

Title of meeting:	Cabinet Member for Housing and Preventing Homelessness
Date of meeting:	2 nd February 2023
Subject:	Private Sector Housing fees and charges
Report by:	James Hill - Director for Housing, Neighbourhood and Building Services
Report Author:	Clare Hardwick - Head of Private Sector Housing
Wards affected:	All
Key decision:	No
Full Council decision:	No

1. Purpose of report

1.1. The purpose of the report is to present the proposals for Private Sector Housing (PSH) fee adjustments for chargeable services to ensure fees achieve full cost recovery.

2. Recommendations

2.1. That the Cabinet Member for Housing and Preventing Homelessness approves the proposals for PSH fee adjustments for the city council's Mandatory HMO licensing fees as outlined in Appendix 1, to commence from 01 April 2023.

2.2. That the Cabinet Member for Housing and Preventing Homelessness approves the proposals for PSH fee adjustments for the city council's Private Sector Housing Enforcement fees in Appendix 2, to commence from 01 April 2023.

3. Background

3.1. Local authorities have a variety of powers to charge for specific statutory services set out in statute. The Local Government Act 2003 also provides a power to trade and a power to charge for discretionary services, the latter on a cost recovery basis. Discretionary services are those that a local authority is permitted to provide under statute but is not obliged to do so. The power to charge for discretionary services is not available to local authorities if there is a statutory duty to provide the service or if there is a specific power to charge for it or if there is a prohibition on charging.



- 3.2. Additionally, the Localism Act 2011 provides local authorities with a general power of competence that confers on them the power to charge for services but again these are subject to conditions/limitations similar to those noted above.
- 3.3. Where a local authority has a duty to provide a statutory service free of charge to a certain standard, no charge can be made for delivery to that standard. Should a request be made, however, for delivery above and beyond that standard, this may constitute a discretionary service for which a charge could be made.
- 3.4. The general public expect high quality services that provide value for money. The review of fees and charges ensures that sufficient resources are made available to manage and prioritise those expectations.
- 3.5. The Cabinet Member for Housing and Preventing Homelessness agreed on 22nd March 2022 to amended fees for several of the Councils Private Sector Housing services including the Home Improvement Agency Service, the HMO licensing fees, and the Housing Regulations enforcement fee, to achieve cost recovery. It was also agreed at that time that fees and charges will be reviewed on an annual basis to ensure that the costs of providing chargeable services are recovered and the Council is achieving value for money. This report therefore sets out the review of these fees and where appropriate, proposals for increased fees for services provided by the Council's Private Sector Housing Team to ensure they continue to recover the costs incurred in providing these services.
- 3.6. All fees and charges will ensure effective cost recovery for delivering the service; prices listed do not include Value Added Tax (VAT), which will only be charged where indicated.

4. Private Sector Housing Home Improvement Agency Fee

- 4.1. Portsmouth City Council (the 'city council') through its Private Sector Housing Team, provide an in-house Home Improvement Agency Service (HIAS) to help Disabled Facilities Grant (DFG) applicants with adaptations to their property.
- 4.2. Whilst the administration of DFGs is a mandatory function for the city council, the provision of a Home Improvement Agency Service is discretionary, and therefore a chargeable service.
- 4.3. The HIAS provides an important and comprehensive service for DFG applicants who are often elderly or vulnerable. It includes specifying and tendering for the work; selecting contractors; obtaining all necessary consent, project managing the delivery of the works and quality controlling the work on behalf of the client, all of which does not form part of the city council's mandatory DFG provision.
- 4.4. When a Disabled Facilities Grant (DFG) is awarded, the grant can include the cost of the work itself, as well as ancillary costs incurred in carrying out the work, which can include the services provide by the HIAS. A full list of what can be included as

an ancillary cost is contained in The Housing Renewal Grants (Services and Charges) Order 1996.

- 4.5. This allows applicants to receive the support from the HIAS, and their grant will pay for the cost of the service. There is no cost to applicants, unless the total costs of work and ancillary were to exceed the £40,000 DFG limit (in which case they would need to pay any costs exceeding the maximum grant award). In the last two years only four DFG cases exceeded the threshold for which the total agency fee would be covered by the grant. In half of these cases the applicants chose not to use the HIAS and managed the works themselves, with the other half opting to pay any costs exceeding the grant limit to use the full service.
- 4.6. This is a very popular service, with many applicants stating that it is vital in order to help them with having their adaptations carried out to their property. Whilst it is a discretionary service, 97% of DFG applicants choose to use the service.
- 4.7. A DFG applicant is under no obligation to use the Home Improvement Agency Service (HIAS) provided by the city council, and can use external suppliers to provide a similar service, or opt to manage the works themselves. If an applicant chooses not to use the city council's HIAS, then ancillary costs can still be included in the grant award subject to the council being satisfied that the costs incurred are reasonable. The city council is not permitted to charge fees for any statutory duties it carries out with regard to Mandatory Disabled Facilities Grants, such as approving the grant award and making payment of the grant.
- 4.8. This HIAS is also available to applicants of the city council's Private Sector Housing Financial Assistance Policy (PSHFAP), a discretionary service which provides affordable loans to vulnerable homeowners to carry out repairs to their properties. The HIAS fee will continue to be offered along with other ancillary fees to their loan application, if applicants opt to use this service.
- 4.9. A proposed new fee structure was agreed by the Cabinet Member for Housing and Preventing Homelessness in March 2022, which includes a minimum fee of £350 to cover officer time in handling lower cost building works, a charge of 15% of the cost of the works for all work up to the value of £30,000, and a lower fee of 12% of the cost of the works for building work exceeding £30,000, reflecting the work involved in processing these cases for officers. This fee structure was calculated to ensure that the cost of providing the service is recovered through the fees.
- 4.10. The HIAS fees are charged as a percentage of the cost of the building works done. As the cost of building work has increased; charges have risen in line with the council's increased costs of running the service (employee costs and overheads). Therefore there is no proposal to change the fee structure for the HIAS at this time, as it is continuing to achieve cost recovery. However, this fee will continue to be reviewed annually, approved by members, and adjusted from 01 April of each year where necessary.

