



## AUDIT COMMITTEE

16 May 2011

**Subject Heading:**

Response to a report from PWC on a complaint from Mr Macdonald

**Report Author and contact details:**

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**Policy context:**

The London Borough of Havering received a report from PWC detailing their recommendations in relation to a complaint from Mr Macdonald about his service charges. This report provides an update of actions taken.

**Financial summary:**

The report summarises the position on the costs and income related to the provision of TV aerials and satellite services for tenants and leaseholders of the London Borough of Havering. It notes that the cost of the service has not been reviewed by means of a tendered service since 1992; and considers the way forward to ensure value for money from this contract. It also notes that the cost of the service is not fully recovered from the tenants and leaseholders, and notes the proposed way forward to address this. The net cost of this service in 2010/2011 was around 175k

**The subject matter of this report deals with the following Council Objectives**

Clean, safe and green borough	<input type="checkbox"/>
Excellence in education and learning	<input type="checkbox"/>
Opportunities for all through economic, social and cultural activity	<input type="checkbox"/>
Value and enhance the life of every individual	<input type="checkbox"/>
High customer satisfaction and a stable council tax	<input checked="" type="checkbox"/>

## **SUMMARY**

1. The Council's Auditors, PWC wrote to the Director of Finance & Commerce on 9 August 2010 with the findings of an Investigation into a complaint from Mr Macdonald about the way in which charges for TV aerial services are levied.
2. This report sets out progress by the Housing Service against the recommendations of PWC in response to this complaint. A copy of the action plan is appended to this report.

## **RECOMMENDATIONS**

That the Committee:

1. Note the progress on actions in relation to the report by PWC on the issue of Service Charges

## **REPORT DETAIL**

### Background

1. The Council's Auditors, PWC wrote to the Director of Finance & Commerce on 9 August 2010 with the findings of their investigations, into a complaint by a leaseholder, Mr Macdonald. The complaint related to the way in which building insurance charges were levied, and the way in which charges were levied for access to TV and Satellite access points.
2. PWC were satisfied that the charges on buildings insurance were reasonably calculated and reflected the costs incurred by the Council, and made no recommendations as to any action in respect of this item.
3. In respect of the charges relating to TV/Satellite access points, PWC found that the Council was lawfully entitled to levy the charge. However, in 2005/6 the basis of recharging to leaseholders changed, but there was insufficient documentary evidence retained to explain how that decision had been arrived at. Also, PWC were concerned to note, that the full costs of the service were not being recovered and that the income from tenants and leaseholders did not cover the full charge. PWC recommended that this charge be reviewed.

4. PWC also noted that Mr Macdonald had not been properly charged for his TV Aerial access, and that this was the result of an oversight. PWC recommended that the Council check to ensure that there were not similar errors occurring in respect of other charges and other tenants or leaseholders.
5. PWC raised a concern that the decision taken by the Council in 2005, whilst strictly legal, as considered by the Council's Monitoring Officer, could have been better justified had a formal decision been recorded as an officer decision, either in consultation with the Lead Member (or the equivalent process at that relevant date).
6. A further point considered by PWC was the lack of transparency for the difference in the way in which leaseholders and tenants were charged. PWC considered that the charges should be the same, unless the services were different. Any difference should be justified in line with rational criteria. The charges to leaseholders were based on a figure for 52 weeks of the year, but the charges to tenants were based on a figure of 48 weeks of the year.
7. One of the points raised as part of the review, was that payments under the contract that the Council holds with Surtees, (who provide the access points for TV and Satellite television and who also maintain the equipment) have not been reconciled. The payments to Surtees are based on the number of access points, whilst there is no agreed list of access points between Surtees and the Council. PWC recommended that reconciliation should take place, and a review of the whole of the contract, and whether it provides value for money, should be undertaken.
8. Given the concerns with aspects of the contract with Surtees, PWC also recommended that there should be a review of all high value or lengthy contracts that are currently held by the Council.

#### Action taken to address the concerns raised

##### *Basis for charging*

9. The Housing Service has instituted a review of all service charges made to leaseholders and tenants. The review established a joint working party between Homes in Havering and the London Borough of Havering, to oversee the project, and a dedicated project officer has been undertaking the work. The review involved consultation with tenants through focus groups, a survey of all tenants, and workshops at the annual tenants' conference in October 2010.
10. Service charges in respect of most services have now been set in line with tenants' expressed wishes. Four service charges have been raised to ensure that the full cost of the service is being recovered:
  - Caretakers
  - Neighbourhood wardens

- CCTV (fixed)
- Bulk refuse removal
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Two service charges were not increased in 2011/12 as tenants strongly expressed their view, that the service was not of an adequate standard. It has therefore been decided to carry out a full review of the service, and ensure that it is improved to an acceptable standard before service charges are raised. These services are:

- Internal block cleaning
- CCTV (mobile)
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Other services are due to be reviewed in the course of 2011/12. These are:

- Heating and hot water
- Grounds maintenance
- Sheltered cleaning
- TV access

#### Surtees contract - higher annual charges for leaseholders

- 14 As reported at the last meeting, although it is true that in charges raised directly through the service charges, leaseholders appear to pay more than tenants (through the annual charge), as the cost of the service is not fully met by the income, the shortfall has to be met by the HRA. This in effect means that tenants are subsidising leaseholders' services. The aim is to address this by raising charges for both leaseholders and tenants to ensure that they are fully recovered, and at the same time negotiate improvements in the value for money of this contract, to then reduce the cost to service charge payers, whether tenant or leaseholder.

#### General - errors in charging

- 15 The report from PWC identified that Mr Macdonald had actually not been charged for the TV aerial service in two successive years (2007/8 and 2008/09). When investigated, it emerged that this was an oversight. PWC therefore recommended that a check should be carried out to ensure that all leaseholders were being properly charged for all services that they received. This check has now been carried out, and tenants and leaseholders who were not being charged for the services that they were receiving were included in the service charge accounts for the year starting April 2011.

### General - documentation of use of delegated powers

- 16 This has now been dealt with, and formal decisions are recorded in an appropriate format.

### Surtees contract - signed copy of the original contract

- 17 Sealed copies of the original 1992 contract and the 1997 variation have been located. A poor quality copy of what appears to be a signed version of the 2001 variation, has also been located and it is accepted by Surtees that this is the appropriate document. Legal advice has been taken on the implications of these contractual documents and negotiations are currently underway on the subject of the TV aerial and satellite service

### Surtees contract - numbers of access points

- 18 A full list of addresses where services are being provided has now been reconciled with Surtees, and there is one common list between the contractor and ourselves which is being used as the basis of our contract.

### Surtees contract - benchmarking costs

- 19 One part of the Surtees contract relates to the provision of a repairs service for the door entry facilities. It has remained difficult to identify suitable benchmarking costs. The Council is seeking to tender the door entry part of the contract separately, which is the best form of benchmark. This matter is still in dispute between ourselves and Surtees.

### Wider Contract Review

- 20 Homes in Havering have reviewed all existing contracts and are ensuring that these are tendered in a timely way.
- 21 The Council has commissioned a wider contract review in terms of commodity contracts the results are being considered by individual departments.

### Conclusion

- 28 The PWC report has been helpful in identifying a number of difficulties in the way in which service charges have been calculated and recovered by the Council. The contract specifically for TV aerial (terrestrial and satellite) services was entered into in 1992, when the technology was new, and all landlords were relatively inexperienced in providing these kinds of services. The report has shown that the assumptions and charges made when the services were first provided are no longer appropriate, and that the Council needs to make sure it carries out regular reviews of such services and charges in order to ensure that its decision making remains logical and fair, and that the services provided are appropriate to its tenants and leaseholders. The intention is that the Council's re-negotiation of this

contract will produce better value, either through revised terms and conditions with Surtees, or through re-tendering.

- 29 It should be noted that a further objection to the accounts has been received from Mr Macdonald, and that a meeting has been held between PWC and Mr Macdonald in January. The basis of his objection appears to cover much of the same ground – in particular Buildings Insurance and the charge for TV terrestrial and satellite aerials. There are some areas where PWC have indicated that they will do further investigation, but there are others where they have indicated that these matters have either been dealt with, or are subject to other methods of investigation – e.g. Information Commissioner, Leasehold Valuation Tribunal or the Police.

## IMPLICATIONS AND RISKS

### **Financial implications and risks:**

1. This report is presented for information. It provides an up-date on actions being taken to improve procedures for TV/Satellite access charges, and service charges more widely.
2. The report refers to various actions being taken to improve process. As explained changes are being made so that the costs of various HRA services are more closely reflected by charges to the service recipients. Though the HRA has been able to absorb deficits, this has meant that some costs are being met by remaining tenants, and is being addressed as quickly as practicable.

### **Legal implications and risks:**

The report by PWC confirms that the objections to the accounts lodged by Mr Macdonald do not identify any illegal charging by the Council. Mr Macdonald made an application to the Leasehold Valuation Tribunal against the imposition of these charges. Whilst the Tribunal accepted that the charges were lawful, they found against the Council in terms of the amount of charge. The Council has obtained permission to appeal to the Upper Tribunal against this finding and the outcome should be known around about June or July 2011

**Human Resources implications and risks:** None arising directly from this report.

**Equalities implications and risks:** None arising directly from this report.

## BACKGROUND PAPERS

Working papers held within the Housing and Public Protection Service.