

Housing Select Committee			
<b>Title</b>	Working in the Private Rented Sector.		
<b>Key decision</b>	Yes	<b>Item no</b>	4
<b>Wards</b>	All		
<b>Contributors</b>	Executive Director of Customer Services Head of Law		
<b>Class</b>	Part 1	18 <sup>th</sup> September 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. Committee are asked to note the 58% increase in the number of licences secured during the last financial year from 231 to 366 (details in table below);
- summarise the details of the Governments extension to the mandatory licensing scheme taking out the 3 storey requirement and the work underway to promote this new scheme;
- summarise the work being undertaken to deliver on the manifesto commitment to deliver an all Borough selective licensing scheme;
- summarise some of the key policy changes and developments relevant to the Private Rented Sector (PRS);
- summarise the new tool of Civil Penalty Notices now operating which was introduced in the Housing & Planning Act 2016 to add to the existing Housing Enforcement powers to tackle poor standards.

## 2. Recommendations:

2.1 The Committee is asked to:

- consider and note the content of the report, especially relating to the all Borough licensing project which will be presented to Mayor & Cabinet next year, and the future direction for managing the PRS.

## 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 and now consists of more than 30,000 homes and makes up more than 25% of all households in the Borough. 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 (9,579 households as of July

2018) 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.

- 3.3 The London Mayor is committed to tackling standards in the PRS and tackling the worst landlords and has launched a new online database that “names and shames” rogue landlords. The new database - the Landlord and Agent Checker - was built in partnership with all London Boroughs and is published on the Mayor’s website. It publishes details of criminal landlords and letting agents who have been successfully prosecuted for housing offences over the last 12 months. Lewisham have to date 2 landlords on this register. One landlord has been prosecuted for non-compliance of a prohibition order under the Housing Act 2004, and the other has been prosecuted for illegal eviction and landlord harassment.
- 3.4 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 needed to 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 “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.”
- 3.5 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 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. Re-forming this team brings together various areas of expertise under one manager.

- 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 A series of reports to Housing Select Committee and Mayor and Cabinet have been submitted over the last few years which have set out the work of the Private Sector Housing Agency delivering schemes that tackle rogue or criminal landlords; that address property standards through targeted enforcement and most recently sought and secured approval for an expansion of an additional 5 year licensing scheme which was launched on the 11<sup>th</sup> February 2017.
- 4.4 The Council currently operates two separate licensing schemes with a new extension to the mandatory scheme from October 2018:
- 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 multiple landlords. This is a national scheme operated by all Councils, although the fees are specific to Lewisham.
  - The extension of the Mandatory scheme relating to all Houses in Multiple Occupation (HMOs) that consist of five or more occupants from two or more households, removing the storey criteria. More information on this new extension and the Council's preparation work is set out in section 4.7 below.
  - 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. 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 of the 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 over the last 6 years:**

<b>Date:</b>	<b>Number of licenced properties</b>	<b>Mandatory or additional</b>
31 <sup>st</sup> March 2013	169	Mandatory
31 <sup>st</sup> March 2014	168	Mandatory
31 <sup>st</sup> March 2015	185	Mandatory
31 <sup>st</sup> March 2016	196	Mandatory
31 <sup>st</sup> March 2017	231	Mandatory
31 <sup>st</sup> March 2018	366	Mandatory & Additional

**Table 2 shows for the first four months (April to August) of the 18/19 financial year:**

	<b>Numbers</b>
<b>Mandatory licensed properties</b>	312
<b>Additional licensed properties</b>	87
<b>Total Licensed properties (both mandatory and additional)</b>	= 399
<b>Active pipeline of properties</b> identified by officers as HMOs on visits; where Notices have been served declaring the property as an HMO; where packs for legal action/CPNs are in progress or where a licence application has been started by a landlord but not completed. A large % of these are either in the process/or in dispute.	50

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 are 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. More details will be provided at the meeting.

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 require **300 new additional properties per annum for each of the next 5 years**. This is challenging, but every effort will be made to meet this target and good progress is being made.

The income target for 2018/19 of £350k is on track to be delivered.

