

Briefing Paper

National Housing Federation Conference on Service Charges – 3rd December 2013

December 2013

Introduction

The National Housing Federation held a conference on Service Charges in Manchester on 2nd & 3rd December 2013 which I attended as a speaker. My two sessions were entitled:

- Ensuring Excellent Customer Service
- The Supported Housing World

The conference was also held in London in September at which I spoke on:

- How to calculate and apportion service charges effectively

Copies of my presentations can be downloaded from my website at: <http://www.awics.co.uk/nhf.asp>

I also prepared a briefing paper on Supported Housing and Universal Credit that can be downloaded from my website at: <http://www.awics.co.uk/suppthsg.asp>

The purpose of this briefing paper is to summarise the presentations that were made by the other speakers,

Can you future proof your systems to deal with Universal Credit and benefit changes? – Christian Woodhead, Assistant Director of Customer and Neighbourhood Services, 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 is involved in the retro-fitting of 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 is currently trying to move the service charges team to the centre of the organisation. Residents need to declare their eligibility.

The implications of Universal Credit include:

- Benefit changes mean less cash coming in
- Residents must maximise income
- Leaseholders are affected by the downturn
- Sub-letting poses real issues. The economic status of the sub-lessees is unclear

The background to Universal Credit is:

- June 2012 draft regulations
- Welfare Reform Act 2012
- Draft guidance – December 2012
- Final draft guidance – April 2013

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- When finally introduced the housing element of Universal Credit will replace Housing Benefit

You cannot future proof your systems to deal with Universal Credit and benefit changes.

There are three steps in the process:

- Landlord determines which service charges are eligible for housing benefit
- Eligible amount is input by the tenant or Department for Work & Pensions as part of housing benefit claim
- The Department for Work & Pensions pays the full eligible amount as part of the Universal Credit payment

The Criteria include:

- Costs must be requirement of lease or tenancy
- Payments must meet categories in guidance
- Costs and apportionment must be reasonable – what will be regarded as excessive?
- Costs must not relate to personal charges

There is a long list of ineligible service charges including:

- Living expenses
- Personal services
- Care services
- Alarms
- Support services & expenses
- Transport
- Aids & adaptations
- Televisions
- Social & recreational areas

Affordable rent must stay within the Local Housing Allowance.

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

Have landlords had a chance to study the form? There is a need to consider what is the best format to give information to residents so that they can complete the form.

Will 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 ineligibles 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.

A delegate asked about the future of management fees as there is often a hidden subsidy from tenants to leaseholders. Circle Housing Association are certainly looking at this including whether a 15% on cost for administration would be eligible.

Standards in Service Charge Recoument and Issues Resolution – Jackie Oakes, Partner, Assurance and Business Services, Smith & Williamson

The Lease is not always written in language easily understood by accountants; and custom and practice can evolve that differs from the lease.

The Landlord & Tenant Act provides that:

- The Leaseholder has a right to a summary statement of costs. It must cover a twelve month period, a summary should be given within six months of the end of the period or twelve months of request. The statement must be supported by the report of a qualified accountant if there are more than four leaseholders and they request a report.
- Landlords often provide information up front to avoid the need to trigger the formal report.
- The landlord must provide an audit if this is specified in the lease.

The Institute of Chartered Accountants of England & Wales (ICAEW) guidance covers best practice including independent examination by an accountant. It covers accounting and reporting of variable service charges in TECH03/11. It:

- Applies to all landlords
- Provides examples of accounts and accountants' reports
- Summarises the law but is not updated for case law.

There is no legislative requirement for an audit for the validation of costs, but it may be required in the lease. Before 1980 'audit' had a looser meaning than today. If the lease is post-1980 and mentions 'lease' careful planning is required.

Except for old leases, audit means compliance with international standards of audit. This is likely to be onerous. Compliance with ISA800 is required on special purpose financial statements. However, the following alternative is available:

- Appendix E and F TECH03/11 work programme for making a factual report. It is described as minimum procedures but is actually quite extensive.