5. Mandatory House in Multiple Occupation (HMO) licensing fee

- 5.1. Under the Housing Act 2004 Part 2 houses in multiple occupation (HMOs) occupied by five or more persons forming two or more households, and sharing basic amenities such as a kitchen or bathroom, are required to be licensed. HMOs in self-contained flats in purpose built blocks where the block comprises three or more self-contained flats are excluded from this licensing requirement.
- 5.2. There are currently 1200 licensed HMOs in the Portsmouth area.
- 5.3. The aim of licensing is to improve the controls on HMOs and to raise the standard of some of the highest risk properties that are often occupied by some of the most vulnerable people, whilst maintaining an adequate supply of rented accommodation.
- 5.4. The licence is granted for a maximum of five years and cannot be transferred. The licence can end because of the passage of time, the death of the licence holder, the sale of the property or the revocation of the licence by the city council. The licence is held on a public register maintained by the city council.
- 5.5. The High Court has indicated that local authorities have a duty to administer funds so as to protect the interests of council tax payers in accordance with the accepted principal that licensed activities should be funded by those benefitting from them, rather than council tax payers.
- 5.6. The Housing Act 2004 makes provision for local authorities to recover their costs associated with operating HMO licensing schemes. There is no upper limit on the maximum fee that can be charged but local authorities are not allowed to make a profit, and the fees charged must be reasonable and proportionate.
- 5.7. Recoverable costs can include set-up costs, processing applications, third party costs, overheads, management costs, setting and reviewing fees, policies and procedures, monitoring licence holders, service development and improvement, and identifying unlicensed landlords (this is regarded as being of benefit to HMO licence holders as it helps avoid unlicensed operators undercutting those with HMO licences).
- 5.8. The Cabinet Member for Housing and Preventing Homelessness agreed on 22nd March 2022 that HMO Licensing fees should be reviewed annually to ensure that they continue to cover the cost of providing the licensing service. The fees should be reviewed annually, approved by members, and adjusted from 01 April of each year.
- 5.9. A recent financial review of the costs incurred by the city council in running the Mandatory HMO licensing scheme revealed that a number of costs have now increased for the local authority since they were last adjusted in April 2022, including employee costs and overheads. Therefore proposed revised charges have been calculated to continue to achieve cost recovery and are detailed in Appendix 1. This represent an increase of 6% compared to the fees agreed in March 2022. The

proposed revised licensing fees will be used to cover the costs incurred by the city council in performing the HMO licensing activities outlined in paragraph 5.7 above.

5.10. The city council's Cabinet made a decision on 22nd November 2022 to introduce a city wide additional HMO licensing scheme from 1st September 2023. This decision included a new approach to licensing, whereby licences will be awarded for different licensing periods based upon the compliance of the applicant. Cabinet have instructed officers to present a further report before September 2023, with a proposal for Mandatory HMO licensing to be aligned with this new licensing model. Therefore, the Mandatory HMO licensing fee structure will be subject to a full review and a new proposed licensing fee structure will be presented to cabinet before September 2023.

5.11. The proposed increase in fees outlined in Appendix 1 is therefore intended to ensure mandatory HMO licensing continues to achieve full cost recovery, before an alternative fee structure is presented to cabinet for their consideration later this year.

6. Private Sector Housing Enforcement charges

6.1. The Private Sector Housing service have a regulatory function in the private rental sector and have enforcement powers which it can use when a landlord does not meet their legal obligations. These powers are used proportionately in accordance with the Private Sector Housing Enforcement Policy, and where informal intervention has not resolved the matter. The procedure for serving formal enforcement notices is detailed in the Housing Act 2004.

6.2. The Housing Act 2004 also confers the right for the city council to recovery expenses it has incurred in serving formal enforcement notices. This includes Improvement notices, Prohibition orders, Hazard Awareness Notices, Emergency remedial action, Emergency Prohibition orders, and demolition orders.

6.3. The expenses which can be recovered typically relate to the cost of officer time, and can include determining whether to serve the notice, identifying any action to be served in the notice, and serving the notice.

