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Deputy Prime Minister
Creating sustainable communities

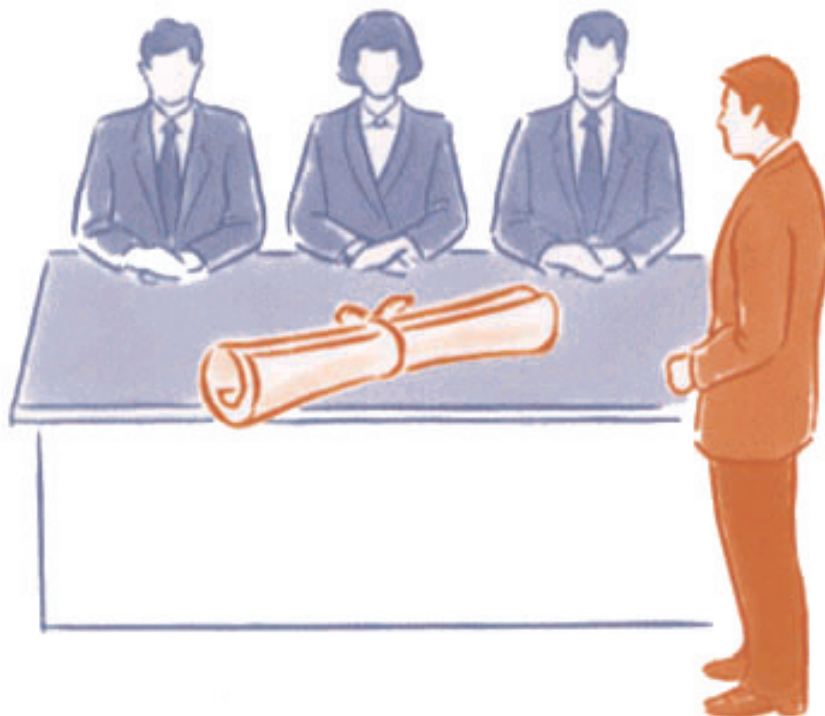


Llywodraeth Cynulliad Cymru
Welsh Assembly Government



COMMONHOLD AND LEASEHOLD REFORM ACT 2002

APPLICATION TO THE LEASEHOLD VALUATION TRIBUNAL



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This booklet is not meant to describe or give a full interpretation of the law – only the courts can do that. Nor does it cover every case. If you are in any doubt about your rights and duties then seek specific advice.

Introduction

This leaflet sets out the different applications that can be made to LVTs and provides some useful information on each application. There are no prescribed forms for an application but suitable forms for all cases, with explanatory notes, are available from all LVTs. Some applications to the LVT are subject to a fee of up to £500. Full details of the fees payable are set out below (*see page 21*).

For the purposes of this booklet we refer to ‘the landlord’ throughout, although the legislation usually refers to ‘any relevant person in control of the premises’. Similarly we refer to ‘the tenant’, which in most cases will be a leaseholder.

The LVT

LVTs are part of the Residential Property Tribunal Service (RPTS) and provide an accessible and relatively informal way to resolve residential leasehold disputes. Each LVT usually consists of three members: a lawyer, who is often the chairman, a valuer and a lay person. The LVT is entirely independent and impartial in its approach. There are five regionally based LVT offices (London, Northern, Midland, Eastern and Southern) plus one for Wales; their addresses can be found at the end of this booklet.

Proceedings at the LVT are semi-formal. Neither side is required to be represented by a barrister, solicitor or valuer, evidence is not given on oath and the usual court rules do not apply. However, parties appearing before an LVT may wish to seek professional advice, and it is sensible to arrange representation if the argument relates to the interpretation of the law or the terms of the lease. In cases of a technical nature, the LVT is usually assisted by expert evidence from a valuer or experienced property manager.

However, if you choose not to be legally represented you must remember that you will be responsible for presenting your own case, including arguments and evidence, and that the evidence should be presented clearly and concisely and be confined to the matter in dispute. The LVT hears both sides of the argument and then determines the issue on the basis of the evidence and the judgement and experience of the LVT members. Their decision is issued in writing as soon as possible after the hearing.

Applicants for a determination may be long leasehold tenants, landlords or, in certain circumstances, renting tenants. The applicant pays an application fee and, where a hearing is held, a hearing fee, but after that each party normally pays their own costs. However, in some cases a landlord may be able to recover his costs under the terms of the lease. If this is the case, advice should be sought on the options available. Finally, the LVT has the power to award a limited amount of costs in certain circumstances. Further details on this can be found in the section *Other costs of appearing before an LVT* below (*see page 22*).

LVT hearings are open to the public and their decisions can be seen at LVT offices. LEASE provides a schedule of decisions with access to the full text of the determination on its own website at www.lease-advice.org.

LVTs can determine a wide range of disputes, including:

- disputes about the terms and price of buying the freehold or extending a lease;

- disputes about the liability to pay, and reasonableness of, a service charge, an administration charge, or an estate management scheme charge;
- disputes relating to building insurance;
- whether it would be appropriate to appoint a new manager in a block of flats;
- whether a residential long lease (primarily of flats) should be varied;
- disputes relating to the right to manage;
- alleged breaches of a lease prior to a landlord serving a notice under Section 146 of the Law of Property Act 1925;
- whether a dispensation should be granted in respect of the consultation requirements under section 20 of the Landlord and Tenant Act 1985.

Types of application

A variety of applications can be made to the LVT.

Under the Leasehold Reform Act 1967 an application may be made:

- for a determination as to the terms of purchase or the price payable when a leaseholder is buying the freehold of a leasehold house (known as enfranchising);
- for a determination as to the terms on which a lease of a leasehold house is extended;
- for a determination as to the reasonableness of the landlord's costs which are payable by the leaseholder.

Under the Landlord and Tenant Act 1985 an application may be made:

- for a determination as to the liability to pay and the reasonableness of any service charges;
- for a determination as to whether the insurance available through the landlord's nominated or approved insurer is unsatisfactory in any respect, or the premiums payable for such insurance are excessive (where the lease requires the tenant to insure with the landlord's nominated or approved insurer);
- to limit the amount of costs incurred by the landlord during the proceedings before the LVT which can be charged to the tenant as a service charge;
- for dispensation from complying with consultation procedures for service charges or long-term agreements.

Under the Landlord and Tenant Act 1987 an application may be made:

- for the appointment of a manager;
- for the variation of leases, primarily of flats;
- for the determination of the purchase price following an Acquisition Order;
- in limited circumstances, for determination of the price under the Right of First Refusal.

