

Mayor & Cabinet			
Title	Working in the Private Rented Sector.		
Key decision	Yes	Item no	
Wards	All		
Contributors	Executive Director of Customer Services Head of Law		
Class	Part 1	10th January 2018	

1. Summary

1.1 The purpose of this report is to:

- provide an update on the work of the Private Sector Housing Agency (PSHA), including the delivery of the additional licensing scheme introduced in February 2017.
- summarise the challenges faced by the PSHA in the work to licence properties and the options available to counter these challenges, specifically developing a business case for the roll out of a targeted selective licensing scheme;
- summarise the new tool of Civil Penalty Notices available to tackle poor standards in the PRS introduced in the Housing & Planning Act 2016 to add to the existing Housing Enforcement powers;

2. Recommendations:

2.1 It is recommended that the Mayor:

- notes the content of the report and agrees the proposal, supported by Housing Select Committee, to develop a business case that considers the extension of the existing licensing schemes to include a targeted selected licensing scheme;
- agrees the introduction of the Civil Penalty Notices as an additional tool to tackle poor practice in the Private Rented Sector as supported by Housing Select Committee and as per the details set out in paragraph 5.3 and charges in Appendix 2.
- agrees the Housing Select Committees recommendation for the PSHA to further promote the work of the team and engage with landlords and tenants to help eradicate bad practice in the sector.

3. Policy Context:

3.1 The housing landscape is rapidly changing and demand is increasing across all tenures. The private rented sector in Lewisham is growing rapidly – having doubled in size since 2001 it now consists of more than 30,000 homes and makes up more than 25% of all households in the Borough. Rich and poor, families and single people are now all relying on the private rented sector to provide a home. This is consistent with the trend across London where the growth in private renting continues.

3.2 Despite the increasing costs of private renting, the sector is expected to grow further in Lewisham to a level comparable with, or even in excess of, the social rented sector which is 31% based on 2011 census data. This is due in part to the relative

unaffordability of home ownership as a result of rapidly increasing house prices, the large numbers of households on the housing waiting list (9,908 households as of October 2017) and relatively low levels of lets, all of which when combined means that Lewisham residents are more reliant on the private rented sector than ever before. The council recognises this and continues to act creatively by developing relationships and working in close partnership with private landlords to drive up standards and offer longer term tenancies, thereby ensuring residents have more choice. This is especially pertinent given that private renting remains the only option for many low income households and those in need.

- 3.3 As the size of the PRS increases tools are being developed both by national Government to address the worst abuses of tenants by criminal landlords but additionally in London where the problems are the most acute to improve standards and enhance the powers of authorities to act against the worst offenders. For example, following Government consultation late in 2016 the Government confirmed their intention to widen mandatory licensing to HMOs to exclude the 3 storey requirement whilst retaining the threshold at a minimum of 5 people. The introduction was planned for October 2017 but there have been delays due to other Government priorities. It is likely that the new scheme will be introduced in April 2018, and so work is ongoing to prepare for that scheme by identifying potential licensable HMOs that may fall under the new scheme on our current visits and speaking to landlords about the requirements. Further details are set out below relating to the licensing schemes in the Borough.
- 3.4 The London Mayor is also committed to tackling standards in the PRS and tackling the worst landlords and is launching in November 2017 a new online database that will “name and shame” rogue landlords. The new database has been built in partnership with all London Boroughs and is published on the London Mayor’s website. It cites criminal landlords and letting agents who have been successfully prosecuted for housing offences. The London Mayor believes it will give Londoners “greater confidence in renting in the capital”, allowing them to check a prospective landlord or letting agent before moving into a property, and acting as a deterrent to the minority of landlords and agents who behave dishonestly. This register is also available to Councils across the capital to easily share information on enforcement and investigations, especially relating to rogue landlords to support more effective joint working. Initially the scheme was piloted with six councils — Newham, Brent, Camden, Southwark, Kingston and Sutton. Lewisham have joined the second roll out in November. The stated aim is to “protect London’s 2 million private renters”. This scheme will sit alongside the national rogue landlord database summarised below.
- 3.5 Other changes include the Energy Efficiency (Private Rented Property)(England and Wales) Regulations 2015 which establish a minimum level of energy efficiency for privately rented property in England and Wales. The regulation means that, from April 2018, landlords of privately rented domestic and non-domestic property in England or Wales must ensure that their properties reach at least an Energy Performance Certificate (EPC) rating of E before granting a new tenancy to new or existing tenants. These requirements will then apply to all private rented properties in England and Wales – even where there has been no change in tenancy arrangements – from 1 April 2020 for domestic properties, and from 1 April 2023 for non-domestic properties.”
- 3.6 The contents of this report are consistent with the Council’s policy framework. It supports the achievements of the Sustainable Community Strategy policy objectives:
- Ambitious and achieving: where people are inspired and supported to fulfil their potential.
 - Empowered and responsible: where people can be actively involved in their local area and contribute to tolerant, caring and supportive local communities.

