



STRENGTHENING LEASEHOLDER PROTECTIONS OVER CHARGES AND SERVICES: CONSULTATION **CONSULTATION RESPONSE**

PREPARED AND SUBMITTED BY

Kate Butler
British Property Federation
E: kbutler@bpf.org.uk

STRENGTHENING LEASEHOLDER PROTECTIONS OVER CHARGES AND SERVICES: CONSULTATION

Part 1: Implementing the Leasehold and Freehold Reform Act 2024

2.1 New Annual Report

Question 17

Do you agree with the minimum information proposed for the annual report (at paragraph 29)? [Yes/**No**]

If no, what additions or changes would make it more effective? [Free text]

We would make a general point here, which is relevant to the proposals to standardise numerous functions and resources provided as part of the landlord and leaseholder relationship, that while we support the spirit of the Government's approach here, attempts to over-standardise will force the simplification of an environment that is necessarily differentiated, depends on the size and makeup of the building and structure, and requires a degree of complexity. For example, not every landlord provides the same services to their leaseholders; some operate via the calendar year and others via the financial year; and some landlords are subject to head leases and complicated title structures.

We note that similar error was made regarding the Building Safety Act and the Building Safety Regulator – assumptions were made that the environment to which the changed regulation would apply was much simpler than it was, and this has resulted in significant delays and comprehensive further reforms to address issues arising from this misplaced assumption.

Question 18

Should the information in the annual report be set out in a prescribed and standardised manner? [Yes/**No**]

Please see response to Question 17.

Question 19

Do you agree with the proposals for the annual report for leaseholders in retirement properties and pay both fixed service charges and an event fee? [Yes/No]

Please, explain your answer. [Free text]

No response.

Question 20

For those with a superior landlord, how do accounting periods differ between that of the superior landlord and the head lessor? [0-1 month/1-3 months/4-6 months/over 6 months]

No response.

Question 21

Where there are different accounting periods between head lessors and superior landlords, do you agree with annual report exemption Option 1 or Option 2 as a means to ensure leaseholders receive timely information? [Option 1/Option 2/neither]

If neither, please suggest what other arrangement should be in place? [Free text]

No response.

Question 22

What circumstances are there where the proposed minimum information may not be available to the landlord to provide the annual report in the specified time period? Please, explain your answer. [Free text]

No response.

Question 23

Should there be any other exemptions for provision of some or all parts of the proposed annual report which should apply? [Yes/No]

If so, please explain [free text]

No response.

2.2 New standardised service charge demand form

Question 24

Do you agree with the proposed contents of the initial service charge demand form? [Yes/No]

If not, what changes to the proposed contents would you like to see? [Free text]

Please see response to Questions 25 and 26.

Question 25

[England only] Do you consider that the new building safety information should be provided as part of the service charge demand or annual report? [Yes/No]

Please explain your answer [Free text]

The Government should avoid duplication where building safety information is already provided to tenants in high-risk buildings, e.g. building certificates, resident engagement strategies.

Question 26

Which option do you think provides the most appropriate level of breakdown of heads of costs budget headings for the annual budget document? [Option 1/Option 2]

Explain why you prefer Option 1 or Option 2. [Free text]

Neither Option 1 nor Option 2 – we believe these headings are too simplistic. Instead, they should mirror the RICS Professional Cost Service Charge Headings to ensure alignment for those already using that service. The options are also confused; Option 1 notes accountancy fees, then talks about professional fees that could include accounting fees.

References to improvement should just be called maintenance to standardise language, and there should be reference to water management hygiene.

Question 27

Do you consider that details of the budget should be provided as part of the initial demand form or as part of the annual report? [Yes/No]

Explain your answer [Free text]

No response.

Question 28

Do you agree with the proposed interim and reconciliation demands forms? [Yes/No]

Please explain your response. If you disagree, please suggest an alternative approach. [Free text]

No response.

Question 29

Should there be any exemptions from providing service charge demands using standardised forms?

[Yes/No]

If yes, please explain what exemptions should apply, and why? [Free text]

See response to Question 25.

Question 30

Do you agree that existing flexibilities to agree how service charge demand forms are provided should continue to apply? [Yes/No]

Please explain your answer [Free text]

Question 31

Landlords and managing agents only: Is there any information for the proposed service charge demand and annual report that you do not already collect? [Yes/No].

If yes, what is this information and how much time and cost would it take to collect this information? [Free text]

No response.

Question 32

Landlords and managing agents only: Do you use management software, or do you manually process demands? [professional management software/manually process/other]

If other, please provide details [Free text]

Members do use management software and noted that any requirements here should be consistent with this software.

Question 33

Landlords and managing agents only: Would you need to make significant adjustments to your systems to meet the new information requirements? [Yes/No]

If yes, would any adjustments be outsourced (for example, to an IT software provider)? [Free text]

No response.

Question 34

Landlords and managing agents only: How long would it take and how much would it cost you (or, if outsourced, the provider) in terms of set up costs to adjust systems to collect and provide the information proposed in the demand forms or annual report and thereafter additional ongoing costs? [Free text]

Please provide a breakdown of both set up costs which may be required and any additional costs of providing the information on an ongoing basis after set up. [Free text]

No response.

Question 35

Do you agree that 12 months is an acceptable transition period for landlords to prepare for the new demand form and annual report arrangements to commence? [Yes/No]

If no, what should be an appropriate period and why? [Free text]

No response.

2.3 A new notice of future service charge demands

Question 36

Do you agree with the proposed structure and content of the future demand notice in Annex C? [Yes/No]

If no, what changes do you consider are needed and why? [Free text]

Question 37

Do you agree with the proposed grounds for extending the estimated demand date? [Yes/No]

If no, under what other reasons should landlords be able to change the demand date? [Free text]

Question 38:

Should we legislate so that costs should not be recovered if the time limit has lapsed on the initial future demand form or capped if the estimate on the initial form has been exceeded? [Yes/No]

If no, please explain why and what limitations you would consider acceptable?

