

 <p>h&f the low tax borough</p>	<p align="center">London Borough of Hammersmith & Fulham</p> <p align="center">CABINET</p> <p align="center">2 SEPTEMBER 2013</p>
<p>PAYMENT OPTIONS FOR LEASEHOLDER RECEIVING ESTIMATED MAJOR WORKS INVOICES</p>	
<p>Report of the Cabinet Member of Housing : Councillor Andrew Johnson</p>	
<p>Open Report</p>	
<p>Classification: For Decision Key Decision: Yes</p>	
<p>Wards Affected: All</p>	
<p>Accountable Executive Director: Melbourne Barrett, Executive Director of Housing and Regeneration</p>	
<p>Report Author: Jana du Preez, Head of Leasehold Services</p>	<p>Contact Details: Tel: 020 8753 4242 E-mail: jana.dupreez@lbhf.gov.uk</p>

1. EXECUTIVE SUMMARY

- 1.1. This report deals with payment arrangements for leaseholders in meeting their obligations to pay for major works under lease provisions, and in particular concessionary payment options offered by the Council to support home ownership. The report seeks to retain interest free options for resident leaseholders and to open these options to non-resident leaseholders who only own one leasehold property, whilst rationalising the number of options to streamline processes and improve cost efficiency. The report also seeks to introduce interest bearing payment options for non-resident leaseholders.
- 1.2. This report also builds on a previous Cabinet decision to introduce billing based on the estimated cost of works, with a subsequent reconciliation of the final account, rather than billing after final account which in some cases can be some years after the work has been completed. It is anticipated that moving to billing on estimate for forthcoming schemes will improve leaseholder engagement, as bills will be received whilst works are underway on site, and in the event of any required rectification, this will be able to be remedied whilst the contractor is still on site. The report also benchmarks current and proposed payment arrangements with a number of other London Boroughs.

2. RECOMMENDATIONS

- 2.1. That approval be given to offer the following menu of interest free payment options for resident leaseholders and non-resident leaseholders who own a single property:

Invoiced amount	Interest free period available
< £3,500	12 months
£3,500 - £5,500	18 months
£5,500 - £7,500	24 months
£7,500 - £10,000	30 months
> £10,000	36 months

- 2.2. That interest bearing instalment plans be offered to non-resident leaseholders who may own more than one leasehold property based on the same number of instalments as set out above.
- 2.3. That authority be delegated to the Executive Director of Housing and Regeneration, acting through the Head of Leasehold Services, to consider any applications on the grounds of hardship from leaseholders to allow additional instalments.

3. REASONS FOR DECISION

- 3.1. Cabinet agreed that major works may be billed on estimate in July 2011. Current payment options now need to be amended to ensure that the Council assists leaseholders with the payment of major works invoices whilst facilitating a steady cash flow.
- 3.2. Experience has shown that additional payment options result in improved collection rates, which in turn benefits the Council's Housing Revenue Account.
- 3.3. Rationalising repayment terms should reduce the number of transactions to be processed by the Council and will lead to a cost saving.
- 3.4. Maintaining interest free repayment options continues to support the corporate priority of supporting home ownership.

4. INTRODUCTION AND BACKGROUND

- 4.1. The London Borough of Hammersmith & Fulham (LBHF) has 4,686 leaseholders, of which 2,599 are resident and 2,087 are non-resident and are likely to be subletting, or may be absent for some other reason.

- 4.2. Leases granted obligate the Council, as landlord, to keep the buildings in which leasehold properties are located in a reasonable state of repair and decoration. The Council in turn is allowed to recover a contribution towards the expenditure in carrying out such work from the leaseholders, as service charges (which includes major works) in line with the terms of the lease.
- 4.3. Typical works may include, but are not limited to, roof repairs/replacement, window repairs/renewal, communal redecorations etc. These larger schemes of work, to blocks or estates, are known as major works, and the leaseholders in such blocks and/or estates receive major works invoices for their contributions towards the work.
- 4.4. Currently the Council invoices leaseholders for major works on receipt of the final account from the contractor. This account normally becomes available 12 months after completion of the work. However, in the case of a complex final account, perhaps involving protracted negotiation or dispute resolution as in the case of a number Decent Homes projects, this could take up to five years after completion of the works. Several problems can be caused by the delay between works being carried out and the leaseholder receiving the bill such as:
- 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 rectification 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 negotiated and agreed to settle the dispute with the leaseholder in question.
 - The Council has to cash flow 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.
- 4.5. The Cabinet agreed in July 2011 to invoice leaseholders for their estimated contributions as works start on site, with an adjustment invoice or credit note being raised on receipt of the final account. This change in practice is to be implemented for all schemes save for Decent Homes [H & F Homes Ltd previously gave an undertaking that Decent Homes contracts would only be invoiced following receipt of final account and therefore it is not proposed to move away from this commitment] and is expected to result in the following advantages:

- 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 major works 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.

