Cabinet Member Report

Meeting or Decision Maker:	Cabinet Member for Housing Services
Date:	January 2024
Classification:	General Release
Title:	Fairer Westminster, Voluntary Service Charge loan major works service charge payment option
Wards Affected:	All
Policy Context:	The Housing (Service Charge Loans) Regulations 1992 S.I. 1708/92 ("the 1992 Regulations") enable Local Authorities to assist leaseholders by introducing alternative ways in which they may meet their service charge payment obligations under the terms of their lease
Key Decision:	Yes
Financial Summary:	Leaseholder contributions represent a significant source of capital funding within the HRA business plan. It is broadly assumed that 25% of the annual major works programme is eligible to be recharged and the corresponding income is therefore factored into the business plan. This works out at an average of £8.9m per annum and represents £266m of capital funding over the full 30-years of the plan.
Report of:	Strategic Director of Housing and Commercial Partnerships

1. Executive Summary

1.1 The last review of major works service charge payment plans was undertaken in January 2023. Following this the Cabinet Member for Housing Services extended the 60 month payment plan to 120 months (60 months interest free, with up to an additional 60 months, subject to interest). As part of this review a discretionary service charge loan option was also introduced enabling leaseholders to pay their major works service charge invoice using a legal charge against the property and to make payment over a period up to 25 years, subject to interest.

1.2 Major works service charges have risen significantly over the past 10 years with the requirement for extensive works to be undertaken, fire safety and building safety works. This combined with the cost-of-living crisis has increased the financial burden on leaseholders. The introduction of a voluntary service charge loan payment option will ensure that our payment options are affordable, sustainable and minimise hardship for our leaseholders. It is important to recognise that the Council will usually only be the lender of last resort, offering service charge loans only when other options have been explored and found to be unavailable to individual leaseholders.

1.3 As of the 1st of November 2023, no leaseholders have taken up the option of the 120-month payment plan, or the 25 year discretionary service charge loan payment plan. Most of the payment plans in place have taken advantage of the 60 months (interest free) payment plan.

2. Recommendations

2.1 That the Cabinet Member for Housing Services agrees to the introduction of the 'Voluntary Service Charge Loan' payment option for leaseholders.

2.2 The Voluntary Service Charge Loan will complement the existing payment plans available to our leaseholder and will allow a charge to be placed on the property. The capital sum and any interest will only be repaid when the property is sold (assigned). The fee to set up the loan and to register the charge against the property can also be added to the loan.

2.3 That the Cabinet Member for Housing Services agrees to the eligibility criteria (paragraph 4.6) and the recommendations from Finance (paragraphs 5.1 – 5.8) as to which bill range is sustainable.

3. Reasons for Decision

3.1 Given the number of high-value major works invoices now being received by leaseholders, the proposal to extend the major works payment options to include a voluntary service charge loan option, bolsters the support for our most vulnerable residents and those who may be subject to financial hardship by making payments by one of the current methods of payment.

3.2 This proposal provides Westminster's leaseholders with an additional payment option to meet their major works service charge liability and should have a positive impact on collection rates as well as further building the relationship with our leaseholders.

4. Background, including Policy Context

4.1 Westminster City Council manages approximately 9,022 leasehold residential properties. Approximately 50% of our leasehold stock is either sublet or has an alternative mailing address, which may indicate the property is sublet or a second home. Leaseholders are required to pay their contribution of the 'management charges' which include repairs, maintenance, and renewal of the common parts of the building. These costs are more commonly known as 'major works'.

4.2 On the 1st of August 2023, there were 5,069 major works invoices on our accounts, with a total invoice balance of £24,308,417.47. These balances are a combination of estimated service charges awaiting the final account adjustment (which may result in further debit or a credit) and final account invoices. The balances also reflect invoices in a payment plan and those yet to make a payment plan arrangement.

