

REPORT OF THE JOINT TASK AND FINISH GROUP

Leasehold Management: Contract & Programme Management, Consultation and Billing.

April 2014

Report co-ordinator

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Foreword

This is the final report of the Joint Task and Finish group that was set up in response to concerns expressed by Leaseholders Council in January 2014 about the implementation of the Lambeth Housing Standard, and in particular the process by which leaseholders are charged for major works. I hoped that the outcome of this process would be a greater understanding of the situation faced by both leaseholders and Lambeth Living, a significant increase in trust and confidence and, most importantly, that all leaseholders whose properties will receive major works would receive a much improved process of consultation and an assurance that they are getting value for money.

This report will not solve all the difficult issues around charging leaseholders for major works at a stroke - but I believe it provides a solid platform on which to build. I hope also that it demonstrates that both Lambeth Council and Lambeth Living are fully committed to working with leaseholders, in an open and transparent spirit, to improve the Major Works process into the future.

I'd like to thank all the members of the Joint Task and Finish Group, but particularly the leaseholder representatives Kevin, Melissa, and George, who gave up a considerable amount of their valuable time to take part. Their challenge, persistence, and personal perspective made an invaluable contribution to this piece of work. Thank you also to the wider group of leaseholders who provided help to the leaseholder representatives outside the formal meetings, and to Jim Martin of Martin Arnold Associates for his independent advice and support.

Both Lambeth Council and Lambeth Living are committed to improving the service that leaseholders receive, and acting upon the findings of this report. Following consideration by Leaseholders Council this report, along with an Action Plan that responds to the recommendations, will be formally received by Lambeth's Cabinet.

Cllr Pete Robbins

Lambeth Cabinet Member for Housing and Regeneration

Executive Summary

Lambeth Living have delegated responsibility to provide a Tenant & Leasehold Management service to the Council's 24,500 tenants and 9,700 leaseholders.

Council and Leaseholder obligations are set out within the terms of the Leases that the Council holds with its leaseholders.

Lambeth Council acknowledged Leaseholders' valid concerns relating to a number of issues related to leasehold management services managed by Lambeth Council, Lambeth Living and its agents. Consequently the Cabinet member for Housing and Regeneration commissioned a review so that issues of concern could be investigated by a 'Joint Task & Finish Group'.

Three Leaseholder representatives supported by an Independent Expert were in general agreement that:

- Compared to the existing long-term qualifying agreements the proposed new approach to procurement if properly managed is sound and reasonable;
- The revised consultation process is an improvement;
- Repayment options appear fair (when considered against the leases) although Leasehold Representatives specifically requested that the Council defer interim billing until April 2015, when the delivery of value for money has been assessed;
- Value for money could be achieved and savings passed onto the Council, Leaseholders and taxpayers, however there are on-going concerns about the ability to deliver value-for-money, due to:
 - a) Lack of identified pain/gain share savings
 - b) The opportunity was not taken to include Mechanical and Electrical (M&E) works in the LHS tender procurement which could have gained efficiency savings up front rather than through on-going value engineering
 - c) History of poor performance.

Leaseholder Representatives from the Task & Finish Group were able to appreciate the difficult task Lambeth has in bringing a large number of properties up to the Lambeth Housing Standard in a short space of time. They recognise that Lambeth Council and Lambeth Living have reviewed the procedures they have in place, and made some important changes that could provide improvements for residents. The issues raised in this document are not exclusive or limited to Lambeth Council and Lambeth Living – it is recognised that this is a national issue. Leaseholder representatives were grateful that Lambeth agreed to engage in dialogue and that they took time to discuss these issues in an open and honest fashion. Lambeth made available a number of senior managerial staff to speak with leaseholders and the parties were able to discuss, debate, and address many of the concerns that affect residents.

Furthermore, members of the Task & Finish Group welcomed the Council's approach in considering issues of concern, which has resulted in a series of recommendations being made which are now to be referred to the Leasehold Council and Lambeth's Cabinet for discussion and consideration.

Recommendations

- (1) For Lambeth Cabinet to note, consider and action the key issues and recommendations arising from the Joint Task & Finish Group.
- (2) For this report to be referred to the Leasehold Council on 24th April 2014.

