respondents who pay a ground rent (n=708)[65]

A similar proportion of surveyed leaseholders who pay ground rent thought the payment will stay the same (31%) or slightly increase (29%) at the next review point.

Of those surveyed living in a house, 61% think that their ground rent payment will increase, compared to 47% of those living in a flat.

63% of those surveyed who pay a ground rent and live in a new build property think that their ground rent will increase at the next review point, compared to 43% who live in a second hand property.

9% of surveyed leaseholders thought that the ground rent would double at the next review point. However, this figure is unlikely to be accurate. As with other responses to the survey questions about ground rent, this response from surveyed leaseholders should be treated with caution and this figure cannot be extrapolated to the total leasehold population. This seems a surprisingly high figure. It is possible that respondents did not all understand the question, as charges are complex and the research suggests that leaseholders do not always have a very good understanding of their obligations and rights. The respondents are also a

[65] For more information, refer to Appendix C, page 15

particular sample of leaseholders and their responses cannot necessarily be extrapolated to the whole leasehold population.

9.2. Views about ground rent

The interviewed stakeholders described how, historically, ground rent used to be a peppercorn sum to cover the landlord's ongoing costs:

> *In the 70s, ground rent was just a peppercorn. And then they were increased maybe to £50 a year, which is a token amount to cover the landlord's genuine ongoing costs that they might incur as a landlord. (Managing agent 4)*

However, it was reported that this practice has changed over time, and ground rent became a source of income:

> *Ground rent is an income source which makes the development viable for building. (Consumer representative 3)*

It was reported that there are investors who are particularly interested in ground rent investment:

> *In an environment where income from savings etc. is not too high at present, ground rent is a secure form of investment for some. (Consumer representative 3)*

When discussing the doubling of ground rent and whether or not it is onerous, it was suggested by interviewed stakeholders that the starting price and the period over which the rent doubles should be borne in mind, as doubling ground rent in itself does not necessarily become onerous. For example:

> *Back in the 1990s, you would have, for example, a ground rent of £50 that doubled every 33 years, and that was never considered a problem. (Industry umbrella organisation 2)*

The house builders interviewed for this research believe that approximately 10,000 properties were sold with a doubling ground rent, and it was estimated in the stakeholder interviews that no developers currently sell leasehold properties on a ten-year doubling ground rent basis.

However, data on ground rent is limited, and information about doubling ground rent clauses is particularly limited and not collected in any national data sets.

The Government asked the CMA to investigate escalating ground rents for existing leaseholders. The CMA published their initial report on 28 February 2020. Of new build residential properties sold during 2000-2018 (c1.9m), the report identified around 21,000 that were sold with a doubling escalation, of which, 13,000 had review periods of 10 or 15 years. Based on this information, they estimated that the total number of properties with 10-year or 15-year doubling clauses is about 18,000.[66]

In December 2017, in order to address issues around ground rent, the Government announced it would tackle unfair practices in the leasehold market by restricting ground rents in newly established leases of houses and flats to a nominal amount.[67]

[66] https://www.gov.uk/cma-cases/leasehold

[67] https://www.gov.uk/government/news/crackdown-on-unfair-leasehold-practices--2

10. Estate rentcharges

There are two types of rentcharge. One, which resembles ground rent, is an annual sum paid by the resident freeholder to the owner of the rentcharge. This type of rentcharge is being phased out and can be removed on application.[68] The other type is an estate rentcharge, which resembles a service charge, and is paid by the freehold homeowner whose house lies within a private or mixed tenure estate. Charges on such estates may also come in the form of charges against the property titles, where estate management companies may make an annual charge. If they are not paid, the costs are recovered on sale of the property as there is a covenant in place which requires the vendor to seek consent of the sale from the management company, who will refuse until outstanding payments are made.

Estate rentcharge may be used to pay for the maintenance of estate roads, drainage and other common areas. Broadly speaking, these charges are equivalent to what would generally be considered to be service charges in leasehold properties. The charges freeholders must pay in this context are either provided by a deed of covenant arrangement or through an estate rentcharge.

There are two types of management arrangement: resident management companies and estate management companies (the latter is set up without resident involvement).

