
REPORT FOR: CABINET

Date of Meeting:	19 November 2015
Subject:	Recovery of Costs following the Service of Housing Act 2004 Notices
Key Decision:	Yes
Responsible Officer:	Venetia Reid-Baptiste, Divisional Director of Commissioning
Portfolio Holder:	Councillor Graham Henson, Portfolio Holder for Environment , Crime and Community Safety
Exempt:	No
Decision subject to Call-in:	Yes
Enclosures:	Appendix A – EQIA Appendix B – Section 49, Housing Act 2004 Appendix C – Private Sector Housing Enforcement Policy

Section 1 – Summary and Recommendations

Section 49 of the Housing Act 2004 gives local authorities the discretion to charge for the service of enforcement notices and certain other work including the time taken determining whether to serve the notice. The purpose is to impose the burden of the costs incurred by the Council dealing with hazardous housing on those committing the breaches that require enforcement.

Recommendations:

1. Introduce charging in accordance with Section 49 of the Housing Act 2004 in respect of the service of Improvement Notices, Prohibition Orders, Emergency Remedial Action, Emergency Prohibition Orders, Hazard Awareness Notices and Demolition Orders.
2. Approve the Private Sector Housing Enforcement Policy, which sets out the principles under which any Notice would be served.
3. Delegate to the Corporate Director (Community) authority to make operational decisions related to this scheme, including delegation of responsibilities following consultation with the Portfolio Holder for Environment, Crime and Community Safety.
4. The introduction of the charging system be with effect from 1st December 2015

Reason: (For recommendation)

To ensure the cost of enforcing housing standards, particularly in the private rented sector, are met by those responsible for breaches and not the public purse.

Section 2 – Report

2.1 Introduction & Background

Charging of Notices

- 2.1.1 The Housing Act 2004 (hereinafter “the Act”) came into force in April 2006, and introduced significant changes to how the private rented residential sector was regulated
- 2.1.2 The Act introduced a risk based approach to housing, through the Housing Health and Safety Rating System (HHSRS). All properties (both rented and owned) can be inspected under this regime, which seeks to quantify the hazards within a property and give each hazard a score depending on its likelihood to cause harm, the presence of a vulnerable group in the property and the type and use of the property itself. It looks at a total of 29 housing hazards that are assessed, ranging from electrical safety to damp, hygiene and entry by intruders.
- 2.1.3 Each hazard has a weighting which will help determine whether the property is rated as having category 1 (serious) or category 2 (other). This is based on the most vulnerable group that can be affected. A risk assessment looks at the likelihood of an incident arising from the condition of the property and the likely harmful outcome. For example, how likely is a fire to break out, and what would happen if it did.

- 2.1.4 The method of risk rating is set out in Government guidance to ensure national consistency of approach. This guidance can be found at www.communities.gov.uk/publications/housing/housinghealth
- 2.1.5 A local authority is legally required to deal with any category 1 hazard when they have been identified while it is at the discretion of the authority whether they take any action in respect of category 2 hazards. Most councils deal with category 2 hazards where possible as they still affect the health and safety of the occupants.
- 2.1.6 As stated above, it is a legal duty on the Local Authority to take action when any Category 1 hazard is identified. The Act provides for a range of enforcement notices that can be served to address hazards, especially those that fall within Category 1.