Under the Leasehold Reform Housing and Urban Development Act 1993 an application may be made:

- for a determination of the terms of purchase or the price payable when leaseholders collectively buy the freehold of a block of flats with other leaseholders in the block (known as enfranchising);

- for a determination of the terms of purchase or price payable when extending the lease of a flat;
- for a determination as to the reasonableness of the landlord's costs which are payable by the leaseholder;
- for variations in respect of estate management schemes.

Under the Commonhold and Leasehold Reform Act 2002 an application may be made:

- for a determination as to the liability to pay and the reasonableness of any administration charges;
- for a determination as to the liability to pay and the reasonableness of any charges under Estate Management Schemes;
- for a determination as to the entitlement to the right to manage (including where the landlord is untraceable);
- for a determination as to the liability to pay and the reasonableness of charges arising from the application for the right to manage;
- for a determination as to the amount of uncommitted service charges to be paid to the right to manage company;
- for a determination as to whether approvals under the lease may be granted by a right to manage company;
- for a determination as to the reasonableness of upholding the four-year rule before another right to manage company can take effect in the block;
- for a determination in relation to an alleged breach of a lease covenant (in connection with forfeiture).

Issues to consider when making an application

Buying the freehold (enfranchisement) or extending the lease (*Leasehold Reform Act 1967* (houses); *Leasehold Reform Housing and Urban Development Act 1993* (flats)).

An application to the LVT must provide:

- the names and addresses of the applicant, the respondent, the freeholder and any intermediate landlord, and any landlord or tenant of the premises not already mentioned, to which the application relates;
- the name and address of any person having a mortgage or other charge over an interest in the premises which are the subject of the application;
- the address of the premises to which the application relates;
- a copy of the lease where appropriate;
- a copy of any notice served in relation to the enfranchisement;
- where relevant, the name and address of the sub-tenant, and a copy of any agreement for the sub-tenancy;
- a statement that the applicant believes that the facts stated in the application are true.

Disputes about whether the right to enfranchise or the right to extend a lease actually exist are matters for a court to decide.

Liability to pay, and the reasonableness of, service charges (*Section 27A, Landlord and Tenant Act 1985*).

Either the tenant or the landlord may apply for determinations on:

- the person(s) by whom the service charges is payable;
- the person(s) to whom it is payable;
- the amount which is payable;

- the date on or by which it is payable;
- the manner in which it is payable.

The application may be made in respect of charges which have already been levied, or charges which are proposed, whether or not the charge has been paid. However, no application may be made where the issue has been:

- agreed or admitted by the tenant;
- determined by a court;
- referred to arbitration. Any reference to arbitration must be with the tenant's agreement following the dispute arising; *or*
- the subject of determination by arbitration as a result of an agreement after the dispute has arisen. Any clause in a lease or any other agreement which appears to commit the tenant to arbitration in advance of a dispute arising is deemed to be void and will not bind the tenant nor prevent an application to the LVT.

Also, the right to seek a determination of service charges from an LVT does not apply to local authority tenants such as secure tenants unless they have been granted a long tenancy or lease.

Payment of the service charge, or any part of it, on its own does not necessarily amount to an agreement or admission by the tenant that the charge is payable or reasonable.

Landlords proposing to carry out works can also ask the LVT for a determination that their proposals are reasonable, and that the service charge is payable, before they start spending.

Service charges in leases can include such things as maintenance, repair or other works to the building, improvements, management, cleaning, porterage or insurance and other costs incurred by the landlord and recharged to the tenants, such as legal and other professional fees.

Either the tenant or the landlord may apply to the LVT for a determination, and the LVT can interpret the terms of the lease to resolve disputes or uncertainties as to whether the tenant is liable to pay a service charge.

There is, of course, no simple definition of 'reasonable' and it is for the LVT to determine the issue according to the evidence before them. However, in determining reasonableness, some of the questions that might be addressed are:

- **are (or were) the works or services necessary?**
 - are the works or services required at all?
 - are the works sufficient to remedy the perceived problem?
 - are the works or services adequate or over-extensive?
- **was, or is, the original specification for the works or service adequate?**
 - did it include all necessary work or was the job allowed to expand as additional repairs were revealed?
 - are there genuine grounds for additional works of an urgent nature?
- **what were the landlord's procedures for costing the works or services?**
 - has the landlord complied with the consultation requirements under Section 20?
 - are there arrangements for competitive tendering or obtaining competitive estimates?
 - did the landlord follow the procedures where the tenants' nominated a contractor or insurer?
 - do the works or services arise from a contract already in place?

- **what are the landlord's arrangements for controlling costs?**
 - how adequate is site supervision?
 - what controls are there for checking and payment of invoices etc?
 - what arrangements are there for checking the service provided against that specified?
 - is the standard of the works or service proposed or completed appropriate and reasonable?

Standards will vary according to the perceptions and viewpoint of the applicant. A landlord might wish to carry out works to a higher standard than the tenant may consider reasonable in terms of their shorter interest in the property and their liability to pay. Equally, the converse can apply, where the tenants expect higher standards in terms of what they are paying or are expected to pay.

- **was, or is, the standard of the works or services appropriate?**
 - is the standard of insurance cover appropriate?
 - will the specification deliver the levels of services or standards of work expected?
 - are the completed works satisfactory?
 - were the works carried out in accordance with the standards specified?
- **what are the landlord's arrangements for monitoring service delivery?**
 - are services maintained to the agreed specification?
- **what amount is reasonable for a tenant to pay as an interim charge?**

Applications should be based on firm grounds, not subjective opinion. In some cases evidence may have to be presented to the LVT by an expert witness, normally a property professional.

Administration charges

(Section 158 and Schedule 11, Commonhold and Leasehold Reform Act 2002)

An administration charge is one payable by a tenant as part of or in addition to the rent which is paid directly or indirectly for:

- considering applications or providing approvals, for example, for consent to alterations;
- providing information or documents by or on behalf of the landlord or other party to the lease, for example on the sale of the flat;
- charges arising from a breach of the lease;
- charges arising from the non-payment of a sum to the landlord or other party to the lease. These may include legal costs of serving notices, correspondence and interest charged on unpaid sums.

An administration charge can be fixed by the lease or may vary. A 'variable administration charge' is one where neither the sum nor a formula for calculating the sum is specified in the lease.

