

	<p align="center">Cabinet 19th July 2021</p>
	<p align="center">Report from Strategic Director, Community Well Being</p>
<p>Rechargeable Repairs Policy</p>	

Wards Affected:	All
Key or Non-Key Decision:	Key Decision
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
No. of Appendices:	<p>Three:</p> <p>Appendix 1: Draft Rechargeable Repairs Policy</p> <p>Appendix 2: Equality Analysis</p> <p>Appendix 3: Consultation Outcome</p>
Background Papers:	None
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1.0 Summary

- 1.1 The purpose of this report is to present a new Rechargeable Repairs Policy for review. Housing Management do not currently have a policy in place to recharge former and current tenants and leaseholders of Brent Council for responsive repairs, service charge and void works as well as the financial

recovery of garage repairs, household clearance, vehicle removal and garden maintenance, which result directly from their action(s) or negligence.

- 1.2 The primary objective of the policy is to discourage wilful neglect and/or abuse, rather than being punitive. Having this policy in place will contribute to the effective maintenance of Brent Council's housing stock as well as related spend as rechargeable repairs do have a significant impact on expenditure.
- 1.3 The ability to recharge residents who are negligent or cause intentional damage will assist in changing behaviours as residents will be held to account for their actions.
- 1.4 Once approved, an awareness campaign will be launched to ensure all tenants, leaseholders and elected members become aware of the policy.
- 1.5 We acknowledge that some people are currently struggling financially and now may not seem the best time to introduce a policy such as this. However, the majority of people do look after their homes and not only do we want to encourage them to keep doing so, we do not believe it is right that they pay for those who do not.
- 1.6 Residents were given an opportunity to engage with the consultation but the response was poor. This is not surprising, as we would expect to see a higher interest in policies residents feel are punitive and/or detrimental to them. What the policy does however, is provide officers with an additional tool with which to address wilful damage and neglect in Council properties. On this basis, we would not propose any further consultation.

2.0 Recommendations

2.1 Cabinet is asked to:

- 2.1.1 Note the contents of this report including the results of the resident consultation exercise and the Equality Impact Assessment
- 2.1.2 Approve the policy for implementation.

3.0 Background

3.1 It is normal practice for social landlords, such as Housing Associations and Local Authorities, to have a recharge policy in place. This is important to achieve value for money. We must manage our homes and tenancies effectively and achieve value for money by ensuring:

- We minimise the cost of carrying out work, which is not our responsibility.
- We recharge the costs back to those responsible, where we know who they are, rather than the current situation where every tenant and leaseholder being responsible.
- That we chase those who do not pay, following the Council's debt recovery process.

- We enforce tenancy and lease conditions consistently.
 - That we have a clear audit trail for our customers, should they refute the recharge.
- 3.2 Brent Council's Housing Management Team dealt with in excess of 38,000 repair works orders in financial year 2019-2020. The cumulative cost of these works orders was £11m (inclusive of the Price per Property contract payments Brent Council make).
- 3.3 Out of the total orders raised, 4,819 works orders were exclusions, which means the repair works are not covered by fixed contract payments to repairs contractors.
- 3.4 Based on a sample testing by officers, it is estimated that 386 (8%) works orders arise directly because of damages caused by tenants. The average cost per work order for exclusions was £362. This gives a potential to recover £0.14M from residents.
- 3.5 Examples of works that will be rechargeable are:
- Garden clearances / removal of items from communal areas
 - Rectifying unauthorised alterations to properties e.g. removal of a load bearing wall.
 - Replacements for damaged internal doors (except when they are related to Domestic Violence or a vulnerability).
 - Excessive and premature damage to the property, including to kitchens and bathrooms.
- 3.6 Regarding the above example of property clearances at the end of tenancies, tenants are expected to leave the property in a reasonable condition, with all their personal belongings removed from the premises. In reality the Council's voids team undertake extensive clearances following the end of tenancies. It has been calculated that the Council spent about £100K on void clearances in 2019/20.
- 3.7 The total estimated rechargeable amount for voids is £0.1M plus excessive day-to-day repairs of £0.14M, totals £0.24M. These are funds that could cover some of the income loss from rent payments or contribute to savings, which will bring the HRA reserves to a more reasonable level. Alternatively, these are funds that could be spent on other essential works, such as:
- 40 Kitchen renewals (approximate unit cost of £6,000) or,
 - 80 Bathroom renewals (approximate unit cost of £3,000) or,
 - 80 full rewires (approximate unit cost of £3,000) or,
 - 120 boiler renewals (approximate unit cost of £2000).
- 3.8 Although the recovery of cost is important, the primary objective of this policy is preventative i.e. to discourage wilful damage and neglect and thereby prevent the cost of addressing them.

