REPORT TO:	**CABINET** **18 January 2021**
SUBJECT:	**Making Croydon's Private Rented Homes Safer and Protecting Residents**
LEAD OFFICER:	**Shifa Mustafa, Executive Director – Place** **Steve Iles, Director Public Realm – Place**
CABINET MEMBER:	**Councillor Jane Avis,** **Cabinet Member for Homes and Gateway Services**
WARDS:	**All**

CORPORATE PRIORITY/POLICY CONTEXT/ AMBITIOUS FOR CROYDON

The report builds on the three priorities that have been written into the 2020 Croydon Renewal Plan. The private rented sector forms approximately one third of all homes in the borough and for a diverse group of tenants, including some of the most vulnerable and 'hard to reach' residents. The adoption of a proposed penalty charge structure for taking formal action against the non-compliant landlords, letting agents and property managers, under the provisions of recently enacted legislation, will enable the Council to take positive steps in line with these priorities. The updated proposed houses in multiple occupation ("HMO") mandatory conditions and fee structure will enhance property safety and guide licence holders to council expectations with safety standards, property management and supporting tenants.

FINANCIAL IMPACT

The cost of implementing wider enforcement powers will be contained within existing staff resources, which are funded from licensing income and staffing budgets. Where penalties are issued, there may be additional legal and tribunal costs which would expect to be covered by any fine receipts.

The report also sees recommendations to adapt the current houses multiple occupation application system to allow for a two stage payment process. Overall the financial impact will be cost be neutral as the cost of administering the scheme is covered by charging license fees to landlords. It is possible some resources will be needed in chasing the Part B payment but these will be met by the license fees. More detail on the current and proposed fee structure are outlined in the appendices to the report.

FORWARD PLAN KEY DECISION REFERENCE NO: 0421CAB

The notice of the decision will specify that the decision may not be implemented until after 13.00 hours on the 6th working day following the day on which the decision was taken unless referred to the Scrutiny and Overview Committee

The Leader of the Council has delegated to the Cabinet the power to make the decisions set out in the recommendations below

1. RECOMMENDATIONS

The Cabinet is recommended to

1.1 Note the new enforcement powers available to the Private Sector Housing Enforcement and Trading Standards teams including the various responsibilities, duties and commencement dates.

1.2 Adopt the proposed policy 'Determining the Penalty and Banding the Offence'; attached as Appendix 1. This policy covers the process to both:

- Determine the Penalty - determine what is the most appropriate sanction to be taken against an offending landlord; and
- Banding the Offence - where the sanction is a Financial Penalty, the level of penalty.

Subject to the adoption of the proposed policy "Determining the Penalty and Banding the Offence"; as per recommendation 1.2 above and having regard to the said determination process:

1.3 Resolve for the proposed policy 'Determining the Penalty and Banding the Offence' to supersede the existing policy "Determining the Penalty" which was approved on the 3rd May 2017 and which the Council commenced using on the 8th May 2017.

1.4 Adopt the proposed revised Statement of Principles attached at Appendix 3 which has been produced as required under regulation 13 of The Smoke and Carbon Monoxide (England) Regulations 2015 and agree to the publication of the Statement of Principles.

Subject to the adoption of the proposed revised Statement of Principles attached at Appendix 3; as per recommendation 1.4 above and having regard to the said determination process;

1.5 Resolve for the proposed Statement of Principles attached at Appendix 3 to supersede the existing Statement of Principles, attached as Appendix 2, which was approved on the 3rd May 2017 and which the Council commenced using on the 8th May 2017".

Subject to the adoption of the proposed policy "Determining the Penalty and Banding the Offence"; as per recommendations 1.2 and 1.3, having regard to the said determination process; and subject to the adoption and publication of the Statement of Principles as per decision 1.4 and 1.5 and having regard to the said Principles;

1.6 Agree to the proposed policy 'Determining the Penalty and Banding the Offence' and proposed revised Statement of Principles to commence on the 1st February 2021 in respect of powers created under the various

enactments.

1.7 Approve the revised proposed houses in multiple occupation licensing ["HMO"] fee payment arrangement that requires the applicant to make the same total payment under the scheme if the licence is successfully granted, but in two stages, Part A on application and Part B if the License is granted, as detailed in a fee structure section 18 of the report and documented in Appendix 4 (current fees) and Appendix 5 (proposed fees).

1.8 Authorise the Council to include new or revised houses in multiple occupation licence conditions as detailed in section 17 of the report and documented in Appendix 6 (current conditions) and Appendix 7 (proposed conditions) covering:

- the safety of the electrical installation requirements, new condition 1.2.1;
- the revision of conditions 1.1, 1.2.2 and 1.2.3 to give a deadline of 14 days in which a licence holder must return a declaration to the Council on request;
- the smoke and carbon monoxide alarm requirements, new condition numbers 1.3.1 and 1.3.2;
- the control of anti-social behaviour, reworded condition 1.5 with new sections 1.5.2 and 1.5.3;
- the storage and disposal of household waste requirement, new condition 1.6.1, 1.6.2, and 1.6.3; and
- the introduction of minimum room standards in paragraph 2 and through 2.3 and 2.4, a system for managing breaches of 2.1 a landlord was not aware of.

