

April 2014

## Briefing:

# Service charges and Universal Credit

## Key issues

- Service charges are governed by legislations and regulation
- Eligibility for benefit will change under Universal Credit (UC)
- There is a need to inform tenants claiming UC of eligible and ineligible charges

## Introduction

This note provides some brief information for Federation members on service charges. The Federations detailed publication 'Service Charges: a Guide for Housing Associations' provides in depth advice on the administration of service charges. For more details see <https://www.housing.org.uk/OnlineStore/Default.aspx?tabid=44&action=INVProductDetails&args=9434>

While some of the issues set out below are relevant to Scotland, Wales and Northern Ireland, this note deals with the legal and regulatory regime for England.

Contact name: John Bryant or Sue Ramsden  
[john.bryant@housing.org.uk](mailto:john.bryant@housing.org.uk) or [sue.ramsden@housing.org.uk](mailto:sue.ramsden@housing.org.uk)

020 7067 1010  
[www.housing.org.uk](http://www.housing.org.uk)

A service charge may be fixed or variable.

Each association will make its own decision on the most appropriate service charge regime to operate based on the merits of the two different regimes. In brief, the advantage of a variable regime is that it guarantees that expenditure properly incurred on services is recoverable from service charge payers; but the drawback is that a variable charge imposes procedural requirements that can be quite complex and demanding, and any errors or omissions in following these will often mean that some or all the charge cannot be recovered. A fixed charge, by contrast, is relatively easy to administer but means that overspends cannot be recovered (although underspends may be retained).

Note that for many statutory purposes, including the requirements of the Landlord and Tenant Acts, the term 'service charge' is defined (by section 18 of the L&T Act 1985) in a way that confines its meaning to variable service charges.

## **Fixed service charges**

A service charge is fixed if surpluses and deficits are absorbed by the landlord. They are not carried forward to the following year's account. Such a service charge is said to be 'fixed' because, from the tenant's point of view, once the charge has been set there is no subsequent adjustment, no matter how much the landlord may have overspent (or underspent) during the year in question.

Please note that the term 'fixed' is not intended to imply that the charge remains the same from one year to the next. On the contrary, it would normally change from year to year reflecting how much the landlord expects to spend on services.

Fixed service charges are the norm in local authority rented housing and very common in Registered Social Landlord (RSL) rented housing.

A fixed service charge counts as part of the rent and, for assured periodic tenancies, it will be governed by section 13 of the Housing Act 1988 in the same way as the rest of the rent.

## **Variable service charges**

A service charge is variable if the surpluses and deficits on each year's account fall to the tenants rather than the landlord. This sort of service charge is said to be 'variable' because, after each year's service charge account is closed, an adjustment is made to cover the gap between the amount budgeted and the actual spending. In theory, this adjustment could be effected by issuing a one-off demand to tenants or, if there was a surplus, by making a one-off

Contact name: John Bryant or Sue Ramsden  
[john.bryant@housing.org.uk](mailto:john.bryant@housing.org.uk) or [sue.ramsden@housing.org.uk](mailto:sue.ramsden@housing.org.uk)

020 7067 1010

[www.housing.org.uk](http://www.housing.org.uk)

payment to them. In the RSL sector, however, where a variable charge applies the normal practice is to carry forward the surplus or deficit and adjust the following year's charges accordingly.

For a variable service charge to exist, it must be created by the tenancy or lease, which should also set out how it will be collected and how each year's adjustment will be made.

Variable service charges are standard in property sold on long leases and it is not uncommon for them to be used by RSLs in rented housing.

A variable service charge does not count as part of the rent for the purposes of section 13. Variable service charge payments are best regarded as the tenants' money, rather than the landlord's money. They are governed by sections 18-30 of the Landlord and Tenant Act 1985, the general effect of which is to impose complex and administratively demanding requirements on landlords, which were made tougher by the Commonhold and Leasehold Reform Act 2002.

## **Service charges and the rent notice**

If the service charge is fixed, it counts as part of the rent for the purposes of the rent notice (although not for the purposes of rent restructuring). Accordingly, the rent stated in paragraph 2 of the form should be inclusive of the service charge. There is no legal duty to identify such a charge separately from the rest of the rent, but RSLs are expected to do so as part of rent restructuring, and where it is identified separately it should be entered in the appropriate box in paragraph 5 of the rent notice. Unregistered associations are under no obligation to identify the service element separately, but if they do they should enter it under paragraph 5.

If the service charge is variable, it does not count as part of the rent for the purposes of the rent notice, and the rent in paragraph 2 should be exclusive of the service charge. Landlords may want to attach a covering letter explaining that there is an additional variable service charge.

To sum up:

A fixed service charge

- is part of the rent
- should be included in the total rent stated in the rent notice
- can be changed only when the rest of the rent is changed
- is the landlord's money, and
- is not subject to the Landlord and Tenant Act 1985;

Contact name: John Bryant or Sue Ramsden  
[john.bryant@housing.org.uk](mailto:john.bryant@housing.org.uk) or [sue.ramsden@housing.org.uk](mailto:sue.ramsden@housing.org.uk)

020 7067 1010

[www.housing.org.uk](http://www.housing.org.uk)

A variable service charge:

- is not part of the rent
- should not be included in the rent notice
- can be changed at different times of year from the rent
- is the tenant's money, and
- is controlled by the Landlord and Tenant Act 1985.

