



Ongo Homes

Leasehold Service Charge Arrears Policy

September 2018

Policy Title:	PRS10 - Leasehold Service Charge Arrears Policy
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1. Our policy...

- 1.1 At Ongo Homes (OH), we manage around 282 Right to Buy (RTB) leasehold flats.
- 1.2 We have a duty to charge our leaseholders for services carried out to the building and communal areas where they live. We must make sure that income from tenants' rent payments does not subsidise the services provided to leaseholders.
- 1.3 An estimated bill is produced for all leaseholders annually. Leaseholders should make payments based on this bill until we reconcile the account in the following financial year. Where payments are not made in line with agreed methods, action will be taken to ensure recovery of funds.
- 1.4 This policy outlines the recovery methods available to OH. It will ensure a consistent approach is taken whilst having regard to each leaseholder's individual circumstances.

2. It applies to...

- 2.1 This policy applies to Ongo Homes leaseholders and shared owners.
- 2.2 It covers **leasehold service charges** levied by OH. The collection of housing tenant rents and service charges is covered within OH's Income Collection Policy.

3. Aims of the Policy

- 3.1 The aims of this policy are:
 - To maximise the service charge income collected by OH
 - To ensure leaseholders have the information and support they need to maximise their income and prevent or minimise their debt
 - To provide an equitable, consistent and robust approach to the collection of leasehold service charges

4. Policy principles...

4.1 Obligations under the lease covenants to pay service charges

- 4.1.1 All leases state the leaseholder must pay rent and service charges. The clause below is taken from our most recent lease:

"To pay the Rent during the Term at the time and in the manner aforesaid without any deduction", and:

"To pay the outgoings and in any event of any of the outgoings being assessed charged or imposed in respect of the building to pay the proper proportion of the outgoings attributable to the Flat or the facilities enjoyed with it under the provisions of this Lease"

4.2 Calculation of service charges

4.2.1 Service charges represent the cost of providing services to a particular area (such as a block or estate) plus the organisations' administration/management charge, apportioned as described in the lease(s).

4.2.2 Service charges are calculated annually based on the estimate as described in the Leasehold Management Policy.

4.2.3 OH will consider alternative payment terms for the annual charge outside of the terms of the lease on an individual basis.

4.3 Reductions in service charges

4.3.1 The final figure of service charge expenditure will not be known until after the end of the financial year and may vary (either up or down) from the estimated bill initially issued.

4.3.2 Once the final service charge account has been issued, the charge will be considered to have been finalised and will only be reduced in the following circumstances:

- The calculation can be shown to be incorrect because of a mathematical oversight. The amount will then be recalculated
- Costs have not been apportioned as required by the terms of the lease
- OH has been ordered to reduce the charge by The First Tier Tribunal (FTT) Property Chamber. The amount of the reduction will be the amount ordered by the tribunal
- A leaseholder has had a complaint upheld under the OH complaints procedure that a service which has been charged for has not actually been received for all or part of the year. The reduction will be the amount charged for the particular service for the period of complete service failure only

4.3.3 Any individual reduction of service charge will be investigated for the impact on other leaseholders within the block or estate who were also recharged for the same works or services. If it is deemed fair, reasonable and in accordance with the terms of the lease, the reduction will be applied to all leasehold properties within the block and/or estate.

4.4 Service charge arrears

4.4.1 We will take prompt action if leaseholders fail to pay their service charges on time.

4.4.2 Debtors will be contacted and asked to pay regular charges within a reasonable period (usually 28 days), and in line with our current service charge arrears recovery procedure.

4.4.3 Service charges will not be reduced on the grounds that a leaseholder is vulnerable, on a low income or has serious debts. Instead we will take a sensitive and flexible approach to debt recovery and will allow payment of larger bills over a longer period

than would normally be acceptable. Assistance with budget management, funding advice and support may be offered in appropriate cases.

4.5 Recovery

4.5.1 OH will consider taking legal action to recover service charge arrears if other courses of action in line with the Service Charge Arrears Recovery Procedure have proved unsuccessful. Any legal action taken will be appropriate and proportionate.

4.6 Disputes

4.6.1 Circumstance may arise where a leaseholder believes that their service charge is too high. . Common reasons for dispute or withholding payment may include:

- The quality and/or standard of a service has been poor
- A service charged for has not been received
- The charge has been calculated incorrectly
- Repair works have not been completed to a satisfactory standard

4.6.2 A leaseholder who formally refuses to pay part or all of a charge will be considered to be "in dispute" over their charges rather than simply as a non-payer.

4.6.3 The dispute procedure need not be used for minor disputes (ones which can be resolved simply and quickly), but since any dispute could ultimately end up at a First Tier Tribunal, it is important that all cases are adequately recorded.

4.7 First Tier Tribunals (FTTs)

4.7.1 Where Ongo's internal review or Complaints and Feedback Procedure have been exhausted, leaseholders have the option of referring their case to the First Tier Tribunal (Property Chambers)

4.7.2 FTT are part of the Residential Property Tribunal Service (RPTS) and provide an accessible and relatively informal way to resolve residential leasehold disputes. Each FTT usually consists of three members: a lawyer, who is often the chairman, a valuer and a lay person. There are five regionally based FTT offices (London, Northern, Midland, Eastern and Southern) plus one for Wales. FTT hearings are open to the public and their decisions can be seen at FTT offices.

