

STOKE-ON-TRENT CITY COUNCIL



City of
Stoke-on-Trent
Leaseholder Policy

Housing Revenue Account Services

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1. Purpose

The purpose of this policy is to;

- Clearly set out the rights and responsibilities of both the leaseholder and the City Council in regard to the management of leasehold properties.
- Ensure that the City Council provides a transparent service to all leaseholders, and that both leaseholders and the City Council comply with statutory requirements and the clauses contained within the lease.

2. Scope

A leaseholder is defined as someone who has bought a flat or maisonette for which the City Council retains the freehold. The council retains the freehold and is therefore the leaseholder's landlord who has a legal duty to make sure that both parties (i.e. the City Council and the leaseholder) keep to their respective obligations, as set out in the lease and provided by Statute, for example, the City Council is responsible for the maintenance and repair of the building that the leaseholders' homes are in, together with all shared areas and grounds (known as the common parts) and services subject to the leaseholders' paying a proportionate amount towards the cost of such works.

This policy sets out how the City Council will ensure that leaseholders are treated consistently and fairly and that the services they receive are of a proper and consistent standard.

The Leaseholder Policy covers a number of key activities as follows;

- Repair and maintenance of the structure of the buildings and the common parts
- Managing leasehold properties
- Services included within the service charge
- Setting annual service charges and making payments
- Review of disputed invoices
- Consultation and engagement
- Insurance
- Selling and letting a leasehold property

3. Key Principles and Service Standards

The City Council is committed to providing a transparent service to all tenants and leaseholders, ensuring that demands for service charges relating to costs that have been reasonably incurred; and that the services provided, are of a proper and consistent standard

The City Council is further committed to providing a safe and harmonious living environment for all leaseholders and Council tenants. It will ensure any issues raised are properly investigated, responded to and action taken where deemed necessary and appropriate.

The City Council will ensure that leaseholders are provided:

- With timely and accurate information regarding responsibilities and services.
- With timely information about service charges and ground rents.

- With information about convenient and affordable ways of paying their annual service charge bill.
- Clear information on how to make a complaint, should a leaseholder feel that services have not met the required standard.

4. Legal and Regulatory Framework

The main acts of parliament covering leasehold tenancies are:

Housing Act 1985

- The Right to Buy and how it is regulated
- A definition of service charges
- Limiting the leaseholders liability in respect of payment for works for the first five years following the purchase of the leasehold property under the Right to Buy Scheme
- Financial assistance for service charges subject to Regulations

Landlord and Tenant Acts 1985 and 1987

- Service charges are fees that leaseholders pay to cover their share of the cost of services, repairs, maintenance, improvements or insurance or the Council's costs of management in respect of the building they live in
- a service charge demand must be accompanied by a summary of the rights and obligations of the leaseholders
- leaseholders rights to be consulted on repairs where the leaseholders contribution will be more than a set limit (section 20 Consultation)
- the requirement to consult leaseholders before entering into a contract lasting more than 12 months to deliver services for which the leaseholder will be charged

Leasehold Reform, Housing and Urban Development Act 1993

- the rules concerning the purchase of the freehold of the block and extension of leases (known as enfranchisement)

Law of Property Act 1925

- rules covering the council's right to forfeit the Lease for breach of the Lease by the leaseholder

The City Council must be able to demonstrate that any demand for service charges are:

- in writing and must contain the City Council's name and address. Failure to provide the landlord's name and address on the demand means the service charge is not payable until this information is given and
- the costs have been reasonably incurred; and
- the services or works are of a reasonable standard and
- is accompanied by a summary of the leaseholders rights and obligations.

5. Equalities Statement

Stoke-on-Trent City Council will ensure that this policy is applied fairly and consistently to customers. The Council will not directly or indirectly discriminate against any person, tenant or leaseholder or groups or people because of their gender, race, religion, age, disability, sexual orientation and marital status. An Equality Impact Assessment has been completed to inform the policy. When applying this policy the Stoke-on-Trent City Council will act sensitively towards the diverse needs of individuals and communities.

6. Policy Detail

6.1 Repairs to Leasehold Properties

The Leaseholder's property is the individual property that is under a long lease from the Council and which forms part of the building that remains within the Council's ownership.