## **Social rent properties**

Under the HCA's Regulatory Framework 2012, social rents are defined as excluding any identified service element. This means that the social rent, for this purpose, will exclude not only a variable service charge (which will have to be identified to comply with the Landlord and Tenant Acts) but also a fixed service charge provided it is separately identified (as the Regulatory Framework requires it to be).

## **Affordable rent properties**

It is clear that the affordable rent is a gross figure – that is, it is inclusive of any service element. This corresponds to the market rent on which it is based, which is likewise inclusive of services. This reflects practice in the private rented sector, where private landlords do not normally identify any separate service element; instead, they negotiate an overall payment with the tenant.

Regarding the question of fixed or variable service charges, there is no specific regulation on the point. However, the normal benefit of a variable regime – that it allows the recovery of service overspends – does not apply to an affordable rent scheme. Many associations, therefore, have adopted a fixed service charge regime in affordable rent properties, even if they operate variable charges elsewhere. Since the regulation of social rents does not apply to affordable rent properties, there is no particular requirement or expectation that a fixed service element should be separately identified.

## **Implication for people claiming Housing Benefit**

Most HB claimants in the private sector are covered by a Local Housing Allowance and are outside the scope of this briefing.

For HB claimants in social housing, the basic principle is that the housing element of HB will include cover the cost of any service that the tenant is required to pay under the tenancy

Contact name: John Bryant or Sue Ramsden

[john.bryant@housing.org.uk](mailto:john.bryant@housing.org.uk) or [sue.ramsden@housing.org.uk](mailto:sue.ramsden@housing.org.uk)

agreement, unless it falls within any of a list of ineligible services. The HB rules do not distinguish between fixed and variable service charge regimes. In a variable regime, the Landlord and Tenant Acts will apply and the landlord will be obliged to identify service costs. In a fixed regime, the landlord is under no legal duty to break down the service charge (or even to identify it separately) but if an ineligible service is provided, the HB regulations provide for its cost to be deducted from the claimant's entitlement, and for certain services (e.g. heating or board) specific scales are laid down for this purpose.

## **Implication for people claiming housing costs through Universal Credit**

For social housing tenants, Universal Credit (UC) maintains the principle that there will be a housing element based on the actual rent; the treatment of service charges is different, however, in that they are covered only if they fall within a list of eligible charges. In other words, instead of being eligible unless ineligible, as under HB, services under UC are ineligible unless eligible.

## **Information for tenants claiming UC**

To claim UC a tenant needs to complete the claim form including details of his or her rent and eligible service charge. The tenant will need to provide the DWP with evidence supporting this information e.g. a rent statement and tenancy agreement.

The Universal Credit claim form contains the following information for tenants claiming UC to cover service charges:

*Eligible service charges are service charges that you can report to Universal Credit as housing costs. Your service charge statement from your landlord will show which service charges are eligible. If you're not sure, contact your landlord*

In order for housing costs to be calculated accurately the tenant must provide the correct information on the UC claim form and provide evidence to allow DWP to verify the claim. The landlord should therefore provide tenants with information that shows clearly which charges are eligible for UC. Variable service charges will have to be identified to comply with the Landlord and Tenant Acts but associations will have to add information about UC eligibility. A similar approach should be taken to fixed charges in social rent properties.

## A note on depreciation

Despite the change in approach in UC as compared to HB, the overall effect is that the boundary between eligible and ineligible services remains broadly as it was. However, some uncertainty has arisen about the treatment of depreciation. Although the UC rules do not allow for depreciation as an eligible charge, it is the Federation's understanding that DWP's intention is that the cost of an eligible item should be covered by UC regardless of whether the tenancy provides for its cost to be recovered in the single year of acquisition or over a period of years. Associations that recover costs in this way are advised to make the position very clear in their presentation of service charges, and it may be helpful to specify the nature of the item in question rather than use the term 'depreciation'.

## Universal credit timetable

Universal credit is live in ten areas across Britain: Wigan, Tameside, Oldham, Warrington, Rugby, Inverness, Hammersmith, Bath, Harrogate and Shotton (North Wales). In these areas DWP are accepting new claims from some newly unemployed people. At present there are very few live UC claims and significantly less claims with housing costs. For 2014 DWP plans to further expand the live areas for UC in the North West of England and to test and then roll out claims for couples and then families.

While current plans mean we will not see large volumes of claims for UC during 2014 it is important to remember that UC claimants can move anywhere in the country and continue the claim for UC so claimants are not necessarily confined to the areas set out above.

For the DWP's list of FAQs for landlords

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/275875/universal-credit-rented-housing.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/275875/universal-credit-rented-housing.pdf)

For a copy of Universal credit guidance for landlords on service charges

<http://www.dwp.gov.uk/docs/universal-credit-service-charges-guidance-landlords.pdf>

For the UC regulations covering service charges see:

<http://www.legislation.gov.uk/ukdsi/2013/9780111531938/schedule/1>

**John Bryant** (john.bryant@housing.org.uk)

**Sue Ramsden** (sue.ramsden@housing.org.uk)

*April 2014*

Contact name: John Bryant or Sue Ramsden

[john.bryant@housing.org.uk](mailto:john.bryant@housing.org.uk) or [sue.ramsden@housing.org.uk](mailto:sue.ramsden@housing.org.uk)

020 7067 1010

[www.housing.org.uk](http://www.housing.org.uk)