Information about estate rentcharges is limited. Interviewed stakeholders believed that the practice grew incrementally and became increasingly common for new build properties over the past 10-15 years.[69] Interviewed stakeholders thought that one of the main reasons behind the growth in the number of freehold estates with estate rentcharge requirements is that local authorities no longer adopt all communal areas and roads on estates.[70]

Landscaping, street lighting, grounds and road maintenance, maintenance of sewers, public liability insurance for communal spaces and estate management fees are the main items that may be covered by estate rentcharges. Interviews with stakeholders suggests that managing agents set an estate rentcharge budget in a same way as a service charge budget. The amount of estate rentcharge varies from one development to another, depending on the services that it covers.[71]

[68] Applicants can apply to the MHCLG Rentcharges team: https://www.gov.uk/guidance/rentcharges
[69] For more information, refer to Appendix B, page 33
[70] For more information, refer to Appendix B, page 34
[71] For more information, refer to Appendix B, page 35

It was reported by stakeholders that there can be a lack of transparency and upfront information about estate rentcharges at the time of purchasing a property. It was thought that this may be one of the main issues with estate rentcharges, that, at the time of purchase, buyers are often not aware of their responsibilities:

> *It should be made clear upfront to people that they are going to have to pay these estate charges on top of their council tax. (Consumer representative 4)*

Interviewed stakeholders described the lack of any redress or tribunal mechanism in place to enable freeholders to challenge estate rentcharges:

> *There must be some sort of mechanism for redress or challenge in place. (Consumer representative 4)*

Leaseholders have better legal protection if they want to challenge the reasonableness of their service charges payable under a lease when compared to freeholders with estate rentcharges:

> *If you've got a leasehold property and you've got an unreasonable service charge, then you can dispute it at the property tribunal. If you've got a freehold property with an estate rentcharge, there's no mechanism for complaining if that charge appears to be high. (Consumer representative 4)*

The government committed to legislate to ensure that freeholders who pay charges for the maintenance of communal areas and facilities on a private or mixed tenure estate can access equivalent rights as leaseholders to challenge their reasonableness.[72]

As with leaseholders, freeholders who are subject to estate rentcharges can face enforcement action if they do not pay their contribution. Interviewed managing agents mentioned that collecting charges from freehold properties is more difficult than for leasehold properties, and, in most cases, if the money at stake is not substantial, then they will not take action until the point of sale or re-mortgage.[73]

[72] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/748438/Leasehold_consultation.pdf

[73] For more information, refer to Appendix B, page 37

11. Conclusions

11.1. General observations

The aim of this research was to provide evidence from a range of sources about leasehold and freehold charges. There are several main observations from this research:

1. Leasehold and freehold charges are poorly understood by those who are subject to paying them. Clear and easy to understand information should be provided to leaseholders during the purchase process and when bills are issued to ensure they are informed about any charges, and their rights and obligations. The findings suggest that more could be done to ensure that potential leaseholders are aware of the whole range of potential charges, their timing and review mechanisms, and the general rights and obligations associated with becoming a leaseholder, before they purchase a leasehold property.

2. There is a lack of comprehensive, detailed national data about the different charges.

3. This is an area of significant complexity in legislation, policy and practice.

4. Because of this complexity, any changes to the system intended to better support leaseholders must be rigorously considered for any potential unintended consequences. For example, trying to better regulate administration fees may lead to increases in service charges.

5. A lack of transparency and responsiveness from freeholders or their representatives, e.g. managing agents, were cited by interviewed stakeholders and leaseholders as a cause of concern. More could be to done to set and support good standards of practice in the property management industry.

6. More could be done to ensure that prospective buyers are aware of the estate rentcharges they will be required to pay, what is paid for through these charges, and how they are managed.

11.2. Service charges

There are, in total, an estimated 4.3 million leasehold dwellings in England. 1.7 million are privately owned and let in the private rented sector with a further 249,000 owned by social

landlords and let in the social rented sector. The remaining 2.3 million leasehold dwellings are owner occupied – where in most cases the owner of the property will also live there, according to the EHS data. In the ComRes leaseholder survey data, nearly nine in ten (88%) leasehold flat owners and 77% of leasehold house owners paid a service charge, and only 9% of leasehold flat owners and 18% of leasehold house owners had never paid a service charge. However, in the EHS data, only just over half (52%) of owner occupier leaseholders reported paying a regular service charge.

Owner occupier leaseholders in flats were more likely to report this than owner occupier leaseholders in houses (78%, compared with 10%). It is possible that service charges are not implemented for houses where there are no communal areas and few services are provided. However, further research is needed to understand why some leaseholders do not pay a service charge, and why the numbers of leaseholders who report paying a service charges vary so much between different sources. How repairs and maintenance are managed in leaseholder properties without any service charge payments is not clear and would benefit from further scrutiny.

