

	Date: 17 August 2011	To: Chair of Housing and Community Safety Scrutiny Sub-committee
Report title:	Leaseholder Charging	
From:	Strategic Director of Housing Services	

This report sets out the response to questions raised by the sub-committee regarding leaseholders in Southwark. The report includes information on service charges, the legislative requirements which the Council must comply with, and major works.

Q1 - What is a leaseholder?

1. A leaseholder is a person in possession of a leasehold property.
2. Leasehold means property held by a tenant (or lessee) for a specific period usually at a rent from the landlord.
3. Leases can be created for any length of time. Normally the term 'leasehold' is applied to long leases (section 59 Landlord and Tenant Act 1987 - a lease granted for a certain term exceeding 21 years including a lease granted in pursuance of the Right to Buy). For commercial premises a lease is more normally granted for between 5 and 21 years. With both residential houses and flats a short term lease for 6 or 12 months might be granted. These shorter leases of residential properties are usually called tenancies (and include periodic tenancies such as secure and assured tenancies).
4. There are 19 different types of leaseholder* in Southwark's portfolio as shown in the chart under section 2.

* assuming that shared equity/shared ownership lessees is included in this definition (Midland Heart v Richardson).

Q2 - How many leaseholders are there in Southwark?

5. As at 31st March 2011, the number for all types of leaseholders including those that do not pay a service charge was 13,183.

Q3 - What proportion of households is this?

6. At 31st March 2011 there were 36,800 properties either rented or void waiting relet (excludes Lakanal House).
 - Leaseholders percentage = 25.77%
 - Homeowners percentage (ie including freeholders paying service charges = 28.07%.

Q4 - Is this number expected to increase or decrease in the future?

7. In the short term the absolute number of leaseholders will remain fairly constant: buy backs on regeneration estates such as Heygate and Aylesbury reduces the overall numbers as does our sale of freehold reversionary interest policy (ie where all the flats

in a street property are sold, selling the freehold interest to the leaseholders jointly). At present these disposals are only marginally outnumbered by the ongoing sale of flats:

- (a) Right to Buy (RTB) sales are at an all time low
 - (b) Social Homebuy sales were only designed to assist purchasers at the margins and won't exceed half a dozen in any year
 - (c) There are a few sales to homeowners who are bought back on regeneration estates
 - (d) by far the biggest source of sales currently is the sale of void properties
8. The fact that regeneration estates have proportionally fewer leaseholders' means that as the estates are decanted the overall percentage of leaseholders rises.
9. In the longer term the homeowner portfolio will only get bigger (there is no political appetite for the abolition of the RTB). Some other London boroughs have overall homeowner proportion as high as 40%, especially where the statutory right to purchase schemes have been supplemented by the sale of voids.

Q5 - Benchmarking table showing charge in Southwark and those in other inner London Boroughs

10. Please see Appendix 1.

Q6 - What is leaseholder charging?

11. This term has been created for the purposes of this scrutiny. It is taken to mean all charges that can be made of residential leaseholders.

Q7 - What are the various categories of charges that a leaseholder can expect to pay? (i.e. service charge, major works)

- (a) Routine annual service charges
- (b) Major works service charges
- (c) Ground rent
- (d) Rechargeable costs (usually due to breach of lease)
- (e) Court costs
- (f) Interest (on arrears, either at lease rate or county court rate)
- (g) Administration fee under the lease (e.g. assignment or remortgage)
- (i) Administration fees for other services (e.g. permissions)
- (j) Rent (shared equity leaseholders)

Q8 - Is there a charge to leaseholders for works to meet the decent homes standard?

12. The decent homes standard is a standard for social housing. Full equity leaseholders are not social housing tenants (Housing and Regeneration Act 2008). Works to meet the decent homes standard are a sub-set of Southwark's overall landlord repairing obligations but do include some communal works that are rechargeable to leaseholders, for example, refenestration, concrete repairs and works arising from Fire Risk Assessments (FRAs).
13. Works that fall outside the decent homes standard but are nevertheless recharged to leaseholders include: repair/renewal of district heating systems; lifts; redecoration and the renewal of electric risers/laterals (if not to meet the health and safety portions of the decent homes standard).

Q9 - Who's responsibility, is it to make leaseholders aware of planned future costs - e.g. future major works and housing investment plan?

14. In September 2006 a progress report on Home Ownership Services went to Executive. One of the recommendations, subsequently agreed by the Executive, was to write to leaseholders on an annual basis to inform them of where their block or estate appeared on the five year programme. The Home Ownership Service has carried out that procedure for every year that there has been an agreed programme of works. When the Executive opted to procure the Council's major works contracts through partnering, the Council needed to make an application to the Leaseholder Valuation Tribunal on a minor part of the statutory consultation process with leaseholders (section 20 of the Landlord and Tenant Act 1985), and as an amelioration promised to write to leaseholders on an annual basis with details of where they currently appeared on the programme. The new five year programme is currently in consultation – previously there was a two year programme covering 2010/11 and 2011/12, which was included in the section 20 consultation carried out for the partnering contracts. There was no programme between 2008 and 2010, as the previous five year programme had been withdrawn and a new stock condition survey was being planned.
15. The five year programme itself is the responsibility of the Head of Major Works. Once the programme has been drawn up and agreed in principle the Head of Major Works then carries out consultation with residents. The programme is sent to Tenants and Residents Associations, Area Forums and Tenants and Home Owners Councils. Additionally residents are informed via their rent and service charge statements of how to access the programme and make comments on it. Any observations made are then considered prior to the programme being finally agreed.
16. While the programme does contain budget estimates, it is important to remember that they are budgets based on the best available evidence at the time they are set. The estimates could go up or down when the work package is priced up or tendered, and the extent and scope of the work may vary considerably when surveys are carried out to draw up the final scope of works.

Q10 - What is a section 20 notification?

