

# Rent & Service Charge Policy

August 2024

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## 1. Version control

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Date	Details	Updated by
August 2024	V1	

## 2. Policy Statement

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Torbay Council will set its rents and service charges annually for customers. We will work within the framework set out by the Regulator of Social Housing and we will provide the correct notices within the correct timeframe to all customers.

## 3. Scope

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This policy covers:

- Current and New Social Rent tenants, including any specialist projects.
- New build, including Affordable Rent
- Service Charges

This policy does not cover any charges payable or collected by Torbay Council on behalf of a third party. These will be set out in the relevant agreements.

This policy applies to all social housing tenants of Torbay Council owned properties. This policy does not apply to any commercial tenancies or agreements between Torbay Council and a third party. This policy provides the framework for Torbay Council to set both rent and service charges on an annual basis and is supported by the terms and conditions within occupation agreements.

## 4. Aims & Objectives

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### 4.1 Overall Aim

The overall aim of this policy is to ensure that rents and service charges are applied and recovered in accordance with legislative and regulatory requirements and provide a fair and affordable system of charging to customers that represents good value.

## 4.2 Objectives of the policy

The objective of this policy is to ensure that rents and service charges:

- are set and maintained in accordance with The Safety and Quality Standard, which was introduced on 01st April 2024 ([Safety and Quality Standard - GOV.UK \(www.gov.uk\)](https://www.gov.uk))
- are charged in accordance with the conditions of any lease and / or other legal document for leasehold properties.
- are compliant with the requirements of the Landlord & Tenants Act 1985 (and subsequent amendments) and other relevant legislative requirements.
- are set at levels that are affordable to customers on low incomes and / or in receipt of state benefits, represent value for money, and which adequately meet the operating and other costs of Torbay Council.

## 5. Responsibilities

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Key areas of responsibility relevant to the approval and implementation of this policy are set out below:

5.1 Cabinet - is responsible for establishing the overall framework for the setting of rents and service charges, and ensuring the policy is reviewed annually so that it complies with regulatory and legislative requirements as well as meeting Torbay Council's Financial Plan.

5.2 Director - has responsibility for ensuring this policy is applied to ensure compliance with regulatory and legislative requirements.

5.3 Head of Finance - has the responsibility for ensuring that rents and service charges are calculated in accordance with this policy, and that appropriate financial and other support and advice is provided to Cabinet and Director as required.

5.4 Housing Manager – The Housing Manager will have the day-to-day responsibility for the implementation of rent and service charges and ensuring timely communication with tenants, including:

- ensuring prompt implementation of rent and service charges increases / decreases following the Cabinet's decisions
- ensuring housing management and other systems are updated in a timely manner
- ensuring there is timely and appropriate communication with customers, and that customer enquiries are dealt with promptly and effectively
- ensuring prompt implementation of any internal audit recommendations.
- Tenants are required to comply with all terms and conditions of their Tenancy Agreement, lease or other legal agreement. The framework for collection of rents and service charges due is covered separately under the Income and Arrears Policy.

## 6. Definitions

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### **Social rented housing**

Since 2001 social rents have been set based on a government formula which uses average sector rent, relative county earnings, number of bedrooms and property value. This is known as formula rent and once calculated is subject to annual adjustments based on the rent uplifts since 2001 and the subsequent four reductions from 2016. Flexibilities allow us to charge at up to 5% above formula rent to take account of local circumstances and affordability.

### **Affordable rented housing**

This is housing that is subject to a Homes England housing supply delivery agreement, or an agreement between a local authority (Torbay Council in this instance) and the Secretary of State, which allows homes to be let at affordable rent. The rent, including service charges, must not exceed 80% of the gross market value.

### **Service Occupancy Agreement**

This is an Assured Shorthold Agreement where accommodation is linked to employment with Torbay Council. The agreement is between Torbay Council as the Employer and the employee. The accommodation is tied to the employment for the length of the employment contract. The rent has been set at two thirds of the open market rent of the accommodation.

### **CPI**

Consumer Price Inflation - The rate of inflation is the change in prices for goods and services over time. Measures of inflation and prices include consumer price inflation, producer price inflation and the House Price Index.

### **RPI**

Retail Price Index is another method of measuring consumer inflation and is produced by the Office for National Statistics.

