

Committee(s): Finance Committee – For decision Court of Common Council – For decision	Dated: 3/5/2022 19/5/2022
Subject: HRA Water Rates Refunds	Public
Which outcomes in the City Corporation's Corporate Plan does this proposal aim to impact directly?	4
Does this proposal require extra revenue and/or capital spending?	Y
If so, how much?	£730,897
What is the source of Funding?	City's Cash
Has this Funding Source been agreed with the Chamberlain's Department?	Y
Report of: The Chamberlain	For Decision
Report author: Neilesh Kakad – Financial Services Division	

Summary

Until 2019, the City Corporation, in common with many local authorities and housing providers, collected weekly water charges from its Secure tenants under an arrangement with Thames Water. Following successful legal challenges involving other councils, the City Corporation sought legal advice on its position and was advised that it would likely be held liable to repay sums to its tenants due to the similarity of its agreement with Thames Water to those successfully contested.

It was initially agreed that refunds would be action for the period of 6 years up to March 2019. This decision was subsequently review by Policy and Resources (P&R) Committee in February 2022, where it was agreed to extend the refund period back to the last date in which records were held, which is April 2005, or April 2001 if evidence is available to support a claim for that period.

Due to this financial position of the Housing Revenue Account (HRA), it alone would not be able to support these historic claims due to its limited reserves and on-going financial risks. P&R therefore recommended exceptional financial support from City's Cash to fund these repayments, which have now been quantified at £730,897, covering the period between 2005-2013.

Recommendation(s)

Members are asked to:

- Endorse a grant from City's Cash of £730,897 to the Housing Revenue Account in 21-22 for onward approval by the Court of Common Council.

Main Report

Background

1. Until March 31st, 2019 the City Corporation had an agreement with Thames Water to collect weekly water charges from its Housing Revenue Accounts (HRA) Secure tenants, paying a lump sum to Thames Water and in return receiving a discount or 'commission' on the water services provided. Thames Water has now ended all such agreements and assumed a direct relationship with its end customers, in the City Corporation's case this occurred with effect from 1st April 2019.
2. Under the terms of the agreement, the Corporation paid Thames Water the gross annual water charge amount for each unmetered domestic water supply, minus the commission amount and the voids allowance. The Corporation then assumed responsibility for billing its tenants and assumed the risk of non-payment and any bad debts. The Corporation therefore absorbed the costs of billing, arrears collection and bad debt liability.
3. This type of agreement was successfully challenged in the courts and, following a Court of Appeal decision in late 2020 relating to the Royal Borough of Kingston-Upon-Thames, the City Corporation sought legal advice on its position. Counsel advised that the similarity of the City Corporation's agreement to those successfully challenged meant that it would be very likely to be found liable to repay sums to its tenants if its agreements with Thames Water were challenged in court. The sums in question are essentially the 'commission' amount, plus interest.
4. On 24th September 2021, Community and Children's Services Committee decided to endorse the option of repaying six years' sums to residents, up to 31st March 2019 (the end date of the agreement with Thames Water), at a cost of £691,000 to the Housing Revenue Account.
5. This Decision was referred to Policy and Resources Committee for review on 18th November 2021. Members requested further information from officers and deferred a final decision to the next meeting of Policy and Resources Committee on the 20 January 2022. Members opted to pay back sums to all tenants from April 2005, or April 2001 if tenants could provide evidence to support a claim for that period.

Current Position

6. Following the review of the decision by Community and Children's Services Committee it was agreed that the refund period would be extended to 2005, the date from which the City Corporation holds records, and would leave open the

opportunity for those who can produce evidence to make claims going back to 2001.

7. In extending the refund period, the estimate refund liability has increased by a further £730,897. It is proposed that this additional cost would be funded by City's Cash via an exceptional grant to the HRA as the account would not be able to absorb this additional cost given its low reserve position of £177k (pending the outturn for 2021/22) and the increased financial pressures as a result of fire safety measures, energy efficiency and carbon reduction investments, demand for the delivery of more affordable homes and the increasing arrears in the past year as a result of the pandemic.
8. In addition, there has previously been 4 years of rent reduction and there is a need for continued investment in the housing stock and services. Investment decisions and the service provided to tenants would be impacted as a direct result of the payment of any refund.
9. The HRA operates within a ring-fenced framework to ensure self-sufficiency of the social housing function and ensure all resources generated through rent/charges etc are directed to the benefit of tenants. It is on exceptional ground that external funding would be provided to support this function.

Proposal

10. The proposal for additional City's Cash funding is an additional requirement on the 2021-22 budget, and therefore requires Finance Committee and Court of Common Council approval, which this paper seeks. The £730,897 has been calculated based on the information available and represents the full liability for current and former tenants. There will be cases where former tenants do not come forward to claim a rebate and therefore, in these cases, funds will be remitted back to City's Cash.

Strategic implications – the recommendation enables continued delivery of the social housing function.

Financial implications – Exceptional grant of £730,897 from City's Cash to the HRA. Without support likelihood that the HRA will fall into a deficit.

Resource implications - None

Legal implications – This paper does not seek to address the legal position regarding water rates charges as these have been addressed in previous committees as referenced in the paper.

Risk implications – Financial sustainability of the HRA would be called into question without support.

Equalities implications – None

Climate implications - None

Security implications - None

Conclusion

11. Following the decision by P&R to extend the water rates refund period back to 2005, a grant from City's Cash to the HRA of £730,897 be award to support the costs of this change.

Appendices

- Appendix 1 – None

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