

WHITE PAPER | SEPTEMBER 2026

Whose Rules Win?

Ofgem's conditions, leasehold service charge law and consumer contract law all reach the same heat bill. Ofgem has settled more of the overlap than is generally recognised, and left the most difficult questions untouched.

Hamish McDonald — Heat Network Compliance — Sorted-IT (UK) Ltd —
heatnetworkcompliance.co.uk

Law stated at 3 September 2026. The service charge discussion concerns England.

In short

A respondent put the obvious question to Ofgem during the consultation. What happens when the fair pricing rule and the reasonableness test in the Landlord and Tenant Act 1985 give different answers? How is a landlord supposed to obey both?¹ Ofgem replied that the two are compatible, that they can sit side by side, and that problems will be looked at case by case.²

That reply has generally been taken as a refusal to engage. In practice Ofgem has since given housing law express precedence in two places, built accommodations for it into several conditions, and set out a transitional approach for existing leases. Much of the operational overlap has already been addressed.

Four questions have not been:

- Whether a heat charge is a service charge at all.
- What to do when the split the lease requires produces a charge the fair pricing condition forbids.
- Whether the charging term is fair.
- Which party occupies which role in a layered structure.

Answering those means applying the regulatory framework and the private-law relationship together. Ofgem can settle its own regulatory position. It cannot determine or alter the private rights the lease creates.

This paper covers where Ofgem has adapted, where heat regulation exposes existing leasehold duties, the four unresolved questions, and what changes next — including a gap nobody has closed.

The consumer contract question has now reached the High Court in a heat charging case. In June 2026 the court gave two Lambeth council tenants permission to challenge their heating and hot water charges, on grounds including that the tenancy term used to raise them is unfair.³ The hearing starts on 1 December 2026.⁴

Why the overlap exists

Three chains of law reach the same bill. The Energy Act 2023 leads to the authorisation conditions and your heat supply contract. The 1985 Act leads to the consultation and summary-of-rights regulations and your lease. Consumer unfair terms law — the 1999 Regulations for older leases, the Consumer Rights Act 2015 for leases from 1 October 2015 — reaches the lease in its character as a consumer contract.

The Energy Act gave Ofgem power to regulate heat network activities and the conduct of authorised persons, including their conduct under a lease that is also a heat supply contract. It did not give Ofgem power to rewrite the lease or alter the private rights it creates. That distinction explains everything below: Ofgem has adapted its own rules wherever it could, and left alone every question that turns on what the lease means.

One thing needs separating first, because most arguments here begin by confusing it. Ofgem's fair pricing condition asks whether the charge is fair. The 1985 Act asks whether the landlord can collect it from this tenant.⁵ Two tests, two subjects, different bodies deciding them. Neither conflicts with the other; they both apply.

Part 1. Where Ofgem has adapted

Six accommodations, none of which required a change to any lease.

Accommodation	What Ofgem does
Back-billing	Says the housing framework takes precedence; its twelve-month rule switches off for service charges ⁶
Vulnerability	Says housing law by its nature takes precedence where it conflicts with the conditions ⁷
Contract changes	Switches off the price-rise notice and the six-month frequency limit for service charges; the notice of a worsening change survives ⁸
Existing leases	Treats the lease as capable of being the heat supply contract, with an “as if” transitional approach ⁹
Billing	Lets the lease set the billing period; excepts a pre-27 November 2020 lease from actual-consumption billing; substitutes Housing Ombudsman details ¹⁰
Forum	Tells suppliers that for consumers inside the 1985 Act, the First-tier Tribunal remains the main route ¹¹

Two of those need drawing out.

Twelve months or eighteen

The rules are not long and short versions of each other. Ofgem’s measures how late the bill is, running from consumption for units and from accrual for other charges. The 1985 Act’s measures how old the spending is, running from when the cost was incurred, and bars recovery after eighteen months unless the tenant was told in writing inside that period.¹²

“Incurred” is not when the heat was used. In *OM Property Management Ltd v Burr* the Court of Appeal held that a liability only becomes a cost once it is made concrete, ordinarily when the invoice is presented or when it is paid. It did not decide which, and that turns on the facts.¹³

Take heat used in March 2025, invoiced in June, with the accounts closed in September and the demand sent in January 2027. March is not the starting point. June may be.

Closing the accounts starts nothing. And if the landlord served a valid written notice within eighteen months of the cost being incurred, a later demand is not barred.