The law states what the City Council may make Service Charges for:

- services;
- repairs;
- maintenance;
- improvements;
- insurance of the block;
- the landlord's costs of management;

However, it is the lease that determines exactly what the City Council can charge for. The general principle is that the City Council can only charge for a particular service if it is permitted by the lease.

The leaseholder is responsible for the repair and maintenance of;

- The internal decoration, including the flooring, interior doors, carpets and paintwork;
- The front door to the Property;
- Furniture and appliances;
- Interior faces of external walls, internal walls and the internal ceiling including plasterwork;
- Window glass;
- Any pathways, gardens and fences which have been designated to the leaseholder in their Lease;
- Internal plumbing and wiring;
- All walls, drains, pipes, cables and wires belonging solely to the property.

As the freeholder of the block, and landlord, the City Council is responsible for repairing and maintaining the structure, exterior and any common parts in and around the block the flat is in, such as halls, landings and stairs.

The things for which the City Council has repairing/maintenance responsibilities include (this list is not exhaustive; please refer to the lease for specific details):

- The building's structure, including the roof, guttering and the foundations to the building
- Window frames and handles.
- Any path or access way over which the leaseholder has a right of way by virtue of their lease and which remains within the Council's ownership and all gas, water pipes and drains and electric cables and wires not contained within the leaseholder's property but are used by the leaseholder.
- The shared parts of the building such as main entrances, passages, lifts and communal stairways, communal gardens and pathways and shared windows
- Communal heating in the building.
- Buildings insurance

Although the City Council is responsible for carrying out or arranging the kind of repairs mentioned above, depending on the wording of the lease, the leaseholder may be required to pay a contribution towards their cost, since they (along with other occupiers of the block) benefit from them.

6.2 Asbestos Surveys

The City Council will not recharge leaseholders for annual asbestos surveys to the communal areas of blocks of flats; however the leaseholder will be expected to pay a proportional contribution towards the removal of asbestos from communal areas if and where appropriate.

6.3 Planned Maintenance

The City Council will publish a schedule of planned works under the data directory on www.stoke.gov.uk.

6.4 Leaseholders and Sub-Tenants Responsibilities

The leaseholder's responsibilities are defined within the Lease. The Leaseholder is expected to adhere to a particular standard of behaviour and conduct whilst residing at the leasehold property. The leaseholder should refer to their original Lease for a full description of their responsibilities. The list provided below is not intended to be exhaustive and is used for illustrative purposes only;

- The leaseholder or subtenant/s must not cause nuisance and annoyance to any other tenant/leaseholder or anyone residing in the locality. – Leaseholders are responsible for the actions of sub-tenants.
- The leaseholder must not obstruct or keep rubbish in the communal areas or porches (including shared gardens).
- The leaseholder must not make any structural alterations to the property without first seeking the consent of the City Council.
- The leaseholder must pay all demands for service charges that relate to costs that have been reasonably incurred or which the City Council estimates are due to be incurred during that accounting period (meaning 1 April to 31 March in any year).
- Where a leaseholder persists in acting in a manner which places them in breach of the Lease appropriate legal action may be taken.

- The Leaseholder must ensure that any gas appliances (permanent or portable), and gas flues have regular gas safety checks.

The City Council retains powers of forfeiture if a leaseholder breaches any term of their Lease including;

- Non-payment of service charges;
- Causing a nuisance, annoyance or inconvenience to neighbours; or
- Fails to keep their property in good repair and condition.

This power will be considered as a last resort and the City Council will seek to work with leaseholders to resolve debt issues, improve property standards or change behaviour before seeking to end the Lease through legal action.

6.5 Anti-Social Behaviour

Stoke-on-Trent City Council is committed to creating a safer, stronger and healthier city, where residents can live free from anti-social behaviour (ASB) and have the opportunities to live their lives well.

Stoke-on-Trent City Council acknowledges that anti-social behaviour can impact on individuals as well as communities and is committed to take the appropriate action against those who engage and continue engage in such behaviour.

6.6 Services Included with the Service Charge

Dependent upon the type of building, the service charge can cover communal area repairs, scheduled health and safety services as deemed necessary by the City Council and required by law, communal energy costs, communal TV aerial maintenance, cleaning of communal areas, building insurance and management costs.