- Healthy, active and enjoyable: where people can actively participate in maintaining and improving their health and well-being, supported by high quality health and care services, leisure, culture and recreational activities.

The report is also in line with the Council policy priorities, in particular:

- Decent homes for all - Investment in social and affordable housing, improve housing conditions and tackle homelessness

The work of the Agency will also help meet the Council's Housing Strategy 2015-2020 in which the Council commits to the following key objectives:

- Helping residents at times of severe and urgent housing need
- Building the homes our residents need
- Greater security and quality for private renters
- Promoting health and wellbeing by improving our residents' homes

4. Working in the Private Rented Sector:

4.1 The Private Sector Housing Agency was re-merged in June 2017 bringing together the key services that work with the private sector, Empty Homes, Rogue Landlord services, Licensing & Enforcement, Grants and Loans to support frail and disabled clients to remain in their homes and the Procurement team that source temporary accommodation for a range of Council services.

4.2 One of the key priorities for the Agency is to deliver both the mandatory and additional licensing schemes (detailed below) to help drive up standards in the private rented sector.

Mandatory & Additional Licensing Update:

- 4.3 The Council currently operates two separate licensing schemes the:
- Mandatory scheme relating to all Houses in Multiple Occupation (HMOs) that are three storeys or above with shared bathroom or kitchen facilities, where there are at least five people living in two or more households. The standard fee is £500 per lettable unit/room over 5 years (£100 pa) to a maximum of £5,000 per property, although there are exemptions for accredited landlords, early application and landlords with multiple properties. This is a national scheme operated by all Councils, although the fees are specific to Lewisham.
 - Additional licensing relating to HMOs above commercial premises where there are at least three people living in two or more households, or poorly converted privately rented self-contained flats. This scheme has been operating since February 2017 and is Lewisham specific. The same fee regime is in place as above.
- 4.4 The reasons for adding an additional licensing scheme in Lewisham was because all available data highlighted that the poorest standards, conditions and hazards in the private rented sector are to be found in shared accommodation and within flats over commercial properties and data was available to support the case. The following sets out some initial results from this scheme as the work rolls out.
- 4.5 Below are tables to show the performance to date and the lessons we are learning from this process.

Table 1 shows the numbers of properties which have been licensed by year:

Date:	Number of licenced properties	Mandatory or additional
31 st March 2013	169	Mandatory
31 st March 2014	168	Mandatory
31 st March 2015	185	Mandatory
31 st March 2016	196	Mandatory
31 st March 2017	231	Mandatory

Table 2 shows in more detail performance over this 2017/2018 financial year to 1st October 2017:

	Numbers
Mandatory licensed properties	286
Additional licensed properties	45
Total Licensed properties (both mandatory and additional)	= 331
Total new draft licences issued awaiting compliance documents from landlords. (Landlords pay for a draft licence and then have to send in a number of compliance documents – like gas certificates. Once received an inspection visit is booked and a full licence is issued)	50
Licences still to be renewed from 01/11/2017 – 31/03/2018.	39
Properties identified by officers as HMOs on visits or where a licence application has been started by a landlord but not completed where there is a likelihood they are an HMO. A large % of these are either in the process/or in dispute.	(214)

These tables highlight the success that the PSHA is having finding and licensing HMOs, compared to previous years. The work that is underway is also bringing out some key lessons for the service, trialling different approaches, testing what works and what does not yield the desired outputs as well as identifying some areas where focus should be placed for campaigning more widely in the future or where an extension to licensing could be beneficial. The Agency is confident that the ambitious targets (summarised below) will be delivered both in this and the remaining 4 years of the project. However it should be recognised that it is very time intensive finding and licensing HMOs.

The target was to identify and licence 4500 licensable units/rooms under the additional scheme. The number was estimated based on initial street surveys. This is a very ambitious target and would equate to around 1500 properties over the 5 year period which, with an average occupancy of additional HMOs of 3 lettable units/rooms per property, would require **300 new additional properties per annum for 5 years**. This is challenging, but every effort is being made to meet this.

The income target for 2017/18 of £362k is on track to be delivered.