#### 4.6 Ongoing lessons learnt:

- There has been an increase of 59 mandatory licences over the 17/18 financial year which is an increase of nearly 26% in the number of licensable properties in less than a year;
- Table 2 shows this trajectory is continuing with an increase of 22 mandatory licences issued in the first four months of the financial year, an increase of nearly 8%. We are confident with the new staff employed as part of the restructure who will be joining us in autumn 2018 and the extension to the mandatory scheme the numbers of properties licensed will continue to rise.
- As the additional licensing scheme is specifically targeted at HMOs above commercial premises and not all properties that are privately rented in an area or across the Borough (as a selective licensing scheme would be) there is a much higher potential for “push-back” by landlords who dispute their properties fall within the conditions of the licensing scheme. This makes the work of the team very labour intensive focusing on proving the case, sometimes through Court rather than tackling disrepair and poor landlord practice. The roll out of the Civil Penalty Notices in Lewisham on the 1<sup>st</sup> August 2018 will help us where landlords are reluctant to licence as they could incur a penalty of, on average, £10k and this process avoids the need for a Court appearance.
- To identify small numbers of HMO there has been extensive visiting and online research. The team has recently begun data gathering and mapping to help identify areas to target. Maps have been produced using data from HMO and

disrepair complaints received by the council, Housing Act notices served by the Private Sector Enforcement Team, census data around housing stock and household composition, and from our own databases.

To support the delivery of the licensing programme officers are:

- utilising data from key data sources, including Council Tax and Waste Management. Unfortunately the data has not been that useful to our work and the success rate is the same with standard visits. However we are working to update our current IT system and the data we can extract so this area will develop in importance, working in tandem and learning lessons from the Housing Trailblazer.
- 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 regular street surveys every 10 - 12 weeks 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 2017 the survey was focused on Telegraph Hill. The survey only uncovered 6 potential new licensable properties (4 mandatory and 2 additional) but it also uncovered 1 overcrowded hostel with 74 occupants and one hostel with 94 occupants with unsatisfactory fire precautions. A joint visit with the fire brigade resulted in the LFB serving a Notice to improve fire safety. The Council's PSHA also served a Notice to remedy overcrowding and disrepair. If the owners do not comply this will be prepared for immediate prosecution.
  - In January 2018 the street survey was arranged around the Bellingham, Whitefoot, and Downham wards. 1200 properties were visited with access gained to 476 properties on the first try. 5 licensable and 12 non-licensable HMOs were identified by officers with a further 43 properties warranting further investigation.
  - In April 2018 we visited 1341 properties in the Brockley and Forest Hill areas of the borough. Access was gained to 424 properties, or 32% of those visited. 20 currently licensable HMOs were identified by officers and a further 15 HMOs which will become licensable with the extension of mandatory licensing were discovered. Officers also inspected 26 non-licensable HMOs and found 10 instances of disrepair in properties. Officers recorded the tenure for all properties giving a breakdown for the area. Based on the properties the officers were able to confirm the tenure type for 42% were owner occupied, and 58% were in the private rented sector. Of those properties identified as being in the private rented sector the vast majority, 73%, were not HMOs, with only 27% being identified as HMOs.
  - A further survey is planned for the Evelyn ward during the w/c 20<sup>th</sup> August 2018.

#### **Extensions to the existing mandatory licensing schemes from October 2018:**

- 4.7 The Government have extended 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. Current estimates for Lewisham based on data from Council Tax and planning enforcement is around 400 two storey HMOs in Lewisham. This however is only an estimate and data from these sources has not been wholly reliable for the PSHA. However just because the properties currently fall within the scheme landlords can use a range of tactics to avoid being included which would dampen outcomes. Data is being collected now as part of the current visiting regime but until the scheme is up and running it is difficult to firm up the numbers and 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, especially around Downham, Whitefoot and Bellingham.
- 4.9 The new scheme will be brought into force in October 2018. 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. The average is likely to be around £10,000. 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.
- 4.10 To date Officers have been working hard to identify and link with landlords to get them to engage with the Council and to take advantage of the Early Bird discounts that have been on offer since April 2018. There are over 90 properties that officers have identified as likely to fall into the extended scheme. However, as above, identifying them and getting landlords to accept they are licensable are very different.
- 4.11 To support the roll out of the extension scheme we have:

Promoted the scheme:

- through a poster campaign which will commence on the 1<sup>st</sup> August 2018 until the 15<sup>th</sup> September, and has the potential to be extended if successful. This has been prepared in conjunction with our communications team and will be displayed across the Borough at a minimum of 8 different locations on existing street furniture;
- have set up dedicated pages on the main general Council website at [https://www.lewisham.gov.uk/myservices/housing/landlords/hmo/Pages/Which-houses-in-multiple-occupation-\(HMO\)-need-to-be-licensed-in-Lewisham.aspx](https://www.lewisham.gov.uk/myservices/housing/landlords/hmo/Pages/Which-houses-in-multiple-occupation-(HMO)-need-to-be-licensed-in-Lewisham.aspx) and included information within the housing pages itself at <https://www.lewisham.gov.uk/myservices/housing/landlords/hmo/Pages/default.aspx>, with links to the amended licensing application form;
- are maximising the use of social media including the Council's Facebook and Twitter pages during July and August 2018 and these will be updated at regular intervals throughout the year. Lewisham's licensing tweet was seen as the "42nd most engaging tweet" from UK Government accounts on 5th August with a potential reach of over 32,000.
- have utilised Lewisham Life both the paper and e-mail copies
- have a programme of visits by the team managers in place for lettings agents where the new scheme will be promoted;
- will be attending landlord events in the autumn to showcase our information. We are looking to hold a session with landlords on how to serve S21s effectively as this will attract many landlords now the requirements have changed;

- are promoting through the officers themselves by using email strap lines for all licensing staff email traffic;

Offered Cash incentives:

- introduced in April 2018 an “Early Bird” discount scheme offering a 20% discount of the licensing fee for landlords who apply and pay before 28th September 2018. Further discounts are offered to landlords if they are members of an accredited Landlord association and also if they already have a licensed a property in Lewisham. Information can be found on the council’s website [www.lewisham](http://www.lewisham) address.

Recruited & Trained staff:

- have diverted resources to the newly merged licensing and enforcement teams following our restructure, who will be responsible for delivering this scheme. They will ensure that the Private Sector Housing Agency (PSHA) continues to identify, inspect and set housing licensing conditions (such as waste management and minimum room sizes) to improve living conditions of not only for HMOs but also the neighbourhoods they are located in. They will also be working hard to reach the agreed income targets.

Are working jointly with other Boroughs on a project called London Lockdown:

- Lewisham is currently an active member of a cross Borough initiative including 8 other London Boroughs who are working collectively to try and tackle what is seen to be a proliferation in 2 storey HMOs converted from traditional 3 bed street properties and used by often vulnerable households. This project is focused on sharing intelligence and best practice where possible; challenging judgements that could set precedence in court and lobbying London and national government.

4.12 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 HMO extension scheme rolling out in October, Councils will still retain the ability to introduce other selective or additional licensing schemes if they meet the prescribed conditions.

**Selective licensing – a business case for submission of a request to the Secretary of State:**

4.13 The idea of introducing an “all-Borough” selective scheme was considered in 2015 but at that time there was a lack of robust evidence to support the need to have this type of scheme. However Officers are re-visiting this option as the size and contribution of the PRS grows in the Borough, in line with the Mayors manifesto commitment for borough-wide licensing of private rented sector properties. There is a requirement to submit substantial evidence and consult residents and landlords prior to introducing a selective licensing scheme and officers are currently working on gathering the body of evidence required.

4.14 To be considered any selective licensing scheme must form part of the council’s wider housing strategies, including homelessness, regeneration, ASB and empty homes. The documentation must set out the role that Police and Social Services will play in ensure the designation reaches its goal and must first consider other courses of action that might provide an effective remedy.

4.15 The evidence must demonstrate the proposals cover an area which is experiencing significant and persistent problems, and that some or all landlords are failing to take

action to combat the problem that would be appropriate for them to take. Also, that making a designation will lead to a reduction in, or elimination of, the problem.