1.0 Introduction and Scope of the Report

1.1 The remit of the Joint Task & Finish Group (JT&F) provided leaseholders with the opportunity to consider issues that have previously been raised as concerns, namely:

- The use of Long Term Qualifying Agreements (LTQAs);
- Whether the Major Works carried out represent/provide value for money;
- How Major Works are programmed, the way in which works are prioritised, and in some cases whether works are necessary;
- The processes and procedures adopted by Lambeth Living during the consultation and communication of the Major Works process, including s20 consultation;
- The Landlord and/or Leaseholder obligations, set out in leases, are not being followed;
- The need to discuss and review repayment options and early payment discounts;
- Clarification: the terms of Interim Billing;
- Clarification: when are leaseholders are expected to begin repayment for Major Works.

1.2 The above concerns were addressed in a work programme by the Task & Finish Group, which met six times during February, March & April 2014. It considered the following:

- Contracts - Contract procurement, Long Term Agreements (LTAs);
- Drawing down contracts from LTAs, contract specifications;
- The process of consultation and communication over major works;
- The Interim Billing process, repayment options;
- Delivering on-going VFM.

1.3 Membership of the Joint Task and Finish Group

Cllr Pete Robbins, Cabinet Member for Housing and Regeneration (Chair)

Cllr Jack Hopkins, Lambeth councillor, Oval ward

Melissa Madjitey, leasehold representative

George Wallace, leasehold representative

Kevin Johnson, leasehold representative

Jim Martin of Martin Arnold Associates - Independent Expert

Su Gomer, Lambeth Council - Housing Commissioning Officer

Ola Akinfe, Lambeth Living, Director of Property Services

Marcus Shukla of Lambeth Council provided administrative support to the group

2.0 Context

2.1 The Council is in year 2 of a 5 year programme, implementing the delivery of the Lambeth Housing Standard (LHS), the largest investment that the Council has ever made, with over £490M being spent to bring homes up to the LHS (these works were prioritised by leasehold and tenant representatives in 2012).

2.2 Under the terms of the leases, leaseholders are responsible for paying a service charge, calculated as a proportion of the costs incurred by The Council for the works and services on their building. This includes but is not limited to:

- Repairs to the exterior, structure or common parts;
- Major works; e.g. *improvements**, lift replacement, window replacement, refurbishment;
- Contracted Services to buildings, such as cleaning or grounds maintenance;
- Management.

[*Note to leaseholders: Not all leases are identical, for example the costs for '*improvements*' may or may not be permitted under the terms of your lease!]

2.3 Under the present LHS scheme some blocks will undergo numerous large-scale work projects, which means the total bill for some leaseholders will be large. The size of these bills goes beyond what was envisaged when the repayment options were agreed five years ago, when major works tended to cover one scheme and the average major works bill was £4,500. Five years ago few leaseholders had bills of over £10,000. However, today 20% of leaseholders will be faced with combined bills of more than £15,000.

3.0 Concern over the use of Long Term Qualifying Agreements and whether charges for works represent value for money

3.1 The JT&F Group considered briefings and presentations from the Director of Property Services, (DPS) and Lambeth Council's Corporate Procurement Manager.

3.2 Procurement

Pre April 2014 works were procured as follows:

a) *12 Lambeth Partnership Contracts (LPC).*

The LPC's primary focus was responsive maintenance and internal refurbishment (kitchens, bathrooms, etc.) As these contracts were tendered in 2008 when market prices were high, the Council/LL tested the market on all internal and external rates in order to improve value for money which was gained as part of the current Lambeth Housing Standard (LHS) contract procurement.

b) *Pre and Post April 2014*

Contractors can be procured through an existing framework established by the *London Housing Consortium* (LHC) based on specific projects.

This option secured fixed prices and project specific contractors for a set of priority renovation projects which have already been scoped and could be specified in detail.

Post April 2014 works are procured as follows:

LHS contracts will provide Lambeth with a capacity to deliver a range of external works including roofs, windows and doors. This will enable appointed contractors to deliver whole estate refurbishment packages and improve Lambeth Living's capacity to deliver the LHS programme.