The differences between the data on service charges make it hard to say with certainty what represents an average annual service charge. According to the EHS, the annual median service charge paid by owner occupier leaseholders is £1,200. According to the ComRes leaseholder survey service charge data, leaseholders who pay a service charge reported paying a median amount of £600 per year. Service charges vary considerably, they are complex, and leaseholders do not always have a comprehensive understanding of them. Therefore collecting data from leaseholders about the amount of service charge they pay is challenging.

There are different available sources for the average annual service charges paid by leaseholders in England, and differences in research methods mean that these are not directly comparable. This is because they report on different years, areas and stakeholders, and use different measures of 'average' service charge. Data from these different and limited samples reflects this diversity. These variations show that better data are needed in relation to the charges in order to understand how and why they vary.

11.3. Management arrangements

According to the EHS data, the majority of owner occupier leaseholders reported that the regular service or maintenance of the property was the responsibility of the freeholder, or a body appointed by the freeholder. In the ComRes survey of leaseholders, over half (53%) of leaseholders said a managing agent or property management company that works for the

freeholder/landlord manages, looks after the common and/or external parts of their building, and sends requests for payment of the service charge.

Over half of leaseholders in the ComRes survey said that they are satisfied with their landlord/freeholder, management company or Right to Manage Company or managing agent (58% and 52% respectively). A third (34%) of leaseholders said they are dissatisfied. with the landlord/freeholder, management company or Right to Manage Company and three in ten (30%) said the same of the managing agent appointed by the landlord/freeholder/company. The majority (62%) of surveyed leaseholders who were dissatisfied with their managing agent/freeholder/landlord said one of the reasons is related to cost, however, services being poor came highest (36%) in the individual breakdowns under the three themes (cost/repairs/communications).

The findings suggest that there are multiple reasons why leaseholders are dissatisfied, but they are generally reasons related to cost, repair and maintenance, and communication.

Some of the interviewed leaseholders were concerned about the high level of service charge, being overcharged or being charged for unnecessary items, as well as by the prospect of increases in the amount of service charge over time. Some interviewed leaseholders thought that they did not receive value for money and that the services they received were poor quality.

The interviews with leaseholders and stakeholders showed that the behaviour and level of service provided by managing agents was a source of dissatisfaction and sometimes led to dispute. A lack of transparency and responsiveness from freeholders or their representatives were cited by interviewed stakeholders and leaseholders as causes for concern. More could be done to set and support good standards of practice in the property management industry.

In the ComRes survey of leaseholders, a fifth (21%) of surveyed leaseholders said that they have been unable to pay charges to the landlord/freeholder, management company or Right to Manage Company, and two in five (39%) said they were asked to pay the outstanding amount immediately. Further guidance on best practice for those administering charges and providing services to leaseholders, e.g. managing agents, may be useful. Freeholders or managing agents could be encouraged to offer help to leaseholders unable to pay charges due, such as referring them to financial advice or other support services, or allowing them to pay over a period of time.

11.4. Information and lack of understanding about charges

The findings suggest that, in some cases, information provided to leaseholders by landlords or managing agents is poorly communicated. More could be done to ensure that landlords and managing agents provide clear and transparent information in a timely and regular manner to leaseholders.

The research findings suggest that there is poor understanding of the rights and obligations of being or becoming a leaseholder. The ComRes survey of leaseholders contained a number of responses of "don't know". For example, 21% of respondents did not know whether their service charge includes payment into a sinking fund. The findings suggest that more could be done to ensure that potential leaseholders are aware of the whole range of possible charges, their timing and review mechanisms, and the general rights and obligations associated with becoming a leaseholder, before they purchase a leasehold property. The findings also suggest that more could be done to ensure that existing leaseholders understand the charges and conditions of their leases.

The research suggests that in the case of new developments, if the service charge is set unrealistically low in the first year by the developer (e.g. to make the property attractive for the buyers), then the managing agent is likely, after taking over the management of the development, to raise the service charge in order to meet the actual costs. According to the interviewed stakeholders, leaseholders do not usually find out about this price rise until they have purchased the property, lived there for a period and then received a higher service charge demand at the beginning of the next charging year. Guidance to developers on good practice in setting service charges may be useful.

11.5. Sinking funds

Leaseholders may be required to make additional contributions to a sinking fund to cover future major works (e.g. external decoration and replacement of the lift, boiler or roof) at the property at some future date, if the lease allows for the collection of a sinking fund. Payments into these funds are held on trust by the payee, and the leaseholders are not entitled to any refunds on unspent money when they sell their property. New leaseholders can therefore benefit from accumulated past funds. If the lease does not allow for a sinking fund, one-off bills will be issued to the leaseholders occupying the properties at the time when the need arises. However, leaseholder interviewees confirmed that even those who had paid into a sinking fund as part of their service charge sometimes also received large one-off bills, mostly because the sinking fund was not sufficient to cover the cost of the work required.

