

Guidance notes on with holding payment

Gather evidence of the lack of maintenance - photos and note any dates the land is or is not worked on and how long any contractors were there. Ask your council for a copy of the landscape maintenance schedule agreed with the original developer (this should say what is supposed to be done). Read your transfer deed (TP1) to see if it stipulates what they are supposed to deliver and at what cost. Look to see if it stipulates what information they are required to provide.

Write to the management company and get a receipt of delivery saying you are with holding payment because they are not doing the maintenance at a reasonable cost (give a description based on your evidence). Say very clearly you are "in dispute" with them over the service charge. You may choose to with hold part or all of the payment, but if there is a rent charge element on your bill, pay this to avoid them sending bailiffs without a court order. Decide what you want them to do to rectify the problem e.g. refund for previous years and/or actually maintain the land - you will know best what you want. Then tell them this very clearly in your letter.

Ask them what systems and processes are in place to obtain value for money.

Ask what processes are or have been in place to ensure the land is adequately prepared before hand over to the management company and how any conflict of interest has been dealt with since the original landowner will have been responsible for the preparation.

What you do next depends on their response. If they don't do anything and proceed to try to collect your "debt" then you can report them to the police for harassment. They are not supposed to go after you whilst you are in dispute. If you are prepared to go to court and they haven't attempted to resolve the dispute, it will go against them.

If you are prepared to fight in court (and some of our members are doing just this) then when you get a solicitors letter, simply acknowledge it and tell the solicitor you are in dispute. DO NOT GIVE YOUR DEFENCE to their solicitors or try to negotiate with them. They are not acting for you. Instead ask the management company for a subject access statement as part of the pre action protocol – there is a small charge for this. When you get a court summons, WRITE DIRECTLY TO THE COURT with your defence. This should include all your evidence and what you have done to try to resolve the dispute. Be very careful to follow proper court procedure to get your evidence admitted and considered. There is an excellent guide at <https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/CJC/Publications/Other+papers/Small+Claims+Guide+for+web+FINAL.pdf>. A copy is available from our own site on the Take Action page.

You may wish to get legal advice at any stage, we are a network of home owners, not solicitors. The above guidance has drawn on our collective experience of what works and what doesn't.

What we can say is that it may be possible to recover some unreasonable charges, but you cannot challenge the fundamental unfairness of the business model in the small claims court. Remember also that the management company will recover its costs through the service charge if they are not awarded against you personally.