- 4.16 Selective Licensing of Houses (Additional Conditions) Order 2015 states licensing can be used if the area is experiencing one or more of the following:
- Low demand – not relevant in Lewisham
  - High Anti-Social Behaviour
  - High migration
  - Poor housing conditions
  - High levels of deprivation
  - High level of crime
- 4.17 Approval from the Secretary of State (SoS) is needed if the designation covers more than 20% of the PRS stock in the area and more than 20% of the total geographical area. Approval is therefore required for borough-wide licensing. This change was implemented in 2015. Newham, Barking and Dagenham, Waltham Forest and Croydon all commenced their borough-wide licensing schemes before the requirement to obtain SoS approval. Newham have since renewed their licensing scheme with SoS consent. Brent and Redbridge have also obtained SoS approval. Haringey are in the process of obtaining their approval.
- 4.18 It should be noted that no London borough has a full SoS approved borough-wide licensing scheme, even Newham, as the Olympic Village was excluded. Redbridge applied for a borough-wide scheme and were refused, due to the SoS acknowledging the need for licensing in some parts of the borough only but not across the entire borough. They subsequently received approval for a smaller scale scheme.
- 4.19 A review of Newham, Brent and Redbridge's evidence bases has taken place (**Appendix 2**), as they have all had approval from the SoS for their near borough-wide selective licensing schemes. Haringey's has also been included as they are about to submit their evidence base for approval. The range of evidence required to put together an application is significant and combines both council held, regional and national data. An assessment has been made of the availability in Lewisham of the evidence used by other boroughs. Data within Lewisham is held separately by each internal team and it will be necessary to bring datasets together to build up the evidence base.
- 4.20 Analysis to date has centred on open source data which is freely available. The Index of Multiple Deprivation data has shown some clear evidence in support of licensing in the borough. Lewisham lies within the most deprived 15% of Local Authorities in England. Lewisham is considered the 10th most deprived London Borough. Indices for Income, Crime, Housing and Environment are all ranked very low - within the most deprived 5%. The Government report explicitly states Lewisham is in the top 20 districts with the highest proportion of children and older people in Income deprivation. The Education index is the only one ranked in the least deprived half in England.
- 4.21 As well as demonstrating evidence for each of the five criteria listed above, it will also be necessary to use a combination of council held datasets to make an up to date assessment of the size and scale of the private rented sector in Lewisham in order to map it. This will require access to datasets such as Council Tax and Housing Benefit and matching of these datasets. The process of identifying, obtaining and analysing data, to form a robust evidence base which can stand up to the scrutiny of residents, landlords and the SoS, is expected to take some time, as shown by the project plan.
- 4.22 A project team to progress the development of the evidence base, consultation documents and application to the SoS has been established. The project team meet monthly and report to the Head of Housing via the Private Sector Housing Project

Board. The project team will report by exception / highlight report to the monthly Housing Programme Board.

- 4.23 The project plan has an outline date of early 2020 to submit an application to the SOS, but this could be brought forward if the time allocated to the collection and collation of the required evidence can be reduced.
- 4.24 A further report will be made to Housing Select Committee and Mayor and Cabinet once the evidence base has been compiled. These reports will present a summary of the findings and seek approval to proceed to with a public consultation.

## **5. Rogue Landlords and Controlling Migration Fund:**

- 5.1 Through previous funding from DCLG, Lewisham was at the forefront of the work on Rogue landlords within London, despite having very limited resources to deal with this problem.
- 5.2 At the end of the 2016/17 financial year the DCLG offered additional - Controlling Migration - funding (CMF) to tackle rogue landlords across the capital to include all exploited citizens but also looking at recently migrated members of the community as they are often the most vulnerable and open to exploitation. The funding was to be used to tackle landlords who often subjected tenants to horrendous living conditions, illegal evictions and excessive or illegal fees. The proliferation of properties which are run by criminals has wider spread negative impacts on the established resident community, often as a consequence of overcrowding and poor maintenance.
- 5.3 To tackle the problem of rogue landlords in the borough we secured £200k funding from this pot for 2 years to June 2019. The funding was to support the appointment of two specialist posts (Private Sector Housing Fraud and Intelligence Officer) one officer from a police background the other a lawyer as well as support for the London Wide London Lockdown partnership project. Officers have been working since July 2017, investigating reports of criminal activity as related to housing offences, preparing prosecution packs for our legal team to progress and to provide an immediate response where there are ongoing illegal evictions. The numbers of prosecutions have already increased with 13 new cases being referred to legal services for prosecutions since July 2017. That compares to one case in 2015/16 and 2016/17. The numbers are still small but the work to investigate and collate evidence for court is slow and time consuming. In addition to working on priority cases these officers also tackle around 15 cases of illegal eviction and 15 cases of tenant harassment per month, getting tenants back into their homes where it is safe to do so. There is a further bid round for additional funding from MHCLG that closes in October that officer are preparing a bid to extend the work of this team for a further 2 years.

