

Notice of KEY Executive Decision

Subject Heading:	Termination of the Water Collection agreement with Essex and Suffolk Water
Decision Maker:	Councillor Ray Morgon
Cabinet Member:	Councillor Paul McGeary
ELT Lead:	Neil Stubbings
Report Author and contact details:	Michael Lynch 01708434753 Michael.lynch@havering.gov.uk
Policy context:	This proposal relates to the cessation of collection of water rates alongside rent. This is not an agreement referred to in any of the Council's policies.
Financial summary:	There are no adverse financial implications arising from ceasing collection.
Reason decision is Key	Significant effect on two or more Wards
Date notice given of intended decision:	30 th August 2023
Relevant Overview & Scrutiny Committee:	Places Overview and Scrutiny Sub-Committee
Is it an urgent decision?	No
Is this decision exempt from being called-in?	No

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

People - Things that matter for residents

Place - A great place to live, work and enjoy **X**

Resources - A well run Council that delivers for People and Place.

Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

The Leader is asked to authorise the Director of Housing and Property to:

(a) make all necessary arrangements with (including serving notice upon) Northumbrian Water (t/a Essex and Suffolk Water) to terminate the water collection arrangement as soon as reasonably practicable;

(b) make all necessary arrangements with (including serving notice upon) the Council's secure tenants to terminate the practice of collecting commissions for water rates alongside rent payments.

The decision sought in this report pertains to the cessation of water rate collection within Havering Council, in response to the recent legal precedent set by the Kingston verdict in the Court of Appeal case of Royal Borough of Kingston-Upon-Thames v Moss. It is recommended that the Council promptly discontinues the practice of collecting commissions for water rates alongside tenant rent payments. The agreement would come to an end with the close of the 2023/24 financial year. It is proposed that the Council terminates its agreement with Northumbrian Water, trading as Essex and Suffolk Water. The said agreement relates to the payment of water services charges on tenanted properties

As the legal landscape has shifted and the financial viability of this arrangement has been compromised, it is in the Council's best interest to conclude this agreement. This will enable the Council to reallocate its resources more effectively and establish a revised framework that aligns with legal mandates while ensuring the responsible and efficient use of public funds.

The Council's Housing Department should develop a clear and concise communication strategy to inform tenants about the decision to stop water rate commission collection. This communication should highlight the reasons for the change, the legal context of the decision, and the benefits that tenants will experience as a result.

The consultation on this matter closed 6th December 2023. There were a number of representations made and the majority of concerns were around tenants fearing they would be worse off as a result of this change. As this will not be the case, the recommendation to terminate the agreement has not changed.

AUTHORITY UNDER WHICH DECISION IS MADE

The Leader has the following applicable powers:

3.2.1 (d): To determine the Council's policy, strategy and programme in relation to the area and in respect of all Executive matters.

Housing

(e) To exercise the Council's functions in relation to housing and homelessness including the formulation and co-ordination of policies and their co-ordination and implementation. Such functions include, but are not limited to, the following:

(iii) Assessing and setting rents and other charges.

STATEMENT OF THE REASONS FOR THE DECISION

The pivotal catalyst for this decision is the recent Kingston verdict. In that case of Royal Borough of Kingston-upon-Thames v Moss, the Court of Appeal upheld the decision of the High Court which held that the local authority involved had been re-selling water to its tenants at a higher price than the permitted cap and ordered that local authority to repay the sums due to the tenant. This had been the practice of numerous local authority landlords in England.

As a result of the Kingston verdict, there is a requirement for Councils to pass on collected commissions (discounts) to residents. Consequently, the existing arrangements for collecting water rates are no longer sustainable from a financial standpoint. The associated agreements have thus transformed from being advantageous to being economically unviable.

Moreover, the continuation of water rate collection as previously practiced is no longer aligned with the judicious use of Havering Council's Housing Revenue Account (HRA) funds and Council resources. Allocating resources to activities that have become financially unsustainable detracts from the Council's ability to effectively serve its constituents in a broader capacity.

Furthermore, the decision to cease water rate collection aligns with an enhanced tenant experience and empowerment. By enabling tenants to have meters installed and be billed based on their actual water usage, we foster a sense of transparency and accountability. This transition empowers tenants to exert greater control over their utility consumption and associated costs.

OTHER OPTIONS CONSIDERED AND REJECTED

The alternative option of continuing to collect water rates and passing the associated commission as discounts to residents was considered.

Implementing this approach would strain Havering Council's finances by diverting funds from essential services and projects, undermining efficient HRA management.

Lastly, while offering discounts provides some cost relief, it falls short of the benefits of metered billing and direct access to discount schemes, which enhance tenant control over utility expenses.