4.3 The major works invoice balances are broken down into the various ranges below.

Major Works Service Charge Balances 1 August 2023			
Range of Balances	(£) Total Value	#	%
£0.01 - £499.00	£ 305,897.45	1378	1.26%
£500.00 - £999.99	£ 511,666.25	689	2.10%
£1,000.00 - £1,999.99	£ 1,008,561.77	701	4.15%
£2,000.00 - £2,999.99	£ 895,102.41	369	3.68%
£3,000.00 - £3,999.99	£ 846,271.88	244	3.48%
£4,000.00 - £4,999.99	£ 778,300.74	175	3.20%
£5,000.00 - £9,999.99	£ 4,256,152.67	594	17.51%
£10,000.00 - £19,999.99	£ 8,818,094.09	676	36.27%
£20,000.00 - £29,999.99	£ 4,032,697.38	169	16.59%
£30,000.00 - £39,999.99	£ 1,554,277.36	46	6.39%
£40,000.00 - £49,999.99	£ 1,120,883.21	25	4.61%
£50,000+	£ 181,512.26	3	0.75%
	£ 24,309,417.47	5,069	100.00%

4.4 The Voluntary Service Charge Loan will complement the existing payment plans available to our leaseholder and will allow a charge to be placed on the property. The capital sum and any interest will only be repaid when the property is sold (assigned). The fee to set up the loan and to register the charge against the property can also be added to the loan.

4.5 The following terms will be applied to all discretionary service charge loans:

- Voluntary service charge loans will be granted for resident leaseholders only who meet the eligibility criteria.
- The principle for the policy relating to the Council's use of its discretionary power to grant a loan is that the Council is usually the lender of the last resort.
- The application process will require evidence from the lenders mortgage company of a refusal to grant further borrowing in the same sum of the major works service charge liability.
- In the event there is no mortgage held on the property, evidence will be required to evidence borrowing cannot be obtained by way of a personal loan.
- The loan will be secured by way of a legal charge on the borrower's property until the property is sold or assigned.
- The rate of interest will be variable at 1.5% above the base rate of the Bank of England.
- The rate of interest charged will be reviewed annually with finance to ensure the rate is commensurate to whatever borrowing rates we are achieving for the HRA as a whole.
- The current fee to cover registration and administration costs is set at £550 and will be reviewed annually.

- A redemption fee will be payable on final settlement of the loan and all further advances, if any. This is presently set at £100 but will vary over time.
- The borrower may repay the loan in full at any time without incurring penalties.
- The borrower may make additional capital payments from time to time so long as these exceed £100 per transaction.
- There must be sufficient equity in the property to secure the loan.
- All lenders consent to the charge being registered against the property.
- The Voluntary Service Charge loan option will not be made available where the property is owned by a company or owned by a housing association.
- Where the property is sublet, we will review the application on a case-by-case basis based on the eligibility criteria in paragraph 4.6

4.6 Due to the impact on the HRA business plan, the decision to grant a Voluntary Service charge loan will be on a case-by-case basis, based on the following eligibility criteria.

1. Invoice liability of £20k and above

2. Ability to pay – this will include a review of eligibility of the existing payment schemes, the ability to obtain external lending and a budgeting income and expenditure exercise.

3. Consideration of cases of extreme hardship.

4. Criteria eligibility and take up of the scheme to be reviewed annually with legal and finance, to determine the ability to extend the scheme forward to the 12 months ahead.

5. The Voluntary Service Charge Loan payment option will be the lender of the last resort.

4.7 At the commencement of the granting of discretionary and voluntary service charge loans, there is not a need for a mortgage officer currently. However, this will need to be reviewed annually determined by the uptake from our residents of these two payment options.

4.8 Mortgage software is required to hold and record the loans granted, to calculate the daily, monthly, annual interest and to produce the change of interest rate letters and annual statements. This process should not prevent the granting of the first few loans, which can be registered and recorded on a database, but the procurement of a suitable system is imperative to protect the council's fiduciary interests and to remove the risk of poor record keeping and local storage arrangements.

