



NOTES ON  
SERVICE CHARGE  
CLAUSES IN  
COMMERCIAL  
LEASES

**T**hese notes were produced by a working party of the Republic of Ireland Branch of The Royal Institution of Chartered Surveyors and the Incorporated Law Society, and are intended for the guidance of Surveyors and Solicitors concerned with the leasing of commercial property.

Some of the practical problems encountered in this relatively new field are discussed and a check-list of services appropriate to each type of property has been prepared. This is intended only as a guideline, and as circumstances are likely to vary from case to case careful consideration should be given to the particular items to be included in each lease.

#### **Introduction**

Group occupation, whether it be in an industrial estate, an office block or a shopping centre, presupposes communal services. These services are provided by the landlord and charged back to the tenants on an apportionment which is usually based on area occupied.

The need for service charges springs from group occupation of single buildings which due to modern construction techniques tend to be larger and more complicated than heretofore.

Buildings in single occupation do not normally require service charge clauses as the tenant or occupier provides his own services at his own direct cost.

The charge is on a non-profit basis providing a pool of money out of which the manager pays for heating, cleaning, wages etc. reimbursing any surplus or recouping any deficit at each year end. At this point we would emphasize the distinction between the rent in respect of the premises and the service charge in respect of the services provided by the landlord, in that no element of the premises rent is attributable to the cost of providing such services. Each service charge clause must be carefully drawn having regard to the circumstances pertaining to the particular building and in relation to other lettings, e.g. joint fire-escapes etc.

#### **General**

It is usual for service charges to be estimated for the first year of operation with each tenant paying quarterly in advance. Thereafter each year is based on the foregoing with each year's differential (if any) being collected in a lump sum at the end of the year.

On the whole leases have followed this pattern, itemising services to be charged and usually drawing a wide general over-rider in case any service has been omitted from the detailed list.

We set out below some considerations which we as a profession would like to become standard. In addition we list a representation of the services which may be required by the different types of property.



1. When setting out the proportion of service charge payable, such proportion should be quantified either as a fraction or as a percentage and not left open for negotiation. Do allow for flexibility over the years particularly in phased developments.
2. A realistic estimate for the first year's costs having been obtained, this figure should be apportioned on the basis in (1) above and provision made either to hand back any surplus at the end of the year or alternatively, to collect any shortfall.
3. It is important in the event of a partial letting only to spell out who bears the percentage of service to be levied on the voids. This has often fallen to the landlord, but if, for example, only the occupied floors were being heated there might be a case where all the heating charge should be borne by the occupiers.
4. In times of inflation it can be seen from the method of collection outlined above that the landlord basing his advance contributions on the previous year's expenditure is short a considerable sum by the year end. A provision therefore to add a percentage to the previous year's figures in an effort to maintain parity is only prudent.
5. Service charges do not include housekeeping services within the demise, nor rates nor insurances.
6. Sinking Fund - the creation of a fund for future capital expenditure is frequently included. For further details see Appendix A.
7. A clause should be incorporated referring to the auditing of accounts and should in our view specify that an accountant be used but no time limit should be stated for the provision of account, or time should not be of the essence, as such time limit can be exceeded causing more problems.
8. In any development there should be no onus on the landlord to provide the services in the event of strikes, shortage of supplies etc; the landlord should, of course, use his best endeavours to obtain supplies.

### Service Charge Components

#### (1) Office Blocks

- A. Central heating or air-conditioning to a statutory level between 15 October and 15 May and at other times as deemed necessary, including the provision of fuel, maintenance, repair, replacement, supervision of the central heating, plant and installation and purchase of spare parts.
- B. Cleaning of the common parts including cost of labour and materials if necessary by a firm on contract.
- C. Supply of electricity to the common parts including light, power, motive power and water heating, also replacement and repair of bulbs, fittings etc.
- D. Cleaning of glass on both sides in the common parts including entrance doors, windows and glass partitions and all fixed external glass as often as considered necessary.

## NOTES ON SERVICE CHARGE CLAUSES IN COMMERCIAL LEASES

(Contd.)



**NOTES ON  
SERVICE CHARGE  
CLAUSES IN  
COMMERCIAL  
LEASES**

(Contd.)