- 3.3 The three new LHS contractors are: Mears, Breyer, and Apollo/Keepmoat, with each covering one of the three Lambeth Living management areas (North, Central and South). There are two reserve contractors, Lakehouse and Mullalley, who can be called in the event of a performance failure by a prime contractor. Lambeth Living state that the procurement of the LHS contracts has already resulted in 30% savings when compared to pre-tender estimates based on a model contract using LPC target costs. Leaseholders welcome this. However this does highlight areas where works have not been re tendered and will not benefit from the savings – such as Mechanical and Electrical (M&E) services.
- 3.4 The JT&F feel that the exclusion of M&E works was regrettable. Although the reasoning was questioned by the leaseholder representatives, the DPS stated that M&E works were not procured as part of the recent LHS procurement strategy because the process would have been too time consuming and complex due to the nature of M&E works. The DPS claimed that best value for money could be achieved through market testing the prices offered by M&E contractors against the main contractors.
- 3.5 Leaseholders recognise Lambeth's obligation to meet the Decent Home Standard (DHS) by 2017. However, leaseholder representatives and the independent expert are concerned about the size of the LHS program, the constrained timescale, and the delivery challenge that risks being compromised by the unprecedented scale of the works. Leaseholders believe Lambeth Living will not deliver value for money unless the council adopt the recommendations proposed by leaseholders.
- 3.6 The JT&F Group welcomed Lambeth Living's decision to ensure that contractors will no longer be preparing the specification of works, and welcomed Lambeth Living's decision that Design and Build Specifications would no longer be used, rather reputable consultants employed by Lambeth Living will now specify works, which contractors will only then price. The DPS presented the cost inflation figures, which are applied to the LTQA schedule of rates, which the independent expert confirmed were reasonable. When the subject of contingency fees was discussed the DPS said that there was no reason why contingency fees should exceed 4-7%. Lambeth Living promised they would ensure that contractors were diligently monitored whilst on site, to ensure that the defined specifications were delivered. Leaseholders remain concerned as to how this will be evidenced and suggested crosschecking with a second consultant.
- 3.7 The Council does audit its key programmes including the delivery of LHS works. VFM is an integral element of Audit and reassurance programmes. Outcomes will be shared with Tenants and Leaseholders.
- 3.8 Following the conclusion of the Lambeth Housing Standard in 2017 Lambeth seek to improve supply chain management. Lambeth council intends to work with Leaseholders and Tenants to develop a practical programme of major works and programmed maintenance to deliver VFM.

Recommendations relating to LTQAs and value for money:

- 1. Current contracts based on the existing LPC target costs should be retendered, or at least market tested to ensure all leaseholders benefit from the 30% savings. If these contracts are not to be re-tendered then Lambeth Living must demonstrate value engineering for all M&E contracts and to draw up measures as to how this will be achieved;**
- 2. If soft market testing indicates that costs are lower than LPC Contract rates for M&E, then Lambeth should retender. For all other areas they should market test;**
- 3. Lambeth to consider employing a specialist resource, to demonstrate value engineering in M&E and other contracts;**
- 4. Contingency fees should be capped at 4-7% while Cost Inflation should be set at the current agreed rate for the lifetime of the present contracts;**
- 5. The procurement process appears to have been carried out appropriately; however Leaseholder representatives raised concerns about Mears, given the current employment tribunal case, notes that the Council has commissioned Internal Audit to investigate the allegations and requests that Lambeth Council act decisively if this process finds wrong-doing;**
- 6. That Lambeth work with leaseholders and tenants to improve long term supply chain management following the conclusion of the LHS.**

4.0 Pain/gain share explained

- 4.1 The Joint Task & Finish Group explored the principles of the Pain/Gain-Share aspect of the contract because Leaseholders have raised concerns in regards to it.
- 4.2 The principal benefit of the Pain/Gain-Share cost arrangements is the ability to align the objectives of the parties, which helps to create a partnering environment. The contractor and employer are both encouraged to work together to control costs, sharing the risk of over or underspend through the gain-share/pain-share mechanism.
- 4.3 The effect of a typical Pain/Gain-Share provision is that any variance between the target cost (the total sum of the schedules of rate claimed) and the defined cost (actual cost of doing the work) will be shared equally (50/50) between the client and the contractor, while the contractor will incur 100% of the pain should the price for works exceed the target cost.
- 4.4 Lambeth Council and Lambeth Living have adopted the Pain/Gain-Share contract because it provides them with a cost ceiling and cost certainty (see chart below).