17. Section 20 consultation is the statutory consultation that the Council, as landlord, is obliged to carry out with its leaseholders in certain circumstances. The consultation affects two types of contracts – those that are termed qualifying long term agreements (agreements for goods, services or works that are for a period longer than 12 months and where any leaseholder would have a service charge of more than £100 per annum), and qualifying works (works of repair, maintenance or renewal where any leaseholder would have a service charge of more than £250).
18. The primary legislation is to be found in section 20 of the Landlord and Tenant Act 1985 (as amended by section 151 of the Commonhold and Leasehold Reform Act 2002). But the detailed regulations are to be found in 'The Service Charge (Consultation Requirements) (England) Regulations 2003 – SI 2003 No 1987 – which can be accessed at the following link:
<http://www.legislation.gov.uk/ukxi/2003/1987/contents/made>.
19. There are five schedules within the regulations – each governing different scenarios. Schedules one and two contain the requirements for qualifying long term agreements. Schedule one is for those agreements that are not subject to a public notice in the European Journal, while schedule two is for those that are subject to such a notice. Schedule four parts one and two are for qualifying works that are subject to a separate tender process, with schedule four part one governing the consultation requirements

for contracts that are subject to a notice in the European Journal and schedule four part two for those that are not. Schedule 3 governs the consultation requirements for qualifying works that are carried out under a qualifying long term agreement.

20. Schedules one, two, four part one and four part two all require at least a two stage consultation, with schedules one and four part two requiring a third stage notice in certain circumstances. Schedule three only requires one notice – but as such works are carried out under a qualifying long term agreement the contract itself would have already been subject to full section 20 consultations via at least a two stage process.
21. The two stage process requires a notice of intention to be served pre-tender, giving details of the proposed agreement or contract, the reasons why the Council is proposing to enter into the agreement or contract and giving leaseholders a thirty day period to make observations on the proposal. Additionally, for agreements or contracts that are not subject to an OJEU notice the Council must invite leaseholders to nominate contractors to be invited to tender. A notice of proposal is then served post tender, giving details of the tender process and inviting leaseholders to make observations on the prices received. Schedules one, two and four part one all require the landlord to provide an estimated service charge or a block or total contract cost or a unit, hourly or daily rate, or a date by when any of these costs is expected to be available. Schedules three and four part two (the two schedules most commonly used for major works, where the service charge to the leaseholder is likely to be high) requires only the total contract cost to be given.
22. Schedules one and four part two require a third notice – a notice of entering into contract – if the Council is proposing to accept a tender that is from neither the lowest tendering contractor nor a nominated contractor. This is a rare occurrence, as the Council will normally accept the lowest tender unless there are very good reasons not to. The notice informs leaseholders that the Council has entered into contract, giving details of the reasons why the preferred contractor has been chosen.
23. The Council accepts observations of all kinds from leaseholders from both stages of the consultation process despite the restrictive nature of the regulations on what counts as an official observation at each stage. In addition, although the regulations state that leaseholders must make observations in writing to a specific address, the Council does accept observations made by telephone, fax and e-mail.
24. Additionally, although the regulations do not require the Council to provide an estimated service charge when carrying out consultation under schedules three and four part two, the Council does construct an estimated service charge from the priced specification of works or bill of quantities and includes this in the notice in order to give the leaseholders notice of the individual cost to themselves. The Council also includes confirmation of the date that the invoice is likely to be issued and details of the payment options that will be available to them.
25. Along with the notice the Council includes a list of frequently asked questions in order to provide further information to leaseholders.

Q11 - How are leaseholders consulted on the future plans

26. The five year programme is currently being consulted on with all residents and is available on the Southwark Council website; all leaseholders have been written to as part of the consultation. The five year programme is agreed in principle by the Cabinet, and resident consultation is then the responsibility of the Major Works Division. The programme is sent to Tenants and Residents Associations, the Area Forums and

Tenants and Home Owners Councils. Additionally, all residents have been informed of how they can access the programme for their block/estate by notification sent out with their rents and service charge statements. They are able to make comments which will be taken into consideration when the final programme is approved.

27. The programme will be available on the Southwark website. Additionally, if leaseholders wish to access it they can contact either the Major Works Division or Home Ownership Services who will be able to provide details. Home Ownership Services will be writing to all leaseholders on an annual basis to inform them of where their block/estate appears in the programme and the work proposed.
28. Tenants who put in a right to buy or social Homebuy application are provided details of proposed works that may take place in the first five to six years of their lease (the 'initial' period), with costs and an estimated service charge, as part of their offer notice. Should they complete their purchase and the works take place, then their service charge will be limited to that amount stated in the notice plus an inflationary allowance. The inflationary allowance is calculated in accordance with the method set down by the Secretary of State and is compounded from the date on the notice.
29. If leaseholders are selling their properties on the open market then the Council is frequently asked to provide information on future works proposed and these details are included in the pre-assignment packages issued for such requests.

Q12 - What choice do leaseholders have over the scope and timing of major works?

30. Leaseholders are being consulted on the works proposed to their blocks and estates within the five year programme and can make comments which will be incorporated into the final document. Additionally, resident consultation on individual packages of work is carried out by the Major Works Division, which normally includes both written communication and public meetings. Further information on the process can be supplied by the Major Works Division.
31. Leaseholders are also invited to make observations on the proposed work via the statutory consultation process. Although the regulations themselves restrict the kind of observations that can be made, the Council will consider and respond to any comments regardless of their nature. In the past observations by leaseholders have led to amendments being made to the scope of proposed work, and, in at least one case in the contract being cancelled and retendered with a revised bill of quantities.
32. Ultimately, however, the Council, as landlord, is responsible for the repair and maintenance of the structure and services, and must make the final decision on the works that are required at any particular time.

Q13 - What input can/do leaseholders have to the tendering process for major works?

