



<b>Report for:</b>	Cabinet – 20.3.12	<b>Item number</b>	To be added by the Committee Section
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<b>Title:</b>	<b>Annual Leasehold Service Charge – Review of Management Fee, etc</b>
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<b>Report authorised by :</b>	Mun Thong Phung Director of Adult and Housing Services  Tel: 020 8489 3385 Email: phungmt@haringey.gov.uk   Signed: pp Date: 8 March 2012
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<b>Ward(s) affected:</b>  'All'	<b>Report for Key Decision:</b>
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**1. Describe the issue under consideration**

- 1.1. This report sets out Homes for Haringey's proposal to introduce a middle band of the management fee, an annual charge for subletting



**Haringey Council**

and non-compliance charges for subletting to address various issues that have arisen.

- 1.2. The proposed middle band of the management fee will address issues arising from a ruling made by the Leasehold Valuation Tribunal. The proposals concerning subletting will address administrative issues and issue raised by leaseholders.
- 1.3. A brief description of each of these proposals has been set out in paragraph 3 for Members to consider and approve.

## **2. Cabinet Member Introduction (Councillor Bevan)**

**2.1. Management fee.** This is charged in two bands at present - £96 for street properties and £262 for all blocks of flats. However leaseholders in small blocks outside estates feel they should not pay at the higher rate and the Leasehold Valuation Tribunal (LVT) has made a ruling which supports this point of view. It is therefore proposed to introduce a middle band to recognise the fact that small blocks outside estates receive fewer services than those situated in estates. Although the proposal will not follow the detailed terms of the lease, it will be the most cost effective way of the implementing the ruling made by the LVT. Furthermore the proposal is in accordance with the current procedure which was specifically accepted by the LVT as being common practice by most landlords. It will benefit leaseholders since there will be no additional administrative costs incurred in its implementation.

**2.2. Annual charge for subletting.** There has been a significant increase in subletting over the last 5 years. This has caused an increase in the administration costs for this work. Leaseholders who do not sublet object to paying for these costs, so it proposed that leaseholders who sublet should be charged separately in future. Thus leaseholders who sublet will have the choice of paying either through an annual charge or a (larger) registration fee – whenever the details of their tenancy agreement changes.

**2.3. Non-compliance charges.** A small minority of leaseholders who are subletting are causing problems. They are slow in repairing leakages in their properties and sometimes when their tenants cause problems through excessive noise, they fail to take prompt action. This means that the Council as landlord has to get involved, incurring additional costs of administration, cost of inspections. Schedule 11 of the Commonhold and Leasehold Reform Act 2002 enables the landlord to recover any costs incurred in dealing with breaches of the lease. It is therefore proposed to have a scale of charges concerning issues of this nature.

### 3. Recommendations

3.1. Cabinet is asked to note this report and agree the following proposals:

**3.1.1. Management fee – middle band.** It is proposed to introduce a middle band of the management fee (part of the annual service charge) to cover small sized blocks of flats which are not situated in estates. (Please see the Appendix A for details.) This is the most cost effective method of implementing the recent ruling made by the Leasehold Valuation Tribunal (see also paragraphs 2.1 and 5.2.2).

**3.1.2. Annual charge for subletting** – it is proposed to make an annual charge of £20 for subletting. This will be included in the estimate as a separate item for leaseholders who sublet (1,550 registered sublet properties at present). If leaseholders object to paying this charge they will instead be charged a registration fee of about £75 for new lettings and for each time there is a change in their subletting agreement (in accordance with the terms of the lease).

**3.1.3. Proposed non-compliance charges for subletting.** These will be required if a leaseholder who sublets their property fails to take action after they have been informed of a problem (such as the repair of a leakage and noise nuisance).

### 4. Other options considered

The only alternative in each case will be to continue with the position as at the present. However there are a number of issues which have to be addressed and these are explained in paragraph 5 below.

### 5. Background information

**5.1 New middle band of the management fee** - the basis for this proposal is as follows:

**5.1.1. Annual service charge.** All leaseholders currently pay the item, the 'Management fee', in their annual service charge. This is one of a number of charges which all leaseholders must pay – the others are: building insurance, day to day repairs and ground rent.



**5.1.2. Flat rate charges for the Management fee.** In response to requests for a clear and easily understandable method of charging it was agreed in 2006 to recharge the management fee via two fixed flat rate charges. The lowest band (currently about £96) is for properties that are only charged for lighting and insurance. All other properties are charged at the higher rate, £262. (The overall policy for the recovery of Homes for Haringey's management costs is based on a report produced by an external consultant and it was consulted on in 2005.)

