

WAVERLEY BOROUGH COUNCIL

EXECUTIVE – 27 SEPTEMBER 2016

Title:

WATER CHARGES – WAVERLEY BOROUGH COUNCIL AND THAMES WATER

[Portfolio Holder: Cllrs Carole King and Ged Hall]

[Wards Affected: All]

Summary and purpose:

This report informs members about a recent court judgment of *Jones v London Borough of Southwark* [2016] relating to the collection of water charges for unmetered tenanted properties and the implications of the case on Waverley Borough Council.

How this report relates to the Council's Corporate Priorities:

This report concerns the Council's secure tenants and relates to the Corporate Priorities of "Community Wellbeing" and "Value for Money".

Financial Implications:

There are potentially significant financial implications for Waverley. Officers' initial assessment of the liability is £200,000 – £400,000. This estimate is based on the figures from the Southwark case and examining Waverley's income in relation to the water charges over the last 6 years ("the limitation period" under the Limitation Act 1980). A detailed financial analysis will be undertaken to work out the exact potential cost exposure.

The Southwark judgment will affect the level of commission received by Waverley from Thames Water each year going forward (approximately £80,000 per annum spent on Housing Revenue Account services) and opens up the potential for claims by tenants for overpayments relating to the commission (both existing and former tenants).

Legal Implications:

Waverley's legal advice confirms that the agreement between Waverley and Thames Water that has been in place for many years is almost identical to the agreement in the *Jones* case. There are therefore significant implications for Waverley.

Before the *Jones* case, a considerable number of local authorities and housing associations (approximately 70 including Waverley) understood that the relationship between Thames Water and the local authority in relation to collecting water charges for unmetered tenanted properties was one of "agent" not "re-seller." Changes will need to be made to the legal agreement between Thames Water and Waverley, in light of the decision.

In terms of the arrangement with Thames Water going forward, the Council will need to consult with its tenants under s 105 of the Housing Act 1985 before making any changes to the legal agreement.

Introduction

1. For many years, the Council has, in common with a large number of other local authorities and social housing providers, had a contractual arrangement with the local water supplier (in our case Thames Water). This service was for the benefit and convenience of its housing tenants. The arrangement was understood to be one by which the Council was to provide billing and collection services for unmetered Council properties, in return for a void allowance for empty properties and a commission to reflect both the administrative costs attached and the transfer of risk associated with these accounts. Any commission received by the Council has been paid into the Housing Revenue Account to support the housing service to tenants.
2. The Council has always regarded itself as acting as an agent for Thames Water and has never sought to vary the billing amount for each tenant, as calculated by Thames Water.
3. Following the recent case of *Jones v London Borough of Southwark* [2016] EWHC 457 (Ch), the Council is investigating:

- 1) Overview:

- (i) The implications arising from the court judgment;

- (ii) What liability there is for Waverley following the case, and whether this can be quantified; and

- (iii) What changes may be necessary to the agreement between Waverley and Thames Water Utilities Ltd dated 24 March 2004 and Contract Addendum dated 1 April 2007.

- 2) Relevant Facts:

Miss Jones – a tenant of Southwark – was charged by Southwark for water supplied to her property by Thames Water Utilities Ltd (“Thames”). The Court had to determine whether Southwark was an agent or, rather, had bought and re-sold water and sewerage services. In the event that the latter applied, the Court had to determine whether Southwark had charged tenants more than was permissible under the Water Resale Order 2006 (“the 2006 Order”).

The Court held that (i) the agreement in place between Southwark and Thames was one under which Southwark bought water and sewerage services from Thames and re-sold them to tenants, and was not therefore one of agency, and (ii) that Southwark charged tenants more than was permissible under the 2006 Order.

Miss Jones, argued that the level of commission which applied to the charges levied upon Southwark by Thames should be taken into account when

determining the amount payable by Southwark to Thames. This argument succeeded and the level of commission was deemed excessive.

Legal Options Available about the future of the arrangement:

4. There are effectively 2 options in light of the decision in *Jones*. They are:
 - a) Terminate the Agreement between Waverley and Thames Water dated 24 March 2004 (6 months' written notice required) leaving it to tenants to set up and manage individual accounts with Thames. This will affect Waverley's HRA budget, as it will lose the commission currently receivable; or
 - b) Redraft the Agreement to make it clear that Waverley is acting as the collection agent on behalf of Thames and reduce the commission charged.

The maximum charge for commission for a water "re-sellers is set by Ofwat (the regulator of water and sewerage providers).

For either option a) or b) Waverley would need to ensure it consulted with its tenants under s105 of the Housing Act 1985 and follow correct procedures.

Conclusion

5. In light of the *Jones v London Borough of Southwark* case, Waverley felt it prudent to review its contractual arrangement with Thames Water and has since found that its agreement is almost identical to the one held by Southwark. Whilst it is still a legitimate service for the Council to provide, this ruling could affect the commission charges made to those tenants that have an unmetered supply.
6. The Council is currently investigating
 - a) what the implications are for the Council and its tenants in relation to water charges for unmetered properties; what the potential liability is for the Council; and
 - b) what the most appropriate method of addressing refunds is; and
 - c) what changes may be needed to the agreement between Waverley and Thames Water in relation to the collection of water charges.

Recommendation

That the Executive recommends to the Council that

1. officers carry out a detailed financial analysis to calculate the exact potential liability;
2. approval of the detailed approach to handling claims from tenants for overpayment by them of water charges be delegated to the Executive;

3. officers formally consult with Waverley's secure tenants who live in unmetered properties in relation to the current arrangements with Thames Water;
4. the decision about the future of the arrangement with Thames Water be delegated to the Executive following a detailed appraisal of the options including termination; and
5. the potential cost of meeting claims be noted and the maximum estimated amount of £400,000 be earmarked from the HRA working balance as a provision for this cost.

Background Papers

There are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to this report.

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