33. Residents are consulted through the statutory consultation processes which include a notice of intention which informs leaseholders of the landlord's intentions and invites observations which must be both taken into account and published. Resident representatives are also involved in the selection process for the main partner contractors for major works. For qualifying works and qualifying long term agreements that are not subject to an OJEU notice, leaseholders are given the opportunity to nominate contractors to be asked to tender for the work/services. Where a contract or agreement is subject to European Procurement rules then the notice of intention must be served prior to placing the OJEU notice, which allows leaseholders the opportunity

to bring the advert to the notice of their preferred contractor, who may then express an interest in tendering for the contract.

34. If a leaseholder does nominate a contractor, then that contractor must be able to comply with the Council's criteria for inclusion on the approved list before any contract award can be made to that contractor.
35. For qualifying long term agreements home owner representatives are frequently asked to join the procurement panel and be involved in the tender appraisal process.

Q14 - What role can leaseholders play in the management of contractors for major works?

36. A Project Team including resident representatives is set up for each major contract wherever there is sufficient interest. This meets throughout the contract to ensure all residents are part of the monitoring process for contractors. Management of the major works contracts is carried out by the Major Works Division, with the costs forming part of the overall contract costs. Depending on the scale of the contract, regular progress meetings may be held with residents to discuss any concerns or issues that they may have. Additionally, any issues, complaints or compliments can be recorded in the issues book in the site office. At practical completion a satisfaction survey is carried out with every resident, so that any issues raised can be dealt with, and each contract has a defects period to identify any problems with the work that need to be rectified by the contractor. Each contract will have a Resident Liaison Officer who is available to residents to discuss complaints or issues on an individual or group basis.
37. Furthermore, each major works contract has a project team which meets on a regular basis to discuss the progress of the work and any other issues. Resident representatives are invited to join the project team – usually at a public consultation meeting. However, these are working meetings and are therefore held during the day, so are often difficult for residents to get to if they work. But, the Council will hold further public meetings if requested to do so and all residents are able to raise particular concerns they may have about the contract management, quality of the work etc with the project team during the course of the contract.

Q15 - How are leaseholders involved in the planning/ timing and contracting of work to meet new and existing standards? e.g. fire safety standards, asbestos etc?

38. Leaseholders are consulted wherever possible as to the overall programme and individual contracts as part of the overall consultation process. This is part of the resident consultation carried out by the Major Works Division, and leaseholders get a further opportunity to make comments and observations through the statutory consultation process.

Q16 - What role do leaseholders have in determining unplanned works?

39. Unplanned works, more commonly referred to as responsive repairs, are by their very nature difficult to consult on. The vast majority of responsive repairs carried out by the Council are internal repairs to tenanted properties, which are not chargeable to leaseholders. Home owners are charged their due proportion of communal repairs - repairs to the structure, common parts and services to their block. All home owners have the opportunity to report communal repairs via the Repairs Call Centre. Additionally, Housing Officers conduct estate walkabouts on a regular basis, which can be attended by resident representatives including home owners. Communal repairs can be identified on these walkabouts.

40. Monthly contract meetings are held for the repairs and maintenance contracts, and representatives from Tenants and Residents Associations are invited to these. There is also resident representation on the monthly Core Group meetings, and the Customer Service Centre Working Party. When any repairs and maintenance contract is procured resident representatives are invited to join the procurement panel, and consultation is carried out with both the Tenants and Home Owners Councils (HOC). Recently there has been an end to end process review of housing repairs, which included resident representatives from both Tenants and Home Owners Council. It is anticipated that the findings of this review will lead to improvements in the service to all residents. The end to end process has resulted in the creation of a repairs core group who have decided to hold a separate meeting to deal with responsive repairs and have specifically invited leaseholder representatives from HOC.
41. Leaseholder representatives will be anxious to embed the core findings of the independent review of service charges:
- (a) Communal repairs to be accurately coded to block and estates
 - (b) Descriptions to include reasons for work being ordered
 - (c) Service chargeable (as opposed to, for example, rechargeable or insurance claimable) to be coded as such.
42. Most responsive communal repairs are relatively minor in nature, and the apportioned charge to leaseholders is low. However, if the cost of any individual repair will lead to a service charge of more than £250 to any one leaseholder then the Council will carry out section 20 consultation. If one of the term contracts is to be used, as long as section 20 has been carried out on the long term nature of the agreement, then a notice under schedule 3 of the regulations is served, giving leaseholders the opportunity to make observations on the proposed repair and its cost. If quotes are to be obtained for the repair then the section 20 consultation will be carried out under schedule 4 part 2 of the regulations, which gives leaseholders the right to nominate contractors to be asked to tender for the work.

Q17 - How do leaseholders suggest future works that are needed? - What is the process for agreeing whether these suggestions are taken forward?

43. The local authority landlord has both a contractual (the lease) and statutory (schedule 6 Housing Act 1985) responsibility to keep the 'structure, exterior, services and installations' in a good and substantial state of repair. Theoretically therefore there should be no need for leaseholders to have to suggest the need for future works. Having said this the arrangement adopted to meet with the requirements of section 105 Housing Act 1985 (in respect of secure tenants) and the commensurate arrangements for the Homeownership council mean that, collectively, homeowners are able to influence the spend decisions made by the council. The current arrangements for consultation on the five year investment programme are a prime example of this.

Q18 - Is there a sink fund that leaseholders contribute towards?

44. No. The current form of Southwark's lease does not have any covenants governing/requiring leaseholders to pay service charges.
45. Local authorities cannot run traditional sinking funds. Sinking funds require all leaseholders to make annual contributions in advance, local authorities cannot afford to pay the contributions for the secure tenants. Any attempt to run a sinking fund scheme for leaseholders only would fail (as it did in Southwark some 20 years ago).

Contributions would accrue for leaseholders and indeed works may be required but the council may not be able to prioritise works to any particular block/estate because of insufficient permission to borrow (under the current HRA financial arrangements) or simply not having sufficient funds available in any one year (under anticipated arrangements). In the early 1990s Southwark ran into similar problems and had to refund all contributions that had been made.