## 7. Rent Setting Current and New Social Rent Tenants

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The Government announced that the previous Rent Standard Guidance would be reinstated for a five-year period (2020/21 – 2024/25 inclusive) at the end of the rent reduction period. This allows Registered Providers to increase social housing rents by CPI + 1% per year, with CPI taken by reference to the prevailing CPI rate at the September prior to the increase being implemented. A CPI + 1% rent increase will be applied for four years from April 2020. This increase has been extended for April 2025/26.

In setting its rent Torbay Council will following how the government sets social rents. This is called 'Rent Formula' and is for the rent and not the service charges. The formula uses the following factors:

**Value of house or flat (by the district valuer, not estate agents)**

**Property size (number of bedrooms)**

## **Average income for the region (set by government)**

### **Plus 5%**

Rents will be calculated and collected over a 12-month period each year. Rent increases / decreases will take effect on any day within the month. Tenants will be notified in writing at least 28 days prior to the change in changes coming into effect.

The rent chargeable on re-let mid-year will be the same as the rent charged under the previous tenancy, excluding any specific allowances / adjustments applied that relate specifically to the individual tenant(s).

The Cabinet will revisit this policy annually and confirm the policy assumptions set out above remain appropriate or make amendments to the policy as deemed appropriate. Key policies and rent settings will always go back to the Cabinet.

Affordable Rent Tenants - The Affordable Rent calculated will be set at no more than 80% of comparable Market Rents. Any Affordable rent will be recommended by Cabinet to the council as part of the fees and charges within the overall annual budget setting process.

Rent increases for Affordable Rent properties will be calculated using the same formula and timescales as defined under 'Current and New Social Rent Tenants'.

The initial rent for any new build affordable rental properties will be calculated in accordance with the current Government Policy, any delivery agreement with Homes England or any other partner. Where there is no delivery agreement in place, the approach to setting initial rents will be determined by Cabinet on a scheme-by-scheme basis.

## **8. Re Lets**

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Existing social rent properties will be re-let at formula rent plus 5%. If the existing rent exceeds formula rent plus 5% the rent at re-let will be lowered to formula rent plus 5%. We will ensure that these rents do not exceed the local housing allowance levels, including service charges.

Existing affordable rent properties will be revalued at re-let to ensure that they do not exceed 80% gross market rent or local housing allowance levels, including service charges. At re-let we may use comparable affordable rent properties or desktop reviews instead of a full valuation.

Where social rent properties are re-let to the same tenant at renewal of a fixed term tenancy the rent will remain the same.

Where affordable rent properties are re-let to the same tenant at renewal of a fixed term tenancy the rent will be re-set, using a valuation, to ensure it is no more than 80% of gross market value. We will not increase the rent by more than CPI plus 1% or local housing allowance, whichever is lower.

## 9. Annual Rent Reviews

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In accordance with the Welfare Reform & Works Act 2016 social and affordable rents were reduced by a further 1% in April 2019.

From April 2020 social and affordable rents increased by CPI (September the previous year) plus 1% for the next five years. The figure will be reviewed annually and reported to the Cabinet. No tenant will have their rent increased by more than CPI plus 1% during this period, including those who have had a renewal of a fixed term tenancy at a re-valued rent.

Service Occupancy Agreements are valued on an annual basis to ensure their rents remain at two-thirds of the open market rent.

The Head of Finance will oversee the preparation of a schedule of revised rents for any given annual review and the Housing Manager will ensure that tenants are notified of their revised rents using the appropriate notices within the required time, usually at least one month prior to the revised rent coming into effect and subject to the Council approving the rents as part of the annual budget setting process.

## 10. Service Charges

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Under the terms of its tenancy agreements and leases, Torbay Council operates a variable service charge regime. Service charges applied by the business are additional to the basic rent charge; they are property-specific and are calculated on the basis that Torbay Council recovers the full cost of providing these services, and that these costs are fair and reasonable.

Service charges are reviewed on an annual basis to ensure the service charge income is sufficient to cover future costs of service provision. In the instance of new developments, a token service charge will be set in the first year, to be reviewed at the end of the financial year and will be adjusted accordingly once there is a clear picture of the annual cost for the service provision.

Any service charges for which an individual tenant or leaseholder is liable to pay will be detailed in the relevant tenancy agreement, lease, or other legal documentation.

