

Service charge collections procedure

Contents

Overview.....	2
Legislation and policies.....	2
Note on service charges.....	2
Key principles.....	2
General responsibilities of the collections officer.....	3
Model recovery procedure.....	3
Estimate invoices.....	4
Actual costs invoices.....	5
Dealing with disputes as part of the collections procedure.....	5
Management of collections action.....	6
Collections Process.....	6
The Mortgagee (Mortgage Company) Letter.....	7
Pre-Action Protocol for Debt Claims (PAP) - Letter of Claim.....	7
Litigation Action.....	8

Overview

This document outlines the procedure by which Lambeth carries out the collection of service charge debt.

Legislation and policies

The following statutory legislation is referenced:

- Landlord and Tenant Act 1985
(<http://www.legislation.gov.uk/ukpga/1985/70/>)

Note on service charges

Service charges are levied on homeowners to pay for services provided to a property, or to the estate upon which a property is situated. Most homeowners are leaseholders of flats in blocks where the council is a freeholder, although some freeholders on estates may also pay a 'service charge' under the terms of their transfer. Leaseholders' charges are governed by the terms of their lease, by the Landlord and Tenant Act, and by other statutory legislation.

Payment of service charges is a condition of the lease and non-payment is a breach of the lease's terms.

Service charges may include:

- Day to day or 'revenue' service charges. These are billed yearly and cover the cost of services like caretaking, cleaning, grounds maintenance and heating (if provided).
- Capital or major works service charges. These are levied from time to time to cover the cost of major works projects

Before the start of each financial year in April, the council will send homeowners an estimated service charge bill for day-to-day service charge costs that are expected to be incurred during the year. The council will then send a final account, showing the actual spend, within six months of the end of the financial year. This will take the form of an invoice where the spend was higher than estimated, or a credit note where the spend was lower than estimated.

The default payment option for day-to-day service charges is 12 equal monthly instalments commencing on 1st April. This is the payment schedule given in the lease. The council will maintain a variety of other payment options (see Appendix). Further payment options may be available for major works service charges, which may be large sums.

Key principles

- Each property will have a service charge account. This will consist of one or more invoices for yearly ('day to day') service charges, along with invoices for major works projects if these are payable. Any officer taking arrears action with respect to one invoice should consider whether the action should include other outstanding invoices unless there are mitigating circumstances.

- Service charge collection should always be carried out with reference to the terms of the lease or transfer, statutory law governing service charges and debt, and the council's own policies.
- Collections officers should always have regard to the homeowner's circumstances. They should ensure that any reasonable concerns and queries raised by the homeowner have been addressed. They should also ensure that homeowners' cases are treated consistently with respect to the options made available for them.
- A clear audit trail of any actions taken should be maintained.
- Where service charge payments are outstanding, the collections officer should make early contact with the homeowner to ensure the situation does not get worse. They should maintain contact with the homeowner if necessary.
- Initial contact should always incorporate:
 - benefit advice for those who are struggling to pay
 - details of the payment options available (given in the Appendix)

General responsibilities of the collections officer

- A collections officer is responsible for managing the service charge accounts of their portfolio and collecting any debt that is incurred. It is their responsibility to liaise with other departments within the council who may be involved with properties in their portfolio and the services provided to them. They are also responsible for ensuring that the homeowner is given adequate information about the charges they are expected to pay, and that any queries made by the homeowner are investigated.
- The collections officer should ensure that they are familiar with the terms of the lease or transfer of any property they are working on.
- Before taking any action, the officer dealing with the property should read the file and any information held on Information at Work or other electronic database.
- The officer should investigate any questions about the accuracy of the service charges before taking collections action. It is their responsibility to satisfy themselves that the charge is due and payable under the terms of the lease or transfer. Where there is any uncertainty, they should in the first instance refer the matter to their line manager.
- When acting, the collections officer should first check that the ownership information held by the council is accurate. If in doubt they should arrange for an Official Copy of the Register Entries ("office copy") to be obtained from the Land Registry. If details are found to have changed, they should suspend collections action until account details have been updated.
- The collections officer should keep copies of all correspondence, file notes and other relevant information on the property's electronic file.

Model recovery procedure

This procedure should be followed when there is neither payment nor a response after an invoice has been issued. Where a complaint has been made about either the quality or cost of the service or the validity of the charge, the officer should consult their line manager.