46. Simply stated if Southwark could afford the tenant contributions, it could afford to deliver the decent homes standard and all the landlord repairing obligations.
47. There are other reasons mitigating a sinking fund scheme.
 - (a) Although contributions are invested the management of the fund (including enforcement for non payment) is expensive and can easily be more than the interest.
 - (b) Leaseholders don't like paying in advance
 - (c) The existence of a sinking fund does not exempt the landlord from its repairing responsibilities which may be needed to be done now, before leaseholder contributions have accrued.
48. An application was made under the previous government's Sustainable Communities Act 2008 for Southwark to be given powers to run a voluntary Incentivised Individual Savings Plan for leaseholders who wished to participate. The application was successful in the first stage of government appraisal but the scheme folded after the last general election.

Q19 - Are there a cap on the absolute of contribution required by leaseholders to major works? Over what timeframe does this maximum contribution apply- is it a rolling timeframe?

49. For Southwark's long leaseholders, who pay a variable service charge, the amount of the service charge is dictated by the level of costs incurred. For major works service charges, the more the Council spends on communal refurbishment (concrete repairs, windows, decorations, lifts etc) the higher the service charge. In many instances we do not have the option of not providing the service – the Council have both statutory and contractual obligations to secure tenants and leaseholders to keep the blocks and estates in good and substantial repair. Not to charge leaseholders their fair proportion of the cost of providing the services is not an option. Apart from such an action being ultra virus (the limited circumstances in which a local authority can reduce service charges are set out in the Secretary of State's Directions 1997-2000 made pursuant to sections 219/220 Housing Act 1996 – Southwark has a policy to implement these following the IDM decision in November 2004) it would result in the inequitable situation of the deficit falling on the tenants or property tax payers.
50. Southwark has the widest possible range of repayment schemes to assist leaseholders to pay their fair share of costs.

Q20 - How is the level of leaseholder service charge determined?

51. Southwark's leaseholders, in common with the vast majority of leaseholders (both public and private) are required to pay a 'variable' service charge. This is a service charge which rises and falls each year in accordance with the landlord's (reasonable) expenditure on providing the (usually) communal services under the terms of the lease.

52. The only factor that determines the level of Southwark leaseholders' service charges is the spend decisions of Southwark council on service chargeable communal services.

Q21 - What input do/can leaseholders have to the process of determining the level of charge?

53. To influence the level of a variable service charge leaseholders must influence either the budget setting process or the spend decisions. The consultation arrangements described in detail below (at question 22) shows how the council is organised to consult with residents over these financial aspects and more particularly over service standards. Also described below is the statutory arrangement available to local authority tenants (periodic and long lease) to manage their own estates i.e. to take over full budgetary control for the delivery of any services they wish to control.
54. Examples of consultation arrangements over spend decisions are given throughout this briefing paper and include:
- (a) The current consultation over the five year investment programme priorities (see question 11 ante)
 - (b) Consultation on the responsive repairs service (see question 16 above)
 - (c) The arrangements governing the Homeowners' Council (see questions 36/37 post)
55. In addition to these local consultation arrangements, leaseholders can influence the spend decisions via the statutory consultation provisions described in detail at question 10 ante.

Q22 - What input do leaseholders have over management of service providers?

56. Homeowners are able to influence the management of service providers in a number of ways dependent on who the service provider is. With regard to the in house housing management service provision, homeowners are able to establish or join a Tenants and Residents' Association (TRA) who can, through the formal involvement structure, hold the council to account for the manner in which services are provided. TRAs are able to attend one of the eight Area Housing Forums (AHF) where performance issues are discussed. Each AHF is entitled to nominate up to two representatives (plus two deputies) to the Home Owners Council (HOC) which is the senior representative body for homeowners within Southwark.
57. Alternatively, where the management function is carried out by Tenant Management Organisations (TMOs) under the terms of a management agreement with the council, homeowners can directly influence their services. TMOs are resident controlled companies established to provide services to parts of the councils housing stock. Since 1994 residents have had a statutory Right to Manage although prior to this the residents' were able to set up TMOs under voluntary agreements with the council. There are currently 14 such TMOs in Southwark providing management services to approximately 3,500 home and a further 4 TMOs in development.
58. Where homeowners fall within the areas managed by TMOs they are entitled to become members of the TMOs for a nominal sum (usually between £0.10 and £1.00). This entitles them to stand for election to the management committee of the TMO who are responsible for the provision of the services delegated to the TMO under the terms of the management agreement. In this manner they are able to, within the parameters

defined by the management agreement and the constitution of the TMO, to directly control the management of services to their homes.

59. A third means by which homeowners can influence elements of the services they receive is through the creation of a Recognised Tenants' Association as defined by the Landlord and Tenant Act 1985. Recognised Tenants Associations have four main statutory rights which have accrued over the years, three of which relate directly to service charges.
60. The first and probably most important right in the context of Southwark Council as a landlord is the right of RTAs to nominate contractors to undertake any services which will cost homeowners more than £100 p.a. or any building works which cost more than £250 per homeowner as part of the section 20 process.
61. Section 84 Housing Act 1996 gives the right to RTAs to appoint a surveyor to advise them on any matters relating to service charges payable to a landlord. The powers of the surveyor so appointed are wide ranging and closely linked to the powers of homeowners (whether or not they are represented by a RTA) conferred by Part I Chapter V Leasehold Reform Housing and Urban Development Act 1993 to have a management audit undertaken. The surveyor's powers, enforceable by court order, include the inspection of all documents used in constructing service charges and the inspection of premises.
62. Section 44 Landlord and Tenant Act 1987 amended section 30 of the 1985 Act by inserting section 30B which allows a RTA to serve a notice on the council requiring it to consult on matters relating to the appointment, employment or change in duties of Managers of the property.
63. Similarly RTAs themselves (specifically the Secretary thereof) have rights to demand summaries of either or both service charges and insurance cover; and then the right to inspect all supporting invoices and documents relating to the service charges or insurance policies and any invoices and receipts which evidence the payment of insurance premiums. The rights include the ability to take copies or extracts of the documentation.

