

Item No.	Classification: Open	Date: 16 th December 2003	Meeting Name: Executive
Report title:		Leaseholders: Service Charges and Administration Fees	
Ward(s) or groups affected:		All wards	
From:		Strategic Director of Housing	

RECOMMENDATIONS

1. The Executive agree that the cost of making facilities available for the inspection of documents used in the construction of service charges be recovered in the management and administration elements of the annual service charge to leaseholders and that a separate fee be levied for the copying of documents only when requested by leaseholders (paragraphs 10-12 refer).
2. The Executive agree that the Strategic Director of Housing in consultation with Leaseholder Council establish the policies to deal with the areas of discretion; procedures; and the levels of fees to be charged (paragraphs 13-15 refer).

BACKGROUND INFORMATION

3. In January 2003 following a question in Council it was agreed that a report would be prepared for Executive setting out recommendations around the issue of leaseholder charges and, more specifically, the management costs of providing a service to leaseholders.
4. At the end of August 2003, Southwark's total housing portfolio of 55,700 units included some 10,700 'service charges payers' (mainly leaseholders, this total also included some 500 freeholders who are required to pay 'estate' service charges). Currently between 100 and 150 units are being sold each month (between 0.2% and 0.3% of the total stock) which means that the current ratio of 4:1 rent payers to service charge payers is set to change to a 3:1 ratio within the next 18 months. Southwark already has the third largest long lease portfolio in the country.
5. This change in the type of portfolio being managed necessarily results in new services having to be provided. These new services can be grouped into two categories:
 - a) the construction, billing and collection of service charges and

- b) services concerning the buying and selling of flats (and to a lesser extent houses). Many of these services have a statutory basis and within these statutory provisions there are both mandatory rules and discretionary powers. For many of these services a fee, separate from the service charge, can and should be made.

Service Charges (Leaseholders)

6. The term 'service charge' has a statutory basis and is defined in section 18 Landlord and Tenant Act (1985) as amended. This statutory definition has been further extended by amendments contained in the Commonhold and Leasehold Reform Act 2002 to include 'improvements'. The statutory definition is in place to precisely delineate the effects of the provisions of sections 18-30 Landlord and Tenant Act 1985 (as amended) which relate to 'variable service charges', such as those contained in Southwark's leases.
7. Whether or not a landlord can recharge a tenant (leaseholder) for expenditure incurred in providing communal services depends on the terms of the lease. However, once costs are identified to be recharged as service charges, the rules set down by the Landlord and Tenant Act (and others) must be complied with. Included in the statutory definition of 'service charges' (and indeed within the contractual definition set out in schedule 3 of Southwark's leases) are charges for the management and administration of the communal services which are provided and for setting up and maintaining the service charge account. The 'management fee' is a normal part of the service charge demand.

Administration Charges (fees)

8. Quite separate from the 'management fee' is the issue of 'administration charges' or 'fees'. These are charges for services, provided by the landlord at the request of the tenant, other than those provided for by the lease. Examples would be for the administrative work involved in the giving of permission for alterations or for dealing with a postponement of charge or for answering 'pre assignment' enquiries. It is proper practice for the landlord to charge individual leaseholders administration charges.
9. The 'reasonableness' of the costs of 'administration charges' now comes within the remit of the Residential Property Tribunals (formally known as the Leasehold Valuation Tribunals) showing that the concept of 'administration charges' is accepted – so long as the landlord acts reasonably. Income from administration charges will prove an important source of income to fund the new/improved services needed because of the change in the nature of Southwark's housing portfolio.

