



Sussex Housing & Care

## Leasehold Management Policy

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**This document is due for review by: July 2020**

Users should ensure they are consulting the current, valid version of the document.

### **Change control details:**

Record any changes to this document in the table below to provide a documentation audit trail.

<b>Date</b>	<b>Version</b>	<b>Reason for changes</b>
<b>19/5/2017</b>	<b>2</b>	<b>Updated with reference to ARHM Removed quarterly accounts</b>
<b>12/6/2017</b>	<b>3</b>	<b>Updated with reference to Safeguarding</b>
<b>23/6/2017</b>	<b>4</b>	<b>Updated with fire safety paragraph</b>

## **1. Introduction**

The Leasehold Management Policy outlines Sussex Housing & Care's (SHC) approach to the management of residential leasehold properties and the legal relationship between SHC and the leaseholder. The policy has been written using external examples from similar organisations and in consultation with SHC staff.

SHC has eight leasehold schemes, with four of these within the Leasehold Scheme for the Elderly (LSE), and the remaining four being traditional retirement housing schemes. LSE schemes are sold at 70% of open market value, but the occupant owns 100% of the leasehold property.

SHC is a member of the Association of Retirement Housing Managers (ARHM). ARHM have developed a code of practice which promotes good practice in relation to the management of retirement housing. SHC abides by this code and ensures all of its staff are aware of the requirements to meet the set standards. The code of practice has been approved by the Secretary of State under Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993.

## **2. Terms of the lease**

SHC will be bound by the terms of the leases issued to leaseholders. The lease is a contract between SHC and the leaseholder and sets out the rights and responsibilities of both SHC and the leaseholder. It includes information on:

- How the service charge has been calculated and the method and date when the payment is due.
- Repairs and maintenance responsibilities of both SHC and the leaseholder to the property, structure and common parts.
- Procedures for the leaseholder to assign (sell) the lease.
- Grounds for the landlord ending the lease.
- Operation of the sinking fund to cover the costs of the long term repair to the property.
- Defined amenity areas, footpaths and rights of way within the curtilage.
- Any other costs/fees to be levied by SHC.

At SHC we have a number of different leases, therefore it is important when dealing with a

leasehold matter to check the lease that relates directly to the property that any enquiry relates to.

### **3. Aims**

The aims of the policy are:

- To provide an efficient and responsive service to leaseholders.
- To comply with all the relevant legislation and regulatory guidance.
- To ensure that the costs of managing and maintaining leasehold properties are fully recovered.
- To communicate clearly with leaseholders by providing accurate and understandable information and advice.
- To provide leaseholders with a cost effective, efficient, value for money service.
- To ensure that repairs, maintenance and utilities charged to leaseholders are accurately calculated, levied and collected.
- To provide clear guidance for staff to carry out their roles within leasehold management.
- To develop and sustain high standards of estate management and community cohesion in our schemes.

### **4. Scope**

This policy applies to all leaseholders in our schemes. We have two different types of leasehold schemes in operation, one is known as the Leasehold Schemes for the Elderly (LSE) (Downash Court, Nevill Close, Sackville Court and Waldron Court) and the others are known as Retirement Homes for Sale. Our leasehold is mostly in self-contained blocks, but we have one scheme where it is mixed with rented accommodation.

### **5. Legal and regulatory framework**

The legislation relevant to the Leasehold Management Policy is comprehensive and subject to regular alterations. The main Acts of Parliament covering leaseholders are:

- The Housing Act 1985
- The Landlord and Tenant Acts 1985 and 1987
- The Housing and Planning Act 1986

- The Leasehold Reform, Housing and Urban Development Act 1993
- The Housing Act 1996
- The Commonhold and Leasehold Reform Act 2002 – which introduced significant amendments to the other Acts

The Leasehold Management Policy operates within the wider framework of policies on matters affecting management and services. Relevant policies include: Antisocial Behaviour, Resident Engagement Strategy, Complaints Policy, Estate Management Policy and the Safeguarding Policy and Procedure.

## **6. Key points of the policy**

### **Consultation and information**

- We will provide published service standards for key services such as the scheme manager, communal cleaning, window cleaning and grounds maintenance.
- We will provide leaseholders with a handbook that sets out the rights and obligations of both parties.
- We will aim to abide by the expectations set out in legislation regarding consultation.

