



## Major Works Payment Policy

|                |                           |             |           |
|----------------|---------------------------|-------------|-----------|
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| Staff affected | All staff in organisation | Issue date  | July 2016 |
| Lead officer   | Commercial Manager        | Review date | July 2018 |

## **1. Purpose**

- 1.1 Leaseholders are required to contribute towards the cost of maintaining the structure of the building and common areas under the terms of their lease. Contribution is made by paying a service charge. Where the service charge is payable for investment or large scale works then these charges are commonly referred to as major works charges.
- 1.2 This document describes our approach to recovering major works charges from our leaseholders.
- 1.3 We want all leaseholders to be aware of their financial and contractual responsibility to contribute to the costs of major works. We will encourage leaseholders to save towards these costs wherever possible to avoid payment problems in the future.
- 1.4 Failure to pay major works charges is a breach of the lease but we recognise that large bills for major works can cause financial hardship for some leaseholders.
- 1.5 We have committed to investing in our homes and communities following the stock transfer and so a significant number of our leaseholders will be required to contribute towards major works in the coming years.
- 1.6 Where leaseholders are unable to pay the charges for major works we will outline the options available and work with them to make sure that they can pay the charges in the shortest possible period that is appropriate to their financial circumstances.

## **2. References**

- 2.1 The policy has been drafted having regard to our vision and values, relevant legislation and best practice.

## **3. Responsibilities**

- 3.1 The Commercial Manager is responsible for ensuring this policy is adhered to through the development and application of robust procedures and auditable documentation.

## **4. Legal framework**

- 4.1 The lease is a contractual agreement between the leaseholder and the freeholder. The lease sets out the payment terms. Any deviation from these terms is a policy agreement not a contractual right.
- 4.2 Leaseholders have a legal right to be consulted where they will incur a charge of £250 or more for works. Their rights are set out in the Landlord and Tenant Act 1985 (as amended) and the Service Charges (Consultation Requirements) Regulations 2003. We are required to provide details of

estimated costs before placing orders for work. In practice this means that leaseholders will often be aware of these costs up to 18 months before receiving a demand for payment.

- 4.3 We will comply with the Consumer Credit Act 1974 (as required) when considering flexible payment terms.

## **5. Definitions**

- 5.1 A lease is a legal agreement which gives details of rights and responsibilities of both the leaseholder and the landlord.
- 5.2 The landlord is the owner of the building which in this case is divided into flats
- 5.3 A leaseholder is someone who has bought the right to occupy a flat from us, or previously Wycombe District Council, for a specified number of years.
- 5.4 A resident leaseholder is a leaseholder who lives at the leasehold premises and uses it as their main home.
- 5.5 A non-resident leaseholder is a leaseholder who does not live at the leasehold premises and does not use it as their main home. Often, but not exclusively, a non-residential leaseholder will sub-let the premises through a commercial arrangement.
- 5.6 A service charge is an amount payable under the terms of the lease as a contribution towards the landlord's cost of maintaining the building and common areas.
- 5.7 A major works charge is a service charge usually for costly investment works where payment is requested separately. This is to improve transparency of costs and also to allow payment on terms different to routine service charges.

## **6. Policy statement**

- 6.1 We will offer a range of payment options to leaseholders and enhanced options to resident leaseholders who live in the leasehold property as their home.

### **6.2 Standard payment method**

- 6.2.1 Where a lease requires a contribution to the cost of the works our preferred option is for leaseholders to pay their charge in accordance with the provision of their lease. In most circumstances this is within 21 days of payment being requested. However, in appropriate circumstances we will make alternative arrangements with leaseholders to spread the cost over a jointly agreed time period.

### **6.3 Financial hardship**

- 6.3.1 We will provide guidance to help those leaseholders in severe financial hardship become aware of the options available to help pay for major works. We understand that some leaseholders may not have any savings, or be eligible for assistance from the Department of Work and Pensions. They may also be unable to obtain a new mortgage, or loan from a reputable financial institution.
- 6.3.2 We have developed this major works payment policy to assist leaseholders in such circumstances.

