

# Insight report



**Insight on service charges and the Ombudsman's jurisdiction**

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# Introduction

Welcome to our latest Insight report covering complaints data, individual cases and wider learning points from our work on charges.

This can be one of the most complex areas of our jurisdiction and one, especially given the cost of living crisis, where there can be a significant breakdown in the resident-landlord relationship.

We urge landlords to use this report as an opportunity to focus on what good complaint handling looks like on charges to provide better customer service, improved signposting and expectation management around charges, as well as to familiarise themselves with our guidance on this important subject.

For residents, it is an opportunity to see where landlords have gone wrong on charges and which complaints can be brought to the Ombudsman and what we are unable to deal with. We work closely with the First Tier Tribunal and have included case studies in this report from them to show their work in this area.

The report also contains key lessons from our formal investigations. In these cases, we looked at a range of topics, including communication and transparency around charges. These cases show where landlords have either got it right or wrong and how to avoid the same mistakes in the future.

There are cases in this report where the landlord has charged for services outside the agreement and then been heavy-handed in the complaints procedure when trying to regularise the payments. This includes forcing the resident to sign amendment deeds.

Among the learning, of which there is plenty in the cases below, landlords should be clear about whether they are able to charge or not by consulting the tenancy agreement, not assuming its content. Where mistakes are then made, it should provide redress and not seek to pressure the resident into accepting charges going forward.

Landlords should also be open and transparent about this and consider whether redress may be appropriate for other residents, which means avoiding the use of non-disclosure agreements or variants of these.

As part of any learning, we would expect landlords to see whether other residents in the same block, estate or development are affected by the outcome of a complaint. With the introduction of wider orders under paragraph 54(f) of our Scheme, we may order the landlord to do so, by reviewing its policy and practice and provide redress to other residents.

Alongside this report, we have also refreshed our guidance and we hope that landlords can use this to provide better services and for residents to use it to know what they can bring to us and how we can help.

**Richard Blakeway**  
**Housing Ombudsman**

# What is a service charge and what is in our jurisdiction?

Service charges are payments that a leaseholder or a tenant must pay for the cost of services provided by a landlord. There are two main types of service charges the Ombudsman sees complaints about:

- **Variable service charges:** These are charges that change based on the costs incurred by the landlord. They are defined in s.18 of the Landlord and Tenant Act 1985.
- **Fixed service charges:** There is no definition of a fixed service charge. These are charges which are set by the tenancy or lease and are not based on the actual cost of the service provided. In tenancy agreements, they often come within the definition of rent and are often increased or decreased at the same time and manner as the rent.

## Who can bring a complaint to the Ombudsman?

Paragraph 25(a) of the Scheme states that those who are in a landlord and tenant relationship may bring a complaint to us. This includes leaseholders, as well as tenants.

## What the Ombudsman can investigate

Examples of the types of cases the Ombudsman may investigate include:

- Complaints about the communications in respect of service charges
- Complaints that the resident has not received the service/benefit they are paying for, or the service provided has been of a poor standard
- Complaints that the landlord has not followed the correct process in respect of service charges.

## Communication

The Ombudsman expects landlords to be able to provide clear information about a charge that is payable. A landlord should be able to explain:

- Its power to claim the charge under the tenancy agreement or the lease
- Whether the charge is fixed or variable
- What the charge is for, when general terms are used such as 'maintenance'
- The level of the cost
- When the charges were increased/decreased and why

The Ombudsman also expects landlords to provide residents with clear information about service charges payable at the tenancy sign-up or during the conveyancing process by having clear documentation and answering clear questions.

Service charge information, including summaries of costs and certificates, should be presented in an easy-to-understand format.

When queries are raised about service charges, the landlord should be able to respond in a timely way providing the information in a consumer-friendly format.

Where residents request additional information, such as invoices, the Ombudsman expects landlords to comply with sections 21, 22 and 23 of the Landlord and Tenant Act 1985. Even where these provisions do not apply, it may still be appropriate to provide relevant and additional information to a resident to assist them in understanding the charge.

In cases where there is a separate freeholder or managing agent, the Ombudsman expects landlords to make requests for invoices to those parties *in addition* to providing the contact details for the freeholder or agent to the resident so that they can make their own requests.

