



ADUR DISTRICT COUNCIL

Adur Joint Strategic Sub Committee
Date 15th June 2023

Key Decision [No]

Ward(s) Affected:All

New Leaseholder Service Charge Income Collection Policy

Report by the Director for Housing and Communities

Executive Summary

1. Purpose

1.1 As part of the Improvement Plan for Adur Homes a number of housing policies are being created, updated and revised to set a clear direction, standards and expectations for the service.

1.2 This report presents a new Leaseholder Service Charge Income Policy, aimed at providing a consistent approach to the collection of leasehold service charges and arrears. It seeks any comments from and approval from Members.

2. Recommendations

2.1 The Adur Joint Strategic Committee is asked to:

i) comment and approve the Leasehold Service Charge Income Collection Policy, attached as Appendix 1.

ii) delegate authority to the Director for Housing and Communities to make minor amendments to this policy, as required, in consultation with the Adur Homes Management Board.

3. Context

3.1 Adur District Council works to comply with the requirements of all relevant legislation and regulation in respect of collection of leasehold service charge arrears and where Adur District Council is the landlord, to provide a clear and robust process in the collection of service charge arrears that adheres to all relevant legislation and regulations.

3.2 This policy has been written in accordance with our Corporate Debt Recovery Policy for Adur and Worthing Councils, with a focus on developing a fair, consistent and sensitive approach to income collection, which works proactively with people that might be suffering from financial hardship. This new policy is presented for comment and agreement by Members of this Committee. The objectives of this policy is to:

- Reduce the current level of leasehold service charge arrears and maximise income to the HRA.
- Monitor and manage collection of leasehold service charges.
- Ensure procedures to enable consistent approach to maximise the collection of leasehold service charge to increase income and reduce the debtor balance.
- Ensure the leasehold service charge arrears policy incorporates the values of the corporate debt policy.
- Signpost leaseholders when required to relevant support and debt advice organisations such as Citizens Advice, National Debt line and Step change as well as provide support via our Proactive approach e.g. Telljo for those in arrears and experiencing hardship.
- Set out our contact options for leaseholders, letter, email, SMS text messaging, and phone call.
- Provide a consistent approach to engagement with leaseholders.
- Provide regular monitoring of current arrears levels and and process for taking action where necessary.
- Provide appropriate training to staff in the process for leasehold service charge arrears collection.
- Maintain documentation and records of correspondence sent to leaseholders in respect of charges and arrears.

4 Issues for consideration

- 4.1 The proposal is to adopt this policy and procedure to create a clear process for leaseholders and the leasehold team to collect and maximise payment of services charges.
- 4.2 An alternative option would be to outsource the collection of arrears to an external company. In the future officers could consider this, but procuring would take time to scope, tender and procure leading to additional debt accruing and could result in increased cost to the council.
- 4.3 If no action was taken on the leasehold service charge arrears, there would be a year on year increase in debt, with a detrimental effect on the HRA. If no recovery action was taken during a six year period, the debt becomes statute barred, unrecoverable and a bad debt that would require write off.
- 4.4 The proposal to create a leasehold service charge collection policy is being recommended to ensure a proactive and consistent approach for the recovery of leasehold service charges. The policy will provide the terms to maximise collection and income to the HRA and minimise the risk of bad debt.

5 Engagement and Communication

- 5.1 In developing this policy relevant housing, finance and legal staff have been consulted. The draft policy has been shared with the chair of the Leasehold Forum (Leaseholder) for their comments.
- 5.2 The process will be dealt with internally within the leasehold team. If an account requires legal action, this will be referred to our legal team.
- 5.3 The policy will set clear boundaries and expectations of leaseholders to pay service charge. If leaseholders are experiencing financial difficulty the leasehold team will discuss payment arrangements, signpost the leaseholder to an external debt advice service and support them via our Proactive work.
- 5.4 Any issues raised from this policy will be addressed by Adur Homes Leasehold Manager and a suitable solution identified, in line with our corporate debt policy. Once approved, the policy will be enabled by the leasehold team and relevant training provided. Any cases which require legal work will be raised with our legal team as and when required.

6 Financial Implications

- 6.1 The current arrears balance is in the region of £170,000. Implementing this policy will enable the service to effectively recover any debt and reduce the balance on the debtor account. The risk of writing off debts through statute barred legislation will

reduce as a result.

