

Housing & Community Safety Scrutiny Sub-Committee

Monday 12 September 2016

7.00 pm

Ground Floor Meeting Room G01A - 160 Tooley Street, London SE1
2QH

Supplemental Agenda

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Contact

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Date: 9 September 2016

Item No. 18.	Classification Open	Date: 7 June 2016	Meeting Name: Cabinet
Report title:		Thames Water – Refund of Overpayments and Future Arrangements	
Ward(s) or groups affected:		All	
Cabinet Member:		Councillor Stephanie Cryan, Deputy Leader and Cabinet Member for Housing	

FOREWORD – COUNCILLOR STEPHANIE CRYAN, DEPUTY LEADER AND CABINET MEMBER FOR HOUSING

Following a recent High Court ruling regarding the Council's contractual relationship with Thames Water the Council needs to re-evaluate how our tenants are charged for water rates and our future relationship with Thames Water.

The preferred option is to terminate the Council's contractual agreement with Thames Water, meaning that our tenants would have a direct billing arrangement for their water rates, but it is important that we consult with our tenants prior to any formal decision being made.

We also need to ensure that we help and support our most vulnerable residents in any transition from the current arrangements to taking on their personal responsibilities if we go ahead with the preferred option. We need to therefore take a measured approach and ensure that we engage with residents who may experience difficulties transitioning to make sure that there isn't a negative impact on them.

This report also highlights the arrangements being put into place to refund overpayments to tenants following the High Court ruling and the need to make immediate refunds to existing tenants.

RECOMMENDATIONS

1. Cabinet agrees that the council proceeds with immediate refunds to current tenants, with interest calculated under the provisions of the Water Resale Order 2006, the refunds themselves covering the period 1 April 2001 to 28 July 2013, and with interest covering the period 1 April 2001 to 30 June 2016.
2. Cabinet instructs the strategic director of housing and modernisation to make necessary arrangements for refunds to former tenants covering the periods outlined in paragraph 1 to take place during the course of 2016 and beyond if required.
3. Cabinet agrees that the preferred option is to terminate the council's contractual agreement with Thames Water.

4. Cabinet instructs the strategic director of housing and modernisation to consult with tenants on the proposal to terminate the contractual agreement with Thames Water, and to provide information regarding likely timescales, their personal responsibilities regarding water charges, and the options available to them once termination has been implemented.

BACKGROUND INFORMATION

Contractual arrangement with Thames Water

5. The council has, in common with a large number of other local authorities and social housing providers, a contractual arrangement with the local water supplier (in our case Thames Water). This arrangement was understood to be one by which the council was to provide billing and collection services, in return for a void allowance for empty properties and a commission to reflect both the administrative costs attached and the transfer of risk and bad debt associated with these accounts.
6. The contract has run for a number of years, and is mostly likely a direct “descendant” of the precepting arrangements in place when water companies were part of the public sector up until their privatisation by the Water Act 1989. In the 2016/17 HRA budget the gross charge for Thames Water which the council passes on to tenants was £13.6 million net of void allowance, whilst the commission income is £2.4 million. Leaseholders have a direct billing relationship with Thames Water, and the council plays no part in this. Similarly, some tenants have also chosen to opt out of the council’s arrangements and also have a direct billing relationship with Thames Water, however they are comparatively few in number.
7. Throughout this process, the council regarded itself as acting as an agent for Thames Water, and has had no input into, nor ever sought to vary the billing amount for each individual tenancy as calculated by Thames Water themselves.

Litigation background

8. In 2011 the council sought to evict a tenant for non-payment of rent and associated charges, including water charges. The tenant resisted the claim, and the tactic of his solicitors was to question the legality of every charge made by the council to the tenant since the commencement of his tenancy in 1999. After a protracted period of correspondence, the council took advice from counsel and brought a possession claim in the Lambeth County Court.
9. At trial the court found for the council in almost every particular regarding the legality of the charges that made up the tenant’s total rent liability; however the Judge was not minded to make a possession order because of reservations regarding the housing benefit position that the tenant found himself in. The tenant appealed, one of the stated grounds being that the court had erred in not finding the council to be a water reseller. This was listed at the Court of Appeal, but the case was settled with the tenant before the hearing commenced.