**5.1.3. Complaints from small, stand alone blocks.** Some leaseholders living in small and medium sized blocks of flats, outside estates have complained because they feel that the level of service provision in their building does not justify the highest rate of management fee.

**5.1.4. Leasehold Valuation Tribunal.** A leaseholder living in a small block of flats went to the Leasehold Valuation Tribunal and complained that the annual service charge was too high for her block, which the LVT accepted. They therefore reduced the management fee.

## **5.2 Legal issues – the proposed middle management fee**

Although this proposal is not referred to in the lease, the following considerations are relevant.

### **5.2.1 The requirements of the lease.**

In common with social landlords generally, it is not possible to fully comply with the conditions of the lease for the following reasons.

- i. Leaseholders would have to pay their proportion of the total cost of maintaining tenanted flats, and collecting rents and service charges in relation to all the tenanted properties in the borough (as part of the management of the building and the estate – please see the Third Schedule of the lease). This would result in a lot of queries and leaseholders would be more likely to challenge the level of charges if they were charged a proportion of the costs relating to tenants.
- ii. Management costs would have to be allocated individually to blocks and estates just as is required for works and services (Fourth Schedule, paragraph (e)). The management costs would then be allocated to each property as per the formula contained in the lease. This method is not followed by most landlords, since the allocation of management costs to individual blocks/estates would require setting up complex recording systems, which would not be cost effective.

**5.2.2 Ruling by the Leasehold Valuation Tribunal.** The Tribunal decided the costs of management fee were too high in relation to the level of services provided to the building. They said that whilst they recognised “as have other Tribunals, that the method of charging for management adopted here is commonly used by other local authorities, they are not persuaded, in this instance, that the resulting costs are either reasonable or reasonably incurred” (paragraph 24 of their ruling).

### **5.3 Method of calculation of the management fee.**

The proposed middle band of the management fee will provide a good practical solution to the issue raised by the ruling of the Leasehold Valuation Tribunal, which indicated that the amount is too high for small blocks of flats situated outside estate areas.

**5.3.1 Separation of leaseholders’ and tenants’ costs.** As noted above, in common with all local authorities the method followed in Haringey of recharging management costs to leaseholders differs from the lease in a number of respects.

- i. The management costs for leaseholders are separated from those which just relate to tenants. In accordance with the practice of most social landlords leaseholders pay nothing towards any costs that are purely concerned with tenants, such as the collection of rents.
- ii. Leaseholders pay their proportion of the costs of managing the exterior and communal areas of the building and estate and support services.
- iii. They pay the full cost of the work of the Home Ownership Team for billing and collecting the annual service charge (please 5.3.2 below). On the other hand they pay nothing in relation to the collection of rents (please see 5.2.1 above).
- iv. Leaseholders also pay nothing towards the administrative and management costs for internal repairs to tenants’ flats, and the refurbishment of voids..
- v. This method of charging is easy to justify and results in lower charges to leaseholders than if the method contained in the lease were followed, which does not provide for the separation of the costs relating to tenants and leaseholders.

### **5.3.2 Costs included in the management fee**



The following costs are included in the management fee charged to leaseholders as part of their annual service charge:

1. **Home Ownership Team's costs relating to the annual service charge.** These include the maintenance of leaseholders' accounts and records, the calculation of the annual service charges, the preparation of the annual statements, the provision of cost breakdowns, the issue of invoices, the collection of payments, the provision of explanatory information, dealing with queries and so on. These costs are apportioned amongst the Council's leasehold properties only which are approximately 4,500 in number.
2. **General management costs, support services, etc.** These include the management of the building and the estate by Tenancy Management, the costs of the Customer Service Centres, the Repairs Call Centre, Homes Zone and Leaseholder News, Citizens Advice Bureau and central services such as Housing Finance, Resident Involvement, Feedback and Support, Communications, Business Improvement (projects), support services and corporate recharges. These costs are apportioned amongst all the Council's properties, approximately 21,000 tenanted and leasehold homes and leaseholders pay their proportion of the costs (based on the number of leasehold properties in relation to the overall total).

