

WAVERLEY BOROUGH COUNCIL

EXECUTIVE – 29/11/2016

Title:

HOUSING SERVICE WATER CHARGES

[Portfolio Holder: Cllr Carole King]

[Wards Affected: All]

Summary and purpose:

The purpose of this report is to set out the strategy and timescale for addressing the current contract issues relating to the collection of water charges for Waverley tenants living in properties without water meters serviced by Thames Water. This includes likely costs, future contract arrangements with Thames Water, tenant consultation and arrangements for providing timely refunds.

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

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

Financial Implications:

There are significant financial implications for Waverley. The Southwark case findings will affect the commission received by Waverley from Thames Water each year going forward (approximately £80,000 per annum) and opens up the possibility for claims by tenants for overpayments of water charges (both existing and former tenants). Following a detailed financial analysis, the Council's liability is estimated to be £400,000 (approved by Council on 20 October 2016).

Legal Implications:

There are wide legal implications. Changes will need to be made to the legal agreement, with Thames Water dated 24 March 2004, relating to the collection of water charges, in light of the Southwark case. Based on the findings of the Southwark case, the Council will need to consult with its tenants under section 105 of the Housing Act 1985 before making any changes to the legal agreement, for example, terminating the agreement. The Legal Services team will keep Members informed if there is any change to legal advice during the consultation period.

Background:

1. The Executive received a report on 27 September 2016 outlining the Jones v Southwark 2016 case and potential implications for Waverley. This relates to a ruling in the High Court that found that the London Borough of Southwark had overcharged some of its tenants for the water and sewerage collection

service for unmetered properties, as a result of its contract with Thames Water.

2. Like many other local authorities and social housing providers, Waverley Borough Council has a long-standing contractual agreement with Thames Water, which was originally put in place to simplify billing procedures for those Council tenants in unmetered properties. This is similar to the one held by the London Borough of Southwark.
3. As a result of this, the Council has been investigating the implications arising from the court judgment; the potential liability for Waverley, and what changes may be necessary in the Council's current contract with Thames Water. In October 2016, the Council delegated to the Executive the approval to agree the detailed approach to handling claims from tenants for overpayment and the decision about the future of the arrangement with Thames Water.

The Current Arrangements:

4. Currently, on behalf of Thames Water, Waverley bills and collects water charges from tenants in unmetered properties. In return, the Council receives commission to cover the cost of administering this service, including any bad debt. The commission is used to help the Council to provide its housing services.
5. The current arrangements were established pre-1980 and, at the time, were advantageous to Council tenants, offering them more flexibility over the payment arrangements. The contract included the collection of charges for either water or sewerage or both water and sewerage.

Legal advice:

6. In August 2016, external legal advice confirmed that Waverley's contract with Thames Water was virtually identical to the agreement at Southwark and therefore the ruling impacted the provision of water service for unmetered properties.
7. Waverley has been advised to: recognise and calculate liabilities for overpayment by tenants in respect of water supply; review the current contract with Thames Water; consult with tenants on the future of the service to collect water charges for unmetered properties; and consider refund arrangements.
8. In September 2016, the Council joined the Local Government Association consortium to assist with further legal advice in assessing the liability of the Council.

Financial analysis:

9. There are 2,577 council tenants who are currently paying a water charge to Waverley under the Thames Water arrangement.

10. Officers calculate that the liability is on average £27 per annum per household serviced by Thames Water per year covering the last six years (“the limitation period”) back to 3 March 2010. After taking all other factors into account it is estimated that the potential total value of claims is £400,000. Council has already set this money aside from HRA resources.
11. The liability is based on the commission received above the £5 admin charge per year allowed for under the Water Resale Order 2006, as Waverley is no longer recognised as an agent of Thames Water but a “reseller”.
12. The analysis takes into account the interest payments required as specified in the Water Resale Order 2006.

General principles

13. To guide the development of the strategy for how the Council responds to the Jones v Southwark case, the following principles have been developed:
 - To be transparent about the Council’s actions in response to the Southwark High Court ruling and to ensure that Council tenants are treated fairly and consistently in relation to the handling of their utility charges.
 - To acknowledge that the arrangement with Thames Water was entered into to provide payment benefits and flexibility for tenants in common with actions taken by many Councils across the country.
 - To formally consult with Council tenants affected by this ruling, before deciding the best course of action.
 - To remove the legal risk associated with the current contract with Thames Water by amending the terms through a deed of variation, to avoid any future liabilities before putting in place any longer term solutions.
 - To prioritise the refunding of any monies from overpayments to current Council tenants as quickly as possible.

Future of Thames Water arrangement:

14. It is proposed to vary the agreement with Thames Water with effect from 1 April 2017 through a formal deed of variation. This will cease any ongoing liability relating to commission. This in itself will not have any implications for tenants and will only impact the commission that the Council receives.
15. There are then two options available to Waverley:
 - Maintain a varied contract with Thames Water with reduced levels of commission to reflect the administration fee permitted under the Water Resale Order 2006; or
 - Give notice to terminate the contract with Thames Water and support tenants in creating a direct relationship with Thames Water as per other utility providers.