KEY ISSUES FOR CONSIDERATION

Inspection of accounts

10. A suggestion was mooted when the 2002/3 service charges were being constructed that a charge of £15 per annum per leaseholder could be made for the provision of a breakdown of 'itemised repairs' – one of the elements of the revenue annual service charge. The £15 was calculated according to a housing assistant's salary and the assumption that to: speak to a leaseholder; find and copy the relevant documents post them together with a covering letter would take one hour:
11. The lease obliges Southwark to provide a responsive repairs service and the leaseholder to pay for the cost of repairs and the management of the services. The leaseholder is entitled at law, on written request, to inspect accounts and all supporting documents and invoices used in constructing the service charges. The amended legislation states that the landlord must provide such facilities for inspection and can only recover these costs via the management and administration element of the revenue service charge. On inspection, however, the leaseholder can ask to take copies and a reasonable charge can be levied for the taking of copies. The service is only provided on request of the individual leaseholder. Such a service (and consequent charge) cannot be imposed on all leaseholders as a general administration charge.
12. It is therefore proposed that the cost of making facilities available for the inspection of documents used in the construction of service charges be recovered in the management and administration elements of the service charge and that a separate fee be levied for the copying of documents as requested.

New Services

13. As mooted earlier in this report, the growing number of leaseholders in the housing portfolio means that there is a need to reorganise and charge for a range of new services required to manage properties sold on long leases and freehold. Some of the services and their charges are provided for in the lease (separate from the services charge provisions for communal services), for example the £10 fees for the registration of an assignment or mortgage. Other services (and their charges) are specifically provided for in legislation (for example service charge loans) and others still may be requested by parties other than leaseholders. An example of this latter group is 'pre assignment enquires' often asked for by the prospective purchasers, their solicitors, estate agents or lending institutions. Having said this the most common type of administration charge is a fee levied for services provided at the request of the leaseholder.
14. The following table gives a list of the types of services that could be provided and their legislative/contractual basis (if any). Information from Association of London Government's RTB and Leasehold Benchmarking Club shows that all of these services are provided and charged for by 'best practice' authorities.

<u>Type of Services</u>	<u>Basis</u>
1. Postponements	Mandatory/Discretionary Rules Housing Act (1985) (as amended)
2. Agency Service	None
3. Assignment Registration	Lease
4. Mortgage Registration	Lease
5. Deeds of Covenant (Subletting)	None
6. Under Lease Registration	Lease
7. Permissions	None
8. Deeds of Variation	None
9. Rent Checks	Housing Act (1985) (as amended)
10. Individual Enfranchisement	Leasehold Reform Act (1967)
11. Collective Enfranchisement	Leasehold Reform, Housing and Urban Development Act (1993)
12. Lease Extensions	Leasehold Reform, Housing and Urban Development Act (1993)
13. Service charge loans	Mandatory/Discretionary rules. Housing Act (1985)
14. Pre Assignment Enquires	None
15. Interest on outstanding balances	Lease
16. Inspection of Accounts	Landlord and Tenant Act (1985) as amended
17. Deeds of Rectification	None
18. Ad Hoc disposals	Housing Act (1985) as amended
19. Sale of Freehold Reversionary Interest	Housing Act (1985) as amended
20. Gas Servicing	None
21. Schedules of Dilapidations	Lease
22. Forfeiture Action	Lease
23. Buy Backs	Capital Allowances Regulations

15. It is proposed that each of the these services be the subject of a report to the Strategic Director of Housing, subsequent to discussion at Leaseholder Council, setting out: the policies to deal with areas of discretion; procedures; and the level of fee to be charged (if any).

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Borough Solicitor and Secretary