10. Following the conclusion of this legal action, the council felt it prudent to review the contractual arrangement with Thames Water in order to remove any possible ambiguity as to the legal relationship between the two parties, and with further advice from leading counsel, a Deed of Variation was drawn up, agreed with Thames Water and signed on 23 July 2013. The Deed explicitly states that the council is not acting as a water reseller under the relevant regulations.
11. On 15 October 2014, the council was served with a High Court claim commenced by a tenant residing in SE15 (N.B. not the tenant cited in paragraphs 8 – 10 above, though represented by the same firm of solicitors), seeking a declaration that the council was a water reseller as defined by the Water Resale Order 2006, and that as a consequence, that water charges made since the date that the regulations came into force should be recalculated under the provisions of that Order.
12. This case was heard at the High Court (Chancery Division) in February 2016, and on 4 March 2016 Newey J. found in favour of the tenant. However, there was an important proviso – the court had not felt equipped to judge on the effectiveness of the Deed of Variation since Thames Water was not a party to the tenant's claim. As part of settlement of the case, the tenant agreed that the Deed of Variation established that the council was no longer a water reseller after 23 July 2013.
13. Given the agreed position regarding the council's relationship with Thames Water post-July 2013, and bearing in mind the cost of further litigation, the chances of success, and the relative benefits to unmetered tenants as a whole, the council decided that the settlement was preferable to bringing an appeal on the "resale" issue, and continued litigation in connection with the Deed of Variation.

KEY ISSUES FOR CONSIDERATION

Water Resale Orders 2001 and 2006

14. Under the Water Resale Orders 2001 and 2006, the amount that a reseller can charge a third party must be calculated as a proportion of the sums paid by the reseller to the water supplier. The High Court judge found that the commission and void allowances, which until July 2013 were both deducted from the total sums paid by the council to Thames Water, should have been passed on to unmetered tenants in the form of lower bills. Taken together, the void allowance (5%) and commission (18%) is equivalent to 22.1% of the total charged to individual tenants for water. Under the terms of the Water Resale Orders, the council is allowed to charge an administration fee of 1.5p per day, which will be deducted from the total to be refunded.
15. The 2006 Order stipulates that overpayments by a reseller must be refunded including an element for interest equivalent to double the average Bank of England base rate for that period, calculated on a "simple" basis (i.e. the interest itself does not generate further interest).

Period covered by overpayment

16. Following the decision not to pursue an appeal, the council initially estimated that its total exposure would be c. £8.3 million, equating to an average refund of c. £240. This was on the basis that liability began six years before the High Court decision (April 2010).
17. Whilst the judgement was made in the context of the 2006 Water Resale Order, the council wishes to avoid any further legal challenge and draw a line under the matter. After taking further legal advice regarding both the applicability of a limitation period and the relative effect of the two Water Resale Orders, the council has reconsidered its position and formed the view that it would be both prudent and reasonable to extend the period of liability to the commencement of the first Water Resale Order (April 2001), and make refunds from that date up to 28 July 2013.
18. The financial implications of this are set out in the '*Financial context*' section below.

The refund process

19. The council estimates that over the refund period, c.48,000 individual properties generated water charge debits. This figure includes council dwellings made available for temporary accommodation purposes, and also properties that were void for all or part of the time – where no actual refund would be required. Further analysis indicates that c.31,000 current tenants commenced their tenancies either before, or during the refund period. Given that these tenants have an on-going relationship with the council, the physical process of making a refund should not be over-burdensome, and it is proposed that the council proceeds to do so.
20. However, this leaves a considerable number of potential cases where former tenants will be entitled to a refund of part of their water charges, and the council will not necessarily have contact data – indeed in some cases the tenant may now be deceased. In these cases it is proposed to calculate the refund where relevant occupancy data is available, and take all reasonable steps to make these refunds, including inviting former tenants to apply for refunds, dependent on them being able to prove occupancy for the relevant period. However, the council will seek to offset any current or former tenant arrears against the refund due.
21. The Deed of Variation was signed on 23 July 2013, and the council is not required to make any refunds in respect of water charges after this date. However, as rents and associated charges are accounted for on a weekly basis (Monday – Sunday), the refund period is therefore extended to 28 July 2013, to the benefit of tenants.

