

Service Charges, Housing Benefit and Universal Credit

May 2020



The YMCA in Walthamstow

Introduction

This briefing paper considers service charges, housing benefit and universal credit. We have also published briefing papers 'Introduction to service charges' and 'calculating and de-pooling service charges' that may be of interest to readers.

Some service charges are eligible for housing benefit while others are not. Generally, to qualify for housing benefit a service charge must be for a housing-related service as opposed to a personal service, and it must be a compulsory condition of the lease or tenancy agreement that the resident receives the service and pays the service charge.

Service Charges that are Eligible for Housing Benefit

Service Charges are eligible for housing benefit so long as they are:

- Paid as a condition of occupying the dwelling as a home; and
- Not listed in the regulations as ineligible; and
- Not excessive in relation to the service provided.

The Housing Benefit Regulations 2006 (as amended) set out the eligibility of service charges for housing benefit.

The following services are usually eligible for housing benefit:

- Provision of a heating system
- Fuel, water and sewage for communal areas
- Furniture and household equipment
- Communal window cleaning
- Other exterior or interior window cleaning that no-one in the household can do.
- Communal cleaning
- Other cleaning that no-one in the household can do.
- Emergency alarm systems in certain accommodation.
- General counselling and support that meets certain conditions
- Most communal services relating to the provision of adequate accommodation including children's play areas, TV and radio relay and other services that are related to the provision of adequate accommodation. Such services include portering and refuse removal; lifts, communal telephones and entry phones; and communal laundry facilities.

Service charges for general counselling and support are eligible for housing benefit only if the following criteria are met:

- It is in supported accommodation
- The charges are for time spent on 'general counselling' or 'other support services'
- The services are provided by the landlord personally or by a person on the landlord's behalf.
- The services are general counselling and support that:
 - Assists the claimant with maintaining the dwelling's security.
 - Assists the claimant with maintaining the dwelling's safety (including arranging for checking the claimant's own appliances if they could be a safety hazard.
 - Is directed at assisting the claimant with complying with the terms of his or her letting agreement relating to nuisance, rent liability, maintenance of the interior and / or the period of the letting – including in each case assisting the claimant with contacts with individuals or professional or other bodies with an interest in ensuring the claimant's welfare.
 - Is for any other general counselling and support provided by a resident or on-call warden – but in this case only in accommodation that is one of a group of dwellings that the landlord lets as a matter of practice to people in need of general counselling and support.

Whether the landlord's normal overheads (such as maintenance, insurance and repairs) count as services or as part of the rent is an arguable point but in either case, they are eligible for housing benefit.

The Welfare Reform Act of 2012 led to changes in how the welfare system works including how the housing costs of claimants are met. The government has introduced the under-occupation penalty, benefits cap and universal credit. The under-occupation penalty reduces housing benefit for tenants who are deemed to be under-occupying their homes but people of retirement age and people who live in exempt accommodation are exempt. The benefits cap does not apply to exempt accommodation and was originally set at £350 a week for single people and £500 for couples and families. The universal credit is having a phased introduction but will not apply to tenants who are over working age or to those living in supported accommodation.

Service Charges that are not eligible for Housing Benefit

Schedule one of the 2006 Housing Benefit Regulations (as amended) lists ineligible service charges as follows:

- Most charges in respect of food.
- Laundry (other than the provision of premises or equipment to enable a person to do his or her own laundry).
- Leisure items such as either sports facilities (except a children's play area) or television rental and licence fees (unless it is the only practicable means of receiving the standard television channels).
- Cleaning of rooms and windows except cleaning of:
 - Communal areas
 - The exterior of any windows where neither the claimant nor any member of his or her household is able to clean them where payment is not made in respect of such cleaning by a local authority (including in relation to England, a County Council) or the National Assembly for Wales to the claimant or his or her partner or to another person on their behalf.
- Transport
- Charges in respect of furniture or household equipment and the use of such furniture or equipment where it will become the property of the claimant by virtue of an agreement with the landlord.
- Charges in respect of the provision of an emergency alarm system.
- Charges in respect of medical expenses (including the cost of counselling related to mental disorder, mental handicap, physical disablement or past or present alcohol or drug dependency).
- Charges in respect of the provision of nursing or personal care (including assistance at mealtimes or with personal appearance or hygiene).
- Charges in respect of general counselling or any other support services, whoever provides those services.
- Charges in respect of any services not specified above which are not connected with the provision of adequate accommodation.