16. The Strategic Director of Housing is seeking agreement of the Executive to the recommendations set out in paragraphs 1 and 2 of this report.
17. The Executive is advised that the law relating to the inspection of supporting accounts etc. in the summary of service charges costs is set out in Section 22 of the Landlord and Tenant Act 1985 ("the 1985 Act"). The landlord is obliged under this Section to afford to a tenant, or the secretary of a recognised tenants' association with the consent of the tenant, such reasonable facilities:-
 - (a) for inspecting the accounts, receipts and other documents supporting the summary of service charge costs; and
 - (b) the taking of copies or extracts from them.
18. Where such facilities are for the inspection of any documents they are to be made available free of charge by the landlord. Section 22 states that this is not to be construed as precluding the landlord from treating as part of his costs of management any costs incurred by him in connection with making those facilities so available. Where such facilities are for the taking of copies or extracts, the landlord shall be entitled to make them so available on payment of such reasonable charge as the landlord may determine.
19. Section 154 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") which is not yet in force, will substitute Section 22 of the 1985 Act. The effect of this substitution will mean, inter alia, the landlord may be able to treat as part of his costs of management any costs incurred by him in connection with the facility of inspection of documents. Furthermore, the landlord will be entitled to make a reasonable charge for doing anything else in compliance with a requirement imposed by a notice under Section 22 of the 1985 Act.
20. The Executive is further advised that Chapter 5 of the 2002 Act makes a number of changes to provisions relating to leasehold management under the 1985 Act. One of these changes is that it introduces a new concept of "administration charge" covering charges, which are required to be paid under leases, for approvals, for the provision of information, as a result of failure to pay rent or other charges on time, or as a result of a breach of a covenant or condition of the lease. Section 158 of the 2002 Act, which is now in force, incorporates Schedule 11, which deals with the provision of administration charges. Paragraph 1 to this Schedule defines the meaning of "administrative charge" as an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly –
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord and tenant,

- (c) in respect of a failure by a tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as a landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- 21. Paragraph 1(3) to Schedule 11 defines “variable administration charge” to mean an administration charge payable by a tenant, which is neither (a) specified in his lease, nor (b) calculated in accordance with a formula specified in his lease.
- 22. Paragraph 2 to Schedule 11 provides that a variable administration charge is payable only to the extent that the amount of the charge is reasonable.
- 23. Under paragraph 3 to Schedule 11, any party to a lease of a dwelling may apply to a Leasehold Valuation Tribunal for an order varying the lease on the grounds that any administration charge specified in the lease is unreasonable, or any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.
- 24. Paragraph 4 to Schedule 11 provides that the demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.
- 25. Under paragraph 5 to Schedule 11 an application may be made to a Leasehold Valuation Tribunal for a determination whether an administration charge is payable.
- 26. The Executive is advised that paragraphs 2 to 5 of Schedule 11 above referred did not come into force until 30th September 2003 and therefore these provisions do not apply to an administrative charge that was payable before this date.
- 27. The Executive is advised that provided that the Strategic Director of Housing complies with the provisions of the 1985 Act and any future amendments to it by the 2002 Act, in relation to the provision of the inspection of documents and provided that he complies with the provisions of Section 158 of the 2002 Act in relation to the exercise of an “administration charge”, he may agree the recommendations set out in paragraphs 1 and 2 of this report.

Chief Finance officer

- 28. The following supplemental comments are provided;
 - a) The cost of the leasehold management activities of the Leasehold Management Unit, including the photocopying and associated staff time costs referred to in paragraph 1 of this report, is charged to leaseholders through their service charges.
 - b) All photocopying charge income from individual leaseholders will be offset against the costs of the Leasehold Management Unit. This will result in a reduction in the costs to be recovered generally from all leaseholders.

- c) The level of fees set for each of the services referred to in this report will be calculated as each charge is introduced. The charge will be calculated with reference to the costs of the service. It will usually be equivalent to the full costs of providing the service and it will not include any profit element.
- d) All income from such charges will be deducted from the costs of the Leasehold Management Unit, before the calculation of leaseholders' general service charges. This means that the management charge to leaseholders will reflect the net reduction in costs, resulting from the revenue collected through these specific fees.

Background Papers	Held At	Contact
<i>None</i>	<i>N/A</i>	<i>N/A</i>

Audit Trail

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Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Borough Solicitor & Secretary	Yes	Yes
Chief Finance Officer	Yes	Yes
<i>List other Officers here</i>		
Executive Member	Yes	No
Date final report sent to Constitutional Support Services		