#### **5.4 Justification for the middle band of management fee**

- 5.4.1 **Ruling of the LVT.** It has become necessary to vary the method of recharging leaseholders in order to take account of the decision by the Tribunal. This is that the level of management fee must be more closely related to the level of services provided to the building. This is invariably lower for smaller buildings outside estates, as in the case of the leaseholder's property considered by the Tribunal.
- 5.4.2 **Compliance with the lease is not practical.** Strict compliance with the lease was not recommended by the Tribunal and would incur higher costs for leaseholders as indicated in 5.2.1. In addition, it would require the allocation of management costs to individual blocks. This would necessitate additional IT systems and much more administrative work since the cost apportionment would then have to be based on the time spent on each block and estate. Moreover it would not greatly increase the accuracy of the final result.
- 5.4.3 **Simple solution.** The introduction of the middle band will more accurately reflect the different levels of housing services

provided to buildings (and estates) in the borough. It will address the issue raised by the Tribunal. Small and medium sized blocks outside the main estates clearly fall into a different category in comparison with blocks situated in estates, which have a higher level of service.

**5.4.4 Level of service.** It is necessary for the level of service provided to the building/estate to roughly correspond to the level of the management fee. This relates to the work of the:

- i. **Home Ownership Team (HOT)** –There is invariably somewhat less work, less queries, etc for HOT in relation to small blocks outside estates in comparison to blocks situated in estates.
- ii. **Tenancy Management function.** There is also less work concerning the management of estate areas, paths, forecourts, etc. There are generally fewer neighbourhood or ASB issues for the Tenancy Management Officers to deal with.

**5.4.5 Breakdown of the charge for the new management fee.**

Please see the Appendix for the proposed new ‘middle’ band in relation to the existing bands.

**5.4.6 Consultation on the middle band.** The subject was discussed at the Leasehold Panel on the 9 December 2010. The Panel said they were broadly in favour of the proposal though a few said there should be more bands to take account of the various different types of properties. However since the majority of leaseholders have said they want to have an easily understandable scale of charges, a large number of bands would undermine this objective.

## **5.5 The proposal for the annual charge for subletting**

It is proposed to introduce an annual charge of £20 for leaseholders who sublet their properties. This will be instead of charging all leaseholders as at present. It will be included as a separate line item, at the end of the breakdown of the annual service charge, after the ground rent. As an alternative, leaseholders who sublet will the option to pay a registration fee of about £75 to register new lettings or changes in their tenancy agreements.

## **5.6 Justification for the annual charge for subletting**

- a. **The lease** enables the landlord to charge for the registration of subletting. Thus Clause 4, Subclause 24 states that a leaseholder



who is subletting should register their details with the landlord and also pay a fee of £50 or any larger amount the landlord may decide as long as the charge is reasonable. An annual charge for subletting will be preferable for most leaseholders as explained in 5.7 below.

- b. **Fairness.** Resident leaseholders have complained that they should not have to bear any costs incurred in respect of the administration of subletting, which is included in the management fee at present.
- c. **Common practice.** A benchmarking exercise shows that it is not uncommon practice for the freeholder to levy registration charges in relation to subletting.
- d. **Increase in subletting and associated costs.** The cost of maintaining the records has increased in line with the increase in subletting. This work consists of the types of work described in the next paragraph (e) below.
- e. **Administration involved.** The following types of work must be undertaken by the Home Ownership Team:
  - i. the dispatch of the registration form to the leaseholder together with some notes about the sublet requirements
  - ii. processing of the registration form - this requires updating the database, notifying the Insurance Section and other stakeholders affected.. It also requires the maintenance of a file of all the relevant documents. The details of most sublets generally require to be updated as and when the new tenancy is agreed / issued
  - iii. the registration fee must cover the fixed costs in relation to staffing, IT, etc required for dealing with such matters
  - iv. arranging a welcome visit to the new tenants in the sublet property which is undertaken by the Tenancy Management Officer, who provides a welcome pack with information about services to the building and the estate and the rules for residents.
  - v. ensuring that sublessees receive the newsletters which are provided to all residents, such as about work to the block or the estate, estate action days, fire safety days, etc
  - vi. issue of a regular newsletter to leaseholders subletting, containing articles on subletting
  - vii. answering queries about subletting on the phone and by letter
  - viii. regular monitoring of database records of subletting to send reminders to leaseholders subletting for them to enable us to update information in respect of their tenancies
  - ix. liaising with the TMOs regarding any minor problems/issues before taking formal action

A benchmarking exercise has shown that it not uncommon practice for the freeholder to levy a charge in relation to matters relating to subletting. This work, much of which is included in the general



management fee at present will need to be enhanced in future. This will be necessary to ensure that leaseholders who sublet are fully aware of their responsibilities under the terms of the lease both in relation to the behaviour of their tenants and the prompt repair of any problems in their property.