The City Council reserves the right to collect a service charge for the maintenance of external communal areas including gardens.

6.7 Setting the Annual Service Charge and Making Payments

The service charge is calculated so that the leaseholder pays a proportional share of the cost of providing services to their block. This is set out in accordance with the lease. The proportional sum is calculated for each individual property by dividing the total cost of the services provided for any one block by the number of properties contained within that block. For example, if the total cost of services provided to a block in a 12 month period is £10,000 and there are 10 flats within that block, the proportional sum is calculated by dividing £10,000 by 10 which equals £1,000. The service charge payable within that block for that particular 12 month period would therefore be £1,000 per property.

The management costs recovered by the City Council are an aggregate amount set at 15% of the total cost of the bill. Using the example above, the total cost of services is £10,000, 15% is added to this amount which equals an additional £1,500 in management costs in respect of the whole

block. This figure is then divided by 10 (total amount of flats within the block) which equals £150 per property per that particular 12 month period and is in addition to the amount detailed above.

In October each year the City Council will send an estimated invoice for the cost of services that will be provided to each block of flats for that current financial year (1st April – 31st March) known as the accounting period. The estimated charge must be specified as a “fair and interim payment”. By the 1st of October each year the leaseholder must pay the estimated sum to the City Council.

As soon as possible after the end of the accounting period, the City Council will send the leaseholder a final invoice showing the actual costs of services provided to their block of flats for the previous financial year.

If the actual costs incurred are lower than the estimated costs by £10 or less, and the leaseholder has made an overpayment of no more than £10, the City Council will credit the leaseholder’s service charge account with the difference to reduce the service charge for the following year. If the actual costs are lower by more than £10, the leaseholder will be automatically refunded the difference within 2 calendar months of the date of the bill.

If the costs are higher than the estimate and the leaseholder’s fair and interim payments are not sufficient to cover the costs, an invoice shall be sent requesting payment for the outstanding sum.

Under section 21B of the Landlord and Tenant Act 1985, the City Council must include a summary of rights and obligations with all invoices demanding the payment of service charges. If the Council fails to provide such summary, a leaseholder may withhold payment of the service charge.

Under section 20B of the Landlord and Tenant Act 1985 the City Council must request payment of a service charge for services provided to a leaseholder within 18 months of the costs being incurred. Requests for payment after 18 months of the costs being incurred are considered to be “out of time” and the leaseholder will not be liable to pay those costs.

The City Council will accept monthly payments by instalments over a twelve month interest free period (October to March). The leaseholder will be strongly encouraged to make payments by direct debit. If severe financial hardship can be demonstrated a repayment plan can be agreed extending the repayment period.

6.8 Service Charges Mandatory Cap

The Social Landlords Mandatory Reduction of Service Charges (England) Directions 2014 limit the amount social landlords (which includes the Council), can charge leaseholders over any five year period, to £15,000 in London and £10,000 in the rest of England. This cap only applies to government funded programmes which includes the 2015/16 Decent Homes backlog funding, as well as other future-funded assistance for works of repair, maintenance or improvement provided by the Secretary of State, or the Homes and Communities Agency. In addition the mandatory cap only applies to leaseholders who live in their property as their only or principal home and not to leaseholders who rent/sub-let their properties.

6.9 Ground Rent

The Ground Rent is £10 per year and is a rental paid to the City Council. The full amount is due on the 1st April every year and is billed by way of a separate invoice. Ground rent demands will be sent no more than 30 days in advance of the due date. Ground rent statements will comply with the requirements of the Commonhold and Leasehold Reform Act 2002.

6.10 Payment Options

The City Council appreciates that leaseholders are understandably concerned about the prospect of receiving sizable bills in respect to their contribution towards service charges and “major works”.

In response, the City Council offers a selection of affordable payment options to enable leaseholders to pay towards the cost of “major works”. Leaseholders will be provided with all relevant information about payment options.

6.11 Review of Disputed Invoices

Should a leaseholder wish to dispute or query the whole or part of their annual service charge they may request a summary of the service charge account. The leaseholder must make the request in writing and the City Council will respond within one month of the request or such other time limit in accordance with section 21 Landlord and Tenant Act 1985.

