

# Birmingham City Council

## Licensing & Public Protection Committee

13 March 2024



**Subject:** Private Rented Sector Housing: Charging for Part 1 Housing Act 2004 Enforcement Notices

**Report of:** Director of Regulation and Enforcement

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Does the report contain confidential or exempt information?  Yes  No

If relevant, state which appendix is exempt, and provide exempt information paragraph number or reason if confidential:

### 1.0 Executive Summary

1.1 This report sets out the proposal for recovering costs incurred in serving statutory enforcement notices and orders to improve the private rented housing sector under Part 1 of the Housing Act 2004.

### 2.0 Recommendation

2.1 To recommend to Cabinet that a charge be levied for the service of enforcement notices under Part 1 of the Housing Act 2004. In line with Sections 49 and 50 of the Housing Act 2004 ("The Act").

2.2 To recommend to Cabinet that the charges proposed in this report are approved.

### 3.0 Background

3.1 Under Part 1 of the Act, the Local Authority has a statutory duty to investigate instances of disrepair or deficiencies within privately rented properties and take the most appropriate action to resolve.

3.2 There are several potential enforcement options. The level of the action taken varies from no action through to the service of statutory notices. Where appropriate, officers will work with the person responsible to achieve compliance. In deciding whether to proceed with enforcement action, the Council will consider the

seriousness of the issue, the past and current performance of the landlord, any obstruction on the part of the landlord, and the risk/s being controlled.

- 3.3 In 2006, Section 49 and 50 were 'added' to the Act enabling Local Authorities to charge for the service of certain enforcement notices. Apart from the benefit of being able to recover costs, this charge encourages landlords to deal with issues before the issue of a notice which will result in living conditions of tenants being improved more rapidly.
- 3.4 However, where officers deliver activities relating specifically to property licensing schemes, enforcement of breaches under Part 1 cannot be undertaken within the remit of property licensing.
- 3.5 The proposed approach of charging for the service of enforcement notices under Part 1 enables action to be taken by property licensing officers when they identify breaches of Part 1 in houses that require a licence.

A charge will be made for service of any Part 1 notice to compensate for the time spent by the officer on work that cannot be funded by the property licence fee. This is in compliance with Section 63(7) and Section 87(7) of the Act, which relate to the power to charge a fee for applications for licensing (including the administration of the licensing scheme).

#### **4.0 Legal Provision Charging for Enforcement Notices**

- 4.1 Section 49 of the Act allows the local housing authority to recover administrative costs and other expenses incurred by them in the service of the following types of notices:
  - Serving an improvement notice under Section 11 & 12
  - Making a prohibition order under Section 21 & 21
  - Making an emergency prohibition order under Section 43
  - Taking emergency remedial Action (EA) under Section 40
  - Serving a hazard awareness notice under Section 28 & 29
  - Making a demolition order under Section 265 of Housing Act 1985
- 4.2 Costs and expenses vary slightly between the different notice /order types, but broadly they can include the following:
  - Determining whether to serve the notice / order.
  - Identifying any action to be specified in the notice, and
  - Serving the notice / order on responsible parties.
- 4.3 Section 50 of the Act relates to the recovery of the charge. It details the following legal bases for recovery:

- As from the time when the demand becomes operative, the sum recoverable by the authority is, until recovered, a charge on the premises concerned.
- The charge takes effect at that time as a legal charge which is a local land charge.
- For the purpose of enforcing the charge the authority have the same powers and remedies under the Law of Property Act 1925 (c. 20) and otherwise as if they were mortgagees by deed having powers of sale and lease, of accepting surrenders of leases and of appointing a receiver.
- The power of appointing a receiver is exercisable at any time after the end of the period of one month beginning with the date on which the charge takes effect.

## 5.0 Proposed Charge

- 5.1 For the more common Improvement Notices served under section 11 & 12 of the Act it is proposed that there are two charges. One for those served to deal with 1-4 hazards found to be impacting on residents, and a second for those required to deal with 5+ hazards. Each charge is based on the average time it takes to produce and serve a notice with the more complex and time-consuming notice attracting a higher charge.
- 5.2 Notices will ordinarily be served by either a Grade 4 or Grade 5 Officer. The Grade 4 rate from the 'Fees and Charges Report 2024/25' presented to and approved by the Licensing and Public Protection Committee (LPPC) on the 17 January 2024, will be used as the hourly rate.
- 5.3 Based on this approach it is proposed that the cost of the service of an Improvement Notice is:
- Notice containing 1-4 Hazards = £355 (5 hours @ £71 per hour)
  - Notice containing 5+ Hazards = £497 (7 hours @ £71 per hour)
- 5.4 For all other notices and orders detailed at point 4.1, charges will be based on the actual time and hourly rate of the officer undertaking the activities allowed to be charged for under Section 49 of the Act.

## 6.0 Available Options

- 6.1 **Option 1:** Adopt a policy of not charging for specific housing enforcement notices. This would preclude officers from the Property Licensing Section being able to deal with urgent repair issues outside the conditions of a licence. All cases when discovered would instead need to be referred to the Private Rented Services team which will impact on resources.
- 6.2 In addition, without the financial incentive to resolve any issues informally, it is likely that the responsible person would take longer to comply with any notices served.

This would therefore cost the council more in resources to ensure compliance and improve the living conditions of tenants.

- 6.3 **Option 2:** Agree to recommend to Cabinet the charge for Housing Act notices. This would enable all authorised officers including Property Licensing Officers to deal with breaches of Part 1 private rented sector housing issues. It would encourage the responsible person to resolve issues quicker to the benefit of the tenant, so as not to incur further cost.
- 6.4 Whilst the aim of this proposal is to encourage compliance and improve living conditions quickly without the need to serve a notice, this is not always possible. Where notices are required, it will ensure that the council tax payer or licence fee payer (as applicable) is not funding enforcement against non-compliant landlords.
- 6.5 For the above reasons it is recommended that Option 2 is agreed by Committee and recommended to Cabinet.

## **7.0 Legal Implications**

- 7.1 Section 49 of the Act allows Local Authorities to charge for the service of certain enforcement notices and Section 50 allows for cost recovery.
- 7.2 The service of notices can be appealed to the Residential Property Tribunal based on the Officers decision for the notice and/or amount charged. Where a tribunal allows an appeal, it may make an order to reduce, cancel or require payment for the notice.

## **8.0 Financial Implications**

- 8.1 The proposed charges are based upon agreed chargeable hourly rates agreed by Committee on 17 January 2024. This delivers cost recovery for the specific activity.

## **9.0 Public Sector Equality Duty**

- 9.1 There are no specific implications identified.

## **10.0 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?**

- Improving Service Delivery
- Recovering cost where possible to maintain essential services.

## **11.0 Background Papers**

- 11.1 Fees and Charges Report 2024/25 agreed at the Licensing and Public Protection Committee on 13 January 2024

## **12.0 Appendices**

- 12.1 None