The ComRes survey of leaseholders found that the majority (57%) of surveyed leaseholders who pay a service charge said this payment includes payment into a sinking fund. The majority of interviewed stakeholders thought it prudent to have a sinking fund in place to cover emergency payments and major items of expenditure, and to avoid large one-off bills.

21% of respondents to the survey did not know if their service charge includes payment into a sinking (or reserve) fund. In general, in the interviews, leaseholders' knowledge of sinking funds was limited. This might reflect the complexity of charges, a general lack of knowledge amongst leaseholders about the details of their obligations and rights, a lack of sufficient interest to find out about these details, a lack of information in the sales process during property purchase, or a lack of information provided by the freeholder or managing agent. Clear and easy to understand information should be provided to leaseholders during the purchase process and when bills are issued to ensure they are informed about any sinking fund.

Although interviewees were asked what support they might want in paying a very large bill, there were no clear views on this issue, but further consideration could be given to providing support for leaseholders in paying large one-off bills.

11.6. Consultation on major works

By law, leaseholders must be consulted before the landlord/freeholder carries out works (e.g. roof repairs and redecorating) for which any leaseholder's contribution for those works will be above £250 (known as a Section 20 or Major Works Consultation). However, the ComRes survey of leaseholders found that, whilst 41% of surveyed leaseholders had been consulted every time work happened, one in ten (10%) surveyed leaseholders said they have not been consulted by their landlord/freeholder about any work that took place, and a further quarter (24%) said they have been consulted some of the time but not every time. This suggests poor practice on the part of landlords/freeholders and managing agents in relation to consultation on major works. More could be done to ensure that leaseholders are clear about their rights in relation to consultation, and to ensure that landlords/freeholders and managing agents follow good practice and comply with the legislation.

11.7. Administration and permission fees

An administration charge is an amount payable by a leaseholder to the freeholder, or their managing agent, for granting approvals under the lease, for the provision of information or documents. Some lease terms are intended to protect the freeholder's interest in a building,

to enable efficient administration, and to protect other residents, and so approvals may be required before leaseholders can undertake some activities, for example, subletting the property, making alterations to it or keeping a pet. In the ComRes survey of leaseholders, over half (55%) of surveyed leaseholders said they have restrictive conditions in place, compared to a third (32%) who said they do not. In the ComRes survey of leaseholders, a third (34%) of surveyed leaseholders report having to pay administration fees for making property alterations, and three in ten (31%) said the same of subletting their property.

The ComRes survey has some particularly interesting results suggesting that there are considerable variations in which types of leaseholders are subject to administration charges, and the amounts they are charged. These variations suggest that administration fees may not always be levied on the basis of a strict need to cover costs, but as a possible further income stream. For example, it is surprising that surveyed leaseholders living in a house are more likely than those living in a flat to say they pay administration fees. 38% of respondents living in a house say they have to pay a fee for responding to their query compared to 18% of respondents living in a flat. 44% of respondents living in a house say they have to pay a fee for subletting their property, compared to 25% of respondents living in a flat. 43% of respondents living in a house say they have to pay a fee for making property alterations, compared to 29% of respondents living in a flat. 36% of respondents living in a house say they have to pay a fee for keeping a pet, compared to 19% of respondents living in a flat.

There is also no obvious reason why those surveyed living in a new build property were generally more likely to report paying for some of the tested administration fees than leaseholders who live in a second hand property. For example, a third (33%) of respondents who live in a new build property say they pay for a response to a query, compared to 17% of respondents who live in a second hand property and two in five (42%) of respondents who live in a new build property say they pay a fee to sublet their property, compared to 24% of respondents who live in a second hand property.

The median reported amount that surveyed leaseholders most recently paid for subletting their property and making property alterations is £100. Surveyed leaseholders were asked the question "Thinking about the most recent time for each of the following administration charges, approximately how much did you pay?". However, some of the responses look unrealistically high and suggest that not all of the surveyed leaseholders understood the nature of administration charges and did not respond to this question correctly.

Fairly high proportions of surveyed leaseholders reported not knowing whether or not they have to pay administration fees for each of the tested options; for example more than a quarter (27%) said they don't know if they have to pay a fee for subletting their property. This highlights the lack of detailed knowledge that leaseholders can have about their lease and the obligations contained within it.