22. The council accepts that overpayments have not been addressed until the issuing of the High Court judgment in March of this year, despite the refund period ending in July 2013, and therefore intends to extend the period of interest calculation to 30 June 2016, being the earliest point at which refunds may reasonably be calculated and applied to tenant's accounts.

The future relationship with Thames Water

23. The council notes that Thames Water has around seventy broadly similar contracts with other London boroughs, district councils and housing associations within its footprint. It is understood that the company is now reviewing the status and content of these agreements in the light of the High Court judgment, and a new model contract may be forthcoming as a result.
24. However, the scale of financial exposure for Southwark, coupled with the fact that as it stands the judgment is solely against this borough, means that the council would be at risk of further legal action regarding any future arrangements between ourselves and Thames Water, and the only certain way to protect the organisation from this is to bring that agreement to an end. In addition, the council considers that the agreement will become less and less appropriate as the water market liberalises and additional options become available for tenants (in the same way as other utilities).
25. Given the circumstances, the council's preferred option is to terminate its agreement with Thames Water, subject to consultation with tenants. As part of the termination process, the council would provide Thames Water with occupancy details for all its directly managed properties and tenant management organisations.
26. An update report regarding the outcome of the consultation, progress on refunds, arrangements for termination and the help and assistance the council will provide to tenants switching to a direct relationship with Thames Water will be provided to cabinet later in 2016.

Implications for tenants

27. Termination of the agreement means tenants would then commence a direct billing relationship between themselves and Thames Water. This may seem less convenient to some, but it would allow individual tenants to take advantage of increasing choice as the water industry is opened up to further competition.
28. This may also incentivise tenants to explore potential ways to reduce their bills from Thames Water. For example, the Water Services Regulation Authority (Ofwat) requires water undertakers to offer a preferential rate to customers who have applied for a water meter but where one cannot be fitted. This Assessed Household Charge (AHC) is a pre-set charge whereby the lower of the rateable value-based charge or the AHC will be the one applied to the individual customer. Information on AHC was previously provided to Tenant Council, at their meeting of 4 January 2010.

29. Thames Water has never entertained applications by the council on behalf of individual tenants, and whilst this arrangement has been in place there has been little impetus for tenants to engage with Thames Water directly in connection with such issues. If there is no longer a relationship between the council and the water supplier, tenants would become more accustomed to managing this service themselves, and may benefit financially as a result. However, this of itself is not dependent on a decision regarding continuation or termination of the agreement. It is important to stress (as was made clear as part of the council's evidence to the Jones v Southwark action) that the council has only ever passed on charges calculated by Thames Water themselves. Termination of the agreement would in no way change that situation.
30. Thames Water also offers further preferential tariffs, known as "*WaterSure*" and "*WaterSure Plus*", designed to assist customers on low incomes. Once again, it is not within the council's purview to pursue this option on behalf of individual tenants, but it has the potential to be of benefit to a number of them. Details extracted from Thames Water's charges leaflet for 2016/17 regarding both AHC and WaterSure are reproduced in the tables below:

If we couldn't fit a water meter

We sometimes find we can't fit a meter at a property, which is usually due to location. If you have requested a meter, and we couldn't fit one, we offer a different charging rate called the assessed household charge.

Assessed household charges

The assessed household charge is based on the number of bedrooms in the property or, for those who live alone, a single occupier tariff, as shown below. In addition, you pay a fixed charge of £31.30 for water and £55.05 for waste water.

Band	Bedrooms	Water (£)	Wastewater (£)
1	0/1 bedroom	127.55	81.08
2	2 bedrooms	139.02	88.37
3	3 bedrooms	160.39	101.95
4	4 bedrooms	177.40	112.76
5	5 or more bedrooms	200.10	127.19
6	Single occupier	93.17	59.22

Source: Thames Water 2016/17

WaterSure and WaterSure Plus

The WaterSure and WaterSure Plus schemes are designed to help you pay your bill if you're on a low income.