Appendix E includes:

- Design & document procedures for gathering evidence
 - Occurrence, completeness, accuracy, cut off & classification
- Links between procedures and risks
- Obtaining written confirmation from landlord on consultation
- Considering possible sources of evidence and the terms of the lease

Appendix F includes a checklist of tasks:

- Obtain copies of leases
- Agree figures in statements to the accounting records
- Document preparation process
- Compare with previous year and budget
- Check compliance with lease requirements in relation to signatures – a wrong signature can invalidate the statement.
- Check treatment of voids.
- Check income to source if over 5% of spend
- Check samples of expenditure to invoice and payment
- Seek written confirmation from landlord that relevant costs have been accurately included.

Common errors in service charge statements include:

- Cut off errors
 - Should be on an accruals basis
 - Can include items from previous periods if reasonable
 - But bear in mind changes to leaseholders and terms of leases
- Inclusion of improvements – can only be done if the lease specifies. Sometimes the lease is not clear so consultation with leaseholders is required.
- Estimates - If the invoice is not received it can be charged if there is a regular pattern or quote provided and evidence work has been completed. It is not chargeable if it is one-off and there is no quote.
- Apportionments
 - Need to be consistent with the lease or (if not specified) reasonable. There also needs to be an audit trail.
 - Apportionment of in-house maintenance staff can be difficult.
- Voids are generally the responsibility of the landlord – unless the lease specifies otherwise

Techniques to improve the process of validation and reduce cost include:

- Project planning
 - Timetable
 - Risk assessment
 - Agreed deliverables
 - Quality control

- Communication process
- Learning points
- Documentation of process
- Self-review

Service charges are usually calculated using large and complex spreadsheets so it is easy to make simple errors. Therefore it is advisable to include checks in the formulae of the spreadsheet and to get a second person to validate the calculations.

Techniques include:

- Method of compilation
- Established trails
- Reconciliation of accountancy records
- Clarity over judgments (and documentation)
- Transparency and disclosure

How to undertake effective consultation before major works – process for section twenty – (a) Steve Chapman, Leasehold and New Tenures Manager, Catalyst Housing

Section twenty applies to tenants with variable service charges as well as leaseholders.

Problems with section twenty notices include:

- Not being addressed correctly – so it is advisable to address notices to Mr. X ‘and all leaseholders’
- Residents don’t live there
- Leaseholder has sold but landlord does not know
- Resident claims not to have received any notice

Key Points include:

- Address notices &/or leaseholder(s)
- Check data from system
- Know issues before the start
- Tailor the notice and include ‘FAQs’
- Proof of notices
- Proof of sending – recorded delivery is not to be advised as the leaseholder can prove it was not received by not signing for it. Hand delivery can be done and supported by a witness statement from the person who did the delivery. Proof of posting notices can be requested from the Post Office, or a statement can be taken from someone that they took to the Post Office letters addressed to a specific list of people. The law considers that if you post a letter it is deemed to be received the next day if sent first class.

Residents tend not to respond to section twenty notices. However, they do respond to the estimates notice as it includes prices. Some residents will think that it is a bill. Residents are entitled to inspect the estimates and to make copies. Catalyst Housing Association will email scanned copies but the legislation says that residents can inspect the physical documents.

Catalyst Housing Association decides what to include in the programme on the following basis:

- Works are based on the stock condition survey. This indicates when to do what, identifies the programme and enables the association to add new units or delete units.
- Reviews of new schemes (they are inspected six to twelve months after being built), periodic surveys are carried out every five years, regular updates are made to the programme, residents are kept informed.