4.6 To support the delivery of the licensing programme officers are:

- utilising data from key data sources, including Council Tax and Waste Management.
- utilising the GIS mapping system to identify privately rented accommodation around transport hubs; near colleges and above pubs as they are often sources of higher than average HMOs and as a way of identifying rented properties that are above commercial premises. A programme of visits are underway;
- introduced a programme of monthly street surveys targeting particular streets and visiting them over two - three days, flooding the area with enforcement staff. Officers are assertive about their requirement to get into property to inspect, and serve Notices on tenants immediately if they refuse access. Areas are selected based on data and research – and this is overlaid by substantial local knowledge within the team. In October the survey was focused on Telegraph Hill and the planned November survey will look at commercial premises in Lee High Road.

Other possible extensions to the licensing scheme:

a) Extensions to the Mandatory Licensing scheme:

- 4.7 The Government have agreed to extend the existing Mandatory licensing scheme as set out in the Housing Act 2004, removing the three storeys or more criteria so that any HMO with five or more occupiers, regardless of how many floors, will fall within the scope of the mandatory licensing scheme. In addition, the Government intends to extend mandatory licensing to flats which are occupied by five or more occupiers/two or more households if it is in a converted building or where part of a building is used for commercial or other non-residential purposes.
- 4.8 It is estimated that the current proposals will make an additional 174,000 HMOs subject to mandatory licensing nationwide. Currently conservative estimates for Lewisham based on data from Council Tax and planning enforcement is between 400 – 500 two storey HMOs in Lewisham. This however is only an estimate and data from these sources has not been wholly reliable for the PSHA. Data is being collected now as part of the current visiting regime but until the scheme is up and running it is difficult to assess the potential. It is likely that the bulk of these additional properties will be found in the South of the Borough where there has been an issue of conversions of 2 storey properties into HMOs.
- 4.9 It is envisaged that the proposal will be brought into force April 2018 (at the earliest). There will be a six month grace period for landlords to comply with the new requirements. Failure to obtain the correct licence after the end of the grace period would allow the local authority to initiate criminal proceedings with unlimited fines imposed on those found guilty of an offence and the possibility of rent repayment orders being made or fixed penalty notices of up to £30,000. However the Council's approach will be to work hard with landlords to apply and conform to the requirements of the new licensing scheme and only use the full force of the law and the penalties available to those landlords who have no intention of complying.

b) Developing a business case for selective licensing

- 4.10 Following consideration of the PRS report in November 2017, Housing Select Committee supported the development of a business case that investigates the potential fit of a targeted selective licensing scheme (under 20% of the PRS/Borough) to the circumstances of the PRS in Lewisham, based on intelligence from the licensing visiting programme and data that shows:
- there are pockets of poor rented housing of all property types, not just HMOs, across the Borough in specific areas, largely in the north of the Borough, although not exclusively. There are also areas, for example, around Goldsmiths, with high levels of student accommodation or around transport

hubs where there are concentrations of rented accommodation that can lead to increased levels of nuisance and anti-social behaviour often associated with litter and waste or above pubs which are showing as having higher levels of disrepair;

- there are areas and properties where poor standards are being identified that are not HMOs but are in self-contained flats. The problems are largely overcrowding and fire safety which are currently dealt with through the standard enforcement route;
- that the high level of disputes around occupancy levels of HMOs that take what the officers know to be HMOs out of the licensing regime would no longer be relevant as all privately rented accommodation within an area would be licensable.

The business cases and any potential selective licensing scheme would be delivered within existing resources. The business case would identify target areas and pull together the data and intelligence. This would be presented back for consideration at Committee.

4.11 To take forward a proposed focused selective licensing scheme evidence would be needed from the data from the current visits; from existing Council systems like Council Tax, Planning Enforcement, Building Control and Waste Management; and from external sources like the Police and GPs to support the development of a robust business case. Work is underway to strengthen and consolidate enforcement work and data collection that would support the development of a business case.

4.12 If a targeted “selective” scheme that licensed all rented accommodation in an area was introduced this would:

- Support the aims of the Agency to work much more closely at a neighbourhood level with Councillors, Police, Tenants and local organisations as well as representatives from planning enforcement and the Crime, Enforcement and Regulation services who have an interest in specific neighbourhoods.
- avoid current disputes with landlords on whether their properties comply.
- Tackle the many properties the team find that are in poor condition but not HMOs adding licensing to the enforcement tools available to the Council for non HMOs in specific areas;

4.13 Like Lewisham, some other Boroughs have also introduced other additional or selective licensing schemes to tackle specific problem areas. The details of other Borough schemes can be seen at **Appendix 1**. Even with the new “below 3 storey” HMO extension scheme due next year Councils will still retain the ability to introduce other selective or additional licensing schemes if they meet the prescribed conditions.

