



## **Service Charge Loans<sup>1</sup> Policy**

### **1. Introduction**

- 1.1. This policy establishes Medway Council Landlord Services (the council's) criteria and approach to administering the mandatory and discretionary Service Charge Loan Schemes in relation to costs billed to Medway Council Leaseholders in the annual service charge invoices.

### **2. Purpose**

- 2.1. The purpose of this policy is to create a fair balance between the needs of individual leaseholders that experience difficulties in paying service charge costs and the council's entitlement to recover service charges owed following their legal administration. It also identifies the council's need to manage our resources in the interests of stakeholders of the Landlord Service and viability of business plan.

### **3. Scope**

- 3.1. This policy applies to all Medway Council Leaseholders and Landlord Services employees.
- 3.2. In the context of this policy, the term "Loan" does not refer to an exchange of money or assets but to the council agreeing to defer repayment of service charges on agreed terms.
- 3.3. The council operates two Service Charge Loan Schemes:
- The Mandatory Service Charge Loan Scheme, and
  - The Discretionary Service Charge Loan Scheme.
- 3.4. The mandatory scheme relates to all leasehold properties originally purchased from the council under the Right to Buy in England where Medway Council remains the freeholder and landlord of these properties. Under relevant legislation and subject to qualifying criteria, see 5.6; the council must, upon request, grant a Service Charge Loan (the Right to a Loan) to its leaseholders.

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<sup>1</sup> Loans, The word "Loans" is used as that is what the legislation refers to. The authority will account for this activity by extending the debt provision period for the leaseholder service charges through the service charge budget setting process.

- 3.5. The discretionary scheme applies as above, but only to resident leaseholders and not to leaseholders who sub-let their property. Medway Council Landlord Services is not legally obliged to operate the discretionary scheme.

#### **4. Legislation and Regulation**

##### **4.1. External**

- The Housing Act 1985, Sections 450A, 450B and 450C, as amended.
- The Housing (Service Charge Loans) Regulations 1992
- The Housing (Service Charge Loans) (Amendment) (England) Regulations 2009
- Housing and Regeneration Act (2008) Section 308
- Landlord and Tenant Act 1985
- Common hold and Leasehold Reform Act 2000
- The Social Landlords Discretionary Reduction of Service charges (England) Directions 2014

##### **4.2. Internal**

- HRA Business Plan
- Asset Management Strategy
- Leasehold Agreements
- Service Charge Arrears Policy
- Leaseholder Handbook

#### **5. The policy**

- 5.1. Under the mandatory and discretionary Service Charge Loan schemes, Leaseholders will only be entitled to a loan for service charges in relation to repair work to their block (responsive, major works and works of improvement). Annual Service Charges billed to leaseholders for ordinary, 'day-to-day' services provided by the council to a block of properties, are not included.
- 5.2. Landlord Services will provide leaseholders with information on the opportunity to apply for either a mandatory or discretionary service charge loan when each Service Charge invoice is issued.
- 5.3. Landlord Services will always advise leaseholders to obtain their own independent financial and legal guidance before accepting any offer of a loan or signing a legal agreement.

##### **5.4. Mandatory Scheme**

**5.5. Eligibility**

5.6. The mandatory Service Charge Loan is available to leaseholders if the below qualifying criteria are met:

- The lease must not be more than ten years old;
- The demand (invoice) for service charges is between £1,500 and £20,000;
- At least £500 is owing to the council;
- The loan must be for service charges relating to repair or maintenance;
- The application for a loan by a leaseholder must be made in writing and made within six weeks of receiving the service charge demand.

5.7. Landlord Services will make a decision for a request for a loan within four weeks of the date of the request.

5.8. Any offer of a loan made to the leaseholder by Landlord Services, must be accepted by the leaseholder in writing and within four weeks of the offer being made.

**5.9. Mandatory Scheme Terms and Repayment**

5.10. The following statutory terms apply to mandatory service charge loans:

- Repayment of the amount secured shall be made in equal instalments of principal and interest combined.
- The period over which repayment is to be made shall be:
  - 3 years, for a loan of less than £1,500;
  - 5 years, for a loan of £1,500 or above but less than £5,000;
  - 10 years, for a loan of £5,000 or above;
  - Or at the option of the leaseholder, a shorter period.