Q23 - Can leaseholders influence the service contract and providers of services within that contract - or are they restricted to council contractors

64. Leaseholders' service charges reflect their individual cost of communal services, if the council allowed leaseholders to use their own contractors then communal services would be delivered by different leaseholders' various contractors. In respect of Right to Buy leases of flats the council has an implied covenant (which it cannot contract out of) to repair the structure, exterior, services and installations of the building in which the flat is situated, so it cannot allow individual leaseholders to carry out communal repairs generally. Having said this (see question 10 ante) the statutory consultation provisions allow leaseholders in certain circumstances to nominate contractors which the council could use (subject to a successful tender). Again the Right to Manage provisions described in the preceding paragraphs allow the residents to take over full budgetary responsibility including the choice of contractors.
65. The answer to question 21 ante describes how leaseholders can influence service contracts and providers of services by involvement in the local consultation arrangements.

Q24 - Is there a management fee included in the charge? Is this a flat rate across the borough or does it vary?

66. The lease allows the Council to charge the costs of both managing the contracts or services and for administration. The administration fee is limited to 10% of the service charge. The management fee is normally calculated as a percentage of the cost of carrying out the works or providing the services, and is included in the charge for those works/services. Reversion to the 10% administration fee was agreed by Cabinet in December 2010 (see page 173 of attached minutes).
67. The management fee covers the cost of managing the individual services – be that care and upkeep and grounds maintenance or day to day repairs to the block or heating systems. The management cost for major works is either the internal cost of managing the individual projects, based on time analysis, or the cost of employing an external consultant to manage the contract on behalf of the Council.
68. The administration fee goes towards the cost of Home Ownership Services for the administrative work specifically for leaseholders, including the statutory consultation, construction of service charges and management of the service charge accounts. Additionally, the fee should cover the cost of other officers within the Council where their management and administration affect leaseholders but is not attributed directly to a specific service. The 10% does not cover the costs incurred by the Council in administration on behalf of leaseholders.
69. As part of the action plan following the recent independent audit of service charges there is a project being carried out to assess the full management and overhead costs of providing services to leaseholders to ensure that these costs are properly captured, as the audit identified a concern that the Council was under recovering their costs in this area. Part of the project will also cover the costs charged under the administration fee to show true cost in this area also.

Q25 - Is the Council always the landlord/managing agent? On the occasions when managing agent is not the Council what safeguards are in place to ensure that the managing agent fulfils its role effectively?

70. In terms of the safeguards in place to ensure that the TMOs provide an adequate level of service, this is the responsibility of the Tenant Management Initiative team (TMI) within the Home Ownership Unit. The TMI team monitor the performance of each TMO on a regular basis throughout the year through a combination of monitoring visits and attendance at TMO committee meetings. It should be noted that satisfaction levels with the performance of TMOs as housing service providers is considerably higher than with the council provided services.

Q26 - Is there a guarantee that the management fee will not increase above a certain percentage year on year? i.e. Inflation plus x%.

71. No. The management fee reflects the costs incurred by the Council in providing the services, and will therefore vary in accordance with the actual costs incurred. Inflation will have an impact in terms of staffing salaries and increased costs to the Council, but the management fee is not increased by an inflationary amount year on year.

The administration fee is limited to 10% of the service charge in accordance with the lease and does not vary.

Q27 - When a leaseholder is charged how is their bill broken down?

72. Leaseholders are charged on an annual basis for “revenue” service charges – i.e. the normal services provided during the course of the year. These include day to day repairs, care and upkeep, grounds maintenance, communal heating, communal lighting etc. Leaseholders are only charged for the services that are provided to their block/estate, and they pay their due proportion of the actual costs incurred by the Council in providing those services. They receive an estimated service charge at the start of the year, which provides a statement of the estimated cost of each individual service. Following the end of the financial year the actual service charge is prepared from the costs incurred. A statement of the actual charge for each service is provided with the invoice, and further breakdowns of the individual costs are available on request. These breakdowns, particularly for un-itemised repairs, often run to many pages and are therefore impractical to provide to over 14,000 service charge payers automatically.
73. Leaseholders are charged for major works on a separate basis. When the statutory consultation is carried out a breakdown of the proposed works, with estimated costs, is enclosed with the notice of proposal. The specifications and bills of quantities are also available for viewing on request, and can be sent to leaseholders on payment of a small fee to cover the costs of photocopying and postage. Once the final account is available the leaseholders are notified of their actual service charge and a breakdown of the work carried out and the cost incurred by the Council is included with the notification. The final account itself is also available for viewing on request, and again can be sent to leaseholders on payment of a small fee to cover the photocopying and postage costs.

Q28 - What formula is used for the apportionment of costs?

74. Most costs are apportioned using a weighting method based on the number of rooms in each property. Each property is assigned four units (kitchen, bathroom, living room and hallway) plus the number of bedrooms. So a bedsit is assigned four units, a one bedroom property five units, a two bedroom property six units and so on.
75. The cost incurred by the Council in providing the service or in carrying out repairs is divided by the total number of rooms in the block or on the estate, and then the resultant figure is multiplied by the number of rooms in the property to come to the individual service charge.
76. The above method fairly apportions the costs based on the size of the property and was agreed by Leaseholder (now Home Owner) Council.
77. For individual major works contracts, the Council may decide to divide the costs among the number of properties included in the work. This is done where the work is for something where the service provision is equal – for example a lift renewal, water tank renewal, door entry system etc. The lease allows any reasonable method of apportionment to be used, and this method is more reasonable where access to the service is not dependent on the size of the property.
78. Both methods have been found to be reasonable by the Leasehold Valuation Tribunal.