For the purposes of this section of the policy, tenants or leaseholders are referred to collectively as 'customers' and provisions apply to all unless specifically stated otherwise.

The Service Charges cycle - The variable service charges regime will be operated on a cyclical basis as illustrated at Appendix 1.

Relevant services – Torbay Council will recover from tenants the costs associated with providing services to schemes, blocks of flats, estates and / or individual dwellings that fall outside its statutory duties as a social landlord.

Costs will be recovered from tenants and leaseholders in accordance with the terms of the lease / legal agreement.

Each customer will pay service charges only in respect of the service and work pertaining to the scheme / block / estate in which their property is situated.

Where specific equipment or an individual service has been provided to support a tenant in maintaining their tenancy, the cost of that service and of servicing any equipment will be charged as a service charge specific to that property / tenancy, e.g., a stair lift.

A list of services for which costs are recharged through service charges is provided as Appendix 2 to this policy.

### **Apportioning shared service costs.**

In apportioning costs between residents in a block and / or estate, Torbay Council will seek to achieve a fair and reasonable apportionment of the costs between all residents in the block and / or estate.

Apportionment will be calculated for all customers on the same basis, regardless of tenure, and costs applied equally across all properties unless there are specific grounds to use an alternative method of apportionment. Apportionment will be based on the services that are available to, but not necessarily used by, customers, in accordance with the terms of their individual agreement.

There are some service costs which are non-recoverable from tenants, but which are charged to leaseholders, typically for an apportioned contribution to the maintenance of common parts and buildings insurance. In these instances, costs will be apportioned based on the total number of properties receiving the service, but only charged to those properties eligible to pay for them.

An estimate of the budgeted costs for providing services for the forthcoming year will be used as the basis of costs to be apportioned.

### **Management, Administration and Other Costs**

A management and administration charge of 15% of the estimated service costs (before over/under recovery adjustment) can be applied to all service charges to cover the costs of centralised management and administration of the variable service charges regime.

Statement of Actual Income and Expenditure and Over / Under Recovery of Service Costs, service charges for the year will be calculated based on the estimated costs of service provision for the forthcoming year. Within six months of the end of each financial year, each customer will be provided with a written statement (the Service Charge Statement) setting out details of actual income and costs for the year. Where there has been under-recovery of actual costs, this will be recovered in accordance with the rules applicable to a variable service charge regime. The amount of any under-recovery will be added to the amount of service costs to be recovered in the year immediately following the date of the Service Charge Statement and recovered in equal instalments throughout the year.

Where there has been an over-recovery of actual costs, this will be adjusted for in accordance with the rules applicable to a variable service charge regime. The amount of any over-recovery will be deducted from the amount of service costs to be recovered in the year immediately following the date of the Service Charge Statement and adjusted for in equal instalments throughout the year.

Management will seek to minimise the level of over and under recovery each year through setting appropriate budgets based on historic data and forecast activity.

Notification and Recovery of Service Charges. All customers will be notified in writing of the service charges applicable to the forthcoming financial year, at least four weeks in advance of the new charges coming into effect (the Rent and Service Charges Letter). This will include details of whether charges are eligible to be covered by Housing Benefit (or not). Following the introduction of Universal Credit, the Department for Work and Pensions has issued further guidance, 'Universal Credit service charges – guidance for landlords (April 2013)', which provides detail as to which charges are eligible / ineligible for inclusion in calculating UC entitlement.

Where there is a change in circumstance in-year that results in the introduction of a new service charge, e.g. completion of a disabled adaptation, customers will be notified in writing at least 28 days in advance of the new charge being applied to their account. Charges will be made and recovered monthly.

Customers are required to pay service charges under the conditions of their tenancy, lease or other legal agreement. Non-payment will result in the relevant arrears recovery policy being applied.

### **Challenging Service Charges**

The law requires that service charges can go up or down without any limit, but the landlord can only recover those costs which are reasonable. Leaseholders have rights to challenge service charges that they feel are unreasonable at the Tribunal.

The law also expects the landlord to behave in a 'reasonable' manner with regard to his expenditure on the building. The landlord has a long-term interest in maintaining the condition and the value of his investment. The leaseholder may have a much shorter-term view, only intending to remain in the property for a few years. These different viewpoints often lead to dispute.

