

City of Westminster

Committee	Date	Title of Report
Cabinet Urgency	14 July 2004	Designated Sales : Recovery of "Surcharge" – Allocation of Receipt
Classification		Report of
For General Release		Director of Finance, Director of Legal and Administrative Services and the Chief Executive
Wards involved	Not applicable	
Policy context	To make the best use of Financial resources.	
Financial Summary	Agreement has been reached with Dame Shirley Porter ("DSP") and her family to settle the proceedings <u>against her</u> for a sum of approximately £12,300,000. This amount was received by the Council on 1 July 2004. Of this amount, £12 million is payable to Westminster and the rest is for costs payable to third parties. This report sets out <u>proposalseptions</u> for the allocation of the receipt within the Council's accounts, and the amounts to benefit the General Fund and the Housing Accounts.	
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1. SUMMARY

1.1 At the meeting on 12 May 2004, the Committee noted the settlement with Dame Shirley Porter in the sum of £12 million. The Committee need to consider the allocation of the receipt in the light of :

1. The settlement falling short of the full debt and the need to balance the claims on the income between the General Fund and the Housing Accounts.
2. Costs incurred by the City Council during the investigation and Auditor's hearing leading to the Judgment against Dame Shirley Porter and David Weeks.
3. The agreement with the Audit Commission regarding costs they incurred to obtain the judgment against Dame Shirley Porter and David Weeks.

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4. Costs incurred by the Council in recovery of the debt following the judgment
5. Costs incurred by the Council as part of its indemnity arrangements with former Officers and Members

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2. RECOMMENDATION

2.1 That the principles for the allocation between the City Council's accounts of the settlement sum (and the sums recovered against David Weeks), as set out in this report, be approved (the precise sums to be allocated will be adjusted as appropriate in the light of the final cost of recovery proceedings and the amount recovered from David Weeks). ~~e Cabinet decide upon the preferred option for allocation of the proceeds to be subsequently agreed with the Audit Commission District Auditor.~~

2.2 That the housing allocation of approximately £6.6 million (adjusted as described above) be made available to the Council's ALMO for capital housing schemes. ~~determine which of the two options in paragraph 3.4 it wishes to adopt. allocate the sum recovered as follows~~

- ~~— No re-imburement of amounts paid under the Council's Indemnity scheme to former Officers and Members~~
- ~~— The costs of recovery to the General Fund~~
- ~~— The cost of establishing the debt through the Audit investigation and the Courts to the accounts bearing that expenditure~~
- ~~— The amount due to the Audit commission under the agreement~~
- ~~— The residual amount to the ALMO for Housing purposes to be used for the priorities they determine~~

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3. BACKGROUND

3.1 Judgements obtained and other costs incurred having "claims" upon the settlement

- i) Judgements in respect of the Designated Sales debt have been obtained up to in the sum of £43,321,644. The make up of this judgement sum is set out in Appendix 1.

This total does not include the following costs items which have also been incurred by the Council:-

- ii) Costs of recovery of the surcharge debts – approx. £1.8m (some costs still to be incurred). External legal and investigative costs to date amount to some £1.78m (mainly to the Council's external Solicitors advisers— Stephenson Harwood, Counsel, Investigators, foreign lawyers, third party costs etc), to which must be added internal legal costs, which bring the total to some £1.84 million. Further, relatively limited, costs will be incurred in finalising matters in

relation to the settlement with DSP, concluding negotiations with David Weeks, and in respect of certain third party costs.

iii) Reimbursement of legal costs

In 2000 the Council agreed to reimburse ~~the~~ sums totalling approximately of £700,000 to ~~a member and~~ former members and ~~former~~ officers. ~~These payments related to was in respect of~~ the legal costs they had incurred in respect of the ~~action taken against them following the~~ Appointed Auditor's report on Designated Sales.

The total possible "claims" on the settlement are therefore some £45.9 million and in the light of these and the settlement of £12m, a policy needs to be agreed by the Council for the allocation of the settlement sum.