Subject to the adoption of the proposed revised fee charging mechanism for houses in multiple occupation licenses as per recommendation 1.7 and having regard to the said determination process; and subject to the adoption of the revised houses in multiple occupation licence conditions as per recommendation 1.8:

1.9 Agree to adopt the proposed revised fee charging mechanism for houses in multiple occupation applications attached as Appendix 5 made on or after the 1st February 2021.

1.10 Agree to adopt the proposed revised HMO licence conditions attached as Appendix 7 for new HMO licences issued on or after the 1st February 2021.

Subject to Cabinet agreeing 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, 1.9 and / or 1.10:

1.11 Authorise officers to arrange the publication of the documentation, subject to updates to ensure that typographical matters, such as reference to draft and seeking Cabinet approval, are updated prior to publication.

2. EXECUTIVE SUMMARY

2.1 The London Borough of Croydon ["the Council"] is very proactive in improving property and management standards in the Borough's private rented stock. At the Cabinet meeting on 11th May 2020, Members heard that this sector makes up 35.6% of all households (58,585 of the 164,378 residential properties in Croydon), but is beset with problems associated with property condition, anti-social behaviour and deprivation. As part of the Council's commitment to improve standards, Cabinet resolved to make two selective licensing designations, A and B. On 20th July 2020 the application was made to Government to confirm these designations and a decision is awaited.

2.2 The selective licensing scheme application saw the Council continue with its commitment to improve private rented property and management standards. In the application Croydon further committed to the adoption of the wider enforcement responsibilities created through recent legislation. This report "Making Croydon's Private Rented Homes Safer and Protecting Residents" proposes that officers of the Private Sector Housing and Trading Standards Teams are able to fully utilise the new powers, including the issuing of financial penalties, to honour that commitment and drive to make 'Croydon a Better Place to Rent'.

2.3 In the three years since the 3rd May 2017, the range of powers and sanctions available to the Council to enforce on non-compliant private sector landlords, letting agents and property managers have widened. More statue has been passed allowing an Enforcing Authority ["EA"], in certain circumstances, to take action to;

- Ensure that landlords only rent properties that meet the current electrical safety standards and their tenants are provided with certification.
- Ensure that landlords do not rent properties where the Energy Performance Certificate [EPC] is below the minimum level of energy efficiency of band E.
- Ensure that landlords and agents only charge tenants fees that they are permitted to charge as part of a tenancy;
- Ensure letting agents are member of client money protection schemes or complaint redress scheme and where fees are charged they are clearly described and published.
- Enter landlords, convicted of the more serious banning order offences, on the Ministry for Housing and Local Government's Rogue Landlord Database;
- Consider whether a landlord, who has been convicted of a banning order offence(s) is considered for a banning order and in certain circumstances an application to the First-tier Tribunal (Property Chamber) ["FTT"] is made.
- Support tenants who have been subject to poor standards of renting such as with an application for a rent repayment order or with reclaiming prohibited fees.

2.4 The Council has adopted and uses a wide range of existing powers to improve and maintain property condition and property management standards in the borough's private rented sector ["PRS"]. This report outlines the increasing and

widening powers introduced by the Government with the clear aim of ensuring there is a comprehensive and ultimately effective set of options for EAs. When an offending landlord, letting agent or property manager does not comply with his or her duties, commits a breach or fails to comply with an order from the Council, the option of imposing a further sanction, including the issue of a financial penalty, should be reviewed based on the seriousness of the offence.

2.5 The powers for an EA to serve financial penalties (including penalty charges) ["FP"] or apply for rent repayment orders ["RRO"] was first enacted in the Housing and Planning Act 2016 ["2016 Act"]. These related to certain housing offences under the Housing Act 2004 ["2004 Act"], 2016 Act, Criminal Law Act 1977 and the Protection from Eviction Act 1977 [reference section 2.1 of Appendix 1]. To enable the Council to use the 2016 Act powers, a policy and process was approved for determining a financial penalty (within a penalty charge structure) and a rent repayment order application was developed. The policy was called 'Determining the Penalty' and came into force on 8th May 2017 following an Executive Decision on 3rd May 2017.

2.6 To continue to enforce standards the Council's Private Sector Housing and Trading Standards Team [together the "EA"] would like to utilise the new powers. The statutory and non-statutory guidance published by the Government directs that an EA such as the Council are expected to develop and document their own policy on when to prosecute and when to issue a financial penalty. EAs must consider all of the available options as part of a making a decision as to what is the most appropriate and effective sanction(s) in that particular case.

2.7 The wider powers require the development of a revised policy. The current policy, 'Determining the Penalty', has accordingly been revised and expanded to both make provision for the Council to determine the sanction against an offending landlord and, where a sanction is a financial penalty, to decide the level of the penalty up to the legislative maximum which is currently £30,000. The new proposed approach is attached as Appendix 1 to this report and named; 'Determining the Penalty and Banding the Offence'.

