

NORTH LINCOLNSHIRE COUNCIL

**HOUSING AND STRATEGIC PLANNING
CABINET MEMBER**

**APPROVAL TO CHARGE LANDLORDS FOR ENFORCEMENT NOTICES
SERVED UNDER THE HOUSING ACT 2004**

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 The Housing Act 2004 allows a local authority to make a charge for the service of formal notices to cover reasonably incurred costs.
- Last year 35 formal notices under the Housing Act 2004 were served by the Housing Division.
 - So far this year, 15 have been served.
 - A formal notice can take 6 to 10 hours of officer time to prepare and serve.
 - The income generated could be used to train landlords who are, or would like to become, accredited.

2. BACKGROUND INFORMATION

- 2.1 Part 1 of the Housing Act 2004 came into force in April 2005. It introduced a whole new raft of formal notices, repealing the Housing Act 1985 and the Local Government and Housing Act 1989 and the assessment and notice regimes contained within them.
- 2.2 Section 49 of the Housing Act 2004 (hereafter called the Act) allows a "local housing authority to make such reasonable charge as they consider appropriate as a means of recovering certain administrative and other expenses incurred by them" when serving a formal notice under the Act.
- 2.3 The Act contains a provision allowing anyone that receives a formal notice to appeal against it to the Residential Property Tribunal. That right of appeal includes any charge made, where it is felt that it is unreasonable.
- 2.4 Within the Humber sub-region, the other 3 Authorities all charge. Hull City Council and East Riding Council both charge using an hourly rate. North East Lincolnshire has a fixed charge depending on single or multi-occupancy.
- 2.5 Charges under the Act must be reasonable and the Act specifies what expenses can be included. So, for example, in relation to the service of an improvement notice, the expenses can include the work involved in

determining whether to serve a notice, the schedule of work required to be completed and the actual service of the notice.

- 2.6 When a housing complaint is received, the Housing Standards and Performance Team will always try to engage with the landlord of the property informally before taking formal action. The use of a formal notice is always the last resort but, on occasion, there is no alternative. Under such circumstances, it seems fair to expect that the owner/landlord of the property should meet some of that cost.
- 2.7 For some time now we have been advising landlords in the correspondence that we send out that a charge might be applied for the service of a notice. On average, a formal notice may take up to 8 to 10 hours of officer time to prepare and serve.

3. OPTIONS FOR CONSIDERATION

- 3.1 Options 1 – continue not to charge.
- 3.2 Option 2 – use a fixed charge per notice
- 3.3 Option 3 – charge using an hourly rate and the actual hours spent on preparing the notice.

4. ANALYSIS OF OPTIONS

- 4.1 Option 1 – this would maintain the status quo. However, given the current threats to budgets and funding, it seems unreasonable that a charge is not applied and that the Housing service therefore has to meet those costs. Applying a charge would also act as a deterrent for some landlords.
- 4.2 Option 2 – the charge applied has to be reasonable. Therefore a fixed charge would need to be calculated on an average. To do so would run the risk of masking situations where the time spent is actually less or more than the charge applied. There may also be a greater risk of appeal against a charge set in this way, which would be upheld if the charge were found to be unreasonable.
- 4.3 Option 3 – the use of an hourly rate and the recording of time against actions related to the service of a particular notice would allow the actual time spent to be calculated and charged for. The IT system that exists in Housing allows for time units to be recorded against set actions and for a report to be produced showing the time spent. An hourly rate would then be applied based on a midpoint salary, with on-costs, for an Environmental Health Officer. If salaries increase in the future, this figure will have to be revised accordingly.

5. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)

- 5.1 Financial Implications – none of the Options has increased financial implications for the service. However, Options 2 and 3, if chosen, would result in money coming back into the service. However, it is difficult to predict precisely the amount since it very much depends on the number of notices served. However, with the promotion of the landlord accreditation scheme in North Lincolnshire and a move towards self-regulation for such landlords, the proposal would be to use some of the revenue generated to subsidise training for these landlords.
- 5.2 Staffing Implications – there are no implications for staff from any of the Options. The use of the time recording facility on the IT system is already in place and is being used.
- 5.3 Property Implications – there are no implications.
- 5.4 IT Implications – Option 3 – to charge using an hourly rate, there has to be a means of recording the time spent by officers and for this to be auditable and rigorous should it be challenged. The IT database that is currently used fulfils these criteria and is already being used to record time spent on different activities.

6. OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17 - CRIME AND DISORDER, RISK AND OTHER)

- 6.1 Statutory Implications – the Act specifically allows a charge to be made, provided it meets the conditions of reasonableness and relates only to elements specified.
- 6.2 Environmental Implications – there are no environmental implications from any of the Options.
- 6.3 Diversity Implications - there are no diversity implications.
- 6.4 Section 17 – Crime and Disorder Implications – there are no crime and disorder implications.
- 6.5 Risk and other Implications – An Integrated Impact Assessment has been carried out. Options 2 and 3 - charging for notices is likely to result in an appeal to the Residential Property Tribunal (RPT) at some stage on the basis of the charge being unreasonable and the landlord being unhappy at being charged. This risk is however minor given the fact that the notices themselves can also be appealed and so far no appeal has been received. Using Option 3 would mean that the actual time spent is the basis for the charge and should therefore be easier to defend in the RPT.

7. OUTCOMES OF CONSULTATION

- 7.1 The intention to charge for notices has been discussed with the Chair and Vice Chair of the Landlords' Forum and they were both very supportive of the idea provided that those landlords who did co-operate were not penalised by being served with a notice unreasonably.

8. RECOMMENDATIONS

- 8.1 That the Cabinet Member agrees the use of charging to cover reasonable expenses where a formal notice under the Housing Act 2004 is served.
- 8.2 That the Cabinet Member agrees to the charge being applied being based on Option 3. That is the actual time spent charged on an hourly rate.

SERVICE DIRECTOR NEIGHBOURHOOD AND ENVIRONMENT

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Background Papers used in the preparation of this report – N/a