4.6. Some discretion will need to remain with officers to invoice some schemes on final account. This will specifically apply to smaller value contracts where final accounts are expected to be available in less than 12 months. Final invoices will be raised soon after the completion of the works without the delay normally associated with larger schemes. It will also negate the need to calculate estimated contributions and again reconciliation within a short space of time.

4.7. As the Council is able to invoice major works on estimate it now needs to ensure that we facilitate payment of these invoices on mutually beneficial terms.

4.8. The lease is prescriptive regarding payment terms and in most cases payment in full is demanded within 21 days of issuing the bill.

4.9. Whilst leaseholders have the benefit of the Council acting as Managing Agent in the planning, scheduling and project management of the works, it is nevertheless recognised that 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.

4.10. 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. The loan is subject to interest at the local authority mortgage rate (fixed by the Secretary of State), which is currently 5.85%.
- **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.

4.11. Cabinet approved more lenient payment options in July 2011 for major works billed on receipt of the final account for resident leaseholders. These options include:

- a 2.5% reduction of a major works bill should payment in full be received within 30 days of the invoice date.
- an interest free repayment period for all major works charges paid within 36 months of the bill being issued subject to a signed payment agreement.
- a five year repayment period, the first three years being interest free and the remaining two years' instalments accruing compound interest at 5% above Bank of England base rate, subject to a signed payment agreement.

4.12. The above options are currently available regardless of the size of the major works invoice, allowing leaseholders access to extended payment options whether the bill is to the value of £300, £30,000 or above.

4.13. Interest-free payment options are effectively loans granted by the Council to allow payments over a longer time at the cost of lost interest charges. As such a fair balance needs to be struck between the leaseholders on the one hand and on other contributors to the Housing Revenue Account, Council tenants. It is proposed to refine the agreed interest-free payment options and it is expected that the cost of providing improved interest-free options will be offset by the increase in the collection rate. The proposed options will also bring the options more in line with those offered by other London Boroughs as detailed in Appendix 2.

4.14. The greater majority of payments received within the three or five year plans are received via Direct Debit. The cost of such a transaction to the Council is £0.03. By allowing a relatively small invoice to be paid over an extended period of time increase the cost to the Council in administering the payments. For example if an invoice to the value of £300 is paid over 36 months it will result in monthly payments of £8.33 a month at a total cost of £1.08 to the Council. This may

seem a relatively small figure but considering the number of leaseholders could quickly add up to a significant amount. Should the same invoice be limited to a repayment period of 24 months it will result in a total cost to the Council of £0.72. In order to achieve Value for Money it will be sensible to limit the number of transactions to reasonable levels.

- 4.15. Formal court proceedings are issued in instances where arrears remain unpaid. Non-payment on receipt of a judgement initiates forfeiture proceedings, which usually prompts a mortgagee to settle the outstanding balance to protect their interest. The court may also make an order to register a charge on the property. In these instances the Council will be remunerated as and when the property changes hands.
- 4.16. Leasehold Services refers an average of 116 accounts per year to Legal Services to initiate formal recovery proceedings.

5. PROPOSAL FOR FUTURE PAYMENT OPTIONS

5.1. The current process:

- 5.1.1 The payment options agreed by Cabinet in July 2011 are currently available when we invoice leaseholders for their contributions towards major works costs on receipt of the final account.
- 5.1.2 In July 2011, Cabinet also agreed that major works bills may be issued to leaseholders based on the estimated contract cost and that upon receipt of the final expenditure, a reconciling invoice or credit note be issued.

