

Executive**On 21st November 2006**Report Title: **Forfeiture Proceedings against Residential Leaseholders**Report of: **Director of Social Services and Housing**Wards(s) affected: **All**Report for: **Key Decision****1. Purpose**

- 1.1 To obtain approval of a proposed change in enforcement policy in relation to leasehold service charge debts.

2. Introduction by Executive Member

- 2.1 In the last 3 years we have improved tremendously the income collection capacity of the council in this area, to the point that the service now exceeds its targets and its collection rate is one of the best in London.
- 2.2 However we need to maintain this position and there is still some room for further improvement.
- 2.3 In this context, there is a problem with some persistent cases, exacerbated by a recent trend by some mortgage companies to refuse paying (and adding to the mortgages) outstanding debts on leasehold properties (a usual procedure in such cases) unless the freeholder threatens forfeiture proceedings.
- 2.4 For the sake of fairness and equitable treatment, as well as for financial good-housekeeping reasons, it is advisable that the council agrees with the Homes for Haringey request to adopt a policy that involves enforcing the forfeiture clauses in residential leases, in undisputed cases and as very last resort.
- 2.5 When first approached with the proposal, I asked for assurances about safeguards against any potential unnecessary penalisation of leaseholders who may be genuinely unable to pay and make use of the range of facilities we have already adopted to assist in such cases, or those who otherwise are unable to respond to such procedures for other genuine reasons.
- 2.6 Subject to members finding the safeguards listed in the report adequate, I recommend acceptance of the recommendation.

3. Recommendation

The Executive is recommended to approve a policy of taking legal proceedings to forfeit the lease as an enforcement procedure of last resort against residential leaseholders who fail to pay leasehold service charges.

Report authorised by: Catherine Galvin
Acting Director of Social Services and Housing

Contact Officer: Nesan Thevanesan,
Finance Manager Home Ownership Team

4. Executive Summary

- 4.1 The Council is the freeholder of and Homes for Haringey (HfH) manages about 4300 residential leasehold flats sold under the Right to Buy. HfH is responsible for collecting the leasehold service charges payable to the Council. These charges vary between relatively small debts for annual maintenance charges to more substantial debts in respect of the leaseholder contribution to major improvements.
- 4.2 HfH regularly takes County Court proceedings against individual leaseholders to recover unpaid leasehold service charges. Once a County Court Judgement (CCJ) has been obtained it is often necessary to take enforcement proceedings to recover the debt. Various procedures are available. The most efficient and cost effective sanction is likely to be forfeiture proceedings. This means that if the debtor fails or refuses to pay the CCJ debt the Council can ask the Court to order that the lease be forfeit and the property returned to Council ownership.
- 4.3 The Council's standard Right-to-Buy lease already provides for forfeiture in these circumstances. It is a standard procedure in the private sector but the Council does not at present use this method.
- 4.4 The Home Ownership Team (HOT) at HfH has introduced numerous schemes to assist leaseholders who cannot pay.

5. Reasons for any change in policy or for new policy development (if applicable)

- 5.1 HfH already takes enforcement proceedings in which the ultimate outcome for the leaseholder could be eviction and loss of the home. Under current procedures, this involves two separate applications to the Court – firstly to obtain a Charging Order to secure the debt against the property and secondly to obtain an Order for Sale to Enforce the Charge. The Court also requires expert evidence of the value of the property. Forfeiture proceedings only require a single application to the Court and do not require valuation evidence. They should therefore be more cost effective.
- 5.2 The main difference in the outcome is that following an enforced sale the leaseholder receives the balance of the proceeds of sale after paying the debts. Under forfeiture proceedings the property reverts back to Council ownership. The Council does not

particularly want property back – it wants the debt paid. A leaseholder should be able to borrow against the property to pay the debt. Some mortgage companies are reluctant to give a second mortgage. Some leaseholders are reluctant to ask for one. But most mortgage companies will want to protect the lease rather than lose their security and will implement a clause in the mortgage that enables them to pay off the debt and add it to the mortgage. They will not do this unless the Council first initiates the forfeiture procedure by serving a “Section 146 Notice” (see para. 11.0 below – penultimate bullet point).