### **Calculation and payment of services charges**

- SHC will prepare timely and accurate information about the cost of services for which service charges are due. It will provide leaseholders with a copy of audited annual accounts for management services within six months of the end of the accounting period. Leaseholders will be provided with an estimate of the following year's charges once the budget for that year's expenditure has been agreed, and in accordance with the requirements of leaseholders' leases.
- The service charges charged to leaseholders are known as 'variable'. The charges are set to reflect the actual costs for each property. Where a surplus has accrued over a particular financial year, SHC will carry it forward to the following year's account. Where there is a deficit, unless the lease advises differently, SHC will add it to the following year's service charge. We will provide a range of payment options and allow leaseholders to pay their annual service charge by direct debit over 12 months to spread the cost.

For a more detailed explanation please refer to the Leaseholder Service Charge Procedure.

## **Payment and arrears of service charges**

- Leaseholders will be sent information about their service charge accounts on an annual basis. Any leaseholder falling behind with their service charge payments will be advised accordingly.
- We will negotiate with leaseholders and if necessary the (lessees' mortgage). Each case will be considered on an individual basis. We may seek a repayment agreement with the leaseholder or obtain a charge on the property depending on the circumstances and level of debt.
- All leaseholders will be offered advice about housing and other benefits that may assist them in maximizing their income and/or meeting their service charge liabilities.
- Where other courses of recovery action have failed, consideration will be given to instituting legal proceedings. Legal action may include a money judgement, or following persistent failure to pay service charges, action for forfeiture.

For a more detailed explanation please refer to the Leaseholder Service Charge Arrears Procedure.

## **Sinking funds**

- Where the lease permits, each leaseholder will have a scheme sinking fund to meet future maintenance liabilities not covered by the annual service charge.
- Annual service charges will include a contribution to the sinking fund. Some leases may contribute to a sinking fund on a different cycle such as upon assignment. Therefore it is important that each scheme's service charge account is prepared in accordance with the individual lease.
- Future contributions to the sinking fund will be calculated using the 30 year lifecycle business plan model for each scheme.
- Leaseholders will be consulted on an annual basis about the future contribution to the sinking fund.

For more detailed information please refer to the Sinking Fund Procedure.

## **Day to day repairs**

- SHC will put arrangements in place to deliver a cost effective and quality repairs service to maintain the landlord's repairing obligations.
- We will recover the costs of communal repairs on a pro rata basis according to the number

of apartments in a scheme. This will be calculated on an annual basis within six months of the financial year end. Leaseholders will be sent a breakdown of relevant communal repairs and details of how these costs have been calculated.

- Details of the repair responsibilities of the landlord and the leaseholder are set out in the Leaseholder Handbook and the leaflet on Leaseholder Repairs.

## **Fire safety**

SHC has a duty to take steps to prevent fires breaking out in the communal areas, Leaseholders have responsibility for ensuring fire safety within their home. Where residents have individualized smoke alarms, they should check these on a weekly basis along with checking the doors within their flats are in good condition and shut properly. If a leaseholder is planning alterations to doors (in particular the flat front door) and the internal layout of the flat, they should contact SHC first as there could be implications for fire safety.

S20 notifications and consultation regarding major works and long term agreements

- SHC will observe the statutory requirements for consultation under Section 20 of the Landlord and Tenant Act 1985 (as amended). SHC is required to consult our customers on:
  - Proposed changes to contracts for long term services
  - Proposed major repairs or improvements for which they will be required to pay

For more detail on the requirements of S20 consultation please refer to: <http://www.lease-advice.org/advice-guide/section-20-consultation-for-council-and-other-public-sector-landlords/>

## **Gas Safety regulations and service offers**

- All leaseholders with a gas supply must provide an annual gas safety certificate from a 'Gas Safe' approved contractor in accordance with the terms of their lease. Leaseholders who choose to sub-let their properties must submit a copy of their landlord's gas safety certificate (known as CP12). We will provide an annual reminder to all leaseholders with a gas supply.

## **Sub-letting**

- SHC will allow leaseholders to sub-let their property provided they have received written permission beforehand.
- Leaseholders remain responsible for the payment of the service charges on their property should they choose to sub-let.

- Leaseholders will be made aware by SHC that they are responsible for the actions of their tenants. SHC will take action against leaseholders who do not deal effectively with their tenants if they commit acts of anti-social behavior or other acts which effectively break the terms of their lease.
- SHC will make leaseholders aware that if they are sub-letting that they have additional responsibilities as a landlord particularly in relation to gas servicing.