A landlord is not usually bound to minimise the costs. However, the law states that service charges must be 'reasonable' and where the costs relate to works or services are of a reasonable standard.

Both landlords and leaseholders have a right to ask the Tribunal whether a charge, or a proposed charge, is reasonable; however, there is no statutory definition of what is 'reasonable'. The Tribunal will consider the evidence presented and then decide on the matter.

An application may be made to the Tribunal whether the charge has already been paid. It can be in respect of costs already incurred for works, services or other charges, or in respect of an estimate or budget. However, if the charges have been agreed or admitted by the leaseholder or finally determined by a court or tribunal, or by post-dispute arbitration, no application to a Tribunal can be made.

Further information can be found at: <https://www.gov.uk/housing-tribunals/apply-to-the-tribunal>

There are various laws that are relevant to this policy (detailed below) but in summary the law says that we should identify accurate costs of managing services to tenants and reasonable costs should be passed onto tenants with clear explanations.



Law	Summary
<p><b><u>Landlord and Tenant Act 1985 (as amended)</u></b></p>	<p>Definition of service charges            Provision for managing variable service charges            Can only charge or vary service charges as set out in the tenancy/lease            Tenants' rights in relation to service charges, consultation, information, recognised tenant's association            Amounts payable must be reasonably incurred            Services provided must be of a reasonable standard</p>
<p><b><u>Housing Act 1996</u></b></p>	<p>Makes it easier for leaseholders to challenge unreasonable service charges            Gives jurisdiction for Leasehold Valuation Tribunals (LVT) to determine service charge disputes.</p>
<p><b><u>Commonhold and Leasehold Reform Act 2002</u></b></p>	<p>Improved definition of variable service charges            Meaning and reasonableness of administration charges (Schedule 11)            Requirement to supply the Administration Charges (Summary of Rights and Obligations) (England) Regulations 2007 every time a demand for an administration charge is made.            Wider jurisdiction of the LVT (liability to pay, reasonableness of administration charges, variations of leases)            Improved rights regarding consultation about 'qualifying works' and 'qualifying long-term agreements'.</p>
<p><b><u>The Service Charges (Consultation Requirements) (England) Regulations 2003</u></b></p>	<p>Required consultation before we can lawfully charge for 'qualifying works or services under 'qualifying long-term agreements'.</p>
<p><b><u>The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007</u></b></p>	<p>Required content and format of service charge demands, to include summary of rights or tenants have the right to withhold payment.</p>

## 11. Sinking Funds

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Sinking funds may be provided for expenditure that may be incurred periodically, such as replacement of equipment. The use of sinking funds avoids the necessity for large amounts to be collected from the customer in a single year when the replacement expenditure is incurred.

Payments into sinking funds will be in accordance with the tenancy, lease or legal agreement, and will either be:

- In advance of the asset being replaced, based on an estimate of the likely replacement cost and anticipated useful economic life of the existing asset.
- Retrospectively in respect of the initial costs being depreciated, based on the actual cost incurred and anticipated useful economic life of the asset.
- The annual payments into the sinking fund will be held separately and attract interest, based on the rate of interest achieved by Torbay Council in respect of its own funds, to offset or partially offset future inflationary increases in replacement cost.
- In holding such sinking funds, the Torbay Council acts as a trustee under Section 42 of the Landlord and Tenant Act 1987, with funds held in trust. If, at the point of replacement, the cost of replacement exceeds the amount held in the sinking fund Torbay Council will consult with relevant customers to determine how this money is to be dealt with e.g. to support another project or refunded. A clear majority will be needed e.g. (more than 55% of all residents impacted). If there is no clear majority the money will be held in trust until a majority can be achieved.
- If the cost of replacement is less than the balance within the sinking fund, the Torbay Council will consult with customers as to whether to refund the surplus or utilise it to reduce future contributions to the fund.
- An annual statement of movements in the sinking fund, including receipts, expenditure and interest accrued, will be provided to all customers paying such a charge within six months of the year end.

## 12. Communication with Customers

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As set out above, customers will receive the following regular communication in respect of service charges:

**Rent & Service Charges Letter:** sent out four weeks prior to the implementation of new service charges (typically late February), this letter will detail the charges payable for the forthcoming financial year, the date from which they come into effect, supporting information on how charges are calculated, and advice / contact information for customers who are experiencing financial difficulties.