6. Local Government (Access to Information) Act 1985

6.1 Minutes of Leaseholder Panel Meeting 6 May 2006

7. Director of Finance Comments

7.1 Forfeiture as a method of debt collection was presented and discussed as a final solution in the collection process at Debt Management Board meetings. One of the main reasons for using it was, that its use was seen as being successful in forcing mortgage companies to add outstanding debt to mortgages rather than risk losing the security of the lease. Approval for its use was given on this basis

8. Head of Legal Service Comments

The Head of Legal Services has been consulted in the preparation of this Report. The Report accurately sets out the legal implications, likely outcomes, and statutory safeguards in relation to forfeiture proceedings.

9. Background

9.1 The process for dealing with non-payers is :-

- (1) HfH contact the leaseholder and endeavour to resolve any disputes by negotiation. If agreement cannot be reached, legal proceedings are issued to obtain a money judgement in the County Court (CCJ). Any disputes will be resolved by the Court or the Leasehold Valuation Tribunal. (LVT).
- (2) Once a CCJ has been obtained, then in the absence of payment, it must be enforced.
- (3) Any debtor may apply to the Court to pay a CCJ by instalments. HfH policy is to resist instalment payments at this stage on grounds that the leaseholder owns a substantial capital asset and equity against which he can borrow to discharge the debt. The Council should not have to provide what in effect would be an interest free loan.
- (4) If there is a mortgage, the mortgage company is invited to pay the debt to protect its interest. The mortgage loan is secured against the lease. If the lease is forfeit the security is lost. Most mortgages therefore contain a clause that allows the

mortgagee to pay the debt and add the amount to the mortgage loan. This is efficient for the Council because it facilitates prompt payment of the CCJ. It is effective for the Mortgagee because it protects their interest and adds to the loan which in turn attracts further interest. It is effective for the debtor because the debt is paid off by affordable instalments under the existing mortgage arrangement. Unfortunately, some mortgage companies have now adopted a policy of not paying unless the council has implemented the forfeiture procedure.

- (5) If the mortgage company does not pay, or there is no mortgage, HfH must enforce against the individual. HfH has experimented with a variety of enforcement procedures including:-

(a) County Court Bailiff (Warrant of Execution)

A trial of 15 cases involving debts under £750 established that this is an inefficient method. There was a nil return in all cases.

(b) Insolvency

A number of statutory demands were served with limited success. These require the debtor to pay or secure the debt within 21 days. If they do not, the Council can petition for bankruptcy. In selected cases the procedure can be effective but it can be slow and expensive.

(c) Charging Orders

A number of Charging Orders have been obtained. These convert the unsecured debt into a secured debt. However, the Court has a discretion and when the application is opposed the Court may refuse to make an order if the debt is small.

(d) Enforced Sale

If a Charging Order is obtained the Council can then apply for an order for possession and sale. Unless the debt is paid by a specified date, the leaseholder is evicted and the property sold. The sale proceeds are utilised firstly to pay off the outstanding mortgage and then to pay the debt and costs due to the Council. Any balance left over is refunded to the leaseholder. Several cases have been processed. All have resulted in payment in full.

(e) Other Enforcement Procedures

Other methods are available (e.g. Attachment of Earnings (where the debtor's employer deducts money from the debtor's wages) or Third Party Debt Orders (seizing money in the debtor's bank/building society account), but each has its limitations and requires accurate and up to date information about the leaseholder's employment and bank account details.

9.2 As shown above, HfH therefore already takes enforcement proceedings in which the ultimate outcome for the leaseholder could be eviction and loss of the home. Under current procedures, this involves two separate applications to the Court – firstly to obtain a Charging Order to secure the debt against the property and secondly to obtain an Order for Sale to Enforce the Charge. The Court also requires expert evidence of the value of the property. Forfeiture proceedings only require a single application to the Court and do not require valuation evidence. They should therefore be more cost effective.

