

Universal Credit service charges – guidance for landlords

Regulatory Approach

1. Universal Credit regulations relating to service charges fall into two distinct segments:
 - A legal definition of what is meant by a service charge for the purposes of Universal Credit; and,
 - Broad definitions of the four eligible service charge categories with some additional specific exclusion criteria.
2. The regulations take a light-touch approach and the detail covering the specifically eligible service charges is contained within this guidance for landlords. Guidance for DWP Universal Credit decision-makers will complement this guidance.

Process

3. The service charges decision-making process envisions three steps:
 1. The landlord determines which of their service charges are eligible, in accordance with the eligible service charges regulations and guidance, and notifies the tenant of the amount.
 2. The total eligible amount is input (by the tenant or DWP) as part of the Universal Credit claim.
 3. DWP pays the full eligible monthly amount as part of the Universal Credit payment.
4. Universal Credit regulations do not place any duty on landlords to determine or apportion eligible service charges or to notify their tenants of eligible amounts; however, it was acknowledged that landlords are already supplying details about service charge payments to their tenants.
5. The Universal Credit claim will only ask for the overall amount and frequency of payments, but there are situations where further detail may be required. It is also reasonable for tenants to understand the specific charges they are responsible for paying.
6. Landlords and their representative groups who helped to develop this guidance therefore suggested that it would be relatively straightforward for landlords to highlight the eligible service charges and their amounts on current tenant notifications. DWP does not intend to mandate this approach, as landlords should have the freedom to determine the best way to communicate with their tenants.
7. It is also recognised that landlords have an interest in providing this information, since their tenants are only able to claim for the eligible charges if they have this figure to supply.

8. It is recognised that the transition to Universal Credit will involve landlords having to consider tenants not immediately affected by this guidance (Housing Benefit recipients, pensioners etc).
9. To ensure that the process avoids unnecessary protracted discussions around the eligibility or reasonability of any supplied amounts, there is the ability for DWP to refer cases for an independent determination.

Universal Credit Service Charges Regulations

Service Charge Payments (whether eligible or ineligible) Definition

10. Service charge payments are (*UC Regulations 2013, Schedule 1, Paragraph 7(2)*):
 - Payments of, or towards, the costs of or charges for providing services or facilities for use or benefit of persons occupying the accommodation; or,
 - Fairly attributable to the costs of or charges for providing such services or facilities connected with accommodation as are available for the use or benefit of persons occupying accommodation.
11. A service charge payment is still classed as a service charge payment whether or not they are separately identified as meeting the conditions in paragraph 9 above, whether or not they are made as part of or in addition to any other payment (such as rent) and whether or not they are made under the same agreement as that under which the accommodation is occupied. (*UC Regulations 2013, Schedule 1, Paragraph 7(4)(a), 7(4)(b), 7(4)(c)*)
12. Payments are excluded where the services or facilities to which the payments relate are provided for any person occupying (*UC Regulations 2013, Schedule 1, Paragraph 7(3)(b)*):
 - A tent;
 - Approved premises;
 - A care home; or,
 - Exempt accommodation.
13. Payments are also excluded where a loan, secured on the property that the service charges refer to, was taken out for the purposes of making the service charge payments. (*UC Regulations 2013, Schedule 1, Paragraph 7(3)(a)*):
14. There are **four conditions** for eligible service charges payments.
15. **The first condition** is that the right to occupy the accommodation is dependant upon the tenant paying service charges, for example where it forms part of the tenancy agreement. (*UC Regulations 2013, Schedule 1, Paragraph 8(3)*)

Eligible Service Charge Categories

16. **The second condition** is that the service charge wholly falls into one or more of the following categories (*UC Regulations 2013, Schedule 1, Paragraph 8(4)*):
 - Category A: Maintaining the general standard of the accommodation

- Category B: Areas of communal use
- Category C: Basic communal services
- Category D: Tenant accommodation-specific charges

17. Comprehensive detail about the specific eligible service charges that come under these categories can be found below.

18. **The third condition** is that the costs or charges are reasonable and that they relate to such services as it is reasonable to provide. (*UC Regulations 2013, Schedule 1, Paragraph 8(5)*)

Exclusions

19. **The fourth condition** is that none of the following applies to the service charge (*UC Regulations 2013, Schedule 1, Paragraph 8(6)*):

- Public funding (in the form of benefits, grants or other sources) is designed to contribute towards the cost of the service or facility, irrespective of whether the tenant has claimed for the funding;
- Where the tenant would acquire an asset, or interest in an asset;
- Any charges for meals, medical services, personal services of any description; and,
- Charges deemed as ineligible service charges by virtue of not meeting the requirements of an eligible service charge.