An application may be made to the LVT to determine the tenant's liability to pay an administration charge, whether the charge is reasonable, or for the variation of a charge fixed by the lease.

Reasonableness

The legislation provides that 'a variable administration charge is payable only to the extent that the amount of the charge is reasonable'. The LVT can determine what is reasonable to be paid, if anything, in the circumstances of each case, and that becomes the amount that can be recovered.

For example, where the administration charge is for the recovery of the landlord's legal costs arising from a breach of the lease, the questions to be addressed might be:

- was the landlord's action, in raising legal costs, appropriate and reasonable to the circumstances?
- how is the cost justified, in terms of the hours charged for and the level of fees?

Where the charge is simply a fee for, for example, a consent or provision of information, is the charge reasonable in terms of the work the landlord had to carry out in order to provide it?

Where the amount is fixed in the lease, or according to a formula in the lease, the LVT can make an order that the lease is varied to amend the sum or to change or delete the formula, or require the parties to the lease to vary it in the manner the LVT specifies. The variation will change the lease for the remainder of its term.

Where the charge is fixed or based on a formula in the lease, this may relate the charge to a multiple or proportion of the rent or the service charge or to the present market value of the dwelling. In all three cases, the question of reasonableness may centre on the charges or increases in the base figures since the original grant of the lease.

Liability to pay

As with service charges, the LVT may determine:

- the person by whom the charge is payable;
- the person to whom it is payable;
- the amount which is payable;
- the date at or by which it is payable;
- the manner in which it is payable.

Similar rules apply as with service charges. The application may be made whether or not the payment has been made, but not where the matter has been:

- agreed or admitted by the tenant concerned;
- determined by a court;
- referred to arbitration. Any reference to arbitration must be with the tenant's agreement following the dispute arising; or
- (has been) the subject of determination by arbitration as a result of an agreement after the dispute has arisen.

Any clause in a lease or any other agreement which appears to commit the tenant to arbitration in advance of a dispute arising is deemed to be void and will not bind the tenant nor prevent an application to the LVT.

Dispensation from requirement to consult service charge payers

(Section 20ZA, Landlord and Tenant Act 1985)

A landlord must consult all service charge payers in writing before carrying out works costing more than £250 for any individual tenant, or before entering into a long-term contract (one for more than twelve months) where the cost to any contributing tenant is more than £100 in any of the accounting periods concerned. Where the landlord has good reason, he can apply to the LVT for permission to dispense with the consultation requirements.

Further information on the statutory consultation procedure is set out in our leaflets *S.20 Consultation* and *S.20 Consultation for council and other public sector landlords*.

Estate charges under Estate Management Schemes

(Section 159, Commonhold and Leasehold Reform Act 2002)

Estate Management Schemes (EMS), approved under the Leasehold Reform Act 1967 or the Leasehold Reform, Housing and Urban Development Act 1993, create obligations on those living within the scheme area (including freeholders) to contribute towards the costs of furthering the objects of the scheme. These will usually be for works to amenity areas, gardens, roads and footpaths and will be generally directed towards the preservation of the particular architectural or historic significance of the area, and to ensure that the appearance and quality of the area as a whole is adequately maintained.

Charges levied under an EMS must be reasonable and a determination of the liability to pay and reasonableness of the charge may be sought from the LVT where this is believed not to be the case.

The provisions and remedies are similar to those in respect of service charges and administration charges. Where the charge is not specified in the scheme or calculated according to a formula in the scheme, the LVT can decide what is reasonable in the circumstances. This becomes the maximum the manager of the scheme can recover.

Where the charge is specified or calculated according to a formula in the EMS, the LVT can vary the scheme to amend the sum or to change or delete the formula.

The LVT may also determine:

- the person by whom it is payable;
- the person to whom it is payable;
- the amount which is payable;
- the date at or by which it is payable;
- the manner in which it is payable.

As with service charges, the application may be made whether or not the payment has been made, but not where the matter has been:

- agreed or admitted by the person concerned;
- determined by a court;
- referred to arbitration. Any reference to arbitration must be with the persons agreement following the dispute arising; *or*
- (has been) the subject of determination by arbitration as a result of an agreement after the dispute has arisen.

Any clause in a lease or any other agreement which appears to commit the person to arbitration in advance of a dispute arising is deemed to be void and will not bind the tenant nor prevent an application to the LVT.

Insurance through the landlord's nominated insurer

(Section 164 of the Commonhold and Leasehold Reform Act 2002 and Paragraph 8 of the Schedule to the Landlord and Tenant Act 1985)

In some cases, the lease requires that the tenant insures the property, usually a house, through an insurer nominated or approved by the landlord. The tenant may consider that he can get cheaper insurance from different companies and may be concerned as to the cover provided.

The provisions of Section 164, Commonhold and Leasehold Reform Act 2002 provide a right for the tenant of a house to arrange his own insurance, provided he notifies the landlord and complies with the requirement of the Section concerning the insurance cover provided. This right is set out in more detail our booklet *Service Charges, Ground Rent and Forfeiture*.

That is one approach to problems arising from 'nominated insurer' clauses, but there is an alternative right. The Schedule to the 1985 Act provides means for the tenant or the landlord of either a house or a flat to seek a determination from the LVT as to:

- whether the insurance which is provided by the landlord's nominated or approved insurer is unsatisfactory in any respect; *or*
- whether the premiums payable are excessive.

No application can be made in respect of a matter which has been:

- agreed or admitted by the tenant;
- the subject of a determination by a court or arbitral tribunal; *or*
- which is to be referred to arbitration under an arbitration agreement to which the tenant is a party.

The sort of issues that might be raised include:

- is the cover adequate or excessive?
- is the cover defective in any respect?
- is the insurer a competent and reputable company?
- is the premium reasonable value?
- can similar cover can be obtained at a lower premium?

Unless the LVT finds the insurance arrangements satisfactory, it may make an order:

- requiring the landlord to nominate the insurer specified in the order; *or*
- requiring the landlord to nominate another insurer which satisfies specific requirements set out in the order.

Limitation of service charges: landlord's costs

(Section 20c Landlord and Tenant Act 1985)

It is common in residential leases for the landlord's legal costs in managing the property to be rechargeable to the service charge. These costs can include the costs of court or LVT actions, whether started by the landlord or the tenant.

Section 20c of the Landlord and Tenant Act 1985 Act enables a tenant to make an application for an order that all or part of the costs incurred by the landlord arising from proceedings before the LVT are not to be included in the service charges.

