

BUDGET AND PERFORMANCE PANEL

LEGAL FEES FOR LEASES 23rd October 2007

Report of Head of Legal and Human Resources

PURPOSE OF REPORT

To inform the Panel of the legal fees that are charged in property transactions, and in particular for leases, and of the outcome of a recent review of the fees.

This report is public

RECOMMENDATIONS

(1) That the report be noted

1.0 Introduction

1.1 It is the practice of the Council to recover a contribution towards its legal costs from the other party to a property transaction. This is common practice among local authorities. Accordingly, fees are charged on the sale of land, on the grant and renewal of leases and for various other legal agreements. The Council's current schedule of charges, which took effect on the 1st April 2007, is at Appendix A. The fees are set by officers, and from time to time are compared with those fees charged by other local authorities in the north west to ensure comparability.

1.2 In particular, with regard to leases, the Council's legal fees are based on the rent payable under the lease. This is a standard means of setting a scale of fees. Legal fees are generally included in the negotiations undertaken by Property Services with the prospective tenant, and are then included as a term of the lease.

1.3 The Council leases a wide variety of commercial premises, for example shops on Council housing estates, and various industrial units. St Leonard's House contains a wide range of commercial lettings, with tenants including public bodies such as the County Council, Police Authority, NHS Trusts, charitable organisations, established companies, and individuals starting up in business.

1.4 During the summer, Legal Services received a number of complaints, some from elected Members, about legal fees being charged to tenants at St Leonard's House, and this has led to a review of the practices and procedures of Legal Services and Property Services in dealing with leases at that property.

2.0 Review

- 2.1 The complaints received related specifically to individuals setting up new businesses in St Leonard's House. As a result of undertaking the review, it became apparent that in some cases, rather than being given a formal lease on entering into possession, some of these individuals, were simply being asked to sign Heads of Terms, with a formal lease being offered after the initial year. Some confusion was arising in that the tenants perceived such a formal lease as a renewal, whereas for Legal Services the document was in fact the first grant of a lease. Confusion also arose with regard to legal fees, as these were not always charged in the first year.
- 2.2 As a result of the review, officers in Legal Services and Property Services have concluded that all new tenants should now be granted an initial lease for a period of three years, but that such a lease should include a "break clause" to enable the tenant to terminate at the end of the first or the second year. This will protect the tenant in the event that the business does not succeed, or equally if the business succeeds to such an extent that the premises are no longer suitable. For tenants who are individuals establishing a new business, the standard legal fee for a commercial lease will be reduced to £150 on the initial grant, with a fee on renewal of £50.
- 2.3 Whilst it is acknowledged that in many cases a lease document and a renewal will be in a standard form, and will require little amendment, many individual tenants, perhaps because they are dealing with the Council rather than with a commercial landlord, choose not to appoint their own solicitor to deal with the transaction on their behalf, and for that reason frequently ask officers in Legal Services questions that would normally be expected to be dealt with by their own solicitor. Further, because Legal staff are aware that tenants do not have their own solicitor, the Legal staff frequently assist the tenant with the completion of the forms required to deal with stamp duty, and respond to inquiries about stamp duty. Accordingly, the transaction is more time consuming for Legal staff than simply printing and sending out a standard document. This may not have been appreciated by those making the complaints. However, officers have accepted that for individuals starting up in business, the £350 fee on grant and renewal may be perceived as too high, and for this reason the lower charge of £150 on grant and £50 on renewal has been introduced. This will, however, apply only to new individual traders at St Leonard's House. It is not considered unreasonable to continue to charge the existing rates to established commercial undertakings.

3.0 Details of Consultation

- 3.1 The review has been undertaken by officers in Legal Services and Property Services in the light of complaints received from elected Members. There has been no formal consultation, although officers have earlier this year undertaken a survey of the legal fees charged by other local authorities in the north west.

4.0 Options and Options Analysis (including risk assessment)

- 4.1 The report is for noting, as the determination of legal fees is a matter for officers.

5.0 Conclusion

- 5.1 The Panel is asked to note the report.

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

None arising from this report.

FINANCIAL IMPLICATIONS

Generally, Legal Services would seek to maximise their income by ensuring that, wherever possible, legal fees are recharged to the other party to a property transaction. This is recognised as standard practice, and accords with good financial management of the Service. However, it is recognised that this may conflict with the Council's regeneration objectives, if a legal fee is prohibitive for a new business. It is estimated that the proposed reduction in legal fees charged to new businesses at St Leonard's House will reduce the Service's income by around £600 each year. However, this can be recovered through adjusting the other legal charges from the 1st April 2008.

SECTION 151 OFFICER'S COMMENTS

The Section 151 Officer has been consulted and has no further comments.

LEGAL IMPLICATIONS

Legal Services have been involved in the preparation of the report.

MONITORING OFFICER'S COMMENTS

The Deputy Monitoring Officer has been consulted and has no further comments.

BACKGROUND PAPERS

None

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