

Statutory Regulation of Service Charges Part I

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When does the
statutory
regime
apply?

The meaning of
the
reasonableness
requirement

The tenant's
right to
information
about service
charges

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The application of the statutory regime: The Basics

- Sections 18 to 30 of the Landlord and Tenant Act 1985
- Applies to a **service charge**, of which all or part will **vary** according to the **relevant costs**, which is payable as part of or in addition to rent by the **tenant** of a **dwelling**
- Service charges:
 - payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management and
 - the whole or part of which varies or may vary according to the relevant costs

The application of the statutory regime: The Basics

- Relevant costs:
 - The costs or estimated costs incurred or to be incurred by or on behalf of the landlord or superior landlord in connection with the matters for which the service charge is payable

The application of the statutory regime: The Basics

- Dwelling
 - a building or part of a building occupied or intended to be occupied as a separate dwelling, together with any yard, garden, outhouses and appurtenances belonging to it or usually enjoyed with it
 - a person may be “the tenant of a dwelling” even though his tenancy includes other property or more than one dwelling
- Landlord
 - includes a management company with whom the tenant covenants to pay service charges

The application of the statutory regime: The Basics

- Exclusions: tenancies granted by
 - Local authority
 - New town corporation
 - The Development Board for Rural WalesUnless the tenancy is a long tenancy
- Long tenancy =
 - Fixed term exceeding 21 years or
 - Perpetually renewable or
 - Granted under right to buy provisions

The application of the statutory regime: The Basics

- Special rules
 - Crown as landlord
 - RTM company

The application of the statutory regime: The Interesting Cases

Would the service costs charged to a tenant in his capacity as a shareholder of a landlord company (payable to the company under separate contracts made in and pursuant to the company's Articles of Association) fall within the regime?

No – this would not be in his capacity as tenant:

Morshead Mansions Ltd v di Marco [2008] EWCA Civ 1731

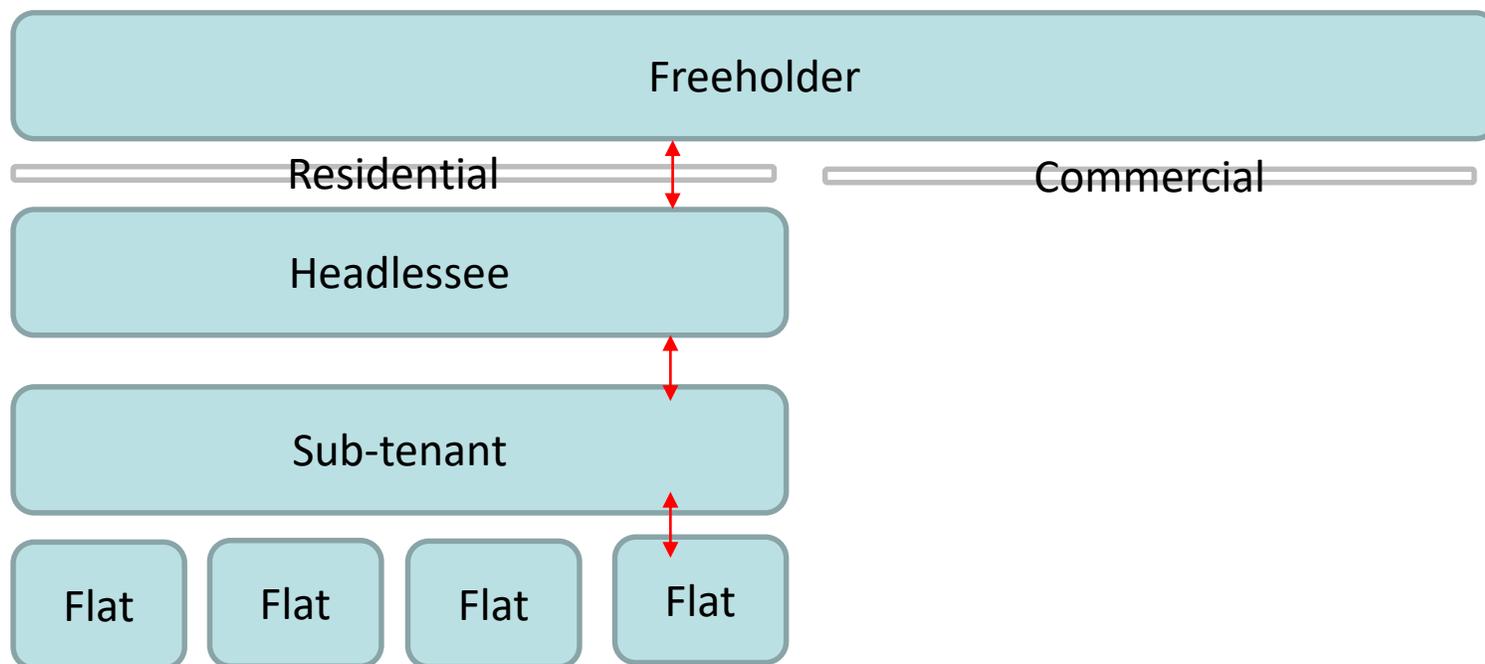
The application of the statutory regime: The Interesting Cases