Any preventing of costs being recovered after a time limit has lapsed, or where the estimate has been exceeded, will lead to perverse outcomes where the estimate is inflated to cover any potential changes, and is essentially a meaningless figure to all parties.

2.4 Extended rights to obtain information on request

Question 39

Do you agree with the proposed list of information that leaseholders can request from their landlords in Table 1? [Yes/No]

If no, what changes do you think are needed? [Free text]

We do not agree that leaseholders should be able to request information that they have received or are already receiving through other information provided to them (annual reports, service charge demands, etc.). This is a waste of resource and cost, which ultimately will be passed on to the leaseholder via service charges. Responsibility should be on the leaseholder to responsibly store information they have already been provided.

There is also further opportunity here to streamline the provision of building safety information, namely the landlord certificate process. Where there is repetition of information able to be request here and the landlord certificate process, we suggest that the latter be replaced to avoid duplication and unnecessary costs and administration.

Question 40

Do you agree with the proposal to give leaseholders the right to request to retrieve documents relating to matters for up to six years? [Yes/No]

If no, please explain why [Free text]

Question 41

Please comment or suggest any changes to the proposals to the enhanced rights to request information. [Free text]

While we don't disagree that leaseholders should be able to request information from the past six years, we are concerned about the timeframes for the provision of this information and the costs – please see our responses to Questions 42 onwards.

We are also concerned that leaseholders may use this as a tool to avoid or delay payment of their service charge or other requested costs.

Question 42

Do agree that 28 calendar days is a reasonable timeframe for a landlord to provide requested information to a leaseholder (in Table 1)? [Yes/No]

Please provide reasons for your answer. [Free text]

Asking landlords to provide information going back up to six years, within 28 days, is an unreasonable timeframe and members note that it is unlikely, particularly where large volumes of information are requested, that this deadline will be met. Members also note that the cost of finding, compiling, and redacting (where commercially sensitive or GDPR-applicable) this information in such a short period will be a significant cost, which will then have to be passed on to leaseholders via their service charges.

Instead, we would suggest that the period in which to provide the information be linked to the time period from which the information is requested; e.g. 28 days for information from within the last year, 56 days for information from within 1-2 years, and so on.

Question 43

Do you agree with the circumstances under which the overall 28 day time period should be extended, and the proposal to allow an additional 7 extra calendar days? [Yes/No]

Please provide reasons for your answer. [Free text]

Please see response to Question 42.

Question 44

Do you agree that the Receiving Party should respond to the landlord's request within 15 days? [Yes/No]

As in our response to Question 42, this timeline should be staggered depending on the age and amount of information required. 15 days' may suffice for information from within the last year, but this should be extended for information older than this.

Question 45

Do you agree that leaseholders should have a maximum of three months after making a request to inspect documents in person? [Yes/No]

Please provide reasons for your answer and any changes you consider necessary. [Free text]

Question 46

Do you agree with the proposed exemptions to the duty to provide requested information? [Yes/No]

If not, what exemptions, if any, do you think should be provided and why? [Free text]

The example given of a vexatious request is far too narrow and is unlikely to be met. We consider that a request for information where that information has already been provided previously would be vexatious and should be exempt.

Further, it is not clear how the duty applies where there has been a change in managing agent and previous information held by that managing agent is not able to be sourced. There should be an exemption in this scenario.

2.5 Application of proposals to those who rent

Question 47

Do you agree that social housing tenants of Private Registered Providers and Registered Social Landlords should receive an annual report and right to access specific information? [Yes/No]

Please explain your answer [Free text]

The list of information able to be requested goes beyond financial information, and there is no mention of tenants of PRPs or RSLs also being able to request only non-financial information where they do not pay a service charge.

Question 48

Would you suggest any modifications to our proposed format of the annual report and information that may be requested? [Yes/No]

If no, please give your specific reasons [Free text]

Tenants not paying service charges should not be able to request financial information.

Question 49

What would be the additional cost to Private Registered Providers and Registered Social Landlords of obtaining and supplying this information to social housing tenants? [Free text]

Please provide a breakdown of both initial costs and long term sustained additional costs. [Free text]

No response.

Question 50

Do you think that 12 months is an acceptable transition period for Private Registered Providers and

Registered Social Landlords to adjust their systems and train their staff to the new arrangements? [Yes/No]

If no, what should be an appropriate period and why? [Free text]

No response.

2.6 New duty to publish administration charge schedules

Question 51

Do you agree with the proposed structure and contents of the administration charge schedule as set out at Annex D? [Yes/No]

If no, what changes do you think are needed? [Free text]

We note that we support transparency around fees in principle and welcome positive steps in this area. However, members note that the variable charges set out in Annex D may be fraught with difficulty. It should not be the responsibility of the landlord to estimate what charges may or may not be payable to a third party – this is entirely dependent on the kind of contractor or firm retained and their estimates for work. We would suggest that where estimates are provided, ranges are given instead of specific costs. Some elements of the list at Annex D, for example certain net zero installations, may not arise at all depending on the building type, or there may be unexpected costs not foreseen in the charging schedule. Flexibility is required here to account for the unique requirements of different buildings and their leaseholders.

Further, we are concerned that, where this becomes a prescribed form, leaseholders will assume that elements are permitted events, when in reality, some may be entirely unsuitable for the property and are not being contemplated by the freeholder.

Question 52

Do you agree that landlords should make the administration charge schedule available on request (see Table 1), in addition to as part of the annual report? [Yes/No]

Information that has already or is already provided to the leaseholder should not be available on request. The responsibility must be on the leaseholder here to retain copies of information they receive, to avoid unnecessary cost and resource in re-providing documents.

Question 53

Are there any other situations when landlords should be able or required to provide the administration charge schedule to leaseholders? [Free text] Provide details

No response.