5.2. Proposed future process:

- 5.2.1 To introduce levels of interest-free payment options for estimated major works invoices dependent on the size of the invoiced amount as below:

Invoiced amount	Interest free period available
< £3,500	12 months
£3,500 - £5,500	18 months
£5,500 - £7,500	24 months
£7,500 - £10,000	30 months
> £10,000	36 months

- 5.2.2 Using the suggested parameters as set out in 5.2.1. above it will result in average monthly instalments of £242 (for invoices of less than £10,000). Please see below a table of expected instalments:

Months (up to)	Invoice Value	Monthly Instalment	Average Instalment	Overall Average Instalment
12	£250.00	£20.83		£242.16
12	£3,499.00	£291.58	£156.21	
18	£3,500.00	£194.44		
18	£5,499.00	£305.50	£249.97	
24	£5,500.00	£229.17		
24	£7,499.00	£312.46	£270.81	
30	£7,500.00	£250.00		
30	£9,999.00	£333.30	£291.65	
36	£10,000.00	£277.78		

- 5.2.3 Leaseholders who receive bills in excess of £10,000 will be able to make use of the 5 year payment plan. This option effectively means that in addition to the 36 month interest free payment period the remaining balance can be paid over an additional 2 years. Interest (variable) will be applied at the end of the 36 months to the residual balance. Interest is charged at 5% above the Bank Base Rate. This payment plan is subject to a signed payment agreement.
- 5.2.4 All the payment options, including the 2.5% discount upon prompt payment, to be revised to a period of within 21 days of the invoice so as to be co-terminus with the payment provision in the lease, will be available as soon as the invoice is released. The interest free period is available from the invoice date and will not be effected by any challenge. Importantly, no further payment options will be offered as and when the final account is released. Please refer to Appendix 1 for a summary of the current and proposed payment options.
- 5.2.5 Should the final account result in a credit note, and if there is already a payment plan in place, the monthly instalments will be adjusted. If all payments have already been made the credit may be refunded. If the final account results in an additional invoice this additional amount will need to be paid within the contractual timeframe prescribed by the lease, in most cases within 21 days of issue.
- 5.2.6 It is proposed to make these payment options available to non-resident leaseholders who only own one leasehold property to facilitate prompt payment. It will be for non-resident leaseholders to complete a declaration that they own only one property and in the event that this is discovered not to be the case they will be liable for interest charges, as per non-resident leaseholders who own more than one property.
- 5.2.7 It is also proposed to offer interest bearing instalment plans, charged at 5% above base rate to other non-resident leaseholders. The instalment period available will be dependent on the value of the invoice similar to that proposed in 5.2.1.
- 5.2.8 Despite being able to offer a number of options for leaseholders to spread the costs of major works there will in some who will still find it impossible to pay via

the proposed level of instalments. It is recommended that the Executive Director of Housing and Regeneration acting through the Head of Leasehold Services be granted delegated authority to consider cases of hardship with the view of spreading payments over a longer period.

6. IMPLEMENTATION

- 6.1. All remaining Decent Homes contracts will be billed on final account and it is proposed to offer the payment options with the amendments proposed in 5.2.1 above. As at end June 2013 final accounts were outstanding on 8 contracts affecting 448 leaseholders. A further 2 contracts have had final accounts settled but bills have not yet been sent to the 79 leaseholders.
- 6.2. Estimated invoices will be issued on schemes following Decent Homes where Final Accounts are not expected to be available within 18 months of the start on site. It is expected that the first estimated invoices for leaseholders will relate to the Planned Preventative Maintenance framework approved at Cabinet on 15 October 2012. Potentially 1,979 leaseholders will have works carried out to their property under the framework.
- 6.3. The first stage of statutory consultation on this framework, the issue of Notice of Intent, was completed in October 2011. The second stage, the issue of Notice of Proposal to appoint a contractor, was completed in February 2012. The third stage, the issue of a Notice of Estimate, will be issued for the first contracts during July and August 2013 with the actual work starting in September and October.
- 6.4. The estimated cost to leaseholders for the framework will be dependent on the details of each lease and the extent of work carried out to each property or block. Estimate bills are anticipated to be released in January 2014.
- 6.5. Early indication of the number of invoices falling within the different bands will be as follows:

Invoiced amount	Estimated % bills
< £3,500	10%
£3,500 - £5,500	30%
£5,500 - £7,500	30%
£7,500 - £10,000	20%
> £10,000	10%

- 6.6. We will be advising the leaseholders of the addition of the payment options for estimated invoices during the Area Forum meetings in October.
- 6.7. The procurement of the 2012/15 framework has been carried out in accordance with the Council's contract standing orders and EU procurement rules. Ensuring demonstrable value for money for residents has been a key priority in this process and the successful contractor, Mitie Property Services, has submitted a

very competitive tender. The contract includes financially incentivised key performance indicators whereby, under the terms of the contract, 10% of the amount payable to the contractor for each scheme is dependent upon the contractor achieving the necessary performance on resident satisfaction, defects, time and cost. A Clerk of Works will be used to carry out interim inspections while the works are ongoing. Interim valuation inspections will also be undertaken by an external Quantity Surveyor, prior to approval of any payments. Inspections will also be carried out upon completion of the works by H & F Officers and each property will be individually handed over. New technology will be embraced to improve workflow processes and create more efficient contract management.