2.2 Housing Notices

- 2.2.1 Part 1 of the Act introduced a range of notices and orders that can be issued dependant on the premises and risk involved, and the category of the risk. These are:
- Hazard Awareness Notices (section 28 or 29) – A legal notice that simply advises of the hazards present and the action that should be taken, these notices do not carry a time limit for compliance
 - Improvement Notices (Section 11 or 12) – A notice that requires repairs to be undertaken within a set amount of time
 - Prohibition orders (Section 20 or 21) – Restrict the use of whole or part of a dwelling due to serious hazards
 - Emergency Prohibition Orders (Section 43) – Restrict the use of all or part of dwelling in an emergency
 - Emergency Remedial Action Notice (Section 40) – Allows the authority to take emergency remedial action where a category 1 hazard causes an imminent risk of serious harm.
 - Demolition Order – Allows the making of an order requiring the demolition of the property. The Act amends the provisions of s.265 of the Housing Act 1985 in this regard.
- 2.2.2 Owner Occupied premises can be subject to Hazard Awareness Notices, by virtue of s.28(1)(a) of the Act.
- 2.2.3 The service of any aforementioned notice requires an officer to assess the premise in line with the Act, follow the HHSRS process and determine the risk category. Remedial works are then required to be identified that would rectify the hazard or, in those cases where it can not be removed / reduced to a sufficient level, prohibit the use of all or part of the premises affected by the hazard

2.2.4 Inspections, the preparation of notices and service of the same are time consuming, especially if the premise has a large number of identified hazards and deficiencies that need addressing. It is for this time, in line with Section 49 described below, that a charging scheme is required to ensure any financial burden is carried by the person responsible for the premises, rather than the Local Housing Authority.

3 Options considered

Charging of Notices

3.1 **Charge for Notices (Hourly Rate)** – allowing cost recovery by the Council for time taken to ensure compliance. It should be noted that such costs are only incurred by those that do not comply, and do not impact on those landlords that comply with recommendations made by the Council’s officers before the service of a notice is required.

Imposing a charge is likely to encourage compliance to avoid further costs relating to enforcement.

3.2 **Charge for Notices (Fixed Charge)** – while a lot of Councils have chosen this option, the issue is that it is reliant on “averages” in terms of costs rather than the actual true cost of the specific enforcement on a case to case basis. This can lead to not recovering full costs or being seen to be making a profit. In line with legislation, the Council should be recovering the actual cost it incurs in taking the action in question.

3.3 **Don’t Charge** – (maintain the status quo) As it currently stands, the Council does not charge for the serving of Notices under the Act, resulting in those landlords that are failing to comply with officer requests and statutory requirements having no financial incentive to comply quickly or any financial penalty for non-compliance.

In 2015, 94 Housing Notices have been served by the Council, with no ability to reclaim costs. As can be seen in 4.3.6 below, each Notice is time consuming for the Council and redirects resources away from conducting other duties.

3.4 **Don’t Serve Notices** – not a viable option, as enforcement of the legislation under the Act falls to the Council. The Council would be susceptible to legal challenge if it failed to meet its statutory obligations.

3.5 Based on the above, to not to charge for enforcement makes no operational or financial sense. By setting a fee that is based on the actual cost per Notice, the Council meets the spirit of the legislation and can justify its costs if challenged. Charging also encourages early compliance in rectifying any hazard identified by the party liable to pay the charge.

4. Cost Recovery of Housing Enforcement Notices

4.1 Charging of Enforcement Notices

- 4.1.1 Section 49 of the Housing Act 2004 sets out what work can be charged for depending on the type of notice/order being issued.
- 4.1.2 For the purposes of Improvement Notices and Hazard Awareness Notices, this includes expenses incurred in determining whether to serve the notice, identifying any action to be specified in the notice, and the actual service of the notice
- 4.1.3 For the purposes of emergency remedial action notice, this includes expenses incurred determining whether to take such action and the serving of the notice
- 4.1.4 For the purposes of prohibition notices, emergency prohibition orders and demolition orders, this includes expenses incurred for determining whether to make the order and serving copies of the order on persons as owners of premises
- 4.1.5 The Council can also make a reasonable charge as they consider appropriate as a means of recovering expenses incurred by them for carrying out a review of suspended improvement and prohibition notices, as well as serving copies of the authority's decision of such a review. This is allowed under Section 49(5) of the Act.
- 4.1.6 A demand for payment of charges becomes operative, if no appeal is brought against the underlying notice or order, at the end of a period of 21 days, beginning with the date of service of the demand. From the time when the demand becomes operative, the sum recoverable by the Council is, until recovered, a charge on the premises concerned.
- 4.1.7 In line with the principles of enforcement, officers will always seek compliance through informal methods where appropriate. But, when formal enforcement becomes necessary for purposes of addressing risk, it should not be a financial burden on the Council.