Therefore, tenants seeking a determination of reasonableness can also apply to the LVT to ensure that any reduction achieved in their service charges will be not cancelled out by the landlord recharging the legal costs of an unsuccessful defence to the service charges. Tenants who are respondents in cases where the landlord seeks a determination of reasonableness, can also make an application under Section 20c.

The LVT will review the evidence presented before making whatever order it considers just and appropriate in the circumstances.

Where an application under Section 20c is made at the same time as the principal application, the 20c application will be dealt with by the LVT hearing the principal matter. If the application is made after proceedings are concluded, then it may be dealt with by a differently constituted LVT at a separate hearing.

The appointment of a manager

(Section 24 Landlord and Tenant Act 1987)

Where the management of a property by the landlord is considered unsatisfactory by the tenants, and the tenants are unable to exercise the right to manage and there is no other remedy available to the tenants which is likely to achieve any improvement, they may apply to the LVT for the appointment of a manager.

Where the right to manage under the Commonhold and Leasehold Reform Act 2002 has already been exercised but the management is unsatisfactory, application may also be made for appointment of a manager, effectively terminating the right to manage.

Provided the LVT is satisfied that the case warrants such action, it may make an order to displace the landlord's control and management arrangements with a manager named by the LVT. This manager need not be a managing agent, but could be a lessee or other responsible person. The manager could delegate tasks to a managing agent, but ultimate responsibility remains with the manager appointed by the LVT.

An application must cover the whole, or part of, a building containing two or more flats. The application may be made by any one tenant or by a group of tenants acting together.

However, the right to seek the appointment of a manager from the LVT is not available where the landlord is a local authority, the Commission for New Towns, an urban development corporation, the Housing Corporation, a registered housing association, a fully mutual housing association or a charitable housing trust. It is also not available where the landlord is resident on the premises and it is a converted (not purpose-built) property and less than half the flats are let on long leases.

The LVT will make the order if it is just and convenient in all the circumstances and at least one of the following applies:

- any relevant person is in breach of an obligation to the tenant, under the terms of the lease, in relation to the management of the building;
- unreasonable service charges have been, are proposed or are likely to be made, or unreasonable variable administration charges have been made, are proposed or are likely to be made.

It is not necessary for the service charges or administration charges to have been determined as unreasonable through separate 1985 or 2002 Act applications, (although such a determination would provide useful evidence).

- the landlord has failed to comply with any relevant provision of an approved code of management practice.

The reference to approved codes of practice relates to approvals under Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993. Two codes of practice have been approved, one produced by the Association of Retirement Housing Managers relating, primarily, to purpose-built retirement housing, and one by the Royal Institution of Chartered Surveyors which is relevant to all residential leasehold property where service charges are paid. Copies of the codes are available direct from the relevant bodies.

- other circumstances where it is just and convenient.

The right to seek the appointment of a manager applies equally where the lease includes a third-party manager. In this case all notices must also be served on the manager under the lease.

Preliminary Notice to the landlord

Before any application is made to the LVT for the appointment of a manager, the tenant must serve a Preliminary Notice (under S22 of the Landlord and Tenant Act 1987) on the landlord and any other

person who is under a duty in respect of management. The notice must state:

- the name and address of the applying tenant (and an address for the service of notices if different);
- that the tenant intends to seek an order, but may not do so if the requirements set out in 4 below are complied with;
- the grounds on which the order will be sought, and the matters which will be relied on in establishing those grounds;
- those matters that are capable of being remedied, and that they should be remedied within a reasonable time limit which is specified in the notice.

If the landlord fails to remedy the matters set out in the notice, or if there are other grounds, then the tenant may proceed with the application to the LVT.

Dispensation from service of the Preliminary Notice

Tenants may apply to the LVT for an order to dispense with the Preliminary Notice where the LVT is satisfied that it would not be reasonably practicable to serve it. The LVT may direct the tenants to take some other appropriate steps, prior to considering the application for the appointment of a manager.

The intention of the Preliminary Notice is to allow the landlord fair warning of the tenants' wish to replace his management and give him an opportunity to make good his deficiencies. Tenants applying for a dispensation will need to satisfy the LVT, through evidence, of the impracticability of serving the Preliminary Notice.

Applicant's nominated manager

The applicant is required to nominate the person of their choice to be appointed as manager, although the appointment will be entirely within the discretion of the LVT. This may be a professional manager but could be a management company formed by the tenants. If an appointment is made, that person or company will manage the premises in accordance with the order of the LVT.

The form and regulations require the qualifications of the nominated manager to be given. This should not be taken to mean that the nominee must be a qualified property manager. If the nominated manager has qualifications they should be shown, but the absence of qualifications is not necessarily an obstacle to appointment, although each case will depend on its own circumstances.

The Order of Appointment

The LVT has wide discretion in the making of the Order, the matters to be included and the conditions to be imposed. The Order may make specific directions in certain matters or provide procedures for subsequent applications by the new manager to seek directions. The Order may include provision:

- for the appointment to be temporary or without a time limit;
- for the manager's costs and fees to be paid by the landlord, the tenants, by any relevant person, or a combination of these parties;
- for the manager to be entitled to pursue claims relating to actions prior to his appointment;
- for the manager to assume rights and liabilities relating to contracts even though he is not party to them.

In effect, the Order will provide the manager with the level of authority that the LVT considers appropriate to enable him take control of the management of the building. The manager is responsible to the LVT and is not required to seek or accept instructions from the landlord or from the tenants.

Once the new manager is appointed, the landlord ceases to have management control over the building to the extent set out in the Order. The LVT can require the landlord to provide all necessary documentation, accounts and other information to the new manager as is necessary for the management of the building.

Variation or discharge of the Order

The LVT may, on the application of any interested party (including the landlord or the tenants, and including those tenants who were not party to the original application) vary or discharge an Order of Appointment. If the Order is discharged, the management will revert to the landlord. In varying or discharging an Order, the LVT will need to be satisfied that by doing so it will not lead to a recurrence of the circumstances that led to the original Order, and that it is just and convenient in all the circumstances to do so.