The following services are usually ineligible for housing benefit even in supported accommodation:

- Water charges
- Other fuel
- Meals
- Window cleaning
- Other cleaning
- Emergency alarm systems outside certain accommodation
- General counselling and support that does not meet certain conditions
- Specific counselling and support
- Medical / Nursing / Personal care
- Other day to day living expenses including laundering, transport, sports facilities, TV and radio rental and licence and satellite service charges, any other leisure items or day to day living expenses or any other services that are not related to the provision of adequate accommodation.

Eligibility of Service Charges for Meals

The 2006 regulations make the following provisions regarding the eligibility of service charges for meals:

“(1) Where a charge for meals is ineligible to be met by housing benefit under paragraph 1, the amount ineligible in respect of each week shall be the amount specified in the following provisions of this paragraph.

“(2) Subject to sub-paragraph (4), where the charge includes provision for at least three meals a day, the amount shall be—

(a) for a single claimant, £20.05.

(b) if the claimant is a member of a family—

(i) for the claimant and for each member of his family aged 16 or over, £20.05.

(ii) for each member of his family under age 16, £10.15.

In effect, the regulations class as ineligible that proportion of the service charge that is equivalent to what a resident would have spent on providing food for themselves if they were provided with cooking facilities, while any additional costs arising from meals being provided in a communal dining area are eligible for housing benefit.

Universal Credit

Universal Credit, introduced in April 2013 with an initial three pilot schemes, merges six existing benefit payments (including housing benefit, job seekers allowance, employment and support allowances, child tax credit, and working tax credit) into one single payment. Once fully operational, the system will oversee £70billion of benefit payments annually. It is heavily reliant on Information Technology systems to calculate benefit payments based on the most up to date information at hand. This way, the system can respond to changes in the recipient's income level and for example reduce benefit payments gradually. The system is only accessible to claimants online and is like a salary in that it follows a monthly pay-out schedule. Through the dynamic payment of benefits, the government hoped to boost the economy by £7billion annually based on improved work incentives and reduced benefit payments.

Under the Housing Benefit system, local authorities are allowed significant discretion in the interpretation of the housing benefit regulations. However, the Department for Work & Pensions is now phasing out Housing Benefit and phasing in Universal Credit. There is no local discretion with Universal Credit as there is with Housing Benefit.

Universal credit requires a culture change. There is a single payment, even for couples. It is a monthly payment made directly to a tenant. The system is managed online. There are new rules of entitlement written in legislation. These have been established already. There are new conditions and sanctions.

Local authority Housing Benefit departments will continue to wind down gradually. Housing Benefit will continue to be paid to pensioners and administered by local authorities.

The Universal Credit process is as follows:

- Make claim online
- Invite to interview
- Text reminder
- Interview at Job Centre Plus with evidence to support claim. Sign claimant commitment (after this the Job Centre Plus deals with finding work and not the Universal Credit claim)
- Look for work
- Universal Credit decision letter

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- Work focus interview
- Call service centre to discuss issues and change of circumstance
- Letter confirming any change

It takes five weeks from making a claim to receiving a payment. Tenants and landlords deal with a centralised service centre rather than the local Housing Benefit office.

The claim form asks for rent and eligible service charges. Claimants are pointed to their landlord for help in identifying what service charges are eligible. Landlords are not under an obligation to provide the information. The claim asks for a total of rent and eligible service charges and not for a breakdown.