5.11. The financial limits referred to above (set in 1992) are subject to annual increase in line with the Retail Price Index prior to 2015/2016.

5.12. Landlord Services will charge £100 to cover administrative costs in processing the mandatory loan.

5.13. Landlord Services will take a charge on the leased property to protect the loan; this is in effect a mortgage.

5.14. The professional costs of conveyancing including solicitors and Land Registry fees and where appropriate valuation fees, will be recharged to applicants and payable before the advance is finalised.

5.15. **Discretionary Scheme**

5.16. **Eligibility**

5.17. Landlord Services may consider administering a discretionary service charge loan where a leaseholder is not eligible for the mandatory loan, or to 'top up' a mandatory loan, if the following conditions are met:

- The lease may be any age;
- Loans are for repayment of service charges comprising major works (including improvements) and repair charges only or for top-up of mandatory loans;
- The service charge demand must be at least £1,000;
- The applicant is an owner occupier, as opposed to a non-resident leaseholder or managing company;
- Following a financial assessment, the leaseholder can demonstrate exceptional hardship in paying the bill for the major works;
- There will be a limited financial impact on the council;
- Details are provided of the current mortgage and any other mortgage or charge held by the leaseholder on their property;
- There is sufficient equity in the home to allow for a further loan;
- Leaseholders can demonstrate an ability to repay the loan.

5.18. The application for a loan by a leaseholder must be made in writing and made within six weeks of receiving the service charge demand.

5.19. Landlord Services will make a decision for a request for a loan within four weeks of the date of the request.

5.20. Any offer of a loan made to the leaseholder by Landlord Services, must be accepted by the leaseholder in writing and within four weeks of the offer being made.

5.21. The decision to grant in addition to the terms of repayment of a discretionary loan will be made by the Assistant Director of Housing and Regeneration.

5.22. **Discretionary Scheme Terms and Repayment**

5.23. The following terms for discretionary service charge loans apply:

- Loans will be secured by way of legal charge against the title to the property to which the service charge relates.
- The rate of interest payable shall be determined in accordance with the provisions of the Housing Act 1985.
- Repayment of the amount secured shall be made in equal instalments of principal and interest combined.

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- In the event of any default on the loan and where lease terms allow, interest will be charged at the prevailing rate seven days after the due date.
- The period over which repayment is to be made shall be in accordance with the mandatory service charge loan (see 5.10).
- A charge of £175 upon application for administering a discretionary loan.
- The professional costs of conveyancing including solicitors and Land Registry fees and where appropriate valuation fees, will be recharged to applicants and payable before the advance is finalised.

#### **5.24. Enforcement of repayments**

5.25. Landlord Services will pursue debts owed in accordance with the law to ensure the maximum collection of income.

5.26. Landlord Services will remind leaseholders that their homes will be at risk if the loan is not repaid.

5.27. If the Leaseholder defaults payment, the loan therefore ends and all monies outstanding are immediately due and must be paid within a 30 day period. Failure to then pay will lead to legal recovery action being considered.

#### **5.28. Death of a leaseholder**

5.29. In the case of the death of the leaseholder, the loan ends and outstanding monies should be recovered through the Estate. If the property is then sold on, Landlord Services accountant will confirm the amount of interest owing at the time of sale and this will have to be advised to the relevant solicitors.

### **6. Roles, Responsibility and Authority**

6.1. The Assistant Director of Physical and Cultural Regeneration retains the overall responsibility for the implementation of this policy.

6.2. The Head of Housing Management is responsible for the operational delivery with this policy and the associated procedures.

### **7. Monitoring, Review and Evaluation**

7.1. The policy has been developed in consultation with stakeholders.

7.2. The council will monitor the performance of service charge loan collections on a quarterly basis in addition to the impact of deferral of payments on the HRA business plan.

7.3. The council will monitor trends in service charge loans and (re) payments made.

- 7.4. This policy will be reviewed every two years in line with legislative or regulatory changes.

## Policy Version Control Sheet

**Policy Title:** Service Charge Loans Policy V2

**Policy Author(s):** Home Ownership Officer, HRA Income Manager, Policy and Partnership officer

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**Cross References:** HRA Business Plan, Asset Management Strategy, Leasehold Agreements, Fire Management Strategy, Service Charge Arrears Policy

**Amendments Made:** September 2018 - This policy has been updated to reflect changes in legislation.