

Board 3 November 2009

Leasehold Valuation Tribunal Recommendations

Report by Chief Executive

Update

1. Background information

In November 2008 YHN was challenged by a group of 22 leaseholders at St Ann's Close in Battlefield regarding various aspects of their lease terms and service charges. The key areas of challenge were as follows:

- The practice of recharging pooled service charges rather than charges to block level
- Heating Charges for district heating
- Major Works – standard of workmanship
- The practice of holding an annual amount of £50 in advance for painting
- The standard of cleaning in communal areas
- YHN's policy of levying a reduced service charge for ground floor properties which were self contained from the communal areas.

Although the Leasehold Valuation Tribunal determined that the majority of YHN's service charges were reasonable, they did make a number of recommendations which were reported to Board in February 2009.

This report provides Board with a progress update on each of these actions.

Appendix 1 shows the progress against each of the LVT actions.

2. Issues and concerns

- 2.1 YHN has made good progress against the recommendations however the main outstanding concern relates to the un-pooling of service charges. Considerable work has already been carried out on this and although most of the charges have been un-pooled there are still some charges for certain blocks with communal lighting which are not clear on the FAMIS accounting system. Finance are currently working with the energy centre to identify the cost of supply to these blocks. This means that when the 2009/10 actual charges are issued in July next year an adjustment will be made to reflect the true charge.
- 2.2 The other charge which is still pooled is the Concierge charge. An apportionment exercise is underway to identify costs to block level based on staff rotas and amount of time spent at each block. The risk with this is that the robustness of the calculation methodology could be open to challenge however this is an interim solution to get best fit costs until the Concierge Review is implemented and block costs fully evidenced.

There are currently 198 properties where the charges for Concierge are pooled and 256 where the charges for Communal lighting are still pooled. Although this is being progressed as quickly as possible it does leave YHN open to further challenge through the Leasehold Valuation Tribunal.

3. Next Steps and Future Progress

- 3.1 By the time the actual accounts are issued for 2009/10, YHN will hold fully un-pooled costs for all leasehold property.
- 3.2 Finance are also working on producing a statement of account for each block which would show the breakdown of block charges down to each individual property. It is expected that legislation will be introduced in future that will make this a statutory requirement when issuing service charge invoices.
- 3.3 With regard to amending leases for consistency, consideration also needs to be given to the cost of implementing this verses the risk of challenge at the LVT. The due proportion is the proportion of service charge the leaseholder is expected to pay out of the total block charge. This is normally the block charge divided by the number of units in the block. Where the due proportion in existing leases are inaccurate the charges are being calculated to what the due proportion should be, which was the methodology the Leasehold Valuation Tribunal used for some of the inaccurate leases in the St Ann's Close case. The assumed due proportions will be in place by April 2010.
- 3.4 The actual cost in officer time, legal support and resources and also the application fees to the LVT are likely to vastly outweigh the risk of challenge over the due proportions. It would be likely anyway that the LVT would rule that the charges were reasonably calculated now that they are un-pooled to block level and we would obviously argue that we had followed their practice of using an assumed due proportion where the leases were inconsistent.

4. The Business Implications

In this section please describe the business implications.

Mission and Strategic Objectives: Compliance with the lease terms and LVT recommendations contributes towards 3 star excellent services and ensures that working practices are legally compliant.

Value for money/efficiencies: Recovering un-pooled costs will ensure that full and accurate costs are recovered from Leaseholders without subsidy from the HRA.

Resources (financial, property, technological or human): A considerable amount of staff time and resource would be needed to formally change the existing 325 leases that are inconsistent. Consideration needs to be given to whether or not this is a cost effective exercise as discussed in section 3.3.

Impact on services/performance: The decision to re-introduce full service charges for ground floor properties has been received unfavourably by those leaseholders it has affected as it has increased their charges by 75%. This means that there has been a significant rise in complaints following invoicing this year.

Outcomes for tenants/leaseholders: The Leasehold Valuation Tribunal ruling over charges for ground floor properties has meant that charges have risen considerably for Concierge for these leaseholders. We will not know the full impact of unpooling until we have cost information for all of the blocks but inevitably some charges will rise and others will fall.

Risk (reputation, relationship): Whilst some of the estimate accounts for this financial year remain un pooled there is still a risk of challenge through the Leasehold Valuation Tribunal. This would be likely to attract negative press publicity.

