

# Statutory regulation of service charges Part I

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## Overview

1. When does the statutory regime apply?
2. The reasonableness requirement
3. The tenant's rights to information

## When does the regime apply?

- **Landlord and Tenant Act 1985**, sections 18-30
- What is a “**service charge**”? Section 18(1):
  - “...an amount payable by a tenant of a dwelling as part of or in addition to the rent—
  - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or 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.”

## When does the regime apply?

- What are “**relevant costs**”? Section 18(2):

*“The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.”*

- NB: this includes (section 18(3)):
  1. overheads
  2. costs incurred or to be incurred in an earlier or later period than the period for which the service charge is payable

## When does the regime not apply?

- Sections 26 and 27 exceptions:
  - Certain landlords:
    1. Local authority
    2. National Park authority
    3. New town corporation(unless the tenancy is a long tenancy: see s26(2))
  - Rent registered under Part IV of the Rent Act 1977 and not variable
- Mixed-use premises? *Ruddy v Oakfern Properties* [2006] EWCA Civ 1389

## When does the regime apply? Some recent cases

- Is a tenant obliged to contribute through his service charge payments to the cost of the landlord's removal of bulk rubbish from the common parts of the property where there is no liability to pay for such costs under the lease (or any other agreement)?
  - *Wilcock v Guinness Partnership Ltd* [2019] UKUT 140
- Are the management costs of a wholly lessee-owned management company service charges under the 1985 Act?
  - *Chiswick Village Residents Ltd v John Robert Francis Southy* [2019] UKUT 148
- Is an allowance for the landlord's management costs which is based on the amount of costs actually incurred in the first year of the lease term but then subject to increase by reference to an index a service charge governed by the 1985 Act?
  - *Anchor Trust v Waby* [2018] UKUT 370 (LC)

## The reasonableness requirement

- Section 19:

*“(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—*

*(a) only to the extent that they are **reasonably incurred**, and*

*(b) where they are incurred on the provision of services or the carrying out of works, only if the **services or works are of a reasonable standard**;*

*and the amount payable shall be limited accordingly.*

*(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.”*

## Costs reasonably incurred

- “Reasonably” means something more than “rationally” in the public law sense: *Waler v Hounslow LBC* [2017] EWCA Civ 45
- Two-stage test – *Forcelux v Sweetman* [2001] E.G.L.R. 173
  1. Was the landlord’s decision-making process reasonable?
  2. Is the outcome of that process (i.e. the amount to be charged) reasonable in light of market evidence?
- Have to look at the context and determine each case on its own facts: *Cos Services Ltd v Nicholson and Willans* [2018] UKUT 382 (LC)
- Not for the court/tribunal to substitute its own decision if the outcome of the landlord’s decision is a reasonable one: *De Havilland Studios Ltd v Peries* [2017] UKUT 322 (LC)

## Services or works are of a reasonable standard

- No presumption for or against the reasonableness of the standard – decision to be made on all the evidence made available: *Havering LBC v MacDonald* [2012] UKUT 154 (LC)
- What happens where works are found not to be of a reasonable standard?
  - Does not mean that there can be no recovery: *Yorkbrook Investments Ltd v Batten* (1986) 18 H.L.R. 25 CA
  - Only the costs which could have been charged for sub-standard works will be recoverable
  - Probably wrong in principle for court or tribunal not to make at least some reduction where there are “significant defects”: *Nogueira v Westminster LBC* [2014] UKUT 0327

## On account service charges

- What is a reasonable amount to be paid in advance depends on the circumstances when the demand is made
  - **Not** retrospectively once the actual costs incurred are known at a later date: *Knapper v Francis* [2017] UKUT 003 (LC)
  - **But** have to take into account possible 3<sup>rd</sup> party contributions: *Avon Ground Rents v Cowley* [2018] UKUT 0092 (LC)
  - Second part of s19(2) provides for “**any necessary adjustment**” to be made once actual costs are known

## Tenant's right to information

- Three basic rights:
  - **Section 21:** to request a summary of relevant costs
  - **Section 22:** to request to inspect supporting accounts, receipts and other documents
  - **Section 23:** to request information held by a superior landlord
- **NB:** failure without reasonable excuse to comply with s21 duty is a summary offence

**Thank you for listening**

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