- 3.9 The intention to introduce this policy has been mooted at TalkBack sessions with residents and indications are that residents will welcome this policy, as it will reduce service charge expenditure for damage caused in communal areas and encourage responsible behaviour, plus adherence to tenancy/lease conditions.
- 3.10 For the policy to be successful, we have to ensure we recognise residents who may not have deliberately or wilfully created one or more of the rechargeable situations above e.g. damage resulting from domestic violence or mental illness. We will ensure that we provide appropriate support, rather than create any extra burden in these circumstances. As part of our response to the lockdown, we have identified and now have more regular contact with many of our residents who may need support. Our records will be updated so we can be confident that the policy will not be inappropriately applied.

4.0 Rechargeable Repairs Policy

4.1 The policy sets out the Council's intention to recharge former and current tenants and leaseholders of Brent Council for responsive repairs, service charge and void works as well as the financial recovery of garage repairs, household clearance, vehicle removal and garden maintenance, which result directly from their action(s) or negligence. Section 4 of the policy sets out when the Council will consider recharging residents and are summarised below:

- When a resident has not completed works in line with their tenancy agreement (such as garden clearances) or when they have been formally asked to complete work (such as removing items from a communal area).
- When a resident has completed unauthorised alterations and where further alterations need to be made to return the property to Brent's void standard.
- When a tenancy ends due to a resident moving and items are left in the premises and are cleared at a cost to the Council.
- In the event of a tenancy ending because of death, the estate can be recharged for any clearance, neglect or damage when it is deemed appropriate. This will only be done where there is evidence that the estate can meet the cost.
- Repairs that become necessary as a result of negligence or abuse. In cases of accidents, a decision will be made on a case-by-case basis.
- Excessive and premature damage to internal doors, kitchens and bathrooms.
- Graffiti in communal areas.

- 4.2 The work will be recharged to the resident at cost, which is detailed in section 5 of the policy, plus a 15% administration fee. The administration fee is to cover the resource used to consider and process recharges.
- 4.3 The Housing Management Service will accept appeals to the charges. Appeals will be considered by a more senior officer than the one who initially assessed the charge. This can be managed within existing resources, as we have estimated under 400 cases a year and 10% appeals. Appeals can relate to whether the calculation of the charge is correct and whether it is reasonable to apply the charge in a particular circumstance. Existing resources will administer the policy as they would be involved in commissioning the repairs or services in any event. Appeals should be decided within four weeks.
- 4.4 Appeal decisions are final. Tenants can make complaints relating to appeals but as is the case with other appeal processes, the complaints procedure can only consider administrative issues (such as, was the appeal considered within a reasonable time scale, was all the relevant evidence considered, etc.), not the substance of the appeal itself.
- 4.5 This Rechargeable Repairs policy is a new proposal, and requires implementation of processes at an operational level. The housing service need to ensure systems are able to distinguish between repairs costing data recorded in systems and repairs considered as recoverable from residents, so that it enables accurate charging and monitoring of cost.