4.2 Process of Determining Enforcement

- 4.2.1 In line with legislation, 24 hours Notice is given of the inspection to take place (exceptions would be where there is an emergency situation, where immediate access will be sought)
- 4.2.2 Within 14 days, Officers will endeavour to issue an informal written notice of any hazard identified and remedial work required. An appropriate time period to undertake works will be stated as detailed in a written schedule, and will be agreed with the responsible person where possible. The informal notice will set out the fact an enforcement notice shall be issued if works are not carried out, and

that such notices incur a charge to recover costs. Each unit of accommodation that attracts a notice will be charged separately.

- 4.2.3 On expiry of any timescales set, a further visit to the premises in question will take place to determine compliance. Officers will keep full notes of such a visit. Determination will be made whether enforcement notices are required to address any outstanding works
- 4.2.4 At the time any formal notice (or order) is issued, a written request for payment shall be made. Details of the reasons for the charge, payment methods and means of appeal shall be set out. There is a 21-day appeal period against the notice before the demand becomes operable. The charge shall be up to and including the point of service of the notice/order, as any works in default or non-compliance would be recovered through other, existing means. The Officer shall record, on a set template, time spent per activity that the legislation allows a charge to be made against. An example is seen in paragraph 4.3.6 below.
- 4.2.5 While the above describes the general rule, there will be times when informal notice is not given and immediate issuing of a Notice is carried out (for example, when a hazard needs to be addressed without delay). These notices shall also incur a charge for cost recovery.
- 4.2.6 There will be circumstances where a charge is not levied on serving a notice, for instance when the works are to be carried out by the landlord but the nature of the hazard are such that a notice is served to ensure liability is covered. Such a decision will be on a case by case basis, in agreement with line management and in line with the concession policy. Where a charge is not to be made, this shall be communicated by written notice.
- 4.2.6 The Housing Health and Safety Rating System Enforcement Guidance suggests authorities should 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 the person being served. This leaves room for a suitably delegated officer to take exceptional circumstances into account to vary or quash a charge. It is proposed that the Service Manager overseeing the Officer is therefore delegated to make such an operational decision.

4.3 Calculation of Costs - Notices

- 4.3.1 The legislation (Section 49, Housing Act 2004) allows for the recovery of reasonable fees for certain administrative and other costs. It is therefore reasonable that each Notice is calculated on its own merits due to the variances in premises, hazards and time an Officer may have to spend on a case

- 4.3.2 The cost will be calculated based on the hourly rate of an Officer, which is currently set at £81 in the Councils agreed fees and charges. This is reviewed annually
- 4.3.3 It shall be the duty of each case officer to record accurately time taken and cost incurred (e.g. postage and travel) on a case, broken down into each category of work (e.g. inspection, HHSRS assessment, drawing plans, considering action etc.). For the purposes of transparency, this breakdown would be made available in any appeal or internal review.
- 4.3.4 No maximum amount is set under legislation, but any charge set will be based purely on the time taken in the process of the enforcement notice. Legislation is clear in that charging can only be for the purpose of cost recovery and not to generate income.
- 4.3.5 It is noted that some Councils have put in place a set fee for any Notice, but this can have the effect of charging too little or too much for a notice, rather than what the law reflects being the true cost recovery of an action.
- 4.3.6 For the benefit of understanding, the process of preparing, inspecting and serving a Notice is likely to take a number of hours and the table below shows an average breakdown of work associated

Activity	Hours to Complete	Cost
Collation of evidence and hazard scoring	3	£243
Review Meeting to determine course of action	0.5 x 2 (includes Officer and Team Leader)	£81
Drafting of Notice	0.75	60.75
Drafting of Schedule of works to rectify hazards	2	£162
Finalise, proofing and revision	1 x 2 (includes Officer and Team Leader)	£162
Service of Notices / Orders	0.75	£60.75
Total Hours and Cost	9.5	£769.50