2.7 Better information about insurance

Question 54

Do you think that managing agents and landlords should also have to declare conflicts of interests with the insurance broker and insurer? [Yes/No]

Please explain your answer [Free text]

We note here that landlords are obligated to distribute leaseholder disclosure documentation, not to produce this; this is the responsibility of the broker. Given this, we strongly recommend that the Government engage much more with brokers, particularly given there was little response to its previous consultation on permitted fees from this sector. The BPF and Residential Freehold Association are happy to support further dialogue here.

We would also reiterate here that, whilst not explicitly providing for in the consultation, replacing insurance remuneration in multi-occupancy buildings with a permitted fee, which represents an untested intervention that has not been implemented in the insurance industry to date. Overturning the principles that underpin the 'common pool' principle of insurance will increase leaseholder costs whilst undermining current FCA

regulatory frameworks - recent updates to which are already driving out bad practice from the margins of the sector.

Question 55

Are there any other conflicts in the chain of organising, managing and providing insurance that should be declared to a leaseholder? [Free text] Provide details.

No response.

Question 56

Do you think that the FCA definition of a conflict of interest covers conflicts that are relevant to leaseholders? [Yes/No]

If no, how should conflict of interest be defined? Are there existing definitions of conflict of interest in other industries or countries that could be followed? [Free text]

We support the FCA definitions, and note that the FCA Disclosure Document has gone some way to improving transparency already and is something that the BPF, and our members, support. However, the FCA requirements are not always user-friendly, and there is an opportunity here for the Government to work with the FCA to find means of distribution of information that works for all parties, including leaseholders in receiving and understanding the information.

Question 57

If the information required under FCA rules, additional details about conflicts of interest and making a claim were sent to all leaseholders, would this be the right amount of information? [Yes, this is right amount of information/not enough information/too much information]

If you answered yes, give reasons [Free text]

If you answered not enough information, please give reasons. What additional information should be provided about building insurance? [Free text]

If you answered too much information, please give reasons. What information should not be required to be shared with leaseholders? [Free text]

No response.

Question 58

Do you think there should be any circumstances where the duty to provide information on insurance should not apply? [Yes/No]

If yes, please give detail on when you think the duty should not apply, for example a specific type of landlord or type of insurance [Free text]

No response.

Question 59

Should landlords be required to provide information in a set template? [Yes/No] Please explain your answer [Free text]

We broadly support standardisation of documentation although again that will sit with brokers, not landlords.

Question 60

What is your opinion of the proposed template provided at Annex E? Provide details. [Free text]

See response to Question 59.

Question 61

Should landlords be able to provide leaseholders with insurance information only by email? [Yes/No]

If the landlord can send insurance information only by email and does so, what safeguards, if any, should be put in place to make sure the leaseholder received it? [Free text]

Digital means of distribution, including email but also online portal, are far better for all parties, and are both ESG- and GDPR-compliant.

Question 62

Do you think 30 days is enough time to give landlords to provide building insurance information to leaseholders? [Yes/No]

If no, please give a reason and whether you think landlords should have more or less time to provide the specified information once the insurance comes into effect [Free text]

Question 63

Do you think there are any circumstances where this time period should be extended? [Yes/No]

If yes, give reasons and when you think the time period should be extended [Free text]

No response.

Question 64

Should landlords be required to request information from a third person in a certain way? [Yes/No] If yes, please give reasons why [Free text]

Question 65

Should there be any circumstances where a person is exempt from the duty to provide information to the landlord? [Yes/No]

If yes, please give detail of the circumstances when you think the duty should not apply, for example a request for a certain of type of information or a category of third party that should be exempt [Free text]

No response.

Question 66

Should there be a set time period within which a request for information from a landlord to a third party be made? [Yes/No]

If yes, what should that time period be? [Free text]

No response.

Question 67

[If you are a landlord or managing agent] What do you think transitioning to these new arrangements would cost your organisation? Provide details [Free Text]

No response.

Question 68

[If you are a landlord or managing agent] How much would it cost you to obtain the required information that you do not currently have? Provide details [Free Text]

No response.

Question 69

Do you think that 3 months is the right amount of time to allow landlords and managing agents to adjust their systems and train their staff to carry out the new arrangements? [Yes/No]

If not, what would be the right amount of time and why? [Free text]

This transition period would require landlords to adjust their systems and train their staff mid-insurance contract, which is not practical and could incur unnecessary costs. We suggest that landlords be required to adjust their systems and train staff in line with their next insurance renewal period.

2.8. New standardised service charge accounts

Question 70

Do you agree that accounts must include the following minimum information:

- a. a balance sheet for the service charge fund which sets out the assets and liabilities of the block
- b. an income and expenditure account and explanatory notes
- c. sinking fund or reserve funds statements (where applicable)
- d. a statement of service charge collection deficits

[Yes/No]

If no, what should be different, why and in what circumstances (please be specific)? [Free text]

No response.

Question 71

Do you agree that, where there are multiple service schedules, a balance sheet should be provided with each schedule? [Yes/No]

Please explain your answer [Free text]

No response.

Question 72

Do you agree that ISRS4400 should be the default reporting standard for assuring service charge accounts? [Yes/No]

No response.

Question 73

Are there any other reporting standards, such as ISRE 2400, that should be followed?

Please be specific, including what any threshold for use should be. [Free text]

No response.

Question 74

Do you agree with the format of the statement of declaration (at Annex G)? [Yes/No]

No response.

Question 75

Do you agree with the proposals to expand the number of qualified people who can prepare the written report? [Yes/No]

Explain your answer [Free text]

No response.

Question 76

What financial information do local authorities, Private Registered Providers and Registered Social Landlords provide to their leaseholders? [Please highlight all that are relevant]

Balance Sheet

Income and Expenditure report

Sinking/reserve fund statement

Other

If other, please specify [Free text]

No response.