Who is eligible? You, or someone in your household, must first be receiving one of the following:

- Income-related Employment and Support Allowance or Income Support;
- Income-based Jobseeker's Allowance;
- Housing Benefit;
- Pension Credit;
- Working Tax Credit;
- Child Tax Credit (other than just the family element); or
- Universal Credit.

If this is the case, then in order to qualify to have your bills capped (at £374 per year) under the WaterSure scheme, you need to have a water meter and meet one or both of the following criteria:

- three or more children under the age of 19 living in the household, and you (or the person responsible for them) claim Child benefit for them; or
- you or someone living in your household has a medical condition that means they use a lot of extra water.

WaterSure Plus applies to both metered and unmetered household customers. In order to qualify, in addition to the points above, your Thames Water bill must also account for 3 per cent or more of your total net household income, once mortgage and/or rent payments (net of receipts or allowances) for the household have been removed. ('Household income' includes the income of all members of the household.)

Eligible customers will have their total bill reduced by 50 per cent (excluding any previous charges).

Source: Thames Water 2016/17

Financial context

31. The total water debit generated by current tenants over the refund period is c. £70 million, former tenants c. £47 million and refunds (inclusive of administration fees and interest) is c. £28.6 million.
32. Given that refunds will be generated for all unmetered tenants over the period, the opportunity arises to offset rent arrears against the refund due. Individual circumstances will differ – in not all cases will the refund cover all the current arrears and so these tenants will see a reduction, but not elimination of their arrears position. Conversely, there may be a residual credit remaining which can be claimed back or left to mitigate against future charges. Overall, it is estimated that offsetting arrears in this way will reduce the council's liability by c. £4.6 million as a minimum.
33. Given the timing of the judgement, the council has accrued for the gross liability in the Housing Revenue Account in the financial year ending 31 March 2016. The sums due reflect the maximum refund payment considered possible to tenants during 2016/17. Any remaining liability in relation to former tenants beyond the end of this financial year will be addressed similarly as part of the statutory accounts next year.

34. Funding for this falls entirely to the HRA, and has been met through a combination of in-year revenue surplus, lower debt repayment, lower bad debt provision and lower contribution to the capital programme than would otherwise have been the case. The corollary of this was a drawdown of both revenue and capital reserves to fund the HIP in 2015/16, which saw programme spending at an all time high (c. £244 million). The greater than anticipated consumption of resources to cover this exceptional cost item in 2015/16, does compound the existing funding gap in the HIP in 2016/17 (as reported to Cabinet in February 2016). However, this position is likely to be moderated downwards during the year as expenditure phasing and resourcing forecasts are updated in light of better information, but it may be necessary to manage programme commitments, such that they match more closely the available resources in year.
35. However, the position regarding former tenants is more problematic as in most cases the council has no current relationship with them, and a staged refund process is therefore under consideration. Tenants that have exercised their right-to-buy during the refund period will in all likelihood still be in regular contact with the council as home owners, and the first stage will be to identify them and arrange for refunds to be made.
36. Other instances where there is no recent relationship to utilise will mean that the onus will have to be on the former tenant themselves to take the initiative and to apply for refunds, which once arrears are offset and proof of occupancy has been provided can be made as cash payments. It is probable that this facility will have to be made available over an extended period of time, and the council is currently working on assessing the best means of taking this forward.
37. In budget terms, the commission received from Thames Water (currently £2.4 million per annum), goes in to the ring-fenced HRA to fund the provision of landlord services. Termination of the agreement would mean that this funding stream would cease, but there will be no budgetary impact in the short-term whilst the agreement remains in place. However, the loss of this income stream will need to be taken in to account alongside other budgetary pressures, such as inflation, service commitments and growth as part of future HRA budget planning; possibly as soon as 2017/18 depending on the effective termination date.
38. Since the primary rationale for the commission in the first instance was to reflect the transfer of risk from Thames Water to the council and offset losses incurred through non-payment, some mitigation will accrue by virtue of a reduction in arrears and hence the need to make a lower provision for bad debts, which is a revenue saving. Notwithstanding the impending roll-out of direct payments on collection performance, it is considered that savings of up to £1.1 million could be made in the existing budget provision (based on the 2015/16 final accounts).
39. Whilst the administration of water charges is not overly burdensome, it may be possible to derive some marginal cost savings (c. £100k to £200k) across the wider income collection function as a result of termination, subject to more detailed activity analysis being undertaken.