The gain-share/pain-share ratios available to Lambeth Living are as follows:

Party	Gainshare (Defined Cost below Target Cost)	Painshare (Defined Cost above Target Cost)
Client (LBL)	50%	0%
Contractor	50%	100%

- 4.5 However, while leaseholder’s final payments for major works are based on bills that would reflect the outcome of any gains identified, it is very important to note that to date the Pain/Gain-Share process has never been triggered on Major Works managed and implemented by Lambeth Council and Lambeth Living.
- 4.6 The Leaseholder representatives accept that the Pain/Gain-Share process, in theory, could create a relatively strong motivation to reduce costs if the right conditions were adopted and then strenuously followed. However, it is clear from the evidence presented by Lambeth’s officers that if the contractor or sub-contractor makes a saving and does not reveal it, then 100% of the saving goes to the contractor, and there is no sharing of the gain.
- 4.7 The Leaseholders also fear that there is growing professional evidence that a number of employers, consultants and contractors have started to question whether target cost contracts actually deliver the value for money envisaged when they were selected, because in certain circumstances there may be no incentive for the contractor to minimize costs, rather the exact opposite. For example: If the gain share is low, the contractor’s strategy could be to “load the costs” and reverse the strategy in an effort to maximize the contractor’s income, rather than pass on the benefit of any potential gain share. This observation is especially relevant to Lambeth Council who tends to adopt the policy of awarding contracts to the bidder who provides the lowest target cost.
- 4.8 The Leaseholders acknowledge that the information was presented in an open and honest manner by the officer but are particularly worried that the M&E works will be let on the previous contract arrangements and that the M&E works have not been retendered. Clearly the pain and gain arrangements have not worked thus far, even against a backdrop of falling tender prices and the Leaseholders need detailed reassurance that they will be made to work in the future.
- 4.9 The Leaseholder representatives realise that once the principle of ‘lowest cost’ is replaced by ‘best value’, measurement of cost against value becomes more complex and there is a worry that the leaseholder will have to pay regardless of cost or value.

Recommendations relating to the Pain/Gain Share Mechanism:

- 7. JT&F Group recommend that sub-contractors are legally contracted to participate in the pain/gain share process;**
- 8. Lambeth commit to the pain/gain process delivering best value to each leaseholder and if there is a failure of the pain/gain arrangement, then Lambeth will make good the costs to Leaseholders;**
- 9. Leaseholder representatives recommend that they be involved in assessing the Pain/Gain process against chosen Major Work contracts;**
- 10. The JT&F Group agreed in principle to a quarterly audit, led by chosen leaseholders with the assistance of an independent expert, of three major work projects from each of the three management areas. Lambeth commit to providing detailed information required for the purpose of the audit and scheduled publication of the findings will be presented to Leasehold Council;**
- 11. The outcomes of Pain/Gain reviews will be reported annually through tenant and leaseholder forums (Subject to commercial confidentiality) and both tenants and leaseholders will be involved in the review;**
- 12. Leaseholders from the Joint Task and Finish Group conclude that if pain/gain share is to work Lambeth Living need to put in place clearly defined protocols that allow them to monitor contracts and contractors properly to ensure that the contractor's strategy is not to maximize their fee (and profit margin) rather than pass on the benefit from any potential gain share;**
- 13. Lambeth commit to market test every M&E contract given target costs are based on higher 2008 rates.**

5.0 Works programming

- 5.1 Leaseholders were unclear as to how decisions were made about what works were required, how works were prioritised, whether works were necessary and when they were required.
- 5.2 The JT&F Group considered the presentation from the Director of Property Services who explained that, as is common in Asset Management programmes, the Council and subsequently Lambeth Living carried out a sample stock condition survey which identified the possible condition of elements e.g. roof, structure, kitchens, bathrooms, boilers, electrical and drainage installations and then applied professional good practice to define when works were required to prevent major deterioration, known as the 'just in time' approach. Other considerations such as work packaging (to group works programmes within estates) would also be taken into consideration, before Lambeth Living prepared its works programme.
- 5.3 At this point Lambeth Living's agent would undertake an individual survey of each property prior to specifying and carrying out works programmes.

6.0 Individual estate analysis (Wyvil, Whitgift and Larkhall)

- 6.1 Following concerns expressed by leaseholders in Wyvil, Whitgift and Larkhall they, and where required their independent surveyors, have been in liaison with the Council and Lambeth Living relating to the proposed scope of works and estimates. It is accepted that improved communications between Lambeth Living and Leaseholders would have helped to address Leaseholder's concerns at an earlier stage.
- 6.2 There was some concern at proposals from Thames Water Authority (TWA) to reduce water pressure to homes in Lambeth, and implications arising. The Cabinet Member for Housing and Regeneration will formally challenge Thames Water Authority on their approach within Lambeth.