Q29 - Who is responsible for customer service to leaseholders?

79. Leaseholders' service charges reflect their fair share of the cost of communal services, so the basic answer to this question is 'the same officers who are responsible to

tenants for communal services'; this is invariably the budget holder for that communal service. This basic position is qualified/clarified by a few further facts:

- (a) Homeownership services' front end was never incorporated into the Customer Service Centre. It was programmed for the second phase but, after review of scripts and contact numbers, Pearsons refused to accept the service on the grounds that it was too complex and contact numbers too few (speciality).
- (b) Homeownership holds the budget for buildings insurance at present and provides this service.
- (c) Leasehold management (e.g. enforcement of lease terms for nuisance or internal repairs) is an area management function.

Q30 - What information is offered to leaseholders on the purchase of their property?

80. This question is taken as meaning the sale/purchase of leases on the open market (as it precedes question 31), the information given to **tenants** before purchase is dealt with at question 32.

81. The following is an extract of information about the sale of their property by a **leaseholder**:

- **When can you sell your property?**

You may sell your property (assign the lease if you are a leaseholder) at any time, but there are a number of things you must bear in mind. Firstly, if you have only recently completed your purchase under the Right to buy or Social Homebuy schemes, you will probably have to repay some, all, or more of the discount you received when you bought the property. It is the council's policy to insist on repayment in all cases, except where there are the most extreme medical circumstances.

- **The discount period**

a) five years for applications made after 17 January 2005.

For applications made on or after 18 January 2005, the amount of discount repayable is more complicated. The full amount to be repaid is calculated as a percentage value of the property on resale. This figure will be reduced by one fifth for each full year after the sale completion.

Also note that if you had made an agreement to re-sell your property before you completed your Right to Buy or Social Homebuy – or if, during the discount period, you make an agreement to sell or transfer your property to a third party at some time in the future – this will trigger repayment of discount. The repayment will be calculated as if the sale or transfer had taken place on the date the agreement was made.

The council may allow a reduction in the amount of discount to be repaid if you have carried out substantial improvements to your home, which have increased its value. In order to qualify for such a reduction you will have to quantify the cost of the improvements you have made, and the council will have to agree that they have added to the value of your home.

If, during the discount repayment period you want to add another person to the lease, this also counts as an assignment, and will probably trigger repayment of discount.

- **If you sell your home, will you have to offer it back to the Council?**

If you bought a property under either the Right to Buy or Social Homebuy schemes, where the application was made after 17 January 2005, your lease or title deeds will contain an obligation that you must first offer it back to the council if

you wish to sell within the first 10 years of acquiring your property through the Right to Buy scheme.

This means we have the right of first refusal to buy the property back at full open market value price. But the council will only exercise its rights in exceptional circumstances. If we do wish to exercise this right, we have to respond within a certain time scale.

- **What do you need to tell the buyer of your home?**

The person you are selling your property to will want details of the service charges, outstanding arrears on the service charge accounts and whether it is anticipated that there will be any major works carried out in the foreseeable future for which they might have to pay. They might also want details of the buildings insurance, the construction of the block and other information about the block and estate.

These are called pre-assignment enquiries. Your solicitor should write to the home ownership unit for this information; there is a charge for providing it (currently £156 – April 2011 - £214 Expedited (24hours)).

- **What happens about service charges when you sell your property?**

The council will expect all service charges to be paid up-to-date on completion of the sale. You will need to bear in mind that all charges are first issued as estimates, and that eventually an 'actual' charge will be issued. This can be lower or higher than the estimated charge.

You will need to agree with your purchaser who will be responsible for any additional charge, or receive the benefit of a credit. Similarly, if you sell part way through the year, it will be up to you and your purchaser to agree how any outstanding amounts of annual service charges are apportioned.

Failure to pay a service charge constitutes a breach of the lease. Although an actual service charge debt cannot be passed on from one leaseholder to another when a property is resold, the new leaseholder will be liable to 'remedy the breach' should there be any such debt. In other words the new leaseholder would either have to pay any outstanding charges, or take action against the previous leaseholder to ensure that they do so.

- **But I'm a freeholder**

The liability to pay service charges for freehold properties arises from personal contract between the freeholder and the council. This is called a deed of covenant, and is essentially a separate contract from the actual freehold transfer. If you have bought your property freehold, and it is on an estate, you should have been asked to enter into an appropriate deed covenant.

When you resell your property, you must make sure that the new owner signs a similar covenant. Otherwise you will not only be liable for any service charges arising during the period you owned the property, but possibly for future charges as well.

Other than that, the arrangements for service charges when a freehold property is sold are the same as for leaseholder properties.

- **What happens if you are disputing a service charge when you want to sell your property?**

The council expects any arrears of service charges to be paid on completion of the resale but, it does acknowledge that there are times when a service charge is being disputed and a leaseholder or freeholder is reluctant to make payment.

In these circumstances, and in order not to interfere with the process of the sale, the council is sometimes prepared to agree to a retention being held by either solicitor to pay the charge once the dispute has been resolved.

Please note that the council will normally insist on the full amount of the disputed charge being retained, regardless of what you believe the outcome of the dispute is likely to be. The purchaser's solicitor would probably insist on this as well.

82. The following is a copy of information sent out to leaseholders who are selling their property which they will pass on to their prospective purchasers (it contains confidential information so is sent out to the current leaseholder even if it is the prospective purchasers solicitors who request the information).
- A copy of the Pre-assignment response including building insurance
 - Service charge accounts for 2011/12, 2010/11, 2009/10 and 2008/9
- A copy of this document is sent by email and post.

Q31 - Is there a general level of awareness amongst estate agents and surveyors working in the borough about how leaseholding works in the borough?