### *Complaints about the services received*

In these cases, the Ombudsman will consider:

- Whether the resident is obliged to pay for the service under the tenancy agreement or lease?
- Whether the resident has received the service or the benefit of the service at all?
- How the landlord provides the service?
- Whether the landlord can demonstrate the service has been provided
- Does the landlord have in place a reasonable method of assessing the level and standard of service provided?

The terms and conditions should set out what the landlord is permitted to charge for. If the cost does not appear in the lease or tenancy, it will not generally be fair to claim the charge unless it has been introduced later following the correct procedure.

Landlords must be clear on whether they are permitted to make the charge and not rely on a 'general understanding' of what usually happens in the area or estate.

The complaints we see about the standard of service often relate to the provision of grounds maintenance, external and internal cleaning, and gardening. Sometimes residents will say they have not received the service at all or that the service provided was poor.

When services are provided at estate or block level, it is best practice for landlords to conduct regularly scheduled checks to confirm the work has been completed or that the service has been provided and that the standard is appropriate. Landlords may also complete ad hoc spot checks. Where residents complain about the level or standard of service, landlords may want to increase the number of checks in the shorter term. The Ombudsman has seen some landlords include residents in these inspections.

Landlords are encouraged to make notes and take photographs as evidence of the standards provided. This will also assist with managing supplier contracts where the standard of the service provided was not appropriate.

Where residents raise concerns about the standard of service, it will be for the landlord to demonstrate the service is chargeable under the lease or tenancy, that it has been provided and that the standard was of satisfactory quality.

## Our powers

Where the Ombudsman finds maladministration, we have the following powers in paragraph 54 of the Scheme.

54. The Ombudsman's determination may uphold or reject the complaint and make orders or recommendations, including that the member:
- a. apologise to the resident;
  - b. pay compensation to the resident;
  - c. performs or does not perform any of the contractual or other obligations existing between the member and the resident;
  - d. exercises or does not exercise any of the rights existing between the member and the resident;
  - e. undertakes or refrains from undertaking works;
  - f. review their policy or practice in relation to a matter if that policy and practice may give rise to further complaints about that matter; and/or
  - g. takes such other reasonable steps to secure redress within the legal powers of the member.

These powers are wide and can include ordering landlords to pay compensation to the value of a service charge where it has not been provided. Importantly, paragraph 54(d) allows the Ombudsman to order the landlord not to exercise its right to demand or claim a charge.

Furthermore, paragraph 49 of the Scheme states:

*The Ombudsman may conduct further investigation beyond the initial complaint or member to establish whether any presenting evidence is indicative of a systemic failing. Where this is the case, it will be referred to the appropriate regulatory body.*

Where a resident complains about a specific charge or the handling of it, the Ombudsman is entitled to look wider at that landlord's handling of charges in general.

## What the Ombudsman may decide not to investigate

Under paragraphs 42(d) and (f) of the Housing Ombudsman Scheme (October 2023) the Ombudsman may not investigate complaints about:

- d. concern the level of rent or service charge or the amount of the rent or service charge increase*
- f. concern matters where the Ombudsman considers it quicker, fairer, more reasonable, or more effective to seek a remedy through the courts, other tribunal or procedure*

#### Paragraph 42(d)

Paragraph 42(d) applies where the Ombudsman would be asked to decide the correct or fair level of the service charge (or increase) or calculate the invoices to determine the complaint.

Examples of the type of complaint we may not necessarily consider are:

- Complaints where the resident believes the landlord has overcharged for a service.
- Complaints where the resident believes the billing and calculations are incorrect.

#### Paragraph 42(f)

Paragraph 42(f) of the Scheme will apply where:

1. There is another dispute resolution procedure available to the parties to use; and
2. It would be more appropriate for that procedure to decide on the dispute. Examples would include:
  - The dispute is specialist in nature and requires an expert or specific expertise.
  - It would not be prohibitive for the parties to use that procedure to get a fair remedy when considering costs and formality.
  - The dispute necessitates a final and binding decision from the court.

The legal process should be the last resort. The courts and tribunals expect non-court dispute resolution procedures to be used in the first instance where possible. That could include the landlord's internal complaint procedure and the Housing Ombudsman Service.

Just because the court or tribunal can be used does not mean residents should be required to go that route. Where the Ombudsman can decide on a case, we will – even if another procedure exists.