5. **Refreshing the Private Sector Housing Enforcement and Licensing Policy – Housing & Planning Act 2016:**

5.1 The Housing Enforcement services of the Council currently operate within the framework of the Private Sector Housing Enforcement and Licensing Policy as agreed in 2006. This policy has been refreshed to incorporate best practice and to maximise the opportunities provided by legislative changes contained in the Housing and Planning Act 2016 (although some powers are yet to be brought forward). The full draft Private Sector Housing Enforcement and Licensing Policy October 2017 can be made available on request.

5.2 This Housing and Planning Act 2016 includes some new powers and obligations introduced by the Government to tackle rogue landlords and improve standards in an increasingly important housing sector. The key proposed change relates to the introduction of Civil Penalty Notices (CPN) which are summarised below and at **Appendix 2** for Committee to consider before implementation.

5.3 Civil Penalty Notices (CPN). The powers conferred by the Housing and Planning Act 2016 (HPA 2016), allow local authorities to issue a Notice of the intention to impose a Civil Penalty of up to a maximum of £30,000, as an alternative to prosecuting offences under the Housing Act 2004. Currently cases that are presented to Court for breaches under the Housing Act are time consuming and expensive to administer. A successful prosecution may only result in the Council receiving the court costs and not the fine imposed. The CPN allows the Council to retain any financial penalties imposed for specific breaches of the 2004 Act, relating to landlords who, for example, fail to comply with Improvement or Overcrowding Notices, breaches of the HMO licensing conditions, or failure to licence. This income can be used to support the enforcement work of the team.

The process starts at the point where a formal intervention has taken place, so an Improvement or Overcrowding Notice has been issued for example in line with the Councils Enforcement Policy, and not complied with by the landlord. (The procedure for issuing a CPN is set out in Schedule 13A Housing Act 2004 and DCLG Civil Penalties Guidance under the Housing & Planning Act 2016).

There are 2 stages to issuing a CPN.

- Issue a Notice of Intent which gives the landlord/defendant 28 days to make representations;
- Issue a Final Notice which confirms the amount to pay, the reason for imposing the CPN and the period of payment. It also sets out the consequences of failing to reply and the rights of appeal to the First Tier Tribunal.

The work to prepare the case and present the case will sit with the Enforcement team in the Agency. There will be a decision making/adjudication process that sits within the legal team as it needs to be independent of the Agency and the enforcement service. The process for agreeing the issuing and awarding a CPN will be finalised with colleagues across the key services of Housing & legal services and the new CPN process launched early in the new year following consideration of this new power by Committee & Mayor & Cabinet.

CPNs cannot be imposed for unlawful eviction, harassment, or failure to comply with a prohibition notice.

The level of the penalty would be calculated based on a proposed matrix set out in the **Appendix 2**. This matrix is based on accepted best practice within the sector.

It is envisaged that the Council, would still submit cases for prosecution to the Criminal Court for the most serious or repeat offenders where it is agreed that a criminal prosecution is most appropriate.

As this policy potentially affects a number of landlords across the Borough a report was submitted to Housing Select Committee and support secured to introduce Civil Penalty Notices into the toolkit for the Private Sector Housing Agency.

5.4 Other areas relevant to the work of the Agency include the creation of a National Rogue Landlord and Property Agent Database, that will sit alongside the London Mayors proposals and the extension of Rent Repayment Orders (RROs). The Act also introduces Banning Orders which can prevent an unfit person from being a landlord/letting agent, but the legislative detail is yet to be published. All the existing

enforcement powers under the various Acts in use in the Agency remain in place. These tools below are additions to current Enforcement powers:

- National Rogue Landlord Database: A national database of rogue landlords and property agents has been introduced which is accessible to local and central government bodies. The database will include information on landlords who have been served with a banning order, convicted of a banning order offence, or have received two or more Civil Penalties Notices. There is ongoing consultations as to which criminal offences should be regarded as banning order offences and will therefore be included on the database. The database will also include details of any letting agents who persist in charging fees to tenants after the new regulations banning this activity come into force.
- Extension of Rent Repayment Orders (RROs): Tenants or the Council may apply to the First Tier Tribunal ((FTT) for the repayment of rent, either rent paid by the tenant or rent paid through Housing Benefit. Under the HPA 2016 tenants now do not need to rely on the local authority obtaining a conviction before they can make their own application for an RRO. The FTT would however need to be satisfied beyond a reasonable doubt that an offence has been committed if either a tenant or the Council made an application for a RRO. An application for a RRO can be made if there has been a breach of a key section of the Housing Act 2004 including failure to comply with a prohibition notice or breaches specifically relating to not having a licence, failure to comply with Notices relating to, for example, overcrowding or the issuing of management regulations. A RRO application can also be made for other legislative breaches committed by landlords and property agents that affect their tenants including the Criminal Law Act 1977 (S6(1) and Protection from Eviction Act 1977 (S1(2), (3) or (3A).
- Banning Orders: Local authorities are waiting for a legislative update following consultation. The aim of introducing banning orders is to rid the sector of the worst rogue landlords and as a result improve property and management standards within the private rented sector. They will also help local authorities to take robust and effective action against rogues who knowingly rent out unsafe and substandard accommodation.

Landlords subject to banning orders will also not be able to earn income from renting out housing or engaging in letting agency or property management work. Proposed banning order offences as outlined in the government consultation include:

- illegally evicting a tenant
- renting out a property decided to be unsafe as a dwelling by local authorities
- failing to carry out works required by local authorities to prevent health and safety risk to tenants
- renting out a property to an illegal migrant
- using violence, or threatening violence against a tenant
- making fraudulent applications for housing benefit, or committing identity theft
- using the property to cultivate cannabis
- theft or criminal damage
- colluding with the tenant to commit a criminal offence, such as tax evasion or the supply of illegal drugs.

Officers are waiting further advice from Government but are proposing to add this tool to the revised Enforcement policy after guidance is issued.

8. Financial implications

- 8.1 The purpose of this report is to update Mayor & Cabinet on the work of the Private Sector Housing Agency (PSHA), which includes progress on the implementation of the additional scheme introduced in February 2017. As such, there are no direct Financial Implications arising from this part of the report.
- 8.2 The report also provides a summary of the key policy changes and developments relevant to the Private Rented Sector (PRS) such as extending the mandatory scheme to remove the 3 story or more criteria and seeks permission to develop a business case for the introduction of a targeted selective licencing scheme. Where necessary, the financial implications of each issue will be considered in specific reports as matters progress.
- 8.3 The first tranche of funding from the DCLG controlling migration fund has been received by the authority following a successful bid for additional resources. This will enable the authority to employ two officers to tackle rouge landlord issues.

9. Legal implications -

The Housing and Planning Act 2016 (HPA) introduces new provisions which are intended to penalise unscrupulous and irresponsible landlords who fail to provide safe and healthy accommodation. These new provisions / powers include;

- Civil penalties of up to £30,000
- Extension of Rent Repayment Order
- Banning orders for most prolific offenders
- Database of rogue landlords/property agents
- Tougher fit and proper person test for landlords of licensed properties
- Sharing data on tenancy deposit schemes with local authorities.

The most significant of those listed above is the introduction of civil penalties. Section 126 of The Housing and Planning Act 2016 (which came into force on 10 March 2017), and amends the Housing Act 2004, allows financial penalties to be imposed as an alternative to prosecution for certain offences as set in Schedule 9 of the Act. Schedule 9 in turn amends the Housing Act 2004 including providing a new Section 249A which has the financial penalties as an alternative to prosecution. The details of the offences to which a civil penalty may be imposed are as set out in Appendix 2 referenced in paragraph 6.3

Unlike fines issued by the Courts when criminal prosecutions are taken, income received from a civil penalty can be retained by the local housing authority provided that it is used to further the local housing authority's statutory functions in relation to their enforcement activities covering the private rented sector. This means that any income received from civil penalties issued can be reinvested into carrying out more enforcement work to bring about further improvements within the private rented sector (PRS).

The Council's additional powers and duties under the Housing Act 2004, as amended by the Housing and Planning Act 2016, along with other relevant legislation are also set out in the body of this report.

The Equality Act 2010 (the Act) introduced a new public sector equality duty (the quality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- advance equality of opportunity between people who share a protected characteristic and those who do not.
- foster good relations between people who share a protected characteristic and those who do not.

The duty continues to be a 'have regard duty' and the weight to be attached to it is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.

The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled "Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice".

