National Audit Office

The UK's independent public spending watchdog

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Mohammad Yasin MP
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By email: mohammad.yasin.mp@parliament.uk
cc: Saskia.OHara@pilc.org.uk; Alexandra.Goldenberg@pilc.org.uk; shac.action@gmail.com

Dear Mohammad Yasin

CONCERNS ABOUT WELFARE BENEFITS AND SERVICE CHARGE ABUSE BY LANDLORDS AND MANAGING AGENTS

I wrote on 15 April to let you know that my team were working through the material gathered as part of our initial inquiries into the issues you raised about welfare benefits paid in respect of service charges. They have now completed this work and I have considered the results.

In your letter, you asked that the NAO launch an investigation into welfare benefits paid in respect of service charges via Housing Benefit or the housing element of Universal Credit without checks on the legitimacy of the invoices and service charge demands. You focused particularly on the potential consequences for public funds paid through the benefits system. You also noted that it would be impossible for DWP or local authorities to scrutinise individual service charge payments covered by benefits but that tenants who are claiming benefits, on the other hand, have little incentive to report excess charges to DWP because to do so would risk those benefits being reduced.

The note I have attached as an annex to this letter summarises the scope of our inquiries and what we have found. As part of this work, we engaged with DWP officials, the Housing Ombudsman Service, the National Housing Federation, and representatives from SHAC. The purpose of our inquiries was to establish whether the concerns raised fall within the NAO's remit and whether there is sufficient risk to public funds to warrant more detailed examination.

Looking first at the benefits system, DWP's direct relationship is with benefit claimants not landlords. Benefit claimants are responsible for claiming only those amounts that are eligible for support. There are a variety of safeguards in place to check the eligibility of the items being claimed for and to protect public funds from excessive claims for service charges. Ultimately, DWP and local authorities have the power to reduce benefit payments if claims are assessed as being too high. DWP does not have the power to reduce the amount invoiced by housing associations, local authorities or private sector landlords. Our audit of DWP would not, therefore, help address the underlying issues you raise in your letter. The NAO does not audit, or have any rights to access information from, housing associations, or local authority or private sector landlords, who are responsible for levying the service charges.

Taking a cross-government perspective, you appear to be raising broader questions about housing regulation. The attached note gives an overview of the various mechanisms and legal safeguards in place that are intended to help ensure that the arrangements for services charges work effectively. The Regulator of Social Housing makes regulations, issues guidance and has powers to intervene in certain circumstances. Variable service charges are subject to statutory controls and there are a number of routes available for people to seek redress in the event of disputes. I do recognise, however, that challenging service charges or appealing against them may be difficult, particularly for vulnerable people. I am also aware that the Housing Ombudsman, for example, has very recently called for a national tenant body and funding review to strengthen tenant voice and landlord accountability, in the context of maintaining and repairing social housing. Policy decisions about regulation fall outside the remit of the NAO and are for government to make. Given this, and our findings as attached, I do not propose to undertake further work at this stage but will keep under review the effectiveness of the regulators that we audit.

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I hope you find the material in the note helpful. Thank you again for drawing your concerns to my attention.

Yours sincerely

Gareth Davies

GARETH DAVIES

Summary findings from the NAO's inquiries into issues relating to welfare benefits paid in respect of service charges

1 This note summarises the results of our inquiries into issues relating to welfare benefits paid in respect of service charges. We carried out these inquiries following correspondence from Mohammad Yasin MP and 25 co-signatories on behalf of the Social Housing Action Campaign (SHAC).

The role of the National Audit Office

2 The NAO scrutinises public spending for Parliament and is independent of government and the civil service. Our main functions are to certify the accounts of government departments and a range of other public bodies, and to carry out examinations into the economy, efficiency and effectiveness with which government departments and other public bodies have used their resources. The NAO's remit does not extend to auditing housing associations or local authority or private landlords.