6.4. An existing framework of costs incurred in taking such action is currently used to set these charges. These costs have been reviewed and it has been identified that a number of costs have increased for the local authority in serving these notices since the current fees were agreed in March 2022, including employee costs and overheads. Therefore, new revised charges have been calculated which represents an increase of 6% and are based on the full cost to the city council of taking the action including inspection, preparation and service of the notices, and are detailed in Appendix 2. Any action to recover costs and expenses will be in accordance with the requirements of the relevant Acts.

6.5. The charges levied when serving formal enforcement action should be reviewed annually to ensure that they continue to cover the cost of taking such enforcement

action. Annual changes will be reviewed annually, approved by members, and adjusted from 01 April of each year.

7. Reasons for recommendations

- 7.1. It is recommended that the Cabinet Member for Housing and Preventing Homelessness consider the proposed fee increases for 2023/24 as it is considered good practice to review fees and charges to ensure that the costs of providing chargeable services are recouped.
- 7.2. The services provided by the city council's Private Sector Housing service detailed in this report have been reviewed and require an increase in order to continue to achieve full cost recovery due to increases in costs for the local authority in [providing these services. In order to achieve full cost recovery proposed new fee structures are presented for decision by members.
- 7.3. In order to ensure that these fees continue to achieve cost recovery in future years these fees should be adjusted going forward each financial year to ensure full cost recovery.
- 7.4. The alternative approach would be not to review these fees annually. This is not however considered to be good practice and would expose the city council to the risk of not recovering the costs of the provision of the service, or potentially, over recovering. This would not be appropriate where the basis for charging is limited to cost recovery.

8. Integrated impact assessment

- 8.1. An Integrated Impact Assessment can be found at Appendix 3.

9. Legal implications

- 9.1. The city council has a statutory duty under the Housing Grants, Construction and Regeneration Act 1996 to provide financial assistance to disabled people for a range of essential adaptations to their home through a Disabled Facilities Grant. The Regulatory Reform (Housing Assistance) (England and Wales) Order 2002 enables the provision of discretionary assistance provided this is given in accordance with an adopted policy for the provision of assistance. The provision of the HIAS is discretionary in order to support those eligible with arranging works carried out under a Disabled Facilities Grant. The powers to provide the HIAS and charge for discretionary services are contained in section 93 of the Local Government Act 2003 and the general power of competence contained in the Localism Act 2011.
- 9.2. The city council is required under the Housing Act 2004 to licence certain HMOs. Section 63 of the Act enables the city council to charge a fee fixed by the authority in order to recover all reasonable costs associated with the administration of the HMO licensing function. The fees must have a two stage fee structure to cover a) the cost of processing applications (even unsuccessful ones) and b) the costs of the

scheme. The Government may make Regulations specifying maximum fees that may be charged, but no such regulations have yet been made. Subject to such Regulations, the city council may take account of all its costs of running the licensing scheme when setting the licensing fee. The fee should be clear and reflect the actual cost of licensing.

9.3. Section 49 of the Housing Act 2004 gives the city council the power to make such reasonable charge as they consider appropriate as a means of recovering certain administrative and other expenses incurred in taking certain enforcement action. The charges recoverable are as set out in the body of this report.

9.4. The fees and charges set out in this report should be transparent and accountable and should be kept under review by the city council in order to ensure the level of fees does not operate at either a deficit nor a surplus.

9.5. It is within the Cabinet Member's powers to approve the recommendations set out in this report.

10. Director of Finance's comments

10.1. Fees are reviewed annually to ensure that they are set at a level that they are recovering the direct costs of the service and, where appropriate, contributing to fixed overheads. An increase of 6% is considered necessary to cover the increased staff and associated costs that are being incurred by the Council. This should ensure that the Private Sector Housing services stay within their Portfolio cash limit.

10.2. The income from the Private Sector Housing Enforcement charges is ring fenced and can only be used to recover enforcement costs. As such, there is no budget for this income within the Portfolio cash limit.

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Signed by: **James Hill - Director of Housing, Neighbourhood and Building Services**

Appendices:

- Appendix 1 - Mandatory HMO Licensing Fees 2023
- Appendix 2 - Private Sector Housing charges for enforcement notices 2023
- Appendix 3 - Integrated Impact Assessment

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
Local Government Act 2003	Local Government Act 2003 (legislation.gov.uk)
Localism Act 2011	Localism Act 2011 (legislation.gov.uk)



The Housing Renewal Grants (Services and Charges) Order 1996	The Housing Renewal Grants (Services and Charges) Order 1996 (legislation.gov.uk)
PCC website on grants and loans for home repair	Grants and loans for home repair - Portsmouth City Council
Disabled Facilities Grant (DFG) and Other Adaptations – External Review	Independent Review of the Disabled Facilities Grant.pdf (publishing.service.gov.uk)
Housing Act 2004	Housing Act 2004 (legislation.gov.uk)
Private Sector Housing Fees and Charges Report	Private Sector Housing Fees and Charges.pdf (portsmouth.gov.uk)
Additional Licensing of Houses in Multiple Occupation HMO Report	Additional Licensing of Houses in Multiple Occupation HMO.pdf (portsmouth.gov.uk)

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on

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Signed by: