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How should LHAs charge for enforcement of notices or orders served under Housing Act 2004, part 1? 14/08/2008

### **Relevant Legislation**

#### **Housing Act 2004**

Sections 49 and 50 Recovery of expenses relating to enforcement action [click here](#).

#### **Housing Health and Safety Rating System (HHSRS): Enforcement Guidance (ODPM Feb 2006)**

Page 28 Powers to charge for enforcement action [click here](#).

### **Answer**

#### **When can charges for enforcement be recovered?**

Housing Act 2004, section 49 gives Local Housing Authorities (LHAs) the power to recover reasonable expenses incurred in taking enforcement action under part one. The following expenses can be recovered:

**Improvement notice and hazard awareness notice:** the cost of determining whether or not to serve the notice, identifying any action to be specified in the notice and

serving the notice.

**Emergency remedial action:** the cost of determining whether to take such action and serving the notice required by Section 40 (7).

**Prohibition order and emergency prohibition order or a demolition order under Section 265 of the Housing Act 1985:** the cost of determining whether to make the order and serving copies of the orders.

Expenses for reviewing suspended improvement notices and prohibition orders and serving copies of review decisions can also be recovered.

### **How are the charges recovered?**

These charges are recovered by serving a demand for payment on the person(s) on whom the notice or order is served.

The demand for payment should be a letter or a notice. It is not advisable to issue an invoice in the first instance, as an invoice usually triggers automatic reminders for payment if the invoice is not paid. Immediate payment would not be expected as the demand for payment does not actually become operable until the expiry of the twenty-one day appeal period on the notice or until any appeal has been dealt with (see below).

### **How much can the LHA charge?**

Costs can be recovered for all work involved in serving an improvement or hazard awareness notice. The amount charged in the demand would need to be based on the time taken by both EHPs and administrative staff to:

- carry out the HHSRS assessment (inspection and scoring)
- decide the most appropriate course of action
- ascertain who to serve the notice/order on
- draft the notice/order, including any schedule of work and reasons for the action
- correspond with the owner or any interested party in connection with the enforcement action e.g. regarding timescales and options for alternatives to be detailed but not informal action taken before the decision to serve the notice.

The amount charged for enforcement action is decided by the LHA. There is no legal maximum charge for recovery of enforcement costs, but the amount charged must be reasonable.

LHAs may calculate the cost of enforcement action for each notice or order based on the time spent and hourly rates for the staff involved, or they may set a standard charge. 31 LHAs provided details of their charges to LACORS, of these 17 charge a standard amount and 13 calculate the cost of each notice or order. See Annex A for more details.

Income from enforcement costs can be maximised by calculating the cost for each notice or order. Here LHAs will need to have procedures in place to record the number of hours spent by staff and hourly rates for all posts concerned would need to be available. These should include an amount for overheads, as well as the salary and employer's contributions to

national insurance, pensions etc. Colleagues in the finance department could advice on this.

The alternative of charging a standard amount for serving notices and orders would mean charging only a minimum amount to ensure the cost charged is reasonable for each notice or order. The amount would also need to be based on estimated officer time spent and hourly rates.

The HHSRS Enforcement Guidance advises that the reasonable costs of enforcement charged by the LHA should take account of “personal circumstances of the person against whom 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”. In practice the personal circumstances of landlords should only influence the recovery of costs in exceptional circumstances. This is because, in general, those subject to enforcement action will be receiving the rent from the property concerned as a minimum level of income.

One London Borough uses the power to charge for enforcement as a penalty to encourage compliance with the notice. They only charge enforcement costs if the notice is not complied with i.e. the works have not started or been completed by the dates specified on the notice.

In fact, according to The CIEH Survey of Local Authority Regulatory Activity under the Housing Act 2004 published in February 2008 [click here](#) less than half of the LHAs were charging for notices. This may have been because they did not consider it to be cost effective to do so, or they considered the cost of compliance with the notice or order to be a large enough cost for the landlord to bear, without having to reimburse the LHA’s costs. Another reason is cited by one council responding to LACORS’:

“We are concerned that if we charge for enforcement action it is likely that our revenue budget would be cut. We would then be expected to make up the difference through these charges and there is every probability that annual targets would be set for notices serving.”

Where an LHA charges for enforcement, the basis for the charges need to be approved by councillors, detailed in the council’s enforcement policy for Housing Act 2004, or otherwise set in accordance with the council’s constitution.