40. In the wider context of budget savings, the imperative has always been to reduce overhead costs and increase operational efficiency without detriment to service delivery. As time goes on, the scope for this diminishes, but it remains the objective, but in the event, the HRA holds a revenue contingency budget of £1.5 million which could be applied to meet any residual shortfall.
41. Appendix A to this report sets out more detail regarding the methodology employed in the calculation of refunds and further information around arrears, bad debts and anticipated timescales.

Community impact statement

42. Under the Public Sector Equality Duty General Duty public authorities must have 'due regard' to the need to eliminate unlawful discrimination, harassment and victimisation as well as to advance equality of opportunity and foster good relations between people who share a protected characteristic and those who do not.
43. The protected groups covered by the equality duty are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The duty also covers marriage and civil partnerships, but only in respect of eliminating unlawful discrimination.
44. The council's "Approach to Equality", which was agreed by cabinet in December 2011, outlines the council's legal duties under the PSED General Duty and its obligations under the Human Rights Act 1998. It also sets out the council's commitment to embedding equality and human rights within the day-to-day responsibilities of all members, officers and contractors, as a part of day to day business.
45. It is essential that when decisions are made they take into account the public sector equality duty's general duty (PSED General Duty) as set out in section 149 of the Equality Act 2010. Officers will therefore undertake equality analysis of the options for the future and review these as appropriate as the results of the consultation become known through implementation of any changes arising. The analysis will be available in the later cabinet report on this issue.

Support for vulnerable residents

46. There is a range of support in place for vulnerable residents who may be less able to manage the payment of their own water bills. Thames Water have a dedicated Extra Care Team that provide a range of support for example providing large print, braille, audio format and coloured background paper for customers with visual impairments, textphone, sign language interpreters and a dedicated mobile phone number for texting during emergencies for people with hearing difficulties, additional help in the event of a water supply interruption or sewage flooding for the less mobile, and a doorstep password scheme to visit a customer's home.
47. The council has records of vulnerable tenants and can ensure that the appropriate co-ordinated support is available to those who need it.

48. Advice and support is also available from agencies like the Citizens Advice Bureau and other independent advice organisations including Step Change Debt Charity and National Debtline.
49. Section 44 of the Flood and Water Management Act 2010 enabled water companies to decide whether or not to bring forward a company social tariff as part of a package of targeted support to enable customers to pay their bills, including help with metering, payment methods, debt advice and water efficiency.
50. The intention of social tariffs is to deliver a wide range of benefits to water companies and their customers, including:
- assisting low income households who would otherwise struggle to pay their bills in full;
 - helping to prevent new cases of bad debt arising as a consequence of non-payment of water bills that may be unaffordable, and helping to resolve the existing problem of bad debt;
 - enabling undertakers to design support schemes that are explicitly tailored to address local affordability problems and local affordability risks;
 - protecting unmetered low income households from unaffordable bills that may arise in areas with high levels of optant metering;
 - protecting low income households from unaffordable bills where an undertaker that has been designated an area of serious water stress has chosen to bring forward universal metering to help ensure a supply-demand balance; and
 - providing reputational and financial benefits to the undertaker through improved customer service and by placing a greater focus on the needs and views of customers.
51. In 2014/15 Thames Water introduced their social tariff for the most vulnerable customers to provide 50% discount on bills for qualifying customers. More than 7,000 customers have also benefited from their metered bill being capped through the WaterSure scheme.