- 4.3.7 When works in default are required because the landlord/person in control has not made suitable progress, then the Council would charge professional and administrative fees as well as the cost of the work.
- 4.3.8 The costs charged will be a local land charge on the premises if not paid within the permitted time and, if not paid within one month, will be recovered in accordance with the powers available under the Law of Property Act 1925

4.4 Exemptions - Charges

- 4.4.1 The purpose of the legislation is to address hazards faced by occupiers who are not the owners and where the owner is failing to carry out repairs. In the case of owner occupiers, these hazards will only affect themselves. It is therefore likely only a hazard awareness notice would be served in such circumstances.
- 4.4.2 This does not exempt them from enforcement action where appropriate, or the recovery the Council's costs in any prosecution proceedings.

Implications of the Recommendation

5 Resources, costs and risks

Notices

- 5.1 Charging for notices must not be seen as a potential source of generating income. Enforcement action must only be taken where it is appropriate to do so. The Council is at risk of being challenged where a disproportionate number of notices have been served inappropriately to generate income.
- 5.2 The recipient of the notice has a right to appeal against the notice and the charge. A tribunal may make an order to reduce, quash or vary any charges made.
- 5.3 No additional resources, including staffing, are required by the introduction of such a scheme as charging can be applied to the existing regime already in place. Approving charging does add a cost recovery element to the work officers are already carrying out, with a slight bureaucratic process to record time.
- 5.4 Ultimately the introduction of charging aids in recovery of costs, which helps better protect services in the important role of identifying and addressing serious hazards in residential premises. This in itself protects tenants, especially those of a vulnerable nature.
- 5.5 It is important to ensure that landlords are advised at the outset of the charging for any enforcement notices served. All informal letters will be updated to ensure that this is clear
- 5.6 As previously mentioned, the introduction of a charging regime will aid in getting early compliance to necessary works from landlords, and encourage early engagement with Officers in achieving the set standards.

6 Staffing and workforce

- 6.1 This area of work is currently carried out within the service, and no additional staffing is proposed as a result of this scheme

7 Equalities Impact considerations

- 7.1 A separate equalities impact screening assessment has been completed for this report. The screening assessment followed the screening methodology recommended in the Council's Equalities Impact Assessment. The screening assessment did not conclude any adverse effect on any particular or recognised minority group and did not require a full assessment to be carried out.
- 7.2 Ultimately any scheme that aids in achieving basic level of compliance to remove residential hazards will be of benefit across all characteristics affected.
- 7.3 The Housing Charity Shelter has previously estimated that 60% of enforcing Officers said more than half their cases involving rogue landlords also involved vulnerable groups. It is essential therefore that enforcement is targeted, and carried out to assist those most in need.
- 7.4 It is likely an argument will be made by landlords that they are being targeted as a group. By being consistent with the principles of enforcement, and also giving opportunity to comply prior to Notice being served (where reasonable), there is ample opportunity to avoid any charge.

8 Legal Implications

- 8.1 Section 49 of the Housing Act 2004 provides that the Council may make such reasonable charge as it considers appropriate as a means of recovering administrative and other expenses occurred.
- 8.2 The legislation is clear about what these charges relate to as set out in Section 4 of this report. The Council may only recover the costs it has incurred and may not make any profit.
- 8.3 Any setting of a fee is subject to a review and appeal process, set out in the Act, and must be clearly set out how the fee is reached to clearly show cost recovery. It is therefore imperative that Officers accurately record their time in line with the restrictions set out under the legislation.

9 Financial Implications

- 9.1 As stated, the introduction of such charging is clearly set out within legislation as a means to recover cost, and not to raise additional income. The charging will allow the service to recover costs that would

otherwise have not been recoverable apart from taking a prosecution case and applying for costs.