Recommendations relating to individual estate analysis:

14. ***The Major Works on these estates are based on the old more expensive 2008 LTQAs. The JT&F recommend that Lambeth Living market test works not yet procured against the more favourable LHS contracts that will be in place from April 2014. For example, the simple water tank replacement at Whitgift should be market tested;***
15. ***That the estate analysis demonstrates the weakness of the old 'design and build' contracts. The JT&F group recommend that Lambeth's consultants should specify works and leaseholders should be involved with the specification;***
16. ***When the outcomes of the analysis relating to Wyvil, Whitgift and Larkhall are considered, existing practice must be improved and it needs to be seen that lessons are learnt;***
17. ***That the Cabinet member for Housing and Regeneration approach Thames Water Authority expressing concern in relation to plans to reduce water pressure, which may require further consideration in terms of maintenance required;***
18. ***Progress will only be made if Lambeth Council delivers robust contract management, otherwise it will be impossible to deliver meaningful improvements to any of the above. Lambeth Council and Lambeth Living should explain, define and improve their scrutiny processes.***

7.0 Communications and Involving Leaseholders

- 7.1 Many concerns had been raised that communication and consultation, including statutory Section 20 consultation was ineffective, lacked sufficient details of proposed works to render it possible for leaseholders to make meaningful comments, and that meetings were then not attended by staff members who could respond to leaseholders' questions and concerns.

- 7.2 Lambeth Living state that they have responded to concerns. The DPS took members of the JT&F Group through the revised communications process (see Appendix 1).
- 7.3 Key changes to the scheme development and consultation process are set out below. Once Lambeth Living have confirmed that a property falls into the current cycle/year of investment they will:

Phase 1: Developing the Proposal:

This phase will be carried out in conjunction with Lambeth Living's Consultants and the Residents:

- Notify all residents by way of newsletter that their home falls into the current investment cycle;
- Send the most recent stock condition information to all residents setting out the key components proposed within the programme, giving information on their current condition, life expectancy and options to prolong;
- Lambeth Living and its Agents will arrange to meet with residents to discuss findings and set out the possible options (if there are any) that, if implemented would bring the property up to the required standard (in this case the LHS is the overarching driver but overall asset management consideration will also be applied at this stage).
- Lambeth Living and its agents will discuss the following three distinct categories:
 - The essential non-negotiable works;
 - Works that may be essential but have options that could be deliberated and agreed on;
 - Optional/Desirable works that residents may like to suggest be included or considered.

Phase 2: Pricing the Agreed Works:

This phase will involve Lambeth Living's consultants and construction partners:

- Residents will have a single consultant responsible for the works on each estate;
- Residents will have 1 main contractor responsible for, and in control of, each estate where works are proposed with any subsequent works aligned with the main contractor (this is not necessarily sub-contracted but it means Lambeth Living will only have a single compound and single set of associated preliminary costs for some of the preliminary items such as site set-up and welfare facilities);
- Lambeth Living will provide details of all works on any given estate up until 2017 and include this in the initial stock condition information sent at the start of the process (even if the works are staggered through necessity, residents will be aware of all proposed works);
- Lambeth Living will ensure that all information is made available to residents as requested.

Recommendations relating to communications and involving leaseholders:

19. *The Joint Task and Finish Group were generally satisfied with the proposed key changes to the scheme development and the consultation process as set out in Appendix 1 which they understand will be put into action immediately;*

20. *Requested that Lambeth Council and Lambeth Living officers who attend*

consultation meetings will be able to respond to every type of query whether contractual or billing;

21. That leaseholders be involved in estate/street property surveys with consultants to look at specifications to achieve LHS

8.0 Billing and repayment options

- 8.1 Leaseholders were confused as to what they should be paying in regard to Lambeth Living's proposal to switch to Interim Billing and when they would now be expected to pay for Major Works.
- 8.2 Lambeth Living's Director of Housing Services took the T& F Group through the context as to how Lambeth Living billed Leaseholders, and presented the revised repayment options (Appendix One).
- 8.3 Under the present LHS scheme some blocks will undergo numerous large-scale work projects, which means the total bill for some leaseholders will be large. The size of these bills goes beyond what was envisaged when the repayment options were agreed five years ago, when major works tended to cover one scheme and the average major works bill was £4,500. Five Years ago few leaseholders had bills of over £10,000; however today 20% of leaseholders will be faced with combined bills of more than £15,000.
- 8.4 Lambeth Living manages around 9,700 leasehold flats across the borough. Under the terms of their leases, leaseholders are responsible for paying the service charge, which is a proportion of the costs incurred by the Council for the works and services at their building. This includes but is not limited to:
- Repairs to: the exterior structure or common parts;
 - Major works: e.g. lift replacement, window replacement and refurbishment;
 - Services to: buildings such as cleaning or grounds maintenance;
 - Management

The term 'Major Works' normally refers to capital works and where the cost to individual leaseholders exceeds £250. Where this applies the council is legally required to undertake a formal (s20) consultation process.