83. Almost exclusively, our contact is with homeowners and their instructed solicitors so we have very little communication with local estate agents or surveyors so cannot judge this easily. However, as the vast majority of stock in the borough (council managed and privately managed) is flatted accommodation, we would assume that there must be at least some basic knowledge of "leaseholding" amongst estate agents and surveyors working within the borough.

Q32 - What communication and support is offered to leaseholders to understand their liabilities and responsibilities?

84. The information given is dependent on the route taken in becoming a leaseholder.
85. Right to Buy: when a qualifying secure tenant makes an initial query, an application pack is sent to them containing Right To Buy Application form and other related documents.
86. Another route for a council tenant to become a homeowner is through Social HomeBuy. Tenants qualifying to purchase their home under the Right to buy scheme also qualify to purchase under this scheme so both application packs are sent at once. The Social HomeBuy application pack contains a guide for secure tenants buying their home and an application form to purchase on social homebuy terms.
87. The council sometimes sells vacant properties via auction or private treaty. In this circumstance, the auction pack is furnished with a copy of the intended lease, current service charge liabilities and buildings insurance information.
88. Evidently, another common to become a Southwark Council leaseholder is via the open market resale of a property originally purchased under RTB or SHB. During the normal conveyancing process, the seller's solicitor will ask for information and documentation relevant to the property, normally referred to as a pre-assignment pack. The full contents of the pack will depend on the information and documentation requested but will normally include a copy of the lease, current and future service charge liabilities and a copy of the insurance policy. It is the responsibility of the buyer's solicitor or other legal representative to obtain all relevant information and documentation on behalf of their client and to interpret the contents, i.e. their client's future liabilities and responsibilities. The council will very rarely have direct contact with the potential buyer.

89. All leaseholders can ask the council for advice on their liabilities and responsibilities under the terms of the lease. They will normally be directed to the council's home ownership reception that will then pass the call on to the most relevant home ownership officer to deal with the enquiry. Support is offered in terms of offering payment plans to assist leaseholders to pay service charges more easily or signposting to debt/money advice agencies and credit unions, amongst other measures.

Q33 - What happens if a leaseholder wants to do some work to their property? How do they know what they do/ don't pay for are supposed to do and who they have to contact? E.g. if the windows need painting on the outside?

90. In accordance with the terms laid out in their individual leases, leaseholders must ask for and be granted the council's permission to carry out a structural alteration or to carry out works which would normally be the council's responsibility to arrange. However, due to changes in legislation and policy over the last 30 or so years the right to buy has operated, leases have evolved over time and there are no generic rules which would apply to all leaseholders. Each lease must be scrutinised individually on receipt of a permission request. Contact can be made via a number of routes (e.g. generic email, call centre, HOS reception) but will all be dealt with by the Disposals Team within Home Ownership Services.

Q34 - Who does a leaseholder contact if they have query about billing or about specific services provided?

91. For any query in relation to the construction, billing or collection of service charges a homeowner will contact Homeownership Services. Each invoice has the name and contact details of the homeownership officer they need to contact. The Homeownership Services' office at 376 Walworth Rd is open 5 days a week 9am - 5pm for face to face meetings either by appointment or by drop in to the office. For each service charge demand (estimated or actual) a leaflet entitled "Your service Charge Explained" is issued giving basic information about how service charges are constructed and which costs are included.

Q34 - Who does a leaseholder contact if they have query about billing or about specific services provided?

92. For queries about specific services e.g. cleaning or repairs the homeowner will contact the service providers, usually via the CSC or via area management.
93. It is not uncommon for a query about service charges to transmute into a query/complaint about the standard of the particular communal service in question. If this happens the homeownership officer will attempt to get a resolution to the query from the service provider. If the resolution is not acceptable then the homeowner has resort to the formal complaint procedure.

Q35 - How does this system work?

94. Any one service charge demand can bring together up to 20 different communal services (cleaning; grounds maintenance, arboricultural services; responsive repairs; lifts; door entry; water pumps; water tanks repairs, water testing; dry risers, ventilation systems, communal TV aerials; lightning conductors; district heating boiler repairs, concierge, gas supply, electricity supply, buildings insurance, management, administration etc) and it is not uncommon for homeowners to make queries/complaints about several different services at the same time. Homeownership

try to co-ordinate a single response but this means the officers can only reply as quickly as the slowest response from service providers. Interim replies are sent but this is seen as not providing a co-ordinated service in respect of communal services.

Q36 - Is there a representative body for leaseholders in the borough?

95. As previously mentioned the representative body for homeowners within Southwark is the Homeownership council, membership of which is set out in the constitution (see next question).

Q37 - What is the role of this body?

96. The role of the Homeowner Council as defined in its constitution is an advisory body established by Southwark Council to:
- a) Represent the views of Southwark's Council homeowners on issues relating to housing services, the management of housing, and new housing management proposals, and
 - b) Form part of the framework for Southwark Council to consult its homeowners on matters relating to housing management, housing services and policies.

Q38 - Is there a cost attached to membership?

98. There is no cost associated to membership of HOC.

Q39 - What is the Leaseholder Valuation Tribunal?

99. The Leasehold Valuation Tribunal (now more properly known as the Residential Property Tribunal Service) is an administrative tribunal established by the Housing Act 1996 initially to deal with determining the (section 19 Landlord and Tenant Act 1985) reasonableness of service charges. Over the past 15 years the RPTS's remit has expanded to now include such matters as:
- (a) Whether section 20 consultation has been carried out correctly
 - (b) Dispensation from section 20 consultation
 - (c) Reasonableness of administration charges
 - (d) Breach of lease
 - (e) Whether, under the terms of the leases, the service charges are payable and if so by whom and when.

Q40 - What systems are in place to resolve disputes with leaseholders before they are referred to the tribunal?