All letters should be dated and include contact details. Copies of any letters sent, responses or associated correspondence should be retained.

Estimated invoices

1. If an estimated invoice remains unpaid from a month of the date of the invoice, and there has been no contact from the leaseholder regarding either payment options or the quality or cost of the service, then the collections officer should send a first letter seeking payment. This should make no reference to legal action, but should include:
 - a. The invoice number(s) concerned
 - b. The outstanding balance(s)
 - c. A list of the services to which the invoice or invoices relate
 - d. A note that failure to pay is a breach of the terms of the lease
 - e. A list of the repayment options available for the type of charge
 - f. A request for a response within 10 days

2. If no response is received within 10 days of sending the first letter, the collections officer should send a second letter which must include:
 - a. A reference to the first letter (including the date it was sent)
 - b. The invoice number(s) concerned
 - c. The outstanding balance(s)
 - d. A request for a response within 10 days
 - e. A note that failure to pay is a breach of the terms of the lease
 - f. Confirmation that we will contact the mortgagee (homeowner's mortgage company) to make them aware of the amount of the debt if not paid within 10 days.

3. If no response is received within 10 days of sending the second letter, the collections officer should send a third arrears letter including:
 - a. The invoice number(s)
 - b. The outstanding balance(s)
 - c. A list of the services to which the invoice or invoices relate
 - d. A note that failure to pay is a breach of the terms of the lease
 - e. To advise that the Council will contact the mortgagee
 - f. At the same time the second arrears letter is sent, the collections officer should also send a letter to the mortgagee. This should advise them that there are arrears on the property's service charge account, stating the amount due, and advising that the council will take recovery action if the arrears are not settled within 10 days.
 - g. A note that the Council will be pursuing this debt in compliance with the Pre-Action Protocol for Debt Claims if payment is not made.
 - h. The collections officer should also send a letter to the property addressed to "*The Occupier*". This should advise of service charge arrears on the property and ask that contact is made.

4. If no response is received within 10 days, then the collections officer should send a Pre-Action Protocol for Debt Claims, Letter of Claim.
 - a. The Letter of Claim will show a table of all invoice number(s) in arrears and the outstanding balances, details of the service to which the invoice relates and confirm that the council will issue legal proceedings in the County Court for recovery of the debt without further notice.
 - b. The table may include the interest to be charged on each debt.
 - c. The letter advises that the homeowner must either make payment of the **full** outstanding amount immediately **OR** respond to the letter by completing the

enclosed Reply Form and Financial Statement Form within **30 days** of the date of this letter.

5. If the homeowner does not make payment and the mortgagee refuses to discharge the debt, the Litigation Team will review the case in full and decide on whether to commence legal action.

As part of this review process, the following may be considered:

- a. The file should be rechecked to ensure that the council is not aware of any other correspondence addresses and that the homeowner is living at the property. This may extend to checks of the Council Tax Records.
- b. Where a limited company is registered as the property's owner, the collections officer should check Companies House records to ensure that the company is still active and whether a correspondence address exists.

Actual costs invoices

Final account adjustments that result in a debit are due within one month of the date on the invoice.

If the additional amount is not settled in full then recovery action may take place on this new invoice in line with the above procedure, irrespective of whether the estimate for that year is subject to a separate payment arrangement.

Subject to the approval of their line manager, a collections officer may agree an extended period for settlement of particularly high final account adjustment. This should be considered on a case-by-case basis. Details of the agreement should be recorded.

Final account adjustments that result in a credit should generally remain on the account. The credit amount can only be refunded to the homeowner if a mutually acceptable payment plan is in place and the homeowner is not in arrears on any other service charge account, including major works.

Dealing with disputes as part of the collection's procedure

The council will investigate all reasonable disputes regarding service charges. The collections officer will deal with these disputes in the first instance.

As a general principle, the presence of a dispute does not mean that the homeowner can withhold payment of their service charges. However, if one element of the charge is in dispute, the collections officer may agree to withhold demands for payment of **that element only** until the dispute has been investigated.

When investigating a service charge dispute the collections officer should contact the other departments involved directly and must not simply give contact details for the homeowner to try and resolve the dispute themselves.

If the homeowner continues to refuse to pay the charge after no grounds have been found to make an adjustment, the collections officer should consider whether to refer the file directly for legal action. This should be discussed with their line manager to review the dispute up to that point. A test should be applied as to whether the action would likely be successful in terms of the lease, the reasonableness of the charges, the likelihood of a counter claim and the timing of the invoice.