Existing leases: the “as if” approach

A lease, tenancy agreement or service charge agreement can itself *be* the heat supply contract; there need not be a second document.¹⁴ Ofgem does not expect the lease to be varied merely to insert the information the conditions require, where that would not be reasonable — the supplier should provide it another way. For contracts already in place, it says to treat the consumer as if the existing contract already met the requirements. Migrate when it is practical: a new resident, a metering change, the end of a term.¹⁵

The answer is therefore not that one document beats the other. The information travels separately from the contract, and the contract catches up.

Part 2. Where heat regulation exposes existing leasehold duties

These are not conflicts. The law answers them already. The difficulty is that heat regulation prompts operators to review, renew and restructure, and each of those steps can engage a long-standing leasehold requirement.

The £100 limit. A qualifying long term agreement is one the landlord, or a landlord further up the chain, enters into for more than twelve months.¹⁶ Where costs under it mean any one tenant pays more than £100 in an accounting period, the landlord must consult; without consultation or the tribunal’s permission to skip it, only £100 is recoverable from that tenant.¹⁷ What counts is the minimum commitment, not how long the agreement happens to last. In *Corvan (Properties) Ltd v Abdel-Mahmoud* an agreement for one year continuing thereafter until terminated on notice was caught; a rolling arrangement capable of being ended within twelve months may fall outside, and the contractual wording decides.¹⁸ Consultation may be needed further up the chain, and renewals and material variations need checking.

Urgent repairs. A plant failure in February will not wait for a consultation timetable, which looks like a conflict until you find that leasehold law provides a route through it. The tribunal can dispense with consultation where it thinks that reasonable,¹⁹ and permission can be sought in advance — the Supreme Court gave very urgent works as the obvious case.²⁰ Where the application comes afterwards, what the leaseholders lost by not being consulted is central.

The summary of rights. Every service charge demand must carry a summary of the tenant's rights and obligations. Without it the tenant may withhold payment, and the lease's late-payment provisions have no effect meanwhile.²¹ A block that has rebuilt its billing to satisfy Ofgem without checking the summary is still attached has given every leaseholder grounds to withhold.

Part 3. What has not been resolved

3.1 Is a heat charge a service charge at all?

This is the hinge question, because the back-billing exception, the contract-change disapplications and the service charge billing rules all depend on the answer.²²

The 1985 Act sets two tests and a charge must pass both:²³

- It must be payable by a tenant of a dwelling for services, repairs, maintenance, improvements, insurance or management costs.
- The whole or part of it must go up or down with the actual costs, or at least be capable of doing so.

Estimating and settling up at year end passes the second test. A charge fixed for a term with no settling-up is different. In *Barton v Platform Housing Ltd* the tenancy carried a service charge and a separate charge for heating and hot water. The landlord set both annually by notice from estimated costs, but the agreement never required that, and nothing was settled up. The Upper Tribunal held neither was a service charge. The charge must move with the actual costs; working it out from an estimate is not the same thing; and a regular settling-up is an essential feature.²⁴

What has not been decided is how this applies to newer charging structures. A rate tied by contract to an outside comparator moves with the comparator, not with what the heat cost the block. No case covers it.

The test runs charge by charge. There is no such thing as “a service charge block” — each item is in or out on its own facts.

The leaseholder loses a route too. In *Barton* the tenant's application was thrown out, because the tribunal has no power over a charge that is not a service charge.²⁵

The agent's position: the lease treats it as a service charge, we collect it as one, and the year-end settling-up makes it move with cost.

The leaseholder's position: either answer gives me something. Inside the definition I get the reasonableness test and the tribunal; outside it I get the twelve-month limit.

3.2 Who decides how the cost is split?

Ofgem's cost allocation condition requires charges to be attributed to costs in a way that produces fair and proportionate charges.²⁶ The lease has usually decided that already — a percentage per flat, floor area, rateable value, or a schedule drawn up when the block was built.

Ofgem has gone part of the way. Its fair pricing guidance accepts that a network may have to depart from the cost allocation approach it recommends. Legacy contracts that cannot be renegotiated are one reason, another legal requirement is another. Ofgem expects networks to move towards the recommended approach as they can.²⁷

That solves the smaller problem and leaves the bigger one. Guidance can excuse a departure from recommended best practice. It cannot obviously excuse a breach of the condition itself, which is binding. Where the split the lease requires produces charges that are not fair and not proportionate, the landlord cannot comply with both.

A lease clause making the landlord's own apportionment final does not shut the tribunal out: an agreement purporting to fix how a service charge question is determined is void so far as it does that.²⁸

The agent's position: the percentages are in the lease and we would be in breach if we changed them.

The leaseholder's position: then the lease needs fixing, because I am charged on a basis that no longer reflects who uses the heat.