Housing Benefit assumes that Service Charges are eligible unless they are specifically ineligible. Universal Credit assumes service charges (not the service itself) are ineligible unless they meet the criteria. There are four conditions of eligible service charges:

- The right to occupy the accommodation is dependent upon the tenant paying service charges, for example where it forms part of the tenancy agreement.
- The service charge wholly falls into one or more of the following categories:
 - The right to occupy being dependent on paying Service Charges.
 - Maintaining general standards.
 - Maintaining areas of communal use with basic communal services.
 - Tenant accommodation specific charges.
- The costs or charges are reasonable and that they relate to such services as it is reasonable to provide.
- There are several exclusions, which include any charges for meals, medical services, and personal services of any description.

Maintaining the general standard of the accommodation includes charges for the external cleaning of the tenant's windows, but only where the tenant does not live on the ground floor; and, in the case of shared ownership tenancies only, internal or external maintenance or repair of the property, but only where those payments are separately identifiable as being for that purpose.

Service Charges for services in areas of communal use include:

- The ongoing maintenance (including repair), cleaning and utility (provision of heating, water, electricity etc.) costs of:
- Communal grounds maintenance (general basic gardening for communal gardens such as lawn mowing, tree management, hedge maintenance, litter removal etc., lighting and maintenance costs for areas of external access (where the tenant is liable to pay for these)
- Tenant car or bike parking (this does not extend to the manning of car parks for security purposes). Such charges must relate to maintaining a parking service for tenants, and must not relate to the provision of security for the tenant's vehicle
- Communal laundry facilities
- Children's play areas (equipment maintenance, surface maintenance etc); and,
- Internal areas of common use outside of the home (hallways, corridors and rooms), including provision of lighting and emergency lighting
- The external and internal cleaning of windows of communal areas
- Health and safety charges for eligible communal areas or eligible communal service (such as legionnaires assessment, chlorination of water tanks, dechlorination of water tanks, water softness, electrical equipment checks, pest control, fire prevention and detection etc.)

Service Charges for the cost of basic communal services include:

- Charges relating to the provision, maintenance, cleaning or repair of:
 - Communal lifts (including stair lifts in communal areas)
 - A communal telephone (but excluding the costs of telephone calls)
 - Adaptations in communal areas (where other public funding is not available to provide for this, such as the ongoing maintenance costs)
 - Secure building access (key-cards, keypad door locking mechanism etc.); and
 - Provision of equipment (such as aerials) to access free-to-air television and radio. Where this equipment includes the ability to extend services to include satellite/cable television or internet connection, any extensions to the service will not be eligible for benefit payment.
- Charges for the provision, maintenance and repair of:
 - Refuse collection (e.g. refuse chutes, communal refuse collection and disposal etc.); and
 - Closed Circuit Television, where this is provided for the purpose of maintenance of areas of internal or external communal use (to help maintain the availability of an eligible communal service or facility).
- Charges for the provision of services, but only the proportion that directly relates to time spent on providing that eligible service:
 - If a person, such as a concierge, groundskeeper or caretaker, is employed to provide any eligible service charge, then the relevant proportion of staffing costs for this person will be eligible; and
 - The costs for management and administration of eligible services, whether incurred by the landlord or by third parties, that the tenant is liable as calculated and charged for in accordance with the terms of their tenancy agreement or other related agreement.

Tenant accommodation specific charges include charges relating to the rental of basic furniture or essential domestic appliances to tenants in the accommodation they occupy, only where the items being rented remain the property of the original owner and do not form part of a purchase or part ownership agreement.

There is also a specific list of ineligible services.

Under Universal Credit there are the following service charges exclusions:

- Where public funding (in the form of benefits, grants or other sources) is designed to contribute towards the cost of the service or facility, irrespective of whether the tenant has claimed for the funding
- Where the tenant would acquire an asset or interest in an asset
- Any charges for meals, medical services, personal services of any description
- Charges deemed as ineligible service charges by virtue of not meeting the requirements of an eligible service charge

The principles of eligibility are:

- Public funding exclusion.
- No luxuries. (for example, security for car parking). It is not clear whether CCTV would be regarded as a 'luxury' although it could depend on the purpose of the CCTV and whether it could be excessive. There have been cases of the Department for Work & Pensions excluding service charges for CCTV.
- Management charges (only charges associated with the service charge)
- Supported & sheltered housing

