

Service Charge Policy

Department: Housing Landlord Services

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1. Scope

Ealing Council provides services to its tenants and leaseholders which are rechargeable through the service charges. The service charge cost is typically separated into services provided to the defined estate and services which are block specific. This policy outlines the types of services the council operates for its tenants and leaseholders, and the accounting treatment applied to each type to achieve transparency and clarity of cost for service charge payers. The following aspects of service charge handling are included within the scope of this policy:

- a definition of a fixed and variable service charge
- the charging mechanism for variable and fixed service charges
- the treatment of individual types of charges
- the accounting treatment of voids and accruals

Excluded from the scope of the policy are:

- consultation under Section 20. S20 Consultation is referred to in the policy in terms of thresholds for Qualifying Long-Term Agreements and Qualifying Works
- treatment of applications to First-Tier Tribunals (Property Chamber)
- compensation payments for residents

2. Policy statement

The purpose of the service charge policy is to clearly set out the basis by which the council sets service charges for tenants and leaseholders.

The policy is based upon the principles of accuracy, transparency, statutory and regulatory compliance, and value for money.

Service charges are levied by landlords to recover the cost that is incurred to deliver services to communal areas within the blocks and estates. These charges typically cover the cost of maintaining or servicing components in the communal areas, providing utilities, insurance and management costs.

The way that a service charge is structured is set out in the resident's tenancy or lease agreement. A landlord can only recharge costs if the tenancy or lease agreement identifies it as recoverable through service charges. Our tenancy agreements and leases allow us to recover costs through service charges.

3. Definitions of fixed and variable service charges

All Ealing Council leaseholders are charged a variable service charge. At the beginning of the financial year in April, a service charge estimate is sent out to all residents, who are provided with a service to the communal parts of their property or estate. Residents then make payments towards those charges during the year. 6 months after the end of the financial year, the council has a legal obligation to send the actualised cost of providing services to all residents once the accounts are reconciled. This is done in the form of a statement which indicates whether there has been a debit or credit adjustment requirement for the corresponding period. If the overall effect of the credit adjustment is a credit balance, a refund would be provided to the leaseholder in accordance with the terms of the lease.

The council operates a fixed service charge for all council tenants. An estimated charge is set at the beginning of the year but there will be no cost reconciliation at the end of the accounting period. The council will,

however, carry out a review of the actual cost against the estimated cost to ensure that the estimated charges to residents continue to be closely aligned to the actual cost of service provision.

Aims and objectives

The aim of this policy is to set out our approach to the setting and management of service charges for our residents. The policy is designed to achieve the following objectives:

- develop a consistent approach to setting fair and reasonable service charges that provide value for money for residents
- ensure compliance with current legislation, regulations, lease and tenancy terms and conditions
- the quality of the service delivered is good
- clarity about the principle on which the council's service charges are based
- deliver quality services that are cost efficient, clear, and transparent
- ensure that there is a clear audit trail to demonstrate the reasonableness of costs incurred

4. Legislative and regulatory context

This policy takes account of the council's statutory requirements as at the date of implementation including:

- Landlord and Tenant Act 1985
- Landlord and Tenant Act 1987
- Commonhold and Leasehold Reform Act 2002
- Housing Act 1980
- Housing Act 1985
- Housing Act 1996
- Arbitration Act 1996
- Housing Act 2004
- Consumer Protection Act 1987
- Law of Property Act 1925
- Localism Act 2011
- Social landlords reduction of service charges: mandatory and discretionary directions 2014
- Building Safety Act 2022

Service charges are regulated on a case-by-case basis by the First Tier Tribunal (Property Chambers) and by the rent officer service for secure tenants. However, we have referred to the following guidance in developing this policy:

- Regulator of Social Housing, Rent Standard, Supplementary Guidance
- Greater London Authority, Shared Ownership Charter for Service Charges
- Royal Institution of Chartered Surveyors, Service Charge Residential Management Code (Code of Practice)
- Royal Institution of Chartered Surveyors, Service Charge Commercial Management Code (Code of Practice)
- GLA Consultation on Intermediate Housing
- National Housing Federation service charges guide for landlords.

5. Estimate setting

Each year, the council provides residents with an estimate of the charges that are expected to be levied for the forthcoming accounting year as defined in the tenancy, lease agreement or transfer documents. Residents are asked to make payments based upon the terms of their lease or tenancy agreement i.e. usually in advance but in some cases in arrears.

Estimates are calculated using a combination of current contract costs, historical trends in the costs incurred and a forecast of future demand for services.

All variable service charge payers receive an annual service charge estimate from the council at the beginning of the accounting period for applicable services provided to the block and estate. The estimated cost is adjusted against the actualised cost and the result of the analysis is sent to the leaseholder on an annual basis as a service charge debit or credit adjustment.

6. Treatment of the credit/deficit for variable service charges

By the end of September of each year, we will send an invoice to all leaseholders with a debit adjustment. Payment of the balance would be required in accordance with the terms of the lease. Equally, all credit adjustments are issued to the service charge account and

may be refunded if there is a credit balance on the service charge account.

