



**CON-VERSATIONS**

**Building Safety Act  
2022 -Service charges**

Key take-aways

September 2022

The Building Safety Act is one of the most important pieces of legislation for the construction sector in a generation.

Borne out of the Grenfell tragedy, it holds developers, contractors, consultants and the supply chain responsible for sub-standard cladding and fire safety systems. But it goes beyond fire safety and aims to give tenants safe and suitable places to live, without pushing huge costs for this through their service charge.

The key features of the Act in relation to the service charge arrangements for mid-rise and higher risk buildings include the following:

- the introduction of protections as to the type, quantity and timing of service charge costs, in particular for “qualifying leases”
- provisions are deemed into residential lease service charge schedules, allowing the landlord to recover the costs associated with the running of the increased building safety regime under the Act – rather than the costs of remediation works
- in particular the costs of cladding remediation works can not be recovered from tenants of qualifying leases
- landlords cannot recover the costs of defects which the landlord itself, or an associate, are responsible for in the first place
- individual leaseholders are given additional protections via a cap on the total amount they can be required to contribute with no more than 10% of the maximum to be billed in any one year
- where the qualifying lease is of lower value, or the landlord’s group net worth over a particular threshold, the costs of remediation works can’t be recovered via the service charge
- the key date to consider is 14 February 2022 which is the date by which a lease is judged to be a “qualifying lease” or not
- landlords are put under an obligation to consider and pursue grant funding, insurance proceeds or claims against contractors or designers, in order to pay into the service charge fund for a building
- costs irrecoverable from one tenant may not be recovered from another, nor from any sinking fund
- additional information to be included in residential service charge demands for higher risk and mid-rise buildings
- whilst the majority of protections relate to residential service charges, some of the provisions of the Act relating to service charge apply to all leases in a relevant building – including leases of commercial premises and leases of residential premises which are not “qualifying”.



# What do I need to do?

- carry out due diligence on your portfolio to determine whether the residential leases in the mid-rise and higher risk buildings are “qualifying leases” – best done sooner rather than later as it is the facts as at 14 February 2022 that count
- be proactive in considering alternative sources of funding – claims, insurance proceeds, product guarantees or grants
- review and add to template service charge demands to ensure the new administrative requirements of the Act are met
- with the consequences for service charges so complex, don’t be quick to come to conclusions as to recoverability or otherwise of costs

# For more information, contact us



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