5. Financial Implications

5.1 Leaseholder contributions represent a significant source of capital funding within the HRA business plan. It is broadly assumed that 25% of the annual major works programme is eligible to be recharged and the corresponding income is therefore factored into the business plan. This works out at an average of £8.9m per annum and represents £266m of capital funding over the full 30-years of the plan.

5.2 The previous measures that were introduced to provide more favourable payment options for leaseholders largely impacted cashflow (i.e. leaseholders could pay back over a longer period of time). Ultimately these measures created a short-term dip in income before settling into a similar pattern of annual receipts. These measures therefore had very little impact on the capacity to fund capital within the business plan.

5.3 However, the measures outlined in this paper are much more long-term in nature. They still represent full cost recovery for the Council (given that loans will attract interest) but the length of time that is likely to pass before the charges levied on the property result in the repayment of loans is likely to be considerable (and in most cases outside of the 30-year life of the business plan). This means that a proportion of projected income from leaseholders will need to be removed from the business plan altogether. Ultimately this will reduce capital headroom for the HRA which has a corresponding impact on its ability to fund the existing capital programme.

5.5 Assessing the likely take-up of the proposed payment option is difficult, especially given that the take-up of the previous extension to leaseholder payment plans has been very low. However, a review of major works bills over the last 3 years has been used to give an indication of the proportion of income attached to bills across different value ranges (see below). On the basis that leaseholders would need to demonstrate that there was no other funding route open to them (including an assessment from financial institutions that they were not credit-worthy), a very low assumption of 3% has been applied to assess the potential impact. This equates to 1.5% of all qualifying leaseholder bills (given that it excludes resident leaseholders that make-up roughly half of the total).

5.5 The table below shows the expected reduction in HRA income over a 15- and 30-year period if the payment plan option outlined in this report was offered to leaseholders with bills that were larger than £20k.

Bill Range	**Proportion of LH MW Income**	**Estimated Take-Up of Payment Plan**	**Income Lost (15 years)**	**Income Lost (30 years)**
£20k+	53%	3%	£1.10m	£2.05m

5.6 Clearly the more bills that qualify for the payment plan proposals outlined in this paper, the greater the potential loss of income within the HRA business plan.

5.6 Based on the assumptions above, capital funding totalling £2m will need to be removed from the refreshed HRA Business Plan (which is due to be approved by Cabinet in February). The most recent iteration of the plan was right at the limit of available borrowing capacity over the first 15 years (with more available headroom over the second 15 years). The £1m profiled for the first 15-years will therefore need to be taken from the existing capital contingency.

5.6 In order to manage the level of financial exposure in the HRA Business Plan, it is proposed that this payment option be trialled as a pilot initially so that the level of need can be properly analysed. It will therefore be reviewed at the earlier time of 2 years or take-up hitting £1m. This will help to reduce the level of exposure in the business plan, and also allow a more accurate set of assumptions to be built into the plan following the review (which may result in a reinstatement of some of the capital funding that is being removed).

6. Legal Implications

6.1 The Housing and Planning Act 1986 amended the Housing Act 1985 to provide local authorities with the power to grant loans in respect of service charges. The legislation provides two service charge loan schemes: a mandatory code (The Right to a Loan) where the council must, upon request, grant a loan to cover the costs of larger service charges in respect of repairs; and a discretionary code which gives local authorities the power to grant loans either to help leaseholders who do not comply with the mandatory rules or to 'top up' mandatory loans which do not cover the whole amount of the service charge being demanded.

6.2 The Housing and Planning Act (1986) set down discretionary powers to grant loans in all other cases where the leaseholder (including their assignees) are liable under the terms of the lease to pay service charge in respect of repairs. The terms of a discretionary loan may be on such terms as the council may determine and must be secured as a mortgage on the flat. Originally there was no discretion as to the interest rate to be charged however the Housing (Service Charge Loans) (amendment) (England) Regulations 2000 gave local authorities freedom to set their own rates for discretionary loans.

