



# Cabinet

18 JULY 2011

**CABINET MEMBER  
FOR HOUSING**

*Councillor Andrew  
Johnson*

**LEASEHOLDERS SERVICE CHARGE  
PAYMENT OPTIONS**

**Wards:  
All**

This report seeks approval for changes to major works payment options, including invoicing for on estimates when work starts on site. It also looks at the options offered by other London Boroughs.

**CONTRIBUTORS**

AD Finance &  
Resources  
DFCS  
ADLDS

**HAS A EIA BEEN  
COMPLETED?  
YES**

**HAS THE REPORT  
CONTENT BEEN  
RISK ASSESSED?  
YES**

**Recommendations:**

- 1. To approve the proposal to bill leaseholders for future major works schemes, not yet consulted on, on an estimated basis.**
- 2. To note the various proposed full payment options and agree in addition to the currently approved options :**
  - a) That leaseholders may be afforded a 2.5% reduction of their major works bill should payment be received within 30 days of the invoice date.**
  - b) An interest free repayment period for all major works charges paid within 36 months of the bill be issued subject to a signed payment agreement.**
  - c) A 5 year repayment period, the first 3 years being interest free and the remaining 2 years' instalments accruing compound interest at 5% above Bank of England base rate, subject to a signed payment agreement.**

**That options b and c will not be available to non-resident leaseholders subletting their property (save, at officers discretion, in exceptional**

**cases of under letting necessitated by mortgage arrears, secondment or hospitalisation, entry into a care home or circumstances of a similar nature). Nor will they be available to leaseholders who are resident but not occupying as their only or principal home, again save in such exceptional cases.**

## **1. BACKGROUND**

- 1.1. LBHF has 4,385 leaseholders. 1,545 of these leaseholders do not reside in their properties and who are likely to be subletting.
- 1.2. Under the terms of their leases, the majority of leaseholders have a contractual obligation to pay invoices within 21 days of issue; a few leases allow for invoices to be paid in two instalments, one on issue of the invoices and the other six months later. Recovery is subject to costs being invoiced on time, being reasonably incurred, correctly apportioned and recoverable under the terms of each lease.
- 1.3 The Council has a fiduciary duty to collect service charges including invoices for major works, the majority of these invoices in recent years have been for works done under the decent homes programme. In line with other Local Authorities the Council currently offers various payment options to assist leaseholders in making full payment. Appendix 1 shows the payment terms currently offered by a number of other London Boroughs.
- 1.4 The Council, in common with most authorities, also distinguishes between owner-occupiers and those who are letting their property in determining whether to extend payment terms.
- 1.5 Unlike a large number of Councils which invoice Leaseholders on estimate, the Council currently invoices leaseholders for their contribution towards major works carried out to their blocks/buildings upon receipt of the agreed final account and after the individual contributions have been calculated. This has a detrimental impact on both Leaseholder satisfaction and cash flow, it often results in queries several years after the completion of the works which can be difficult to resolve. Invoicing on estimate would also offset the cash flow implications to the Council of the payment plans offered.

## **2. PROPOSAL TO MOVE TO ESTIMATED MAJOR WORKS INVOICES**

### **2.1 The current process:**

- 2.1.1 The Council currently invoice leaseholders for their contribution towards major work to their blocks/buildings upon receipt of the agreed final account and after the individual contributions have been calculated.
- 2.1.2 Before any major work is carried out the Council engages in a statutory consultation process with leaseholders. This process can include a series of notices, the final of which advises leaseholders of their estimated individual contribution. This last notice is usually served between 1 to 6 months before works are due to start on site.

2.1.3 The Council then serves another notice on all leaseholders involved within roughly 18 months of the works commencing as a reminder to expect an invoice once the final account is available.

2.1.4 The final account only becomes available after the works have completed on site and defects liability queries have been resolved. Due to the scale and complexity of some contracts this may be four or more years after the final notice. Other London Boroughs have experienced even longer delays, especially when a contractor has gone into liquidation when an account may never be agreed.

2.1.5 Invoicing on final account has the following disadvantages:

- Uncertainty around the amount due to the Council when a leaseholder sells their property which can result in inadequate retentions being held by the purchaser
- Leaseholders tend to dispute the works on receipt of the invoice by which time it is too late to call the contractor back to site. Any required work may then have to be carried out by a Repairs contractor which has additional cost implications as the original contractor has already been paid. This adversely impacts on leaseholder satisfaction.
- In some cases where disputes have been raised and cannot be resolved due to the lapse in time income is lost as reductions are agreed.
- The council has to subsidise all payments to the contractor for an extended period of time as income from leaseholders can only be expected once the invoices are raised.
- Payment options are triggered by the final invoice which means that full payment may not be received for 5 years after the final invoice.