3.2 General Principles

The situation that has arisen is unique and there is no specific accounting rule ~~can which dictates the be applied to the~~ allocation of the settlement. However, ~~many~~ interested parties will be looking at the outcome and objections to the District Auditor in respect of the accounts ~~to the District Auditor~~ for 2003/04 cannot be ruled out, could result.

The Council needs to show that it has considered the claims on the sum and acted reasonably as fairly as possible in respect of balancing the interests ~~the interest~~ of Council taxpayers (i.e. the General Fund) on the one hand and Council tenants (HRA)ousing, for future investment in that service on the other. ~~Otherwise all amounts could be allocated for housing or as in options described below.~~

There is also an agreement with the Audit Commission that in respect of any monies in excess of the costs of recovery received, a 10% contribution of such monies will be made towards the Auditor's costs on the appeals (subject to a maximum costs figure of £2.5 million).

~~The proposals set out in this report for allocation of the settlement have been discussed with will of course need to be agreed with the Council's auditors, the Audit Commission. A copy of this report has been given to the District Auditor.~~

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3.3 Options for Allocations ~~A similar argument applies th the sums from the HRA with regard to the body of tenants.~~

The following issues are relevant to consideration of the allocation of the sum recovered.

- a) The costs of the Investigation were met partly by the General Fund and partly by the HRA. With regard to the General Fund, this element is a charge on the entire body of Council Tax payers in Westminster. So far as the element charged to the HRA is concerned, this is a charge to the Council's housing tenants. Without these sums being incurred no debt would have been established and no sum recovered.
- b) The costs incurred by the Audit Commission were met by an increase in fees from all local authorities, hence the need to reclaim their costs incurred through the agreement reached with the City Council. Again this was to establish the debt and so enabled its subsequent recovery.
- c) The Council exercised its discretion to meet from the General Fund expenses by certain former officers and members who were subsequently not surcharged or considered culpable. This expenditure had no direct bearing on either establishing or recovering the debt. Therefore it could reasonably be left out of account in determining the allocation of the settlement between accounts
- d) The costs of recovery action have all been incurred by the City Council through the General Fund and again therefore have been met by all Council tax payers in the City. No sum would have been recovered without this expenditure. The Audit Commission have acknowledged this ~~and have allowed this sum~~ as first call on any sum recovered in the agreement between them and the City Council.

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The main questions that present themselves are:

- i) Whether to include the £700,000 reimbursement of legal costs (item (c) above) in the allocation of the settlement sum. This was a discretionary payment by the Council and not included in the judgement sum.

~~It is proposed, therefore, The Cabinet may therefore consider on balance to exclude this sum from the calculation.~~

- ii) What priority order to give to the other "claims":

- a) Costs of Recovery (approx. £1.84m.) item (d) above)

It would seem reasonable to make these the first application against the settlement sum. If they had not been incurred, at the expense of the Council Taxpayer, the settlement would not have been achieved.

- b) Payment to Audit Commission (approx. £1m.) item (b) above)

This sum is payable in respect of the agreement entered into with the Audit Commission referred to earlier.

After ~~allocating~~deducting the above items, approx. £9.1m of the settlement would remain to be allocated.

- c) Costs of the Audit investigation and enquiry (approx. £3.1m, ~~item (a) above~~)

The Council reimbursed these sums to the Appointed Auditor (John Magill of Deloitte & Touche) and his legal advisers Rowe & Maw in the period 1990/01 to 1996/97.

These costs, in earlier years were borne by the HRA (£1.2m) and following the final initial public interest report by John Magill in 1996, by the General Fund (£1.9m). ~~The expenditure~~ led ultimately to the imposition of the surcharge by the House of Lords. It is proposed, therefore, ~~The Cabinet may therefore consider~~ that these costs should take some priority in the allocation of the settlement sum.

If the above sums were allocated to the General Fund, the HRA and the Audit Commission as appropriater reimbursed in priority to the other "claims" this would leave some £6.05m remaining.

