

## **Service charges, arrears and bad debts Policy**

This policy statement and the associated procedures have been drawn up and approved by the Board in order to ensure that the Company complies with its legal obligations

- 1) Summary
  - a) Posol is the management company for the Higgs and Hill/Swan Hill/Crest Homes residential estate at Port Solent.
  - b) It recovers its costs via a service charge to its shareholders who own the houses and berths on the estate.
  - c) The duty to pay the service charge is set out in the legal documents that shareholders sign when they buy a property.
- 2) Payment of the Posol Service charge is due on the 1st April and 1<sup>st</sup> October.
- 3) How to pay
  - a) By online transfer. See bank account and details on invoice.
  - b) By telephone using credit/debit card.
  - c) By cheque.
- 4) If the service charges are not paid, then the following process will be implemented:-
  - a. Reminders will be issued 14 days later
  - b. A Final Notice will be issued after a further 14 days.
  - c. If payment has not been received within 21 days of the Final Notice solicitors will be automatically instructed and administrative charges of £100 for the referral will be added to the amount outstanding.
  - d. The solicitors will issue a Pre-summons and if payment has not been received within 30 days of the Pre-Summons then a Summons will be issued.
- 5) If Posol issues the invoice later than 1st April or 1st October then the above schedule will be delayed pro rata.
- 6) All solicitors costs arising from the time of referral will be charged to the debtor.

7) Interest will be added to any unpaid account backdated to the date on which payment was technically due. (e.g. 14 days from 1<sup>st</sup> April or 1<sup>st</sup> October)

8) In exceptional circumstances Posol may be able to take hardship into account if the Board is given advance notice.

#### 9) Monthly Payments of Posol Service Charge

Posol's biggest expense is the Port Solent charge that is payable to Premier. The contract demands that 2/3rds of this is paid in April and 1/3rd in October. Whoever drew up the original house deeds and Sub-Underleases on the berths recognized the cash flow implications, which is why both the house deeds and lease agreements also specify payments in April and October.

For reasons of cash flow Posol is unable to operate without our own invoices being paid in April and October.

There is an additional legal complication, which is that the contracts with Posol are embedded in the house deeds and berth lease agreements. These are on record at the Land Registry and would be expensive to change. In respect of the Posol charge all our shareholders have identical contracts and our solicitors advise us that changes cannot be made to just a few. Changes to all of them are not a practical or financial proposition.

#### 10) Payments by Direct Debit.

There are two reasons why Direct Debits are desirable. The first is to facilitate monthly payments, but as above this option is not acceptable to Posol.

The second is to automate payments for the benefit of those who are abroad or on their boat. According to our analysis it is believed that few shareholders would use this facility now that online payments and payment by telephone using a credit card are available. The costs of introducing direct debits for such limited use is not a justifiable expense to impose on shareholders.

#### 11) What is the Service Charge

Port Solent Residents Management Company Limited (Posol) is the management, maintenance and service company for shareholders who own a property on the Higgs and Hill/Crest Homes/Swan Hill estate, and for the adjacent mooring areas. Posol is owned by the shareholders, who elect the Board of Directors to run the Company on their behalf. Each house owner holds one 'A' share in the company and each berth holder holds one 'B' share. The company is

established in the interest of its shareholders as a body and on a not-for-profit basis.

The company negotiates and pays the Port Solent Charge on behalf of shareholders, as well as providing a number of direct services including landscape gardening, maintenance of the residential pontoons, provision of communal TV aerial service (to part of the estate only) and insurance. In undertaking these responsibilities, Posol incurs other administrative and audit costs.

Posol recovers these costs from its shareholders via an itemised service charge account. This shows the basis for the service charge on their house and/or berth, the amount paid on account for the current financial year, and the amount of any adjustment (+/-) required to fund the company's actual expenditure established by the audited accounts for the previous year. The Managing Agent issues an account for service charge payment twice each year in April and October. It is current practice to ask shareholders to pay 2/3 of the annual service charge in the April invoice, with the remaining 1/3 being paid in October.

More information about how the service charge is constructed is given at the end of this statement.

## 12) Responsibility for payment of service charges.

As the owners of Posol, it is the responsibility of each shareholder to ensure that the Company is properly managed and, therefore, that service charges are paid promptly.

