



To: Executive Councillor for Housing: Councillor Kevin Price
Report by: Jas Lally Head of Refuse and Environment
Relevant committee: Housing Scrutiny Committee: 14th January 2015
Wards affected: All Wards

DELEGATION OF POWERS TO MAKE CERTAIN MANAGEMENT ORDERS UNDER THE HOUSING ACT 2004

Not a Key Decision

1. Executive summary

- 1.1 An Interim Management Order (IMO) is an order lasting up to 12 months made by the council in respect of a residential property. The order authorises the Council to manage the property in place of a private landlord where he cannot be licensed or where there is some management problem which requires intervention by the Council.
- 1.2 It is a temporary measure designed to provide time for a longer-term management solution to be found or if that is not possible the making of a final management order. They are a vital tool in ensuring that whilst steps are taken to improve the skills and approach of the landlord the occupiers are not put at risk.
- 1.3 A Final Management Order (FMO) can only follow an IMO and is similar in function to an IMO but lasting up to 5 years (a subsequent FMO may be made to follow this). The prime differences between an IMO and FMO are that the Council may (under certain circumstances) create tenancies without the landlords consent and the Council must have management scheme in place relating to the long term management of the property.
- 1.4 The power to make IMOs and FMOs currently sits with the Executive Councillor for Housing. This report seeks agreement that where the Council have a duty to make a Management Order that this power be delegated to the Head of Refuse and Environment. Where discretion exists in relation to the making of a Management Order then the power should remain with the Executive Councillor for Housing.

2. Recommendations

- 2.1 The Executive Councillor is recommended to approve an amendment to the Constitution that where the Council have a duty to make a

Management Order that this power be delegated to the Head of Refuse and Environment. Where discretion exists in relation to the making of a Management Order then the power should remain with the Executive Councillor for Housing.

3. Background

3.1 One of the key aims of the Housing Act 2004 (the Act) is to improve the conditions and management of the Private Rented Sector (PRS). In Cambridge the PRS accounts for approximately 25% of the housing stock which amounts to nearly 12,000 households who rely upon the sector for their homes.

3.2 For many, unable to access social housing or afford to buy their own home, the PRS is the only accessible option they have and in the main it is a sector which works well for all concerned. However in a minority of cases properties can be poorly managed and have a huge impact upon the occupiers many of whom are vulnerable.

3.3 The Act gives local authorities the powers to regulate properties in the PRS which are of most concern but these sanctions are not always sufficient to protect the occupiers of a property that is being poorly managed. It is at this point where management orders come in.

3.4 The Act sets out the impact of Interim and Final Management Orders (summarised in Appendix A) and also sets out the circumstances under which they must and may be used. This report only seeks to amend the delegation of powers where a management order **must** be made, in relation to an IMO these are set out in Appendix B.

3.5 The reason for the proposed change in delegation is that where a duty to make an order we must make one and therefore a decision to make one does not exist. The nature of Management Orders is such that the timing of them will be determined by the revocation/refusal of a House in Multiple Occupation (HMO) licence or where one is necessary to protect the health, safety or welfare of the occupiers of the property. It is therefore not under the control of the Council and would not necessarily fall within the normal Scrutiny Committee cycle.

4. Implications

(a) Financial Implications

An IMO or FMO is a local land charge. A Local Housing Authority (LHA) can apply to have an appropriate restriction entered on the land registry register of the property in respect of the order.

A LHA may spend such monies as is reasonable in carrying out its duties to manage a property subject to an IMO. Such expenditure might include (but it is not limited to):

- the costs incurred in carrying out works, or taking other action to secure the health, safety and welfare of the occupiers are protected
- the costs of providing services or carrying out routine maintenance
- the cost of insurance and
- the cost of providing management services, including administrative costs

Any rent or other payments (in the nature of rent) collected by the LHA from the occupier (s) of the property may be used by it to meet:

- the relevant expenditure and
- any amounts of compensation paid to a third party under section

Having deducted from the rents or payment it receives its relevant expenditure and any amounts of compensation payable, the LHA must pay to the immediate landlord:

- the surplus (if any) and
- if the LHA considers it appropriate, any interest on that amount at a rate fixed by the LHA

The IMO may specify the intervals as to when payments of surpluses are to be made and if interest is payable the rate of interest. If the order does not contain terms relating to either or both of these provisions the immediate landlord may appeal to an Residential Property Tribunal (RPT). If there is more than one immediate landlord, the LHA may pay to each any sums due to them in such proportion as it decides is appropriate.