2.8 Each of the actions above require officers to make decisions that will ultimately impact on a landlord's, letting agent's or property manager's livelihood, reputation and future ability to rent. Issuing a FP or prosecuting is a serious step and saved for the worst offenders. The revised and expanded policy brings the process for wider decision making into a single policy document. 'Determining the Penalty and Banding the Offence' has been developed to allow the Council to achieve this aim and meet the obligations in the statutory and non-statutory guidance. The proposed policy allows a decision to be made that reflects the offending on a wider scale.

2.9 Members should be aware that the costs incurred by the Council with issuing a FP or applying for a RRO are not recoverable. Generally, each party bears its own costs. However, the FTT may award costs where a person has acted unreasonably in bringing, defending or conducting proceedings. Where the selected sanction is to prosecute in a Magistrates Court, an application can be made to cover a proportion of the Council's costs. Table 9 of Appendix 1

shows that the recovered penalty can be used for local authority functions and indicates whether it is for general use or limited to enforcement in the PRS. A landlord fine in the Magistrates Court does not arrive as a financial benefit to the authority.

2.10 Since February 2018 the Private Sector Housing team has issued 59 Fixed Penalties (FP) against offending landlords and letting agents; the collective penalty is £244,500 making the average £4,144 per penalty. There are 18 of the FP that are subject to an appeal; within the appeal period or at the notice of intention stage. Progress with collecting the 41 penalties is ongoing with 14 have been paid. The remaining 27 are at the debt recovery stage and the council is in communication with the relevant landlords to ensure payment is made to avoid Enforcement Agency action where possible.

2.11 Many of the borough's more vulnerable residents live in the 3,000 houses in multiple occupation, 700 of the larger higher risk properties falling within the mandatory houses in multiple occupation licensing scheme ["MHMO"]. On the 18th November 2020 Cabinet authorised the revision of the fee structure and property licence conditions of the designated Croydon Private Rented Property Licensing Scheme ["CPRPL 2015"]. In a similar way, Cabinet authority is needed to achieve an update to the MHMO scheme that reflect the various legislative changes and the current legal interpretation by the Courts which have occurred over the past few years.

2.12 This report also seeks authority to implement a revised set of MHMO licensing conditions for licence holders in the MHMO licensing scheme. It also seeks authority to introduce a split fee structure that sees the fee total remain the same but the fees being collected in two stages; Part A and Part B. Further details of these proposals is covered in paragraphs 15 to 18 and Appendices 4 to 7 of this report.

2.13 Where approval is given by Cabinet, the proposed date on which authorised Council officers can commence to use the new policy, powers and documentation is proposed as the 1st February 2021.

2.14 The Cabinet report now considers the implications for the sector with the implementation of the various pieces of legislation and the proposed changes to the MHMO licensing conditions and application fee.

Section 3 – Smoke and Carbon Monoxide Alarm (England) Regulations 2015.
Section 4 - Tenant Fees Act 2019
Section 5 - Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020
Section 6 - Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (as amended).
Section 7 - Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019.
Section 8 - The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to belong to a scheme etc.) (England) Order 2014.
Section 9 - Consumer Rights Act 2015.
Section 10 - Rent Repayment Orders (RRO) under the 2016 Act

Section 11 - Landlord Banning Order under the Housing and Planning Act 2016.
Section 12 - Ministry for Housing, Communities and Local Government's Rogue Landlord and Property Agent Database.
Section 13 - Mayor for London Landlord and Letting Agent checker.
Section 14 - Publicising successful convictions and wider EA action against a landlord.
Section 15 - Mandatory Licensing of Houses in Multiple Occupation.
Section 16 - The need for changes to the HMO mandatory licensing fees and licence conditions.
Section 17 - Proposal for the revision of the HMO mandatory licence conditions.
Section 18 - Two part HMO fee structure following Gaskin v Richmond-Upon-Thames London Borough Council and Anor.

3. Smoke and CO Alarm (England) Regulations 2015.

3.1 Authority to start enforcing the powers within the Smoke and Carbon Monoxide (England) Regulations 2015 ["2015 Alarm Regulations"] was granted by Executive Decision on the 3rd May 2017. Authority enabled the EA to take action using a penalty charge ["PC"] with the level of the charge determined by a penalty charge structure captured in a Statement of Principles; subsequently published [LINK]. The 2015 Regulations came into force on the 1st October 2015 and the date on which authorised officers could use the new powers was 8th May 2017.

3.2 A sanction available to the EA for a breaches of Regulation 6(1) of the 2015 Alarm Regulations is the penalty charge ["PC"]. The current approach to determine whether a penalty should be issued (and if so the amount of the PC) is explained in Statement of Principles (attached as Appendix 2). It sees a penalty structure with a fixed penalty for a first offence and a greater fixed penalty for second and subsequent offences up to the legal maximum, with a 14 day early payment reduction for the first offence only.

