

This Report will be made public on 23 January 2024

Report Number **C/23/75**

**To:** Cabinet  
**Date:** 31 January 2024  
**Status:** Key Decision  
**Responsible Officer:** Gill Butler, Chief Officer – Housing  
Andy Blaszkowicz, Director Housing & Operations  
**Cabinet Member:** Councillor Rebecca Shoob, Cabinet Member for Housing and Homelessness

**SUBJECT:** SERVICE CHARGES 'DE-POOLING' PROJECT FOR COUNCIL HOUSING – HOUSING REVENUE ACCOUNT (HRA)

**SUMMARY:**

This report outlines the recommendation to 'de-pool' the service charges for council tenants, as well as properties sold under the RTB<sup>1</sup> and other property sales, and implement an accurate, fair, and transparent charging regime across all service charge elements. Making the charges equitable and transparent in the charging structure is in line with good practice according to the government's policy - Statement on Rents for Social Housing 2018, Social Housing Regulation Act 2023, and RICS<sup>2</sup> service charge management code (3<sup>rd</sup> edition).

**REASONS FOR RECOMMENDATIONS:**

Cabinet is asked to agree the recommendations set out below in order to ensure that the council housing service is able to continue to deliver against its priorities by ensuring recovery of service charges due to the HRA. The two main issues that this report aims to address are:

- Lack of transparency in the current service charges.
- The disparity between what the services cost the HRA and income currently generated through service charges.

**RECOMMENDATIONS:**

1. To receive and note report C/23/75.
2. To agree initiation of the service charge de-pooling project, of which the first stage is to ensure we can accurately breakdown and apportion all service chargeable items per block and unit.
3. To note that the current standard tenancy agreement does not have adequate provision for service charges. The project will therefore include updating the agreement by variation to ensure that a new agreement is in place before the de-pooling project is concluded.

<sup>1</sup> Right to Buy.

<sup>2</sup> Royal Institution of Chartered Surveyors

- 4. To note that this project will take approximately 2 years to undertake and fully implement and will require significant consultation. It is proposed that the new charging regime would commence in the 2026/27 year. A draft project timetable can be found at Appendix 1.**
- 5. To note that officers will ensure reporting back to Members at key points during the project to the appropriate committee to ensure effective oversight.**
- 6. To note that consultation will be a key theme throughout the project. Early engagement will be made with all the tenants and private owners that will be affected by the project. Ward Members will be included in consultation plans, as will the Strategic Tenants' Advisory Panel (STAP), to ensure that residents are supported throughout this process.**

## 1. BACKGROUND

- 1.1. A service charge is a charge collected to pay for services that's undertaken to the communal parts of a building and/or estate. Service charges are not the same as rent and are bound by different legislation. Rent is expected by the government to cover a charge for the occupation of a home including its general management and, in many cases, its repair, whilst service charges such as: communal facilities, car parking, grounds maintenance, communal area heating, cleaning, communal area fire detection, etc. are additional and regarded as a service charge cost.
- 1.2. Council tenants currently pay a fixed / 'pooled' service charge. Leaseholders and shared owners pay a variable service charge. Fixed service charges are set at the start of the financial year, the charge needs to be an accurate projection of the cost of the services over the coming year. A profit isn't allowed under the legislation, a deficit would mean that social rents are subsidising the services which also wouldn't be correct. Variable service charges are different. An estimated cost is set at the start of the service charge year with a final account based on the actual cost for the period being produced within 6 months after the end of the period. The legislation for fixed service charges and variable service charges is different, however, the principle of billing and collecting the correct level of charges is the same.
- 1.3. Tenants who are in benefit of services that are undertaken to the building and/or estate, currently pay a weekly service charge in addition to their rent. Current charges range between £0.06 to £10.84 per week (see 3.1). However, charging this way is commonly referred to as 'pooled' charges. Pooled service charges are when the cost of a group of services are added together, then quite often increased (or decreased) annually by a percentage, (sometimes in line with rent). Calculating charges this way creates a disparity between the cost of the service and what tenants are required to pay.
- 1.4. Due to the nature of pooled service charges, the amounts charged are not specific to the services provided to an individual property. This was a common practice among local authorities; however, it is not ideal nor good practice, as charges should be directly linked to the services that the tenant is in benefit of, and most local authorities have now moved away from this process. The lack of clear apportionment results in residents not paying the correct level of service charges, others may be paying for more than the cost of the service they receive i.e., a ground floor flat may not use the lift whereas a 3rd floor flat will. Any shortfall in the cost is currently being subsidised by the rental income. A study into pooled service charges conducted by the Chartered Institute of Housing in 2013, estimated that there were sixty local authorities in England that had not undertaken a de-pooling exercise. This figure has significantly decreased in recent years as most have now undertaken a de-pooling exercise and is now estimated to be only 5% of stock owning councils.