Examples of cases which will be better suited to the legal processes are:



- Where the resident is seeking a declaration on the reasonableness of a charge under section 27A of the Landlord and Tenant Act 1985 (variable service charges)<sup>1</sup>.
- Where the interpretation of the agreement is in dispute and a final and binding decision to resolve the dispute and the Ombudsman is unable to make that decision.

### What the Ombudsman can investigate vs First Tier Tribunal

In the following table, we have sought to distinguish between complaints the Ombudsman might consider compared to disputes that would be more appropriate for the tribunal.

Housing Ombudsman	First Tier Tribunal
<ul style="list-style-type: none"> <li>• Whether the information about service charges was clear and transparent at the start of the tenancy or lease and throughout</li> <li>• Whether the resident received the service being paid for at all (this also falls within Tribunal jurisdiction as to whether the costs is reasonably incurred)</li> <li>• Whether the standard and level of service provided was appropriate</li> <li>• Whether the landlord provided key information to the resident on request about the service charges</li> <li>• Whether the landlord followed its policies and procedures as well as the terms of the tenancy/lease in deciding a change in the amount payable.</li> </ul>	<ul style="list-style-type: none"> <li>• Conditions and price of buying the freehold or extending a lease</li> <li>• Who is responsible for paying a charge, and whether the charge is reasonable</li> <li>• The cost of building insurance</li> <li>• Whether it would be appropriate to appoint a new manager</li> <li>• Whether a residential long lease should be varied</li> <li>• Right to manage</li> <li>• Where the landlord believes there has been a breach of a term of the lease</li> <li>• Whether to grant a 'dispensation' of consultation for a specific service charge.</li> </ul>

### How the tribunal handles disputes

To help residents understand the role of the tribunal, we have summarised a case about the reasonableness of charges.

In *Freitas v Westminster City Council* [LON/00BK/LSC/2022/0349], the resident sought a determination under section 27A of the Landlord and Tenant Act 1985 that

<sup>1</sup> Section 27A of the Landlord and Tenant Act 1985 states:

Liability to pay service charges: jurisdiction

(1) An application may be made to the appropriate tribunal whether a service charge is payable and, if it is, as to—

(a) the person by whom it is payable,  
 (b) the person to whom it is payable,  
 (c) the amount which is payable,  
 (d) the date at or by which it is payable, and  
 (e) the manner in which it is payable.

Importantly this only relates to the 'variable' service charges and not fixed charges.

the service charges from 2019-2023 were not reasonable and not payable. The resident said the charges for repairs and maintenance were unreasonable because the services provided by the landlord were inadequate.

Specifically, the resident said the communal areas and their home had been affected by severe water penetration and that the price of the cleaning was too high.

The tribunal found that the breaches of the lease were outside its jurisdiction to consider because this would be for the county court. However, it said it could consider the cleaning services aspect of the case.

The resident said she had evidence that the cleaning had not taken place and the cleaners would attend and sign the attendance sheet and leave. This evidence was not provided to the tribunal.

The tribunal found the price of the cleaning was not high. It was satisfied the landlord had attended and cleaned at no extra cost in response to a five-day absence by the cleaner. The tribunal said the charges were payable and due and were not unreasonable.

### How the courts handle disputes

In *Arnold v Britton* [2015] UKSC 36, the residents had fixed service charges. The leases included a service charge provision to pay an annual service charge which started at £90 per year. This was then to increase by 10% each year on a compound basis.

The tenants said the increase each year would create an absurdly high annual service charge towards the end of the lease term.

The court said the approach is to look at the ordinary meaning of the service charge provisions. In this case, the ordinary meaning of the service charge term was that the service charge would increase yearly at a fixed rate.

Even though that would make the service charges extortionate towards the end of the leases, that is what the parties had agreed to in the lease.

### How the Ombudsman may decide its jurisdiction

Finally, we consider two cases to illustrate whether a complaint is within our jurisdiction.

In case **202008909**, the resident had a variable service charge and complained about the level of that charge. Unfortunately, the Ombudsman could not make a determination on this because the complaint related solely to the level of the charge payable.

In case **202203052** we were unable to make a determination about the landlord's decision to increase the service charge for management fees. The resident said

there was no justification for the increase. Unfortunately, the Ombudsman could not investigate the complaint as it was about increases in charges.

### Key learning for the sector

The Housing Ombudsman Service is not always the correct forum for a dispute. We would not expect landlords to make this decision. But where a complaint relates to the level or fairness of variable service charges, we would expect landlords to ensure they signpost residents to the Ombudsman and the tribunal as well as the Leasehold Advisory Service (LEASE).