Consultation and notification

52. As noted above, the recommended option under consideration by the council is termination of the agreement with Thames Water, and since this would affect the vast majority of current tenants, appropriate consultation will take place. The council will receive and consider responses to the consultation and report back to cabinet accordingly.
53. It is important that tenants are fully appraised as to the implications of termination, and the council will therefore provide information as to the rights and responsibilities of tenants as individual customers of Thames Water; the opportunities that this enables regarding their access to preferential tariffs; and the likely timescales involved as an integral part of the consultation process. This is not to say that tenants are not able to approach Thames Water directly regarding these alternative tariffs and charges at the moment – some have already done so, and now have a direct relationship with Thames Water.

54. In 2012 Southwark adopted a consultation framework that promised all our consultation would be:
- Universal;
 - Impartial;
 - Comprehensive;
 - Timely; and
 - Cost effective.
55. The stakeholders for this consultation are all current tenants who are subject to the current arrangement for paying water charges. It is therefore proposed that the consultation should be by a survey made available on the council consultation portal which will be promoted to residents in the letters that will reach them by the end of June confirming the refunds. Hard copies will be available for those residents who are unable to access or complete them online.
56. The consultation will provide information on the background and set out the reasons for the council's current suggested way forward and invite feedback on this option.
57. In terms of timescale the consultation will launch by 30 June 2016, allow six weeks for responses giving a closing date of 12 August 2016 with analysis complete for the end of August.
58. The consultation will also be monitored and analysed with the aim of ensuring that we receive responses from a representative sample of residents to give greater confidence in the results.

Statutory and contractual notifications

59. Subsequent to the approval of this report and its follow-up later in 2016, either as set out or as amended by cabinet, the passing of the necessary date for implementation, and subject to the consultation process outlined above, the council will then give notice to Thames Water to terminate the agreement to provide billing and collection services for water and waste water provision on the water company's behalf – the notice period as set out in the agreement with Thames Water being six months.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

60. Pursuant to Section 1 of the Local Authorities (Goods and Services) Act 1970 the council has the specific power to collect Thames Water's charges from tenants on Thames Water's behalf. As a consequence of the settlement with Ms. Jones in the High Court claim referred to above the High Court has declared that the council is not currently acting as a reseller.
61. The agreement between the council and Thames Water is a commercial agreement which, as noted above, can be terminated on six months' written notice to Thames Water.

62. Statutory consultation requirements with secure tenants are set out in Section 105 of the Housing Act 1985 (and similar requirements relating to introductory tenants in the Housing Act 1996). Section 105 requires that a landlord authority:
- “(1) ...shall maintain such arrangements as it considers appropriate to enable those of its secure tenants who are likely to be substantially affected by a matter of housing management to which this section applies
- (a) to be informed of the authority's proposals in respect of the matter, and
- (b) to make their views known to the authority within a specified period;
- and the authority shall, before making any decision on the matter, consider any representations made to it in accordance with those arrangements.
63. The section applies to matters of housing management which in the opinion of the landlord authority, represent a change in the practice or policy of the authority and are likely substantially to affect its secure tenants.
64. For the purposes of the section, a matter is one of housing management where in the opinion of the landlord it relates to “*the management, maintenance, improvement or demolition of dwelling houses...or the provision of services or amenities in connection with such dwelling houses*”.
65. It is noted that the council intends to consult tenants on the issue of terminating the agreement with Thames Water.
66. The law required consultation must be undertaken when proposals are still at a formative stage; it must include sufficient reasons for the proposals to allow interested parties the opportunity to consider the proposal and formulate a response, allow adequate time for interested parties to consider proposals and formulate their response and the outcome of it must be conscientiously taken into account when the ultimate decision is taken,. These are the central requirements for fair and proper consultation and should be applied at all stages of the consultation process.
67. The judgment in the Supreme Court case of *Moseley v L.B. Haringey* 2014 indicates that fairness requires the consultation plan to be kept under regular review to ensure that all interested parties are included, that they are provided with clear and accurate information that contains sufficient detail of the proposals, the reasons for them and, where appropriate, refer to alternatives, including those disregarded and the reasons for disregarding them, that consultees have sufficient time to consider the proposals, to respond to them, including putting forward alternatives.
68. Due regard must also be had to the impact proposals may have on persons with protected characteristics under the Equality Act 2010; the equality assessment should therefore be reviewed, updated and considered regularly.

