



A response to the the DCLG consultation on local authority service charges

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About HLP

The Housing Law Practitioners Association (HLP) is an organisation of solicitors, barristers, advice workers, independent environmental health officers and others who work in the field of housing law. Membership is open to all those who use housing law for the benefit of the homeless, tenants and other occupiers of housing. HLP has existed for over 20 years. Its main function is the holding of regular meetings for members on topics suggested by the membership and led by practitioners particularly experienced in that area, almost invariably members themselves.

The Association is regularly consulted on proposed changes in housing law (whether by primary and subordinate legislation or statutory guidance). HLP's Responses are available at www.hlp.org.uk.

Membership of HLP is on the basis of a commitment to HLP's objectives. These objectives are:

- To promote, foster and develop equal access to the legal system.
- To promote, foster and develop the rights of homeless persons, tenants and others who receive housing services or are disadvantaged in the provision of housing.
- To foster the role of the legal process in the protection of tenants and other residential occupiers.
- To foster the role of the legal process in the promotion of higher standards of housing construction, improvement and repair, landlord services to tenants and local authority services to public and private sector tenants, homeless persons and others in need of advice and assistance in housing provision.
- To promote and develop expertise in the practice of housing law by education and the exchange of information and knowledge.

The Response

First of all, we thank the DCLG for agreeing to carry out some consultation in relation to the important issue of service charges for tenants.

Summary of the problem

Secure and introductory tenants of local authorities who live in buildings with communal heating systems usually pay heating and hot water charges to their landlord. These tenants have no way to challenge the amount they are required to pay even if it is unreasonable. The charges often appear to be higher than a tenant could expect to pay in a similar property on an individual meter. Many such tenants have low incomes and struggle to pay the charges. A significant proportion of tenants are vulnerable and/or have children living with them. Tenants are forced to choose between essentials such as rent, fuel and food as they cannot meet all these expenses. Tenants with control over their hot-water and heating may save money by reducing their use, tenants in buildings with communal heating systems do not have this option. Tenants are often unable to keep up with the heating and hot water charges which can lead to the landlord seeking possession and ultimately to the tenant becoming homeless.

The first issue is the discriminatory effect of s.26 of the Landlord and Tenant Act 1985 ("L/L&TA 85") which excludes ss.18-25 to tenants of a local authority, a National Park authority or a new town corporation unless they occupy under a long lease (i.e. a term certain exceeding 25 years). The particular concern is the exclusion of secure tenants. The common problem relates to heating charges which are charged in addition to the rent and which are not covered by housing benefit.

The second issue is the failure of the DCLG to make any regulations under s.108 Housing Act 1985 ("HA 85") to require heating authorities to adopt such methods for determining heating charges payable to tenants to secure that the proportion of the heating costs borne by each of those tenants is no greater than is reasonable. This would apply to secure tenants. This enabling section was enacted to meet what was seen as a common complaint. It was enacted at the same time as the L/L&TA 85 and was apparently intended to provide protection similar to that provided under ss.18-30. Over 25 years later, no scheme has been created.

A third issue is that tenants are not generally liable for their individual consumption; they rather pay a proportion of the total cost. It is suggested that this does not encourage the efficient use of energy, the individual tenant having no incentive to reduce their use of energy.

The extent of the problem

HPLA has asked its members, who work in advice centres, law centres and solicitors' firms whether heating charges are a problem for their clients. HPLA's members say that high heating charges are a significant problem which often leaves vulnerable clients in financial difficulties. Members believe their clients should be able to challenge the heating charges they are being required to pay to make sure the charges are fair and reasonable. Members are concerned that high heating charges can lead to people losing their homes. Below are some examples, provided by HPLA members, of clients who are struggling with high heating and hot water charges, many of whom are at risk of losing their homes.

- 1. Miss W was a young single mother who suffered from depression and was unable to read or write. Miss W's weekly income was £150.82 for her and her daughter after deductions for a previous benefit overpayment. Miss W was required to pay £19.97 per week for heating and hot water for a two bedroom flat which is considerably higher than what she would expect to pay for heating and hot water for a property of that size on an individual meter. In addition to these charges Miss W had to pay all the usual living costs including water rates, fuel for cooking, lighting etcetera, food, travel household expenses. As a result Miss W had fallen into financial difficulties, rent and heating charge arrears had accrued and the local authority was seeking to evict her.*
- 2. Miss M, mother of teenage girl in 2 bedroom council flat. Only income was JSA, child benefit and child tax credit. Heating and hot water charge of £19.97. Council had issued possession proceedings due to rent arrears. Client could not afford the heating charges as well as the water charge of £6.47, electricity and gas and other living expenses.*

