



TAI CANOLBARTH CYMRU MID-WALES HOUSING

Yn barod **amdani** **Equal** to the challenge

Service Charge Policy

Strategic Aim:	To ensure the Association's income from Service Charges is maximised
Reference No:	Service Charge Policy v1.1 July 2017
Date of Issue:	July 2017
Next Review Date:	July 2020
Departments Affected:	Finance, Community Housing, Customer Services, Technical Services, Income Management Team
Approved By/Date:	Board of Management, July 2017
Lead Officer:	Service Charge and Systems Officer
Statutory Compliance:	<ul style="list-style-type: none"> • Landlord & Tenant Act 1985 & 1987, • Commonhold and Leasehold Reform Act 2002
Other Related Documents	<ul style="list-style-type: none"> • Income Collection Policy • Maintenance Policy (Consultation)

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1. Introduction

1.1 The Landlord & Tenant Act 1985 is the key element of legislation that covers the administration of service charges.

1.2 Definition:

The Statutory definition of a Service Charge, under S.18 of the Landlord & Tenant Act 1985, states:

Service Charge means an amount payable by a tenant of a dwelling as part of or in addition to the rent –

- a) Which is payable ... for services, repairs, improvements, maintenance, insurance or the landlord's costs of management and*
- b) The whole or part of which varies or may vary according to the relevant costs.*

1.3 Service charges are paid by the Association's residents in addition to, rent and/or ground rent to meet the cost of any services provided by us and/or our agents or the agents of superior landlords.

2. Policy Statement

2.1 Where the Association provides a service above the provision of the 'bricks and mortar' property, these will be charged for by way of a service charge.

2.2 The Association will recover the cost of providing these services to residents by charging a variable service charge. The Association will aim to avoid large changes in the service charges each year, by spreading the costs of services over an appropriate number of years. We aim to recover 100% of the costs of providing services through the service charges paid by residents. Variable service charges will be managed in accordance with relevant legislation (currently the Landlord & Tenant Act 1985, (L&T Act 1985) as amended).

2.3 The costs of providing services will be reasonable, as required by L&T Act 1985, S19 and represent Value for Money to the resident.

2.4 The services provided to tenants will be clearly identifiable to residents, and set out in Tenancy or Lease Agreements. Where there are amendments the Association will add an addendum to the Tenancy Agreement.

2.5 The management of service charges on leasehold retirement properties will comply with the standards set out in the Code of Practice (CoP) for Private Retirement Housing, issued by the Association of Retirement Housing Managers (ARHM).

2.6 For open market leasehold flats, with no age restriction in the lease, the management of service charges will comply with the Code of Practice issued by the Royal Institution of Chartered Surveyors (RICS).

3. The Objectives of this Policy

3.1 This policy sets out Mid-Wales Housing Association's (MWhA's) approach to managing service charges and applies to all residents of the Association where a service charge is payable. The objectives are:

- To ensure that the policy and processes for the management of service charges payable by residents of the Association comply with contractual and statutory obligations and good practice;
- To provide cost effective services necessary to manage and maintain the scheme;
- To offer choice to our residents on the level of services where possible;
- To set estimated service charges that reasonably reflect anticipated expenditure for the coming financial year;
- To ensure new residents are made aware of the services provided and the service standards they can expect;
- To provide service charge payers with clear and concise information about estimated service charges we intend to make, how we set those charges and the actual cost of providing services;
- To ensure all new tenancy agreements and leases include a full list of all services provided including the management of the services and details of sinking funds;
- To adopt a consistent approach throughout the Association's housing stock and tenure types in the apportionment, calculation and recovery of the costs of providing services, so far as contractual obligations permit;
- To ensure that service costs and charges meet with legal requirements;
- To avoid excessive changes in the level of service charge between years;
- To measure the effectiveness, efficiency and economy of services provided and to keep residents informed about our performance against standards set.

4. Cost of Services

4.1 The costs of providing services will be reasonable, as required by L&T Act 1985, S19 and represent Value for Money to the resident.

4.2 Estimated service charges are not altered as a result of temporary breakdown or failure to provide a service. The difference between estimated and actual costs will be identified in the year end service charge accounts, and any

balance treated as set out later in this policy.