Strategic Director of Finance and Governance (FC16/005/SR)

69. This report is concerned with the consequences arising from the High Court judgement of March 2016, and specifically the decision to refund sums overpaid and the proposed termination of the council's contractual agreement with Thames Water going forward.
70. The council has accrued for the gross liability in the Housing Revenue Account in the financial year ending 31 March 2016. The sums due reflect the maximum refund payment considered possible to tenants during 2016/17. Any remaining liability in relation to former tenants beyond the end of this financial year will be addressed similarly as part of the statutory accounts next year.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
HRA Final Rent-Setting and Budget 2016/17	160 Tooley Street London SE1 2QH	Paula Thornton Constitutional Team 020 7525 4395
Web link: HRA Final Rent Setting and Budget 2016-17		

APPENDICES

No.	Title
Appendix A	Refund Methodology and Financial Assumptions

AUDIT TRAIL

Cabinet Member	Councillor Stephanie Cryan, Deputy Leader and Cabinet Member for Housing	
Lead Officer	Gerri Scott, Strategic Director of Housing and Modernisation	
Report Authors	Ian Young, Departmental Finance Manager, Housing and Modernisation Stephen Douglass, Director of Communities	
Version	Final	
Dated	26 May 2016	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS/DIRECTORATES/CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Date final report sent to Constitutional Team		26 May 2016

APPENDIX A

REFUND METHODOLOGY AND FINANCIAL ASSUMPTIONS

Part 1 – Refunds

Previously, a very general assessment was made using relevant budgets to arrive at an average refund figure of £240 – using the initial refund period of 1 April 2010 to 23 July 2013.

A more detailed calculation has now been done, rolling back the start date for refunds from 2010 to April 2001.

- The total water charge raised for individual tenancies for each year from April 2001 to March 2013, and for the first seventeen weeks of 2013/14 (to take the calculation to 28 July (being the end of the rent week containing 23 July 2013));
- Each of these debits has had 22.1% applied to it (being the equivalent of the commission and void allowances granted by Thames Water) to generate a gross refund for each year;
- The administration fee of 1.5p per day permitted under the Water Resale Order 2006 is then applied;
- Interest at twice the average annual the Bank of England Base Rate is then applied to the subsequent total, as prescribed by the Water Resale Order 2006; and finally
- Interest is rolled forward from 29 July 2013 to 30 June 2016 at twice the Bank of England Base Rate over that period (1.0%) to reflect that overpayments have been outstanding from then to the anticipated date of refund.

The table below sets out the total water charge and each of the stages above, separated into current and former tenants.

1 April 2001 – 28 July 2013	Cases	Water Charge £m	Gross Refund £m	Admin. Fee £m	Interest 2001-2013 £m	Interest 2013-2016 £m	Total Credits £m
Current tenants	31,070	70.2	15.5	(1.5)	2.7	0.4	17.1
Former tenants	43,358	46.8	10.3	(1.1)	2.1	0.2	11.5
Total cases	74,428	117.0	25.8	(2.6)	4.8	0.6	28.6

Notes:

1. *Data regarding temporary accommodation cases is not included within this analysis.*
2. *The council does not hold individual tenant details for TMO-managed properties centrally, as a reflection of the local management arrangements, and the refund exercise for individual TMO's will have to be conducted separately as a consequence.*
3. *A number of current tenants form a sub-set of the former tenant dataset, where they have occupied an alternative council property within the refund period before their current one.*

For current tenants, roughly speaking the average refund will be £550. For former tenant cases, the figure is less certain, but is estimated at present to be around £265. This is lower given the greater number of cases in this category and the likelihood of a shorter occupancy period to base the refund upon. It is important to note that an individually calculated refund figure will be dependent on a number of variables, since the water charge itself as supplied to the council by Thames Water is based on rateable values, which gives rise to a greater variety of original debits. The water charge was also updated annually by Thames Water, so the timing of occupancy will also affect the final amount arrived at.

Part 2 – Rent arrears

Where possible, the council intends to offset refunds against arrears, in order to assist tenants in the management of their rent accounts. Not all the aggregate arrears of £15.1 million can be utilised in this way – there must be a matching exercise to allow individual cases to be offset where this is possible. An early estimate of the proportion available to be utilised in this way is £4.6 million, as the table below sets out.