## Lessons from our formal investigations

The themes and case studies featured below have been selected to illustrate the lessons that can be learned in a range of cases, from maladministration to reasonable redress or no maladministration.

In many of these cases, we have ordered the landlord to consider how this applies to other residents who may be impacted.

In one case (**201805079**) we looked at how fairly the landlord acted in responding to leaseholders' concerns about the charges, although we could not look at the level and fairness of the charge itself.

The resident complained that he had not been charged correctly for the communal electricity because the landlord had not taken regular meter readings. The Ombudsman found that the lease required the costs to be assessed based on the meter readings. As the landlord had not taken regular meter readings it had not acted fairly in all the circumstances. Moreover, it had not responded to the resident's queries fairly.

We determined the landlord was responsible for maladministration in its handling of the charges for the communal electricity and the way it handled the complaint.

### Key learning for the sector

In this case, whilst the level and actual cost were outside the Ombudsman's jurisdiction, the way a landlord calculates a service charge could be looked at. The Ombudsman expects landlords to take reasonable steps to ensure charges are calculated correctly, such as taking regular meter readings like in this case.

We found no maladministration in how a landlord provided a breakdown of service charges. The landlord fulfilled its obligation to provide a breakdown of what the resident will pay as a fixed service charge and included it within the breakdown of the total rent. (**202201833**)

In another case (**202114456**) we found severe maladministration in how the landlord handled service charges. This was because it recognised that the resident had paid charges he was not required to, but the landlord unreasonably withheld the refund until the resident agreed to a variation of the lease to include the charges.

The resident was seeking clarification of the landlord's service charge documentation. Instead of doing so, the landlord treated the query as a formal complaint. When he did raise a formal complaint eight months later, the landlord said he had agreed to all charges and so were payable.

However, when the resident escalated this complaint, the landlord uncovered a letter showing the resident was not liable to pay a management fee and therefore they had been incorrectly billed.

In a further stage 2 complaint response, the landlord accepted the tenancy agreement did not allow it to recover the service charges from the resident.

The landlord said it would only give the resident the refund if they agreed to a variation of the tenancy agreement to allow for the charges moving forward.

## Key learning for the sector

When assessing complaints about service charges, landlords should:

- Be clear on the provision in the tenancy or lease which allows for it to make the charge
- Even where the agreement allows it, the landlord must consider if the charge is not permitted by law. For example, a charge in a tenancy agreement for costs associated with repairs to which s.11 of the Landlord and Tenant Act 1985 prohibits
- Ensure that it can be evidence it gave the correct notices for increases to residents
- Where it has overcharged or taken a payment it should not have, it should be refunded immediately without conditions being applied
- Consider whether the information about the service charges is in clear and simple language and can be understood by the ordinary person with no specialist service charge knowledge
- Ensure complaint responses deal with the complaint raised and are responded to promptly
- Ensure there is a process in place for taking learning forward: Service charge errors and failures should not be replicated year-on-year

We also made a determination in case **202125842** for how the landlord responded to a resident's enquiries about service charges. When asked, the landlord was not specific in its answers and provided conflicting information. This amounted to a maladministration finding.

## Key learning for the sector

When assessing complaints about service charges, landlords should:

- Ensure they provide specific responses raised by residents promptly
- Responses should be targeted to the information requested
- Ensure the information they provide is accurate and consistent
- Make reasonable adjustments to how they present information when a resident asks

Landlords may want to:

- Consider whether they receive common questions about the service charges and review these to see how it can make service charge information clearer or create a FAQ document to accompany service charge information
- Liaise with residents about how they would prefer to have information presented

In case **202109935** we found maladministration in the landlord's response to the resident's service charge queries.

The resident contacted the landlord and submitted a query regarding his service charges, the increased caretaking costs, and how the grounds maintenance costs were calculated. There was also a query regarding the block cost including the communal electricity.

The landlord provided a partial response to some of the queries, with other answers being insufficient, or lacking detail. It took the landlord nearly two years to respond to all the resident's service charge queries which were included in his request.

## Key learning for the sector

Landlords should have adequate processes in place to ensure effective communication between teams so they can fulfil their legal obligations to provide information on service charges to residents upon request, including how the grounds maintenance costs are calculated.