3.3 Is the charging term itself fair?

Consumer contract law reaches a contract between a trader and a consumer, and a lease can be one.²⁹ Where it applies, an unfair term does not bind the consumer.³⁰ Which regime applies depends on when the lease was granted: the 2015 Act does not reach contracts made before 1 October 2015, and the 1999 Regulations still govern those.³¹ Given the age of most leasehold stock, the older rules will often be the ones in play.

The date the term was agreed matters too. A charging clause granted in 2006 is judged on the world of 2006, and a heat supply contract issued in 2026 does not repair it.

The core price is partly protected. The machinery for changing it may not be:

	2015 Act	1999 Regulations
What is excluded	Whether the price is appropriate for what is supplied	Whether the price is adequate for what is supplied
Condition	Transparent and prominent	In plain intelligible language
Limit on the exclusion	Grey list terms cannot shelter behind it	—

What is sheltered is the price against what you get for it. When payment falls due, how it is collected and how it can be raised are separate questions, and those terms remain assessable.³²

Three points shape how this arrives. Wording a supplier is obliged to include is outside the test under both regimes.³³ A term in one contract that cuts rights under another is treated as though it sat in the other, whoever the parties are.³⁴ And a court must consider fairness even if neither side raises it.³⁵

Ofgem runs its own version. A supply contract is defined to include a lease.³⁶ The authorised person must keep its terms from being unduly onerous, and must not include, enforce or take advantage of a term where doing so would breach the conditions.³⁷

Ofgem cannot rewrite your clause. It can make relying on it a compliance failure.

The remedy differs in shape from anything else here. The 1985 Act can cut a charge to a reasonable amount. Consumer law does not: the term simply does not bind, though the consumer may still rely on it, and the rest of the contract continues.³⁸

3.4 Which party occupies which role?

Four legally important roles may fall on the same person, or on different people:

Role	Who	What it brings
Consumer	The person taking the supply	The regulatory relationship; conditions then apply by consumer category
Contract counterparty	May be the landlord, not the occupier	The heat supply contract and its duties
Service charge tenant	Whoever the lease makes liable	The 1985 Act protections
Relevant consumer	Domestic, micro or small business — but not in the capacity of a bulk buyer	Contract content, complaints, billing ³⁹

Ofgem’s guidance contemplates the contract residing with the landlord while the occupier uses the heat, and directs the supplier to provide the information to the occupier anyway.⁴⁰ An intermediate landlord may therefore be a consumer for one purpose, a supplier for another and excluded for a third — though being in the chain does not by itself make it a supplier. Ofgem’s guidance provides no worked example tracing the same heat cost through a whole chain.

Part 4. What changes next

The statutory position. The Leasehold and Freehold Reform Act 2024 will split the definition in two. “Service charge” becomes the wide category, “variable service charge” the narrow one. The reasonableness test, the consultation duty and the eighteen-month bar are all confined to variable charges.⁴¹ The Act also replaces the summary of rights with a prescribed demand form, applying to fixed charges too.⁴²

The jurisdictional line moves with it. The tribunal’s power to decide whether a service charge is payable is not confined to variable charges. A fixed charge inside the wider definition therefore becomes capable of determination there,⁴³ which reverses the outcome the tenant met in *Barton*. None of it is in force.

Ofgem, in the opposite direction. As individual metering arrives, Ofgem expects heat to be charged separately and unbundled from rent or service charges where the lease permits, and has said existing leases should not be a barrier.⁴⁴ Whether the separately charged payment then falls outside the statutory definition depends on the legal

mechanism, not the billing heading. Where it does, the accommodations tied to service charge status fall away with it.

The gap between them. Ofgem defines a service charge by pointing at the 1985 Act. If that reference operates ambulatorily, a fixed heat charge could become a service charge for Ofgem’s purposes. It would fall inside the exception that switches off the twelve-month limit. But it would not be a variable service charge, so the eighteen-month bar would not reach it either.

A fixed heat charge could fall outside both specialist back-billing limits. Ordinary contractual limits would still apply. Neither result would be a matter of policy; the two definitions would simply have moved independently.

Ofgem can change its definition or its exception before commencement. Nothing in the January 2026 material addresses it, which makes it the point most worth raising now.

Where a disagreement is decided

No single body can rule on all three sets of rules. The First-tier Tribunal decides whether a service charge is payable and if so by whom, to whom, how much and when.⁴⁵ Ofgem keeps its own conditions. The courts decide unfair terms, with the Competition and Markets Authority holding its own enforcement powers.⁴⁶

Where the payment is a service charge, paying does not concede the point,⁴⁷ but the tribunal route is closed for anything already agreed, admitted, arbitrated or decided by a court.⁴⁸ A charge can be recoverable under the lease while the way it was calculated draws regulatory attention, and a regulatory concern does not by itself wipe out what the leaseholder owes.