The purpose of our inquiries and the evidence we drew on

3 The purpose of our inquiries was to establish whether the concerns raised by SHAC fall within the remit of the NAO and whether there is sufficient risk to public funds to warrant more detailed examination. This note summarises the evidence we drew on and what we found. It is not a comprehensive report on the arrangements for service charges. While we refer to the statutory framework, the note is not a statement or interpretation of the law since those are matters for the courts.

4 We reviewed the following documentary evidence:

- a letter from MPs raising concerns about welfare benefits paid in respect of service charges via Housing Benefit or the housing element of Universal Credit;
- a letter from the Public Interest Law Centre on behalf of SHAC and supplementary material complied by SHAC, alleging service charge abuse by landlords and managing agents;
- supplementary correspondence from SHAC raising additional concerns about the legality, in specific circumstances, of some rent and service charge increases by housing associations;
- Universal Credit and Housing Benefit legislation, statutory regulations and guidance relevant to service charges;
- published Department for Work & Pensions (DWP) documents, including annual reports and accounts, official statistics on fraud and error in the benefit system, and guidance notes; and
- relevant material published by the Housing Ombudsman Service and the Regulator of Social Housing, and other advice and guidance published, for example, by charities.

5 We interviewed or consulted:

- representatives of SHAC to explore the evidence underpinning their concerns around service charges, within the housing association sector and more broadly;
- DWP officials for an overview of processes, regulations and sources of assurance over the validity of service charge demands covered by benefit payments;
- the National Housing Federation, the representative body for housing associations in England, to obtain its views on the issues raised with us; and
- the Housing Ombudsman Service to understand the Ombudsman's role in respect of service charges.

The total cost of service charges

6 The Regulator of Social Housing publishes annual global accounts of private registered providers (housing associations). There are around 1,400 providers on the register, of which most have fewer than 1,000 homes. The published data are concerned with a financial analysis of 200 large provider groups, each of which owns or manages at least 1,000 homes and which together represent more than 96% of the sector's stock. The 2024 Global Accounts of private registered providers show that, in the year from 2022-23 to 2023-24, service charges to tenants increased by £0.3bn (16%) to £2.0bn and the corresponding expenditure increased by £0.3bn (13%) to £2.6bn. The Regulator's report noted that increases in service charge expenditure were widespread, reflecting higher costs for labour, materials and building maintenance. Providers with a significant presence in the care and support sector tended to have relatively higher service charge costs and reported the greatest level of increase year-on-year.

7 The data published by the Regulator of Social Housing do not distinguish which housing association tenants are receiving benefits to help pay for service charges. We note that the correspondence we received from MPs estimated that approximately half of the amount of service charges collected by housing associations was covered by Housing Benefit but we have not been able to validate this figure.

8 Equivalent data for the cost of service charges in council housing or the private rented sector outside housing associations are not readily available.

The overall regulatory framework for service charges

9 Service charges are part of the contractual agreements between landlords and tenants or leaseholders. Service charges are payable for services, improvements, insurance or landlords' management costs in respect of eligible services, and repairs and general upkeep of communal areas. There are two types of service charges:

- variable service charges, as defined in section 18 of the Landlord and Tenant Act 1985, which are based on the costs incurred by landlords; and
- fixed service charges, which are not defined in legislation but are stipulated in tenancy or lease agreements.

10 The structure of service charges (for example, what they cover and how they are determined) should be set out in lease or tenancy agreements. Landlords who issue demands for service charges could be housing associations, councils or private landlords. The National Housing Federation told us that the overarching principle is that service charges are not landlords' money but that landlords manage these funds, on behalf of residents, to meet the costs of maintenance or shared services.

11 Statutory controls on service charges were introduced by the Landlord and Tenant Act 1985. These controls apply only to variable service charges. The legislation limits service charges on grounds of reasonableness. The Act says that costs shall be taken into account in calculating service charges "only to the extent that they are reasonably incurred", and "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".[1] The legislation includes other provisions covering, for example, consultation with leaseholders in advance of expensive repairs.