Question 77

What procedures are in place within local authorities, Private Registered Providers and Registered Social Landlords to ensure that any accounts or financial statements are accurately reported and who signs off any information?

Provide details [Free text]

No response.

Question 78

Do you think that local authority and Private Registered Provider landlords, and Registered Social Landlords, should be exempt from the provisions to prepare written statements of account for each block and signed off by a suitably qualified accountant? [Yes/No]

If yes, what provisions should apply to local authority, private Registered Provider landlords and Registered Social Landlords? Please be specific. [Free text]

No response.

Question 79

Are there any other landlords or specific scenarios where you think exemptions or modifications are needed? [Yes/No]

If yes, provide details. [Free text]

No response.

Question 80

Do you already provide your leaseholders with service charge accounts? [Yes/No]

No response.

Question 81

What are the differences between these new proposals and the information you currently provide to leaseholders? Provide details [Free text]

No response.

Question 82

How long does it take you to prepare accounts now? How long would it take you to prepare accounts if you had to implement the proposals? Provide details [Free text]

No response.

Question 83

How much does it cost you to prepare a set of accounts on average? Please give specific examples and a range if possible. [Free text]

No response.

Question 84

What additional costs or savings would you face if you had to implement the proposals? Please include where these costs or savings would occur, e.g. number of people to prepare; new people to verify. [Free text]

No response.

Question 85

Would you adjust your systems, or would any adjustments be outsourced (for example to an IT software provider)? Provide details [Free text]

No response.

Question 86

How much would it cost to adjust systems to collect and provide the information? Please provide details, including the costs of an outsourced provider if relevant. [Free text]

No response.

Question 87

Do you agree that 12 months is enough time to allow landlords and managing agents to adjust their systems and train their staff to the new arrangements? [Yes/No]
If no, what should be enough time and why? [Free text]

No response.

Question 88

Would set up costs be reduced if we provided a longer transition period? [Yes/No]
And if yes, by how much? [Free text]

No response.

2.9 Rebalancing the litigation costs regime

Question 89

Should there be an exemption to the requirement for landlords to apply to the court or tribunal in order to recover their litigation costs as an administration charge where a landlord has issued a debt claim in the

civil court (e.g. for the debt of an unpaid service charge) where the leaseholder has admitted to the claim or not defended the claim? [Yes/No]

If no, explain your answer. [Free text]

Are there any further considerations or unintended consequences to this proposed exemption? [Free text]

As we have previously set out to Minister Pennycook alongside the Residential Freehold Association, we firmly oppose the introduction of s 62 and limitations on the landlord's ability to claim litigation costs. As currently drafted, the provision goes beyond the Government's intention of improving consumer rights and is instead an unjustified interference with contractual rights to payments, which is not seen in other sectors. This would have serious consequences for the management of multi-occupancy buildings and across the residential property sector, and the Government has not sufficiently engaged with industry to ensure there are no unintended consequences alongside its aim to raise standards in the sector.

Landlords and other parties responsible for the management of buildings need to fund litigation in cases intended to protect other leaseholders – including disrepair and maintenance issues, building safety issues, anti-social behaviour, unsuitable sub-letting and non-payment of service charge including insurance. If the ability to recover these costs is restricted beyond the protections already afforded to leaseholders, residential buildings will immediately become almost impossible to manage in cases of service charge arrears and breaches of lease covenants because such claims might become unaffordable. The increased time taken to apply for and assess the recoverability of costs through the courts will lead to leaseholders who pay their service charges having to effectively subsidise non-paying leaseholders to ensure essential maintenance costs are covered in the short term.

Landlords are regularly approached by RMCs and RTMs who have been unable to recover service charges from their members or other leaseholders, requesting the landlord's support to initiate further recovery action. In fact, nearly 50% of our members' overall cases are requested by a third party (such as an RMC or RTM) seeking landlord resource to enforce outstanding debt and other lease breaches. However, without the certainty of being entitled to recover the associated costs, landlords are less likely to be able to provide these services and support to others.

These issues will also have significant ramifications across the property market. Professionals involved in the leasehold dispute resolution sector will see their businesses put under significant pressure and may exit the sector which will exacerbate the problems outlined above, and limit the number of professionals available to deal with this area.

Furthermore, mortgage lenders will be adversely affected by the inability of landlords to recover litigation costs, as this will lead to covenants under the lease not being enforced which will put a mortgagee's security at risk. This could ultimately lead to increased costs for borrowers or the inability to secure a mortgage.

Requiring all costs to be sanctioned by the relevant court or tribunal would slow down the process of costs assessment and push litigation costs up across the board, not to mention severely overloading the already stretched capacity of the court system.

We strongly recommend that s 62 is not implemented; rather, we support the implementation of s 63 to improve leaseholders right to recover costs.

Question 90

We would welcome further evidence on the proportion of cases to recover a debt brought by the landlord which are undefended or admitted to by the leaseholder. [Free text]

See response to Question 89.

Question 91

We would also welcome evidence from leaseholders about whether they have ever had to pay a landlord's litigation costs as part of a debt claim, and if so, how much were those costs (£)? [Free text]

No response.

Question 92

Are there any other cases where you think there needs to be an exemption to the landlord requirement to apply in order to recover their litigation costs as an administration charge? [Free text]

See response to Question 89.

Question 93

We are aware that some landlords may not be able to recover their litigation costs from an individual leaseholder as an administration charge due to the terms of the lease. Are there instances that such an exemption should be made to allow a landlord to recover their litigation costs through the service charge without an application to the court or tribunal? [Free text]

See response to Question 89.

Question 94

These measures will apply to social landlords who are seeking to pass their litigation costs onto leaseholders. We would welcome views from social landlords and their leaseholders on any further considerations in relation to the power to exempt certain situations from the landlord application requirement. [Free text]

See response to Question 89.