PRE-DECISION CONSULTATION

A month-long consultation process with the Council's secure tenants has taken place the recommendation is that the Council proceed with this action. Consultation closed on December 6th.

Concerns were raised that vulnerable customers may struggle to manage the change. Havering funds a post at the Citizen's Advice Bureau. Customers that are identified as vulnerable (Havering maintains a database) will be contacted prior to the switchover and directed to the CAB for any additional support needs.

NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER

Name: Michael Lynch

Designation: Income Services Manager

Signature: 

Date: 05/01/2024

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

Kingston verdict established a clear precedent by deeming the practice of Councils collecting commissions for water rates alongside tenant rent as unlawful, categorising Councils as water resellers.

In 2019, the Court of Appeal upheld the decision of the High Court in the case of Royal Borough of Kingston-upon-Thames v Moss [2019] EWHC 3261 (Ch). After considering the tenant's tenancy agreement, the High Court held that Kingston was a reseller for the purposes of the Water Resale Orders 2001 and 2006 and in turn, was bound by the maximum charges' provisions. This meant that the tenant's water charges should reflect the actual sums payable by Kingston to Thames Water.

In 2003, an agreement was reached between Kingston and Thames Water meant that Thames Water did not bill Kingston's council tenants for water and sewerage charges, but billed Kingston instead. Kingston's tenants would then pay water charges to Kingston as part of their rent under tenancy agreement. Under the 2003 agreement, the arrangement was that charges paid by Kingston to Thames Water was reduced where properties were vacant – known as the 'voids allowance' including 'commission' and as a result, Kingston paid less to Thames Water.

As a result, continuing to engage in such practices would place Havering Council at substantial legal risk, potentially exposing the Council to legal challenges, penalties, and reputational damage. Adherence to the legal mandates set forth by the Kingston verdict is therefore paramount in order to safeguard the Council's legal standing and maintain its commitment to operating within the boundaries of the law.

Any claim by a tenant for repayment of any charges relating to water rates shall be considered by the Director of Housing and Property under existing delegations.

FINANCIAL IMPLICATIONS AND RISKS

By discontinuing the practice of collecting commissions for water rates alongside tenant rent payments, the Council will eliminate a significant administrative and financial burden. Water rates, being ineligible for inclusion as a service charge under housing benefit and universal credit guidelines, have led to extensive efforts from Income Services to recover shortfalls from low-income residents. The resources allocated to these efforts far outweigh the benefits derived from collecting water rates.

Cost Savings: The immediate cessation of water rate collection translates into cost savings for Havering Council. The resources previously allocated towards the administrative tasks associated with collecting, tracking, and recovering water rates can now be redirected towards more productive and impactful endeavours. This shift will improve the overall efficiency of Income Services and allow for a more strategic allocation of staff time and resources.

Any refunds of water rates collected to date will be dealt with in accordance with the tenancy agreements.

HUMAN RESOURCES IMPLICATIONS AND RISKS (AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)

No human resources implications or risks will result from this decision.

EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS

There will be no change for Residents. Accounts will be automatically opened for them with Essex and Suffolk Water, and their tariffs will remain as existing. Havering will offer to support any vulnerable residents with setting up Direct Debits initially.

HEALTH AND WELLBEING IMPLICATIONS AND RISKS

The proposed change to tenants managing their own water bills could have implications for their mental well-being. While this shift might introduce new responsibilities and potential concerns, there are also positive aspects that can contribute to positive mental health outcomes.

One aspect of concern is the potential impact on mental well-being due to the added responsibility of managing separate water bills. However, it's important to note the potential benefits:

Cost Savings: The change could result in reduced bills based on actual water usage, potentially easing financial burdens and positively influencing mental well-being.

Empowerment: Direct management of water bills gives tenants greater control over their utility expenses, fostering a sense of empowerment that can contribute positively to mental health.

Discount Access: The availability of discount schemes can further reduce financial strain, potentially leading to improved mental well-being.

ENVIRONMENTAL AND CLIMATE CHANGE IMPLICATIONS AND RISKS

There are no environmental or climate change implications or risks.

BACKGROUND PAPERS

Havering/Essex and Suffolk Water Agreement

APPENDICES

N/A

Part C – Record of decision

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

Decision

Proposal agreed

Details of decision maker

Signed 
Name:
Councillor Ray Morgon
Leader of the Council

Cabinet Portfolio held:
CMT Member title:
Head of Service title
Other manager title:

Date: 01/02/2024

Lodging this notice

The signed decision notice must be delivered to Committee Services, in the Town Hall.

<p>For use by Committee Administration</p> <p>This notice was lodged with me on _____</p> <p>Signed _____</p>
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