## 2.2 **Proposal to invoice Leaseholders for major work on estimates**

2.2.1 We will normally invoice Leaseholders for the estimated contribution when major works have started on site with an adjustment invoice or credit note being raised on receipt of the final account. We do not have to formally consult under the lease to make this change.

2.2.2 Billing on estimate should result in:

- An improved streamlined process as the leaseholder receives a bill while work happens on site and not years after the completion of the work.
- Leaseholders should engage more with the process as and when work is being carried out which should result in a higher satisfaction with the work at completion
- Disputes can be addressed whilst contractors are on site, again resulting in increased satisfaction.

- Cash flow will be significantly improved, under the current method of invoicing on final account full payment may not be received for nine or more years after LBHF has made the first payment to the contractor.
- Greater certainty on liability for prospective leaseholders
- If a S20B notice has not been served in time or contains incorrect information the income to the value of the estimated invoice will be protected

2.2.2 The individual leases allow for interim (estimated) invoices to be issued (although not all on the same basis – see Legal comments).

### 2.3 Implementation

2.3.1 We will be advising the leaseholders of the change in our major works billing practise during the Area Forum meetings in September and implement invoicing for major works on estimates for all works consulted on from 26<sup>th</sup> July 2011 onwards.

2.3.2 Invoices for the existing Decent Homes programme, on which we have already consulted, will continue to be issued on final account, as leaseholders were advised at the time that they will only have to make payment towards the work once the work is completed.

## 3. CURRENT PAYMENT OPTIONS

3.1 Currently a range of payment options for major works invoices are available to resident leaseholders. These were agreed by Cabinet in January 2008 and are:

- **Mandatory service charge loans (S450A Housing Act 1985):** an interest bearing loan with set criteria which are applied in accordance with the act, leaseholders are not compelled to apply for this where eligible.
- **Discretionary service charge loans (S450B Housing Act 1985):** this is available to all leaseholders and is interest bearing, currently 0.25% above the average council lending rate for the previous year, it is reviewed each year, and may last up to 10 years.
- **Discretionary reductions:** this allows local authorities to reduce service charges to a minimum of £10,000 over 5 years subject to a number of factors. Eligibility for a reduction on hardship grounds is based on the receipt of Council Tax Benefit and/or other means tested benefits for example Income Support, Working Tax Credit etc.

- **24 month interest free repayment option:** this is for the payment of major works with proof of lack of means.
  - **Voluntary charge on the property:** this is applied in cases of extreme hardship where the discretionary reduction and discretionary loan options are not suitable. It is a loan secured on the property as a charge and payment is made when the lease is assigned. Interest can either be left to accrue on the property or be a monthly payment.
  - **Mandatory capping:** this applies to prescribed government grant funded schemes only, e.g. Estate Action Funding or New Deal for Communities etc.
- 3.2 Leaseholders can also arrange their own savings accounts, loans, mortgages or sell their properties on the open market to raise money to pay their service charges. They may also be entitled to help from the Department for Work and Pensions, or take up one of the equity-release schemes, available from various financial institutions and designed to free up cash based on the equity of the property.
- 3.3 Should leaseholders want independent advice council officers will usually suggest that they use organisations such as the Leasehold Advisory Service or the Citizen Advice Bureau.
- 3.4 If Leaseholders are struggling to pay under the above payment terms H&F Homes has historically taken a pragmatic approach when arriving at arrangements to pay and as such there are currently leaseholders who are paying under terms different to those set out above. Only as a last resort, when leaseholders do not agree any other method of repayment, does the LBHF issue a claim in the County court for a judgment which will enable the council to proceed with forfeiture and recovery of the property. In practice Leaseholders or their mortgage companies will usually pay or sell the property before the Leasehold Valuation Tribunal confirms a breach of the lease.
- 3.5 None of the above payment options are available to non-resident leaseholders subletting their property (save, at officers discretion, in exceptional cases such as those necessitated by mortgage arrears, secondment or hospitalisation or entry into a care home)

#### **4. PROPOSED ADDITIONAL PAYMENT METHODS FOR MAJOR WORKS**

- 4.1 The payment options set out below have been offered to Leaseholders for the payment of Major Works bills, since at least July 2009, as part of the pragmatic approach taken to income collection by H&F Homes.

- 4.2 This proposal formalises these options, allowing officers to continue offering them as experience has shown they significantly improve collection rates.
- 4.3 It is proposed that none of the proposed payment options are available to non-resident leaseholders subletting their property (save, at officers discretion, in exceptional cases such as those necessitated by mortgage arrears, secondment or hospitalisation or entry into a care home). The proposed additional options are:

**1) Discount for prompt payment of major works invoices**

An early payment discount of 2.5% to leaseholders who pay their major works bills within 30 days of the date of the invoice. H&F Homes have been offering this, historically 34% of Leaseholders opted to take up this offer.