- E. Supply of hot and cold water and drinking water to lavatory accommodation, tea stations and drinking fountains.
- F. Supply and maintenance of fire-fighting equipment including extinguishers, dry risers, hose reels and sprinklers and maintenance of fire exits, signs and an alarm system.
- G. Cost of fitting and maintaining internal telephone or Tannoy system, porter's telephone and house telephone.
- H. Operation and upkeep and replacement of lift service, lift plant and equipment including electricity and maintenance contract, and purchase of spare parts (if any).
- I. Maintenance and installation of emergency lights.
- J. Insurance of central heating/air-conditioning plant, lift plant and mechanical equipment generally.
- K. Repair, maintenance and decoration of interior and exterior of building, including where necessary the replacement or renewal of a section.
- L. Removal of refuse.
- M. Wages, uniform, insurance and pension premium for commissionaires and/or porters, car park attendants and all such service staff and including rent and rates for a flat in the building occupied by a resident caretaker if any.
- N. Reasonable professional fees for the management of the building by whomsoever carried out.
- O. Provision of internal and external shrubs and flowers and maintenance thereof.
- P. Reasonable accountants' fees incurred in the auditing of service charge figures.
- Q. Provision and maintenance of sanitary towel disposal systems within the women's toilet accommodation.
- S. Provision of working clothes, tools and appliances and other equipment to porter staff.
- T. Rates, if levied on the common areas.
- U. Provision and maintenance of such security arrangements as shall be considered necessary by the lessor including guards, alarms and mechanical services as are agreed.
- V. V.A.T. on fees or service provided in the course of management of the building.
- W. Provision of all such further or other services or amenities as the lessor shall consider ought properly and reasonably be provided for.

**(2) Shopping Centres**

Some provision should be made in the service charge (or elsewhere in the lease) for the collection of promotional moneys for the centre.

**(2-1) Covered Shopping Centres**

- A. Central heating, air-conditioning or mechanical ventilation including the provision of fuel, maintenance, repair, replacement, supervision of the central heating plant and installation and purchase of spare parts.
- B. Cleaning of the common parts including cost of labour and materials if necessary by a firm on contract.
- C. Supply of electricity to the common parts including light, power, motive power and water heating, also replacement and repair of bulbs, fittings etc.
- D. Cleaning of general glass throughout the shopping centre including shop fronts if any.
- E. Supply of hot and cold water to lavatory accommodation (if any).
- F. Supply and maintenance of fire-fighting equipment including extinguishers, dry risers, hose reels and sprinklers and maintenance of fire exits, signs and an alarm system.
- G. Cost of fitting and maintaining internal telephone system, Tannoy, piped music and close circuit television.
- H. Operation and upkeep and replacement of lift/escalator service, lift plant and equipment including electricity and maintenance contract, and purchase of spare parts (if any).
- I. Maintenance and installation of emergency lights.
- J. Insurance of central heating/air-conditioning plant, lift and escalator plant and mechanical equipment generally.
- K. Repair, maintenance and decoration of interior and exterior of building, including where necessary the replacement or renewal of a section.
- L. Removal of refuse and the cost of any equipment for treating or packaging of same.
- M. Wages, uniform, insurance and pension premium for centre manager, commissionaires and/or porters, car park attendants and all such service staff and including rent and rates for a flat in the building occupied by a resident caretaker if any.
- N. Reasonable professional fees for the management of the building by whomsoever carried out.
- O. Provision of internal and external shrubs and flowers and maintenance thereof.
- P. Reasonable accountants' fees incurred in the auditing of the service charge figures.
- Q. Provision of towels, soap, deodorisers etc. in the toilet accommodation (if any).
- R. Provision and maintenance of sanitary towel disposal system within the women's toilet accommodation.

**NOTES ON  
SERVICE CHARGE  
CLAUSES IN  
COMMERCIAL  
LEASES**

(Contd.)



**NOTES ON  
SERVICE CHARGE  
CLAUSES IN  
COMMERCIAL  
LEASES**

(Contd.)

- S. Provision of working clothes, tools and appliances and other equipment to porter staff.
- T. Rates, if levied on the common areas.
- U. Provision and maintenance of such security arrangements as shall be considered necessary by the lessor including guards, alarms and mechanical services as are agreed.
- V. V.A.T. on fees or services provided in the course of management of the building.
- W. Providing traffic control to and from within the centre including the maintaining and replacing of signs and signals and other equipment.
- X. Maintenance and repair and cleaning of service area, access road and perimeter walls and where necessary rebuilding or renewal.
- Y. Provision of all such further or other services or amenities as the lessor shall consider ought properly and reasonably be provided for.