- 4.3 Mid Wales Housing Association (MWHHA) are committed to providing quality services to its tenants and leaseholders, enabling them to enjoy their home and wider environment. Where appropriate, a service charge will be made for the provision of services. MWHHA will ensure that services are provided efficiently and in the most effective and affordable manner, consulting with tenants and leaseholders where appropriate.
- 4.4 It is critically important that the tenancy agreement or lease outlines the services that will be recovered through the service charge. The Association can only recover the costs of the services outlined in the tenancy agreement or lease. If the service is not specified the Association will be unable to recover the costs.
- 4.5 It is essential to ensure an addendum to the Tenancy Agreements are signed, explained and understood, when installing additional equipment into the property (E.G. Specialist Equipment such as Stair lift Installation), which will result in additional services being charged for.

5. Sinking Funds

- 5.1 The service charge will, on the majority of scheme developments, include a contribution towards a reserve or sinking fund, which is effectively a savings account for the scheme development to accrue sums required for future works such as external decorations or major repair.
- 5.2 The use of a sinking fund is a method of spreading the cost of a service over a number of years and can avoid the excessive change in service charge each year.

6. Management charge

- 6.1 In addition to the actual cost of the services, the Association can recover an amount for managing and administering the services. This charge is the overhead for providing the services.
- 6.2 This management fee is calculated as a percentage of the service cost. The Association aim is to charge the management fee equivalent to the overall overhead percentage rate. However, this is subject to a maximum of 15%, The Landlord and Tenant Act 1985, does not specify what would be a reasonable management charge. However, the previous guidance from the Housing Corporation was that the management fee should not be more than a 15% uplift on the cost of the services provided.
- 6.3 The Association currently has overhead costs greater than 15% of turnover and is aiming to reduce the overhead in running the business. If the overhead for running the services reduce to below 15%, then this lower level of administration fee will be charged

7. **Who Pays a Service Charge?**

7.1 **Freeholder**

Where a property has been purchased from the Association outright, this may have included the obligation to pay a service charge for services provided. The services are likely to cover grounds maintenance or maintenance of communal car parking areas and access roads where these are not adopted.

The sales could have been under:

- Right-to-Buy and Right-to-Acquire (and people they have sold on to);
- Voluntary sales.

Freeholders pay for services provided in accordance with the obligations of sale (covenants). This may include, but is not limited to, grounds maintenance and repairs to communal car parking and un-adopted access roads. Variable service charges are estimated at the beginning of the financial year and the actual costs reported to service charge payers within six months of the end of the financial year. The balance is treated as described later in this policy.

Where freehold sales of properties are made, we will ensure a covenant (a binding and enduring legal obligation) is included in the sale terms to ensure a reasonable continuing contribution by freeholders to estate services.

7.2 **Leaseholder**

A lessee is anyone whose legal relationship with the Association is in the form of a lease. This will include:

- Shared owners, including Social Homebuy shared owners;
- Open market purchasers;
- Residents who have bought under the Voluntary Purchase Grant;
- Former shared owners (and people they have sold on to) who have outright ownership of their particular property but where we are the landlord – typically blocks of flats;
- Right-to-Buy and Right-to-Acquire lessees (and people they have sold on to) where we are the landlord.

Lessees pay for services provided in accordance with the lease terms. This may include but is not limited to repairs, maintenance and insurance. Variable service charges are estimated at the beginning of the financial year and the actual costs reported to service charge payers within six months of the end of the financial year. The balance is treated as described later in this policy.

The year-end account may be subject to independent audit if required by the

lease. Landlords are precluded from recovering costs that are not billed within 18 months of being incurred. In addition, failing to provide service charge accounts on request is a criminal offence (L&T Act 1985 S25).

- 7.3 The estimated service charge for an individual property will be calculated by applying the apportionment for the property to the service charge budget for the scheme to which it applies. This information will be the basis of annual resident consultation about the estimated service charge for the following financial year. Once it has been set, apportionment will not usually change. The consultation is to be led by the person responsible for service charges.

7.4 **Tenants**

Where required by their Tenancy Agreement, tenants will pay service charges for services provided. The type of services provided will be listed in the tenancy agreement.