Legal: Where service charges are still pooled this is against the lease terms and there is a risk of further LVT challenges. There are also implications of introducing a new lease as legal staff will require briefing and training to implement it.

Equality and Diversity: Complying with the LVT recommendations means that all leaseholders are treated fairly in accordance with their lease terms.

Stakeholder Involvement/consultation: Leaseholders have been advised of the outcome of the Leasehold Valuation Tribunal and how it affects them in communication through the Leasehold newsletter, website and direct correspondence relating to individual issues.

5. Recommendations

Board is recommended to make any relevant comments on progress being made with the Leasehold Valuation Tribunal recommendations.

Background papers

Board Report 24 February 2009: Leasehold Valuation Tribunal Next Steps

Contact Officer:

If you have any questions about this report that you would like clarifying before the meeting, you can contact Jeanette Johnson Leasehold Manager by telephone on 0191 2787724 or email jeanette.johnson@yhn.org.uk

Appendix 1

Item	Recommendation	Progress	Status
Painting Fund	The LVT said that the lease did not allow us to hold a fund in advance for painting	All leaseholders who paid into the painting fund have now had the money refunded to them	Complete
Cleaning Service	The LVT reviewed photographic evidence provided by the leaseholders at St Ann's Close and determined that a reduction of 3% had to be applied to the service charges for concierge for the 3 years in question.	The reduction has been applied to all of the accounts in question for the years 2006/07/2007/08 and 2008/09.	Complete
Ground Floor Properties	The LVT overturned Boards decision to offer ground floor leaseholders a reduction in their service charges. This was originally implemented because ground floor leaseholders received a greatly reduced level of service for concierge and many lived in self contained units without access to the communal areas. The LVT reviewed the lease and determined that these properties were liable for an equal share of service charges as the upper floors.	Full service charges have now been reintroduced for leaseholders who live in ground floor properties.	Complete
Outdated Lease Clauses	The majority of clauses for existing leases are legally unable to be changed however the Leasehold Manager has worked with a specialist consultant to	The new draft lease has been passed to Newcastle City Councils legal team for review and implementation.	Awaiting agreement and implementation from NCC

	<p>draft a new lease for new Right to Buy sales.</p> <p>This new 'catch all' lease would allow greater power for the management of properties. More importantly it would allow enforcement of gas servicing, electrical checks and other safety related issues.</p>		<p>Timescale - Progress update expected Dec 09.</p>
Due Proportions	<p>Around 325 lease due proportions are inconsistent. These can only be amended through individual block applications to the LVT.</p>	<p>This is a lengthy and admin heavy process however the charges are being un-pooled to the correct proportions in the meantime. This was the methodology used by the LVT when they had to determine charges for inaccurate leases for the St Ann's Close case (i.e. they apportioned the charge based on what a correct lease would say.)</p>	<p>Inaccurate leases have all now been identified however cost v's risk exercise to be carried out in conjunction with NCC legal team as discussed in section 3.3</p> <p>Timescale - April 2010</p>
Pooling	<p>Although in this instance the LVT determined that the majority of charges were reasonable they did state that the current method of calculating charges was legally against the lease terms and must be changed. They did acknowledge that YHN were working towards this.</p>	<p>Significant progress has been made and the majority of charges are now un-pooled. Outstanding charges include around 250 properties with communal lighting and also the concierge charge due to the review.</p>	<p>Work is underway with the energy centre to identify the remainder communal lighting charges. A time recording exercise is underway to identify block charges for Concierge as an interim measure whilst the review is being implemented.</p>

			Timescale - Will be fully implemented by time of actual billing in 2010
District Heating Charges	The Leasehold Valuation Tribunal said that this charge should not be classed as a service charge and must be invoiced separately. They also stated that they did not have the jurisdiction to determine the reasonableness of this charge.	The charge is now invoiced separately from the service charge and a metering programme is underway to ensure that residents only pay for what they use.	Complete
Decent Homes Workmanship	The LVT inspected the work at St Ann's Close and found that some of the work was substandard and there were other quality/service issues regarding the contractors. They stated that this should be taken into consideration at point of invoicing.	Assets and Programme Manager has met with Straightline who have agreed to forgo the profit on this particular scheme. This means that leaseholders will be offered a monetary discount on their major works charges to compensate for the poor level of service. Negotiations are taking place between YHN and Straightline to agree a suitable amount.	Complete