3.3 This report seeks Cabinet approval for a single policy that allows the EA to determine the penalty and where the sanction is a financial penalty, to determine the level of the penalty. This report proposes that the enforcement of the 2015 Alarm Regulations should be aligned with the proposed policy 'Determining the Penalty and Banding the Offence'. The Council believes this change would allow a consistent approach for the EA when taking formal action for a breach. The proposed change sees the removal of the fixed penalty structure with a penalty can now be issued at any one of 16 levels from £250 to £5,000, capped at the maximum of £5,000 [refer to Table 3 in Appendix 1]. The option for offering a reduced fee for first offences and where the fee is paid within 14 days is retained. The means by which the fee is calculated is changed from a reduction of £1,000 to a reduction in the determined penalty by one penalty point.

3.4 To reflect the alignment of the Statement of Principles with the proposed policy, Members are asked to agree the revised 'Statement of Principles' (attached as

Appendix 3). This report proposes that the revised Statement of Principles be applied to breaches occurring on or after the 1st February 2021.

3.5 On the 17th November 2020 the Ministry for Housing, Communities and Local Government ["MHCLG"] commenced an open consultation entitled 'Domestic smoke and carbon monoxide alarms: proposals to extend regulations'; with a closing date of the 11th January 2021 [LINK]. The consultation seeks views on proposed amendments to the 2015 Alarm Regulations to:

a) require social landlords to ensure at least one smoke alarm is installed on each storey of the premises on which there is a room used wholly or partly as living accommodation.
b) amend the statutory guidance (Approved Document J) supporting Part J of the Building Regulations to require that carbon monoxide alarms are fitted alongside the installation of fixed combustion appliances of any fuel type (excluding gas cookers).
c) require private and social landlords to install a carbon monoxide alarm in any room used as living accommodation where a fixed combustion appliance is used (excluding gas cookers).

3.6 In the recently ended selective licensing designation the Council recommended the installation of carbon monoxide alarms in rooms with a fixed combustion appliance in line with current guidance [The Smoke and Carbon Monoxide Alarm (England) Regulations 2015: explanatory booklet for local authorities] [LINK]. The Government statistics (released with consultation) show In 2019/20, fire and rescue services attended nearly 30,000 dwelling fires in England and sadly there were nearly 200 fire-related fatalities. Around 20 people die from accidental carbon monoxide poisoning every year (excluding those relating to accidental exposure to smoke, fire and flames, with more than 4,000 presentations to hospitals estimated to be related to carbon monoxide.

4. Prohibition on landlords charging tenants excessive fees.

4.1 The Government wants a fair private rental market where services are paid for by the person that contracts them. The Tenant Fees Act 2019 ["2019 Fees Act"] was passed to help to achieve this and as part of the progress to improve property standards, professionalise the sector, strengthen consumer protection for tenants and tackle rogue landlords and letting agents.

4.2 The 2019 Fees Act places a duty on every local weights and measures authority ["WMA" or "EA"] to enforce these requirements and the breaches are;

- Section 1 (prohibitions applying to landlords),
- Section 2 (prohibitions applying to letting agents), and
- Schedule 2 (treatment of holding deposits).

4.3 From 1st June 2019, landlords or letting agents can no longer require new tenants in the PRS in England, or any persons acting on behalf of a tenant or guaranteeing the rent, to make certain payments in connection with an applicable tenancy. Any other such payment will be regarded as a prohibited payment. Tenancies include assured shorthold tenancies, student accommodation and licences to occupy including HMOs and lodgers.

4.4 From the 1st June 2020, the ban on prohibited fees applies to all tenancies. Any term that is prohibited in a tenancy agreement entered into prior to the commencement date will cease to be binding on the tenant and any enforcement of the term by a landlord or agent will be prohibited.

4.5 The 2019 Fees Act only permits certain fees or charges related to a tenancy;

- The rent
- A refundable tenancy deposit capped at no more than five weeks' rent (where the total annual rent is less than £50,000);
- A refundable holding deposit (to reserve a property) capped at no more than one week's rent;
- Payments to change the tenancy when requested by the tenant, capped at £50, or reasonable costs incurred if higher;
- Payments associated with early termination of the tenancy, when requested by the tenant;
- Payments in respect of utilities, communication services, TV licence and council tax; and
- A default fee for late payment of rent and replacement of a lost key/security device giving access to the housing, where required under a tenancy agreement.

4.6 A landlord or agent who breaches section 1, section 2 or schedule 2 commits an offence and EA may issue a financial penalty ["FP"]. The FP may be of such amount as the EA determines, but must not exceed £5,000. [Refer to Table 4 in Appendix 1]. Only one FP may be imposed in respect of the same breach.

4.7 Where a landlord commits a further breach within five years of the imposition of a FP or conviction for a previous breach the EA will have discretion over whether to prosecute or impose a FP. Upon conviction, the courts can impose an unlimited fine and this is deemed a criminal breach. Alternatively, an EA may impose a FP of up to £30,000.