Compulsory Acquisition Order

Where a landlord is in breach of an obligation under the terms of the lease and it is likely to continue, or where a building has been subject to the appointment of a manager pursuant to Section 24 of the Landlord and Tenant Act 1987, the qualifying tenants may make application to the High Court or county court for an Acquisition Order to acquire the landlord's interest. Where the application is based on a manager having been appointed under Section 24, the manager must have been appointed for **no less than two years** on the date of application to the court. A Preliminary Notice must be served on the landlord by the tenants before an application can be made to the court, unless the court agrees to dispense with the notice. The court's Order for Acquisition is subject to conditions that, amongst other things, there are two or more flats, that at least two-thirds of the flats in the building are held by qualifying tenants, and that the requisite majority of qualifying tenants make the application. Further advice should be sought before this option is pursued, as there are exceptions.

If the Order is made by the court, the LVT will determine the terms on which the landlord's interest may be acquired (including the purchase price) unless they have been agreed between the parties involved.

Variation of leases

(Sections 35-40, Landlord and Tenant Act 1987)

A lease is a contract between the landlord and a tenant. No matter how unsatisfactory the terms may seem, none of the parties to the lease may vary the terms unilaterally. The consent of every party to the lease is required to vary it. Otherwise, the terms of a lease may only be varied by order of the LVT.

In some cases, unsatisfactory provisions in the lease may affect all other tenants in a building, or the variation of one lease may have an effect on the others. In these cases it is often difficult to get every tenant to consent to vary the lease, so the law provides that the LVT can make an order to vary all the leases in the same way.

Variation of single leases (flats)

Any party to a long lease of a flat may make an application for it to be varied. The grounds for the application to the LVT to vary a single lease are that the terms of the lease fail to make satisfactory provision in certain areas. These are:

- for the repair and maintenance of the flat, or the building, or land or buildings let to the tenants or over which they have rights;
- for the insurance of the building containing the flat or the land or building;
- for the repair and maintenance of installations (whether in the building or not) which are necessary to ensure a reasonable standard of accommodation;

- for the provision or maintenance of services to ensure a reasonable standard of accommodation, for example, lighting, cleaning, caretaking, insurance;
- for the computation of the service charges, particularly in terms of the proportion of the charge payable by each flat in relation to the whole building, for example, if the individual proportions add up to more than 100%;
- for the payment of interest on arrears of service charges;
- for the recovery of expenditure from one party where it has been incurred on his behalf by another or for his benefit or the benefit of others including him; and
- any other matter to be included in the Regulations.

Where an application is made by an individual leaseholder in respect of one flat, any other party to the lease may apply to the LVT seeking that the variation ordered should also apply to one or more other leases.

Variation of two or more leases (flats)

An application may also be made for an order to vary two or more leases in the building in the same way, in order to correct the same defect. An application can be made by the tenant or the landlord. Where the application concerns less than nine leases, then all (or all but one) of the parties concerned must consent to it. Where the application concerns more than eight leases, it must not be opposed by more than 10% of the parties concerned and at least 75% of them must consent to it. For these purposes the landlord shall constitute one of the parties concerned.

The ground for the variation of two or more leases is that the object sought to be achieved by the variation cannot be satisfactorily achieved unless all the leases are varied to the same effect.

The LVT may make an order to vary the leases according to the application or as it considers appropriate. It may also make an order instructing the parties to vary the leases in accordance with that instruction, and the LVT can order any party to pay compensation to anyone considered likely to be disadvantaged by the variation of the leases. However, it cannot order the variation if it would cause a disadvantage to another tenant which could not be remedied by payment of compensation.

The LVT regulations require that any anyone making an application for a variation must serve notice of the application on anyone likely to be affected by the proposed variation. This will include the landlord (where he is not the applicant), the other leaseholders if the change will affect them, and the mortgagee to the flat or flats. Failure to serve the notices will allow the affected parties to apply to the LVT for cancellation or modification of the variation or, in some cases, to bring action for damages.

Variation of leases (houses)

The above provisions relate solely to flats, but there is one ground on which the lease of a house can be varied: that the lease fails to make satisfactory provisions for the insurance of the building or for the recovery of the costs of the insurance.

In summary, therefore, the range of applications that can be made to vary a lease are:

- for variation of a lease of a flat (Section 35);
- for a corresponding variation to other flat leases (Section 36);
- for variation of two or more flat leases (Section 37);
- in limited circumstances, for cancellation or modification of a variation to a flat lease ordered by the LVT (Section 39 (3b));
- for the variation of the lease of a dwelling other than a flat in respect of the insurance (Section 40).

The right to manage

(Chapter 1, Part 2, Commonhold and Leasehold Reform Act 2002)

The right to manage (RTM) is not subject to any requirement for consent or order of a court or LVT. It is exercisable as a right which is begun simply by the service of notice. However, there are some areas where disputes, costs or other issues are able to be referred to the LVT by the RTM company for determination.

An application may be made for a determination:

- that the building is not eligible (for example because more than 25% of the building is non-residential or less than two-thirds of the flats are owned by qualifying tenants);
- that the RTM company is not eligible (for example because the membership is less than half of the qualifying flats), or the Company has not been set up in accordance with the regulations;
- that the RTM company has not fulfilled all necessary procedures and requirements of the application process.

The landlord does not have a valid challenge on grounds of simply objecting to losing the management (because his consent is not required), or from any misgivings about the management experience or competence of the RTM company.

Where the RTM company has received a counter-notice containing a statement of challenge by the landlord, it may apply to the LVT for a determination that it was, on the relevant date, entitled to acquire the right to manage the premises. The application must be made within two months of the landlord's counter-notice. The Tribunal's jurisdiction and consideration of the application relate simply to whether, on the date of service of the claim notice, the RTM company was entitled to acquire the right to manage.

If the LVT determines that the RTM company was **not** entitled to acquire the right, then the claim notice ceases to have any effect and the Company will be liable for the landlord's reasonable costs arising from the notice and the LVT hearing. A determination becomes final at the end of the period allowed for appeal (if not appealed against), or at the time when any appeal is finally disposed of.

Where the landlord or other party to be served with the claim notice is not traceable (Section 85)

If the RTM company cannot serve the claim notice on the landlord (or other relevant parties to the lease) because he is untraceable, the RTM company may apply to the LVT for an order that it is entitled to acquire the right to manage.

The RTM company will be expected to have made all reasonable enquiries into the identity or the whereabouts of the landlord, for example, by writing to the last known address or writing to the solicitor who drew up the original lease. If this is unsuccessful and an application to the LVT is necessary, a notice must first be served on all the qualifying tenants of the building advising them of the intention to seek the order from the LVT. (There is no prescribed form for such a notice).