Interviewed stakeholders expressed a consensus view that information about administration/permission fees should be transparent and upfront for the leaseholders at the time of purchasing their property.

11.8. Ground rent

The research suggests that, historically, ground rent was a small sum to cover the landlord's ongoing costs, but this practice has changed over time, as ground rent became a source of income in some cases. Other than providing such an income stream to freeholders, given that no services are provided in exchange for ground rent payment, the research did not identify any compelling reasons why ground rent needs to be set at anything other than a nominal figure.

Similarly to service charges, coming to a definitive understanding of the amounts paid in ground rent is difficult. Ground rent varies, the system of charges is complex, and leaseholders do not always have a comprehensive understanding of them. Therefore collecting data from leaseholders about the amount of ground rent they pay is challenging. There are different available sources for the average annual ground rent paid by leaseholders in England, however, differences in research methods mean that these are not directly comparable. This is because they report on different years, areas and stakeholders, and use different measures of 'average' ground rent. Data from these different and limited samples reflects this diversity. The EHS data analysed by MHCLG found that the annual median ground rent is £50. The annual median ground rent for owner occupied leasehold houses is £20; for owner occupied leasehold flats it is £110. However, amongst the leaseholders surveyed by ComRes, the median yearly ground rent cost is £210, and for those surveyed who report paying a ground rent, the median ground rent per year reported by those living in a house (£250) is higher than those living in flats (£200).

The research suggest that this is a complex area of charges, with high levels of variance and, similarly to average annual service charges, a single figure may not be representative of all leaseholders in all areas and property types.

The EHS data found that 80% of owner occupier leaseholders reported paying a ground rent and the ComRes survey of leaseholders found that 71% of surveyed leaseholders said that they pay ground rent on their leaseholder property. Although this was not explored through the survey, it is possible that leaseholders do not pay a ground rent where they also own the freehold (and would in effect be charging themselves), or where the ground rent is set very low and is therefore not collected in practice.

The EHS ground rent data does not provide information about the frequency of review of ground rent. The ComRes survey of leaseholders found that 43% of surveyed leaseholders who pay ground rent on their leasehold property said the payment is reviewed at least every year. This is a surprisingly high figure. It is possible that respondents did not all understand the question, as charges are complex and the research suggests that leaseholders do not always have a very good understanding of their obligations and rights. However, it is also possible that leaseholders have ground rent reviewed annually, for example, in line with RPI. Further research is needed to have more robust knowledge about ground rent review frequency and terms.

9% of surveyed leaseholders thought that their ground rent would double at the next review point. However, as with other responses to the survey questions about ground rent, this response from surveyed leaseholders should be treated with caution and this figure cannot be extrapolated to the total leasehold population. This seems a surprisingly high figure. It is possible that respondents did not all understand the question, as charges are complex and the research suggests that leaseholders do not always have a very good understanding of their obligations and rights. The respondents are also a particular sample of leaseholders and their responses cannot necessarily be extrapolated to the whole leasehold population.

The house builders interviewed for this research believe that approximately 10,000 properties were sold with a doubling ground rent, and it was suggested in the stakeholder interviews that no developers currently sell leasehold properties on a ten-year doubling ground rent basis. However, data on ground rent are limited and information about doubling ground rent clauses is particularly limited and not collected in any national data sets. In December 2017, in order to address issues around ground rent, the Government announced it would tackle unfair practices in the leasehold market by restricting ground rents in newly established leases of houses and flats to a nominal amount. As mentioned above, further research is needed to have more robust knowledge about ground rent review frequency and terms.

11.9. Estate rentcharges

Information about estate rentcharges is limited. Interviewed stakeholders believed that the practice grew incrementally and became increasingly common for new build properties over the past 10-15 years. Interviewed stakeholders thought that one of the main reasons behind the growth in the number of freehold estates with estate rentcharge requirements is that local authorities no longer adopt all communal areas and roads on estates. It was reported by stakeholders that there can be a lack of transparency and upfront information about estate rentcharges at the time of purchasing a property, and therefore, at the time of purchase, buyers are often not aware of their responsibilities. More could be done to ensure

that prospective buyers are aware of the estate rentcharges they will be required to pay, what is paid for through these charges, and how they are managed. The lack of any redress or tribunal mechanism in place to enable freeholders to challenge estate rentcharges was identified in the stakeholder interviews as an issue that could be worthy of attention. As part of its July 2019 consultation response on implementing leasehold reform proposals, the Government confirmed its intention to provide equitable rights to freeholders on private and mixed tenure estates to challenge the reasonableness of estate rentcharges.