- Depreciation (The National Housing Federation are disappointed that The Department for Work & Pensions has not been persuaded to change its position that depreciation is ineligible. The National Housing Federation think that if a service is eligible the landlord should be able to charge for it how it wishes including using depreciation)

Changes in the process include:

- The Department for Work & Pensions requires information from the tenant – so the landlord needs to give the tenant information. This may prove an imposition on landlords
- Service charge verification.
- The Department for Work & Pensions is managing and spending its own money, and this will drive a different dynamic to the current system. Decision-making and challenge will therefore change. There will be benchmarking of service charge costs.
- The Department for Work & Pensions will decide what is excessive

The government is looking for significant savings in the cost of benefit administration with significant reductions in staff numbers.

Universal Credit reduces entitlements for people with low earnings and high mortgages but can increase entitlements for people with high earnings and small mortgages.

The question of how to treat depreciation remains. The National Housing Federation think that the treatment should be up to landlords. They think it is reasonable to spread the costs of capital investment over the life of an asset. The Department for Work & Pensions agree but refuse to take depreciation off the list of charges that are ineligible for Universal Credit. However, landlords can make a usage charge.

The question of 'excessive' service charges also remains. The Department for Work & Pensions will not pay for 'luxuries', things that are 'excessive' or things that should be paid for by another income stream. For example, there is a scheme in London where there is a garden for private tenants, but social tenants are not allowed to use it as it would generate a service charge that the Department for Work & Pensions would not pay.

Digital claims for Universal Credit are needed. This includes a statement of how much rent and service charges are paid. Tenants need to get this information from their landlord.

At present the Department for Work & Pensions has not made a clear statement about whether and when claimants of pensionable age will move from Housing Benefit to Universal Credit or Pension Credit, but this is considered likely to happen eventually. Pension credit is an income-related benefit made up of guarantee credit and savings credit. The benefit is set regarding whether the claimant is disabled, is a carer or has housing costs such as service charges to pay.

Housing Benefit is not a guaranteed long-term source of funding and the implications of Universal Credit need to be considered carefully.

The Impact of Universal Credit on Service Charges: Example – East Thames Group

The East Thames Group is the smallest of the G15 housing associations. It makes a deep offer to small numbers and does a lot of regeneration and care & support. It was involved in the retrofitting of the Olympic site for affordable housing.

Universal Credit is all about direct payments to residents. Residents need to understand the affordability of service charges. In practice the service charges team pick up the pieces after the development has been completed rather than being involved in the planning. East Thames Group has moved the service charges team to the centre of the organisation. Residents need to declare their eligibility. They have found that landlords cannot future proof their systems to deal with Universal Credit and benefit changes.

The landlord can help people to help themselves through:

- Residents registering increases
- Information is currently on paper, so it is now time for 'cut & paste'
- In kind incentives, can be provided but discounts are problematic
- Services and charges become visible
- Resident understanding empowers challenge
- Going beyond 'FAQs' to a service charges guide

It is not clear whether people embrace the technology. This depends on client ability to understand charges, access a device, complete online form and demonstrate eligibility.

Landlords will find themselves spending resources that they cannot recoup including:

- Failures to ensure charges are eligible before billing.
- Appeals as residents say ineligible should be eligible
- Increased focus on costs by tenants
- Increased arrears as Universal Credit doesn't cover costs
- How to make the choice if services need to be cut

There is a need to avoid pitfalls by:

- Returning to fixed service charges
- Keeping up to date with regulations
- Allocating costs carefully and calculating ineligible and eligible service charges
- Making charges clear and offering value for money
- Benchmarking (including rents)
- Keeping customers informed and consulting over the options available
- Keeping staff informed
- Ensuring information provided meets the Universal Credit guidance

It is possible to help people by:

- Delivering clear and transferable information
- Making computers available at schemes surgeries and offices (East Thames Housing Association has only 15% of residents with computer access)
- Building in staff capacity to assist claimants
- Preparing a service charges guide including 'FAQs'
- Considering incentives in kind
- Keeping enquiries to a minimum

20% of properties are lived in by leaseholders but they make 80% of the queries. East Thames has an in-house customer contact centre, but they don't have skills and knowledge to deal with service charges. Queries are handled by the service charge team and they are reluctant to give up this role. But it would be more economical to give the work to the customer contact centre, so they are currently doing some process mapping and training.