- 6.2 Policy for collection will enable KPI's to be set and provide revenue to the HRA which is essential to budget setting and achieving good service standards.
- 6.3 Enabling the prompt collection of service charges will reduce the financial impact on the HRA and support HRA budget management.

Finance Officer: Sarah Gobey

Date: 6th June 2023

7. Legal Implications

- 7.1 The Landlord and Tenant Act 1985 (as amended by the Common Leasehold and Reform Act 2002) states that a Landlord may only include costs in the service charge to the extent that they are reasonable.
- 7.2 Section 20 of the Service Charges (Consultation Regulations) (England) Regulations 2003 limit the amount of service charge that a Landlord can charge to £250 if the proper consultation processes have not been undertaken by the Landlord.
- 7.3 Under Section 111 of the Local Government Act 1972, the Council has the power to do anything that is calculated to facilitate, or which is conducive or incidental to, the discharge of any of their functions.
- 7.4 Section 3(1) of the Local Government Act 1999 (LGA 1999) contains a general duty on a best value authority to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.

Legal Officer: Andrew Mathias

Date: 30 May 2023

Background Papers

- [Corporate Debt Policy](#)
- Appendix 1: Leasehold Service Charge Arrears Policy
- [Equalities Impact Assessment](#)

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Sustainability & Risk Assessment

1. Economic

1.1 Thriving Economy is one of the four Missions identified in Our Plan and will become one of the key documents informing the direction and prioritisation of the council's work with regard to Adur Homes.

2. Social

2.1 Social Value

- The policy will facilitate engagement with leaseholders to discuss their arrears and provide an opportunity to increase their understanding of the collection process.
- Increasing income to the HRA will benefit our leaseholders and tenants as will contribute to improving our services and maintaining the homes in our portfolio.
- The policy will facilitate engagement with leaseholders and an opportunity to identify support needs where we can connect residents to appropriate services

2.2 Equality Issues

- The council is subject to the equality duty set out in section 149 of the Equality Act 2010. This duty covers the following protected characteristics: age, gender, gender reassignment, pregnancy and maternity, race, religion or belief, and sexual Orientation.
- In delivering housing services the council must have due regard to the need to:
 - i) Eliminate unlawful discrimination, harassment and victimisation
 - ii) Advance equality of opportunity between different groups
 - iii) Foster good relations between different groups
- The participative principle in Our Plan describes the council's commitment to providing truly inclusive services by listening to underrepresented voices, creating equal access and meeting our equality duties.
- The council's legal duties (Equality Act 2010) will inform the Development and delivery of the improvement plan, in relation to eliminating discrimination, advancing equality of opportunity and fostering good relations.
- The leasehold service charge collection policy will help identify leaseholders who are experiencing financial difficulty and signpost them to external organisations to receive financial advice as well as connect them to other services to support them with their

health and well being where required. Repayment plans will take account of income and expenditure and be set at an affordable rate.

2.3 Human Rights Issues

- The actions set out in the policy will help ensure Adur Homes' properties are safe and enable our residents, communities and neighbourhoods to thrive.

3. Environmental

- Thriving Environment is one of the four Missions identified in Our Plan and key actions include achieving net zero carbon, resilience to climate change and increased biodiversity by restoring natural habitats and minimising waste. The Leasehold Service Charge Collection Policy will help maintain consistent collection of funds into the HRA. This will enable Adur Homes to carry out maintenance and services to our housing stock resulting in improved levels of living for our residents.

4. Governance

- The governance will sit with the Housing Improvement Board

Leasehold Service Charge Income Collection Policy

1. Introduction

This document sets out our policy for leasehold income collection.

2. Purpose

2.1. Adur Homes must maintain an effective and efficient income service to ensure that leasehold customers pay rent and charges in accordance with their lease. Our approach in Adur District Council and Worthing Borough Council will be fair, consistent and sensitive to individual situations

2.2. We recognise that engaging with our leasehold customers, helping them to overcome financial problems and embedding a payment culture is the most effective method of income recovery. To do this we will:

2.2.1. Develop triggers and measures to provide an opportunity for proactive, early intervention and reduce the likelihood of the arrears increasing

2.2.2. Implement best practice for collecting and recovering debt to the Councils

2.2.3. Ensure that the debt has been raised correctly and in a timely manner

2.2.4. Make sure that residents and businesses are given invoices or bills setting out the charge, the basis of the charge, methods of payment and Council contact details

2.2.5. Where appropriate, agree payment arrangements with customers

3. Scope

3.1 This policy sets out our approach to the collection of leasehold income and the management of debt/ arrears.

3.2 It applies to all leasehold customers of Adur District Council who have a legal obligation to pay an income to the Council.

