



To: Executive Councillor for Housing: Cllr Kevin Price
Report by: Jas Lally – Head of Refuse and Environment
Relevant scrutiny committee: Housing Scrutiny Committee: 1st July 2014
Wards affected: All

POWER TO CHARGE FOR CERTAIN ENFORCEMENT ACTION UNDER THE HOUSING ACT 2004 (the “ACT”)

Not a key decision

1. Executive summary

The Act enables local authorities to make a reasonable charge as a means of recovering certain expenses incurred in serving an improvement notice, making a prohibition order, serving a hazard awareness notice, taking emergency remedial action, making an emergency prohibition order, or making a demolition order. The expenses are in connection with the inspection of the premises, the subsequent consideration of any action to be taken and the service of notices.

Authorities are able to charge for each course of action including, where emergency remedial action is taken, for any subsequent notices.

In March 2012 the Community Services Scrutiny Committee (decision 12/25/CS) gave permission to seek to recover the costs against the recipient of the Notice or Order. This paper is a review of the charges set in this decision in light of recent case law.

2. Recommendations

The Executive Councillor for Housing is recommended to approve the attached policy document as detailed in Appendix A which supercedes the previous Policy Document Charging for certain enforcement action.

3. Background

The preparation and service of enforcement notices is a time consuming and costly process.

Section 49 of the Housing Act 2004 (“the Act”) gives the Council the power to make a reasonable charge as a means of recovering certain expenses

incurred by them in serving an improvement notice, making a prohibition order, serving a hazard awareness notice, taking emergency remedial action, making an emergency prohibition order, or making a demolition order. This provision does not relate to the cost of any remedial action taken by the authority either with or without agreement. These are separate charges covered by section 31 and Schedule 3 to the Act.

The Act provides for the appropriate national authority to set a maximum charge to be made by authorities (no such maximum has been set). Authorities however are reminded that they should charge only the reasonable costs of enforcement.

In 2008 a survey¹ by the Chartered Institute of Environmental Health found that approximately half of Authorities used the power to recover costs outlined above and two thirds that they expected the need for enforcement activity to increase.

- The expenses recoverable are, in the case of the service of an improvement notice or a hazard awareness notice, the expenses incurred in—
 - (a) determining whether to serve the notice,
 - (b) identifying any action to be specified in the notice, and
 - (c) serving the notice.
- Given the informal nature of hazard awareness notices and the fact that there are no appeal provisions against a hazard awareness notice it is not intended to charge for the service of them.
- In the case of emergency remedial action under section 40, the expenses incurred in—
 - (a) determining whether to take such action, and
 - (b) serving the notice required by subsection (7) of that section.
- In the case of a prohibition order under section 20 or 21 of this Act, an emergency prohibition order under section 43 or a demolition order under section 265 of the Housing Act 1985, the expenses incurred in—
 - (a) determining whether to make the order, and

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(b) serving copies of the order on persons as owners of premises.

- A reasonable charge may also be made as a means of recovering expenses incurred by them in—

(a) carrying out any review under section 17 or 26, or

(b) serving copies of the authority's decision on such a review.

A breakdown of the time and cost involved of undertaking these actions is included in Appendix A. Authorities are able to charge for each course of action including, where emergency remedial action is taken, for any subsequent notices.

Section 50 of the Act sets out the powers available to a local authority for recovering any charge they make under section 49 powers. These are, following service of the Order or Notice a demand for payment of the charge must be served on the person from whom the authority seek to recover it and once the demand becomes operative the Council may register the charge as a Local Land Charge on the property until the debt is recovered.

There are no Appeal provisions against this charge only against the underlying notice. However where a tribunal allows an appeal against the underlying notice or order, it may reduce, quash, or require repayment of any charge made in respect of the notice or order.

In deciding whether to exercise their powers to make a charge and the level of any charge, authorities may take account of the personal circumstances of the person or persons against whom the enforcement action is being taken. The degree to which authorities consider personal circumstances is at their discretion, having regard to the resources available to them.

It should be noted that in line with the Councils adopted Enforcement Policy (March 2010) and the Councils Housing Health & Safety Rating System (HHSRS) enforcement procedure (March 2013) an informal approach would normally be taken first and the Landlord given an opportunity to resolve the matter informally without the need for the service of Notice or Order.

During this informal stage the landlord will be informed of the consequences of non-compliance including the levying of a charge for the service of the Notice of Order should that become necessary.

Informal action may not be appropriate where the risk to the occupiers of the premises is imminent or where the landlord has a history of non-compliance with informal requests.