The LHA must keep full accounts of its income or expenditure and must allow any person with an estate or interest in the property all reasonable facilities for inspecting the accounts, to take copies of them and for the purpose of verifying them (for example the production of actual invoices, quotes and so on).

As such there are no long term financial implications in the interim a recoverable cost may be incurred to secure the health and safety of the occupiers.

(b) Staffing Implications

Work to be undertaken within existing resources although each management order will be resource intensive and require prioritisation over other work.

(c) Equality and Poverty Implications

No impact.

(d) Environmental Implications

Nil.

(e) Procurement

In the event that an interim or final management order becomes necessary it is the intention that internal resources (Town Hall Lettings or City Homes) be employed to under take the work incurring no procurement issues.

(f) Consultation and communication

None required beyond publication of the report.

(g) Community Safety

No impact.

5. Background papers

- A guide to the licensing and management provisions in Parts 2, 3 and 4 of the Housing Act 2004:
(https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7813/1446472.pdf).
- Interim and Final Management Orders (IMOS & FMOs) for HMO and Selective Licensing Schemes under the Housing Act 2004
(<http://www.lacors.gov.uk/lacors/upload/12356.pdf>)

6. Appendices

Appendix A: Impact of Interim and Final Management Orders.

Appendix B: Circumstances where a Management Order must and may be made

7. Inspection of papers

To inspect the background papers or if you have a query on the report please contact:

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Appendix A: Impact of Interim and Final Management Orders

Once a management order is in force, it places obligations on the local authority and impacts upon the rights and powers of the immediate landlord, those living in the property and those with an interest in the property.

Impact upon the local authority

When a management order comes into force, the local authority must:

- a. Take immediate steps to protect the health, safety and welfare of those living in the property and those living in or owning properties in the vicinity;
- b. Take steps to ensure the property is properly managed;
- c. Ensure the property is insured against destruction or damage;

The order also gives the local authority the following rights over the property:

- a. Possession of the property (subject to the rights of any existing occupiers);
- b. All the rights which a landlord has, including collection of rent;
- c. The power to spend the money received through rent to carry out its duties to manage the property;
- d. The power to grant new tenancies and licences.

Impact upon the landlord

The management order effectively places the local authority in the landlord's shoes and as a result, upon it coming into force, the landlord can no longer:

- a. Receive any rent from those living in the property;
- b. Exercise any rights or powers in respect of the management of the property;
- c. Grant any tenancies or licences in the property.

Impact upon the occupiers

A management order does not impact upon the existing occupiers' status within the property. For example, if they had a 6 month assured shorthold tenancy with the landlord, they continue to have a 6 month assured shorthold tenancy even after the management order comes into force.

However, the order does have a practical impact upon the occupiers, in that:

- a. Their rent will be paid to the local authority, not their landlord;
- b. The local authority will be responsible for managing the property.

Where the local authority grants any new tenancies under the management order, these will not be council tenancies (e.g. secure or introductory tenancies). Instead, these new occupiers will be granted private sector tenancies (e.g. assured shorthold tenancies).

Impact upon those with an interest in the property

The landlord and the occupiers may not be the only people with a legal interest in the property. There may be a mortgage in force or the property may be leasehold, with a freeholder who has an interest in it.

The making of a management order has no impact upon these interests and does not prevent either the mortgage company or the freeholder exercising any of its rights.

