

## **APPENDIX B - Proposed harmonisation of Private Sector Housing Enforcement and HMO licence fees**

### **Introduction**

1. The four District Councils currently utilise three policies covering private sector housing enforcement across the county. AVDC have a single overarching generic regulatory enforcement policy which covers general principles in respect of all environmental health functions. Chiltern, South Bucks and Wycombe have specific Private Sector Housing Enforcement Policies with explicit references to the full range of housing enforcement options and penalties, which include, for example, HMO (Houses in Multiple Occupation) licensing, Housing Act Statutory Notices and Orders, civil penalties, Rent Repayment Orders and Banning Orders.
2. Statutory guidance requires a Local Housing Authority to publish a policy on how it applies the penalties available under the Housing and Planning Act 2016; namely civil penalties as an alternative to prosecution, use of Rent Repayment orders, Banning Orders and use of the Rogue Landlord Database
3. An overarching county wide Enforcement Policy has been prepared by the Private Sector Housing sub-workstream with the involvement of all Authority partners, including Adult Social Care and Children's Services. This Policy is presented for agreement and adoption by the new Authority.
4. If the current policies remain live beyond vesting day, there is a risk of inconsistency of approach across the county, and it may prove difficult to robustly defend enforcement action and civil penalty levels

### **Charging Arrangements and Licence fees**

#### **HMO Licence fees:**

Under the Housing Act 2004, The Local Housing Authority has a duty to licence HMOs of a certain definition. Prior to 2018 this related only to larger HMOs of three storeys in height.

In October 2018, the Government changed this definition to include all HMOs with 5 or more people in them, which significantly increased the numbers subject to licensing provisions.

1. In WDC, a desktop exercise was undertaken in advance of the 2018 licensing extension to accurately estimate the numbers of potentially licensable HMOs in the District. The intelligence gathering operation identified a significant number of HMOs in the Wycombe District (up to 2000), with a significant number estimated to be licensable. The market in Wycombe is within a challenging enforcement environment.
2. In AVDC, a District wide discretionary additional licensing arrangement was already in place which was not substantially affected by the new change in legislation. This scheme covered all HMOs including those that will now not be covered by the mandatory definition. Their fees were set in advance of the launch of their scheme in 2014, and approximately 160 HMOs were part of this scheme over the five-year period. The additional licensing scheme lapsed in September 2019.
3. The numbers of identified HMOs in CDC and SBDC are lower, with 46 licensed in total, and 135 HMOs estimated in total across both Districts.

4. The Housing Act 2004 allows the Local Housing Authority to set the appropriate level of fee and prescribes what can be taken into account. This can include the costs to administer the scheme including software and administrative costs, team structures, staffing levels and costs, and other overheads. The Fee can also take into account the predicted level of future enforcement costs to identify all unlicensed HMOs and to take appropriate enforcement action. The fee must only cover costs and must not generate additional income.
5. Wycombe DC revised its HMO fees in 2018 utilising the evidence base and predicted costs to set the level of fees; building in reductions for renewal applications and incentives for landlords to join Landlord Association schemes, and higher fees if applications have been made following enforcement actions. A desktop exercise looked at property level data and identified an estimated 2000 HMOs within Wycombe town centre. Software to accommodate online applications and payments was introduced, and staffing and enforcement costs to meet demand for application processing and enforcement were estimated.
6. A further legal precedent was set in the Divisional Court in 2018 [R \(Gaskin\) v Richmond-upon-Thames LBC](#) [2018] EWHC 1996 (Admin) which stated that if the fee is made up of the two strands of processing costs and enforcement charges, then the fee must be separated and collected in two parts.
  - WDC, CDC and SBDC currently split their fee, with a £500 processing fee in the first stage, and a second enforcement fee charged at the point of issue of a licence.
  - At AVDC the fee is collected in one stage and only currently covers the processing costs, and is one flat fee across all applications.

The current charging arrangements by district are summarised in the table below:

	New		Renewal		Renewal		Additional		Reduction	
	(proactive)		(enforcement)		(proactive)		(Enforcement)		for Landlord	
	£	£	£	£	£	£	£	£	£	£
AVDC	595	595	595	595	595	595	34		80	
CDC	875	1,040	795	960			-		-	
SBDC	875	1,040	795	960			-		-	
WDC	700	1,000	500	700			25		100	

### **Proposal to harmonise licence fees**

It is proposed to harmonise fees to match those currently charged by Wycombe DC.

This is because the method for fee calculation is evidence based, robust and recent; it reflects lower fees for renewals for existing licence holders, and incorporates a cost to fund enforcement of the scheme to identify unlicensed properties.

It is noted that due to the significantly higher numbers of identified HMOs in the Wycombe area, that any change away from these fees would affect the budgetary position much more significantly than in other areas. WDC have received 164 applications in the last 12-month period.

### **Housing Enforcement costs**

Under the provisions of s49 of the Housing Act, the Authority may charge for the recovery of costs incurred whilst undertaking certain prescribed types of enforcement action. This income must be ring fenced for enforcement costs.

Currently, the Districts recover costs using a mix of fixed costs and hourly recharge rates, as seen in the table below:

	Enforcement charge
AVDC	£41 per hour cost incurred for Notice issued
CDC	£100 for first Notice , £50 for additional Notices
SBDC	£100 for first Notice , £50 for additional Notices
WDC	£50 per hour cost incurred for Notice issued

Enforcement recovery costs are calculated based on the costs incurred of time taken for inspections and associated administration, thus differences reflect different district team structures, salaries and overheads.

### **Proposal to harmonise Enforcement Costs**

As per advice provided by Legal and Finance at the Fees and Charges workshop, it is proposed to harmonise the enforcement charge fees as per the charging arrangements proposed for the Planning Service. This will utilise a charging matrix, to calculate a 'blended fee' for costs incurred based on Officer grade (including on costs) and a calculation of time invested in each case, on a case by case basis.