The summary will include:

- How the costs relate to the service charge demanded.
- Any items for which the landlord did not receive demand for payment for during the accounting period.
- Any items for which a demand was received and for which no payment has been made during the accounting period.
- Any items for which a demand was received and for payment was made during the accounting period.

The leaseholder’s service charge invoice shall be placed into dispute until such time it is resolved.

If the City Council fails to provide the information required by section 21 within the above mentioned time period, the leaseholder has the right to withhold payment of the service charge until the information is provided. Once all the information has been provided, the invoice shall be removed from dispute and the leaseholder shall be required to pay the service charge.

A leaseholder has the right within a period of six months from receipt of the written summary of the service charge account to write to the City Council to request access to inspection of the accounts, receipts and any other documents relevant to the service charge information contained within the summary. Facilities for inspection must be provided within one month of the request and be made available for two months. (Section 22 of the Landlord and Tenant Act 1985)

The City Council is unable to waive charges that are lawfully due. If the leaseholder, preferably after exhausting the City Councils internal complaints procedure, is still unhappy with any element of their service charge bill, an application for a final decision from the First Tier Tribunal (FTT)

Property Chamber can be made. Leaseholders can challenge the reasonableness of service charge by applying to the FTT.

6.12 Consultation and Engagement

The Council has recently entered into a Qualifying Long Term Agreement with a Company called Unitas who shall be undertaking all repair works to Council owned residential properties, including blocks of flats and maisonettes. All leaseholders were served with a notice advising of the Council's intention to enter into the Agreement, prior to its completion.

If works are proposed to a block which would mean each leaseholder within that block will be required to contribute £250 or more towards the cost of those works (referred to as 'Major Works'), the Council is required to consult with all leaseholders within that block in accordance with s20 Landlord and Tenant Act 1985 prior to the costs being incurred.

In addition to consultation on Major Works the City Council will also seek to consult with leaseholders on all matters that impact upon their leasehold property.

The City Council will continue to ensure there is leaseholder representation across its developing customer involvement and scrutiny structures.

6.13 Major Works

The City Council has a duty to consult with leaseholders when carrying out works to a block where these works will result in a charge to any one leaseholder in excess of a certain amount, currently £250, as per paragraph 6 of The Service Charges (Consultation Requirements) England Regulations 2003.

In these instances the City Council will serve all leaseholders within the block with a Section 20 Notice which will include all information detailed within Schedule 3 of the above mentioned Regulations which includes:

- A description of the works, or details of the place and hours at which a description of the works may be inspected;
- Reasons why it is considered necessary to carry out the works;
- An estimate of the total amount per block
- The address to which comments or observations to the work should be sent;
- The due date on which the consultation period ends (30 full days from date on the Section 20 Notice).

The City Council must have regard to all observations made by the due date, and must respond to any leaseholder within 21 days of receipt of any observations.

Once the work has been completed the City Council will write to the leaseholders advising of the actual cost of the work and their proportional contribution. The invoice will be issued at the end of financial year during which the major works were undertaken and completed. Payment will then become due.

If the Council is unable to include the costs of all elements of the Major Works within the financial year in which the works were completed, the costs may be included in the service charge invoice for the following financial year provided the invoice demanding payment for the works is not dated more than 18 months after the costs were incurred in accordance with the Landlord and Tenant Act 1985.

6.14 Insurance

As a condition of the Lease the City Council will take out building insurance to cover all high and low rise/maisonette blocks of flats. The leaseholder contribution towards the cost of building insurance is included within the annual service charge. The building insurance provides cover for damage caused to the building by:

- Fire;
- Explosion;
- Aircraft collision;
- Earthquake;
- Lightning;
- Impact.

In addition high rise blocks are also covered for;

- Storm damage;
- Floods and escape of water.

The policy insures each building up to the replacement value of the building plus the replacement of all individual flats including the leaseholder's if so required, but it does not insure the leaseholder's contents. Responsibility for insuring the contents of the property including fixtures and fittings rests with the leaseholder and it is strongly recommended that all leaseholders arrange their own home contents insurance which is suitable to their needs and requirements as deemed by themselves.

6.15 Selling and Letting a Leasehold Property

The leaseholder must inform the City Council when they wish to sell their leasehold property. If a leaseholder wishes to sell their property within the first ten years of purchase, they are required to give the City Council the right of first refusal to purchase the property before it is placed on the open market.

The leaseholder may have to pay back to the City Council a proportion of the Right to Buy discount they received at the time of purchase from the City Council, if they sell the property, within the first five years of buying their property.

If the leaseholder wishes to let their property out and become a landlord, section 159 Housing Act 1985 allows this, without the leaseholder having to first offer back the property to the Council or repay any portion of the Right To Buy discount they received on their purchase, providing the term

of the letting agreement is less than 21 years. As a responsible landlord, the City Council must know who is residing within its buildings, it will therefore require the leaseholder to:-

- provide details of their new contact details, and the contact details of any management company appointed to manage the letting of the leasehold property.
- ensure that their tenant complies with all provisions contained within the leaseholder's lease. The leaseholder will be responsible for how the tenant conducts their tenancy.
- ensure that all costs due to the Council under the Lease continue to be paid.

Any Estate Agent representing a Leaseholder wishing to sell or let the leasehold property must obtain written permission from the City Council, as the freehold owner of the property and also in its statutory capacity as local planning authority, to display 'for sale' and 'to let' signs outside blocks of low and high rise flats. Permission will be granted at the discretion of the City Council and in accordance with the Town and Country Planning Act.

Leaseholders can also exercise the right to purchase the freehold of the building as a group, as long as they meet the qualifying criteria contained in the relevant legislation at the time of application and this is known as enfranchisement. This is possible even if the City Council does not wish to sell, as long as the leaseholders qualify. To qualify, the current criteria are:

- The block must contain more than two flats.
- No more than 10% of the floor area must be used for non-residential purposes, such as shops or a similar commercial unit.
- At least two thirds of the flats in the block must be owned by leaseholders; At least two thirds of those leaseholders must want to buy the Freehold.

Enquiries regarding enfranchisement must be directed to the City Council's Home Ownership Team.

6.16 Fire Entrance Doors

The Council has a duty under the Regulatory Reform (Fire Safety) Order 2005 to take general fire precautions in respect of the common parts within its residential Buildings which includes landings and stairs. The precautions include the taking of measures:

- to reduce the risk of fire within the building and the risk of the spread of fire;
- in relation to the means of escape from the building;
- for securing that, at all material times, the means of escape can be safely and effectively used;
- in relation to the means for fighting fires in the building;
- in relation to the means for detecting fire in the building and giving warning in case of fire.

The duties do not extend to individual properties within the Building, but, in order that the Council can comply with its applicable duties, it has undertaken a programme of installation of fire resistant doors to each property, complying with current British Standards applicable to fire resistant doors, which has been carried out following advice and assistance from the Fire Service. These doors are integral to the prevention of the spread of fire to the common parts and leaseholders are

therefore required not to interfere with the doors in any way, including, but not limited to fitting or installing any security lock, chain, bolt or other device or item. If the Council has to replace the door due to it no longer being a fire resistant door caused by the actions of the leaseholder or their subtenant, visitors, agents or workmen, the Council will seek reimbursement of the full cost of the replacement door and installation from the leaseholder via the service charge.

8. Lease Extension

Lease extension is provided for in the Leasehold Reform, Housing and Development Act 1993 (as amended). Technically it is not an extension, but the issue of a new lease for 90 years, plus the balance of the old lease and generally on the same terms as the existing lease. A lease is known as being 'short' if it has less than 80 years remaining. Lease extensions can be statutory or discretionary. In order to qualify for a lease extension, a leaseholder must have owned the property for at least two years.

9. Re-mortgaging, Further Advances and Postponement of Charges

If the leaseholder wishes to re-mortgage their property or get another secured loan during the discount repayment period (5 years from the date of purchase from the Council), their mortgage company will require them to get a 'postponement' of the Council's discount charge. A postponement makes sure that the new loan takes priority over the repayment of the discount under the Right to Buy. This means that, should the property be sold within the discount repayment period, the mortgage or loan would be repaid first out of the sale proceeds and then the Council's discount will be repaid. If there is any money outstanding following the repayment of both the mortgage and discount charge (and any other charges registered against the property), this will belong to the leaseholder.

A request for a postponement during the discount repayment period will only be considered if the leaseholder satisfies the condition contained in s156 Housing Act 1985 namely, that any amount of loan over and above the amount paid for the purchase of the property ('Additional Borrowing'), will only take priority over the Council's discount charge, if such amount is for an approved purpose. Some of the current approved purposes are:

- The leaseholder wishing to use the Additional Borrowing to pay for works to the property, subject to the leaseholder providing evidence of the works in the form of quotes on tradesmen's letter-headed paper, to the Council;
- The additional borrowing is for the payment of a service charge;
- Repay the existing mortgage and interest accrued.

10. Alterations and Improvements

The leaseholder is responsible for maintaining and repairing the internal parts of the property. The leaseholder is also responsible for the maintenance of fixtures and fittings in the property. Under the terms of the lease the leaseholder will require the council's permission to carry out any alterations and improvements affecting:

- The councils fixtures and fittings; or
- The exterior of the building; or
- The structure of the building (including the removal of internal walls)

Leaseholders wishing to carry out alterations or improvement works to their home must apply for the councils consent as required by the lease and provide details of the proposed works. Consent may be granted subject to conditions, such as obtaining planning permission and/or appropriate buildings regulations consent, where this is required. Leaseholders should not change or alter the main entrance door to the property.

11. Links to Other Policies

The Leaseholder policy is linked to a number of other housing policies, namely:

- Repairs and Maintenance Policy
- Tenancy and Estate Management Policy
- Corporate Compliments, Comments and Complaints Procedure
- Anti-Social Behaviour Policy
- Corporate Debt policy
- Rent Setting and Collection Policy
- Decant and Compensation Policy

12. Complaints

If a leaseholder is not satisfied with the level of service they have received they may register a complaint through the council formal Complaints Procedure. Details are available from any council office or online (www.stoke.gov.uk). In line with this procedure, the initial complaint will be acknowledged in writing within two working days and information will be provided about who is dealing with the complaint. The council will aim to respond within 10 working days. If the complaint is more complicated, it may take longer to sort it out but the complainant will be kept informed.

First-Tier Tribunal (Property Chamber) If you have followed the complaints procedure and remain dissatisfied with the City Council's decision you have the right to apply to the relevant Tribunal to settle your dispute.

The fee's payable to the Tribunal will vary and will be dependent upon the type of application. It is suggested that you contact the Leasehold Advisory Service, who may be found at <http://www.lease-advice.org>, who are an independent body and will be able to provide advice on how to proceed with your application.

13. Key Contacts

Leaseholder Services:

- Telephone: 01782 235540 (office hours only)
- Email: leaseholderServices@stoke.gov.uk
- 1 Smithfield, Leonard Coates Way, Hanley, Stoke on Trent, ST1 4FA

Housing Repairs - UNITAS:

There are several ways that you can contact us to request a housing repair:

- **Call us on:** 01782 234100
- **Email us at:** enquiries@Unitas.co.uk
- **Text us on:** 07786 200700
- **In person:** at your nearest Local Centre

Glossary

Throughout this policy document, it is inevitable that words or phrases are used that are understood by some readers, but which are new to other readers and their meaning is not

immediately apparent. The meanings of some words/phrases used in this document are given below:

Building / Block – both of these terms are used throughout this document and mean the same thing, that being, the whole building that the Leasehold property is located in.

Enfranchisement – Leaseholders joining together to buy the freehold of the building.

Forfeiture – The right of the freehold owner to apply to the Courts to end the Lease if the conditions have been breached.

Freehold Property – means the absolute ownership of a property.

Freeholder/Freehold Owner - within this document means the City Council which owns the building and is responsible for the maintenance and repair of the structure, exterior and any common parts.

Lease - is a binding contract, enforceable in law and defines the rights and obligations of the Leaseholder, and the City Council as the freeholder of the property.

Leasehold Property – means the right of possession of a property for a fixed number of years.

Leaseholder – in this document, means a Council tenant who has purchased their flat under the Right To Buy scheme or a person who has purchased an ex-council flat and the City Council is the Freeholder.

Major Works – means works that are proposed to be carried out to a building which will cost each leaseholder within that block £250 each or more.

Service Charge – the annual financial contribution Leaseholders pay towards the day to day running costs of the block of flats in which they reside.