- The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty.
- The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions.
- The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value.
- The statutory code and the technical guidance can be found at: <http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>

The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

- i. The essential guide to the public sector equality duty
- ii. Meeting the equality duty in policy and decision-making
- iii. Engagement and the equality duty
- iv. Equality objectives and the equality duty
- v. Equality information and the equality duty

The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at: <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>

10. Crime and disorder implications

10.1 There are no crime and disorder implications arising from this report

11. Equalities implications

11.1 Please see Appendix 3 for full details of the assessment.

11.2 On the basis of the available data and assessment it is concluded that the implementation of Civil Penalty Notices in Lewisham will have a positive impact on some of the most vulnerable citizens in the Borough. This will be monitored and reported back to Committee as the policy is rolled out.

12 Environmental implications

12.1 There are no environmental implications arising from this report.

13. Originator

For further information or a copy of the full Housing Enforcement policy please contact Madeleine Jeffery (Private Sector Housing Agency Manager) on Madeleine.jeffery@lewisham.gov.uk or 0208 314 9484.

Appendices:

- Appendix 1 = Other Borough Licencing schemes summary
- Appendix 2 = Civil Penalty Notices matrix
- Appendix 3 = Equalities implications

Appendix 1 – Summary of other Borough licensing schemes;

List of London Boroughs with Mandatory and Additional and/or Selective licensing schemes operating in all or part of their boroughs.

London Borough of Barking & Dagenham

Licence Overview - Additional, selective and mandatory HMO licensing schemes all apply borough wide

Camden

Licence Overview - No selective licensing in Camden but mandatory HMO and additional licensing schemes apply borough wide.

Croydon

Licence Overview - Mandatory HMO and selective licensing applies borough wide. There is no additional licensing scheme.

Ealing

Licence Overview - Mandatory HMO and additional licensing schemes apply borough wide. A selective licensing scheme covers part of the borough.

Greenwich

Licence Overview - No selective licensing in Greenwich but the mandatory HMO licensing scheme applies borough wide. An additional licensing scheme started on 1st October 2017.

Hammersmith and Fulham

Licence Overview - Mandatory HMO licensing applies borough wide. Additional and selective licensing schemes started on 5th June 2017

Haringey

Licence Overview - Mandatory HMO licensing scheme applies borough wide and additional licensing applies to part of the borough. There is no selective licensing scheme.

Harrow

Licence Overview - Mandatory HMO and additional licensing schemes apply borough wide. There is selective licensing in 2 wards. The council recently consulted on plans to extend selective licensing to another two Wards.

Havering

Licence Overview - No additional or selective licensing in Havering but the mandatory HMO licensing scheme applies borough wide.
An additional licensing consultation took place from 19 May to 28 July 2017.

Hillingdon

Licence Overview - No selective licensing in Hillingdon although mandatory HMO licensing applies borough wide and additional licensing applies to part of the borough.

Hounslow

Licence Overview - No selective licensing in Hounslow although mandatory HMO and additional licensing applies borough wide.

Islington

Licence Overview - Mandatory HMO licensing scheme applies borough wide and an additional licensing scheme applies to part of the borough. There is no selective licensing scheme.

Kingston Upon Thames

Licence Overview - No selective licensing in Kingston upon Thames although mandatory HMO and additional licensing applies borough wide.

Newham

Licence Overview - Additional, selective and mandatory HMO licensing schemes all apply borough wide. Are looking for a further 5 year extension to their selective scheme.

Redbridge

Licence Overview - Borough-wide additional licensing started on 13 April 2017 and a selective licensing scheme started on 13 July 2017. The mandatory HMO licensing scheme applies borough wide.

Southwark

Licence Overview - Mandatory and additional HMO licensing applies borough wide. There is a smaller selective licensing scheme that covers part of the borough.

Tower Hamlets

Licence Overview - No additional licensing in Tower Hamlets but the mandatory HMO licensing scheme applies borough wide. A selective licensing scheme covers part of the borough.

Waltham Forest

Licence Overview - There is no additional licensing scheme but selective and mandatory HMO licensing schemes both apply borough wide.

Please note any London borough that has not been included on this list is only taking part in the national Mandatory HMO licensing scheme

Appendix 2 – Civil Penalty Notices – proposed charging matrix

Culpability

	Very High	High	Moderate	Lesser	
Harm	Very Serious	Range 15k-30k Starting point: 25k	Range 15k-30k Starting point: 20k	Range 8k-18k Starting point: 13k	Range 5k-10k Starting point: 7.5k
	Serious	Range 15k-30k Starting point: 20k	Range 8k-18k Starting point: 13k	Range 5k-10k Starting point: 7.5k	Range 3k-6k Starting point: 4.5k
	Moderate	Range 8k-18k Starting point: 13k	Range 5k-10k Starting point: 7.5k	Range 3k-6k Starting point: 4.5k	Range 1k-4k Starting point: 2.5k
	Lesser	Range 5k-10k Starting point: 7.5k	Range 3k-6k Starting point: 4.5k	Range 1k-4k Starting point: 2.5k	Range £250-1.5k Starting point: £750