- 6.8. A comprehensive resident communication strategy is in place to ensure that residents are kept properly informed of the timing and extent of works and are familiar with their respective project teams.
- 6.9. In blocks consisting of 100% leaseholders, the leaseholders will be encouraged to purchase the freehold of said block from the Council through its voluntary freehold reversion policy which is managed by the H&F Home Buy service. This will enable leaseholders to circumvent the charges as they will assume full responsibility for the maintenance, repairs and major works of the building which they will be able to carry out at their own convenience.

7. EQUALITY IMPLICATIONS

- 7.1. The Cabinet Decision on 18 July 2011 already confirmed that invoicing leaseholders for major works on an estimated basis is expected to have a positive impact and medium relevance to vulnerable 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).
- 7.2. The proposed payment options are expected to have a positive impact on the groups mentioned in 7.1 above, as extended payment terms will give more options to make payments towards the bill, and this will lower the risk of leaseholders facing legal recovery proceedings.

8. LEGAL IMPLICATIONS

- 8.1 The Council has a fiduciary duty to recover all debts owed to it. By making the proposed payments options available to leaseholders the Council is, in effect, giving loans to the leaseholders on concessionary terms. 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 further to the Localism Act 2011.

- 8.2 Section 1 of the Localism Act 2011 provides a general power of competence for local authorities and replaces the “wellbeing” powers from the Local Government Act 2000. It gives local authorities the same power to act that an individual generally has and provides that the power may be used in innovative ways. The only restriction is that there must be no statutory prohibition against the proposed action. There is no such prohibition on discounts for early payment.
- 8.3 Section 3 of the Local Government Act 1999 requires the Council as a best value authority to “make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness”.
- 8.4. Offering the payment options detailed in this report including the discount for early payment of sums due to the Council can be seen as an efficiency measure as the Council may not have to expend resources in chasing late payments.
- 8.5. Implications verified/completed by: Piero Ionta, Senior Lawyer –Litigation (x2724).

9. FINANCIAL AND RESOURCES IMPLICATIONS

- 9.1 It is anticipated that formally offering additional payment options to both resident and non-resident leaseholders will continue to improve the collection of major works income.
- 9.2 These options have been prepared after careful consideration of the Council’s fiduciary duty to recover debt and aim to strike a reasonable balance between the interests of leaseholders and those of council taxpayers and council housing tenants.
- 9.3 It is considered that, in common with other Councils as detailed in Appendix 2, the costs of offering payment options are more than offset by the increased collection rates which arise as a result. The estimated cost of interest foregone in offering interest free terms is £1.07m over the five years of the instalment plans. Currently 30% of leaseholders enter into instalment plans and each 5% increase in leaseholders signing up to instalment plans is expected to result in the generation of a further £163k cash over five years and additionally reduces the costs of collection.
- 9.4 Implications verified/completed by: Danny Rochford, Head of Finance, HRD, x4023

10. RISK MANAGEMENT

- 10.1 In instances where invoices remain unpaid or where payment arrangements are breached the arrears recovery process will be followed. Where judgements are

obtained and breached it may result in forfeiture proceedings or a charge registered on the property.

- 10.2 Billing on estimate is moving towards best practice. However, defending an estimated charge at a formal arena such as the Leasehold Valuation Tribunal can be difficult as the works may be complete but the final account may not yet have been agreed. A tribunal may decide to make decisions regarding the recharges based on the estimates which may result in a loss of income.
- 10.3 The majority of risk in para. 10.2 may be averted if leaseholders and officers agree to put a hold on the recovery process for the disputed element of the invoice until such a time as the final account becomes available.
- 10.4 Implications verified/completed by: Michael Sloniowski, BiBorough Risk Manager, x2587

LOCAL GOVERNMENT ACT 2000
LIST OF BACKGROUND PAPERS USED IN PREPARING THIS REPORT

No.	Description of Background Papers (published)	Name/Ext of holder of file/copy	Department/ Location
1.	Cabinet Report dated 7 January 2008 (published)	Jana du Preez	Leasehold Services
2.	Cabinet Report agreed on 18 July 2011 (published)	Jana du Preez	Leasehold Services