4.7.3 Proceedings at the FTT are semi-formal. Neither side is required to be represented by a barrister, solicitor or valuer, evidence is not given on oath and the usual court rules do not apply. However, parties appearing before a FTT may wish to seek professional advice, and it is sensible to arrange representation if the argument relates to the interpretation of the law or the terms of the lease. In cases of a technical nature, the FTT is usually assisted by expert evidence from a valuer or experienced property manager.

4.7.4 Applicants for a determination may be long leasehold tenants, landlords, or in certain circumstances, renting tenants. The applicant pays an application fee and, where a hearing is held, a hearing fee, but after that each party normally pays their own costs.

However, in some cases a landlord may be able to recover its costs under the terms of the lease. If this is the case, advice should be sought on the options available. Finally, the FTT has the power to award a limited amount of costs in certain circumstances.

4.7.5 The FTT can determine a wide range of disputes, including:

- Disputes about the terms and price of buying the freehold or extending a lease
- Disputes about the liability to pay, and reasonableness of, a service charge, an administration charge, or an estate management scheme charge
- Disputes relating to building insurance
- Whether it would be appropriate to appoint a new manager in a block of flats
- Whether a residential long lease (primarily of flats) should be varied
- Disputes relating to the Right to Manage
- Alleged breaches of a lease prior to a landlord serving a notice under Section 146 of the Law of Property Act 1925
- Whether a dispensation should be granted in respect of the consultation requirements under section 20 of the Landlord and Tenant Act 1985.

4.7.6 Applications to a FTT can be made under the LR Act 1967, L&T Act 1985, L&T Act 1987, LRHUD Act 1993 or CHLR Act 2002.

4.7.7 The FTT application fee varies depending on the nature of the case.

4.8 Debt Advice and Leaseholders with Serious Debts

4.8.1 Leaseholders who are in arrears with their service charges and also have other debts will be offered the same support as renting tenants. Ongo's first option will always be a referral to the OH Financial Inclusion team. If this fails to resolve the situation, it may be necessary to refer the leaseholder to the Citizens Advice Bureau or another suitable agency for advice.

4.8.2 If a leaseholder is about to be made bankrupt, applies for an Administration Order or proposes an Individual Voluntary Arrangement (IVA), the Home Ownership Team will ensure that the service charge debt is included in the repayment schedule. However, it will rarely be appropriate for OH to initiate bankruptcy or to suggest the leaseholder applies for an Administration Order or an IVA.

4.9 Vulnerable Leaseholders

4.9.1 Leaseholders who become vulnerable through old age or physical or mental ill health may find themselves unable to pay service charges, particularly large one-off major works costs. 4.9.2 OH will help leaseholders on a low income and with other needs by agreeing that they may spread the cost of service charges over an extended period. The length of the agreement will depend on the leaseholder's circumstances, including their needs, income, the amount owing and the projected costs of future repair bills.

4.9.3 OH will make every effort to avoid the need to apply for an order for forfeiture where a vulnerable leaseholder can show that they are genuinely unable to pay for the costs of major repair works. Instead, if there is no mortgage (and consequently no lender willing to pay the arrears) and the leaseholder cannot obtain a mortgage because of their age or infirmity, OH will seek to attach the debt to the title of the property, enabling the debt to be recovered when the property is eventually sold.

4.10 Confidentiality and Data Protection

4.10.1 We comply with the General Data Protection Regulation (EU) 2016/679 ('the GDPR') and the Data Protection Act 2018 ('the DPA') and do not share personal data with third parties without their consent except under circumstances allowed by the GDPR and DPA.

4.10.2 This means that we may discuss arrears cases and action we are taking with other parties such as advice agencies but we will not disclose information about the personal circumstances of leaseholders unless we have their permission to do so.

4.11 Complaints and Review

4.11.1 If customers are dissatisfied with the way their case has been dealt with, they can make a complaint in accordance with our Complaints and Feedback Policy.

5. Making sure we do what we say...

5.1 The Head of Customer & Support Services is responsible for ensuring this policy is implemented.

5.2 The Home Ownership Manager is responsible for monitoring the service and ensuring it complies with the requirements of this policy.

5.3 All employees who are involved in providing advice and assistance to leaseholders are responsible for ensuring they comply with the requirements of this policy.

5.4 OH monitors performance on the collection of leasehold service charges annually. Key Performance Indicators are in place in order to continue the reduction of historic service charge arrears in each financial year.

6. Other things to bear in mind...

6.1 The main pieces of legislation and regulation relevant to this policy include:

- Housing Act 1996
- S3 of the Landlord and Tenant Act 1927
- Landlord and Tenant Act 1985
- Law of Property Act 1925
- Leasehold Reform Act 1993

- Commonhold and Leasehold Reform Act 2002

6.2 This policy links to the:

- Complaints, Compliments & Feedback Policy
- Leasehold Management Policy

8. We'll look at this again...

8.1 This policy will be reviewed every three years unless there are any substantial changes to legislation or regulation, or deficiencies are found which necessitate an earlier review.

9. What do we mean?

Reference	Explanation
Estimated bill	A bill is issued each February which is an estimate of the cost to provide services to a block or estate. The exact amount cannot be known in the current financial year; therefore the estimate is mainly based on the actual cost in the previous year, including inflation. This is in accordance with OH's lease agreement.
Final service charge account	The final figure of service charge expenditure will not be known until after the end of the year and may vary (either up or down) from the estimated bill given earlier. OH will calculate the actual cost and issue a final service charge account in the summer.
FTT	First Tier Tribunal – an independent way to resolve leasehold disputes.
Service charge	Service charges represent the cost of providing services to a particular area (such as a block or estate) plus the organisations' administration/management charge, apportioned as described in the lease(s).