- Long-term agreements – existing contracts are reviewed when each contract is up for renewal. The landlord must serve a section twenty notice when contracts are renewed if the annual cost is over £100; there are stakeholder strengths / weaknesses (for example the contractor will want to get on with the work while the finance team will want to collect the service charges); the association will add new or expected contracts.
- There is a need to identify the impact of rolling contract reviews on service charges for tenants and leaseholders

The Planned works programme is managed by:

- Contacting residents eighteen months or so before it is expected to be on site.
- Identifying indicative costs and possible liabilities / reserve funds / payment options. Deciding whether to expect up-front payment or instalments.
- Dealing with all the issues before serving the section twenty notices.

The Section 20 process often has three notices. The third notice is where the contract is not the lowest price (quality analysis or resident feedback leads to its rejection) and a reason needs to be given to the residents unless the contract goes to a contractor nominated by the leaseholders. There is a need to include a summary of observations received on the second notice and how that was taken into account.

Often there is a 'leaseholder lawyer'. It can be claimed that the work is not the landlord's responsibility. However, there is case law to say that window replacement is a landlord responsibility. Residents may argue for a 'cherry picker' rather than scaffolding but case law supports the argument that scaffolding is required on health & safety grounds. It can also be demonstrated that scaffolding can be cheaper.

For example: Planning permission is needed to replace windows on a listed building. The leases can be amended to allow for improvements. Secondary internal glazing can be added where the existing glass is listed. It can be argued that the leaseholder is responsible for secondary glazing. Catalyst is taking the case to a tribunal.

How to undertake effective consultation before major works – process for section twenty – (b) Adrian Shaw, Group Head of Leasehold Management, Centra Living

During 2012 social landlords wrote off £2.8million following Leasehold Valuation Tribunal decisions. In 52% of 113 cases the leaseholders won their cases. The main themes were:

- Inadequate / non-compliant section twenty consultation
- Unnecessary repairs
- Unacceptable standards

The association reviewed its repairs & maintenance contracts. The review considered customer feedback, improvements to delivery, needs of member landlords, geography and good practice in the public and private sector. The objectives were to:

- Maximise buyer power and save £100million over ten years
- Consistent standards and services to customers
- Improved efficiency, simplified processes, improved information technology
- Create excellent service for all customers

The solutions identified were:

- Six contracts in three regions
- Three responsive repairs contracts – awarded to Kier, Keep Moat and the Direct Labour Organisation.
- Three programmed & planned maintenance contracts – awarded to Kier and United South

The Notice of Intention was issued in May 2011

- It was co-ordinated by the non-leasehold team
- External legal advice was used
- The notice was tailored to be customer friendly including 'FAQs'
- Contract / observations were managed in one team

Over 30,000 properties were consulted. There were 100 logged telephone calls and seventeen formal written observations.

The Notice of proposal was issued in May 2012

- It was undertaken by leasehold team
- External legal advice was used
- Two proposals (responsive maintenance and planned maintenance) were included in the letter including 'FAQs'
- Tender documents and schedules of rates were deposited in offices to be viewed
- The contracts were divided into three regions, with two contracts a region
- Outcomes included: 64 logged telephone calls, fifty formal written observations (52% from leaseholders of same landlord who sent same letter)

The main observation themes were:

- Length of contract, with a view that there would be complacency with a contract lasting over ten years
- Competitive pricing, with a view that value for money would not be achieved with a contract lasting over ten years
- Negative perceptions of contractors

Practical Challenges included:

- Working with ten landlords
- Working with 30,000 tenants & leaseholders
- Landlords with properties in multiple regions
- Creation of mail merge to send to printer
- Timescales – printing, standstill, briefings
- Staffing up for the unknown volume of the contact
- Responding to observations
- Historic dissatisfaction manifested itself
- Letters worry some customers
- Responding to the 'what will it cost me?' questions

The following worked well:

- Explanations in letters, especially the 'FAQs'
- Good technical support from procurement and property staff
- Observations built into the process
- Residents involved in evaluating contractors
- Accepted observations by email
- Used returned notices to review records, subletting and sales