The position regarding current tenant and former tenant accounts is somewhat different, due to the age of some of the data regarding the latter, and historic decisions taken regarding the write-off of arrears. In some cases these write-off decisions will have been taken upwards of ten years ago. It is also the case that current tenants will be more likely to have smaller, much more short-term profile arrears.

As at early May 2016, the rent account position of the cases cited in Part 1 above may be summarised as follows:

	Cases	In credit	Nil balance	In arrears	Arrears £m
Current tenants	31,070	17,103	308	13,659	10.2
Former tenants	43,358	9,837	29,891	3,630	4.9
Total cases	74,428	26,940	30,199	17,289	15.1

Analysis of the individual cases gives the following likely application of refunds as an offset against arrears:

	Arrears £m	Likely offset £m	Arrears remaining £m	Net refunds £m
Current tenants	10.2	3.5	6.7	13.6
Former tenants	4.9	1.1	3.8	10.4
Total cases	15.1	4.6	10.5	24.0

Notes:

1. *Arrears less likely offset = arrears remaining.*
2. *Net credits (in Part 1) less likely offset = net refunds.*

Part 3 – Non-directly managed stock

With regard to TMOs; the basis of refund calculation will be the same across the council's stock. However, as noted in Part 1 above, arrears and occupancy data is the province of the individual TMO.

In terms of temporary accommodation, between 200 – 500 properties per year were made available for short-term lets across various estates in the course of their regeneration. Water charges were raised on these properties as appropriate, and refunds and arrears offset exercises will be completed in due course.

Part 4 – Bad Debts

In terms of the gross rent debit, water charges equate to around 5.5% of the total. However, data on housing benefit for individual tenancies indicates that of the total sum demanded, since the water charge is not benefitable, this element increases to a proportion of 10.8% of the total. This has implications for the calculation of bad debt provisions if water charges are no longer collected by the council. Running the calculation of this provision with an assumed on-going reduction in arrears of 10.8% leads to a one-off reduction of £1.1 million (from £10.7 million to £9.6 million).

Part 5 – Timescales

The physical generation of credits to rent accounts is unaffected by any decision that may be made regarding the future relationship between the council and Thames Water.

First Tranche

Given that current tenants have an on-going relationship with the council, there are few impediments to processing refunds for this set of cases in a timely manner, and therefore the council proposes setting this in train immediately following the first cabinet report (June 2016).

Second Tranche

Over the refund period (1 April 2001 – 28 July 2013), 6,369 properties were sold subject to the right-to-buy (5,955 leasehold, 395 freehold, 19 shared ownership). As part of the conditions for these sales, home owners commence an immediate direct relationship with the water undertaker upon completion. Where these properties have not been sold on to third-parties, the original purchaser/tenant will therefore also have an on-going relationship with the council, and so the council intends to concentrate on these cases as the second tranche of refunds, during summer/autumn 2016.

Third Tranche

Work on generating refunds and identifying recipients for non-directly managed stock (TMO's and temporary accommodation) will be undertaken in parallel to that for home owners. Where the recipient has a live rent account with the relevant tenant management organisation, or with Housing Solutions, then refunds will be processed at the earliest opportunity.

Fourth Tranche

Former tenant cases (i.e. not current tenants in another property, or recent RTB purchasers) present a genuine problem in terms of tracing and processing for refund generation and in a number of instances, the former tenant may be deceased. The council wishes to make every reasonable effort to re-establish the connection with former tenants to facilitate a conclusion to this process, but acknowledges that this may take an extended period of time, and where invitations are made to claim a refund on this basis, reserves the right to seek proof of occupancy from the claimant before making a refund.

HOUSING & COMMUNITY SAFETY SCRUTINY SUB-COMMITTEE**MUNICIPAL YEAR 2016-17****AGENDA DISTRIBUTION LIST (OPEN)****NOTE:** Original held by Scrutiny Team; all amendments/queries to Fitzroy Williams Tel: 020 7525 7102

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