**Sinking Fund Statement:** sent out to customers where relevant with the Service Charges Statement, the Sinking Fund Statement provides details of the amount held in the fund, interest accrued, and any costs offset against the sinking fund balance during the year.

Detailed calculations of service charges and actual costs are not provided routinely. Customers can request additional information regarding how their charges are calculated, this will be provided on a case-by-case basis.

## 13. Equality & Diversity

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Torbay Council is committed to promoting equality and inclusion and to ensuring that our communities thrive. We complete equality impact assessments (EIAs) to help us understand the possible impacts that our decision may have on different groups. This toolkit guides you through the different stages of the equality impact assessment process to help ensure that your EIA is meaningful and robust.

The Equality Act 2010 provides legal protection from discrimination across nine 'protected characteristics' which are: age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, pregnancy and maternity and marriage and civil partnerships.

Under the Act, the Council is subject to the Public Sector Equality Duty (PSED) which means that we must take steps to actively promote equality. The PSED requires public authorities to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not, and
- Foster good relations between people who share a protected characteristic and those who do not.

The PSED requires us to give 'due regard' to equality when making decisions and delivering services. This is to ensure our actions actively promote equality and do not directly or indirectly adversely affect people with protected characteristics.

## 14. Associated Documents

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- Lettings Policy
- Rent Arrears and Debt Recovery Policy

## 15. Appendices

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Appendix 1 – Summary of Rent types and changes

Appendix 2 - Schedule of Chargeable Services, including Eligibility for Housing Benefit or Universal Credit.

## Appendix 1 – Summary of rent types and changes

Rent type	Circumstance	Rent charge	Service charge	LHA cap to be applied	Reference
<b>SOCIAL</b>	New tenant	Formula rent plus 5% (rent flexibility).	Additional	Yes	Welfare & Reform Act 2016. Sch 2 Part 1 Section 1 Paras (3) to (5).
	Newly acquired property	Formula rent plus 5% (rent flexibility).			Feb 2019 Policy Statement para 2.2 and 2.14. Rent Standard 2020.
	Re-let (end of Fixed term tenancy)	Continue previous rent, with no re-base.			Assignment (no change).
<b>AFFORDABLE</b>  (including rent conversions)	New tenant	The higher of (1) formula rent (2) 80% of current MV rent (revalued).	Included	Yes	Feb 2019 Policy Statement para 3.17 does not prevent change to social rent to increase rental
	Newly acquired property	80% of current MV rent (revalued).			Per IDS / relevant grant programme
	Re-let (end of FTT)	80% of current MV rent (revalued) or continue with previous rent if valued higher.			Feb 2019 Policy Statement para 3.15 & 3.16

## Appendix 2

### Schedule of Chargeable Services, including Eligibility for Housing Benefit or Universal Credit.

Service Charge Description	Description	HB eligible	UC Eligible
Communal Adaptations	Servicing of communal lifts and any other specific adaptations	Yes	Yes
Equipment Maintenance	Servicing of communal equipment and installations  Running costs of intercom system (excluding repairs)	Yes	Yes
Estates and Communal Areas	Caretaking / Cleaning of communal spaces and associated direct costs (including communal window cleaning)  TV license for communal areas	Yes	Yes
External Contractor Charges	3rd party block management charges (where TorVista Homes hold properties on long lease)	Yes	Yes
Grounds Maintenance and Landscaping	Maintenance of communal green spaces and associated direct costs	Yes	Yes
Laundry Charges	Running costs of communal laundry facilities	Yes	Yes
Utilities Communal	– Gas, electric and water supplies to communal areas / facilities	Yes	Yes
Utilities Personal	– Recharge of gas, electric and water supplies that are supplied through a communal meter but which relate to individual residential properties	No	No

Window Cleaning Personal	– Cleaning of external windows of residential properties within a block	No	Yes - if property is not on ground floor
Personal Adaptations	Servicing of lift provided as a specific property adaptation (i.e. property adaptation rather than communal adaptation)  Decommissioning of adaptations that are no longer required (one-off, on request)	No	No
Insurance	Apportioned share of landlord property insurance	Yes	Yes
Management	15% of calculated service charges	Yes	Yes

This list may be subject to change and will be periodically updated if new charges are applied or if an existing charge is discontinued.