**(2-2) Uncovered Shopping Centres.**

- A. Cleaning of the common parts including cost of labour and materials if necessary by a firm on contract.
- B. Supply of electricity to the common parts including light, power and water heating, also replacement and repairs of bulbs, fittings, etc.
- C. Cleaning of glass within the centre including shop fronts.
- D. Supply of hot and cold water and drinking water to lavatory accommodation.
- E. Repair, maintenance and decoration of exterior of building, including where necessary the replacement or renewal of a section and also including downpipes, drains etc.
- F. Removal of refuse and the cost of any equipment for treating or packaging of same.
- G. Wages, uniform, insurance and pension premium for centre manager, commissionaires and/or porters, car park attendants and all such service staff and including rent and rates for a flat in the building occupied by a resident caretaker if any.
- H. Reasonable professional fees for the management of the building by whomsoever carried out.
- I. Provision of external shrubs and flowers and maintenance thereof.
- J. Reasonable accountants' fees incurred in the auditing of the service charge figures.
- K. Provision of towels, soap, deodorisers etc. in the toilet accommodation (if any).
- L. Provision and maintenance of sanitary towel disposal system within the women's toilet accommodation.



- M. Provision of working clothes, tools and appliances and other equipment to porter staff.
- N. Rates if levied on the common areas.
- O. Provision and maintenance of such security arrangements as shall be considered necessary by the lessor including guards, alarms and mechanical services as are agreed.
- P. V.A.T. on fees or service provided in the course of management of the building.
- Q. Maintaining and repair and cleaning of service area access roads and perimeter walls and where necessary to rebuild or renew.
- R. Providing traffic control to and from within the centre including the maintaining and replacing of signs and signals and other equipment.
- S. Provision of all such further or other services or amenities as the lessor shall consider ought properly and reasonably be provided for.

**(3) Industrial Estates**

- A. Provision of fuel to central oil tank and maintenance, repair and replacement of oil tank and pipes.
- B. Cleaning of the common parts including cost of labour and materials if necessary by a firm on contract.
- C. Supply of electricity to the common parts including light and power, also replacement and repair of bulbs, fittings etc.
- D. Insurance of heating plant.
- E. Repair, maintenance and decoration of exterior of building, including where necessary the replacement or renewal of a section.
- F. Removal of refuse.
- G. Wages, uniform, insurance and pension premium for commissionaires and/or porters, car park attendants and all such service staff.
- H. Reasonable professional fees for the management of the building by whomsoever carried out.
- I. Provision of internal and external shrubs and flowers and maintenance thereof.
- J. Reasonable accountants' fees incurred in the auditing of the service charge figures.
- K. Provision of work clothes, tools and appliances and other equipment to porter staff.
- L. Rates if levied on the common areas.
- M. Provision and maintenance of such security arrangements as shall be considered necessary by the lessor including guards, alarms and mechanical services as are agreed.

**NOTES ON  
SERVICE CHARGE  
CLAUSES IN  
COMMERCIAL  
LEASES**

(Contd.)



**NOTES ON  
SERVICE CHARGE  
CLAUSES IN  
COMMERCIAL  
LEASES**

(Contd.)

- N. Maintenance and repair and cleaning of the service area, access roads and perimeter walls and where necessary to build or renew.
- O. Providing traffic control to and from within the centre including the maintaining and replacing of signs and signals and other equipment.
- P. V.A.T. on fees or services provided in the course of management of the building.
- Q. Provision of all such further or other services or amenities as the lessor shall consider ought properly and reasonably be provided for.

**Appendix A**

**Sinking Fund**

A major source of discussion is the construction of the sinking fund clause. At present, where included, this sub-clause is frequently drawn in very general terms leaving its implementation totally in the hands of the lessor.

1. It is our view that if such a fund is to be set up the following should be itemised:
  - a) The exact nature of the equipment for which the fund is to be used, for example, in the Plant account the boilers, fans, cooling tower, compressor, refrigeration machine but NOT the ducting or the electric wiring.
  - b) The exact cost of this equipment at installation.
  - c) An estimate of the plant's life.
  - d) A provision for updating the replacement cost say, every five years.
  - e) How the fund is to be administered, i.e. where it is to be invested, how the annual calculations as to contributions are to be made, whether the fund is to be in the joint names of landlord and tenants.
  - f) In what circumstances may the fund be drawn on.
2. It is our view that with the increase in the rate of inflation the administration and collection of such a fund is onerous on landlord and tenant alike.
3. As items of plant are insurable and as the tenant is responsible for replacement and repair it is recommended that a sinking fund contribution be omitted, but if this is so, the repairing covenant must be reinforced to include replacement of items of plant etc. either directly or through the service charge.

**Short-term Reserve Fund**

Provision may be made for a short-term reserve fund for the completion of ongoing repetitive maintenance works like painting on a three-yearly or five-yearly basis.