7. Service charge statements

All variable service charge payers receive an annual service charge statement from the council following actualisation of the cost. The statements contain a breakdown of the charges.

Ealing Council will issue statements to residents within 18 months of incurring the expenditure. In effect, this is 6 months after the close of the financial year. Relevant legislation will be followed if the council is unable to actualise the cost within the 18 months since it was incurred by serving the applicable notice on council tenants.

All statements, demands for payment and estimates must be accompanied by a prescribed statement of rights and responsibilities.

Ealing Council commits to ensure that service charges are transparent and accountable, giving residents a clearer understanding of services applicable to their block and estate and its charges.

8. Sinking/reserve funds

Ealing Council's housing does not currently operate a sinking or reserve fund.

9. Recoverable and non-recoverable charges

The type of service charges that are recoverable and non-recoverable is dependent on the terms of individual tenancy agreements, lease agreements, legislations and transfer agreements.

10. Apportionment

The council apportions service charges between properties in accordance with the terms of individual tenancy, lease and transfer agreements. Where such agreements are silent upon the issue of apportionment, the council apportions the charges equally amongst the dwellings that receive the service.

Where charges must be apportioned across several schemes within an estate or between properties with different apportionment bases, the fair and reasonable methodology is applied.

The council sets charges for new schemes by adopting a standard method for all properties within the scheme and having regard for the apportionment method prescribed in the lease.

A fair and reasonable approach will be taken to apportion costs taking account of the size of the property and the frequency of the service provided. All service charges use the rateable value which is based on the number of bedrooms and size of the property.

11. Management costs

The council will charge leaseholders a percentage of the service charge cost as a management fee, to recover the full cost of managing the service charges. This percentage will be subject to a regular review and benchmarking to ensure the full cost is recovered and it continues to represent value for money.

12. Insurance

The council has a legal obligation as the freeholder of the building, to provide building insurance to all council leaseholders. Leaseholders pay based on the insured value of their property.

Where Ealing Council housing revenue account (HRA) is not the head lessor and a separate charge for insurance is made usually by the managing agent the insurance policy would not cover these schemes, and the resident will be charged the amount invoiced by the managing agent.

13. Personal charges

The personal element of any charge is not recoverable via the service charge.

In the case of utility charges, the personal element of a charge for tenants is charged separately via their rent account. For leaseholders the charge is identified separately on the service charge statement.

14. New developments pre-handover

As part of all new development proposals, an initial estimate of the service charge is prepared at the design and quality panel stage.

These estimated service charges are based upon:

- type of services provided
- quotes for the various services
- known cost for comparable services

Post-handover

All prospective residents for new developments are made aware of the services provided to the scheme and the estimated charges. They are advised that these are estimates only and that there is potential for the service charges to rise once the actual operating costs for the scheme are known; typically, within 3 years.

The actual operating costs are carefully monitored, and new contracts put in place quickly to avoid wide variations in the estimated and actual charges in the early years. Revised estimates are provided as the charging profile becomes known.

Incoming residents are provided with a summary of the service charge information during the offer and lettings or sale process.

The council's HRA will ensure that each new tenancy and lease agreement includes full details of the service charges and the apportionment methodology to be used.

For freehold sales, the HRA will ensure that a binding and enduring legal obligation is included in the sales terms to ensure that a reasonable and continuing contribution is made by freeholders to relevant services.

15. Stock transfer

When we swap housing stock with another landlord, we'll share service charge information from the past 6 years.

Where there are sinking fund balances these will also be transferred between the 2 landlords for both tenants and leaseholders depending on the terms of the individual lease or tenancy

agreements. Provision balances belong to the residents of the schemes transferring whether they are tenants or leaseholders.

Where there are variable service charges, the surpluses and deficits outstanding at the point of transfer will also be transferred between the 2 landlords. For example, if the difference between the income and expenditure for the incoming stock has resulted in a surplus repayable to the new residents when the statements are eventually issued, then the council would expect to receive a payment from the previous landlord, which they would pass onto the resident. This also applies to the previous years where a surplus or deficit still must be fully paid to or recovered from the resident.

For specific details of arrangements for individual schemes that have formed part of a stock transfer, see the relevant transfer agreement.

16. Schemes with managing agents

On schemes, where the council HRA is not the freeholder but has a head-lease or combination of several head-leases, it is likely that the superior landlord (usually the freeholder) will have appointed an external managing agent to carry out services to the block and/or estate on their behalf.

The head-lease will allow the managing agent to charge relevant service charges to residents.

The financial year for the freeholder/managing agent will often vary from that of the council's HRA. The council HRA will invoice its residents based on the financial year 1 April to 31 March.

Services may be carried out in 1 financial year but billed to residents as part of the next financial years accounts. The year in which we pass on costs is determined by the incurred date of the invoice, rather than the period to which it relates.

Invoices for a period crossing 2 financial years will not be split but will be fully included within 1 financial year determined by the invoice date or payment date.

17. Disputes

Formal complaints regarding service charges would be addressed in line with the council's corporate published times and standards.