4.8 The 2019 Fees Act enables an EA to help a tenant through the pursuance of the repayment of a prohibited fee. An EA can either assist a tenant with an application to the FTT or the repayment amount can be included in the FP on the landlord. The EA needs to be satisfied on the balance of probabilities that the breach resulted in a tenant making a prohibited payment *and* that all or part of the prohibited payment has not been repaid to the tenant.

4.9 EA are expected to develop and document their own policy on when to prosecute and when to issue a FP of up to £30,000 and should decide which option they wish to pursue, on a case-by-case basis, in line with that policy. The EA may decide that a significant FP, rather than prosecution, is the most appropriate and effective sanction in that particular case. The proposed policy for the London Borough of Croydon is attached as Appendix 1; 'Determining the Penalty and Banding the Offence' to set the level of the FP.

5. Electrical safety standard; property inspections and testing.

5.1 On the 18th March 2020 the Government enacted the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 ["2020 Electrical Regulations"]. The 2020 Electrical Regulations came into force on 1st June 2020 and applied to new tenancies from the 1st July 2020 and will apply to existing tenancies from 1st April 2021. Tenancies include assured shorthold tenancies and licences to occupy, including in HMOs. The aim of the regulations is to improve electrical safety standards in the PRS and to improve the confidence of tenants in the safety of their home. The electrical installations in rented properties must be inspected and tested every 5 years by a person who is qualified and competent. National standards are set out in the 18th Edition of the 'Wiring Regulations'.

5.2 Providing information to tenants is central to the 2020 Electrical Regulations. Following the inspection the landlord must request the report and supply their tenant with a copy within 28 days. New tenants are to be provided with a copy before they occupy the premises. When one inspection report is completed the future inspection date and test is to be set within 5 years.

5.3 The 2020 Electrical Regulations place EA at the heart of regulating tenant safety; duties are given to both the landlord and EA to take action and within strict timescales. The landlord must supply the local authority with a copy of an electrical report on request. Where the report shows that remedial or further investigative work is necessary, the EA must serve a remedial notice. The landlord is to complete this work within a maximum of 28 days before supplying written confirmation of the completion of the remedial works from the electrician to the tenant and the local authority. Should a landlord not comply with the remedial notice, the EA may arrange for remedial action to be taken themselves.

5.4 Where the report indicates that urgent remedial action is required and the landlord has not carried this out within the period specified, the EA may, with the consent of the tenant, arrange to carry out remedial work. A tenant must be given at least 48 hours' notice before a qualified and competent person attends to undertake the remedial action. The EA can recover costs reasonably incurred of taking action to comply with its duties in default of the landlord. This cost will include the cost of the works plus an administrative cost; currently set at 30% of the nett work costs. The landlord has the right of appeal against a demand for costs.

5.5 The 2020 Electrical Regulations make a change to the mandatory HMO licence or selective licence property licence conditions. At Cabinet, on the 11th May 2020, Members agreed the proposed licence conditions that would apply to any granted selective licence as set out at Appendix 7 of the report. These licensing conditions already contain, in condition 1.8 and 3.1A the necessary requirements for landlords as introduced by the 2020 Electrical Regulations. In this report the proposed mandatory houses in multiple occupation licensing MHMOL conditions see the same change with the inclusion of this electrical safety condition.

5.6 The 2020 Electrical Regulations do not apply to electrical appliances like cookers, fridges, televisions etc. as they are not fixed. A landlord is recommended to regularly carry out portable appliance testing (PAT) on any electrical appliance that they provide and then supply tenants with a record of any electrical inspections carried out as good practice.

5.7 The 2020 Electrical Regulations give the EA a number of powers to deal with electrical safety breaches. A Remedial Notice must be served on a landlord where the local authority has reasonable grounds to believe that a landlord is in breach of one or more of the duties. Should a landlord not comply with the remedial notice, the EA may arrange for remedial action to be taken themselves. The EA can recover the costs of taking the action from the landlord. The landlord has the right of appeal against a demand for costs.

5.8 Part 5 and schedule 2 allows EA, who are satisfied beyond reasonable doubt, to impose a FP of up to £30,000 on a landlord who is in breach of one of their duties. EA are required to develop and document their own policy on how they determine appropriate FP levels. EA are guided to consult the guidance produced on FPs under the Housing and Planning Act 2016. The Government advises that the maximum amount is to be reserved for the very worst offenders. The actual amount levied in any particular case should reflect the severity of the offence as well as taking account of the landlord's previous record of offending. The proposed policy for the London Borough of Croydon is attached as Appendix 1; 'Determining the Penalty and Banding the Offence' to set the level of the FP.

6. Improving the Energy Efficiency Rating of Croydon's private rented properties.

6.1 On the 11th May 2020, the Cabinet resolved to introduce two new selective licensing designations. Appendix 6 of that report set out the scheme objectives with objective 3 titled 'Improve property conditions, management standards and compliance with CPRPL 2020 conditions in licensable dwellings'. A sub-objective directly referred to the energy improvements in the private rented stock; 'Ensure that all licensed properties have an energy performance rating ["EPC"] of at least "E" by the end of the scheme and that 75% have an energy rating of at least "D" (subject to exemptions)'.