16. The option of maintaining a varied contract with Thames Water has a number of implications. Firstly, it would perpetuate an anomaly with those tenants in the rest of the borough who already have a direct relationship with their Water and Sewerage provider, South East Water, and have done so for many years following the termination of a similar agreement. If tenants were able to have a direct relationship with their utility companies, this would provide a consistent outcome for all tenants wherever they live in the borough.
17. It is also important to note that approximately 40% of Waverley tenants affected by the contract with Thames Water are in receipt of full housing benefit which is paid directly to the Council. Therefore these tenants only make water charge payments to the Council who then need to process this through the Rents Team and then pass this on to Thames Water. This represents a disproportionate and bureaucratic arrangement and in the context of a reduced commission charge, does not represent value for money.
18. Thames Water has indicated that they now offer a range of flexible payment arrangements for customers which were not available at the time the Council entered into this contract. This includes monthly direct debits and more customised payment plans including:
- Water Sure - capping bill at £374 for large families on benefits
 - Water Sure plus - bill reduced by half for tenants with an income less than £16k and disabled family member or child under five
 - Water Direct - payment from benefits
 - Customer Assistance Fund – financial assistance for those struggling to pay and owe past bills
19. This will make it easier for Council tenants to move to a direct billing arrangement with Thames Water and reflects the arrangements already in place for all other Council tenants.
20. The current contract provides the Council with a six month notice period should they decide to terminate the contract. It is proposed to provide notice to Thames Water of the Council's wish to do this, following consultation with tenants. The precise timing for the end of this contract will need to align with the tenant consultation process and schedule for the current billing arrangements. Waverley will also seek to provide sufficient time for Thames Water to put in place appropriate arrangements to support tenants with the transition to direct billing.

Tenant consultation

21. Secure tenants must be consulted regarding any change in the way their home is managed under the Housing Act 1985. The 2,577 tenants impacted have been notified of the case, Waverley's potential liability and the possible refund for tenants.

22. It is proposed that consultation with these tenants commence in December 2016 for a six week period (encompassing Christmas). The consultation will seek these tenants' views on the proposal to terminate the contract and advise tenants on how to create a direct relationship with Thames Water.
23. It is also proposed that Waverley officers will attend the Tenants Panel open meeting in January 2017 to seek views and provide information and advice regarding tenants having a direct relationship with Thames Water.

Refund arrangements

24. The Council has already indicated a wish to refund any overpayments to Council tenants affected as quickly as possible. Every effort will also be made to ensure that this is completed as efficiently as possible, minimising any associated administrative costs.
25. Refunds will only be made for the period of the past 6 years. It is proposed that current Council tenants will receive reimbursement through a credit to their rent account, *after any* outstanding debt or rent arrears to the Council has been repaid. This provides a consistent and robust approach for all tenants, minimising the risk of fraud, and ensuring that those tenants without bank accounts are not disadvantaged. This will also assist those tenants in rent arrears where their home is at risk if they are unable to bring their rent account back into balance.
26. Once rent accounts had been credited, tenants would then have the option to request any surplus or part surplus to be paid to them direct. The normal refund process will be followed.
27. Some tenants alternatively may wish to leave the refund in their rent account and see their weekly rent payments reduce for a period until the surplus had been spent. This would be a choice for individual tenants to make.
28. Former tenants who no longer have a rent account with the Council will be invited to apply online for a refund. The invitation will be publicised through the Council's website and a local press release.
29. These applicants must apply online and provide proof of identification and proof of residence to be cross checked with Council records (date of birth, national insurance number, full name, addresses and time periods). Applications from former joint tenants must be made jointly, in both names.

Risks

30. Should Executive agree this strategy following consultation with Council tenants, the main external factor and therefore risk, is the cooperation and capacity of Thames Water in relation to agreeing to a deed of variation and arrangements for terminating the contract including putting in place direct billing for water charges for 2,577 Council tenants. However, initial exploratory discussions have already started with Thames Water and they

have indicated their wish to cooperate with the Council and their ability to accommodate the approach set out in the draft strategy.

31. Summary of draft strategy and timetable

		Timescale
Formal consultation on current arrangements with Thames Water	Formally consult with those tenants affected by the High Court ruling and consider the outcome before deciding on the final course of action.	Second week of December to end January 2017
Short term changes to the contract	Negotiate a deed of variation with Thames Water to ensure that there are no future liabilities arising from the High Court ruling	January 2017 - April 2017
Formal Decision by Executive	Executive consider feedback from consultation and agree final strategy and actions	March 2017
Feedback to Tenants	Write to tenants letting them know the outcome of the consultation and the Council's final course of action.	March 2017
Refunds	Provide a refund to current Council tenants affected, by crediting their rent account. Any outstanding debt to the Council will be met before credits are made.	From April 2017
Notice of termination of current contract	Progress with giving six months notice of termination of the current agreement with Thames Water and agree a handover date based on alignment with billing periods	Notice given in April 2017
Former tenants	Invite former tenants to apply for a refund through the Council website. The invitation will be publicised through the website and local press release Any outstanding debt to the Council will be met before payments are made.	April 2017

Direct Billing with Tenants	Contract notice period expired with Thames Water and direct billing arrangements in place for existing Council tenants	October – December 2017
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Recommendation

It is recommended that the Executive:

1. approves the strategy in principle, as set out in the report;
2. delegates authority to the Director of Operations, in consultation with the Portfolio Holder for Housing, to negotiate a variation in the Thames Water contract to reduce future contract liability; and
3. receives a further report in March 2017 setting out the feedback from the consultation with tenants, a revised strategy reflecting this feedback, any further external legal advice received and recommending the action to be taken.

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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