The Impact of Universal Credit on Service Charges: Example – Curo Housing Association

Curo is a not-for-profit housing and support organisation based in Bath, providing affordable homes and high-quality care and support services across the West of England. They manage 12,000 homes and are building around 300 new homes every year.

The Curo experience is that:

- Access to a service centre can be difficult and expensive for customers. Some housing association staff work from the job centre. Customers miss the direct relationship with the housing benefit team. There is a need to work to bridge this gap.
- Alternative payment arrangements & third-party deductions are inconsistent but improving
- There has been minimal take up of budget support offer. This now lies with the work coach, so it may improve. Curo is now setting up a local welfare reform and financial inclusion partnership.
- It is simplistic. That's why it works so well. There is no online access other than the claim form. The system is all telephone based.
- Service centres provide no local access – there is a loss of relationship & vulnerable customers struggle

76% of people on Universal Credit have borrowed from family or friends. 14% have overdrafts or credit cards. 5% have doorstep loans. 5% have payday loans. People with financial problems avoid talking to housing officers.

Extra Care schemes: Fair Access to Care, Supporting People and Service Charges

Residents in extra care schemes are usually able to access a wide range of support and care services that are provided by Adult Services and typically consist of the following:

- Community Alarm Service
- Self-Directed Support
- Home Care and Day Care and other non-residential care services

The latter two services will only be provided to scheme residents where an assessment of need undertaken by Adult Services staff indicates that these services should be provided. In these circumstances the resident may elect to use a personal budget to provide their own services rather than using the ones provided by or commissioned by the council.

All residents are legally liable for paying their own housing costs and for meeting their support and care charges. These individual costs and charges are determined and collected (where appropriate) separately by the relevant organisation. It is the responsibility of Adult Services to assess and collect care charges.

All residents are required to pay a service charge in respect of a range of services and communal facilities and in addition are individually liable for Council Tax for their own properties. Residents may receive assistance with some of these costs, depending on their financial circumstances, through Housing Benefit, a Council Tax reduction scheme, or Mortgage Interest Payments (paid with other state benefits by the Department for Work & Pensions). These benefit awards are means tested and have other criteria that must be satisfied before any payments can be made. As these charges form part of the total rent and therefore must be paid by all residents, they are everyday living expenses for the type of accommodation they have chosen to live in.

A Council will consider the same principles as Housing benefit when considering maintenance charges. As well as the services included in and paid for via the respective schemes service charges the support costs may include those relating to basic Helpline equipment – if this isn't available free through the Supporting People Programme. These charges are made in respect of either Home Care / Day Care Services or other non-residential care services provided by or through Adult Services.

Potential charges for care services are determined in accordance with a Council's Adult Social Care - Charging Policy. All potential extra care residents who are subject to an assessment of need will be provided with a financial assessment and full benefit check. It is intended that charges for the care and support provided in extra care should be reasonable, demonstrably fair and should support social inclusion and independence.

The care and support services provided are assessed under the Community Care legislation and council charging policy to ensure that they accord with the Department of Health's guidance document for non-residential social services 'Fairer Charging Policies for Home Care and other non-residential Social Services'. This assessment process is designed to ensure that any charges levied consider the scheme residents' other charges and allowable expenditure.

Although scheme residents can use the charge review and appeals process in respect of charges due for their care services, a council will usually monitor the range of charges potentially payable by scheme residents to ensure that they remain affordable and remain less than the cost of residential care placements.

Charges under Fair Access to Care are usually calculated by taking the lower of:

- The cost of providing the services
- The maximum that the client can afford, calculated by assessing their income and deducting certain allowable expenses from that.