- 8.5 Since 2009 Lambeth's policy is to allow leaseholders more time to pay interest free. Provided they agree to pay monthly by Standing Order, all leaseholders can have two years to pay Major Works bills, double the lease term, and in cases of proven hardship leaseholders can have up to ten years to pay. The Council agreed to offer those faced with major works bills this longer period to access the 5% discount. The reason for this is that the council recognises that many leaseholders struggle to pay their contribution for large major works projects. It also wants to maximise its ability to recover funds.
- 8.6 A leaseholder who has to pay a major works bill can find the money through one of the following routes:

- Approach their mortgage lender (if any) who may add the amount to an existing mortgage;
- Take out a loan from a private lending institution such as a bank or building society;
- Use their savings; Unemployed leaseholders may be entitled to help from Income Support;
- By making regular payments from their earned income until the debt is cleared;

- 8.7 It was stated that most leaseholders opt for the two-year interest free repayment period, with the presumption that this course was taken because leaseholders prefer to pay for major work bills from their earned income. On the other hand it is in the Council's financial interest for leaseholders to settle bills quickly, so the 5% discount was designed to encourage prompt payment. However take-up has been low at less than 1.3%. The Council increased the repayment period for the discount from six weeks to one year (from receipt of Interim Bill) in October 2013 to improve take-up but it is too early to say what effect this has had.
- 8.8 In April 2012 Lambeth Living moved to Interim Billing. Major Works are accounted for on an annual basis ending on the 31st March each year. Leaseholders were sent an estimated bill for any Major Works due in that financial year but were not required to make payments by instalment until works started on-site.
- 8.9 What this means in practice is that the scope and cost of planned Major Works proposed in that particular financial year is estimated based on a sample of properties using industry archetypes and the leaseholders are sent a single bill.
- 8.10 In September 2013 the Council consulted Leaseholders, proposing changes to some of the repayment options.
- 8.11 The Joint Task & Finish Group was presented with the revised options to pay for major work bills for schemes starting from 1st April, 2014. These take into account the leaseholder's circumstances and provide more guidance on the most appropriate repayment options, and detail when first and last payments are due. The details are attached in Appendix 1.
- 8.12 *Please note: If a leaseholder does not select one of the repayment options or fails to adhere to the terms, the default position is that the lease terms will apply. i.e. full repayment within one financial year.*
- 8.13 Presenting the repayment options in a clear format is important for two reasons. Firstly, to help leaseholders find a method to pay large bills, and secondly to help ensure that the Council maximises its income recovery and saves on enforcement costs.
- 8.14 The interest-free periods offered by Lambeth Council are generous in comparison to other social landlords. However Lambeth Council and Lambeth Living understand that two years is not necessarily enough time for all leaseholders to pay larger bills in instalments from their income - however it does provide time for leaseholders to consider all the options available to them.
- 8.15 In cases of extreme hardship, for instance where the leaseholder is elderly or long-term unemployed, the Council can agree to put a charge on the property to secure the debt and collect the money owed at a later date from the proceeds of sale when the property is sold. Although there must be sufficient equity in the property to cover the debt and the mortgagee must consent.

- 8.16 As the current level of investment in the housing stock has given rise to significantly larger bills there may be cases of hardship outside of those who are unemployed or not in work. Where this arises, the need for flexibility on the hardship policy will be considered. 8.17
 There had been some confusion amongst Leaseholders that they would be required to pay their estimated bills up front. This was not the case. The JT&F Group has clarified the nature of the early payment discount, as noted above, with further consultation taking place.
- 8.18 In the context of the lease, the Task & Finish Group believe that the repayment options set out in the attached (Appendix 1) are fair and reasonable. It is noted that Lambeth Living does use discretion when considering cases under hardship criteria.