6.2 The requirement to improve the EPC of private rented properties was set out in the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 ["2015 Energy Regulations"].

6.3 EPC ratings range from A to G, with A the most efficient and G the least efficient. Cabinet on the 11th May 2020 heard that the modelling report estimated that 27% of PRS properties in Croydon have an E, F, and G EPC rating. 5.5% of PRS properties have an F and G rating and 42% have a D rating [London Borough of Croydon - Private Rented Sector: Housing Stock Condition and Stressors Report – Metastreet – September 2019]. A further data source is in Table 1.

Table 1: EPC Data relating to the Private Rented Sector (August 2019)

EPC Band	Number of PRS properties	Percentage of all certificated PRS properties.
G	173	0.8%
F	585	2.6%
E	4,038	17.9%
E-G	4,796	21.3%
D	10,295	45.6%
A-C	7,468	33.1%
TOTALS	**22,559**	**100%**

Data source: Department for Business Energy and Industrial Strategy [BEIS]. EPCs registered on EPC register by band and identified as PRS property. To August 2019.

6.4 The 2015 Energy Regulations have been amended twice. Firstly on the 21st June 2016 to postpone the dates on which the PRS ["Private Rented Sector"] Exemptions Register opened to domestic landlords, and secondly, on the 15th March 2019, with respect to the domestic sector only, to include a capped landlord's contribution requirement in the event of the non-availability or insufficiency of third-party funding. The capped landlords contribution of £3,500 was incorporated in the Energy Efficiency (Private Rented Property) (England and Wales) (Amendment) Regulations 2019 ["2019 Energy Regulations"].

6.5 The 2015 Energy Regulations introduced, in April 2016, the minimum energy efficiency standard ["MEES"] for domestic properties. With effect from the 1st April 2018 it was a requirement for any domestic properties rented out in the PRS (required to have an EPC from 2008) to have a MEES; an Energy Performance Certificate rating of E. It is unlawful for a landlord to rent a property that breaches the MEES unless there is a valid exemption and the exemption is registered on the PRS Exemptions Register. The regulations came into force for new lets and renewals of tenancies with effect from 1st April 2018 and for all existing tenancies on 1st April 2020.

6.6 Local authorities ["EA"] are responsible for enforcement. An EA can issue a compliance notice to request documentation from the landlord to check whether a property meets the MEES which can allow a review of the information uploaded by a landlord when registering the property on the PRS Exemptions Register.

6.7 An EA may serve a penalty notice where it is satisfied that there is a breach. An EA can also publish details of the breach on the PRS Exemptions Register, a "publication penalty". The offences (and maximum penalty) are under;

- Regulation 23 - landlord has let a sub-standard property in breach of the Regulations (up to £4,000).
- Regulation 36(2) – landlord has registered false or misleading information on the PRS Exemptions Register (up to £1,000).
- Regulation 37(4) (a) – landlord has failed to comply with the compliance notice (up to £2,000).
- Regulation 38(4) – landlord has failed to comply with the action in a penalty notice within prescribed time scale.

6.8 A landlord served with a penalty notice under Regulation 38(4) can request a review by the Council and if the penalty is upheld on review, the landlord may then appeal the penalty notice to the First-tier Tribunal.

6.9 The 2015 Energy Regulations set a maximum per breach and a maximum for a property; both at £5,000. Where a penalty is issued for a Regulation 23 offence AND one or both of a Regulation 36 and Regulation 37 offence the total of the FP is £5,000. If an EA confirms that a property is (or has been) let in breach of the Regulations, they may serve a financial penalty up to 18 months after the breach and/or publish details of the breach for at least 12 months.

6.10 Where a landlord having been previously fined up to £5,000 for having failed to satisfy the requirements of the 2015 Energy Regulations then proceeds to unlawfully let a sub-standard property on a new tenancy; a further financial penalty of up to £5,000 can be issued. The maximum remains.

6.11 EA can decide on the level of the penalty, up to maximum limits set by the Regulations. The proposed policy for the London Borough of Croydon is attached as Appendix 1; 'Determining the Penalty and Banding the Offence' to set the level of the FP. If a landlord does not pay a financial penalty imposed on them, the EA may take the landlord to court to recover the money.

6.12 The PRS Exemptions Register is for properties which:

- are legally required to have an EPC
- are let on a relevant tenancy type (licences excluded)
- cannot be improved to meet the minimum standard of EPC band E for one of the reasons; a high cost exemption, a 7-year payback exemption, all improvements made exemptions, wall insulation exemption, consent exemption, devaluation exemption and new landlord exemption.

Further information is available in the Guidance on PRS exemptions and Exemptions Register evidence requirements [LINK].

6.13 The 2019 Energy Regulations made amendments to what a landlord must do. Since 1st April 2019, landlords of domestic properties with an EPC rating below E must carry out up to £3,500 (Inc. VAT) worth of works improving their energy efficiency if they cannot obtain third-party funding to meet the full costs. The £3,500 cap is an upper ceiling, not a target or a spend requirement and landlords may spend more if they wish. If a landlord can improve their property to E (or higher) for less than £3,500 then they will have met their obligation. NB: If a landlord is unable to improve their property to EPC band E for £3,500, they should install all measures which can be installed up to £3,500, then register an exemption on the PRS Exemption Register.