Responsive Repairs and Major Works

Social landlords often recharge tenants for responsive repairs and major works where these works have been made necessary by the actions of the tenant. For example, at Connect Housing the policy is as follows:

"The Association may recharge the tenant for any repairs that it has to carry out, which fall within the scope of the tenant's responsibilities. These types of repairs are usually as a result of tenant misuse, abuse, neglect, wilful damage or carelessness, caused by the tenant themselves, family or visitors to their home. Where these repairs cannot be attributed to normal wear and tear or component failure, we expect tenants to pay for these repairs in full or, alternatively, the tenant may carry out the repair themselves."

How landlords can ensure positive liaison with service charge payers

The Chartered Institute of Housing has identified 'ten top tips' to ensure effective service charge management. They are:

- Involve tenants and leaseholders at an early stage in setting the service charges and agreeing appropriate arrangements of monitoring estate service delivery.
- Provide user-friendly information about service charges that explains how they are set, what services they are for and how service delivery is monitored.
- Ensure you comply with legislative requirements for consultation with leaseholders.

- On multi-landlord and multi-tenure estates it is good practice (and helpful for community cohesion) to consult tenants and leaseholders in a similar way, especially where everyone is receiving the same services.
- Create sub-accounts for service charges in order to separate service charge elements from the rent, ground rent, sinking fund, etc.
- Explore, with residents, the options to include or exclude services or change services to get better value for money.
- On multi-landlord and multi-tenure estates, liaise with other landlords and their tenants to consider whether an estate-wide service contract for some communal work is feasible and whether it will achieve a better value for money service.
- Ensure that any information about tenders and contracts for the work is in plain language so that all residents can understand what this will mean for them; this will help the consultation process to be effective.
- Consider people who will need information in other languages or formats.
- Consult individual tenants and residents as well as their recognised residents' association (under Section 29, Landlord & Tenant Act, 1985).

The Chartered Institute of Housing also identified 25 'golden rules' of service charges. These are:

- Service Charges are at the heart of good leasehold management. It is an essential role. It requires more focus than any other tenure type.
- Accuracy is key. You should focus on this relentlessly. It is how you should be judged. Information should be timely, accurate and numerate. Standards should be set high.
- There are only two possible answers: Right and Wrong.
- There are no grey areas. You need to reach a decision. Your position needs to be set out on everything. Then apply it consistently.
- If you have a 100% leasehold block you should recover 100% of your costs.
- Your job is to maximise income. First and foremost. You have a gatekeeper role. Understand cross-subsidy. Understand financial loss.
- Successful service charging is about good asset management and good financial control.
- Service Charges are a property management function. Look at leases. Not complex financially. Significant potential for complexity elsewhere. What happens on the ground? Success from teams working together.
- Calculate on an accrual's basis using the historic cost convention.
- Estimates are easy. Actuals should be hard.
- Never adjust an estimate.
- Estimate to the pound. Actualise to the penny.
- The only data you need to construct service charges is the data that any good property management organisation should already hold.
- You only need one figure from the estimates to construct the actuals: the total.
- Set service charges up right from the start – new contract, new service, new supplier. Include in contractual terms. Data to fit property hierarchy. Include major works contracts.
- Get your information from the service providers.
- Don't use the corporate accounts to construct charges, use them to reconcile the charges (plus to prove and for cost capture).
- Collect global information.
- Gather answers to your queries as you go. Collate information in construction. Make requests to inspect.
- Charges are property specific, not person specific.
- You need only six things to recharge a repair: Order number, completion date, actual amount, property, location, description.

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- Bills must be on time. Treat each service charge release as a project. Understand the dependencies. Control as much as you can.
- Actual file notes and annual manuals.
- Check twice, adjust once. Check several times in fact. Match demands to schedules. Variance checks can be the best way to spot mistakes.
- Find ways to deal with the fact that many people will have no idea about what you are doing. The task. You help. Briefings. Queries. It comes right over time.

Landlords are more likely to ensure positive liaison with service charge payers where the focus of the service is on customers, where value for money is achieved, where information is transparent and where there is two-way communication between the landlord and the service charge payers.

Adrian Waite
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