- 9.2 Fees will be set at the standard officer hourly charge of £81 per hour which is already in place in 15/16 for other services charged for based on time spent by Public Protection officers, and this figure is reviewed annually as part of the Council's fees and charges setting process. Fees will be calculated on a case by case basis depending on the amount of officer time involved, with an aim of cost recovery only.
- 9.3 It may be appropriate for the council to determine that in certain circumstances a reduced charge or no charge at all should be applied in line with guidance. Any reduction, changes or waivers of the set fee shall be in line with a concession policy. This report recommends that final sign off to such a policy is delegated to the Portfolio Holder.
- 9.4 Due to the nature of the charges in terms of Notices being one to seek compliance, it is anticipated that the fees received will become minimal over time as the level of compliance by landlords rises to avoid being served a notice. .

10 Performance Issues

- 10.1 The introduction of charging will encourage early compliance with addressing hazards within premises, to the benefit of residents as well as the reduced involvement of Officers
- 10.2 Formal enforcement notices are a result of informal methods not being successful in achieving compliance. Therefore early compliance can be assessed by the annual assessment of category 1 hazards identified during the course of the year and the number of enforcement notices that were served. This will also allow an assessment to determine the most common enforced hazards, to allow focused work to raise awareness in the private rented sector.
- 10.3 As with any aspect of legislative compliance, education will play a key role. While the onus under legislation is for the landlord to know and comply with the legislation, the Council does seek to promote awareness to maximise compliance.
- 10.4 Public Protection run an annual landlord forum that covers the aspects of the HHSRS and legislative requirements, including the aspect of enforcement options available.
- 10.5 Additionally, Harrow operates a number of residential licensing schemes (Mandatory and Additional HMO and Selective Licensing) which clearly sets out the requirements to be met.
- 10.6 If charging for Enforcement Notices is passed, the fees and relevant documents shall be placed on the Harrow Website and all relevant correspondence (e.g. inspection letters to landlords) from the officers

/ sections shall contain information about the charging regime. This will set out clearly what must be done to avoid charge, as well as the charging regime should enforcement be required.

- 10.7 There will lead to some additional bureaucracy and work for Officers from the completion of the costing element of Notices. Over time, the charging element will aim to improve compliance and prevent the need for formal action to be needed to achieve early compliance, leading to a reduction on Officers time overall.

11 Environmental Impact

- 11.1 The policy is not expected to have any direct impact on the environment, but improve the situation faced in terms of residential premises.
- 11.2 Approving this policy does not require an Environmental Impact Assessment.

12 Risk Implications

- 12.1 This policy is not included on the Directorate or any other corporate risk register

13 Corporate Priorities

The Council's vision: **Working Together to Make a Difference for Harrow**

The cost recovery of enforcement action aids in meeting the priorities of the Council including:

Making a difference to communities:

It allows appropriate action to be taken to improve those living in the community without placing a burden on the Council, or on those that comply with the legislation

Making a difference to the most vulnerable:

The use of enforcement tools are essential to tackle the highest risk hazards in premises that many vulnerable occupy. The charging of such action means the decision to serve notice is based on those affected rather than cost to the Council.

Making a difference to families:

The ability to recover costs helps ensure a minimum housing standard families can expect in the housing market

Section 3 - Statutory Officer Clearance

Name: Jessie Man

on behalf of the
Chief Financial Officer

Date: 12 October 2015

Name: Andrew Lucas

on behalf of the
Monitoring Officer

Date: 12 October 2015

Ward Councillors notified:

N/A

EqIA carried out:

YES

EqIA cleared by:

Hanif Islam

Section 4 - Contact Details and Background Papers

Contact: Richard Le-Brun, Service Manager (Public Protection),
020 8424 6267, Richard.lebrun@harrow.gov.uk

Background Papers: See Enclosures

**Call-In Waived by the
Chairman of Overview
and Scrutiny
Committee**

NOT APPLICABLE

[Call-in applies]