



To: Executive Councillor for Housing (and Deputy Leader): Councillor Catherine Smart
Report by: Jas Lally – Head of Refuse & Environment
Relevant scrutiny committee: Community 15/3/2012
Services
Scrutiny
Committee
Wards affected: All Wards

RECOVERING COSTS INCURRED WHEN ENFORCEMENT NOTICES ARE CHARGED

Not a Key Decision

1. Executive summary

1.1 Section 49 of the Housing Act 2004 (“the Act”) gives the Council the power to recover all reasonable expenses incurred by them in taking enforcement action under part one of the Act. Preparing and serving enforcement notices can be a time consuming and costly process currently this cost is not recharged to the receipts of notices.

1.2.1 Costs can be recovered for all enforcement work involved that has been incurred in undertaking housing assessments, determining whether to serve the following notices or orders and identifying action specified in the notice or order.

- Serving an improvement notice
- Making a prohibition order
- Serving a hazard awareness notice
- Taking emergency remedial action
- Making an emergency prohibition order
- Making a demolition order
- Declaring the area in which the premises are situated to be a clearance area.

1.3 Once the demand becomes operative the Council may register the charge as a Local Land Charge on the property until the debt is recovered.

2. Recommendation

- 2.1 The Executive Councillor for Housing approves the attached policy document as detailed in Annex A *Charging for certain enforcement action -Policy document January 2012* which will introduce a charge of £150:00 per Housing Act 2004 enforcement notice from April 2012.

3. Background

- 3.1 Section 49 of the Housing Act 2004 allows Councils to make reasonable charges for the recovery of enforcement costs. Preparing and serving enforcement notices to remove hazards can be a time consuming and costly process. Currently this cost is not recharged to the notice recipients so the Council is not making maximum use of the power.
- 3.2 There is no legal maximum charge but charges must be reasonable in reflecting time spent to remove a hazard and be justifiable.
- 3.3 The Council can recover certain administrative and other expenses incurred by them in by:
- Serving an improvement notice
 - Making a prohibition order
 - Serving a hazard awareness notice
 - Taking emergency remedial action
 - Making an emergency prohibition order
 - Making a demolition order
 - Declaring the area in which the premises are situated to be a clearance area
- 3.4 Administrative expenses that may be charged for include:
- Determining the appropriate course of action
 - Identifying actions to be specified in a notice
 - Serving the notice
 - Reviewing suspended improvement notices and prohibition orders
- 3.5 The Councils *Housing Health & Safety Rating System (HHSRS) enforcement procedure (January 2009)* requires that an informal approach to regulating private housing including the private rented sector must be followed before a formal enforcement notice is considered. The vast majority of landlords work informally with officers to remove hazards without the need for enforcement action.

- 3.6 If the informal approach fails the Council must consider the formal approach to removing the hazard.
- 3.7 Typically it can often take a single enforcement officer a half a day to assess a dwelling, undertake a full hazard assessment in line with the HHSRS operating guidance, determine the most appropriate notice to serve and prepare the notice prior to service. Currently this officer time is not recovered from the recipient of the notice.
- 3.8 The Housing Standards team inspected over 500 dwellings in the year ending March 2011 and served 39 enforcement notices for a variety of hazards. Multiple enforcement notices can be served on a particular property so fewer than 30 landlords received enforcement notices.
- 3.9 Current guidance *How should LHAs charge for enforcement of notices or orders served under Housing Act 2004, part 1?* states that –
- Enforcement action can be either charged per notice as a standard charge or based on the hourly rate for staff involved.
 - Charging a standard amount must be based on the minimum amount of time to ensure that the cost charged is reasonable.
- 3.10 Research undertaken by the Housing Standards team of a few other authorities indicates that current charges range between £100:00-£425:00 per notice.
- 3.11 It is likely that by introducing a charge for the recovery of costs in many cases the landlords would undertake works informally or make an acceptable proposal prior to the need to serve a formal notice.
- 3.12 The current hourly officer rate of £40:00 is charged for works in default in other aspects of Environmental Health enforcement. This figure includes an element to cover overheads.
- 3.13 3hours 45 minutes at an hourly rate of £ 40:00 would result in a charge of £150:00 per notice.
- 3.14 Section 50 of the Act relates to recovery by the Council of a charge made by then under section 49.
- 3.15 Once the demand becomes operative the Council may register the charge as a Local Land Charge on the property until the debt is recovered. The sum charged will be a local land charge on the premises and, if not paid within one month, will be recovered in

accordance with the powers available under the Law of Property Act 1925 which include the power to appoint a receiver.

4. Implications

(a) **Financial Implications**

No additional resources are required to implement this policy as enforcement notices are already served. The policy is for cost recovery purposes. The budget report in January included an additional small amount of income of £900 (reference S2849) may be generated by the introduction of this policy.

(b) **Staffing Implications**

Housing standards officers currently serve enforcement notices and already undertake this mandatory task, which can be managed within existing resources.

(c) **Equal Opportunities Implications**

The service of enforcement notices will impact on a small number of private sector landlords or property managers who persistently 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.

As this policy will not impact directly on a particular group an EIA is not considered necessary.

(d) **Environmental Implications**

It is hard to assess this as enforcement notices may be served to repair and improve housing including remedying penetrating dampness, damaged or dangerous electrical installations, installation of fire precautions or to improve overall heating systems.

In the majority of cases the impact will be nil however when the enforcement notices requires works to improve heating systems or relate to energy efficiency the proposal may have a low positive impact.

(e) **Consultation**

A small selection of local landlords and managing agents were consulted as part of the landlord accreditation forum in October 2011.

(f) **Community Safety**

This policy will not impact on community safety as it refers directly to private housing

5. Background papers

- 5.1 These background papers were used in the preparation of this report:
- 5.2 *How should LHA's charge for enforcement of notices or orders served under Housing Act 2004 part 1*
<http://ideatest.conseq.org.uk/lacors/core/page.do?pagelid=10491731>
- 5.3 Housing standards HHSRS enforcement procedure. *Health & Safety Rating System (HHSRS) enforcement procedure (January 2009.)*

6. Appendices

- 6.1 Appendix A- Housing Act 2004- Charging for certain enforcement action

7. Inspection of papers

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

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