In general, legal action will only be considered when all other avenues have been exhausted.

Management of collections action

Collection rates are a key performance indicator. Collections and caseload will be monitored by line managers within the collections team, reporting to the Senior Management Team.

Collection statistics will be analysed each month for significant trends on area, contract and individual bases.

Areas of underpayment will be discussed with the line managers and individual officers concerned and an appropriate plan put in place to improve collection rates, if necessary.

Responses from collections officers should be periodically checked to ensure quality and guidance should be given if required.

Collection Process

Leasehold/freehold properties are split into portfolios by geographic area. Each collection officer manages their own portfolio and is tasked with the collection of arrears in accordance with the covenants of the lease/transfer.

The geographic areas are:

- ARR1 – Streatham
- ARR2 – Norwood
- ARR3 – Clapham
- ARR4 – Brixton
- ARR5 - North Lambeth
- ARR6 – Stockwell & Vassall
- ARR8 – TMO's

The arrears process consists of 6 stages of recovery. When an account goes into arrears, letters are produced via an automated arrears process.

The process consists of:

Arrears Letter 1

This letter is produced when an invoice goes into arrears and payment is not forthcoming in accordance with the payment terms stipulated by the lease agreement. The letter advises the owner of the debt to contact the Council within 10 days of the letter to settle the debt or to discuss a payment plan.

Arrears Letter 2

This letter is produced when no contact has been made, or payment received to clear the arrears outlined within the Arrears Letter 1. The letter outlines that non-payment constitutes a breach of lease and should payment or contact not be made within 10 days then Council intends to contact their mortgagee and inform them of the breach.

Arrears Letter 3

This letter is produced when no payment or contact has been made by the owner, despite our previous attempts to contact them via the Arrears Letter 1 & Arrears Letter 2. The letter advises that in these circumstances the Council is obliged to contact their mortgagee to inform them that their borrower is in breach of your lease. The letter also advises that should payment or contact not be made within 10 days the Council will be pursuing the debt in compliance with the Pre-Action Protocol for Debt Claims.

The Mortgagee (Mortgage Company) Letter

Early disclosure of documents and relevant information can help to clarify or resolve any issues in dispute. The Courts encourage early engagement and communication between the parties, including early exchange of sufficient information about the debt.

The mortgagee Letter is sent to encourage early engagement and communication between the parties, and to enable any relevant parties to resolve the matter without the need to start court proceedings. If legal proceedings are necessary, the mortgagee Letter supports the efficient management of proceedings that cannot be avoided.

The letter is generated at the same time as the Arrears Letter 3 and is sent direct to the mortgagee. The letter notes that they hold a valid mortgage against the property and outlines the arrears and breach. It affords the mortgagee the opportunity to make payment on their borrower's behalf to clear the arrears and avoid any legal action from being taken against the owner, which may incur interest and legal costs.

We will only contact mortgagees as a last resort, and when our previous attempts to contact the owner are unsuccessful. We inform the mortgagee of a breach of lease as they hold an interest in the property by way of a secured charge (i.e., the mortgage) which may ultimately be impacted by legal action, (for example, a claim for forfeiture of the lease, application for charging order etc).

Pre-Action Protocol for Debt Claims (PAP) - Letter of Claim

If no payment or contact has been made and/or the owner and the mortgagee decline to settle the debt, then a Letter of Claim is produced.

The Letter of Claim outlines the payment requirements in accordance with the covenants of the lease agreement. It outlines all the invoices in debit and Council's right to charge interest on that debt. It also states that non-payment may result in a county court judgment being registered, requiring them to pay the outstanding sum at the time of the claim, plus interest and costs.

The Letter of Claim will contain the following insert documents:

- . Choosing the best way to pay.
- . Admittance Form.
- . Reply Form.
- . Financial Statement Form (Income & Expenditure).

Should the homeowner dispute the costs, then the Reply Form affords them the opportunity to submit details of their dispute to the Council within 30 days from the date of the letter.

Litigation Action

If no payment or contact has been made by the homeowner, and following the issue of the above correspondence, our Litigation Team will consider commencing legal action against the owner to recover the debt, plus interest and costs. This may result in a county court judgment being registered against the homeowner.