**2) Interest-free 36-month instalment scheme for major works invoices.**

The previous Cabinet approval extended the interest free payment option to 24 months. All leaseholders who agree to pay major works charges in a period of 24 months or less are given that period interest free. This option was extended around July 2009 by H&F Homes to a 36 month interest free payments period and 25% of leaseholders have signed up to this option. Leaseholders must contact the leasehold services team within 6 weeks of the invoice date to apply for the interest free option. An income recovery officer will discuss the options available and agree the most suitable repayment term of up to 36 months interest free. A payment agreement is then sent out detailing the terms agreed for signature by all leaseholders of the property. It is proposed that we continue to offer this payment option. No proof of lack of means is required.

**3) 5 year payment scheme for major works invoices**

A 5 year mixed loan option was agreed in June 2009 by H&F Homes, where the first 2 years' payments are interest free and the remaining 3 years subject to interest at 5% above the Bank of England base rate. This option has rapidly evolved into a 3 year interest free and 2 year interest bearing option and seems to have been in place since July 2009. Currently 6% of leaseholders who received major works bills prefer to make payment based on this option.

The process is initially the same as for 3 year interest free option and compound interest (variable) is applied at the end of the 36 month period to the residual balance of the account for remaining 2 years of the 5 year plan. It is proposed that we continue to offer this payment option.

- 4.4. We are currently aware of 1,545 leaseholders who are not resident in their properties and who are likely subletting. A number of these leaseholders own multiple properties. We are proposing to only make the prompt payment discount (Option 1 in paragraph 4.2) available to non resident leaseholders so as to not subsidise individual business interests.
- 4.5 However, where a leaseholder is subletting the property due to their financial circumstances and are renting out the property to maintain mortgage payments or due to unfortunate personal circumstances (e.g. ill-health or relationship breakdown) officers should be given discretion to consider applications for alternative payment options.
- 4.6 The Council's well being powers (S2 Local Government Act 2000) allow it to offer loans although any reduction or waiver of the liability to pay a service charge must be justifiable in terms of the fiduciary duty. There must therefore be a balance struck between those benefiting from the works and those ultimately bearing the cost of the works and the offering of additional payment options must promote the economic and / or social well being of the Borough.
- 4.7 Our experience has shown that these additional payment options result in improved collection rates, benefiting the tenants who are the other major contributors to the Housing Revenue Account.
- 4.8 Major works invoices can be large. Although all leaseholders receive notices to warn them of the impending bill it is, in some cases, still extremely difficult or impossible to raise enough funds to settle the invoice within 21 days as the lease requires and given the current economic climate more flexible terms will continue to be required to ensure full collection of the invoices.
- 4.9 If we are unable to collect these invoices we would ultimately have to issue a claim in the County Court for a judgment which would enable the council to proceed with forfeiture and recovery of the property. As a minimum this would result in poor credit history for a Leaseholder, impeding their ability to participate fully in the economy of the Borough and potentially could result in the leaseholder losing their home. This would not be in accordance with both LBHF's Housing Strategy and Community Strategy both of which promote home ownership to promote the economic and social well being of the Borough. Additionally the loss of home ownership would create housing need and potentially add to the Housing Register. There is therefore a clear argument that offering these payment options to resident leaseholders will promote the economic and social well being of the Borough by promoting the LBHF's Housing and Community Strategies



## **5. RISK MANAGEMENT**

- 5.1 Although these proposed options are not included in the risk registers, income recovery from leaseholders is. These options are popular ways of paying major works invoices and it is expected that it will have a detrimental impact on the income collected should we not continue to offer these payment options. Invoicing on estimated costs should further improve the timeliness of income collection.
- 5.2 Withdrawing the options will result in an unfavourable comparison of terms offered by other Councils (see Appendix 1).

## **6. EQUALITY IMPLICATIONS**

- 6.1 Invoicing leaseholders for major works on an estimated basis is expected to have a positive impact and medium relevance to leaseholders in receipt of state pensions, disabled leaseholders receiving state benefits, those on maternity leave who may have fluctuating incomes and any low income households which are likely to include BME and single parent households. The expectation is that these leaseholders will have clarity on when to expect the bill and will have assurance as to the value of the estimated bill, which should in turn allow them to better plan their finances.
- 6.2 Major works invoices can be large. Although all leaseholders receive notices to warn them of the impending bill it is in some cases still extremely difficult or impossible to raise enough funds to settle the invoice within 21 days as the lease requires. The proposed payment options are expected to have a positive impact and medium relevance to the groups mentioned in 6.1 above as extended payment terms will enable them to make payments towards the bill without the risk of facing legal recovery proceedings.
- 6.3 Extended payment terms and estimated invoices are expected to have a neutral impact to all other groups. It will be applied to all resident leaseholders and it is expected they will be more relevant to leaseholders representing low income households. Extended payment terms will be available to leaseholders who are subletting their properties if they can evidence that they are subletting the property due to unfortunate personal circumstances (e.g. ill-health or relationship breakdown).