8. **Basis of the charge**

- 8.1 New tenancy agreements and leases will specify that the service charge will be variable. That is, the tenant will pay an estimated service charge based on the budget for the provision of services during the financial year. At the end of the year the difference between the estimated and actual costs is calculated, and service charge payers are informed of their liability to pay any deficit, or of the surplus to their credit. Credit/debit amount will not normally be refunded, but instead charged to a scheme sinking fund, to allow for the smoothing of future costs.
- 8.2 Some properties let on secure tenancy agreements specify that the tenant pays a fixed service charge. The charge is set by the Rent Officer (Statutory post at Powys County Council) at the biennial rent review, not derived from budget for provision of services. Nor is the charge adjusted for past variances between estimated and actual costs.
- 8.3 The Association will have regard to affordability when setting charges and will aim to keep the level of service charges as low as possible. This aim is to give the best service possible for value for money.
- 8.4 We will only provide services which correspond to the lease or tenancy. We cannot introduce new services at will and ask service charge payers to pay for them. It may be necessary to vary the leases or tenancies for the properties to make the provision of the additional service a contractual requirement.

9. **New developments**

- 9.1 The Association aims to build and develop new schemes which have reasonable and affordable service charges. An initial estimate of the service charges for proposed new schemes will be prepared early in the design/acquisition process. This will identify 100% of costs that can be

recovered by service charges. The service charge for new schemes will be based on:

- Information obtained from the Development Team identifying services;
- Quotes for the various services;
- Known costs for comparable services.

9.2 During the design phase of new developments, consideration will be given to keeping service chargeable items to a minimum.

Where service costs result in service charges that are not affordable a meeting is to be arranged to review the design in order to reduce those costs.

9.3 Additionally we will review services, service standards and procurement.

10 Service Charge Setting

10.1 The setting of the service charges is done as part of the Association's budget setting process. The estimated charges will be 'informed' by the costs of the previous year, the costs to date, and any specific cost or service standard changes.

10.2 The final estimated service charge will be charged to residents accounts as follows:

- For weekly and monthly tenancies from the first Monday in April;
- For leasehold properties from the first Monday in September;
- For leasehold schemes for the elderly from first week in July.

10.3 Where the cost of a service provides benefit over a number of years, such as painting communal areas or tree maintenance, the costs of such cyclical expense is spread over the number of years where the benefit is received. In this way fluctuations in service charge from one year to the next should be minimised.

11. Service Charge Accounting

11.1 We will maintain a comprehensive monitoring system to ensure that only costs reasonably incurred as a direct result of providing services are attributed to services and recharged to residents.

11.2 The service charge accounting period shall normally be 1st April – 31st March each year. This does differ with the acquired leasehold schemes for the elderly in Aberystwyth (Gerddi Rheidol and Llys Hen Ysgol) where the period chargeable is 1st January – 31st December.

- 11.3 Each service charge payer will be sent a summary of the service charge account for their scheme for the previous financial year within six months of the end of the chargeable period.
- 11.4 Surpluses and deficits accrued in any one year will be treated as set out later in this document.

12. Surpluses and Deficits

- 12.1 The issue of surpluses and deficits is covered by the Landlord and Tenant Act 1985 (as amended by the 1987 Act). Section 19 of the Act deals with the limitations of service charges payable, and makes reference to the concept that service charges must be “reasonable”.

The wording of Section 19 is as follows:

(19) (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

- 12.2 The course of action to be taken will depend on the requirements of the lease or tenancy, which are contractually binding.
- In the case of tenancies the standard form of agreement allows the balance to be carried forward to the next service charge year.
 - In the case of most leases the obligation is to credit any surplus and debit any deficit after the close of the accounting period. In the case of deficits to be recovered this should be done within six months of accounting period, in order to comply with the “18 month rule” introduced by the L&T Act 1987.
- 12.3 The smoothing of cyclical costs as described in section 9 along with the operation of Sinking Funds as described in section 5 are part of the efforts to minimise the difference between the estimated and actual costs. Therefore, the variance reported as ‘surplus/deficits’ should be minor.