6.14 On the 30th September 2020 the Department for Business Energy and Industrial Strategy ["BEIS"] reinforced the Governments' commitment to upgrade as many PRS homes as possible to Energy Performance Certificate ["EPC"] Band C by 2030, where practical, cost-effective and affordable. An open consultation entitled 'Improving the energy performance of privately rented homes' has commenced with a closing date of the 30th December 2020 [LINK].

6.15 Central to the consultation the Government proposes a further amendment to the 2015 Energy Regulations. The amendments see the following changes:

- Raising the energy performance standard to Energy Performance Certificate (EPC) energy efficiency rating (EER) Band C [from Band E];
- A phased trajectory for achieving the improvements for new tenancies from 2025 and all tenancies from 2028;
- Increasing the maximum investment amount, resulting in an average per-property spend of £4,700 under a £10,000 cap.
- Introducing a 'fabric first' approach to energy performance improvements.

7. Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019.

7.1 The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019 (as amended) ["2019 CMP Regulations"] came into force on the 1st April 2019 and made it a requirement that property agents (letting agents or property manager) working in the PRS and who are receiving and holding client money must obtain membership from a Government approved or designated client money protection scheme.

7.2 Client money must be held in client money account with a bank or building society authorised by the Financial Conduct Authority. A grace period was offered until the 1st April 2020 to allow schemes to accept agents as members who have made all reasonable efforts to hold client money in such an authorized account. A client money protection scheme means a scheme which enables a person on whose behalf a letting agent holds money to be compensated if all or part of that money is not repaid to that person in circumstances where the scheme applies.

7.3 In the 2019 CMP Regulations it is the duty of every EA in England to enforce the requirements of regulations 3 and 4.

- Regulation 3 – Requirement to belong to an approved client money protection scheme from 1 April 2019.
- Regulation 4 – Transparency requirements relating to the publishing or display of certification and steps when membership changes.

7.4 As of the 2nd December 2020 the current approved or designated client money protection schemes are run by; Client Money Protect, Money Shield, Propertymark, RICS, Safeagent (previously NALS), and UKALA Client Money Protection. A property agent must get a certificate from the scheme, confirming membership of the scheme, and provide it to anyone who asks, free of charge,

7.5 EA should be proactive with their enforcement to ensure membership exists through working with the approved schemes to identify non-compliance. There are provisions in the Client Money Protection Schemes for Property Agents (Approval and Designation of Schemes) Regulations 2018 for approved schemes to share information on the membership of agents and claims against the scheme with local authorities.

7.6 Since 2018 Croydon Trading Standards team have been working with property agents based within the borough to ensure compliance with the range of consumer protection legislation that affects them. All businesses affected have received written business advice followed by visits to premises to ensure that the advice has been adopted. Any non-compliant agents have received warnings and follow up enforcement visits. Levels of compliance are now good with only a few agents failing to adhere completely to the requirements; further work is currently underway in relation to these. The adoption of this policy will enable staff to take proportionate action as necessary with those remaining in breach of duty.

7.7 The proposed selective licensing scheme, if confirmed, will require property agents to provide continued evidence of membership of a client money protection scheme as part of the Council agreeing to the agent taking on responsibility as a licence holder or property manager accepting responsibility for licence conditions.

8. The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014.

8.1 The Council have a duty to enforce the Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 ["2014 Redress Order""]. From the 1st October 2014, article 5(1) of the 2014 Redress Order create the legal requirement for a person engaging in letting agency work or property management work or estate agency work dealing with residential property to belong to a government-approved redress scheme.

8.2 Letting agency work and property management work are defined in section 83 and section 84 of the Enterprise and Regulatory Reform Act 2013. Lettings agency work includes actions by an agent in the course of a business in response to instructions from either a PRS landlord who wants to find a tenant: or a tenant who wants to find a property in the PRS. The tenancy is an assured shorthold. It does not include publishing advertisements, providing information, connecting landlords and tenants in response to an advert or to communicate.

8.3 Property management work means things done by a person in the course of a business in response to instructions from another person who wants to arrange services, repairs, maintenance, improvement, or insurance or to deal with any other aspect of the management of residential premises on an assured shorthold or protected tenant.

8.4 As of the 2nd December 2020 there are two government approved redress schemes which are; The Property Ombudsman Limited and Property Redress Scheme. If a letting agent or property manager continues to act in any of the capacities without belonging to an approved redress scheme, a monetary penalty ["FP"] with a fine of up to £5,000 can be given.

8.5 Under article 7 the Council are under a duty to enforce the 2014 Redress Order. An EA has authority under article 8, to require, by notice, the payment a monetary penalty of such amount as the EA may determine. The proposed policy for the London Borough of Croydon is attached as Appendix 1; 'Determining the Penalty and Banding the Offence' to set the level of the FP. The 2014 Redress Order require that a notice of intent must be first served and within 6 months. Any monetary penalties received by the Council for such breaches can be used for any of its functions.