Recommendations relating billing and repayment options:

22. *That the interim bills, based on estimated figures are regarded as a bill for legal purposes;*
23. *That Leaseholders should advise on which repayment option they will take, as soon as possible after the interim bill is received;*
24. *That leaseholders are reminded that they must identify a repayment option otherwise they will be required to pay all charges within 1 year;*
25. *If the interim estimated bills are based on higher 2008 LPC rates then the estimate should state that the actual cost is likely to change; interim estimated bills to state they are based on a sample using industry archetypes and that the actual cost is likely to change following a full survey of a leaseholders estate/block or street property;*
26. *Those Leaseholders who wish to take up the 5% discount scheme are required to pay within the same financial year;*
27. *That leaseholders are informed of the month that works are expected to start well in advance. e.g. at interim bill stage;*
28. *That all bills include an additional piece of information, a simple breakdown of total cost showing as a percentage: Work Costs; Prelim Costs and Contractor Profit.
 Example:*
- | | Work Costs | Prelim Costs | Profit |
|-----------------|------------|--------------|--------|
| % of Total Cost | % | % | % |
29. *Leaseholders must be provided with a 'receipt' for major works invoices which should include a description of the works paid for;*
30. *The receipts should give details of all works covered by guarantees/warranties, including the length of those guarantees, insurances and associated warranties;*

- 31. Lambeth Council should take reasonable steps to ensure that leaseholders are not charged for repairs and works that are covered by guarantees, warranties or latent defects;**
- 32. That once works start, leaseholders are given additional time before they must commence payment;**
- 33. Lambeth commit to improving communication, in particular:**
- **Provide clear and concise bills in plain English**
 - **That Lambeth specify their definition of 'start on site' – e.g. assembly of skips, erection of scaffold etc.**
 - **State in writing at an early stage (e.g. service charge estimate) when works are likely to start**
 - **Agree with Leasehold Council the format for such correspondence**
 - **That interim estimated bills include contact details for Leasehold Council and area leasehold representatives**

Note: Leaseholder representatives specifically requested that the Council defer Interim Billing until April 2015, by which time it could be established whether value for money has been achieved in a pre-determined auditable means. Additionally, prior to introducing Interim Billing the Council in conjunction with leaseholders should consider and review the timing of interim bills. Although these points were not agreed as recommendations of the JT&F Group, these requests will be considered and responded to by the Council as soon as possible.

9.0 The Lease

9.1 *“All leaseholders must realise that there are rights and obligations for both the leaseholder and the landlord contained within the lease document, it is important that all leaseholders read their lease and in particular the repairing covenants” - Jim Martin to the Joint Task and Finish Group.*

9.2 The advice from the Council's legal service is set out below:
“The contractual relationship with the leaseholders is governed by the terms of the lease agreement. Whilst there is some variation, most of the Council's lease agreements require the lessees to pay rent and their service charges for the repair and maintenance of the building (and estate where applicable), on an annual basis. The Service Charge can include an amount the Council estimates it will spend on service charges, which includes major works, maintenance, improvements and repairs in the forthcoming year. The terms in the lease, as to when the interim service charge should be paid do vary. It is open to the parties to agree alternative payment methods, though the Council could be at risk if the billing procedure does not comply with the terms of the lease as the service charge may then become irrecoverable.

- 9.3 *In order to be able to recover service charges the Council must comply with the provisions of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003. Failure to comply with these requirements may prevent the council from recovering service charges above £250 p.a. for works. However, in the recently appealed case of Daejan Investments -v- Benson, the Supreme Court took a far more liberal approach than the LVT had, to granting landlord's dispensation from strict compliance with the consultation requirements, where it can be proven the lessees had not suffered prejudice."*
- 9.4 Leaseholders should check their leases to ensure the Council complies with the provisions of the individual leases, particularly where large sums are involved.