The LVT will consider the steps taken by the RTM company and may require it to take further action, including advertising its intentions, if appropriate. If the landlord (or a landlord of any part of the premises) is traced by this means, the LVT will take no further action on the application and the RTM company will be able to proceed with service of the claim notice.

If the landlord is not traced then the LVT may make an order which will, effectively, confer the right to manage on the RTM company. The LVT can also make directions as to the steps to be taken for giving effect to the right.

Should the landlord be found after the application is made but before the LVT makes the order, no further steps can be taken with a view

to obtaining the order. Instead, it will be treated as though the claim notice was given at the date of application, and all the rights and obligations will be determined thereafter as though a claim notice had been served. However, if the order has been made, the application may not be withdrawn without the specific consent of the newly traced landlord or by permission of the LVT.

Determination of landlord's costs (Section 88 (4))

The RTM Company is liable for the reasonable costs of the landlord, a manager appointed under S24 of the Landlord and Tenant Act 1987 and any third party to the lease arising from the take-up of the right to manage. The costs must be reasonable and application can be made to the LVT for a determination as to what is reasonable.

The costs may include those 'in respect of professional services' for which the landlord is 'personally liable'. The costs to be determined by the LVT will, typically, be legal and other professional costs arising from the receipt and response to the claim notice, provision of information or other assistance to the RTM company and the transfer of the management function.

The LVT's approach to the application is likely to be similar to that applied to the determination of landlord's costs arising from applications for collective enfranchisement or new leases under the Leasehold Reform, Housing and Urban Development Act 1993. They are likely to consider the work done by the professional advisers, the chargeable time spent and the individual charging rate of the adviser.

Determination of accrued uncommitted service charges (Section 94 (3))

On the day the RTM company takes over the management, or as soon as practicable afterwards, the landlord, manager appointed under S24 of the Landlord and Tenant Act 1987 and any third party to the lease must pay over to the RTM company all 'accrued uncommitted service charges'. These are the total of:

- all the service charges collected from the tenants; *plus*
- any investments which represent such sums together with any interest accruing; *less*
- any amount required to meet the service charge expenditure incurred before the RTM company acquired the right to manage.

Either the landlord, a manager appointed under s24 of the Landlord and Tenant Act 1987 and any third party to the lease or the RTM company, may seek a determination from the LVT of the amount of the payment.

If a landlord arranges an external audit of the amount, the reasonable fee payable for this audit will be chargeable to the RTM company as part of the costs. The RTM company could then challenge the audit by application to the LVT if there was reason to question its accuracy. However, the audit is not a legislative requirement and it is entirely within the remit of the LVT to determine the amount to be paid to the tenants, based on the information available. Clearly both parties to such an application will need to provide substantial evidence of:

- the amounts of service charges demanded during the charging period;
- the amount actually paid by the leaseholders;
- the outstanding arrears;
- the monies paid by the landlord for works and services;
- the amounts of service charge monies in any investment account and the interest on these amounts.

Approvals under the lease (Section 99 (1))

One of the RTM company's functions after acquisition of the management is in the granting of approvals under the terms of the lease. Leases often require the tenant to seek an approval from the landlord for matters specified in the lease, for example, for the assignment of the lease, or for consent to subletting the flat or making alterations to it. This function passes to the RTM company on acquisition of the management of the building.

The RTM company may not grant an approval relating to assignment, underletting, charging or parting with possession, the making of structural alterations or improvements, or alterations of use without having given the landlord (or landlords) thirty days notice. In any other case for approval the time period is fourteen days. If the landlord (or landlords) objects to the approval, or seeks to impose conditions, he must notify this to the RTM company and the tenant. The matter may then be referred to the LVT. The application may be made by the landlord, the RTM company, the tenant in question or, if the issue concerns the approval of an act of a sub-tenant, that sub-tenant.

Exercise of the right to manage within four years of a previous application (Schedule 6, para 5)

Where the right to manage has been exercised in a building but has, for some reason, ceased to operate, then the right may not be exercised again for a period of four years from the time when the previous right ended. (This does not apply where the right ceased due to the freehold being conveyed to the RTM company.) However, an application may be made to the LVT for determination that a new application for the right to manage can be made before the expiry of the four-year period. The LVT would require to be satisfied that it would be reasonable to allow the application.

Forfeiture

(Sections 168-170, Commonhold and Leasehold Reform Act 2002)

Forfeiture or re-entry is the final sanction for a landlord whose tenant is in breach of the lease, including for non-payment of service charges. The procedure, except in the case of unpaid rent, is generally started by the service of a notice under Section 146 of the Law of Property Act 1925.

However, the law requires a determination by the LVT in circumstances relating to a breach of the lease or to arrears of service charges before action can be taken.

Breach of a covenant or condition in the lease

Since the coming into effect of S168 of the Commonhold and Leasehold Reform Act 2002, the landlord may not serve a S146 notice unless the tenant has agreed or admitted the breach or there has been a determination of the breach. Application can be made to the LVT for determination that the breach has occurred. Alternatively, if the tenant has agreed, the matter can be determined by arbitration. Any arbitration must be freely agreed to by the tenant, after the dispute has been established. A term in the lease imposing arbitration is invalid for these purposes.

The landlord may not serve the S146 notice until fourteen days after the final determination of the LVT, to enable the tenant to remedy the breach.

Arrears of service charges

If a landlord wishes to take forfeiture action because of the leaseholder's failure to pay service charges then, again, he may not serve the S146 notice unless the tenant has admitted or agreed the breach or the matter has been finally determined by (or on appeal from) the LVT. 'Finally determined' means determined by the LVT and not appealed against within fourteen days, or where the LVT's decision is appealed and is not set aside as a consequence of that appeal (*Section 81 Housing Act 1996 as amended by Section 170*).

Again, the landlord may not exercise his right of re-entry or forfeiture until fourteen days after final determination.

For further information on forfeiture see our booklet *Service Charges, Ground Rent and Forfeiture*.

Application to the LVT: the procedure

Any application to the LVT will require the preparation of a proper case. The LVT has to consider the argument and evidence from both sides and it is essential that applicants present their case properly.

The LVT considers the evidence put before it. Where there is a hearing, members of the LVT may ask questions, but their function is to make a decision on what is before them, not to find the evidence for themselves.

The landlord may normally be in a better position to present the case than the tenants because he may have the relevant facts concerning the management and functioning of the building. The tenants will have to obtain their evidence as best they can, although they can request the LVT to issue directions requiring the production of information relevant to the issues.