13. Resident/Leaseholder consultation

- 13.1 Charges and consultation over works or contracts will be made in accordance with legislation (in particular the Landlord and Tenant Acts 1985 and 1987 (as amended, particularly by the Commonhold and Leasehold Reform Act 2002), case law, and the content of occupancy agreements. The key consultation requirements are as follows:
- Qualifying Works - landlords must consult if these works will cost over £250 for any one leaseholder;

- Qualifying long-term agreements - landlords must consult where the amount payable by any one contributing leaseholder under the agreement in any accounting period exceeds £100.
- Qualifying works under a long-term agreement - where the long-term agreement includes provision for the carrying out of works to the property (for example, a schedule of rates agreement for general maintenance), and these works will result in a charge to any one leaseholder of more than £250, then a separate consultation must be carried out.

13.2 Leaseholders will be consulted annually about the draft service charge budget and draft estimated service charges prior to the start of the new financial year. The procedure will comply with the ARHM Code of Practice.

13.3 We aim to involve residents in deciding the services and the standard of services required on their estate:

- The Association recognises that service charge payers have a legal right to be consulted and will ensure that consultation will always take place when required using methods agreed with residents, and in compliance with relevant Code of Practice.
- The Association will ensure that service charge payers are provided with clear and easily understood information about service charges.
- The Association will involve residents in the monitoring of service provision and will obtain information from service charge payers on their level of satisfaction with the services and standards of services provided.

14. **Value for Money**

14.1 The Association has adopted a definition of value for money which is summarised by *'doing the right thing, in the best way at the best price'*.

In the case of Service Charges, *'doing the right thing'* is ensuring the Association provides the services outlined in the tenancy agreement, lease or sale covenant. The *'best way'* requires consultation with residents; while *'best price'* is achieved through ensuring prices are reasonable.

14.2 Service charges must be 'reasonable' as required by the Landlord & Tenant Act 1985 s.19, as amended. The Association will consider the following in our assessment of reasonableness:

- Whether the works are reasonably required. In particular, whether they are specified in the lease or tenancy;
- Whether the standard of works or services is reasonable;
- Whether the charge is reasonable.

In addition to meeting these requirements we will ensure that services charges offer value for money.

15. Right To Appeal:

- 15.1 Appeals on the grounds of reasonableness can be made in writing to the Director of Finance. Should the outcome be unsatisfactory a further appeal can be made to the Leasehold Valuation Tribunal
<http://www.justice.gov.uk/tribunals/residential-property/decisions#top>

16. Service Charge Collection

- 16.1 For information on how the Association will collect service charges, please refer to the Income Collection Policy.

Strategic Risk Factors	<p>The Association needs to ensure it maximises its income. The 100% recovery of the service costs through the service charge is a key element of this Business Plan objective.</p> <p>If the service charge policy and procedure is not followed correctly the Association risks not being able to recover costs that it has incurred. Effectively this would mean residents that have not received the benefit of the service will have paid a contribution towards the cost.</p>	
Equality Impact Audit	<p>How does/will this policy ensures needs is met fairly, particularly with regard to race, gender, disability etc.?</p>	<p>The service charge policy aims to recover 100% of the cost of services provided to a resident. It aims to treat fairly residents regardless of tenure (freeholder, leaseholder or tenant) or 'protected characteristics'.</p>
	<p>Is it felt that this Policy might affect different groups adversely. If so what is the justification for this, and is it legally permissible?</p>	<p>The service charge policy aims to recover 100% of the cost of services provided to a resident. Those residents with a disability may have specialist equipment installed in their home. The costs of maintaining and servicing this equipment will be recovered from the individual resident having the benefit of the equipment. Therefore, a resident with a disability may have a higher service charge than a neighbour without a disability. However, the service charge will properly reflect the individual services each resident has actually received.</p>
	<p>Have any representative groups in the locality been asked for their opinion and if so what was the outcome?</p>	<p>A draft version of this policy has been taken to the Tenants' and Residents' Forum.</p>
Tenant Engagement	<p>How does/will this policy ensure the needs of tenants are met?</p>	<p>The requirement to consult with residents; over the annual estimated service charge and service specification ensures the needs of tenants are met.</p>

	How is it felt this Policy will impact on the rights and obligations of tenants?	The 100% recovery of service costs from those residents receiving the services ensures these residents are not being subsidised by those residents not receiving the services.
	Have tenants been consulted and were the outcomes of that consultation taken into account when considering the introduction of this Policy?	Yes, the Tenants' and Residents' Forum have been consulted and their views taken into account.