Ground rent – own the freehold of a property and charge a ground rent within the terms of the lease.

Service charge – Covers a leaseholder's contribution to services provided to the communal areas of a block or estate, defined within the lease which includes but not limited to estate management, cleaning, day to day maintenance of shared areas and management fees.

Debt/ Arrears – These are amounts owed to us, by a leaseholder for rent, services or major works charged for as defined within the lease.

5. Roles and Responsibilities

The Leasehold Team will be responsible for proactive early engagement and arrears collection.

6. Income Collection Policy

6.1 Leaseholder obligations

Leaseholders are responsible for ensuring any amounts due, defined within the lease, are made promptly following receipt of a demand for ground rent and service charges, as set out in their lease. Failure to pay any amounts due constitutes a breach of their lease. Leaseholders remain responsible for informing us of any financial difficulties they are experiencing which may affect their ability to pay amounts due, maintaining their payments and should engage with us to ensure that the arrears are repaid.

6.2 Payment

We will request payments promptly to minimise delays and leaseholders falling into arrears. We understand the value of using a range of preventative measures to help customers to pay and will minimise the use of enforcement action where appropriate. To enable us to do this we will:

6.2.1 provide leaseholders with clear and transparent information regarding their responsibilities, payment methods and support available.

6.2.2 promote a payment culture, highlighting the connection between payments and our ability to provide a quality service.

6.2.3 expect leaseholders to pay all charges in advance in accordance with the terms of their lease.

6.2.4 provide leaseholders with a variety of convenient payment methods.

6.2.5 monitor accounts to identify issues at an early stage.

6.2.6 work closely with leaseholders to ensure signposting to internal teams or external agencies where appropriate, identifying any additional needs our customers may have and referring them to appropriate support services as necessary.

6.2.7 identify any communication needs our customers may have and provide information in alternative formats and languages if required.

6.2.8 highlight the importance of paying all charges when due, the implications of accumulating arrears, and assistance that may be available. The consequences of accumulating arrears, as well as the support we can

offer to customers in difficulty.

6.2.9 provide a supportive environment where leaseholders feel able to discuss financial difficulties.

6.2.10 encourage leaseholders to inform us of any change in personal circumstances that may affect their ability to pay. New leaseholders will be asked to complete a direct debit mandate upon completion of sale. Payment Agreements will be made within the terms of the lease.

6.3 Advice and information

6.3.1 We will issue clear, annual statements to all leaseholders that will show service charges and ground rent amounts due. We will also provide additional statements on request.

6.4 Account Monitoring and Communication

6.4.1 If arrears accrue we will communicate with leaseholders in a variety of ways:

- letter
- email
- text
- telephone
- home visits

We will record and store their preferred method of contact and update this regularly and respect their preferred method of contact. We may also attempt home visits to speak to the leaseholder in person where necessary.

6.4.2 Our communication aims to inform leaseholders that they have arrears, encourage them to repay the debt, signpost them to internal teams or external agencies for support and advise them of any action we may take to recover the debt. We will keep records of all communication and correspondence with leaseholders regarding their arrears.

6.5 Payment difficulties

6.5.1 Payment arrangements will be reasonable and affordable to the leaseholder, taking into account the need to collect sufficient service charges to maintain services and lease obligations, the balance on the service charge account. Payment arrangements will be confirmed in writing.

6.5.2 Where the lease permits, we reserve the right to charge interest on any debt.

6.5.3 We do not offer our customers financial advice or debt counselling. Customers wishing to seek independent advice or debt counselling will be signposted to suitable internal teams or external agencies which can include the Citizens Advice, Money Advice Plus or StepChange.

6.5.4 It is the leaseholder's responsibility to keep Adur District Council updated of their financial situation if they cannot maintain their payments, even when receiving support from independent agencies.