We also found maladministration for a landlord's administration of a service charge account (**202204054**) and its response to the resident's enquiry.

The landlord took over 12 months to respond to the resident's query about their service charge, to inform them that they were only responsible for rent collection. The landlord's response put the onus on the resident to make contact with the managing agent to obtain full information about her service charge.

The landlord also failed to recognise its legal obligation within the lease relating to the collation of service charges, and failed to recognise that more could have been done to engage with the managing agent on the matter.

## Key learning for the sector

Landlords should be aware of their obligations in terms of the lease. Landlords should ensure that they are proactive in pursuing managing agents and freeholders for meaningful account information about service charges promptly.

We found service failure in case **202127944**, which involved a leaseholder. There was a thorough and detailed investigation into whether and how the landlord justified charges and we made orders for the landlord to explain eight specific work orders.

In case **202126628**, our orders following an unresolved issue with charges for a communal door entry system (that the block did not have) resulted in the landlord removing this charge from the bill.

Finally, in case **202111543**, the resident complained they were being charged more than their neighbours for a service charge and that the landlord had not responded to their queries about why the charge for the communal TV and caretaking services applied.

We found the landlord responsible for maladministration and asked the landlord to contact the resident to explain the reasons for the increase and why the charges for the communal TV and caretaking services applied. The resident was also awarded £350 compensation.

## Following the correct procedures

A key lesson from our casework is for landlords to be clear about both the provisions of a tenancy or lease *and* about the relevant procedure. Here we consider some of the common procedural issues as well as cases we have investigated.

Where a landlord wants to increase a fixed charge or claim a cost that is more than £250 (for a variable charge), then it must follow the correct procedure.

Section 20 of the Landlord and Tenant Act 1985 requires landlords to consult with residents where:

- The cost of the works would be over £250 for any resident contributing to the cost of the works ('qualifying works')
- The landlord intends to enter into a contract with a wholly independent organisation or contractor which will last *more than* 12 months ('qualifying long-term agreements')
- There are 'qualifying works' under a 'long term agreement'.

There are some occasions when landlords may not follow the section 20 procedures. This could be where emergency works are required to stop uncontrollable leaks and floods or harm to residents. In these cases, landlords may apply to the tribunal for 'dispensation' under section 20ZA of the Landlord and Tenant Act 1985. This is where the tribunal may decide it is reasonable for the landlord not to comply with the requirements of section 20.

It is for the landlord to assure itself that the process it is following is correct and in line with the provisions of section 20. The Ombudsman may expect the landlord to do more than the section 20 consultation. This could include cases where residents have additional needs. This would include providing information outside the process in an accessible format, for example.

The tribunal can make decisions on whether the consultation was followed correctly. However, the Ombudsman can investigate and make a finding where the process followed was 'obviously wrong'.

In **201916011**, the Ombudsman found service failure by the landlord because the final account and actual costs were not consistent and did not include information about the section 20 notice and bill.

When the resident raised this, the landlord ought to have reviewed the differences and provided clarification on the matter. The landlord failed to provide a full explanation in respect of the costs in the notices and why they differed.

Whilst following the correct process is an important piece of learning from this case, the Ombudsman also believes staff need to be adequately trained to deal with these issues.

### *Increasing or decreasing fixed service charges*

Landlords should follow the correct procedures for increasing or introducing new fixed service charges and be able to demonstrate this. In some tenancy agreements service charges are included in the definition of rent and so the rent increase procedure will be the correct process.

In case **202200081**, the Ombudsman found the landlord responsible for maladministration because it had not provided adequate notice to the resident about service charge (and rent) increases.

### *Removing charges from the tenancy or lease*

Leases and tenancies are contracts and can only be amended in certain ways, including an agreement by all parties to the agreement (usually by deed) or by order of the court.

Where service charges affect a number of residents, all leaseholders must agree to the removal or amendment of a charge, unless the provisions of s.37 of the Landlord

and Tenant Act 1987 apply. In these circumstances, the residents would vote on the amendment and the landlord could then apply to the tribunal to vary the service charge provisions based on the specified majority set out in the Act.

We would expect a landlord to fully explain the process being used to vary a service charge provision.

### Where can you go if we cannot help?

- [Leasehold Advisory Service](#)
- [Shelter Legal](#)

## Housing Ombudsman Service

PO Box 152, Liverpool L33 7WQ  
0300 111 3000

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

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