- The process starts at the point where a formal intervention has taken place, so an Improvement or Overcrowding Notice has been issued for example in line with the Councils Enforcement Policy, and not complied with by the landlord. (The procedure for issuing a CPN is set out in Schedule 13A Housing Act 2004 and DCLG Civil Penalties Guidance under the Housing & Planning Act 2016).
- There are 2 stages to issuing a CPN.
 - Issue a Notice of Intent which gives the landlord/defendant 28 days to make representations;
 - Issue a Final Notice which confirms the amount to pay, the reason for imposing the CPN and the period of payment. It also sets out the consequences of failing to reply and the rights of appeal to the First Tier Tribunal.
 - The work to prepare the full details of the case and present it to panel will sit with the Enforcement team in the Agency. There will be a decision making/adjudication process that sits within the legal team as it needs to be independent of the Agency and the enforcement service. The process for agreeing the issuing and awarding a CPN will be finalised with colleagues across the key services of Housing & legal services and the new CPN process launched early in the new year following consideration of this new power by Committee & Mayor & Cabinet.
- The 4 categories of harm will be assessed against the 4 categories of harm which are based on the Housing Health and Safety Rating System (HHSRS). This assessment tool is used by all enforcement and licensing officers. The seriousness of the outcome “harm”

on the vertical axis collates with the seriousness of the landlord/defendant's conduct "culpability" on the horizontal axis to produce the starting point. The starting point will be adjusted following consideration of specified "matters to consider" which are contained within the main DCLG Guidance document (para 3.5), and listed below. CPNs can move between bands if case is unusual

- The harm caused to the tenant;
 - Punishment of the offender;
 - Deter the offender from repeating the offence;
 - Deter others from committing similar offences;
 - Prevent the offender from benefitting financially;
 - Offender's previous history;
 - Severity of offence;
 - Whether offender admits or denies offence;
- The CPN can be registered as a judgement debt and can be enforced through the County Court.
 - This matrix is based on accepted best practice within the sector.

CPNs cannot be imposed for unlawful eviction, harassment, entry with violence or failure to comply with a prohibition notice. It is envisaged that the Council, would still submit cases for prosecution to the Criminal Court for the most serious or repeat offenders where it is agreed that a criminal prosecution is most appropriate.

Copies of the full draft processes are available on request from
Sean.Longley@lewisham.gov.uk

<https://www.gov.uk/government/publications/civil-penalties-under-the-housing-and-planning-act-2016>

Appendix 3 – Equalities Implications

There is limited data available to make a thorough assessment of the equalities implications arising from the introduction of Civil Penalty Notices which is an addition to the Council's Housing Enforcement policy.

Name of proposal	Housing Enforcement Policy review – Civil Penalty Notices
Lead officer	Madeleine Jeffery – Private Sector Housing Agency Manager – 0208 314 9484
Other stakeholders	Private Sector Landlords & Private Sector Tenants
Start date of Equality Analysis	1 st April 2017.
End date of Equality Analysis	30 th November 2017 however there are a number of opportunities over the coming months to improve the data available relating to the private sector and its operation which will be looked at as the Council builds a clearer and more robust picture of the private rented sector for policy and service decisions.
Step1: Identify why you are undertaking an Equality Analysis	
The Equality Analysis is being undertaken to support the decision making relating to the introduction of Civil Penalty Notices.	
Step 2: Identify the changes to your service	
<p>The policy change is as a result of the powers conferred by the Housing and Planning Act 2016 (HPA 2016), which allow local authorities to issue a Notice of the intention to impose a Civil Penalty of up to a maximum of £30,000, as an alternative to prosecuting offences under the Housing Act 2004 which can be very slow and result in very small fines for landlords who receive large sums of money for rent. We are looking to utilise these new powers to protect public welfare, safeguard the well-being of people who are often the most vulnerable in our society living in the very poorest accommodation and to prevent exploitation.</p> <p>It is envisaged that the Council would still submit cases for prosecution to the Criminal Court for the most serious or repeat offenders where it is agreed that a criminal prosecution is most appropriate but the CPNs will give a more effective tool to those landlords who fail to take action to improve their rented properties at a lower scale but still in cases where there is poor housing conditions that are affecting the health of the occupiers and where, despite all the actions of the Council, they are still not working with us to resolve the disrepair.</p> <p>As this policy potentially affects a number of landlords across the Borough a report was submitted to Housing Select Committee and support secured to introduce Civil Penalty Notices into the toolkit for the Private Sector Housing Agency to help protect vulnerable tenants where landlords refuse to deal with poor housing conditions.</p>	
Step 3: Assessment of data and research	
There is limited data on the protected characteristics of the 33,000 private renters in Lewisham specifically and we currently hold very limited data about private landlords in Lewisham.	