Question 95

Where the leaseholder has partially admitted a debt (and so has defended another part of the debt) and therefore the claim will go before a judge who can then assess a landlord's application for litigation costs, do you think the exemption to the landlord application requirement should not apply? [Yes/No]

If no, please explain your answer. [Free text]

Are there any further considerations or unintended consequences to this approach? [Free text]

See response to Question 89.

Question 96

We would welcome any further evidence of the proportion of cases to recover a debt brought by the landlord which are partially admitted to by the leaseholder. [Free text]

No response.

Question 97

Do you think that the proposed exemption to the landlord application requirement should not apply where the leaseholder has successfully applied to set aside a default judgment? [Yes/No]

Are there any further considerations or unintended consequences to this approach? [Free text]

See response to Question 89.

Question 98

Should the proposed exemption extend to cases where the leaseholder has unsuccessfully applied to set aside a default judgment? [Yes/No]

Are there any further considerations or unintended consequences to this approach? [Free text]

See response to Question 89.

Question 99

Should there be an exemption to the landlord application requirement to recover their costs as an administration charge where the civil court has automatically struck out a leaseholder's case because of something the leaseholder has done or failed to do? [Yes/No]

Are there any further considerations or unintended consequences to this approach? [Free text]

See response to Question 89.

Question 100

We would welcome any further evidence of the proportion of cases where a landlord and a leaseholder is involved which are struck out "automatically", without a formal reviewing of a case. [Free text]

Question 101

We would welcome further evidence about how resident-led buildings (e.g. those with Resident Management Companies in place or buildings with the Right to Manage) fund litigation when they bring a claim against a leaseholder. [Free text]

No response.

Question 101

We would welcome further evidence about how resident-led buildings (e.g. those with Resident Management Companies in place or buildings with the Right to Manage) fund litigation when they bring a claim against a leaseholder. [Free text]

No response.

Question 102

Should the requirement for landlords to apply to the court/tribunal to recover their litigation costs from leaseholders be “suspended” until a later time for resident-led buildings (enabling them to recover litigation costs from the service charge prior to proceedings)? [Yes/No]

If no, please explain your answer [Free text]

No response.

Question 103

Should the proposed use of the suspension power apply to resident-led buildings only? [Yes/No]

If no, please explain your answer. [Free text]

No response.

Question 104

Should the definition of “resident-led buildings” (e.g. those who will have the application requirement suspended) be those where a recognised Right to Manage Company or Resident Management Company have been established, or where a manager has been appointed under Section 24 of the Landlord and Tenant Act 1987? [Yes/No]

If no, please explain your answer. [Free text]

No response.

Question 105

Should the “event” which will then require resident-led buildings to apply for their litigation costs be upon the substantive claim or application being decided, or, where relevant, upon the case being withdrawn, struck out or a consent order being made? Resident-led buildings will be able to apply for their costs alongside the initial substantive application so as to simplify processes for resident-led buildings and the courts/tribunals. [Yes/No]

If no, please explain your answer. [Free text]

No response.

Question 106

Are there any further considerations or unintended consequences to the proposed approach? [Free text]

No response.

Question 107

Do you think that any other organisation or person; or any other situation should have the requirement to apply for litigation costs, either for recovery through the service charge or as an administration charge, suspended until a later date in this way? [Yes/No]

If yes, please explain your answer. [Free text]

No response.

Question 108

We would welcome views from social landlords and their leaseholders on any further considerations in relation to the power to suspend the landlord application requirement until a time or event specified by regulations. [Free text]

See response to Question 89.

Question 109

Should the requirement for resident-led buildings to apply to recover their litigation costs be re-suspended if the court or tribunal agrees for a case to go to appeal and places a “stay” on the determination of an application for costs in a substantive case until the appeal concludes? [Yes/No]

Are there any further considerations or unintended consequences to the proposed approach? [Free text]

No response.

Question 110

Should the leaseholder right to apply to the court or tribunal to claim their litigation costs from their landlord broadly align with the right to litigation costs that landlords have? [Yes/No]

Are there any further considerations or unintended consequences to this approach? [Free text]

We support s 63 and the right of the leaseholder to apply to the court or tribunal to recover their litigation costs; however, as set out in our response to Question 89, we strongly opposed the implementation s 62 and the limitation on the right of landlords to recover their litigation costs.

Question 111

Do you think the proposed cases (those set out in Table 2 and 3) should be those that relevant proceedings must relate to in order for the leaseholder to have the right to apply to the court or tribunal to claim their litigation costs from their landlord? [Yes/No] If no, please explain your answer. [Free text]

No response.

Question 112

Do you have any views and evidence on whether lease terms allowing for the recovery of litigation costs from leaseholders generally give landlords the right to recover their costs for varying a lease (under Section 35 of the Landlord and Tenant Act 1987)? [Free text]

No response.

Question 113

Do you think leaseholders should be given the right to apply to the court or tribunal to claim their litigation costs from varying a lease (under Section 35 of the Landlord and Tenant Act 1987) from their landlord – either by bringing a claim or defending a claim? [Yes/No]

No response.

Question 114

These measures will apply to leaseholders who have social landlords. We would welcome views from social landlords and their leaseholders on any further considerations in relation to the leaseholder right to apply to the court/tribunal to claim their litigation costs from their landlord. [Free text]

No response.

Question 115

What transition period do you envisage being sufficient to provide time for landlords, resident-led buildings and the courts to transition to a new system for litigation costs once the regulations have been made? [1-2 months/3-4 months/5-6 months/More than 6 months]

Are there any further considerations or unintended consequences to the proposed approach? [Free text]

See response to Question 89.

Part 2: New additional service charge reforms

3.1 Mandating reserve funds and planning for major works

Question 116

Do you agree that reserve funds should be mandated for new leases? [Yes/No]

If no, please explain why [Free text]

We support the mandating of reserve funds for new leases. Some members involved in buying s 106 housing with service charge obligations can't get sufficient sinking funds in the early years but it would be hugely beneficial if they could. In these cases, the cost planning could be carried out by the developer to ensure a sinking fund on year one.