12 Registered providers of social housing should, under the Regulator of Social Housing's Rent Standard, comply not only with the requirements of that standard but also the requirements and expectations of the Rent Policy Statement published by the Ministry of Housing, Communities & Local Government. Providers must set reasonable and transparent service charges that reflect the service being provided to tenants. Providers should also "endeavour to keep increases for service charges within the limit on rent changes", which is set at CPI (at September in the previous year) plus one percentage point. The National Housing Federation told us that housing associations are also expected to follow the Service charge residential management Code, which is produced by the Royal Institution of Chartered Surveyors and approved by the Secretary of State.

[1] Landlord and Tenant Act 1985, section 19 (1).

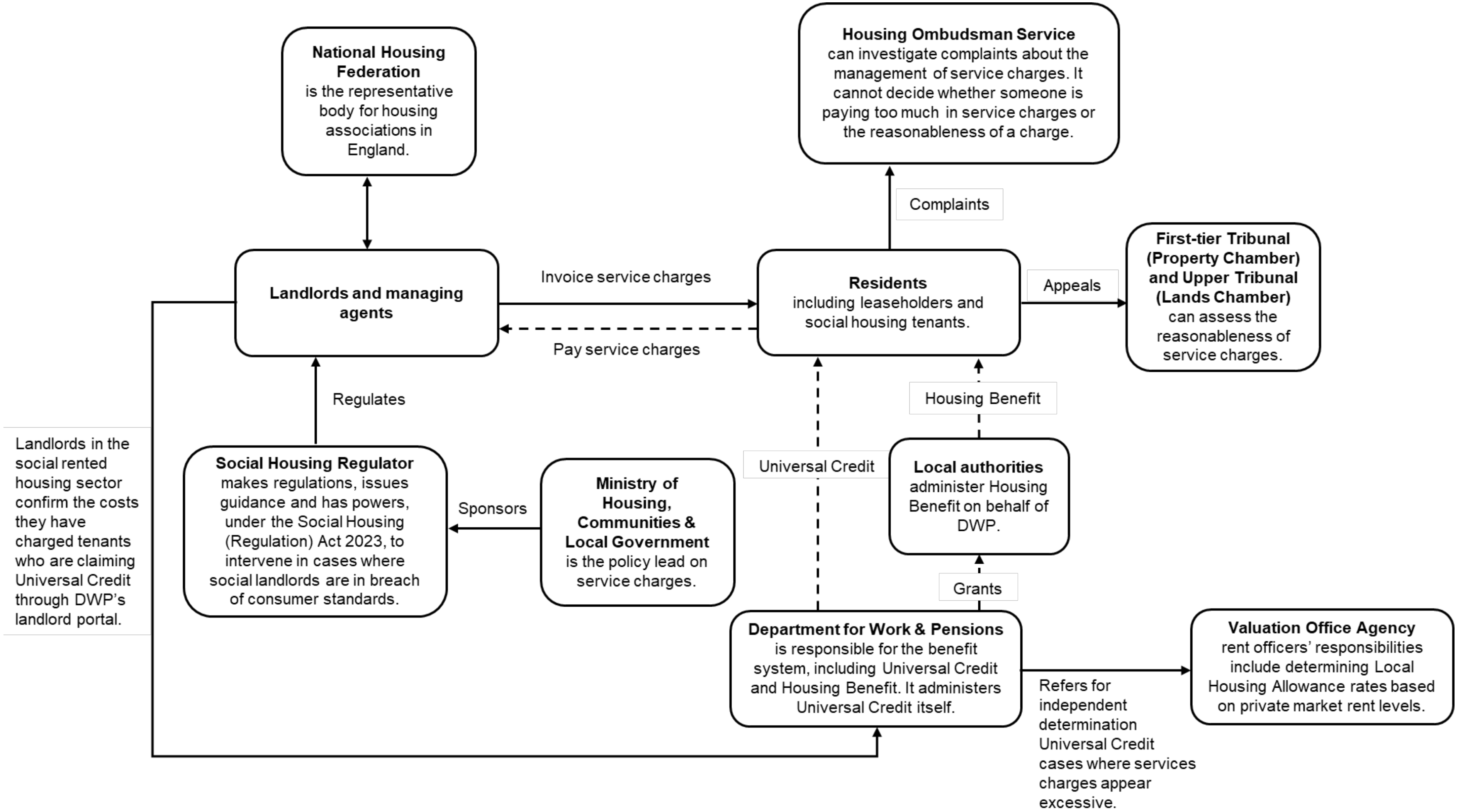
13 Under the Landlord and Tenant Act 1985, landlords must provide tenants with information explaining their service charges, and must provide “reasonable facilities” for the tenant, or the secretary of a recognised tenants’ association, to inspect accounts, receipts and other supporting documents.

