

Cambridge City Council: Briefing Paper on Rents and Service Charge Recalculations 2024

To support Executive Decision 24/URGENCY/HSC/1 by Cllr Gerri Bird, Executive Councillor for Housing 26.2.24

1. Background

- 1.1 Social and Affordable rents have been regulated by government for many years, and subject to various change in legislation and guidance.
- 1.2 The Regulator of Social Housing's remit has been extended to include Council Housing provision. Councils who own and manage stock will be subject to inspection by the regulator from April 2024.
- 1.3 In light of this, officers began reviewing regulated activity, in preparation for increased oversight. They became aware of housing providers where rents had breached the Rent Standard. Initial investigations suggested two areas of concern. Legal advice was sought. Exec Members were updated on the issues.
- 1.4 The two areas of concern identified were:
 - a) Failure to reduce affordable rents as required by government from 2016 – 20 and rent review errors resulting from displaying service charges separately from the rent.
 - b) The way in which service charges had historically been set and displayed in social rented homes
- 1.5 The first issue (Affordable Rents) was fully investigated in late 2023. The impact was reported to Housing Scrutiny Committee on 25 January 2024; provision was made in the HRA BSR for the financial impact. The Exec Councillor (Housing) delegated powers to recalculate rents to the Director of Communities.
- 1.6 This paper relates to the second issue: the way in which charges were set and displayed from 2004 to 2024. It supports a recommendation to the Executive Councillor for Housing to recombine gas and electrical / mechanical maintenance charges into rent; and to delegate powers to recalculate rents where required.

2 Description of the Issue

Service Charges

- 2.1 In 2004, following the government Rent Restructuring Guidance, and a consultation exercise involving tenants and members, the Council de-pooled

service charges from rent. This included charges for gas maintenance and, in a limited number of cases, building electrical and mechanical maintenance. These were then charged separately. This was deemed reasonable as not all homes had gas central heating, or the communal equipment requiring mechanical and electrical maintenance. The charges were for servicing and maintenance and not connected to the supply of utilities. "Service charges" have been displayed separately on rent statements.

- 2.2 Following legal advice, the Council has established that these charges should properly be shown as rent, as they are a Landlord Obligation. It is clearer for tenants for these to be included in the total rent figure. The recommendation is therefore to include these charges in rents in future.
- 2.3 Some other items may continue to be shown as service charges, where they relate to something that is not a landlord's responsibility, e.g. communal cleaning

Overcharging

- 2.3 Due to the complexity of rent setting, some tenants have been overcharged in previous years, or could be overcharged from April if rents are not recalculated. The reason for this is that each property has a "Formula Rent" set by government. Rents charged may not be more than Formula Rent, unless the 5% rent flexibility is applied, which is not currently the case at Cambridge City.
- 2.4 Initially, Formula Rents set in 2002 were significantly higher than actual rents. From 2002 to 2014, Government rent convergence policy expected actual rents to be increased by more than inflation, to move them towards Formula. From 2016 – 2020, rents were decreased by 1% per year, in line with government policy; and then subsequently allowed to rise at 1% more than the set inflation figure until 2023 when they were capped at 7% nationally and 5% locally.
- 2.5 The Council has checked rents every year and capped any that reached Formula Rent. Where tenants paid gas or electrical/ mechanical maintenance charges, these were charged on top of rent. The failure to properly include the maintenance charges in the rent means that some tenants have paid more than target rent.
- 2.6 For other tenants, their rent is not close to Formula Rent, so they have not been overcharged at any point.

- 2.7 For tenants who have had gas central heating installed during their tenancy, and a service charge added on top of rent, they will have been overcharged.

3 Advice sought

- 3.1 The Council sought initial legal advice from Trowers and Hamblins (T&H), Housing law specialists, and subsequently from Cornerstone Barristers. This paper is based on careful consideration of that advice.
- 3.2 The Council has also sought the advice of the Regulator of Social Housing, The Regulator has been informed as a proactive engagement, with the Council choosing to self-refer rather than wait for an inspection. As at 5 February 2024, the outcome of this is unknown, but a response is expected. In due course.

4 Proposed Action (Item for decision)

- 4.1 The Council will recombine all gas and electrical or mechanical maintenance charges into rent. It will reduce rents which are more than Formula Rent for the property. The proposal is to recalculate so all rents are correct from April 2024.
- 4.2 For tenants who had central heating installed during the tenancy, and a resultant rent increase, the charges will be removed, and overcharges calculated and refunded.
- 4.3 The Council will examine individual rent accounts to determine which have been overcharged in previous years. A detailed refund scheme will be developed and published in Summer 2024.
- 4.4 It is not possible to begin the refund process until rents have been recalculated and, as it is administratively very complex, it will take many months to process all refunds. Current tenants will be given priority in a refund scheme, and the Council will make advice available to tenants.

5 Impact of this Decision

- 5.1 Reducing rents which have been (or were due to be) charged at above Formula Rent, will reduce the income to the Council's Housing Revenue Account for the coming year 2024/5, and for all subsequent years where income has been modelled from the existing baseline. The amount of the reduction will be reported to Housing Scrutiny Committee once the individual calculations (which this decision authorises) have been completed.

- 5.2 Refund payment to current tenants will have an impact in 2024/25. Refunds to previous tenants may also have an impact in the following year(s). These refunds will reduce the Council's available resources and increase the need to borrow money for essential works to tenants' homes.
- 5.3 An evaluation of these impacts will be reported to Housing Scrutiny Committee, and the Medium-term Financial Forecast updated as soon as possible. This will not be before June 2024.

6 Other Options Considered

There are no realistic alternative options that are legally valid and fair to tenants.

7 Addressing the Impact on Tenants

- 7.1 The Council will provide advice and information to support tenants affected by this issue. The impact on tenants will be:
- **No tenants will owe the Council more money as a result of this issue**
 - Tenants who previously paid gas and electrical/ mechanical maintenance charges separately will have a clearer rent statement
 - Some social rent tenants will have their rent re-set at a lower level than it would otherwise have been, from April 2024.
 - Some tenants will be entitled to refunds of overcharges – but only where they paid their own rent (rent paid by HB has to be refunded to the DWP). These will be processed in 2024.
- 7.2 Advice will be provided to tenants in individual letters, and in briefings to tenant representatives. All affected tenants will receive a letter in March explaining the impact on their rent. There will be advice on the Council website, and available from Housing Officers as well as from the contact centre.
- 7.3 The work to reset rents and to ensure that rents do not breach target or formula rent will include;
- Reviewing target rent calculations to ensure they are correct, with resulting calculations rounded annually to the nearest penny
 - Removing any reduction in target rent for the non-existence of gas heating where this now exists
 - Applying the exceptions to target rents for sheltered housing in April 2016 and in temporary housing (HMO's) from April 2016 to April 2019
- 7.4 Some previous tenants will also be eligible for refunds. Once accounts of current tenants have been resolved, the Council will contact those previous tenants for whom it holds contact information, if they are eligible, and will

produce details of a scheme for other previous tenants to find out whether or not they are affected.

8. Further Updates and Decisions

There will be an update to Housing Scrutiny Committee in March and June, with the latter including proposals for the operation of the refund scheme, as well as information about the financial impact of this issue.

The HRA Budget and Medium Term Financial Strategy will need to be amended to take account of reduced rental income, and the cost of refunds, once these have been calculated. Due to the need for individual account-level work, this is not yet available.