## **7. COMMENTS OF THE DIRECTOR OF FINANCE AND CORPORATE SERVICES**

- 7.1 Moving to estimated invoices for major works will significantly improve cash flow as receipts from Leaseholders will be more in line with payments made to contractors. Under the current method of invoicing after final account full payment may not be received for up to nine or more years after LBHF has made the first payment to the contractor. Moving to estimated invoices should also improve collection rates as disputes regarding the quality of the work will be able to be dealt with while the contractor is still on site.
- 7.2 It is anticipated that formally offering the additional payment options will continue to improve the collection of major works income. These options have been prepared after careful consideration of the Council's fiduciary duty and aim to strike a reasonable balance between the interests of leaseholders and those of council tax payers and council housing tenants. It is considered that, in common with other Councils as detailed in Appendix 1, that the costs of offering payment options are more than offset by the increased collection rates which arise as a result.

## **8. COMMENTS OF THE ASSISTANT DIRECTOR (LEGAL AND DEMOCRATIC SERVICES)**

### **Proposal to bill on estimate.**

- 8.1 Although all Council leases granted under the Right to Buy permit at least some charging for works prior to final account, there is a difference between earlier leases (prior to around 1986) and later ones. In the case of earlier leases, the interim charge can only be £50 (payable on 2 half-yearly instalments) or (if greater) one half of the previous financial year's service charge. To bill leaseholders under these earlier forms of lease in the manner proposed would require a variation of the leases, either by agreement or by application to the Leasehold Valuation Tribunal under Section 35 or 37 of the Landlord and Tenant Act 1987.
- 8.2 Where an additional charge is intended to be made when the final account is in, it will be important (if the payment on account has been based on estimated costs) for a warning notice under Section 20B Landlord and Tenant Act 1985 to have been served no later than 18 months after the relevant expenditure was "incurred" otherwise recovery may be impossible.

### **Proposed payment options**

- 8.3 The Council has a fiduciary duty to recover all debts owing to it. By making the proposed payments options available to leaseholders the

Council is, in affect, giving loans to the leaseholders. Sections 450A and 450B of the Housing Act 1985 give the Council power to make loans secured by a mortgage on the property but as there is no security these “loans” can be made using S.2 Local Government Act 2000.(the “well-being” power) if it bona fide considers doing so will promote the economic or social well-being of the borough or any part of or any people in it. S2(4) of the Act states that the “well being” power includes the power for the council to give financial assistance to any person.

- 8.4 S2(3) requires the Council to have regard to its community strategy when determining whether or how to exercise the well being power. S2(4). A key priority of the Council’s community strategy is to promote home ownership in the borough and, as set out in paragraph 4.6 it is considered that the proposed payment options are likely to assist with this priority and promote economic and social well being within the borough. .

**LOCAL GOVERNMENT ACT 2000**  
**LIST OF BACKGROUND PAPERS**

<b>No.</b>	<b>Description of Background Papers</b>	<b>Name/Ext of holder of file/copy</b>	<b>Department/ Location</b>
1.	Cabinet Report dated 7 <sup>th</sup> January 2008 (15)	Jana du Preez x4242	Leasehold Services
2.			
<b>CONTACT OFFICER: Jana du Preez</b>		<b>NAME: Jana du Preez EXT. 4242</b>	

## Comparisons of Payment Options

## APPENDIX 1

### Terms offered by other Boroughs (at May 2011) in addition to Statutory Options

Terms	K & C	Westminster	Ealing	Wandsworth	Barnet	H&F: proposed
<b>Discount for prompt payment</b>	None	None	2.5%	None	2.5%	2.5%
<b>Max interest free period</b>	3 years	2 years	3 years	1 year	2 years	3 Years
<b>Interest rate</b>	5.13% variable and calculated twice yearly	Base +1% (over £5,000 plus admin fee £352.50)	5.6% (over £12,601 plus admin fee £290)	6% (up to 5 years)	4.05%	Base + 5% for years 4 & 5
<b>Invoice major works on Estimate or Final Account</b>	Estimate	Estimate	Final Account	Estimate	Estimate	Estimate