The Chartered Institute of Housing identified part of the benefit of de-pooling charges: *"By de-pooling, a landlord can ensure that its tenants receive services at a fair price. In addition, there is the potential to increase*

*the quality of the service provided. This could lead to improvements in resident satisfaction and provide an additional opportunity to engage with tenants about other issues, when consulting on service standards.”*

*“When staff understand the services that are being charged for and the agreed standards for them, they can more easily ensure those services are provided and that customers are kept satisfied.”*

- 1.5 Since the introduction of the government’s reforms to social rents in 2002, many local authorities have de-pooled their service charges. The paragraphs below highlight some learning points from other local authorities that have already carried out a de-pooling exercise:
  - 1.5.1. Consultation with residents is regarded as the key to a successful project. The way in which consultation is undertaken can be tailored to fit the characteristics of the audience. Online consultation through a portal, (F&HDC have Housing Online), which allows housing services to communicate with the residents directly, seems the most popular form of consultation. However, a more hands-on approach with consultation may be required with the residents of sheltered schemes and more vulnerable residents, who may not as easily understand the changes.
  - 1.5.2. Ensuring that the current systems have been set up to be able to deliver efficient, reliable, and accurate data administration through the correct software is also a key factor in the ability to deliver a successful project. Implementing the F&HDC NEC housing system service charge module will allow the housing team to utilise the system that’s already in place to achieve that goal.
  - 1.5.3. Management of the services that are delivered to ensure residents are getting value for money. This also includes ensuring detailed transparency of the charges and how they are communicated with the residents in most LAs experience has been an important part of the project both during and after it has been completed.
- 1.6. The current F&HDC charges levied are not clear to the tenants. The housing service receive a number of enquiries, complaints, and FOI<sup>3</sup> requests each year from tenants who want to know exactly what they are paying for. Due to the charges still being pooled, the documentation that is sent to tenants about their charges is lacking in any form of detail and it’s understandable that tenants would want to know what they are paying for.

The Social Housing Regulation Act 2023, sets out that providers need to be more transparent in relation to the charges and the costs incurred in managing, repairing, and maintaining the buildings and estates where tenants live.
- 1.7. Preliminary work on service charges has also highlighted that not only residents of flats are benefited by services, but there are a number of houses that also benefit from services that are provided, e.g., grounds

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<sup>3</sup> Freedom of Information

maintenance. The tenants in those properties are not currently charged a service charge.

- 1.8. Along with the tenanted houses (noted in 1.7. above) the council have sold a large number of houses over the years (between 1980-81 and 2021-22, 2313 properties have been sold with approximately 2100 being freehold houses). Some of those houses were sold with a service charge clause in the lease, which allows the council to charge those residents a service charge for the maintenance of the estate where the property is situated. Currently none of those residents are being levied a service charge.
- 1.9. Leasehold service charges are currently already de-pooled and are required to be de-pooled via the legislation that governs them. However, there are several services where the data is not up to the standards that it should be, such as grounds maintenance, where we are often not able to determine which areas have received a service on particular dates and what level of service was provided on that date. This is because the grounds maintenance team use manual methods of recording works which doesn't give the level of detail needed to accurately apportion works by block and unit. The de-pooling project will help to increase the standard of the data allowing for a better understanding of the full costs that the HRA incur with the management of the buildings and estates and enable us to pass these costs on accurately to the tenants as well as leaseholders.
- 1.10. The HRA is also responsible for the management and maintenance of a number of pumping stations and water treatment/sewage plants within the district, mainly on the Romney Marsh. These stations/ plants were not adopted by the local water supplier, and following further investigation cannot be as they do not discharge into a mains sewer. The properties serviced include 92 private and 62 Council owned properties. The lack of clear service charge management for these buildings and facilities is evident. The HRA budget is currently subsidising this service to predominantly private properties who are outside the scope of the council housing stock. For the 2023/24 charging year this equated to £6,055.08. There is no provision within the charges to establish a reserve fund to allow for future remedial works to the sewage facilities.