The main purpose of this team is to:

- track rogue landlords across the borough, utilising data that is already collected and adding new data and facts to build a comprehensive picture of the activities of the landlords.
- Develop a clearer picture of the rogue landlord problem (the true extent of the problem across the borough, risk factors, at risk groups, repeat offenders, understanding of interface with criminal activity such as running of cannabis farms or brothels;
- Fully utilise intelligence from as many local partners as possible and work collaboratively, sharing knowledge amongst local partners.
- Identify at risk occupants and work with internal teams, and partners to ensure that support and housing advice and options are provided, particularly in cases where criminal landlords are being prosecuted;

- Initially target 10 of the worst offending for in-depth investigation and prosecution where this is possible;
- Build case files for individual landlords specifically geared for successful prosecution.

A recent prosecution relates to a landlady who said that she was not letting out 2 windowless basement flats. On a scheduled inspection the rooms were found to be clear although a Prohibition Order was served. On a re-inspection in the early hours of the morning after obtaining a warrant, 8 people were found living in bunk beds in these small rooms. A summons has been served and the case is progressing to court.

The landlady was found guilty and was convicted and fined £5000 for non-compliance of the Prohibition Order served.

A second case relating to a property in Downham involved a landlord trying to “persuade” a tenant to leave in order to upgrade property and re let to more affluent tenant at a much higher rent. The tenant had a long-standing tenancy and was not willing to give up possession as they had no other option for housing. The landlord cut off the water and gas, and attempted to physically evict the tenant, during which the tenant was bitten on the arm. Police were called, and tenant was reinstated. The landlord refused to attend a PACE interview and the case has been presented for prosecution.

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

- 6.1 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 Private Sector Housing Enforcement and Licensing Policy October 2017 can be made available on request. This was approved by the Mayor & Cabinet in January 2018.
- 6.2 The Housing and Planning Act 2016 includes some new powers and obligations introduced by the Government to tackle rogue landlords and improve standards in an increasing important housing sector. The key proposed change relates to the introduction of Civil Penalty Notices (CPN) which are summarised below. These were approved by Mayor & Cabinet in January 2018. The process has been worked through with the legal team and launched on the 1<sup>st</sup> August 2018 and we are now taking the first case through this route where a landlord has failed to licence and HMO. The potential fine is £10,000.
- 6.3 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 level of the penalty would be calculated based on a proposed matrix with an average fine for not licensing an HMO being around £10,000.

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.

6.4 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. 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 came into effect 1<sup>st</sup> April 2018. 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 members 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, which comes into force from October 2018. The extension to the scheme will be contained within existing resources.
- 8.3 The introduction of a selective licencing scheme will require evidence to be gathered and the submission of an application to the SOS. The project plan has an outline date of early 2020 to submit this application.
- 8.4 A further report will be made to Housing Select Committee and Mayor and Cabinet once the evidence base has been compiled. These reports will present a summary of the findings and seek approval to proceed to with a public consultation. 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 has enabled 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. Details of the offences to which a civil penalty may be imposed are as set out within Appendix 2 of the Act.

Unlike fines issued by the Courts when criminal prosecutions are taken, income received from a civil penalty may 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 practical difficulty remains that the investigating officer must ensure that all necessary evidence to prove the main offence is available when choosing whether or not to pursue either a civil penalty or a prosecution. Thus, it is still time consuming for officers whichever route is ultimately chosen and careful reasonable use of agreed criteria for each case will be needed.