### **Appeals against costs of enforcement**

The appeal provisions are set out in schedules 1 and 2 of the Act, there is no separate provision for appeal against the charge for enforcement action, it is in effect an appeal against the notice or order itself. This was confirmed in an appeal to the RPT against the charges made for an improvement notice served by Eastbourne BC. The RPT said that there was no appeal as the appellant specifically said that he was not appealing against the notice itself, only against the charge levied by the council [click here](#).

In this case, the landlord made a late appeal against the charge for an improvement notice. The demand for payment had been served after the expiry of the appeal period for the improvement notice, as was acceptable under the previous legislation. However this led to the RPT accepting the late appeal. As a result the improvement notice itself did not become operative until the appeal was dismissed by the RPT, which caused a delay of over 11 weeks.

This kind of delay in a notice or order becoming operative, just because the LHA’s costs of

enforcement have been appealed, will generally mean that there is a delay in the remedy of health hazards experienced by tenants in their home. LACORS is concerned about this and will raise this matter with CLG.

### **When should the demand for payment be served?**

If the demand for payment goes out at the same time as the notice or order, this will minimise the delay in the underlying notice or order becoming operative. So where there is no appeal the notice will become operative after expiry of the appeal period. Whereas if the demand for payment goes out at a later stage, there will be some uncertainty after the appeal period, as an RPT could accept a late appeal against the cost of enforcement.

### **When does the demand becomes operative?**

Section 50(6 to 8) states that demand for payment will become operative, if there is no appeal, at the end of the period of 21 days after the demand has been served. If there is an appeal against the notice or order, the demand becomes operative when the appeal has been decided, provided the notice is still valid. The invoice should be issued when the demand becomes operative, if the payment has not been received.

### **The debt as a land charge**

Section 50 (9) states that once the demand becomes operative the LHA may register it as a Local Land Charge on the property until the debt is recovered.

### **Conclusion**

LHAs can recover reasonable expenses incurred in taking enforcement action under Housing Act 2004 part one. Income can be maximised by calculating the cost for each notice or order based on the number of hours spent by staff and hourly rates for staff, including on-costs. Alternatively standard charges can be made for enforcement costs. Enforcement costs can be used as a penalty if they are only charged if the works do not start or are not completed on time. Where LHAs charge for enforcement, the basis for the charges need to be included in the enforcement policy, approved by councillors, or otherwise set in accordance with the council's constitution.

The demand for payment for the costs of enforcement action should be served at the same time as the notice or order. This is because there is no separate provision for appeal against the costs. So where an appeal is made against the cost it needs to be an appeal against the notice or order itself. Simultaneous service means that, at least, where there is no appeal the notice will become operative after expiry of the appeal period. Whereas if the demand for payment goes out at a later stage, there will be some uncertainty after the appeal period, as an RPT could accept a late appeal against the notice or order being an appeal against the cost of service.

Where there is an appeal against the cost of the notice, there will be a delay in the actual notice or order becoming operative. Such a delay will mean the tenants will have to experience health hazards in their home for a longer period. LACORS will raise this matter with CLG.

### **Version 1**

**Dated 13.8.08**

**Please Note:**

This advice has been produced by LACORS in consultation with experienced local authority housing practitioners. As such, it is not statutory guidance and may be subject to challenge by the Courts or the Residential Property Tribunal. Anyone wishing to comment on the advice given should email [housing@lacors.gov.uk](mailto:housing@lacors.gov.uk), stating which question their query refers to. LACORS may update this advice from time to time. See also the disclaimer below.

## Annex A

### LHA Charges for notices and orders under Housing Act 2004

Details were received of enforcement charges for 31 councils

Of these, 17 charge flats rate from £150 to £420 and 9 charge in the region of £300. Comments on these responses were:

- we charge £300 for singly occupied dwelling and £540 for HMO of up to 6 and £40 per person above
- we charge if no works have started by the start date on the notice
- we charge if no works have started by the start date on the notice or if works are not completed by the completion date on the notice
- 3 councils in the North-West agreed the same charge of £325.

13 of the councils charge an hourly rate £30 to £60, comments on these responses were:

- we charge a lower hourly rate for admin staff.
- our hourly rate is based on the salary paid, excluding any on-costs.
- we add 15% to salary paid
- our £30 per hour includes 40% on-costs.
- we charge £215-340 based on time spent, this amount may vary
- we record time on our computer system; this does not include admin time.

One council charges £67 plus an hourly rate.

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