Question 117

Do you agree that UK and Welsh governments should legislate to mandate or encourage creation of reserve funds for existing leases where leaseholders want it? [Yes/No]

While we support this idea in principle, we urge caution around mixed-use developments where both residential and commercial tenants pay into the same schedule could be difficult, because how funds have to be dealt with here could be problematic, especially given commercial leases often don't allow for reserve funds.

Question 118

Do you have any other comments or observations on how reserve funds should work in practice that need to be taken into account when preparing legislation? Provide details [Free text]

No response.

Question 119

Do you think that AMPs should be mandated for new leases? [Yes/No]

Question 120

Do you think that AMPs should be mandated for existing leases? [Yes/No]

Question 121

Do you have any comments or observations on how the details of AMPs should be communicated to leaseholders? Provide details [Free text]

No response.

Question 122

What should be an appropriate transition period for introducing AMPs? Provide details [Free text]

No response.

Question 123

If you are a landlord, do you already prepare and provide an AMP to leaseholders? [Yes/No]
If so, how long does it take you? [Free text]

Our members already provide AMPs for some of their buildings; how long this takes varies depending on complexity of the building, and members note that these can produce confronting costs for leaseholders that they are not willing or able to pay. Landlords thus must have the flexibility to implement AMPs in such a way that protects existing leaseholders.

Question 124

What are the differences between these proposals and the information you currently provide to leaseholders? Provide details [Free text]

No response.

Question 125

What additional costs or savings would you face if you had to implement the proposals? Be as specific as possible, including how long it would take you to prepare an AMP [Free text]

No response.

Question 126

If you are a landlord, would you pass on the costs of preparing AMPs to leaseholders? [Yes/No]

Question 127

Do you agree with the proposed approach to enforcement of the provision of AMPs? [Yes/No]
If no, what other way do you suggest? [Free text]

No response.

3.2 Reforming the major works consultation process

Question 128

Do you agree that the threshold should change to £600 for major works and £300 for QLTAs? [Yes/No]
If no, please set out an alternative proposal and explain your reasoning? [Free text]

Question 129

Should energy and other utility contracts, as well as single energy providers, be taken out of the Section 20 consultation process if they meet specific criteria set out in paragraph 234? [Yes/No]

Question 130

Are there any other activities which should be removed from the Section 20 process? [Yes/No]
Please explain your answer [Free text]

No response.

Question 131

Where existing activities are taken out of the Section 20 process – do you consider there should be a mechanism whereby leaseholders are notified of these costs? [Yes/No]

No response.

Question 132

What are your experiences of QLTA's? Provide details [Free text]

No response.

Question 133

What suggestions do you have to improve the consultation arrangements for leaseholders where there is a QLTA in place? Provide details [Free text]

No response.

Question 134

Should some contracts be subject to market testing on a regular basis – for example, every 5 years? [Yes/No]
Provide details [Free text]

No response.

Question 135

Which of the following options do you think will speed up the consultation process?[Standardised form/shorter consultation period/setting a deadline for works to begin].
Explain the reasons for your answer [Free text]

No response.

Question 136

What further changes to the proposed measures, or otherwise, should we make to improve the process? Provide details [Free text]

No response.

Question 137

Do you agree that, where intermediate landlords are in place, both the resident leaseholder and intermediate landlord should be consulted? [Yes/No]. If no, please explain the reason for your answer [Free text]

No response.

Question 138

Do you agree with the plans for reforming the existing dispensation arrangements? [Yes/No]

Please explain your answer [Free text]

No response.

Question 139

What other proposals would you recommend that we take forward to reform the dispensation arrangements? Provide details [Free text]

No response.

Question 140

Do you have any other comments about the major works process that should be considered? Provide details [Free text]

No response.

3.3 Protecting leaseholders' money

Question 141

Leaseholders only: Have you ever had difficulties obtaining proof or ascertaining the amount held in your service charge account? [Yes/No]

No response.

Question 142

Leaseholders only: Have you ever had monies missing from your service charge account (or reserve fund account if one exists)? [Yes/No]

No response.

Question 143

When taking over management of a property, whether as residents who have bought the freehold or acquired management, or as a landlord or managing agent, have you ever had difficulties with recovering the monies from the previous party? [Yes/No]

No response.

Question 144

What evidence do you have that the existing arrangements are or are not working effectively? Provide details [Free text]

No response.

Question 145

What extra measures, if any, should we introduce? Explain your reasoning. [Free text]

No response.

3.4 Protections for leaseholders paying fixed service charges

Question 146

What evidence do you have that those paying fixed service charges are not sufficiently protected? Provide details [Free text]

No response.

Question 147

Should tenants and leaseholders be able to challenge the reasonableness of fixed service charges at the appropriate tribunal (or some other body)? [Yes/No]

No response.

Question 148

What measures can or should be put in place to better protect leaseholders and tenants who pay fixed service charges? Provide details [Free text]

No response.

3.5 Powers to appoint a manager or replace a managing agent

Question 149

If you have tried to use the Section 24 process in the past, please describe your experiences with the existing process? Provide details [Free text]

No response.

Question 150

How could the existing process for appointing a manager under Sections 21 to 24 of the Landlord and Tenant Act 1987 be improved? Provide details [Free text]

No response.

Question 151

Do you think that leaseholders should have rights to veto or force a change in managing agent, without the party responsible losing full control? [Yes/No]

Question 152

What are your thoughts about the proposed process and challenges in developing these measures?

Provide details [Free text]

We strongly oppose the proposal to introduce a 'right to veto' a managing agent. Management of multi-occupancy buildings is a complex task, and appointment of managing agents is a nuanced exercise that relies on assessment of a multitude of factors. BPF members and responsible landlords are experienced and well-qualified to consider these factors; leaseholders are not, and will not appreciate or be aware of many of the considerations that a landlord must take into account.