3. *Single mother with 2 children of primary school age. Secure tenant of local authority. In 2007-8 total rent £89.95 per week of which £4.98 was water rates and £10.56 was district heating (total £15.54 non HB eligible service charges). By 2009-10 total rent was £97.29 of which non HB-eligible service charges comprised £17.06 (breakdown between heating and water rates not available but likely to be at least £11.50 for heating). Her income at that point comprised (weekly) £64.30 Income Support, £85.04 per week Child Tax Credit, £33.20 Child Benefit. Also paying for £10 per week electricity as well as normal household expenditure including food, clothing, bus pass, TV licence, phone bill plus after school club for children and loan payments, £3.25 towards rent arrears and deduction for HB overpayment. In 2010-11 total rent was £97.61 of which £17.71 was non-HB eligible including water rates.*
4. *Single father with three children (6, 8 and 10 years old). His accommodation was a local authority owned 3 bedroom flat. In September 2008, the service charges (all I think in respect of the estate's district heating system), not covered by his HB, were £21.84 per week. There had been a problem sorting out housing benefit which, because of the high weekly rent, had caused arrears of £1,000 plus over 7 weeks. In addition a further £1,400 of arrears had arisen over about 30 months because of the difficulties he had in paying the service charges and raising the family on his only income which were benefits he received as a lone parent. The Local authority had obtained a possession order against him because of rent arrears and was proposing to evict the family.*
5. *23 year old woman with two young children, 2 and 4 and had been in care for a period as a child. Her first permanent accommodation, and the first where she had to pay anything towards the rent, was an introductory tenancy in a 1960s estate with a district heating system and single glazed windows, starting in June 2008. She received income support, child benefit and child tax credit. The heating charge when she first moved in was £13.07 per week, which with water rates of £6.19 meant a payment of £19.26 per week, rising in April 2009 to £21.43. With no advice or family support, having to furnish her new flat and bring up the children, she fell into rent arrears. Her housing officer demanded repayment in full rather than instalments and she gave up in despair, causing rent arrears to rise to £1,400 at the point that the possession order was made against her in September 2009.*
6. *24 year old single man living in one-bed flat, secure tenant, on JSA at £51 pw (under-25s rate) less deductions for crisis fund loan repayments and council tax arrears. Client was required to pay non-eligible heating/water charges at £17.17 pw. Rent arrears had accrued and possession proceedings had been issued.*
7. *Ms C: 19 year old care leaver, pregnant, living in one-bed flat, introductory tenant. Had to pay £17.48 (heating £12.09 and water £5.39) per week. Income on JSA (then Income Support) at under-25s rate of £51 pw; notice to terminate tenancy upheld; arrears solely related to non-eligible charges. Local authority issued a possession claim seeking to evict her.*
8. *Mr D: 19 year old care leaver, living alone in one-bedroom flat, secure tenant, on JSA of £51 pw (under 25s-rate), non-eligible heating/water charge at £17.48 per week; arrears solely related to non-eligible charges. Possession claim issued by*

local authority with considerable input from his personal adviser he is placed on direct payments from JSA for rent/arrears and the arrears are later cleared by social services on basis that Mr D will try for mutual exchange to property without heating charges; proceedings withdrawn.