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 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 There are no equalities implications arising from this report.

## **12 Environmental implications**

12.1 There are no environmental implications arising from this report.

## **13. Originator**

For further information please contact Madeleine Jeffery (Private Sector Housing Agency Manager) on [Madeleine.jeffery@lewisham.gov.uk](mailto:Madeleine.jeffery@lewisham.gov.uk) or 0208 314 9484.

### **Appendices:**

- Appendix 1 = Other Borough Licencing schemes summary
- Appendix 2 = Grid of the evidence used by other boroughs with near to borough-wide licensing and an assessment of Lewisham's data

## Appendix 1 – Summary of other Borough licensing schemes;

### London Borough licensing summary

Borough	Scheme
B&D	Borough wide selective licensing prior to 2015 changes
Barnet	Additional HMO licensing
Bexley	Selective licensing for all PRS in 4 areas
Brent	Extended (not borough-wide) selective licensing, SoS approval granted in 2017. Different designations for different areas.
Bromley	No additional or selective licensing scheme
Camden	Additional HMO licensing
City	No additional or selective licensing scheme
Croydon	Borough wide selective licensing prior to 2015 changes
Ealing	Borough wide additional and selective for some areas
Enfield	Attempted borough wide licensing in 2014 but was subject to judicial review, which found the proposals were not lawfully designated. No further proposals have been made.
Greenwich	Additional HMO licensing
Hackney	Borough wide additional and selective for some areas
H&F	Borough wide additional and selective for some areas
Haringey	Additional licensing for some areas. Recent consultation on selective licensing in 29 areas (not borough wide). A report is expected in the summer. Approval not requested yet.
Harrow	Borough wide additional and three separate selective schemes for some areas
Havering	Additional licensing for some areas. Dropped plans for selective licensing in 2017.
Hillingdon	Additional licensing for some areas
Hounslow	Borough wide additional licensing
Islington	Additional licensing for some areas
K&C	No additional or selective licensing scheme
Kingston	Additional licensing
Lambeth	No additional or selective licensing scheme
Merton	No additional or selective licensing scheme
Newham	Near borough wide (excluding E20) additional and selective licensing. SoS approval granted in 2017.
Redbridge	Selective for 14 wards (not borough wide), SoS approval granted in 2017. Borough wide additional.
Richmond	No additional or selective licensing scheme
Southwark	Borough wide additional and selective for some areas
Sutton	No additional or selective licensing scheme
Tower Hamlets	Selective for some areas. Recent consultation for additional licensing to the rest of the borough
Waltham Forest	Borough wide selective licensing prior to 2015 changes. No additional
Wandsworth	No additional or selective licensing scheme
Westminster	No additional or selective licensing scheme

**Appendix 2: Grid of the evidence used by other boroughs with near to borough-wide licensing and an assessment of Lewisham's data**

		Newham	Brent	Redbridge	Haringey*	Lewisham
Size of the PRS	Census					
	Council tax - change to liable person					
	Council tax band A-C					
	Council tax benefit data					
	Housing benefit data					
	Electoral roll: frequent changes					
	Electoral roll: number of adults					
	Existing licenses					
	English Housing Survey					
	SHMA					
	Mayhew Harper study					
	GLA rents map					
ASB & Crime	Open source police data					
	MET Police data		Unsure	Unsure	Unsure	
	Council held ASB records					
	Council held noise records					
	Council held waste records (fly tipping, pest control, enforcement, graffiti,					
	Street cleansing tonnage					
Poor housing conditions	Disrepair cases					
	Cat 1 and 2 hazards					
	Complaints - dilapidation					
	Stock condition survey					
	Enforcement cases					
	DECC fuel poverty stats					
Migration	Annual population survey					
	NINO registrations					
	ONS					
	Commissioned studies					
	Census					
Deprivation	English Indices of Deprivation					
Others	Liveability Study					
	Landlord Survey					
	Long term empty property addresses					
	LLPG					
	Housing waiting list					
	Case studies					
	Right to buy - permission to rent					