10.0 Delivery

- 10.1 Leaseholders on the Joint Task and Finish group have expressed concerns that Lambeth Living has to ensure that the outcomes agreed above can be delivered on an on-going basis. The Independent Expert expressed the following "It is within the area of "delivery" that I have my concerns, this is where all the focus needs to be. All of the reassurances and details provided by Lambeth appear sound and well thought through but until we see the delivery process in action we will have to reserve judgement. This is a very large programme being delivered in a very short time-scale; it is likely that there will be errors and mistakes. If there is a focus and attention on the delivery process before it commences hopefully errors and mistakes will be minimised".
- 10.2 The JT&F group note that a new Asset Management Data base is being implemented from September 2014. This is a risk for the delivery of the LHS, if Asset Management data is not effectively managed. As such reports on the implementation of Keystone, should be monitored at Leasehold Council.
- 10.3 The concerns of the Independent Expert mirror those of the leaseholder representatives. We have on-going concerns about the ability of Lambeth to deliver value-for-money, due to:
- Lack of identified pain/gain efficiency savings;
 - The opportunity to re-tender M&E works as part of LHS procurement may have drawn in efficiency savings up front rather than through on-going value engineering;
 - History of poor performance.
- 10.3 A detailed Leasehold Improvement Action Plan from Lambeth Living informed by the outcomes of the Joint Task and Finish Group is being finalised and this will be made available to the Leaseholder Council. There is a need to ensure that organisational competence and capacity, training, communications and monitoring of the above key outcomes are maintained on an on-going basis and that this is built into the action plan.

Recommendations relating to delivery:

- 34. The implementation of the Asset Management database is to be monitored at Leaseholder Council.***
- 35. The Leasehold Improvement Action Plan from Lambeth Living should be made available to Leaseholder Council.***
- 36. That the Action Plan is included within formal client/contractor liaison meetings;***
- 37. That the leasehold council considers the Action Plan on a quarterly basis.***

11.0 The Independent Expert

- 11.1 The JT&F Group appreciated the advice from Jim Martin, the Independent Expert, which was considered to be clear, expert and even-handed. A report from Mr Martin is attached – see Appendix 2.

Recommendation relating to the Independent Expert:

- 38. The profile of leasehold income gained arising from the implementation of capital works is under review by the Council. The JT&F Group request that the Council commits a portion of its leasehold income to employ an Independent Expert who could oversee quarterly reviews of the delivery of the Leasehold Action Plan and engage with leaseholders on the quarterly audit. Lambeth Living should make available BCIS log-in details for purpose of the audit.***

12.0 Conclusions of the Joint Task and Finish Group

12.1 The involvement of leasehold representatives in the work of the Joint Task and Finish Group, supported by the Independent Expert, offered the opportunity to bring transparency to the way in which contracts were procured and managed, to revise the consultation process, and clarify the billing and repayment process.

12.2 The size of the overall LHS program is huge and the timescale is very tight - making the overall delivery challenge very significant. This is not wholly of Lambeth Council or Lambeth Living's making. It is a combination of the need to deliver a £490M investment programme over just five years, so as to retain Government funding and deliver on much-needed investment within the Council's housing stock, the need to revisit and renew the existing procurement arrangements, and finally the need for Lambeth to deliver value for money in an open, transparent and auditable process.

12.3 Overall, the Joint Task and Finish Group found that:

- Compared to the existing long-term qualifying agreements the proposed new approach to procurement, if properly managed, is sound and reasonable;
- The revised consultation process is an improvement;
- Repayment options appear fair (when considered against the leases) although Leasehold Representatives specifically requested that The Council defer interim billing until April 2015, when the delivery of value for money has been assessed;
- Value for money could be achieved and savings passed to the Council, leaseholders and tax-payers, however there are on-going concerns about the ability to deliver value-for-money, due to:
 - a) Lack of identified pain/gain efficiency savings
 - b) The opportunity to re-tender M&E works as part of LHS procurement may have drawn in efficiency savings up front rather than through on-going value engineering
 - c) History of poor performance.

We encourage the Council to commit to action the recommendations put forward by the JT&F group, particularly market testing and the quarterly audit.

Leaseholder recommendations can be found in Appendix 3.

12.4 The Task & Finish Group welcomes the changes brought in by the Council and Lambeth Living relating to contract specification, consultation & communication, repayment options and the point at which payments are made following an interim bill. However leaseholder representatives have put forward recommendations to further improve the process and have specifically requested that interim billing is deferred for a year when the delivery of value for money can be assessed.

12.5 Council and Leasehold representatives are of the firm opinion that Lambeth Living must focus on delivery to ensure the processes described by Lambeth Living to the Joint Task and Finish Group are delivered.

12.6 The JT&F Group notes that Lambeth Living is developing an action plan, which should focus on delivery. This action plan will be monitored by the Council, with the Joint Task and Finish Group also recommending that:

- The action plan is monitored by Leaseholders Council on a quarterly basis
- That leasehold representatives should be included in the monitoring of value for money and efficiency savings from contract procurement and involved in assessing pain/gain outcomes.