- We are working on developing the HMO licensing form. The collection of equalities data can be added in that review. This is not planned until the 2018/19 financial year.
- A project manager is being appointed in early 2018 to lead the work on developing the M3 data system and data analytics to be used in the service. Improving data relating to landlords and tenants in the PRS will be included in this project.

The most recent English household survey 2015-16 identifies that:

- Younger people are disproportionately over represented in the PRS - the proportion of those aged 25 to 34 who lived in the private rented sector increased from 24% in 2005-06 to 46% in 2015-16.
- The proportion of households living in the private rented sector who had dependent children increased from 30% in 2005-06 to 36% in 2015-16. This increase was particularly apparent for lone parents with dependent children. Between 2005-06 and 2015-16, the proportion of households in the private rented sector that were lone parents with dependent children increased from 9% to 11%.

Some further information about the quality of the PRS include:

- Nearly a quarter (24%) of tenants have lived in the PRS for more than 10 years;
- 73% of tenants describe the quality of their homes as good or very good;
- More than a quarter (28%) of PRS homes did not meet the Governments decent homes standards in 2015.
- PRS homes have nearly double the incidence of dampness compared to the social sector and only 84% have central heating compared to 95% in owner occupied homes;
- When asked about their most recent move, most private renters said that their last tenancy ended because they wanted it to (73%). A tenth (11%) said that their landlord or agent ended the tenancy.
- Among those private renters who had moved in the last three years because their landlord had asked them to, roughly two thirds (63%) were asked to leave because the landlord wanted to use or sell the property.

The data available is limited for both landlords (who are the group who will be primarily affected) and tenants who are indirectly affected. However as the importance of the sector grows alongside the Council's understanding and engagement with the sector it has now an increasing priority to better understand the PRS and all its components in the Borough and issues relating to EIA. Collecting data however for this sector is more complicated than for others as tenants move on and Landlords are often reluctant to engage with enforcement services.

Step 4: Consultation

No consultation at this time;

Step 5: Impact Assessment

Potential Positive impacts:

- + Often the most vulnerable tenants (including recently arrived migrants) live in bottom 25 percentile of properties in the Borough. These are the most exploited group and any improvements to condition would have a

positive impact on these citizens. Recognition of this has led to funding from DCLG for the rogue landlord team for 2 years;

- + Poor standard PRS homes will be improved as landlords see there is an immediate and costly fine that could be imposed that would not be delayed by waiting for a court appearance. This will have a positive impact for tenants as standards across the sector improve;
- + Poor landlords could be driven out of the Borough because any landlord where a CPN has been served will then be a candidate for the GLA Rogue Landlord and Letting Agent Checker which can be accessed by tenants and so will make more informed choices about what properties they let;
- + There will be some more immediate teeth to the enforcement policy which will have the impact of encouraging landlords to work with us in improving their properties rather than “wait and see” what the court process brings. This will in turn will ensure the quality of accommodation is improved for tenants renting in the private rented sector.
- Other Boroughs will implement CPNs. If we fail to do this then more rogue landlords may decide to move to an area where there is less regulation and opportunities to be fined. Rogue landlords will go where the risks to them are the least and so we need to ensure we have all the tools available or the tenants of Lewisham will be more open to exploitation.

Potential Negative Impacts:

- - Tenants may be open to exploitation as the costs of any fines are passed on to them or they are subject to harassment if the landlord believes them to be the source of the complaint. The existence of the newly re-formed rogue landlord team will mitigate against any actions from the landlords against the tenants;

Step 6: Decision/ Result

On the basis of the available data and assessment it is concluded that the implementation of the CPNs in Lewisham will have a positive impact on some of the most vulnerable citizens in the Borough.

Step 7: Equality Analysis Action Plan

The identified area at this stage where there is a potential negative impact can be mitigated by the work of the rogue landlord team and by the enforcement services that are delivered by the PSHA. If a landlord takes retaliatory action against their tenants, which is a common factor, then the PSHA will utilise all of its enforcement powers to protect all tenants.

In addition we will:

- Undertake ongoing and continuous monitoring of this policy to assess its impact;
- In common with all housing policies we will review its impact after its first year