## **2. REGULATORY REQUIREMENTS**

### **2.1. Central government advice**

The Ministry of Housing, Communities and Local Government (MHCLG, now the Department of Levelling up, Housing and Communities) state that local authorities should consider apportioning service charge costs to individual homes. It is recommended that charges be de-pooled because this makes the charging structure equitable and fair for all.

MHCLG did not make de-pooling compulsory but approximately 95% of local authorities and Registered Providers nationally have now de-pooled their charges.

### **2.2. Service charges legislation**

The Landlord and Tenant Act 1985 (as amended) sets out the basic rules for service charges. It defines what is considered a service charge and sets out requirements for making sure costs are reasonable and for landlords to consult leaseholders before entering into any agreement for work or services which would lead to a service charge.

Section 18 (1) of the Act defines a service charge as ‘an amount payable by a tenant of a dwelling as part of or in addition to the rent:

- a) which is payable, directly, or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord’s costs of management; and
- b) the whole or part of which varies or may vary according to the relevant costs.
- c) The costs of the services, repairs, maintenance, improvements, insurance, and management must be reasonable’.

### **2.3. Social Housing Regulation Act 2023**

Part of the Social Housing Regulation Act 2023 mentions that providers of social housing must be more transparent. The exact nature of what providers must make transparent and how the transparency needs to be communicated with tenants isn’t currently clear, nor has the regulator yet explained how the new consumer regime will be measured and monitored.

However, it’s expected that providing financial information regarding the costs incurred in managing, repairs and maintaining the buildings and estates, will be required to be provided to tenants. As mentioned previously, how this information should be provided to the tenants isn’t yet clear, however, the de-pooling of service charges will ensure that the information regarding the individual cost the tenant is required to contribute towards the service delivered to them is transparent and accountable.

## **3. FINANCIAL SUMMARY**

3.1. The current amount of pooled service charges which are levied against the councils’ tenants annually is approx. £419,500.00 (current 2023/24 charges). This is excluding the Intensive Housing Management (IHM) fee levied to those in Independent Living, (sheltered schemes for older people), that have an on-site staff presence to assist them with their health, safety and wellbeing. This figure also excludes sewage charges, and charges for the Lifeline/ Telecare service, (separately applied to Independent Living and some ‘age designated’ general needs properties).

3.2. A preliminary calculation of the what the annual service charges for the councils’ tenants after the de-pooling project is complete indicate the cost to be up to £685,000.00. Please note, this a conservative estimate of potential income without the accurate cost of grounds maintenance to the majority of the estates and based on poor utility data. With accurate data, the potential income would be greater. In the HRA business plan we have estimated that the potential additional income due to the HRA as from 2026/27 would be £400,000.

- 3.3. The cost projections made under 3.2. above are also without the additional income through the service charges for the tenants who live in houses with services provided, nor those residents who bought a house under the RTB and are still in benefit of services provided by the HRA.
- 3.4. The preliminary calculation of what the income would be after the de-pooling project is complete is based on known costs for the 2022/23 financial year. Variances to the actual costs each year would directly relate to the charges the tenants would be required to pay. For example, if the cleaning at a block increased by 5% per annum, the charge the tenants would pay would be equal to the 5% increase. Likewise, if the caretaking increased by 2%, then the tenants would pay an increase of 2% for that service. This would allow for greater accuracy and transparency for all services and charges.
- 3.5. Until the de-pooling project is completed, officers are not able to predict how much each tenant will be asked to pay, but there are likely to be those that see an increase and those that potentially see a decrease. Members at that time may want to consider a phased approach to implementation and, or other options such as capped charges. However, as stated previously until the apportionment work is completed this level of detail cannot be provided.