5.0 Consultation

- 5.1 Following the Lead Member's decision to consult on the policy and procedure document, the document went for resident consultation on 19 November 2020, until 30 December 2020.
- 5.2 This consultation included information on the website, a link in housing management officers' email signatures and engagement with resident associations.
- 5.3 By 27 November 2020 there had been no responses, and by 4 December there had been only one response. Therefore, a decision was taken to extend the consultation by two weeks (until 13 January 2021) and to promote the consultation more widely on social media and a second round of engagement of resident associations. In addition, the details of the consultation were included in Brent's Your Voice newsletter.
- 5.4 In total, seven responses were received by 4 Jan 2021, despite the extended consultation period and the increased promotion of the policy across different platforms.
- 5.5 Upon reflection, it was determined that the results of this consultation were not viable, which may be because of the nature of the questions asked.

- 5.6 A further consultation exercise was undertaken in February 2021, this time using a focus group. The discussion points and questions asked in the Focus Group were broader and open-ended. This enabled residents to discuss their views in a more informal setting, which allowed us to gain more insight into their honest opinions and concerns.
- 5.7 Seven Brent Residents attended the Focus Group. All seven residents are members of Brent Resident Associations. There were six tenants and one leaseholder present at the meeting.
- 5.8 Resident Consultation Questions and Summary (all comments referred to are appended in Appendix 3).
- 5.9 Five discussion points informed the Focus Group. Overall, the resident attendees were supportive of the Policy. The responses detailed in the survey results are close quotes from the attendees. Analysis of the comments indicates that those who disagree, are basing their views on perception of the Council and its services, rather than a consideration of what the Council is attempting to achieve by introducing this policy and procedure. The detailed results of the following five discussion points are detailed in Appendix 3. The general findings are as follows:

1. The principle of recharging residents. Do you agree or disagree with the principle of recharging residents?

The residents generally supported the Policy but suggested that the implementation should be sensitive to the particular circumstances affecting the particular household.

2. Should residents receive a reduced service if there are outstanding recharges? If so, what form could that take?

The residents were in overwhelming support of this. They also suggested possible financial penalties.

3. When should exemptions from recharges be valid? Under what circumstances should Brent waive recharges?

The residents suggested those households with mental health issues, older people, low income families and those with young children.

4. Are there any recharge items listed that you did not agree with?

The group advised that there should be no recharge for rectifying poor quality workmanship from Council contractors. They also suggested that residents could perhaps recharge the Council if outstanding repairs were left unattended.

Whilst pertinent, these two issues should be managed by the Council effectively following the Contract Administration procedures. In addition,

residents already have existing statutory rights to apply to Court to compel the Council to comply with their legal repairing obligations.

5. Are there any recharge items that are not listed that you think should be included?

Fly-tipping was mentioned as a possible recharge, and has been incorporated.

5.10 The consultation exercises demonstrated that there has not been a high level of interest in the Council's proposal to launch the new Rechargeable Repairs Policy. However, the revised consultation did achieve good insight into resident's views. Generally, the residents are supportive of the policy, save for a few caveats referred to above.

5.11 There were some objections, but these seem to be based on personal experience of services provided to individuals, rather than the principles of the policy. The objections referred to in Appendix 2 were:

1. Residents agreed that the policy was fair but had to be correctly administrated.
2. Residents had some concern about the policy being utilised where the Council was not delivering the required level of service.

5.12 Based on the consultation results, amendments have been made to the policy to reflect the views of participants. On that basis, the policy is presented for sign-off and implementation.

6.0 Financial Implications

6.1 The Housing Revenue Account (HRA) has a total budget of £12.6m for repairs and maintenance of the Council housing stock during 2021/22. The cost of repairs from damages caused by residents, such as intentionally breaking doors and walls, are outside of the Councils fixed cost repairs contract (price per property). It is therefore an additional cost pressure to the Council.

6.2 There is potential to recover circa £0.24m per annum, which is a combination of annual voids and repairs cost recovery, with an average net invoice value of £362, excluding the admin fee and VAT. The ability to recover cost from residents will allow Brent Housing Management to reduce budget pressures and reinvest recovered costs towards other essential improvement works, such as kitchen and bathroom renewals.

6.3 Repairs expenditure recharged to residents will be based on the schedule of rates paid by the Council to external repairs contractors. An admin fee of 15% is in line with the Council's service charge policy to leaseholders. The fee is to cover additional costs associated with officer responsibilities of issuing and pursuing charges to residents for recoverable repairs.

- 6.4 The rechargeable repairs policy will seek to collect the full amount of the invoice charged to a resident. The risk of non-payment from residents will be monitored through the existing debt recovery procedures.

7.0 Legal Implications

- 7.1 Section 11 Landlord and Tenant Act 1985 (LTA 1985) states that, a secure tenancy of a dwelling house, for a term of seven years or less contains an implied covenant for the landlord to:

- keep in repair the structure and exterior of the dwelling house including drains, gutters and external pipes
- keep in repair and proper working order the installations in the dwelling house for the supply of water, gas and electricity and for sanitation (including basins, sinks, baths and sanitary conveniences, but not other fixtures, fittings and appliances for making use of the supply of water, gas or electricity)
- keep in repair and proper working order the installations in the dwelling house for space heating and heating water

- 7.2 The obligation does not extend to parts of the building in which the landlord has no estate or interest.

- 7.3 Section 11(2) LTA 1985, states that the landlord is not required to:

- carry out works or repairs for which the tenant is liable by virtue of their duty to use the premises in a tenant-like manner, or would be so liable but for an express covenant on their part
- rebuild or reinstate the premises in the case of destruction or damage by fire, or by tempest, flood or other inevitable accident
- keep in repair or maintain anything which the tenant is entitled to remove from the dwelling house

- 7.4 In addition, as of 20 March 2019, section 1 of the Homes (Fitness for Human Habitation) Act 2018 amended LTA 1985, to imply a covenant on the part of a landlord into a lease of a dwelling (as defined in LTA 1985, s 38) in England which is let wholly or mainly for human habitation, that:

- the dwelling is fit for human habitation at the time the lease is granted or created, or at the beginning of the term of the lease if this is later, and
- will remain fit for human habitation during the term of the lease

These provisions apply to a lease granted for a term of less than seven years, or a secure or introductory tenancy for a fixed term of seven years or more.

7.5 The tenancy terms and conditions dated 29 September 2017 state at Part C, Repairs, paragraph 5 that:

7.5.1 “You [the tenant] are responsible for any damage caused to your home by you or anyone who lives with or visits you. As we are not responsible for repairing any such damage, you must pay us for any necessary repairs. However, we will give you a chance to carry out the repair.”

7.6 Section 151 of the Commonhold and Leasehold Reform Act 2002 (which replaced the previous consultation procedure in the Landlord and Tenant Act 1985, section 20 though the old title ‘section 20’ is still used) sets out the requirements for consulting leaseholders. Under the provisions of s151 Landlords must consult leaseholders before carrying out qualifying work or entering into a long-term agreement for providing services. S20 does not apply in this case.

7.7 The individual leaseholder’s repairing responsibilities will be set out in their lease. There are several variants of the RTB lease so each leaseholder’s responsibilities should be checked before action is taken against them.

8.0 Equality Implications

8.1 Pursuant to section 149 of the Equality Act 2010 (“the Act), the Council has a duty to have ‘due regard’ to eliminating unlawful discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act, advancing equality of opportunity between persons with a protected characteristic and those without, and foster good relations between persons with protected characteristics and those without.

8.2 The Council has completed an Equality Impact Assessment (EIA) of the Policy in order to ensure that no one with a protected characteristic (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief (including political opinions), sex or sexual orientation) will be adversely affected by the implementation of this policy. The results will be provided to Cabinet for consideration when the report and policy are submitted for a decision.

8.3 Particular emphasis will be placed on safeguarding residents with diagnosed or suspected mental health issues.

9.0 Human Resources / Property Implications

9.1 None

10.0 Consultation with Ward Members and Stakeholders

- 10.1 All key stakeholders have been fully consulted on this policy and their feedback has been incorporated in developing the attached policy for consideration by Cabinet.
- 10.2 The draft policy has also been shared with residents as part of the formal consultation process.

Report sign off:

PHIL PORTER

Strategic Director, Community Wellbeing