Most leaseholders will instead use the power of veto to ensure the cheapest managing agent is chosen – cost is far from the only factor considered by a landlord, and in allowing leaseholders to force a choice of managing agent based only on who is cheapest, leaseholders risk the appointment of subpar managing agents that are not able to effectively manage their building and, in the long run, incur . Further, there is considerable risk in managing buildings and this risk sits with the landlord; it is therefore not appropriate that the leaseholders, who don't share in this risk, have the power of veto.

BPF members, and all responsible landlords, do not appoint low quality managing agents in an effort to cut costs; they choose The Property Institute managing agents that can be relied upon for their expertise and who provide a quality service to leaseholders.

Leaseholders have the right to take control of their building through the Right to Manage process where they are unhappy with the management of their building – allowing a right to veto is unnecessary given this process exists and risks severe unintended consequences for the management of buildings.

Question 153

Who is best placed to enforce the measures and resolve any disagreement between landlords and leaseholders? Provide details [Free text]

No response.

Question 154

Are there any unintended consequences that the UK and Welsh governments should be aware of in considering these measures? Provide details [Free text]

See response to Question 152.

3.6 Providing information and services digitally

Question 155

Do you think that more documents or exchange of correspondence between landlords and leaseholders should be done via electronic means? [Yes/No]

Question 156

What steps can the UK and Welsh governments take to encourage greater digitalisation of service? Provide details [Free text]

While we support increased correspondence via electronic means, we caution that this is not practical in every circumstance and should not be mandated across the board; for example, electronic service of court documents is not appropriate. Members note that a form, which sets out whether communication should be electronic or not, would be helpful in providing clarity to all parties. We also note that GDPR rules must be taken into account here.

Question 157

What safeguards should be in place to protect leaseholders? Provide details [Free text]

See response to Question 156.

4. Qualifications of managing agents

4.4 New qualification requirements

Question 158

Do you agree that individual managing agents should be accountable for gaining qualifications? [Yes/No]

Question 159

Do you think that managing agent firms should be responsible for ensuring their employees hold the required qualifications? [Yes/No]

Question 160

Do you think that the requirements in this consultation should apply to estate managers of freehold estates in the same way as managing agents of leasehold properties? [Yes/No]
If no, provide further information. [Free text]

Question 161

Do you agree that level 4 should be the proposed minimum level of qualifications for managing agents in most cases? [Yes/No]

Question 162

Do you agree that where agents only undertake more basic functions, a lower level of qualification could be required? [Yes/No]

Question 163

Do you agree that there are some areas where agents could require a higher level of qualification than Level 4, e.g. a Company Director, or a Managing Agent with significant building safety responsibilities? [Yes/No]

Question 164

What types of role and functions performed do you think require a) a lower or b) higher level of qualification than Level 4? Provide details [Free Text]

No response.

Question 165

Which qualifications already offered by providers provide managing agents with the requisite skills and knowledge to perform effectively? Provide details [Free text]

The Property Institute's Leasehold Management qualification, which is already widely used within the sector.

Question 166

Do you agree that qualifications should be Ofqual-regulated or equivalent? [Yes/No]

No response.

Question 167

What do you consider to be the best way of ensuring that any syllabus prepared is robust and kept up to date? Provide details [Free text]

No response.

Question 168

Do you think that the UK government should mandate that managing agents must complete CPD? [Yes/No]
If so, how many hours of CPD should agents be required to complete and over what period? [Free text]

Question 169

Do you have any other views about requirements for managing agents to undertake CPD? Provide details [Free Text]

No response.

4.5 Implementation and Enforcement

Option 1 - Implementation led by designated professional bodies, supported by local authority enforcement (preferred option)

Question 170

[Option 1] Do you think that UK government should require that all individual managing agents become members of a designated professional body, and that to do so, agents must achieve a professional qualification? [Yes/No]

Provide details [Free text]

Question 171

[Option 1] Do you think that UK government should require that all managing agent firms become members of a designated professional body, and that those firms must ensure that their members achieve a professional qualification? [Yes/No]

Provide details [Free text]

Question 172

[Option 1] What conditions should designated professional bodies have to meet to be appointed to undertake a role in the implementation of mandatory professional qualifications?

Provide details [Free text]

No response.

Question 173

[Option 1] Which existing bodies could perform the role of a designated professional body?

Provide details [Free text]

The Property Institute.

Question 174

[Option 1] Do you think that designated professional bodies would need any additional support to fulfil this role? [Yes/No]

Provide details [Free text]

No response.

Question 175

[Option 1] Do you agree with the proposed role for local authorities to undertake enforcement under this option? [Yes/No]

Explain your answer [Free text]

Local authorities are already under immense strain delivering on existing priorities and responsibilities. We do not believe that they have the requisite resource and capability to deliver this enforcement, and do not agree that they should be the designated authority (though we note that the Government has assumed they will take on this additional responsibility in all three options).

Requiring local authorities to take on an enforcement role here would mean that taxpayers are funding a function that does not benefit the whole community, but a small proportion. As members note, there are massive discrepancies between the effectiveness of different local authorities in enforcement, which would increase uncertainty to the disadvantage of leaseholders.

We suggest instead that a dedicated national body, or perhaps further resourcing for an existing body like The Property Institute, is more suitable.

Question 176

[Option 1] Do you have any views about the level of cost this approach would create for managing agents? Provide details [Free text]

No response.

Option 2: Give government-approved redress schemes a role in the implementation of mandatory qualifications, supported by local authority enforcement

Question 177

[Option 2] Do you have any views about asking government-approved redress schemes to take a role in the implementation of the proposals? [Yes/No]

Please explain your answer. [Free text]

We support Option 1, with the caveats around local authorities that we set out in our response to Question 175.