Lessons learned included:

- Included some leasehold properties in error
- Managing tender and schedule of rates across many offices was challenging
- Log everything with enough detail to analyse
- The database can be further developed

- Anticipate contact where regeneration work underway or planned
- Plan how to share information (including tenders and schedules of rates) and how to respond to requests for information.
- Provide extra information to active groups & attend meetings
- Think about challenges during the life of the contract
- Be prepared for challenges once actual works proposed with estimates

Improvements to the section twenty processes included:

- Section twenty team with training
- Exploring how to increase awareness and understanding for customers
 - Attending meetings, standardising notice mail outs
- Developing web page and general information
- Reviewing opportunities to save postage & printing
- Analysing contact to identify improvements
- Investigating lack of contact to see if residents are engaged in the consultation

Emerging issues include:

- A first tier tribunal case pending on the reasonableness of estimates and procurement under public notice
- *Woelke v Southwark (2013) UKOT0349(LC) LRX/6/2012* – it is possible to charge on estimate but offer repayment terms. There is a need to demand money at the time of estimate.

Managing Mixed Blocks – Leasehold & Rented Challenges – Dawn Thomas, Leasehold Services Manager, Plus Dane Group

Management Practices present the following challenges:

- Two or more teams manage one building
- Tenancy agreements and leases can be complimentary or poles apart. They are usually poles apart
- Information Technology systems – Leaseholders are often not on the same system as the tenants

For example, at Beechtree Court there are eighteen social rented and six leasehold flats. The local lettings policy states that rented apartments are for the over 55s but leases have no age related restrictions on assignment or sub-letting.

Resident Expectations can differ by tenure in terms of:

- Attitudes and perception
- Whether service standards should be the same
- Leaseholders can be prepared to pay more for services while tenants can want to keep costs affordable.

For example, Jack Lee Mill has thirteen shared ownership flats. It is next door to Waterside Mill that contains 48 social rent tenants. Tenants and their visitors use the parking bays at Jack Lee Mill. Waterside Mill also experiences anti-social behaviour and there was a vandalised and boarded up flat that could not be let.

Resident Consultation can be formal or informal:

- Informal – resident meetings, participation groups, social functions, board opportunities.
- Publications get tone right. They still get the tenant magazine but now there is also a leaseholder magazine.
- Formal – for example section twenty consultations

Service Charge Budgets should be kept simple, reflecting the following:

- One budget per scheme to show charges for all tenures
- Clear headings
- Include explanations where possible
- Finance systems should be set up to code expenditure correctly

It was concluded that landlords should:

- Ensure leases and tenancy agreements complement each other
- Get to know the block. Is it one community? Can you help it become one community or are the management practices segregating it?
- Encourage the leasehold and neighbourhood management teams to work together.
- Ensure leasehold and rented properties are managed on the same Information Technology system to aid communication.
- Recognise that each tenure requires specialist management at times but managing together can help mixed tenure blocks to be managed more effectively.

Problems can arise where the leaseholders and tenants want different contractors. In practice tenants are more likely to want to support the direct labour organisation.

Case Study on De-Pooling Service Charges for Tenants – Challenges and Successes – Andrea Lowman, Director of Assets, First Ark Group

First Ark Group de-pooled because of pressure from the Homes & Communities Agency, board pressure, the need for increased income because of the credit crunch and service improvement. But it was hoped that the service charges would be equitable and tenant-led.

De-pooling was to be done in 2007, five years after transfer. It was delayed due to the 2008 Housing & Regeneration Act, the length of time taken to deliver, mandatory timescales and consultation. Implementation started in April 2009.

Considerations included: phased introduction, capped charges and full recovery. Net target rent increases would rise steeply.

Affordability was considered. De-pooling was implemented in a year of high rent increase (7% overall). Issues arose related to the economy and the credit crunch. Support was required for tenants who were not eligible for housing benefit. Support was needed for transferring tenants. Lift maintenance in high rise flats was not included due to affordability.