Would student accommodation where living accommodation, such as a kitchen or living room, is shared with another tenant, or with the landlord, fall within the statutory regime?

Student accommodation can be a dwelling, despite not being the tenant's "home"
JLK v Ezekwe [2017] UKUT 277 (LC).

But unlikely to satisfy the criteria of "separate dwelling" because of the shared living accommodation
JLK v Ezekwe [2017] UKUT 277 (LC).

The application of the statutory regime: The Interesting Cases



To which charges
does the statutory
regime apply?

Heron Maple House Ltd V Central Estates Ltd [2002] 13 EG 102

Reasonableness: The Basics

- Section 19
- Only to the extent that costs are:
 1. Reasonably incurred
 2. Where they are incurred on provision of services or carrying out of works, works must be of a reasonable standard

Reasonableness: The Basics

1. Reasonableness should be given a broad common sense meaning.
2. Reasonableness involves consideration of
 - Whether the landlord's actions were reasonable (decision-making process); and
 - Whether the amounts charged to the landlord were reasonable (outcome).
3. Where the services or works are not provided to a reasonable standard, the charge may be reduced to reflect the deficiency.
4. The requirement of reasonableness extends to service charges payable in advance.

Reasonableness: The relevant factors



Failure to comply with
consultation
requirements

No need for the cheapest
possible outcome, just a
reasonable outcome

Management costs:
size of the block

Comparison to market
value of works or services

Whether landlord could
have procured work on
warranty or guarantee at
no cost

The existence and
quantum of any sinking
fund

Financial impact to lessees
of one big charge rather
than phased charges

Not sufficient that
landlord has paid sums
under superior lease

Nature of the works –
repair vs. improvement

The interests and views of
the tenants

Tenant's right to information

The Basics

1. Section 21: tenant can request written summary of costs incurred.
2. Section 22: tenant can request inspection of supporting documents within 6 months of obtaining s.21 summary
3. Section 23: tenant's s.21 request can trigger consequential obligations for landlord and superior landlord.
4. Section 84, Housing Act 1996: RTA can appoint surveyor to inspect documents and premises.
5. Chapter V of the Leasehold Reform Housing and Urban Development Act 1993: two or more qualifying tenants of dwellings have right to management audit.

Tenant's right to information

Section 21

1. Section 21: tenant can request written summary of costs incurred.

Request

(a) if the relevant accounts are made up for periods of twelve months, in the last such period ending not later than the date of the request, or

(b) if the accounts are not so made up, in the period of twelve months ending with the date of the request.

Time Limit

Within one month of request, or within 6 months of the end of the period referred to in (a) or (b), whichever is the later.

Tenant's right to information

Section 21

1. Section 21: tenant can request written summary of costs incurred.

RTA

If tenant consents, the request can be made by the secretary of the RTA

Contents

- Set out how the costs have or will be reflected in demands
- Costs which have not been demanded from landlord, costs which have been demanded but not paid, and which have been demanded and paid.
- Credit of tenant of each relevant dwelling

Tenant's right to information

Section 21

1. Section 21: tenant can request written summary of costs incurred.

Remedy

- No civil remedy – no injunction available
- Criminal offence only



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