What to do now

Managing agents and landlords.

- Work out which parts of your heat charge pass both tests in the 1985 Act. Confirm a genuine settling-up stands behind the ones you treat as service charges. The back-billing exception, the contract-change disapplications and the service charge billing rules all depend on it.

- Check your heat supply agreement's minimum commitment, including renewals and variations, and who signed it.
- Check every demand still carries the summary of rights.
- Build an eighteen-month check into year-end, working from when the cost was incurred.
- Decide in advance what you do when a repair is urgent.
- Read your charging and escalation clause as an unfamiliar reader would. Transparency protects the price, not the machinery for raising it.

Leaseholders.

- Ask which parts of your heat charge come through the service charge, and whether the supply agreement was consulted on.
 - Check your demands carry the summary of rights.
 - If the charge is a service charge you can apply to the tribunal, and paying does not give that up.
 - If it is not a service charge, the tribunal has no power over it. That is why the question comes first.
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Caveats

Ofgem acknowledges that folding heat costs into rent or a service charge can put consumers outside the protections, and says it is working with government on it.⁴⁹

Citizens Advice puts a third of heat network consumers on bundled charges, and one in seven of all heat network consumers outside Ofgem's billing and back-billing protections as a result.⁵⁰

Important edges of Part 3 remain untested. *Barton* has settled the current approach to a fixed heating charge, but not how it applies to newer tariff structures. The Lambeth claim appears to be the first High Court challenge aimed specifically at the fairness of a residential heat charging term. It concerns council tenants, not long leaseholders. It cannot settle the service charge questions either, because those provisions do not reach certain public authority tenancies.⁵¹ Cases settle and grounds fall away, so it is a prospect rather than a promise.

This paper reads the legislation rather than your lease, and your lease is where most of Part 3 will be decided.

About heatnetworkcompliance.co.uk

We work on the Ofgem side of this. The questions in Part 3 belong with a property lawyer.

The Policy Generator — from £2,495. A full policy and consumer document suite generated from your answers. It asks how you recover charges: all through the service charge, none, or some. It then changes the back-billing, contract-change and billing wording to match, so the accommodations in Part 1 are built in rather than left for you to spot.

The Compliance Assessment — £995. A review of documents you already have, against the conditions as made.

Further reading in this series

Who Pays for the Pipe (cost sharing) · *No Number to Hit* (fair pricing) · *The Heat the Meters Do Not See* (unrecorded heat) · *The Bill You Left Too Late* (back-billing) · *One Complaint, Two Ombudsmen* (redress routes).

Disclaimer: this white paper is for information only and is not legal or regulatory advice. The questions in Part 3 turn on the wording of particular leases and should be taken to a property lawyer. Everything here is current at 3 September 2026.

Endnotes

1. Ofgem, *Heat networks regulation: authorisation conditions* (decision, 13 January 2026), summary of consultation responses on fair pricing and cost allocation.
2. Ofgem decision, response on “Interactions with the Landlord and Tenant Act”.
3. Public Interest Law Centre, “Permission Granted! Challenging the Heat Network Trap” (23 June 2026). Permission was granted on two grounds: unfairness of the tenancy term under s62 of the Consumer Rights Act 2015 or reg 5(1) of the 1999 Regulations; and Article 1 of the First Protocol to the ECHR.
4. Hearing listed from 1 December 2026, per reporting current at 2 September 2026: Simon Pirani, “Heat networks judicial review challenge”, *The Ecologist*.
5. Authorisation conditions, A6.1; Landlord and Tenant Act 1985, s19(1) and (2).
6. Authorisation conditions, B7.1 to B7.3; Ofgem, *Heat networks regulation: consumer protection guidance* (13 January 2026), paras 5.9 and 5.19. B7.1 is expressly subject to the B7.2 exceptions.
7. Ofgem consumer protection guidance, para 6.6.
8. Authorisation conditions, B3.6, disapplying B3.1.2 and B3.2 to the extent the Charges are Service Charges. B3.1.1 is not disapplied.
9. Ofgem consumer protection guidance, paras 2.4 and 2.8.