### **Breaches of lease and forfeiture**

- SHC will take action wherever we become aware that a leaseholder is breaching the terms of their lease. Such breaches may include the following:
  - Non-payment of service charges.
  - Unapproved works.
  - Failure to maintain, or damage, to premises.
  - Harassment or Anti-Social Behaviour.
- In the first instance, SHC will always try to reach agreement with the leaseholder prior to resorting to legal action.
- SHC will first serve notice on the leaseholder(s) to require them to remedy the breach. If the breach continues, further action will be taken which may include seeking an injunction or, as a last resort taking further action against the leaseholder(s) for forfeiture of their lease.

For more detail please refer to the Leaseholder Breach of Lease Procedure.

### **Anti-social behaviour**

- SHC will work with the leaseholder to prevent a breach of the lease. It will follow the principles set out in the Anti-Social Behaviour Policy.
- Where formal action has to be taken we will:
  - Take injunctive action against the leaseholder to comply with the terms of the lease.
  - Work with the police and the local authority to obtain an anti-social behaviour order against the perpetrator(s).
- As a final resort we will take forfeiture proceedings against the leaseholder(s).

For more detail please refer to the Anti-Social Behaviour Policy and Procedure.

## **Varying leases**

- SHC manages leasehold properties under a variety of different leases. On occasions it may be desirable to amend leases:
  - To reduce the number in use
  - To provide a uniform format
  - To enable service available to some leaseholders to be provided to others
- The terms of the lease will only be varied following consultation and with agreement of the leaseholders involved and where appropriate, their mortgagees, and where there is provision within the lease to do so.
- SHC would make an application to the First Tier Tribunal to vary the lease for a group of apartments. Where more than 75% of leaseholders agree and not more than 10% disagree (or in the case of eight or fewer properties not more than one party disagrees) with the proposal. In addition consent would need to be given by the lenders.

## **Lease extension**

- Lease extension is provided for in the Leasehold Reform, Housing and Urban 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. A lease is known as being "short" if it has less than 80 years remaining.
- SHC will take the opportunity to determine new lease terms if an extension application is made.

## **Statutory lease extension**

- The Housing Urban Development and Leasehold Reform Act 1993 (as amended) gives a leaseholder the right to purchase a new lease for a term of 90 years, plus the present unexpired term, all at a peppercorn rent (that is, ground rent free). This is subject to some conditions.
- The main conditions are that:
  - The customer is a qualifying leaseholder (named on the lease).
  - The customer has a 'long lease' (over 80 years remaining) on the property; and
  - The customer has owned the property for at least two years.

### **Discretionary lease extension**

- If the leaseholder does not qualify under the statutory terms SHC can offer a discretionary lease extension based on the same terms and conditions. SHC is under no obligation to offer this.

For more detail please refer to the Lease Extension Policy.

### **Requests for permission to make improvements**

- Leaseholders must obtain our consent before carrying out any improvements. In addition, where necessary leaseholders must obtain any planning permission and building control consents.
- SHC will refuse permission if there is:
  - An adverse effect on the structure of the building.
  - A likely increase in our future maintenance liabilities.
  - A likely reduction in the value of the building.
  - A change to rights of way or communal areas and other residents object to the change.
  - A contravention of the lease provisions.
- The terms of the lease will be enforced if leaseholders make alterations or improvements without first seeking our permission.

### **Complaints**

- SHC is committed to resolving all complaints in line with the Complaints Policy and the terms of the individual lease. Where SHC or the leaseholder are not in agreement with any decision made, either party reserves the right to apply to the First Tier Tribunal for the dispute to be heard.

## **7. Related policies and procedures**

This policy must be read in conjunction with the Leaseholders Handbook and Leaseholder Management Procedure Manual and the following generic policies:

- Antisocial Behaviour Policy
- Resident Engagement Strategy
- Complaints Policy

- Estate Management Policy
- Safeguarding Policy and Procedure

## **8. Monitoring**

Regular monitoring will take place to ensure we comply with this policy. Leaseholder surveys will be carried out annually and the results used to improve services. Leaseholders will be invited to assist from time to time in service improvement projects, such as the re-writing of the leaseholder handbook.

## **9. Staff training**

The staff involved in leasehold management and sales will be well trained, particularly following changes in the law. New staff will receive induction training and regular updates will be given to all staff that have any responsibility for a service to leaseholders.

## **10. Equality and diversity**

There are no specific equality and diversity implications for this policy. SHC will monitor the effectiveness of this policy to ensure statutory requirements are met and all leaseholders are treated equitably and fairly.