Exhaustive List of Eligible Service Charges

Category A

- Charges for the external cleaning of the tenant's windows, **only** where the tenant does not live on the ground floor; and,

In the case of shared ownership tenancies **only**:

- Internal or external maintenance or repair of the property, but only where those payments are separately identifiable as being for that purpose.

Category B

The ongoing maintenance (including repair), cleaning and utility (provision of heating, water, electricity etc.) costs of:

- Communal grounds maintenance (general basic gardening for communal gardens such as lawn mowing, tree management, hedge maintenance, litter removal etc., lighting and maintenance costs for areas of external access (where the tenant is liable to pay for these);
- Tenant car or bike parking (this does not extend to the manning of car parks for security purposes). Such charges **must** relate to maintaining a parking service for tenants, and **must not** relate to the provision of security for the tenant's vehicle;
- Communal laundry facilities;
- Children's play areas (equipment maintenance, surface maintenance etc); and,

- Internal areas of common use outside of the home (hallways, corridors and rooms), including provision of lighting and emergency lighting..
- The external and internal cleaning of windows of communal areas.
- Health and safety charges for eligible communal areas or eligible communal service (such as legionnaires assessment, chlorination of water tanks, de-chlorination of water tanks, water softness, electrical equipment checks, pest control, fire prevention and detection etc.)

Category C

Charges relating to the provision, maintenance, cleaning or repair of:

- Communal lifts (including stair lifts in communal areas);
- A communal telephone (but excluding the costs of telephone calls);
- Adaptations in communal areas (where other public funding is not available to provide for this, such as the ongoing maintenance costs);
- Secure building access (key-cards, keypad door locking mechanism etc.); and,
- Provision of equipment (such as aerials) to access free-to-air television and radio. Where this equipment includes the ability to extend services to include satellite/cable television or internet connection, any extensions to the service will not be eligible for benefit payment.

Charges for the provision, maintenance and repair of:

- Refuse collection (e.g. refuse chutes, communal refuse collection and disposal etc.); and,
- Closed Circuit Television, where this is provided for the purpose of maintenance of areas of internal or external communal use (to help maintain the availability of an eligible communal service or facility).

Charges for the provision of services, **but only the proportion that directly relates to time spent on providing that eligible service:**

- If a person, such as a concierge, groundskeeper or caretaker, is employed to provide any eligible service charge, then the relevant proportion of staffing costs for this person will be eligible; and,
- The costs for management and administration of eligible services, whether incurred by the landlord or by third parties, that the tenant is liable as calculated and charged for in accordance with the terms of their tenancy agreement or other related agreement.

Category D

- Charges relating to the rental of basic furniture or essential domestic appliances to tenants in the accommodation they occupy, **only** where the items being rented remain the property of the original owner and do not form part of a purchase or part-ownership agreement.

Examples of Ineligible Service Charges

20. The following list is for illustrative purposes and is **not** exhaustive:

- Individual living expenses, such as heating, lighting and hot water for the tenant's accommodation;
- Meals;
- Personal services, such as a laundry or cleaning service;
- Nursing or personal care services (help with personal hygiene, eating, dressing etc.);
- Counselling, medical or support services;
- Any medical expenses (including those relating to the provision of counselling);
- Transport;
- Installation, maintenance or repair of any special equipment or adaptations to the tenant's accommodation in respect of disability or infirmity of tenants;
- Individual emergency alarm systems;
- Subscription or fee-based television (e.g. satellite television subscription);
- Such communal social recreational areas that would be considered unreasonable, or excessive, to provide such as gyms, bars, shops, hairdressers, restaurants, café's or swimming pools;
- Gardening for an individual's gardens;
- Provision of furniture and recreational facilities in communal rooms (such TVs, computers, internet connection, TV licences etc.);
- Depreciation of assets providing an eligible or ineligible service;
- Water, sewerage and utility charges relating to anything other than communal areas; and,
- Arrears of service charges owed by the tenant due to non-payment – these to be recovered through separate arrears repayment agreement with the landlord, or via 3rd party deductions from benefit.