### **5.7 Advantages for landlord leaseholders of the annual charge for subletting.**

Most leaseholders who sublet will be better off if they choose to pay the annual subletting charge but they will also have the option to pay a registration fee in accordance with the terms of the lease.

- a. **Frequency of lettings.** According to HOT's records leaseholders on average re-let their properties about once a year. Thus although leaseholders will be able to choose to pay a registration charge of £75, most will probably not take this option since they will have to pay it once a year on average. Therefore most leaseholders who sublet will pay less if they choose to pay the annual fee of £20.
- b. **Avoidance of a separate invoice.** Including the fee as a separate line item in the estimated service charge invoice will avoid the necessity of issuing a separate invoice. There is a corporate charge for the issue of each invoice. The collection of payments for separate invoices also incurs unnecessary costs. Therefore landlord leaseholders will benefit in terms of the reduced cost of this arrangement. Furthermore it will not deter leaseholders from registering their sublets which will help HOT to manage this type of tenure more effectively.
- c. **Reduction in the management fee payable by leaseholders.** There are two reasons for this:
  - i. Resident leaseholders will no longer have to pay for subletting which used to be included in the main management fee.
  - ii. The cost of the time spent in dealing with breaches of the lease requirements regarding subletting is currently also included in the main management fee. In future this type of costs will be charged to individual landlords as non-compliance charges, if these should be necessary (please see 5.8 below).

### **5.8 Proposed non-compliance charges in respect of subletting**

This proposal is concerned with recovering the landlord's costs where Homes for Haringey (acting on behalf of the Council) has to take action because a leaseholder who is subletting has failed to comply with the terms of their lease. The regulations contained in Schedule 11 of the



Commonhold and Leasehold Reform Act, 2002 (Section 158) mean that the landlord is entitled to make reasonable charges to recover administration costs, and any other cost incurred in applying the requirements of the lease.

## **5.9 Background regarding the proposed non-compliance charges**

HOT and the Tenancy Management Team have experienced quite a number of problems relating to sublet properties in the last couple of years. On a number of occasions leakages from sublet properties (on account of inadequate maintenance) have caused significant problems which have had to be dealt with. In addition some leaseholders who are subletting have not made their tenants aware of the rules of residence for the building.

This relates to matters such as taking care not to cause a nuisance to other residents, preventing excessive noise (especially late at night), not putting rubbish in the corridors, cleaning the area next to the front door of the flat, following the estate rules for parking and so on. All matters of this kind can give rise to infringements of the lease.

Under Clause 4 Sub-clause 23 of the lease, the leaseholder is required to arrange for their tenants to sign an agreement with the Council (a covenant) stating they will follow the terms of the lease regarding the rules for residence in the building. Most landlords do not enforce this condition. However quite a lot of social landlords now adopt the practice of requesting a copy of the leaseholder's tenancy agreement with their tenants. This would be administratively quite difficult to implement so Homes for Haringey proposes instead to require leaseholders who sublet to sign an undertaking that their tenants have agreed to follow the most important conditions of the lease.

## **5.10 The details of the non-compliance charges**

Leaseholders will only become liable for these charges if they break the terms of their lease with regard to subletting. If they do so the following charges will apply:

- a. Fee for non-registration** (minimum charge of £50) – this will be required where the leaseholder does not let HOT know that they are subletting. In cases where HOT has to undertake various checks there will be additional charges to the leaseholder.



- b. **Non-compliance fee (£50).** If the leaseholder does not accept that they are responsible for a problem then HOT will send a letter detailing issues of non-compliance with the lease. With regard to non compliance matters leaseholder will be billed for the works carried out and all cost incurred on their behalf by Homes for Haringey.
- c. **Investigation fee (£30 per hour plus an administration charge of £25 to cover invoicing and collection).** This will apply where the Tenancy Management Officer has to go out to the leasehold property to investigate serious issues relating to matters such as excessive noise or leakages.
- d. **Service action fee** – a charge for the cost of HfH’s surveyor’s time (if an internal inspection is required); or if sublessees leave rubbish in the communal area when they move out, there will be a charge for its removal. There will also be an administration charge of £25 to cover invoicing and collection.
- e. These charges will only be made if a problem occurs. Unless the leaseholder has been very negligent or broken the law (for instance not carried out an annual gas service), they will be informed in advance where they are likely to become liable for these charges.