### **6.4 Major works payment options**

- 6.4.1 Payment options available to leaseholders will vary depending on personal circumstances. Options include:
- Personal savings
  - Private finance (borrowing)
  - Service Charge loans from the HCA
  - Discretionary deferred payment
  - Voluntary charge on the property

### **6.5 Personal Savings**

- 6.5.1 We will encourage leaseholders to save towards the cost of major repairs. Where possible, as soon as we know that major works are to be carried out, we will carry out the required statutory consultation and write to leaseholders giving an estimate of the cost and their likely contribution. This is the most cost effective way of paying for both the leaseholder and us and one which we will promote most strongly.

### **6.6 Private finance (borrowing)**

- 6.6.1 We will advise those leaseholders without savings to obtain independent financial advice on taking out a private loan. Leaseholders may find adding the amount to their mortgage, or seeking a private loan to be the cheapest method of borrowing.

### **6.7 Service Charge loans from the Homes and Communities Agency (HCA)**

- 6.7.1 A leaseholder has the right to request a loan from the HCA to cover the costs of major works to the property demanded as part of the annual service charges, provided that:
- The leasehold property was purchased under the Right to Buy legislation (not the preserved right to buy or via a voluntary sale by the landowner).
  - The leasehold was purchased less than ten years before the date of the invoice for service charges.

- The amounts demanded for service charges in respect of major repairs and routine service charges are such that they qualify for a loan in accordance with HCA guidance.

6.7.2 We will provide up to date information from the HCA about this facility. The HCA publishes revised thresholds in March of each year using the Retail Price Index from January of that year. For the year ending 31 March 2016 the maximum loan is £37,670.

## **6.8 Discretionary deferred payment agreement**

6.8.1 Providing a leaseholder cannot access any of the above assistance methods we may offer discretionary deferred payment options for resident leaseholders. Non-resident leaseholders are not eligible for this discretionary assistance.

6.8.2 We will carry out an affordability assessment before agreeing deferred payments to ensure that the instalment payments can be made.

6.8.3 Deferred payment by instalment will be considered for amounts up to £2000 only, over a period of twelve months or less.

6.8.4 We will require the leaseholder to set up a Direct Debit to pay the major works charges in twelve equal instalments or less from the date payment is requested.

6.8.5 Failure to maintain deferred instalment payments will result in the total sum outstanding becoming due for immediate payment.

6.8.6 We reserve the right to secure these payments by means of a charge on the property in certain circumstances.

## **6.9 Voluntary charge on the property**

6.9.1 Where all leaseholders of the property are retired, have a disability (or are unlikely ever to work again), have no savings and no ability to obtain a loan from a reputable financial institution, and cannot afford deferred payments, we may consider a voluntary charge on the property. This charge will be secured against the property. Legal fees are to be paid by the leaseholder and will be rolled up and included in the loan.

6.9.2 Although the leaseholder will be able to opt to pay off the debt at any time, there would be no requirement to do so until the property is either sold, transferred in title, or if any of the initial leaseholders have not been resident in the property for a period of six months. We will allow this option only to leaseholders who would have no other option but to sell the property to pay for the major works charges.

6.9.3 We will only consider a voluntary charge for resident leaseholders.

6.9.4 The Director of Operations must approve any application for a voluntary charge.

## **6.10 If payment is not made**

6.10.1 If the leaseholder does not make payment as agreed, then we will pursue the debt in line with our homeownership arrears procedure and will consider options including:

- Recovery action as a civil debt via the courts.
- Seeking mortgagee's capitalisation of the debt.
- Securing a charge on the property via the courts.
- Seeking forfeiture of the lease (following a decision of the First Tier Tribunal).

## **7. Related Policies & Strategies**

7.1 The following policies and strategies are related:

- Asset Management Strategy
- Right to Buy Sales
- Leasehold policy
- Homeownership arrears procedure

## **8. Policy Review**

8.1 This policy will be reviewed every two years by the Commercial Manager unless there are material changes in legislation relating to management of leasehold premises.

8.2 Parties to be consulted on reviews of this policy include the following teams:

- Leasehold Interest Group
- Commercial Team
- Asset Management Team
- Finance Team
- Policy Group