- 9. Mr K: 20 year old, Part 7 duty accepted when aged 17, housed with sister in two bed property, non-secure tenancy, sister working and (mostly) paying the rent/HB shortfall but moves out and Mr K unable to afford the weekly non-eligible charges of £5.70 for water + £14.97 for heating/hot water + an HB overpayment recovery + arrears repayments from his JSA of £51 pw (under-25s rate); possession claim defended on public law + other grounds and subsequently withdrawn with arrears paid off by local authority (a counterclaim having been brought but withdrawn as part of agreed settlement); consent order also provides that if the authority makes a "direct offer" of housing under Part 6 they are to have regard when assessing suitability the unlikelihood of accommodation where the rent includes a heating/hot water charge being suitable/affordable for him.*
- 10. Ms M: single woman living in one bedroom flat on ESA of £65 pw (less deduction for social fund loans), introductory tenant, bid for this tenancy from supported housing, possession claim defended on public law grounds (ongoing), non-eligible charge for heating/water @ £16.98 pw, family/friends have cleared the arrears but Ms M is struggling to maintain ongoing payments from limited means.*
- 11. Client in a large local authority block. His maximum payable housing benefit is £95.82 weekly but total rent is £120.21 weekly leaving heating/hot-water and water charges of £24.39 for client to pay. He is on JSA £65.45 per week, with 3 dependent children, so also receives child benefit (£47.10 per week) and should be receiving tax credits although there is problem with this at the moment.*
- 12. Client lives in a 2 bedroom flat, secure tenant of local authority. Client's only income is Jobseekers' Allowance which, after deductions, is paid at a rate of £62.20pw. His district heating charge is £14.97pw which is nearly 25% of our client's weekly income.*
- 13. Client is a single mother with 2 children of primary school age. Local authority tenant. In 2007-8 total rent £89.95 per week of which £4.98 was water rates and £10.56 was district heating (total £15.54 non HB eligible service charges). By 2009-10 total rent was £97.29 of which non HB-eligible service charges comprised £17.06. Her income at that point comprised (weekly) £64.30 Income Support, £85.04 per week Child Tax Credit, £33.20 Child Benefit. Also paying for £10 per week electricity as well as normal household expenditure including food, clothing, bus pass, TV licence, phone bill plus after school club for children and loan payments, £3.25 towards rent arrears and deduction for HB overpayment. In 2010-11 total rent was £97.61 of which £17.71 was non-HB eligible including water rates.*
- 14. Many tenants in large block of flats are struggling with compulsory heating charge of £14.75 per week which causes massive hardship for those tenants who are in receipt of basic levels of benefit. The council has evicted people from these flats for nonpayment of these charges. For example one client resident in the block who is on a weekly benefit level of £64.50, which means that he cannot*

afford to pay the heating charge without neglecting his basic essential living expenses. He is faced with either paying his heating charge, or not having enough to eat.

- 15. This has been an issue in our area for some time. It appears that it was almost a policy to put young people under 25 (with a reduced rated JSA) into properties with large heating and hot water costs. Therefore, in my view setting them up to fail. I have previously challenged affordability in some cases. The heating and hot water costs can represent almost 35% of income. An additional problem is the local authority operates an introductory tenancy scheme, and evicts under that scheme for rent arrears. This has happened on numerous occasions when young client don't get advice. The same problems arises when you have someone under 25 that is working on a very low income. They will have a reduced applicable amount for housing benefit purpose. They can actually be worse off although sometime discretionary housing payments may pay the difference.*
- 16. I am just writing this short note to advise you of the case I am dealing with on this point. The Local Authority has applied for possession of the property on the basis of rent arrears. My client has put in a Defence that the heating and hot water charges are unreasonable in that they were dramatically increased during the tenancy... We are also claiming breach of Article 8 and Wednesday unreasonableness on the basis of the Claimant's decision to charge our client communal heating and hot water charges on the basis of bed spaces rather than number of occupants and to charge him for the period he was out of the property.*
- 17. Just had a client – in an ALMO – On JSA and h/b – heating charge is £20 and rent is £45. He was referred to us by the court but we cannot see a way out of it – one third of his benefit must go to pay for heating but as he has not that money his rent arrears are over £2k - and there is no option of turning the heating off – or opting out and using alternative heating or being cold.*
- 18. Mr A - Council tenant. Receiving JSA for under-25 (£51.85 each week), so got full HB. Rent was £97.15. Heating and hot water charges £17.57. I represented him in possession/disrepair CC proceedings. Disrepair was due to defective heating system. He'd struggled to afford the service charge on the low income, though there were a few rent arrears as well from an earlier period.*
- 19. Mr B - Council tenant. Single, vulnerable adult - 61 year-old with mobility problems. SPO made as arrears were quite high. I advised him following the SPO. Rent is £132.65, of which heating is £13.82 and hot water £4.61. He found it difficult to pay these when his DLA stopped.*
- 20. Ms T - Council tenant. Single adult, now receiving ESA on basis of health issues. Previously on JSA. Received full HB. Rent is £97.03, of which service charge is £17.16. Arrears built up after direct deductions stopped and she didn't realise. But she says that she would have struggled to afford the high shortfall (there was also an overpayment deduction of £9.90 that would have made the shortfall even more difficult).*

The Proposed Solutions

HLPAs suggests that the problems faced by tenants in relation to heating charges could be resolved in the following ways

- (i) repeal s.26. This would ensure that local authority tenants with short leases are protected from all unreasonable service charges, not just district heating charges);
- (ii) amend s.18(1)(b) (by deleting the words “according to the relevant costs” at the end of s.18(1)(b)).

Alternatively:

- (iii) enactment of regulations under s.108 HA 1985, those regulations to mirror the protection under s.18/19 LTA 1985.

HLPAs also supports the introduction of a requirement that district heating suppliers, including local authorities, install individual meters so as to promote energy efficiency and facilitate charging that is based as closely as possible on an individual household’s actual consumption.