- d) Amount of certificate and interest thereon

The remaining ~~sum~~ of £6.05m could then be apportioned pro-rata to the various elements comprising the certificate and interest thereon.

The analysis of the certificate on this basis is set out below:

- i) The Housing Capital losses comprise almost 80% of the certificate total, and it is assumed the interest amounts apply to each element of the certificate proportionately. The capital receipts foregone would be credited back to a capital receipts account to fund capital programme expenditure.
- ii) The ~~The~~ balance of the certificate comprises revenue losses of:

General Fund	5%
HRA (pre-ringfencing)	5%
HRA (post-ringfencing)	10%

On this basis, of the sum of £6.05m, £4.81m would be paid into a Housing capital receipts account, £0.61m to the Housing Revenue

Account and £0.63m to the General Fund (as subsidies were made to the HRA (pre-ringfencing) by the General Fund).

e) Summary

On the basis set out in a) ~~to and~~ d) above, the summary of allocation of proceeds would be (details set out in Appendix 2) :

	£'000	£'000
General Fund		4,388
Audit Commission		1,016
Housing Revenue Account	1,787	
Capital Receipts – Housing	<u>4,809</u>	<u>6,596</u>
		<u>12,000</u>

3.4 However, in order that the amounts allocated to –Housing above of £6.6m can be tracked against specific projects and purposes, the Committee ~~abinet~~ may wish to either

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- i) create a separate reserve within the Council accounts to hold this sum of £6.6 million. Approvals for incurring expenditure against this reserve could be considered as part of the Capital Programme Review (and used to fund expenditure by Revenue Contributions to Capital) or through the revenue budgetting process for items of revenue expenditure

or

- ii) to allocate this sum to be used by the Council's ALMO (CityWest Homes) for capital housing schemes.

In view of CityWest Homes detailed awareness of Housing conditions in Westminster and their ability to target these additional funds to improve conditions, the second option is recommended.

4. **OUTSTANDING ISSUES**

i)

Following the decision of this Committee, the Accounts for 2003/04 will be updated and then presented to General Purposes Committee on 21 July 2004 for approval. In view of this late amendment to the Accounts, a further period of public inspection will be undertaken. This will be followed by the Audit meeting of the District Auditor for the hearing of questions and objections. ~~Receipt of the settlement which is subject to legal processes still has to be achieved.~~

5. CONSULTATION

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The Audit Commission was a party to the settlement with DSP. In addition, the District Auditor has been advised of the proposals for allocation of the settlement sum in the Council's Accounts.

6. LEGAL IMPLICATIONS

In the absence of a specific accounting rule which is applicable to the current situation the City Council's obligation is to act reasonably, balancing the competing interests of Westminster's Council tax payers on the one hand with those of its Council house tenants on the other. The proposals in this report seek to meet this obligation.

67. CONCLUSION & REASONS FOR DECISION

The ~~Committee~~ ~~abinet~~'s decision ~~on~~ the allocation of the settlement is needed urgently; initially this ~~has been~~ ~~would be~~ disclosed as a post balance sheet event in the draft of the 2003/04 accounts ~~to be~~ presented for Public Inspection from 21 June 2004. As the settlement sum has now been received, the amount needs to be accounted for to be allocated within the Council's accounts for 2003/04, in consultation with the District Auditor, and allocated within those accounts on a reasonable basis.

IF YOU HAVE ANY QUERIES ON THIS REPORT OR WISH TO INSPECT ANY OF THE BACKGROUND PAPERS, PLEASE CONTACT R.KEELING ON 020 7641-2280, fax 020 7641-2078, e-mail rkeeling@westminster.gov.uk

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985
BACKGROUND PAPERS

1. Statement of Accounts 2002/03
2. Draft Statement of Accounts 2003/04
3. Correspondence with Audit Commission Solicitor dated 8 February 2002 – relating to costs and expenses.