### 3.6. **Clarity of service and service charges**

There have been difficulties at F&HDC over the years in accurately collating service charge information. The primary reason for this issue is that the data that makes up service charges isn't broadly used other than for a limited number of buildings/estates where leasehold properties are situated. The two biggest areas of concern currently are grounds maintenance and utilities.

- 3.6.1. The HRA is recharged a lump each year for grounds maintenance to areas of HRA land. However, it is not currently possible to break down that cost on an estate basis. This is currently a high priority issue for leasehold service charges as the cost leaseholders are asked to contribute toward the cost of grounds maintenance is not based on the true cost of that service. The housing service is currently working closely with the grounds maintenance team to rectify this issue with a time management exercise currently being undertaken and also developing a service level agreement to be agreed. Both these items will ensue that the housing service will understand what the cost of the grounds maintenance service is on an estate level and have a set standard for the grounds maintenance that is provided to the residents.
- 3.6.2. Utilities appear to have been an historic issue, with incorrect charging/missing data, and a lack of utility meter information across the stock. This has led to a number of issues including high usage, incorrect billing (continual estimated billing), and unmonitored usage. This issue will be tackled using a two-pronged approach, updating of meters to smart meters and the use of robust software to track usage.

This approach will ensure that the data is correct in terms of billing and also effectively manage the utilities in a more proactive way.

- 3.6.3. FHDC also supply utilities to certain flats (particularly within the Independent Living schemes). Currently there is no individual metering which leads to incorrect assumptions of usage and cost. The housing Compliance Team are currently looking at several different metering options to address this issue.
- 3.6.4. Over the last few years there has been a number of high-profile cases: Jones v London Borough of Southwark [2016] EWHC 457 (Ch) & Royal Borough of Kingston-upon-Thames v Moss [2019] EWHC 3261 (Ch), which brought the spotlight on social housing providers who provide water services to individual tenants. Both local authorities were found guilty of breaking the legislation that governs the recharging for water and sewage. Both councils had to repay back millions in overcharging to residents (London Borough of Southwark repaid £28.6 million). Due to the uses around individual metering, it's unclear under the current system how the tenants' charges relate to the actual costs of the service. Therefore, this will be a priority part of the project.
- 3.7 There is also an issue of scaling up apportionment, monitoring, and administering service charges. Currently de-pooled service charges are only calculated for leaseholders (some 200 properties), and this work is maintained largely on manual systems. The payments are then managed via the council's finance system EFinancials. However, this does not allow the housing team to be proactive in collecting and chasing bad debt. If we were able to manage service charges using the NEC Housing management system, this would make the service charge management more efficient and effective. It would also allow the Housing Income Officers to be engaged with recovering service charge debt as well as rent arrears and former tenant arrears. Part of the de-pooling project will therefore include the development of the service charge module in the NEC housing management software.
- 3.8 The current tenancy agreement does not have adequate provision for service charges being de-pooled. The Neighbourhood Management team are currently updating the agreement to ensure that a new agreement is in place before the de-pooling project is concluded. The new agreement will have adequate provision for service charges. This will be a separate project that will run concurrently with the de-pooling project over 2 years.

#### **4. IMPACT AND RESOURCES**

- 4.1 The impact increased charges will have on the tenants is unknown at this stage. Although Housing Benefit and subsequently Universal Credit can be utilised to pay a proportion of the charges, (some claimants will be entitled to 100% of the cost of the charges). The council do not have a thorough enough record to be able to accurately understand the impact of the increases fully yet. This is due to the migration from Housing Benefit (HB) to direct payment of Universal Credit to the claimants. Therefore, this will be a key part of the project to identify the impact for different groups of



tenants and consultation will be key to introducing any increases, supporting vulnerable residents, and advising them on ways to pay their service charge.