Powers & duties once FMO in force

The powers afforded to the local authority in respect of the property are similar to those provided under an IMO. However there are a number of important differences.

a. The local authority can grant tenancies and licences in the property without the landlord's consent provided:

- i. It is not for a fixed term which expires beyond the end of the FMO;
- ii. It is not a licence or tenancy which cannot be terminated on less than 4 weeks notice (i.e. any periodic tenancy or licence must be weekly) unless it is an assured shorthold tenancy, in which case consent is not required provided it is created at least 6 months before the expiry of the FMO.

b. A FMO must contain a management scheme. The purpose of the scheme is to set out how the local authority proposes to manage the property over the relative long term of the FMO. The scheme must be split into 2 parts.

Part 1 of the scheme must contain a plan giving details of how the local authority intends to manage the property including:

- i. Any work to be carried out;
- ii. Estimates of expenditure likely to be incurred whilst the order is in force;
- iii. Levels of rent likely to be collected;
- iv. Provisions for the payments of any money to the landlord and/or the recovery of any expenditure from the landlord which cannot be covered by the collected rent.

Part 2 of the scheme must set out how the local authority intends to address the matters which caused the making of the FMO in the first place.

c. Since the FMO follows an IMO, there is no requirement on the local authority to take immediate steps to protect health and safety (since this will have been addressed under the IMO). A FMO is a longer term provision. Instead, the local authority must from time to time review the operation of the FMO and the management scheme and decide whether the FMO is still the best course of action for this property.

In particular, the local authority must decide whether to:

- i. Vary the terms of the FMO (including the terms of the management scheme);
- ii. Grant a licence (if relevant);
- iii. Revoke the FMO and take no further action.

Appendix B: Circumstances where a Management Order must and may be made

Where a licence cannot be granted

The Council must make an IMO if the property is required to be licensed under Parts 2 or 3 of the Housing Act 2004 (the Act) and is not so licensed and:

- there is no reasonable prospect of it being licensed in the near future or
- that the health and safety condition is satisfied

The circumstances in which the Council may not be able to grant a licence might be:

- that a suitable licence holder cannot be agreed (including where the proposed licence holder are not a fit and proper person)
- the person having control or person managing the property cannot be identified
- the person having control or person managing the property has failed to apply for a licence
- the application for a licence has been refused (for whatever reason)

The 'near future' will depend on the circumstances of the case, but is likely to be weeks or at most a month or two since first suspecting that the prospect of granting a licence may be problematic.

The second circumstance is where the health and safety condition has been met, notwithstanding whether or not an application for a licence has been submitted.

On revocation of a licence

The Council are also under a duty to make an IMO if the property is licensed, but we intend to revoke the licence, and upon the revocation:

- there will be no reasonable prospect of the property being licensed in the near future or
- that the health and safety condition is satisfied

The circumstances in which the Council may revoke a licence might be:

- the licence holder or manager has committed a serious breach of a condition of the licence or has committed repeated breaches of a condition or

- the licence holder is no longer deemed to be a fit and proper person or
- the manager of the property is no longer deemed to be a fit and proper person

A licence may only be revoked if the breach of a condition of the licence is serious, for example one adversely affecting the health or safety of the occupiers or the community. However, if less serious breaches occur repeatedly, the licence can be revoked. The tests for determining whether a person is fit and proper are the same as those that apply when considering an application for a licence.

Following revocation the IMO must be made if there is no reasonable prospect of granting a replacement licence or a new licence to a different licence holder within a reasonable time. If we consider that the Health and Safety condition will be satisfied when the licence is revoked it must make an IMO (even if the licence has been revoked for a different reason).

In relation to a FMO the circumstances in which we must make one are:

On expiry or revocation of an IMO

- in respect of a property which is required to be licensed and if on the expiry or revocation of the IMO it is unable to grant a licence for the property.

The Council may make an IMO in respect of:

- an HMO which is not required to be licensed and
- a house which, if a selective licensing designation was in force in the area, would be subject to licensing

The Council may make an FMO in respect of:

- a property which is not required to be licensed under Parts 2 or 3, if on the expiry or revocation of the IMO the LHA is satisfied that it is necessary to make the FMO to protect on a long term basis the health, safety and welfare of persons occupying the property or persons occupying or owning premises within its vicinity.

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