18. Commercial service charges

Commercial service charges are not subject to the same legislative framework as those for dwellings unless there is a clause in the lease which states that the lease is subject to S18 – 30 Landlord & Tenant Act 1985. The lease determines the type of charges that are payable. All commercial leaseholders are required to pay towards services if their lease allows.

19. The way we will work

We aim to facilitate the recovery of all costs incurred in providing services in accordance with good estate management. We will procure services considering both the need for quality, value for money and in accordance with the principles of good estate management.

We will operate all our service charges in accordance with the relevant contractual agreements, legislation and regulations, and our service charges will reflect transparency.

Variable service charges will be calculated and set in compliance with relevant legislation highlighted in this policy as well as all other applicable regulations and guidance.

The services provided will be clearly identified to customers and set out in contractual agreements. The annual service charge budgets and apportionment schedules will detail the amounts charged for these services.

We will not charge a customer for the cost of a service where their property is physically excluded (e.g. without key access to a communal area) from the benefits of that service, and where the lease, covenant, deed of transfer or tenancy agreement does not prescribe the method of apportionment for those sharing the costs of that service.

We will, however, charge a customer for the cost of a service where that customer derives an indirect and/or real and tangible benefit from the service (such as where the customer derives a tangible benefit from having properly maintained fire safety equipment/systems in their block structure).

We will not adjust service charges if a customer or group of customers choose not to use a particular service.

In the case of our properties being managed by an agency, we authorise the agents to set service charges on our behalf, and to recover designated service costs on our behalf. Where we appoint a managing agent, we will review charges to ensure they are fair and reasonable.

Properties let under the affordable, market and intermediate rent schemes include service charges as part of their overall charge. Rent is set in accordance with the appropriate methodology, often as a percentage of the market rate, with the view that this includes costs which would otherwise be service chargeable. Where a property would incur a service charge this will be set annually and reflected in our internal accounting systems, however the customer will only receive details of the total rent figure. Personal service charges, for example gas, electric, water and care services relating to a specific property, may be charged in addition to the rent for affordable, market and intermediate rent schemes.

General needs and supported housing customers may be required to pay for the depreciation of existing assets on their estates. These funds will be used to pay for the replacement of these assets when necessary.

We will make a charge to cover our own reasonable costs of managing services where agreements allow. This will be based on the terms of the agreement, or a reasonable percentage or charge as deemed appropriate. We will charge a minimum of 5% of total service, subject to review.

We will consult and inform customers in line with legislation, best practice and tenancy and lease agreements, for the provision of additional and changes to existing services and therefore service charges. We will facilitate our customers' ability to scrutinise relevant information and receive feedback on the services delivered as part of our assessment of value for money of the service charges. Customers will still be responsible for paying their service charges while scrutinising accounts. For more information on raising disputes about service charges, please see our complaints policy.

20. Adding services

We will consider requests made by customers for additional services to be provided and will consult with all customers potentially affected by the new service prior to deciding.

We will only add a new service based on a customer's request if:

- the service relates to the provision of adequate accommodation, enjoyment of the premises or protecting the security of the building
- the cost of providing the service is reasonable and affordable
- it is customary to provide similar services for residential accommodation
- we believe it is reasonable for the service to be provided
- we will not be financially disadvantaged by the provision of the service
- the lease or tenancy agreement allows or can be varied to allow for full costs to be recovered
- more than half of affected customers respond to the consultation (excluding schemes where lettings are short term, and the inclusion of the service is important to deliver contractual or health and safety requirements or the introduction of the charge is necessary to ensure the viability of a supported or sheltered housing service); and two-thirds of the respondents support adding the service, (excluding schemes where lettings are short term, and the inclusion of the service is important to deliver contractual or health and safety requirements) or the introduction of the charge is necessary to ensure the viability of a supported or sheltered housing service)

We will also add a new service if we have a statutory obligation to do so, giving reasonable notice to customers.

We will review the success of a new service during a 12-month period from the date the service is introduced – where the outcome of the review is to discontinue the service, we will charge customers for the full costs incurred by us from the date the service was introduced until the date the service is discontinued.

21. Discontinuing services

We will consider requests made by customers for services to be

discontinued and will consult with all customers who pay for a service when deciding whether it should be discontinued. We will only discontinue the service if:

- there is a change in legislation which means we are unable to continue to provide a service
- there are no reasonable health and safety risks involved with discontinuing the service
- we believe it is reasonable to discontinue the service
- we are not legally or contractually obliged to provide the service
- we will not be financially disadvantaged by the discontinuation of the service

22. Monitoring, review and evaluation

Ealing Council will periodically commission an independent audit of the service charge process to ensure full continued compliance with legislation and regulations. This policy and connected procedures will be reviewed by relevant Ealing Council staff who have day to day operational overview of service charges.

23. Diversity and inclusion

Ealing Council will treat all residents with fairness and respect. We recognise that we have an ethical and a legal duty to advance equality of opportunity and prevent discrimination on the grounds of:

- age
- sex and sexual orientation
- disability
- race
- religion or belief
- gender reassignment
- pregnancy and maternity
- marriage and civil partnership

24. Publicising the policy

We will publicise this policy to our residents, staff and other stakeholders in several ways including the council website.