The duty to pay the service charge is set down in the deed of transfer signed by each shareholder when purchasing their house and the sub-underlease signed when purchasing a berth. These legal documents require service charges to be paid on 14 April or 14 October or within 14 days of receipt of the company's invoice whichever is the later. Legal precedent has established that the obligation to pay the service charge is wholly based on the covenants signed when buying the house or berth. Payment is not conditional on the shareholder being satisfied with the performance of either Premier Marinas plc or Posol Residents Management Company Limited and therefore withholding payment is not an option.

It is the company's policy to take all steps necessary to ensure that it does not incur bad debts. If, however, in the opinion of the Board, and

every effort having been made to recover the debt, a debt is irrecoverable it will be written off and become a charge on the general accounts of the association, and therefore payable by the members as a whole. The company reserves the right to establish a contingency fund for this purpose.

13) Service charge credits.

Any surplus arising at the end of the financial year will be either added to the sinking fund, or credited against the service charges due in the following year. Cash refunds will not be made unless there are exceptional circumstances. It follows that a person who has ceased to be a shareholder will not receive any adjustment.

14) Financial hardship.

Posol recognises that circumstances occasionally arise in which its members may face financial difficulties that cause genuine hardship. The Company is prepared to take a sympathetic view of such cases wherever possible. Where shareholders are genuinely unable to pay their service charges within the time period laid down, they should write within 14 days of receiving the service charge account to the Managing Agent explaining their difficulties. Every effort will then be made to come to a mutually satisfactory arrangement.

The Company regrets that it will not be able to take a sympathetic view of hardship cases if the shareholder concerned does not communicate with the directors in sufficient time to prevent the normal arrears procedures being followed. The burden of proof lies with the shareholder and not with the Board, whose decision will be final.

All written and verbal communication between the member concerned and the directors of Posol will take place in the strictest confidence and will not be referred to by name in the circulated Board Minutes.

15). How the service charge is made up.

Each householder is liable for 1/423<sup>rd</sup> of Posol's expenditure attributable to the housing areas, e.g. landscaping, ground maintenance, insurance, a share of the Port Solent Charge falling on Posol (see below), and the costs incurred in employing a managing agent.

Each berth holder is liable additionally for 1/310<sup>th</sup> of Posol's expenditure attributable to the residential mooring areas, e.g. insurance, maintenance and replacement, as necessary, of the pontoony, and a share of the Port Solent Charge falling on Posol.

Posol is required to provide annual individual accounts to each householder, showing how installments paid on account match individual liability as calculated in accordance with these rules. Adjustments are required in cases of either under or over payment, after allowing for allocations to the reserves.

**Sinking Funds:** By Articles 22 and 27, the Company may establish reserves or 'sinking' funds but any funds must be split to avoid landscaping and other "householder" costs falling on berth holders' reserves and pontoony costs falling on householders' reserves.

**The Port Solent Charge:** This is analogous to a local rate, and is levied by Premier Marinas plc under the terms of its lease from Portsmouth City Council. This is a charge payable by all residential owners and commercial enterprises at Port Solent, whether or not the individual householder or commercial enterprise participates in any activity connected with the marina proper (a point often not understood by householders who are not also berth holders).

The purpose of the Port Solent Charge is to reimburse Premier Marinas plc for expenditure incurred in carrying out its obligations contained in the Second Schedule of each underlease relating to the Common Parts of the Marina (Note: Posol is an under-lessee in respect of the residential berths).

The main obligations falling on Premier Marinas plc, for which the Port Solent Charge is levied, are to maintain (which includes repair, replace and cleanse) within the marina:

- the structure of the marina, the hoist quay and the lock;
- the inner and outer waiting pontoons, fuel and visitors' pontoons;
- the lock gates and machinery, work boats and plant and equipment, including the fuel bay;
- the landscaping, car parks, roads and footpaths;
- the signs and information services;
- the methane and leachate protection systems, fire fighting and safety equipment and security systems.

In addition, the marina operator must:

- dredge the marina and access channel;

- light the common parts and the car parks etc;
- insure the marina, plant and equipment and common parts, and insure against public liability;
- pay uniform business rates in the common parts including the marina control building;
- impose and enforce Rules and Regulations for the proper and safe operation of the marina;
- keep the marina, car parks and common parts clean and tidy, etc.

Approved by the POSOL Board on 18 May 2019