The Housing Standards team undertook 300 inspections in 2013-14 and served 14 enforcement notices that would have resulted in a charge.

The level of charges is detailed in Appendix A and subject to a yearly review.

4. Implications

(a) Financial Implications

The principle is to recover those costs which we are able to. The budget report for this year includes a small amount of income of £1040 that was anticipated under the previous policy.

(b) Staffing Implications

No additional resources are required to implement this policy given that the enforcement activity is a statutory duty and already undertaken within existing resources.

Equality & Poverty Implications

The service of enforcement notices will impact on a small number of private sector landlords or property managers who fail to comply with the Act. Private landlords come from across all strands and do not make up a specific group. This policy will not disadvantage any specific group. An Equality Impact Assessment is attached.

(d) Environmental Implications

Nil.

(e) Procurement

None.

(f) Consultation and communication

A small section of local landlords and managing agents were consulted as part of a landlord accreditation event in 2011.

(g) Community Safety

No impact on community safety.

5. Background papers

- Housing Act 2004

- Housing health and safety rating system (HHSRS) enforcement guidance: housing conditions
- The CIEH Survey of Local Authority Regulatory Activity under the Housing Act 2004

6. Appendices

Appendix A- Housing Act 2004- Charging for certain enforcement Action

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- Housing Act 2004- Charging for certain enforcement action

The level of charge levied for service of the notice or order must be reasonable and capable of being substantiated. The breakdown of costs below is based on an hourly rate of £40 p/h for a case officer and £22 p/h for administrative support.

A reasonable charge may also be made as a means of recovering expenses incurred in carrying out any review under section 17 or 26 or serving copies of the authority's decision on such a review (of Suspended Improvement Notices and Prohibition Orders respectively).

Additional reasonable costs incurred in the service of the notice may be included in the costs to be recovered, an example of such costs would be where it was necessary to undertake an Electrical Installation Condition Report in order to identify all electrical hazards in a property.

The charge may be waived in exceptional circumstances at the approval of the Environmental Health Manager.

Improvement Notice

Item	Actions by Case Officer	Time allotted	By whom
1	Initial investigation (gathering information and initial inspection)	2 hours	Case officer
2	HHSRS scoring (record on M3 recording to include full notes, justification, and scores).	2 hours	Case officer
3	Referencing (land registry, Council Tax search etc)	30 mins	Admin Officer
4	Preparation of Notice Pack (cover sheet, notices(s), schedule 1 & 2, consultation letter and statement of reasons).	2 hours	Case Officer
5	Consultation (with TM over notice pack, plus any amendments and response to representations).	30 mins	Case Officer
6	Peer Check	30 mins	Case Officer

Total 7 hours of case officer and ½ hour of admin officer

Cost £280 + £11

Recommended Fee £291

Prohibition Order (including Emergency Orders)

Item	Actions by Case Officer	Time allotted	By whom
1	Initial investigation (gathering information and initial inspection)	2 hours	Case officer
2	HHSRS scoring (record on M3 recording to include full notes, justification, and scores)	2 hours	Case officer
3	Referencing (land registry, Council Tax search etc)	30 mins	Admin Officer
4	Preparation of Notice Pack (cover sheet, notices(s), schedule 1, consultation letter and statement of reasons).	1 hour 30 mins	Case Officer
5	Consultation (with TM over notice pack, plus any amendments and response to representations).	30 mins	Case Officer
6	Peer Check	30 mins	Case Officer

Total 6 ½ hours of case officer and ½ hour of admin officer

Cost £260 + £11

Recommended Fee £271

Emergency Remedial Action Notices

Item	Actions by Case Officer	Time allotted	By whom
1	Initial investigation (gathering information and initial inspection)	2 hours	Case officer
2	HHSRS scoring (record on M3 recording to include full notes, justification, and scores).	1 hours	Case officer
3	Referencing (land registry, Council Tax search etc)	30 mins	Admin Officer
4	Preparation of Notice Pack (cover sheet, notices(s), schedule 1 and statement of reasons).	1 hour	Case Officer
5	Consultation (with TM over notice pack, plus any amendments and	30 mins	Case Officer

	response to representations).		
6	Peer Check	30 mins	Case Officer

Total 6 hours of case officer and ½ hour of admin officer

Cost £240 + £11

Recommended Fee £251

Review of Suspended Notices and Orders

Item	Actions by Case Officer	Time allotted	By whom
1	The review of OR service of copies of decision following such a review.	2 hours	Case officer
2	Referencing (land registry, Council Tax search etc)	30 mins	Admin Officer

Total 2 hours of case officer and ½ hour of admin officer

Cost £80 + £11

Recommended Fee £91