6.3 The statutory instrument 1992/1708 (the Housing (Service Charge Loans) Regulations) came into force on the 17 August 1992. The regulations were aimed at two groups:

- (i) leaseholders who, despite adequate income, could not get a loan in the private sector because of negative equity or because their block was 'system built' and
- (ii) people who would not be able to secure a private loan

6.4 Schedule 16 of the Housing Act 1985 provides that the rate of interest shall be whichever is for the time being the higher of :

- i) the standard national rates; or
- ii) the applicable local average rate.

6.5 The standard national rate is the rate for the time being declared as such by the Secretary of State after considering interest rates charged by building societies in the UK and any movement in those rates. On 1 April 2009 the Standard National Rate of Interest was 3.13%.

6.6 The applicable local average rate as defined by Schedule 16 of the Housing Act 1985 and amended by Schedule 11 of the Local Government and Housing Act 1989 is calculated by adding 0.25% to the average rate at which the Council itself borrows.

6.7 The Council can in relation to leases which are within the tenth anniversary of the grant charge an interest rate that is higher of the standard or locally determined rate. In other cases, under Regulation 5 of the 1992 Regulations the Council has freedom to set its own interest rates for discretionary loans provided such rates are reasonable.

7. Carbon Impact

7.1 The decision will have no carbon impact.

8. Equalities Implications

8.1 The availability of extensive and inclusive payment options for leaseholders who are not able to obtain borrowing from their own banks will provide our residents with an alternative option and will prevent cases of further hardship or the loss of the ownership of the property.

8.2 Loans granted by Westminster City Council would not reduce opportunities for other lenders as the leaseholders concerned are unlikely to be able to afford commercial rates.

9. Consultation

9.1 Consultation is not required on the extension of the major works payment options. Once approved, notification of the new payment method will be published extensively through the appropriate communication channels.

9.2 However, it is recommended that we regularly review our major works payment options with our residents in the most appropriate forum(s) and the creation of a service charge payment options working party could be created to bring residents in the decision making process.

If you have any queries about this Report or wish to inspect any of the Background Papers, please contact:

Paul Halpin, Head of Leasehold, Income and Resident Engagement phalpin@westmisnter.gov.uk 023 8154 2663

APPENDICES

N/A

BACKGROUND PAPERS

N/A

NB: For individual Cabinet Member reports only

For completion by the **Cabinet Member** Housing Services

Declaration of Interest

I have <no interest to declare / to declare an interest> in respect of this report

Signed: ______________________ Date: 11/01/2024

NAME: **[Councillor Liza Begum]**

State nature of interest if any:

(*N.B: If you have an interest, you should seek advice as to whether it is appropriate to make a decision in relation to this matter*)

For the reasons set out above, I agree the recommendation(s) in the report entitled Fairer Westminster, Voluntary Service Charge loan major works service charge payment option and reject any alternative options which are referred to but not recommended.

Signed: ______________________

Cabinet Member for Housing Services

Date: 11/01/2024

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:

If you do <u>not</u> wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Director of Law, City Treasurer and, if there are resources implications, the Director of People Services (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.

Appendix A

Other Implications

1. **Resources Implications**

2. **Business Plan Implications**

3. **Risk Management Implications**

4. **Health and Wellbeing Impact Assessment including Health and Safety Implications**

5. **Crime and Disorder Implications**

6. **Impact on the Environment**

7. **Equalities Implications** – See section 13

8. **Staffing Implications** – See section 13

9. **Human Rights Implications**

10. **Energy Measure Implications**

11. **Communications Implications**

12. **Counter Terrorism and Security Implications** – See section 13

Note to report authors: If there are particularly significant implications in any of the above categories these should be