10.0 Forfeiture Proceedings

- 10.1 The lease already provides for forfeiture in the event of non-payment but the Council has not, up to now, used this method of enforcement.
- 10.2 In both Enforced Sale and Forfeiture, the leaseholder can be evicted. The main difference is that in Enforced Sale the property is sold and after payment of all debts and costs the leaseholder receives the balance of the sale proceeds. In forfeiture proceedings the Council gets the property back and the leaseholder still has to pay the money judgement to the Council and still has to pay off any outstanding mortgage.
- 10.3 The aim of HfH remains to recover money not property. In practice the Court will grant relief from forfeiture on terms as to payment. Most leaseholders have substantial equity in the property which both they and their mortgage company will want to protect. If there is a mortgage, the likely outcome will be that the mortgage company will pay the debt and add it to the mortgage. If there is no mortgage, the likely outcome will be that the leaseholder will take a loan secured against the property in order to discharge the debt to the Council. Most mortgages have a clause that enables the mortgage company to pay off the debt and add it to the mortgage but they will not do this unless the Council initiates the forfeiture procedure, usually by serving a Notice under Section 146 of The Law of Property Act 1925 (a Section 146 Notice – see para 11 penultimate bullet point below). If there is no mortgage, the leaseholder will almost certainly decide to borrow the money to pay the debt rather than face the consequences of re-possession. In the case of the elderly on fixed incomes, the “House-proud” Scheme (a secured loan with guarantees against re-possession) is available where the charges arise from major works. The procedure is therefore a cost effective and efficient way of forcing payment where all other attempts have failed.

11.0 Safeguards

Forfeiture is viewed as a last resort. There are various safeguards such as:-

- The leaseholder has failed to take advantage of or has failed to keep to the conditions of any of the range of options open to him/her to pay the debt before the Council commences legal proceedings, including:-

Quarterly and monthly Instalment payments;
Mandatory loans (in selective circumstances);
“Hardship” Discretionary Loans;
“House-proud” Scheme (with guarantee against repossession)
- Forfeiture proceedings cannot be taken in respect of disputed amounts. If the leaseholder disputes the charges, HfH must first prove its case in the County Court, the Leasehold Valuation Tribunal, or Arbitration.
- If the CCJ is payable immediately, the debt must remain unpaid. If the CCJ is payable by instalments, the leaseholder must be in default.
- If the debt is less than £350 (excluding legal costs), then payment must

have been outstanding for more than three years.

- Finally, before the Council issues proceedings for forfeiture, the leaseholder must fail to comply with a Notice under Section 146 of The Law of Property Act – a “final notice” calling for payment within 28 days and containing a clear warning that forfeiture proceedings will be commenced in default. [The mortgage company, if any, will usually pay the debt upon service of this Notice].
- In the case of the elderly on fixed incomes, the “House-proud “ scheme would still be available to them right up to final order stage providing the debt relates to major works. HfH would always consent to adjournment of the proceedings and relief from forfeiture linked to an application under that scheme.

12.0 Consultation

12.1 The Council’s Debt Management Board has been consulted and has previously reported favourably to the CEMB on the proposal.

12.2 A Senior Lawyer from the Council’s Legal Service attended the Leaseholder’s Panel Meeting on 3 May 2006. The proposals, implications and safeguards were fully explained to leaseholder’s representatives who then had the opportunity to ask questions. The overriding view of the Leasehold Representatives was that the proposal was fair. Forfeiture was already a condition of the lease and HfH was proposing adequate safeguards. There were no objections.

13.0 Equality Implications

All legal proceedings against individual (as opposed to corporate) leaseholders are accompanied by a standard notice in the main ten minority community languages drawing attention to the importance of the proceedings.

Age, gender and disability issues are addressed by the various statutory and Audit Commission KLOE safeguards mentioned in the body of the report at paragraph 11.0 above.