Tenants Council

Depooling Rents and Service Charges

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Presenter: TBC

Type of Report

For information - This report responds to questions raised by Tenants Council

Summary

At the start of rent restructuring in 2002, the government recommended (but did not compel) local authorities to separate their rents from their service charges – a process known as “depooling”. Lambeth did not do this until 2007/08.

For two years, (2006/07 and 2007/08) the government provided support to authorities who lost subsidy through government restrictions on rent increases by Rental Constraint Allowance (RCA). RCA was calculated on two year old data.

The assumption in the question raised by the Tenant’s Council is that the timing of Lambeth’s depooling and the end of the RCA regime meant that Lambeth missed out on £11.2m worth of housing subsidy to which it would otherwise have been entitled.

Tenants Council Questions

Tenants Council have asked for detailed information to be provided on the option not to de-pool, and whether someone was negligent thus resulting in Lambeth losing out to £11.2m.

Recommendations

1. Tenants Council is asked to note the contents of this report.

Rent Restructuring

The government introduced the policy of rent restructuring for the 2002/03 financial year, using data drawn from 2001/02. At the end of the rent restructuring programme (original target date was 2012), CLG envisaged that tenants will pay a combination of formula rents and service charges in the same way that RSL tenants do.

The government also encouraged Councils to separate their rents from their service charges by a process known as “depooling”. The rationale for this was the difference between rent and service charges. Rent is generally taken to include all charges associated with the occupation of a dwelling, such as maintenance and general housing management services. Service charges usually reflect additional services which may not
be provided to every tenant, or which may be connected with communal facilities rather than particular to the occupation of a dwelling. Different tenants may receive different types of service reflecting their housing circumstances.

Although depooling was recommended by government, it was not compulsory. Nonetheless, many authorities chose to depool in the early years of rent restructuring. And from the fact sheet at appendix B it was also clear that the local authorise campaigned for RCA so they must have been aware of the financial benefits. Lambeth did not depool and was not alone in this - at the point when Lambeth depooled (2007/08), it is understood that five London boroughs had not depooled (and some of these have still not depooled even now).

**Lambeth’s Decision to Depool**

The reason for Lambeth’s decision to depool was set out in the Cabinet Report of 8 January 2007 (relevant section reproduced as Appendix A). The reasons stated are to improve the score for Housing Management following a recommendation made by the Audit Commission (paragraph 8.1) and to reduce the amount of rent rebate subsidy limitation payable by Lambeth (paragraph 8.3). This latter paragraph makes it clear that as a result of not depooling in 03/04 we had lost 4.7million in rent rebate subsidy limitation.

The report makes it clear that there was a growing impact on rent rebate subsidy limitation, but it does not envisage there being a substantial gain from Rental Constraint Allowance (RCA) or that the timing of depooling will affect entitlement to RCA. The report writer (Paul Cook, Interim Divisional Director of Resources) was clearly familiar with the workings of RCA as a specific technical issue is deemed to cause “…, a marginal adverse effect on RCA …” at paragraph 8.5.

**Rental Constraint Allowance**

The government introduced Rental Constraint Allowance (RCA) to provide assistance via housing subsidy to those authorities that were prevented from raising their rents to the level assumed in the subsidy model by government policies to protect tenants from excessive rent rises.

The main aspects of the system were:

- Rental Constraint Allowance (RCA) provides councils with support via housing subsidy for the difference between the maximum rent that they can set based on government recommendations and the guideline rent
- The maximum rent increase for a tenant is restricted to RPI plus ½% plus £2 per week.
- Guideline rent is the level to which rents would have to rise if rent convergence is to be achieved by 20011/12
- RCA was initially introduced for a period of two years (2006/07 and 2007/08)
- It was never made clear what would happen after those to years – RCA could have continued, but in fact CLG reverted back to old system of “caps and limits”
- RCA was introduced in part as a response to concerns expressed by London Councils at the loss of subsidy to those authorities heavily constrained by the maximum rent increase
- RCA is calculated on the difference between guideline rent and actual rent. It ignores services charges if they have been depooled, but effectively takes them into account if they are part of a combined rent and service charge.

- RCA takes into account the average rent from two-years ago, thus any changes made during the two years that RCA was in operation do not impact on the RCA calculation.

Further details are provided in the RCA Fact Sheet at Appendix B.

For Lambeth the critical thing is that the RCA regime only lasted for two years (2006/07 and 2007/08) and used two year old data in determining entitlement to RCA. Thus, Lambeth’s data from 2007/08 would not impact fully on the RCA element of housing subsidy until 2009/10. However, by that year the RCA system had ended.

When making the decision to depool, it would have been known that the government had announced RCA for two years only. However, the government had not said that RCA would definitely not be extended or if it were not extended, what system if any would replace it. Thus, at the point when the decision to depool was made (January 2007) those making the decision would not have known whether there would be an entitlement to RCA (or its replacement) arising from that decision.

**Lambeth’s “Entitlement” to RCA**

The calculation of Lambeth’s “entitlement” to RCA of £11.2m is simply the difference between the housing subsidy that the Council received and what it would have received if the RCA system had been continued beyond 2007/08 or if the system had taken into account 2007/08 data.

The key point is that at the time that the depooling decision was made, it could not be known whether this gain would subsequently have been made. On the other hand, by not depooling earlier, the Council could not have known that it would potentially miss out on RCA as this system was only announced in the subsidy determination for 2006/07 and the use of two year old data to calculate entitlement meant that no decision could be made then to ensure immediate and definite entitlement to RCA. Everything depended on the government extending RCA beyond the initial two years – it did not.

**Lambeth’s Response**

The Council feels that it missed out on a substantial amount of subsidy, to which it would have been entitled, but for the fact that it did not depool earlier. On this basis, the Council has been actively lobbying senior civil servants, local MPs and ministers to secure this additional funding for the borough’s tenants.