Apportioning Service Charges

21. Where a specific service charge levied against a tenant includes eligible and ineligible aspects (for example, part of charge includes an amount for meals), **only** the eligible aspect will be payable for Universal Credit purposes. The charge will therefore need to be apportioned and the appropriate amount highlighted as eligible to the tenant.
22. When apportioning amounts, ineligible aspects can be ignored and there are no provisions to deduct notional amounts. This is because Universal Credit regulations provide only for the payment of charges relating to eligible service charges.
23. Where a particular charge covers both eligible and ineligible services, it should be apportioned in a reasonable and transparent way. General terms, such as 'intensive housing management', should therefore be avoided.

Example 1

- A janitor is employed to carry out a range of maintenance services and the cost of this is £300 per week (wages plus employer pension contributions etc.).
- The landlord, using the eligible service charges list and the janitor's job description, determines that the janitor will normally spend 20% of his time carrying out work directly related to eligible service charges each week.
- 20% of the cost is £60 p/week.

- There are 50 tenants. £60 divided by 50 tenants = £1.20.
- The eligible weekly amount, per tenant, is therefore £1.20p.

Example 2

The landlord is allowed to charge the tenant administration fees. For Universal Credit purposes, only the element of the administration fees relating to eligible service charges can be considered as eligible.

To apportion these correctly the landlord should:

- Determine the percentage of their service charges that are eligible service charges, using the eligible service charge categories.
- Apply this percentage to the overall administration fee to produce a total eligible amount.
- Divide by 52 to arrive at a weekly amount and then divide the weekly total (without rounding) by the number of tenants.
- This figure, rounded up to the nearest penny will be the eligible amount of management charges for Universal Credit purposes.

Worked Example

- Administrative charges are £25,000 per year.
- Eligible service charges equate to 50% of the charged services.
- 50% of £20,000 is £10,000.
- £10000 divided by 52 is £192.307692.
- There are 200 tenants. £192.307692 divided by 200 is £0.961538.
- The eligible weekly amount is therefore £0.97p per tenant.

Notifying the Tenant

24. The key information that will need to be highlighted on notifications to tenants will be:

- What the tenant's eligible service charges are;
- What those eligible service charge amounts are and the frequency of payment this relates to; and preferably,
- The overall total of eligible service charge amounts.

25. This information is required by the tenant because they will be asked to provide the overall amount of eligible service charges and the frequency that they are due to pay this. Providing the tenant with the overall eligible amount, rather than just the individual elements, helps to mitigate against the risk of error.

Disputed Service Charges

26. If an amount of eligible service charges has been supplied by the claimant and appears to be in excess of the level that would be expected, the case will be flagged for intervention. DWP will then try to establish the reason for this, which may be due to one of the following scenarios:

- Customer error (for example a keying error or misunderstanding of what information they needed to supply);

- The service charges have not been correctly apportioned; or
- The service charges have been apportioned correctly but elements **appear to be excessive**.

Customer Error

27. If the case has been flagged as a result of an error on the part of the customer, DWP will work with them to identify this and correct the error.

Incorrectly Apportioned Service Charges

28. Only eligible service charges can be included as part of the Universal Credit housing costs. If a charge has not been correctly apportioned into eligible and ineligible elements, the service charge cannot be included as an eligible service charge.

29. Where it is determined that the service charges have not been correctly apportioned, DWP will attempt to resolve this issue. Where it is resolved successfully, the amount originally supplied may need to be adjusted on the Universal Credit system by a Universal Credit decision-maker.

30. Providing that the charge has been apportioned in a reasonable and transparent way and in accordance with this guidance, cases where service charges are excluded on the basis will be rare.

31. If a service charge has been excluded, this does not affect the tenant's right to request a reconsideration of a DWP decision, or the process of legal recourse through appeal.

Elements of Correctly Apportioned Service Charges Appear Excessive

32. Where the service charges have been correctly apportioned, but the charged amounts appear to be excessive, DWP can refer the case for independent determination.

33. Before any referral is made, a Universal Credit decision-maker will conduct further enquiries with the tenant and, or, landlord to gain further data. If these enquiries resolve the issue, the Universal Credit decision-maker will take appropriate action rather than referring the case.

34. Where a referral is made, the process of independent consideration allows landlords to supply any relevant information that they wish to be considered.

35. Independent consideration of charges that appear to be excessive will, so far as is possible, compare actual costs within tenancies on a 'like with like' basis. For example, lift maintenance charges for a 10 storey building will be compared with those for another similar building and tenancy within the same local authority area (or adjoining local authority if that is not possible).

36. DWP expects the numbers of cases that are referred for independent consideration to be low. The process, which acts as a safeguard for landlords as well as DWP, is in place to ensure that the relevant information is considered should any service charge initially appear excessive. A referral will be an exception rather than routine.