100. After all service charge queries have been resolved (see questions 34/35 above) the Council begins legal action for unpaid service charges at the local County Court.
101. The leaseholders have the right to defend the matter. Depending on the substance of the defence the dispute is often transferred to the Leasehold Valuation Tribunal (LVT) for determination.
102. LVT is a specialist independent tribunal of inquisitorial nature set up to deal with service charge disputes. LVT has a jurisdiction to determine whether charges are reasonable, have been reasonably incurred as well as payable and to what extent and by whom. Only challenges of this type are transferred to the LVT.

103. Once the LVT heard the dispute and written determination is given, the matter is transferred back to the County Court for a disposal hearing. During the hearing the final award of the debt payable is made, together with court and tribunal fees as well as interest, by way of money judgment.
104. We have a transparent and comprehensive arrears recovery process which ensures that no legal action is taken on any account until all disputes have been resolved.
106. It is up to **the individual collection officer** to liaise with the collection manager and/or the litigation manager whether or not to pass a case over to the litigation section:
107. The test being – “*Would we be successful in accordance with*”
- I. The terms of the lease
 - II. Reasonableness
 - III. Would we receive a counter claim
 - IV. Timing of the invoice
 - V. Have all disputes been resolved
108. We proceed to litigation **only** when all over avenues have been fully addressed.
109. ***This procedure is a reiterative process***
 When service charges are outstanding the first step is to consult the lease to ensure payment is due. For example : some leases will require the leaseholder to pay an estimated service charge by reference to an annual sum payable quarterly in advance; other leases may only allow for payment of actual service charges. This is especially important when dealing with ‘major works’ service charges as leases seldom distinguish between service charges for routine services and ‘one off’ major works. There is no statutory distinction between the two. The lease will also dictate if interest can be applied to the outstanding balance and, if so, at what rate (e.g. 5% above base rate) and whether simple or compound (if unstated it is taken to be simple).
110. It is essential that an internal process is established which identifies arrears as soon as they occur and establishes the principles around initial contact with the leaseholder:
- Whether interest is applied to the balance being notified (for example the landlord may decide to warn leaseholders that interest could be applied but only apply interest to the account if and when a county court application is made).
 - Format of letter (if the leaseholder is non resident whether letters should be sent to leasehold address as well as forwarding address and/or to managing agents).
 - Telephone contact
 - E mail contact
111. Initial contact with the leaseholder should incorporate two factors:
- (a) benefit advice and
 - (b) Any assistance schemes offered by the landlord
112. **Benefit Advice**
 Few benefits are available to full equity leaseholders, basically income support for the ‘essential’ elements of the service charge. There is inconsistent practice within the Department of Works and Pensions (DWP) around support for service charges to eligible claimants. DWP officials have commented that interpretation of the regulations is for their officers to decide upon given the circumstances of each claim. For example, service charges for major repair works have been paid but in other cases the

support is in the form of monthly payments to cover interest on loans taken out to pay the service charge. It is advisable that the attitude of the DWP office to service charges is understood and, in the absence of specialist support officers within the landlord organisation, that a referral system with local voluntary agencies is established. A referral system to independent voluntary agencies has the advantage of not having the enforcement and support regimes within the landlord organisation: unlike the protection housing benefit provides periodic tenants there are circumstances where individuals cannot sustain owner occupation and will lose their homes (usually to mortgagees in possession). Shared ownership leaseholders are eligible for housing benefit in respect of rent payments and the 'essential' elements of the service charge.

113. Assistance Schemes

In brief, payment options are as follow:

- a) Resident leaseholders who live full time in the property are able to split the balance over 36 equal monthly instalments interest-free (soon to be extended to 48 month's interest free). This period begins the month after the estimated invoice is received. Leaseholders not living in the property billed are offered payment over 12 equal monthly instalments interest free. Should leaseholders fail to begin paying in accordance with this option or miss a payment we will revert back to the lease and request any arrears in accordance with the quarter dates stated above.
- b) The Council has 2 discretionary loan options:
 - i) A Discretionary Service Charge Loan. This is similar to a mortgage on the property. The invoice can be paid back over up to 25 years. Interest is charged on this loan and there is an application fee to cover legal and administrative costs.
 - ii) A Discretionary Voluntary Charge Loan. This charge means you do not have to make any payments. The amount of the charge and the interest incurred is secured on the property and payable on reassignment of the lease. There is an application fee to cover legal and administrative costs.

With both of these options a minimum equity is required and should you have a mortgage on the property consent is required from your lender to add a second charge.

- c) The Council also offers an unsecured loan over a period of 3 years to 10 years. Equal monthly instalments are required for the duration of the loan. Interest is charged at a higher rate than the secured loan options.
- d) There are also two equity schemes available for leaseholders. An equity loan is where the major work service charge cost is offset as a percentage share in the market value of your home as assessed by the council. The council effectively 'loans' you the money to pay the major works invoice and secures the equity loan by way of a legal mortgage over the property. The equity scheme has the same premise however instead of an equity loan the council grants you a new lease on shared ownership terms, under which the council holds a percentage share.

Background Papers	Held At	Contact
Analysis of sold properties by lease type at 31 March 2011 Benchmarking Data For Leasehold Scrutiny Report 04 08 2011 Executive Meeting Report / Minutes Section 20 Docs SCA Leaseholder Services Proposal Service Charge Reduction Payment Options Different Basis for Service Charges Management and Administration Fees Calculation/Construction of Capital Service Charges Recharge Leon Time RTB application / Leaseholders Leaflet Service Charge Leaflet Leasehold Valuation Tribunal – Guidance and Procedure Repayment Options	160 Tooley St SE1 2TZ	Louise Turff Tel: 020 7525 7558 Paul Halpin Tel: 020 7525 1412

NO:	Title
1	Benchmarking Data

AUDIT TRAIL

.Lead Officer	Gerri Scott, Strategic Director of Housing Services	
Report Author	Martin Green, Head of Home Ownership and TMI	
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