6.6 Taking enforcement action

6.6.1 Enforcement action will only commence when all reasonable steps have been taken.

If a payment arrangement is not maintained or engagement with us ceases and arrears remain on the account, we will pursue one or more of the following enforcement options to recover the debt.

6.6.2 We will encourage customers to respond to correspondence from the Court and attend any hearings listed.

6.6.3 In all cases that are referred to court will refer to the guidance provided in the Ministry of Justice pre-action protocol. Pre-action protocol would allow 30 days before any civil action is undertaken.

Contacting the mortgage lender

6.6.3 We will contact the mortgage lender once we have established there are no other means of arrears recovery as detailed in Section. This step would not happen until after the 30 pre-action protocol letter had been sent to the debtor.

6.6.4 If the mortgage lender refuses to satisfy the arrears we will seek alternative enforcement action.

Civil Action

6.6.4 We may pursue arrears as a civil debt through the county court judgement.

Enforcement

6.6.5 We will not take court action without informing the leaseholder of our intention by serving a notice under section 146 of the Law of Property Act 1925. We will also inform the mortgage lender of our intention. Enforcement will be taken inline with the Council's debt policy.

6.6.6 Should we take further action we will follow the Commonhold and Leasehold Reform Act 2002, which states that proceedings cannot commence if the sum is less than £350 or has been outstanding for less than three years. We will add court fees and legal costs relating to the arrears where applicable under the terms of the lease.

6.6.7 Prior to taking legal action, any vulnerability or support needs paying particular regard to the Equalities Act, and refer leaseholders to relevant support agencies as appropriate.

6.7 Where the court has granted Adur District Council ownership of the lease, we will inform

the leaseholder of the decision and instruct the bailiff to gain possession.

6.7.1 Once the lease is sold, we will deduct any relevant expenses from the proceeds of the sale, for example outstanding service charges and legal fees. We will recover all internal and external costs associated with the property. If there are not sufficient funds to cover these costs, we will consider making a claim for the remaining balance and any outstanding debts.

6.7.3 If there are any proceeds remaining from the sale, we will consider returning them to the former leaseholder, based on the circumstances of the case.

6.8 Deferring payment following the death of a leaseholder

We may agree to defer payments of charges relating to a property which has recently been vacated following the death of the leaseholder until Probate is granted. Such agreements will be made at our discretion and will not affect our rights under the terms of the lease.

6.9 Deferring payment following a move to residential care

We may agree to defer payments of charges relating to a property which has recently been vacated following a leaseholder's move into residential care. Such agreements will be made at our discretion and will not affect our rights under the terms of the lease.

7. Confidentiality

We will treat personal data and information in accordance with our Data Protection Policy. We will seek the informed consent of customers with capacity (or advocates for customers lacking capacity) before asking for, accepting, or sharing their personal data. To support this, we will ensure that local arrangements about sharing data are in place, such as information sharing protocols.

8. Impact Assessments Equality

[EIA](#) has been completed.

- We are governed by a pre-court protocol including a proportionality assessment. We cannot take enforcement action without showing evidence we have followed this.
- Any mandatory action or eviction requests need to have an individual EQIA if there is any vulnerability or protected characteristic. DPIA assessment is not needed as the Policy does not refer to collection of additional sensitive information.

9. Review

This policy will be reviewed every three years and more frequently if changes in legislation, regulation or the service requires it. (Date of next review - April 2026).

10. References Related internal documents

• Other relevant policies and procedures will also apply, together with leases:

Policies:

- Corporate Debt Policy
- Complaints Policy
- Data Protection Policy
- Equality and Diversity Policy Legislation, regulation and guidance
Pre-action Protocol for Possession Claims Based on Rent Arrears, Civil Procedure Rules, Ministry of Justice, 2006

Legislation:

- Law of Property Act 1925.
- Leasehold Reform, Housing and Urban Development Act 1993
- Common and Leasehold Reform Act 2002
- Equalities Act 2010
- Landlord and Tenant Act 1985
- Landlord and Tenant Act 1987
- Housing Act 1996
- Data Protection Act 1998
- Human Rights Act 1998

11. Appendices

- First Reminder Letter
- Arrears Letter 1
- Arrears Letter 2