10. Authorisation conditions, B6 Part Two (paras 6.20 to 6.31); Ofgem consumer protection guidance, paras 4.28 to 4.31.
11. Ofgem consumer protection guidance, para 5.20.
12. Landlord and Tenant Act 1985, s20B(1) and (2).
13. *OM Property Management Ltd v Burr* [2013] EWCA Civ 479. The Master of the Rolls held costs are not incurred on the mere provision of supplies, and found it unnecessary to decide between presentation of an invoice and payment.
14. Ofgem consumer protection guidance, paras 2.4 and 2.8.
15. Ofgem consumer protection guidance, paras 2.11, 2.13 and 2.25 to 2.29.
16. Landlord and Tenant Act 1985, s20ZA(2).
17. Landlord and Tenant Act 1985, s20(1) and (7); Service Charges (Consultation Requirements) (England) Regulations 2003, reg 4(1).
18. *Corvan (Properties) Ltd v Abdel-Mahmoud* [2018] EWCA Civ 1102, upholding [2017] UKUT 228 (LC). The deciding factor is the minimum length of the commitment.
19. Landlord and Tenant Act 1985, s20ZA(1).
20. *Daejan Investments Ltd v Benson* [2013] UKSC 14, per Lord Neuberger at [56].
21. Landlord and Tenant Act 1985, s21B(1), (3) and (4).
22. Authorisation conditions, A3 (definition of Service Charge, by reference to s18(1) of the 1985 Act), B7.3 and B6 Part Two.
23. Landlord and Tenant Act 1985, s18(1) and (2).
24. *Barton v Platform Housing Ltd* [2025] UKUT 369 (LC), Martin Rodger KC, Deputy Chamber President, at [33] to [35], applying *Home Group Ltd v Lewis* [2008] EWLands LRX/176/2006.
25. *Barton*, at [15] and [36]. The tribunal's jurisdiction under s27A is to determine whether a service charge is payable.
26. Authorisation conditions, A7, which runs on Applicable Consumers.
27. Ofgem, *Heat networks fair pricing and cost allocation guidance* (13 January 2026).
28. Landlord and Tenant Act 1985, s27A(6).
29. Consumer Rights Act 2015, s61(1) and (3); "trader" and "consumer" per s76(2), referring to s2(2) and s2(3).
30. Consumer Rights Act 2015, s62(1), (3) and (4). By s62(3) the consumer may still choose to rely on the term.
31. Consumer Rights Act 2015 (Commencement No. 3, Transitional Provisions, Savings and Consequential Amendments) Order 2015, SI 2015/1630, arts 3, 6(1)(a) and 6(4).
32. Consumer Rights Act 2015, s64(1) to (6); Unfair Terms in Consumer Contracts Regulations 1999, reg 6(2).
33. Consumer Rights Act 2015, s73; Unfair Terms in Consumer Contracts Regulations 1999, reg 4(2).
34. Consumer Rights Act 2015, s72(1) to (3).
35. Consumer Rights Act 2015, s71(1) to (3).
36. Authorisation conditions, A3: a Supply Contract includes a deemed contract or any other form of contract, including a lease.
37. Authorisation conditions, B2.11 and B2.12. B2.5 separately requires a single pack in plain and intelligible language, with nothing incorporated by reference to a website.
38. Consumer Rights Act 2015, s62(1) and (3), and s67.

39. Authorisation conditions, A3: a Relevant Consumer is a Domestic, Microbusiness or Small Business Consumer, except in its capacity as a Bulk Supply Consumer. The exclusion is capacity-based, not size-based.
40. Ofgem consumer protection guidance, paras 2.11 and 2.13.
41. Leasehold and Freehold Reform Act 2024, s53, not in force at Royal Assent (s124(3)). s53(2)(b) substitutes new s18(1); s53(3) and (4) substitute “variable service charge” in s19, s20, s20A, s20B(1), s20D, s20F, s30D and s30E. The s20B(2) notice reform is at s54.
42. Leasehold and Freehold Reform Act 2024, s55, not in force. It omits ss21, 21A and 21B and inserts s21C, which runs on the wider “service charge”.
43. s27A is not among the provisions listed in s53(4), so the tribunal’s jurisdiction will run on the wider substituted definition. The Upper Tribunal noted the same prospective effect in *Barton*.
44. Ofgem consumer protection guidance, paras 4.34 and 4.35.
45. Landlord and Tenant Act 1985, s27A(1) and (3).
46. Consumer Rights Act 2015, s70(1) and Schedule 3.
47. Landlord and Tenant Act 1985, s27A(5).
48. Landlord and Tenant Act 1985, s27A(4).
49. Ofgem decision, foreword and response on interactions with the Landlord and Tenant Act; consumer protection guidance, para 5.18.
50. Citizens Advice, *Hidden debt, hidden risks* (July 2026). Survey by IFF Research of 3,266 heat network consumers, February to May 2026.
51. *Barton*, at [13] and [23]; Landlord and Tenant Act 1985, s26.