Consultation and rationale raised issues. Key tenant issues were affordability and complexity – especially explaining to older tenants. The association used a one-to-one process. The challenge was to sell service improvement benefits and maintain openness on cost.

Complexities regarding individuals arose because there were no unilateral agreements to change; the tenancy agreement only permitted a small number of service chargeable items; there were differing tenant circumstances; board understanding; and implications for older and vulnerable tenants.

Complexities regarding tenancies included: Chasing rent arrears after new tenancy agreements were issued, enforcing Suspended Possession Orders, managing tolerated trespassers (see Peabody v Reeve), heating charges and issues of future changes.

Mixed tenure issues were limited due to the number of leaseholders but included: Leaseholder consultation / right to manage, leaseholders charged at cost, low risk due to numbers.

The Benefits of de-pooling are:

- Service improvement
- Estates services team
- Communal investment
- Grounds maintenance contracts
- Parity and fairness
- Support additional inward investment
- Clarity on service levels (landlord and tenant)
- Ecopod
- Assessment of asset value
- Additional homes and investment
- Clarity of charges

The Disadvantages of de-pooling are:

- Tenants view of loss of caretaking service
- Impact on project costs for CCTV etc.
- Introducing new costs

Prior to introducing service charges the homes reached the Decent Homes Standard but communal areas were poor. Service charges have enabled an improvement to the communal areas.

Ongoing issues include:

- The Bedroom tax – leading to the re-designation of properties. It is not clear whether the proportionate charge will reduce service charges
- Caretakers
- CCTV updates
- Impact on asset management – lift maintenance is expensive and there is no sinking fund for replacement,
- Ability to be flexible with the service
- Tenants now assume the service is the norm and don't see why they should pay for it in some circumstances.

Adrian Waite
December 2013

All You Want To Know About Service Charges

We are holding our seminar and workshop 'All You Want to Know about Service Charges' in April. This seminar and workshop is designed to give an introduction and overview to this important subject and is fully up to date with all developments.

Service charges are an integral part of landlords' work in financing value for money services and sustaining customer satisfaction. They have always been relatively complex but with landlords, leaseholders and tenants facing increased financial challenges and with increased legal complexity there is an increased need to understand how service charging works.

This seminar and workshop is presented mainly from a financial point of view and is designed for people who are not experts in service charges, but who need to understand the basics and achieve an overview of what is going on. It is suitable for councillors, board members, housing managers, finance staff, tenant representatives, members of the service charges team who have limited experience and others who realise that an understanding of service charges can place them at an advantage!

We believe in quality rather than quantity and so numbers at each session are limited to twenty people to permit the maximum possible interaction and participation.

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What the Session Covers:

The session will answer the following questions:

- How do Service Charges work:
 - In Housing Associations and Local Authorities?
 - For Leaseholders and Tenants?
- How are service charges calculated?
- How to de-pool service charges?
- When are service charges eligible for housing benefit?
- How to ensure excellent customer service?

The session includes a participatory case study and is accompanied by a very useful 100 page book that is designed for reference after the session entitled: **“All You Want To Know About Service Charges”**

Venue and Date:

London: Novotel Hotel, Waterloo – 29th April 2014.

About ‘AWICS’

‘AWICS’ is a management consultancy and training company. We specialise in providing support in finance and management to clients in local government and housing in England, Scotland and Wales. We are well known for our ability to analyse and explain complex financial and management issues clearly.

Our mission statement is ‘Independence, Integrity, Value’. We therefore provide support to clients from an independent standpoint that is designed to help the client to achieve their objectives. We are passionate about working with the utmost integrity. We believe that we offer the best value for money that is available today!

For more information about us and our services please visit our website at www.awics.co.uk or contact Adrian Waite at Adrian.waite@awics.co.uk

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