Application forms

The application must be made on the correct form where one is required, and in the proper manner. The LVT produces model application forms and these are available in printed form from the local LVT or can be downloaded from the LVT website (www.rpts.gov.uk). Guidance is provided on how to complete the forms.

Notices

Some applications require notice to be given to other parties, and will not be accepted until notice has been given. The LVT may require evidence that any necessary notice has been given, with the application. If you are in any doubt about whether a notice must be served on other parties, you should seek advice from your own legal adviser if you have one, or from LEASE.

Receipt of applications

On receiving an application, the LVT will copy it to whoever is named as the respondent.

The LVT may issue directions to the parties governing the exchange of evidence and the general conduct of the case (at a pre-trial review, if appropriate – see page 20). Although LVTs are not subject to court rules, procedure at hearings approximates to general court procedures. LVTs have the power to determine for themselves the conduct of their proceedings and to provide specific instructions about the conduct of the case.

The LVT also has powers to require information, or additional information, from any party to an application which is reasonably required for the proper consideration of the case. This must be provided within the time specified in the notice, which should not be less than fourteen days from service of the notice, and failure to comply without reasonable excuse is an offence subject to summary conviction and a fine not exceeding level 3 on the standard scale (currently £1,000).

Regulations require the LVT to tell anyone likely to be significantly affected, whose name and address the tribunal has, about the application. This will usually be other tenants in the building and any recognised tenants' association. The LVT must serve notices on these affected persons, to make sure that they know about the application and have an opportunity to be joined in the application, if appropriate.

Representative applications

It may be that a number of tenants make separate applications to the LVT on the same issue or substantially the same issue (eg liability to pay and reasonableness of service charges or insurance, or the appointment of manager). In such circumstances, the LVT can propose that only one case be heard, as representative of all of them.

The LVT will do this by sending a notice to all the relevant applicants and the respondent in each case:

- specifying the matters which, in the LVT's view, are common to all the applications;
- stating the application which the tribunal proposes to determine as the representative application;
- explaining that the decision made in respect of the common matters in the representative application shall be regarded as a decision made in respect of the common matters in any of the other applications made where the applicant has received notice;
- inviting objections to these proposals and specifying where the objections can be sent.

A representative determination will only be made for those where no objection was received, although those applicants who objected can have their applications determined with the representative application, albeit they will be distinct determinations in their own right.

Similarly, in cases where the LVT has determined a matter and then receives an application about the same matter from an applicant who had already received a notice, it shall, amongst other things, invite the applicant and the respondent to be bound by the earlier determination. Again, there is a right for either party to object, but, having considered any objection received before the date specified, the LVT may still treat the decision in the earlier proceedings as the determination in the subsequent application. If no objection is received, the LVT need not determine the matter, and the decision already made shall be recorded as the decision of the LVT.

Where the LVT determines a matter and then receives an application about the same matter from an applicant who was not a person who received a notice, it will again invite the applicant and the respondent to be bound by the earlier determination. Again, there is a right for either party to object, but where an objection is received before the date specified in the notice, the LVT, having considered the objection, shall determine the application as if it were a normal application. If no objection is received, the LVT need not determine the matters, and the decision already made shall be recorded as the decision of the LVT.

The LVT's power to dismiss applications

The LVT has authority to dismiss any applications which it considers to be frivolous, vexatious or an abuse of the process of the LVT. This can be at the LVT's own instigation or in response to a request from the respondent to the application.

In such a case the LVT will advise the applicant in writing, stating that it is minded to dismiss the application, the grounds for the decision and the date (no less than twenty-one days after the notice was sent) before which the applicant may request to appear before and be heard by the tribunal on the question whether the application should be dismissed.

Pre-trial reviews

Regulation 12 of the Leasehold Valuation Tribunals Procedure Regulations 2003 empowers LVTs to arrange pre-trial reviews.

The LVT may decide to hold a pre-trial review. Alternatively, either party to the application can request a pre-trial review. Where a pre-trial review is to take place, fourteen days notice will generally be given.

Typically, the parties will be asked to specify:

- the matters in dispute;
- the agreed facts;
- the facts to be agreed;
- a statement of outstanding requests for details/information etc.

The pre-trial review may be conducted by one member of the LVT panel, the aim being to identify the issues in the case and to see if any part of the dispute can be resolved by agreement at that stage.

Determination without a hearing

The 2003 Regulations also provide a power for the LVT to determine applications on the basis of consideration of written submissions only, without the need for an oral hearing. This procedure is useful for simple matters. If the LVT considers this appropriate, written notice will be given to the applicant and respondent, allowing the parties at least twenty-eight days to respond. If any party requests an oral hearing this must take place, but if no party replies within the time allowed, the LVT may proceed without an oral hearing.

The hearing

Except in exceptional circumstances the LVT will provide no less than twenty-one days notice of the hearing. In London the hearing is held at the LVT's offices; in the regions it is likely to be held at a venue local to the property. The hearings are generally held in public, and may be preceded, or followed, by an inspection of the property by LVT members. The hearing is relatively informal and typically follows general court procedures in the presentation of experts and witnesses, and the members of the LVT may ask questions of any of the parties attending. There is no requirement for representation by a lawyer but this can be useful in complex cases. Evidence is not given under oath.

Decisions and enforcement

The LVT will deliver its decision in writing as soon as possible after the hearing. The decision becomes final four weeks later, provided no notice of appeal is given.

Any order made by the LVT may be enforced, with the permission of the county court, in the same way as a county court order.

Appeals

Any application for permission to appeal must be made to the LVT in the first instance, within twenty-one days from the date the reasons for the decision are sent to the parties.

Appeals from the LVT are made to the Lands Tribunal. There is no automatic right of appeal, only by permission of the LVT or the Lands Tribunal.

If consent is not granted by the LVT the party may seek permission to appeal from the Lands Tribunal. There is no appeal from a refusal of the Lands Tribunal to hear the appeal against the LVT's original determination. There are time limits within which appeals can be made. You are strongly advised to seek independent advice if considering an appeal.

Appeal from the Lands Tribunal is to the Court of Appeal.

Application costs

Most applications to the LVT are subject to payment of a fee, presently set at a maximum of £500. The fee is payable in two instalments: upon making the application and, where a hearing is to be held, prior to it taking place; there are arrangements for the fee to be waived or reduced in respect of certain applicants.