- 4.2 The NEC housing management system currently benefits from a service charge module which the council already holds the license for. However, the module has never been set up so is not currently utilised. A timeframe to set up and implement the service charge module is thought to be between 6-9 months. This has been factored into the draft project timetable.
- 4.3 De-pooling the service charges will have an impact on several key service areas including housing finance, IT systems, and income recovery, as well as the housing management and delivery teams. These teams are and will be part of the project:
  - 4.3.1. The housing finance team are responsible for collating the raw data from invoices etc. The basic duties for collating the information are currently undertaken because they're needed as part of the leasehold service charge calculations. However, the amount of data needed to be collated would increase. The finance case officer has estimated that they would need approx. 3 months to collate the data. This is primarily due to the finance case officer having other tasks to fulfil alongside housing.
  - 4.3.2. The IT team currently upload the tenants' service charges onto the system. The current charges consist of 4 elements to upload. The de-pooled charges consist of 13 elements. The IT case officer has estimated that the uploading of data would not be too much of an additional task. However, the initial set up of the system to account for the service elements would take approx. 3-6 months utilising the current system. Utilising the service charge module will streamline the process, however the initial set up of the service charge module may take between 6-9 months.
  - 4.3.3. The income recovery team collect the tenants rent and service charges and chase up any arrears. It is expected that an additional estimated £380,000.00 per annum to be collected would have an impact on the team. The team now have a predictive software tool, NEC Account Analytics, which has proved useful in identifying and supporting tenants to pay their rent and this could be used for service charge recovery also should the NEC service charge module be used for monitoring service charge income.
- 4.4. **Point to note – Management Fee:** the management, (including collating data, IT provision, and income collection), of the service charges is self-funded. Any costs that are incurred in connection to the management of the service charges can be recharged by way of a service charge management fee. Currently no service charge management fee is included within the pooled service charges. A flat fee of £220.00 per annum is included within the leasehold, shared ownership, and HRA commercial property service charges. It is proposed that a similar fee, based on the cost of managing

the tenants' service charges, would also be applied to tenants in line with best practice and legislation.

- 4.5. Due to the size of the project, it is recommended that it be undertaken in two separate phases. Phase 1 will contain the bulk of the de-pooling centering on the service charges for the blocks and estates. Phase 2 will include the service charges for the houses which have been sold under the RTB, tenants who live in houses on estates, and the pumping station/ sewage works properties.
- 4.6. Alongside both phases finance and IT considerations will be a key part of the project. The project will also have a robust consultation and communications plan to ensure tenants (and leaseholders) understand what and why the council is changing the way service charges are calculated and charged.
- 4.7. There has been a substantial amount of work already undertaken with the project. However, there's still a lot more to do. The basic parts of the project are in place and will be further developed in 2024/25 (and 25/26) with a view to being able to start implementing the new charging regime in the 2026/27 year.

## 5. OPTIONS AND RISKS

5.1. The following options have been considered:

- 5.1.1. **No change in current calculation method.** No change in the current calculation method would be the easiest option in terms of the amount of work and resources required to complete this project. However, this option would mean failure to adhere to Government guidance and best practice, it would also lead to possible challenges in the future regarding transparency of charges, which may result in a change needed at a later date, including possible backdated costs being awarded. It would also mean no increase in income due to the HRA which will help fund priorities, as well as new build and acquisitions.
- 5.1.2. **De-pooled service charges with a phased rollout** starting 2026/27 over a further 2 or 3 years - This would allow residents additional time to plan the probable increase in charges. However, this option will be more time consuming and increase the administration involved with processing the charges. Depending upon if the resident is claiming housing benefit, the charges may be paid as part of any entitlement they have, so will not be an issue (Housing Benefit Regulations 2006 & *Universal Credit Regulations* 2013). Also, even though we will be communicating the changes with the residents, there will likely be some form of confusion over a phased rollout. This is always an issue when phasing increases to any charges.
- 5.1.3. **De-pool service charges in one go** commencing 2026/27. This is the recommended option and ensures we have clear and transparent charges without the increased administration and confusion of a phased rollout. It would mean that we are adhering to the government's recommendations and best practice for tenants' service charges, and with the regulations for leasehold service charges. This

option is recommended in both the HRA Business Plan (agreed by Cabinet on 13.12.2023) and in this report.