### 5.11 Consultation with leaseholders – subletting charges

- a. Although statutory consultation with leaseholders about these proposals was not required, leaseholders were extensively consulted through the standard ways for involving residents in accordance with best practice.
- b. A short paper containing the proposals was sent with the magazine ‘Leaseholder News’ to all leaseholders in October 2011. In response to this a large number of observations were received from leaseholders and responded to individually by the Home Ownership Team by email and by letter.
- c. A special Subgroup of the Leasehold Panel was set up in November to discuss subletting issues (it met on the 01/12/11 and 05/01/12). Consisting mainly of leaseholders who sublet, it made a number of suggestions which were incorporated in the proposals. It also agreed the main details of all the subletting proposals.
- d. The subject was also discussed at Leasehold Panel meetings in September (15/09/11), October (12/10/11), November (10/11/11), December (06/12/11) and January (18/01/12) and the minutes of these meetings and the relevant documents are available online. The



whole of the January meeting was devoted to a discussion of the revised proposals - a special paper was sent with the agenda to all panel members and to leaseholders on the email circulation list (about 2050 in number, that is half of all leaseholders). During the discussion a lot of leaseholders subletting said they supported the proposals and when the vote was taken there was a clear majority in favour.

#### **5.12 Improvements in the information to be provided about subletting.**

In the next financial year the Home Ownership Team will provide more information to leaseholders about subletting with the sublet registration form. Although HOTA has provided good information about subletting in the past, in future more will be provided:

- **a helpful booklet on subletting** for leaseholders planning to sublet
- **a summary of the conditions of the lease** which sublessees must follow
- **a model tenancy agreement** which leaseholders can use if they wish. It will include all the rules which residents of council blocks of flats and estates must follow.

This information will be designed to help leaseholders avoid breaking the terms of the lease without being aware of it.

### **6. Comments of the Chief Financial Officer and Financial Implications**

6.1 Council Leaseholders pay charges to HRA as their freeholder in order to cover the costs of providing services to them. The HRA should neither subsidise services to leaseholders nor seek to make surplus income from these charges

6.2 As the HRA bears the net burden of any costs incurred on services to leaseholders that are not recovered through service charges it is important to have a robust policies in place to recover as many costs as possible. It is also important that the Council demonstrates fairness and value for money in the charges it makes and balance improving accuracy of charging with administrative efficiency.

6.3 This report concerns the standard fee charged to leaseholders for management costs. In 2010/11 the management fee charged to leaseholders amounted to £1,017,568 per annum. This report proposes new management fee levels that will raise income amounting to £1,037,772. Three changes to the charging structure are also proposed.



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6.4 The first change – the introduction of a middle band management fee - does not significantly change the overall income from charges but realigns the charges made to different groups of leaseholders to the costs of the service provided to them

6.5 The second change – the introduction of a subletting charge should generate £31,000 additional income to cover the additional costs of dealing with sublet properties

6.6 The third change – the introduction of non compliance charges will allow the recovery of additional costs incurred as a result of non compliance or negligence on the part of subletting leaseholders. This will prevent such costs being borne by all leaseholders or falling to the HRA

6.7 The administrative costs of these changes is not material and will be covered as part of the general management fee.

## **7. Head of Legal Services and Legal Implications**

7.1 See Appendix B for Head of Legal Exempt Comments.

## **8. Equalities and Community Cohesion Comments**

Not Applicable

## **9. Head of Procurement Comments**

Not Applicable

## **10. Policy Implications**

Not Applicable

## **11. Use of Appendices**

- **Appendix A** contains details of the existing management charges in comparison with the proposed management charges. It should be noted that the reason why the increase is significantly less for street properties as compared with those on estates is that they are normally only charged for ground rent and insurance, so there



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is very little work required by the landlord in the management of these properties

- **Appendix B** – Head of Legal Exempt Comments – the observations of the Legal Service are provided in this appendix for the reasons given in paragraph 12.1

## **12. Local Government (Access to Information) Act 1985**

12.1 The information in Appendix B is not for publication by virtue of paragraph 3 and paragraph 5 of Schedule 12A of the Local Government Act 1972.

## Appendix A Proposed Middle Band of Management Fee

	Management fee 2010/11			Proposed management fee 2012/13 (with uplift)			Increase (see note)
	No of properties	Management fee	Amount	No of properties	Management fee	Amount	
Group 1	901	£95.97	£86,469	901	£97	£87,397	1%
Middle band				356	£200	£71,200	
Group 3	3,553	£262.06	£931,099	3,197	£275	£879,175	5%
	<b>4,454</b>		<b>£1,017,568</b>	<b>4,454</b>		<b>£1,037,772</b>	

Note: the reason why the increase is significantly less for street properties as compared with those on estates is that they are normally only charged for ground rent and insurance, so there is very little work required by the landlord in the management of these properties