The application fee is based on a sliding scale dependent upon the circumstances, and is payable with the application. For applications

relating to the challenge of costs, the initial fee is based on the amount in question; for other applications it is based on the number of flats to which the application relates. Where an application covers both cases, the application fee will be whichever is the greater.

Full details of the fees are set out in *Leasehold Valuation Tribunal (Fees) Regulations S1 2003 No 2098*.

For applications concerning service charges, premium of nominated insurer and administration charges, costs are as follows:

Disputed charge	Application fee
not more than £500	£50
more than £500 but less than £1,000	£70
more than £1,000 but less than £5,000	£100
more than £5,000 but less than £15,000	£200
more than £15,000	£350

For applications concerning dispensation with consultation requirements, determination as to suitability of nominated insurer, appointment of managers and variation of leases, costs are as follows:

Number of flats	Application fee
up to five	£150
between six and ten	£250
more than ten	£350

There is no fee payable in respect of the following provisions:

- applications to determine the terms or price in respect of enfranchisement (Leasehold Reform Act 1967 (houses) and Leasehold Reform Housing and Urban Development Act 1993 (flats));
- applications to determine the terms or price in respect of lease extensions under the same legislation as for enfranchisement above;
- application for an order for the limitation of service charges arising from the landlord's costs of proceedings (S20(c) Landlord and Tenant Act 1985);
- application for an order to dispense with service of a Preliminary Notice prior to an action for the appointment of a manager (S22(3) Landlord and Tenant Act 1987);
- determination of liability to pay an estate management charge (S159(6) Commonhold Leasehold Reform Act 2002);
- variation of an estate management charge (S159(3) Commonhold and Leasehold Reform Act 2002);
- all applications arising from the right to manage (Ch 1, Pt2, Commonhold and Leasehold Reform Act 2002);
- applications for a determination that a breach of a covenant or condition in the lease has occurred.

Where a court transfers proceedings to the LVT, the application fee will be the fee that would have been payable to the LVT (as above), less the total amount of any court fees paid by the applicant to date. Where the fee paid to the court is equal to or more than the fee payable to the LVT, no fee is payable.

The hearing fee

Where the application fee is paid and the matter proceeds to a hearing, this will be subject to the payment of the hearing fee of £150 for all applications, within fourteen days of the LVT's request.

Where a determination by the LVT is made without the need for a full hearing, an application fee is payable in the normal manner as described above. However, there is no hearing fee payable.

No hearing will take place until all the fees have been paid.

Waiver and reduction of fees

An applicant is not liable to pay any fee where he, or his partner, is in receipt of:

- Income Support;
- Housing Benefit;
- Income-based JobSeekers Allowance;
- A Working Tax Credit where the gross annual income used to calculate the tax credit is £14,213 or less;
- A Working Tax Credit with a disability element or where the applicant or partner is also in receipt of child tax credit, and the gross annual income taken into account for the calculation of the Working Tax Credit is £14,213 or less;
- A guarantee credit under the State Pensions Credit Act 2002;
- A certificate issued under the Funding Code which has not been revoked or discharged and which is in respect of the proceedings before the tribunal the whole or part of which have been transferred from the county court for determination by a tribunal.

Applicants are asked to state their grounds for waiver of the fee and these will be verified by the LVT on receipt of the application.

Where more than one person is the applicant and at least one of them is liable to pay a fee, the fee shall be reduced rateably in accordance with the number of persons who would have been liable.

An application form for the waiver and reduction of fees is available from the LVT.

Reimbursement of fees paid to the LVT

In certain circumstances, the LVT may order the reimbursement of all or part of the application and hearing fees paid. This is entirely at the discretion of the LVT. During the hearing, or after the hearing but before issue of the determination, an applicant may ask the LVT for an order requiring the reimbursement of his application and/or hearing fee by the other party.

Other costs of appearing before the LVT

Each party is normally responsible for their own costs of appearing before the LVT, although a lease may make provision for the landlord to recover his professional costs through service charges. The paragraph 'Limitation of service charges – landlord's costs' (*see page 10*) explains the type of application that can be made to a LVT if this is the case.

In addition, the LVT may determine that a party to the proceedings shall pay another party's costs incurred in the case. The amount that the LVT can award is currently limited to £500, and only applies in the following limited circumstances:

- where the application has been dismissed by the LVT because it believes the application is frivolous or vexatious or otherwise an abuse of process; *or*
- where a person has acted 'frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings'.

Award of costs from the Lands Tribunal

Where the case is heard on appeal by the Lands Tribunal, it may also order the repayment of costs, but in the same circumstances as paragraph 2 above for LVTs. Again, this is currently subject to a maximum of £500.

Useful addresses

Leasehold Valuation Tribunals in England

London

10 Alfred Place, London WC1E 7LR
Tel: 020 7446 7700 Fax: 020 7637 1250

Eastern

Great Eastern House, Tenison Road, Cambridge CB1 2TR
Tel: 0845 100 2616 Fax: 01223 505116

Northern

1st Floor, 5 New York Street, Manchester M1 4JB
Tel: 0845 100 2614 Fax: 0161 237 3656 or 0161 237 9491

Southern

1st Floor, Midland House, 1 Market Avenue, Chichester
PO19 1PJ Tel: 0845 100 2617 Fax: 01243 779389

Midlands

2nd Floor, Louisa House, 92-93 Edward Street, Birmingham B1 2RA
Tel: 0845 100 2615 or 0121 236 7837 Fax: 0121 236 9337

Leasehold Valuation Tribunal for Wales

(sponsored by the Welsh Assembly Government)

1st Floor, West Wing, Southgate House, Wood Street, Cardiff CF1 1EW
Tel: 029 2023 1687

LEASE, 31 Worship Street, London EC2A 2DX Tel: 0845 345 1993 or 020 7374 5380 Fax: 020 7374 5373
Email: info@lease-advice.org Website: www.lease-advice.org

ODPM, Leasehold Reform Team, Zone 2/H10, Eland House, Bressenden Place, London SW1E 5DU
Tel: 020 7944 4287 Fax: 020 7944 4287 Email: enquiryodpm@odpm.gsi.gov.uk Website: www.odpm.gov.uk

Welsh Assembly Government, Cathays Park, Cardiff CF10 3NQ (Llywodraeth Cynulliad Cymru, Parc Cathays, Caerdydd CF10 3NQ)
Tel(Ffon): 029 20 82 3025 Fax(Ffacs): 029 20 82 5136