5.2 This is a summary of the perceived risks:

| Perceived risk  | Seriousness | Likelihood | Preventative action  |
|---|-------------|------------|--|
| Timescale and resources to complete project not sufficient.                     | High        | Medium     | Draft project plan across 2 years. Project team in place.  |
| Not able to effect de-pooling of service charges and collect income due to HRA. | High        | Low        | Consultation and communication plan. Feedback to Members at key points during the project to gain appropriate committee agreement. |

## 6. CONSULTATION

- 6.1. As part of the project, engagement will be made with all the tenants, leaseholders, and shared owners that will be affected by the de-pooling project.
- 6.2. Ward Members will be included in consultation plans as will the Strategic Tenants Advisory Panel (STAP), to ensure that residents are supported through this process.
- 6.3. A 7-8 month period has been allowed for consultation with residents to include a handbook/ leaflet, contact/ coffee mornings (particularly with IL scheme tenants), with all feedback received being responded to.
- 6.4. Further consultation for stage 2 of the project with private owners of ex-RTB houses, tenants of houses on estates, and the owners of properties effected by the pumping station/ sewerage plants will be required. The 2<sup>nd</sup> phase of the project will commence immediately after the 1<sup>st</sup> stage has completed.

## 7. IMPLICATIONS

- 7.1 **Legal Officer's Comments (NM)** - The legal implications are covered within the body of the report.
- 7.2 **Finance Officer's Comments (LW)** - All financial implications are outlined within the body of the report. Financial impact will be assessed as the project progresses.
- 7.4 **Diversities and Equalities Implications (RP)** - There are no equality and diversity implications directly arising from this report. The de-pooling of service charges is designed to implement an accurate, fair and transparent charging regime across all service charge elements. An extensive consultation will be undertaken with tenants, as well ward members, and the Strategic Tenants Advisory Panel will ensure that any concerns raised regarding proposed the changes will be taken into consideration. EIA will be completed.
- 7.5 **Climate change Implications (OF)** - There are no climate implications arising from this report.

## **8. CONTACT OFFICERS AND BACKGROUND DOCUMENTS**

Councillors with any questions arising out of this report should contact the following officer prior to the meeting.

Gill Butler  
Chief Officer, Housing  
Email: [gill.butler@folkestone-hythe.gov.uk](mailto:gill.butler@folkestone-hythe.gov.uk)

Richard Parker– Leasehold Management Senior Specialist  
Email: [Richard.parker@folkestone-hythe.gov.uk](mailto:Richard.parker@folkestone-hythe.gov.uk)

## Appendix 1

### De-pooling service charge project draft timeframe:

| Task   | Timeframe                       |
|--|---------------------------------|
| <b>Initial overview of charging structure and known costs undertaken previously.</b> |                                 |
| Service charge matrix completed  | Completed                       |
| Review matrix data   | June 24 – Sept. 24              |
| Report to CLT  | Nov. 23                         |
| <b>Tenancy agreement review to allow service charge contributions.</b>               |                                 |
| Tenancy Agreement update (provisional timeframe)                                     | Oct. 23 - March 25              |
| <b>Grounds Maintenance project</b>   |                                 |
| Review time management plan  | Oct. 23 – Feb./March 24         |
| Agree site times and costs   | March 24 – Sept. 24             |
| <b>Utilities</b>   |                                 |
| Review site meters   | Sept. 23 – Nov. 23              |
| Contact supplier re upgrade meters (possible budget for initial meters)              | Nov. 23 – Dec. 23               |
| Discuss cost and formulate a project timeframe                                       | Jan. 24 – Feb./March 24         |
| Communal meter replacement project   | TBC possible Apr. 24 – March 26 |
| <b>NEC service charge module</b>   |                                 |
| Implementation of service charge module.   | TBC possible Apr. 24 – March 25 |
| <b>Resident engagement - Explain what is de-pooling, why, how, etc.</b>              |                                 |
| STAP presentation  | Apr. – May 24 (ongoing)         |
| Tenant leaflet/information booklet   | May 25 – Jul. 25                |
| Contact/coffee meetings  | Aug. 25 – Sept. 25              |
| Feedback evaluation  | Oct. 25 – Nov. 25               |
| Engagement mop up  | Dec. 25 – Jan. 26               |
| <b>Use actual cost data for 2024/25, to form charges 2025/26</b>                     |                                 |
| Data finalised and prepared  | Jun. 25 – Aug. 25               |
| Data apportioned to block and estate on system                                       | Aug. 25 – Sept. 25              |
| Charge capping (if appropriate)  | Sept. 25                        |
| Increment calculation  | Sept. 25                        |
| Data upload (pending final decision on charging in 26/27 budget setting process.     | Feb. 26                         |