14 The government is seeking to strengthen protection for leaseholders, including making provisions to increase service charge transparency. The Leasehold and Freehold Reform Act 2024 is intended to increase leaseholders’ rights, including giving leaseholders a new right to request information about service charges and the management of their building. The government also plans to publish a Draft Leasehold and Commonhold Bill in the second half of 2025 with the aim of reforming the leasehold system, and is considering strengthening the regulation of property managing agents.

Organisations with a role in relation to service charges

15 Multiple bodies, with different regulatory, policy, administrative and enforcement responsibilities, have a role in relation to service charges. The key bodies and their respective roles are shown in the overview below.

Overview of the service charges landscape



In this diagram, solid lines show relationships between the different bodies; dashed lines show funding flows.

16 The Regulator of Social Housing, an arm's-length body sponsored by the Ministry of Housing, Communities and Local Government, regulates registered providers of social housing, including local authorities and housing associations. It oversees providers' governance, financial viability and value for money. Its remit also includes transparency, accountability and tenancy standards, and it may take action if standards are breached. The Regulator of Social Housing publishes a variety of data, research and analysis about council housing and housing associations, including financial information, an annual value for money report and a national tenant survey.

17 There are a number of options available to people to seek redress in the event of disputes about service charges. Residents can raise concerns via their landlord's complaints procedures and, if a complaint is not resolved to their satisfaction, they can refer their case to the Housing Ombudsman Service. The Ombudsman makes the final decision on disputes between social housing residents and their landlords (housing associations, local authorities, private landlords and letting agents). Those in a landlord and tenant relationship, including leaseholders, can make complaints about service charges to the Ombudsman. The Ombudsman can investigate:

- the communications in respect of service charges;
- the provision and standard of the services and benefits paid for by residents; and
- whether landlords have followed the correct process in respect of service charges.

18 The First-tier Tribunal (Property Chamber) settles legal disputes over property and land. The Housing Ombudsman Service has said that the legal process should be the last resort and that the courts and tribunals expect non-court dispute resolution procedures (such as landlords' internal complaint procedures and referrals to the Housing Ombudsman Service) to be the first point of redress where this is possible. SHAC's analysis found that in 2024 there were 233 English Tribunal judgements involving tenants or residents challenging the reasonableness or payability of service charges. SHAC's analysis was that the courts removed or reduced all of the disputed charges in 67 cases (29%), and removed or reduced some of the disputed charges in 103 cases (44%).

Service charges and the benefit system

19 People eligible for certain benefits may be able to claim housing costs, including service charges. DWP provides support with housing costs for eligible claimants through the housing element of Universal Credit or Housing Benefit. It is now approaching the end of its programme to move working-age people from its legacy benefits, including Housing Benefit, to Universal Credit. Housing Benefit will continue to be available for people over State Pension age and for those living in supported, sheltered or temporary housing.

Eligible costs

20 The definition of a service charge in the context of the benefit system, and specifically which costs are eligible, or ineligible, for benefit payments, is set out in statutory regulations. Charges must be "fairly attributable" to the costs of or charges for providing services or facilities connected with the accommodation. The regulations also make clear that the costs and charges to which benefit payments relate must be "reasonable" and "must relate to such services as it is reasonable to provide". Only charges connected with the provision of accommodation are eligible: lift maintenance or a communal laundry, for example; and not charges for services such as sports and leisure facilities, furniture, meals, nursing or personal care.

