



## AUDIT COMMITTEE

22 September 2011

**Subject Heading:**

Update on Service Charges following the 2010 PWC report on the complaint from a leaseholder, Mr M.

**CMT Lead:**

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**Report Author and contact details:**

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**Policy context:**

The report of 2010 by PWC raised a number of issues concerning council contracts and recovery of costs through service charges. At its meeting on 16 May 2011, the Audit Committee considered a report on these matters. This report updates the Committee on the issues.

**Financial summary:**

The report updates the Committee on the recovery of costs in relation to the provision of TV aerials in the housing stock. It also updates Members on the recovery of costs for other services through service charges, and on the on-going Tribunal action in the case of leaseholder Mr M.

**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	x

## SUMMARY

This report follows the report to the Audit Committee on 16 May 2011 and updates Members as follows on three main issues:

- 1) The action taken with the television aerial contractor Surtees which has resulted in a reduction in costs. Extending the charge to all the residents who receive the service will generate additional income, and as a result of these actions, we expect to recover our costs in full. Work to establish our ability to re-tender the contract is continuing.
- 2) The review of other service charges is continuing and will lead to fuller recovery of costs from tenants and leaseholders.
- 3) The Council's appeal to the Upper Tribunal of the Leasehold Valuation Tribunal against the original decision that our service charge for the provision of TV reception to his home was too high.

## RECOMMENDATIONS

That the Committee:

- 1) notes the further actions taken in relation to the report by PWC on service charges
- 2) notes that final decisions on implementing some of the actions identified in this report (such as extending charges to a wider group of residents) will be taken at the March Cabinet meeting as part of the annual rent increase process

## REPORT DETAIL

Background:

- 1) On 9 August 2010 the Council's auditors PWC wrote to the council with the findings of their investigation into a complaint by a leaseholder, Mr M. The complaint concerned charges for building insurance and TV reception.
- 2) On 16 May 2011 the Audit Committee considered a report on the matter. A copy of this report, along with the original PWC action plan, is given as an appendix. The current report brings the Committee up to date with the implementation of PWC's recommendations.

Recovery of the cost of television aerials

- 3) A central finding of the PWC report was that the council was under-recovering the cost of this service. Since the Committee's last meeting, staff have negotiated a number of changes to the way Surtees charges for the service. The main changes were to delete the charge for the Mardyke Estate and to charge only one amount

for each address, even where the address has more than one TV point. Officers have also agreed with the contractor a schedule of the addresses which receive the service. These actions have led to reductions in costs. We have also drawn up plans to extend the charge to all residents on the schedule of addresses, as some 664 tenants and 391 leaseholders had been wrongly omitted. As a result of these various actions the amount recovered in service charges will rise and should in time cover the contract costs. Increases in the amount we can charge any individual tenant are however constrained by the rent restructuring rules and there may be a delay in achieving full recovery as new charges are phased in.

Review of other service charges:

4) In response to the PWC report, officers started a comprehensive review of the recovery of the costs of other services provided to tenants and leaseholders. This work is still in progress. As reported to the committee's meeting on 16 May, four service charges have already been raised after resident consultation (Caretakers, Neighbourhood Wardens, fixed CCTV and Bulk refuse collection). The charges for these services fully meet the cost.

5) The position in respect of the other heads of charge is as follows:

- Door Entry systems maintenance. This service is provided under the same contract as television reception, although unlike the TV element of the contract, the contractor does not own the equipment. The contractor has agreed to a reduction in charges of 25%, and we continue to recover sufficient to meet costs and build up a reserve fund to meet the cost of future equipment replacement.
- Grounds maintenance. Officers have updated the schedule of address which receive the service. Recent calculations carried out in partnership with Homes in Havering (HiH) have shown that 1,900 tenants should pay this service charge but currently do not. As a result the flat rate charge of £2.78 does not meet the cost of the service. It is proposed to extend the charge to these additional residents as quickly as the rent restructuring rules allow.
- Cleaning in the general stock. There is currently an under-recovery of costs. The scale and nature of the service is currently under review. The question of increasing the charge for cleaning will be addressed once decisions have been taken about the future of the service. It may be appropriate to phase in any increases.
- Cleaning in sheltered accommodation. The financial position is generally in balance with the costs covered by the income. However, it is proposed that more work is done on consulting tenants about the level of cleaning required in each scheme, and the appropriate charge. This may lead to different levels of cleaning in each scheme, depending on the tenants' choices, and different levels of charges to match.
- Heating and hot water. Some tenants pay a separate service charge, while others pay for the service through a pooled rent. For those residents whose charge is de-pooled, we are fully recovering the cost.
- Mobile CCTV. Resident consultation on this showed some dissatisfaction with the service, and therefore no increase has been applied. The service will be reviewed in the light of this.

Ensuring fairness between tenants and leaseholders

6) Quite understandably, residents often complain that charges to tenants and leaseholders are not the same. Although it is of course desirable for them to be comparable, they are unlikely to be identical because the way they are calculated is completely different. Tenants pay a share of the overall cost of a service, across the whole stock, whereas leaseholders pay a contribution to the cost of providing the service at their own block. In the long run we aim to move towards charging tenants at block level, but until this is achieved the charges will continue to differ. Another issue is that because of the 48 week rent year for tenants, the weekly charges will differ, but of course they are the same over a whole year.

#### Update on Mr M's complaint

7) The Council has appealed against the Leasehold Valuation Tribunal (LVT) decision in 2010 which found that our service charge for the provision of television reception was excessive. We believe it is important to pursue this as the decision as a matter of principle.

8) We have recently been contracted by the Upper Tribunal about the case. The Tribunal has indicated that they may remit the case back to the LVT for a fresh hearing. The Head of Legal Services has indicated that he would be happy with this.

9) Whether the case is dealt with by the Upper Tribunal or the LVT, the Council will appoint a barrister to present our case. It is likely to be heard in the first half of 2012.

#### The future of the TV Aerial and Door Entry contract

10) The exercise to collect benchmarking data on the cost of the TV element of the contract has shown how difficult it is to achieve valid comparisons. Each landlord structures their services in a different way and it was hard to draw definitive conclusions from the data which was obtained. However, it does seem that the cost of our contract was higher than average, and it is therefore important that reductions have been achieved.

11) Legal advice is being obtained about the Council's ability to terminate the contract. The contract documents are ambiguous and we propose to obtain Counsel's opinion in order to be as clear as possible about the position. Once we have definitive advice, decisions will be taken as to whether to negotiate with the contractor for further cost reductions (to either or both parts of the contract), or to terminate either or both elements.

#### Conclusion

12) Much depends on the legal advice we are currently awaiting on the contract for TV reception and door entry. The advice will enable us to make decisions about our strategy for achieving further improvements in value for money for our residents.

13) The work on the other service charges has brought in additional income to the HRA in the current financial year, and this process is set to continue in future years.

## IMPLICATIONS AND RISKS

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

1) This report is for information. It gives an update on the action taken to improve procedures for the recovery of costs associated with the provision of TV reception and other services.

2) The costs concerned are contained within the ring fenced HRA, and do not impact on the general fund. Full recovery of charges will add to the HRA income and lead to fairer charging between tenants and leaseholders.

**Legal implications and risks:** As stated in paragraphs 7-11 above

### **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.