Question 178

[Option 2] Do you agree with the proposed role for local authority enforcement under this option? [Yes/No] Please explain your answer [Free text]

Please see response to Question 175.

Question 179

[Option 2] Do you have any views about the level of cost this approach would create for managing agents?

Provide details [Free text]

No response.

Option 3 – Enforcement by local authorities with no statutory role for designated professional bodies or redress providers

Question 180

[Option 3] Do you think that local authorities should be responsible for enforcement, with no statutory role in implementation for designated professional bodies or redress providers? [Yes/No]

Please provide any further detail for this answer. [Free text]

Please see response to Question 175.

Implementation in Wales

Question 181

In your view, should minimum qualifications be required of managing agents and estate managers of freehold estates in Wales, in the same way has been outlined in relation to England? [Yes/No]

Please explain your response. [Free text]

No response.

Question 182

Do you have any comments about how proposals would need to be adapted to function appropriately in Wales? Provide details [Free text]

No response.

4.6 Transition Arrangements

Question 183

Do you consider that the proposed transition period for qualifications is appropriate? [Yes/No]

Question 184

What different transition periods for qualifications, if any, should be put in place? Provide details [Free text]

We are not aware of data on how many managing agents currently have the required qualifications vs those that would need to undertake qualifications, and any recruitment issues that firms are currently

experiencing. We hope that these factors have been investigated by the Government prior to setting these transition periods; if not, we strongly encourage this to take place.

Question 185

Do you consider that, under the preferred option, the transition period for joining a designated professional body is appropriate? [Yes/No]

Provide details [Free Text]

4.7 Grandparenting

Question 186

Do you agree that where agents have already undertaken relevant qualifications to the required level for their role, that this will count as the required qualification? [Yes/No]

Question 187

Do you think that agents should be able to top up qualifications? [Yes/No]

Question 188

Do you have any other views on grandparenting? Provide details [Free Text]

We would suggest that an exemption to undertaking the requisite qualification should be provided for those managing agents with extensive professional experience, who can demonstrate their competence to the requisite level.

4.8 Costs and Impacts

Question 189

Do you have any views on the cost of this intervention? Provide details [Free text]

No response.

Question 190

What proportion of managing agents and estate managers of freehold estates already hold qualifications and to what level (please provide information for the market as a whole or for your managing agent firm, as applicable)? Provide details [Free text]

No response.

Question 191

How would managing agents and estate managers of freehold estates finance their qualifications and to what extent would cost be passed onto leaseholders? Provide details [Free text]

No response.

Question 192

What other issues relating to qualifications should we be aware of or take into account? Provide details [Free text]

No response.

Question 194

If you are a managing agent, landlord, or other interested party, where are the properties that you deal with? [England / Wales / both]

No response.

5. Other information

Differences between England and Wales

Question 195

Are you aware of any differences in the operation of service charges or service charge accounts between England and Wales? [Yes/No]

If yes, please give details. [Free text]

Not strictly related to service charges and accounts, but members note that the application of the Building Safety Act in Wales is different to England, and any standardisation will need to account for this. Further, leaseholder protection requirements in England are not relevant in Wales; these discrepancies will also need reconciling.

Question 196

Are you aware of any differences in the operation of the transparency of insurance policies between England and Wales? [Yes/No]

If yes, please give details. [Free text]

Question 197

Are you aware of any differences in the operation of the litigation costs regime between England and Wales? [Yes/No]

If yes, please give details. [Free text]

Question 198

In your opinion, are there reasons why an alternative approach should be taken in Wales than that for England, in relation to the potential for future reforms explored in the second half of this consultation (the major works regime, other service charge matters and minimum qualifications of property management agents)? [Yes/No]

If yes, please give details. [Free text]

Question 199

What, in your opinion, would be the likely effects of these proposals on the Welsh language? We are particularly interested in any likely effects on opportunities to use the Welsh language as well as making sure the Welsh language is treated equally to English. Please provide details. [Free text]

Do you think that there are opportunities to promote any positive effects? Please provide details. [Free text]

Do you think that there are opportunities to reduce any negative effects? Please provide details. [Free text]

No response.

Question 200

In your opinion, could these proposals be formulated or changed so as to have positive effects or more positive effects on using the Welsh language and on not treating the Welsh language less favourably than English? [Yes/No]

If yes, please elaborate. [Free text]

No response.

Question 201

In your opinion, could these proposals be formulated or changed so as to mitigate any negative effects on using the Welsh language and on not treating the Welsh language less favourably than English?

No response.

Impact on environment and protected characteristics

Question 202

Do you believe any of the proposals put forward could negatively or positively impact individuals who have a protected characteristic?

[Yes/No] Age

[Yes/No] Disability

[Yes/No] Sex

[Yes/No] Gender Reassignment

[Yes/No] Marriage or civil partnership

[Yes/No] Pregnancy and maternity

[Yes/No] Race (colour, nationality, ethnic or national origins)

[Yes/No] Religion or Belief

[Yes/No] Sexual orientation

[If you have answered yes to any of the above]

Please explain your rationale and evidence your thinking where possible. [Free text]

Where a managing agent is on maternity or paternity leave, this could impact their ability to meet the transition window for qualification and/or their ability to meet ongoing CPD requirements.

Accommodations should be made here.

Question 203

Do you anticipate any environmental impacts from this policy, either positive or negative? [Yes/No]

If yes, please elaborate. How could positive impacts be maximised or negative impacts be mitigated or minimised? [Free text]

No response.

Question 204

Do you anticipate that this policy would be likely to impact the judicial system? Examples could be an increase or decrease in applications to court or tribunals, increasing the length or complexity of cases, and new requirements on judicial recruitment or training. [Yes/No]

If yes, please elaborate. [Free text]

No response.

Question 205

Do you anticipate that this policy would disproportionately impact local authorities? [Yes/No]

If yes, please elaborate. [Free text]

Please see response to Question 175.