LIST OF APPENDICES:

Appendix 1 – Comparison of current and proposed payment options

Appendix 2 – Comparison of payment options offered by different Boroughs

Comparison of Current and Proposed Payment Options

APPENDIX 1

Current payment options	Proposed payment options
Mandatory service charge loans (S450A Housing Act 1985)	No change
Discretionary service charge loans (S450B Housing Act 1985)	No change
Discretionary reductions	No change
24 month interest free repayment option	No change
Voluntary charge on the property	No change
A 2.5% reduction of a major works bill should payment in full be received within 30 days of the invoice date	2.5% reduction if paid within 21 days of the invoice date
Three year interest free instalment plan for all invoices	<p>To offer the following interest free instalment plans to resident leaseholders and to non-resident leaseholders who own one leasehold property.</p> <p>> £3,500 to be paid in monthly interest free instalments over a maximum period of 12 months from invoice date</p> <p>£3,500 - £5,500 to be paid in monthly interest free instalments over a maximum period of 18 months</p> <p>£5,500 - £7,500 to be paid in monthly interest free instalments over a maximum period of 24 months</p> <p>£7,500 - £10,000 to be paid in monthly interest free instalments over a maximum period of 30 months</p> <p>Invoices over £10,000 to be paid in monthly interest free instalments over a maximum period of 36 months.</p>
A five year repayment period, the first three years being interest free and the remaining two years' instalments accruing compound interest at 5% above Bank of England base rate, subject to a signed payment agreement	Invoices larger than £10,000 to be paid using the five year plan, the first three years being interest free. The remaining 2 years accruing interest at 5% above base rate, subject to a signed payment agreement
No instalment options are currently available to non-resident leaseholders	<p>To offer interest bearing instalment plans to non-resident leaseholders who may own more than one leasehold property based on the following:</p> <p>> £3,500 to be paid in monthly interest</p>

	<p>bearing instalments over a maximum period of 12 months from invoice date</p> <p>£3,500 - £5,500 to be paid in monthly interest bearing instalments over a maximum period of 18 months</p> <p>£5,500 - £7,500 to be paid in monthly interest bearing instalments over a maximum period of 24 months</p> <p>£7,500 - £10,000 to be paid in monthly interest bearing instalments over a maximum period of 30 months</p> <p>Invoices over £10,000 to be paid in monthly interest bearing instalments over a maximum period of 36 months.</p>
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Comparisons of Payment Options

APPENDIX 2

Terms offered by other Boroughs (at June 2013) in addition to Statutory Options

Terms	RBKC	Westminster	Ealing	Wandsworth	Barnet	Newham	LBHF - Current	LBHF - Proposed
Discount for prompt payment	None	None	2.5%	None	2.5% if paid within 28 days	5% if paid within 8 weeks of billing	2.5% if paid within 30 days	2.5% if paid within 21 days
Max interest free period	3 years	2 years	3 years	1 year	2 years	2 years only	3 years	3 years
Interest free payment terms	<£5,000 over 12 months >£5,000 over 36 months	£200 - £2,000 over 12 months >£2,000 over 24 months	£4,201 - £6,300 18 months £6,301 - £8,400 24 months £8,401 - £10,500 30 months >£10,500 36 months	10 months interest free	<£3,000 12 months £3,000 - £5,000 24 months	do not offer any other term except for 2 years and it is interest free	Three year interest free instalment plan for all invoices	3,500 - £5,500 over 12 months £5,500 - £7,500 over 18 months 7,500 - £10,000 over 24 months >£10,000 over 30 months

Interest rate when applied	5.13% variable and calculated twice yearly (Generally is 2% above NatWest base rate)	Base +1% (over £5,000 plus admin fee £352.50)	5.6% (over £12,601 plus admin fee £290)	6% over Barclays base but only charged on serious arrears (up to 5 years)	4.25%	Do not apply interest until case referred to court. The value will be determined by courts.	Base + 5% for years 4 & 5	Base + 5% for years 4 & 5 (in the case of estimated bills >£10,000)
Invoice major works on Estimate or Final Account	Estimate	Estimate	Final Account	Estimate	Estimate	Final Account	Final Account	Estimate
Interest free options available to non-resident leaseholders	Yes	No	No	No	No	No	No	Yes, to leaseholders with one non-resident property