DWP's assurance framework

21 Benefit claimants are responsible for claiming only those amounts that are eligible for support. Universal Credit regulations allow the Secretary of State to require landlords to provide evidence of housing costs, including service charges. However, DWP's guidance for social landlords recognises that landlords supply details about service charge payments to their tenants. DWP told us it would be impractical for its staff to establish the eligibility of each item on service charge demands. Instead, landlords in the social housing sector tell DWP, through an online portal, what they have invoiced and which items are eligible for Universal Credit. DWP takes assurance that it is only paying benefits in respect of the actual service charges invoiced by matching claims to amounts on the portal to validate claims before making payments. For social rented sector cases, local authorities gather evidence of total rent and service charges from either the claimant or landlord, and decide which service charges are eligible for Housing Benefit and how much of that service charge it is reasonable to meet. Neither DWP nor local authorities are in a position to establish whether the billed services have actually been provided, or provided to an acceptable standard.

22 Private landlords do not usually separately identify service charges. They charge a rent which covers all of their costs and generates a profit. Tenants would not know what element of their rent relates to service charges. DWP told us that the Local Housing Allowance rates, which are based on the size of households and the rental costs in local areas, limit its expenditure on private sector rents.

23 DWP told us that, while social housing providers fulfil a social goal and it is not unreasonable to expect them to be sensitive to the needs of their tenants, it actively encourages local authorities, which administer Housing Benefit on behalf of DWP, to challenge the reasonableness of service charge demands. It told us that the external auditors of local authorities test a sample of Housing Benefit payments to confirm the regularity of the payments with reference to the relevant regulations but these checks do not cover whether the billed service charges were provided. DWP has established assurance arrangements for Housing Benefit payments, involving local authorities that, for example, set out sample size requirements for each local authority to test for errors in payments.

24 Statutory regulations include specific protection for taxpayer funds against excessive benefit claims in respect of service charges. These provisions affect the calculation of amounts payable under Universal Credit or Housing Benefit. What this means is that, should DWP or the relevant local authority determine that a claim for service charges is too high, they may reduce the benefit payment. As the contractual relationship under which service charges are due is the lease or tenancy agreement between residents and landlords, DWP does not have the power to reduce the amount that a landlord charges.

- Where it appears to the Secretary of State that the amount of any relevant payment in respect of accommodation is greater than it is reasonable to meet by way of the housing costs element of Universal Credit, DWP may apply to a rent officer for an independent ‘determination’ to be made.[2] Where a rent officer determines that a lower amount should be payable, the lower amount is used to calculate the amount of Universal Credit due.
- A local authority may, similarly, reduce the amount paid under Housing Benefit if it considers that service charges are too high. Where it considers that the amount of a service charge is excessive in relation to the service provided, having regard to the cost of comparable services, the relevant authority may deduct the excess amount from the benefit payable.

25 DWP expects the numbers of cases that are referred for independent examination to be very low. It told us that in 2023-24 it identified no cases which needed to be referred for an independent determination.

[2] Valuation Office Agency rent officers have a number of responsibilities, including collecting rental information to calculate local housing allowance rates (a measure of reasonable local rent levels) used to calculate Housing Benefit payable to claimants in the private rented sector. Their functions were extended to include Universal Credit by the Rent Officers (Universal Credit Functions) Order 2013.

Benefit spending on service charges

26 DWP does not hold data on the total cost to public funds of meeting service charges through benefit payments. DWP reported that in 2023-24 it paid £31.8 billion in housing support through Housing Benefit and the housing element of Universal Credit but did not separate the cost of rent from service charges.

27 DWP publishes annual estimates of the level of fraud and error in the benefit system including in Universal Credit and Housing Benefit. These statistics do not estimate the level of fraud and error associated with the service charge component of benefit claims.