9. Consumer Rights Act 2015.

9.1 Part 3 of the Consumer Rights Act 2015 ["CRA 2015"] required, from 27th May 2015, that letting and management agents to display a list of all fees, charges or penalties (however expressed) payable by landlords and tenants for any letting agency or property management service. This includes any additional fees, charges or penalties which may be incurred during a tenancy as well as fees, charges and penalties which are referenced in Tenancy Agreements and in Terms of Business.

9.2 Some of the main points of the 2015 CRA to note are that:

- The description of each fee must be sufficient to enable the person who is liable to pay it to understand the service or cost that is covered by the fee or the purpose for which it is imposed;
- All fees, charges and/or penalties must be quoted inclusive of VAT;
- Fees, charges and/or penalties must be displayed prominently (i.e. where it is likely to be seen by consumers) and in all branches; and
- Fees, charges and/or penalties must be displayed in full on the agent's website.

9.3 The 2019 Fees Act made changes to the 2015 CR Act in respect of what must be contained on the list of fees and how it is displayed. Where a letting agent advertises either a property for rent on a third party website (such as on Rightmove, Zoopla etc.) or advertises letting agency work carried on by the agent (such as advertising their services as sponsorship), the agent must ensure that a list of the agent's relevant fees is published on the third party website, or there is a link on that website to a part of the agent's website where a list of those fees is published.

9.4 Under the 2015 CR Act, the list of fees must contain details of the redress scheme the agent is a member of. From 1st April 2019, where the agent is required to be a member of a client money protection scheme, the list of fees must also include a statement that indicates that the agent is a member of a client money protection scheme, and gives the name of the scheme.

9.5 The EA will have the ability to impose a fine on the letting or management agent of up to £5,000 if non-compliance with the 2015 CR Act is found. The proposed policy for the London Borough of Croydon is attached as Appendix 1; 'Determining the Penalty and Banding the Offence' to set the level of the FP.

10. Rent Repayment Orders under the 2016 Act.

10.1 Rent repayment orders ["RRO"] give the Council and tenant the opportunity to claim back rent where a landlord was committing an offence. In part 2, section 41 the 2016 Act extended the RRO to cover the offences of not licensing, non-compliance with an improvement notice, non-compliance with a prohibition order, illegal evictions, forced entry or the breach of a banning order.

10.2 A rent repayment order is an order made by the FTT requiring a landlord to repay a specified amount of rent. The rent is returned to either the tenant or the local housing authority. If rent was paid through Housing Benefit or through the housing element of Universal Credit, then the rent must be repaid to the local housing authority.

10.3 Procedurally an EA must give notification of its intent to apply for a RRO to the landlord and allow a period of 28 days for representations to be made. Then, on application to the FTT it may make a RRO if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter 2 of the 2016 Act applies (whether or not the landlord has been convicted).

10.4 The amount of a RRO under this section that can be awarded by a FTT is determined in accordance with whether the application is made by a tenant, by the EA or in cases where the landlord has been convicted. The maximum amount of rent that can be recovered is capped at 12 months.

10.5 Section 48 of the 2016 Act makes it a duty for the EA to consider applying for RRO in situations it becomes aware that a person has been convicted of a relevant offence. An EA has the option to help tenants apply for a RRO, by for example, helping the tenant to apply by conducting proceedings or by giving advice to the tenant. EA are expected to develop and document their own policy on when to prosecute and when to apply for a rent repayment order and should decide each case independently. The proposed policy for the London Borough of Croydon is attached as Appendix 1; 'Determining the Penalty and Banding the Offence' to set the level of the FP.

11. Landlord Banning Order under the Housing and Planning Act 2016 ["the 2016 Act"].

11.1 Banning orders for the most serious offenders came in on the 6th April 2018 to allow an EA to determine, in line with their policy, on whether to pursue a landlord banning order LBO on a case-by-case basis. Banning orders were introduced by the 2016 Act and were aimed at forcing the worst landlords and agents out of the sector. This new power was introduced to address the problem of repeat offenders who had committed multiple offences but continued to operate in the PRS.

11.2 For the banning order offences relevant to this policy refer to section 3.2 or table 9 of Appendix 1 to this report. Following a successful conviction for a banning order offence(s), an EA can then make the application for a banning order to the FTT. In the application the EA proposes the length of time that a

banning order, if made, would last for with a minimum set by law of 12 months; there is no upper time limit. It is the FTT that makes the order, and determines the term, that bans a landlord or letting agent from:

- Letting housing in England;
- Engaging in English letting agency work;
- Engaging in English property management work; or
- Doing two or more of those things.

11.3 If the FTT makes a banning order, an EA must make an entry in the database of rogue landlords and property agents under the 2016 Act (see section 12 of this report). If a landlord breaches a banning order he / she commits an offence which can result in the imposition of a FP or prosecution proceedings in the Magistrates Court. The decision would be made using the proposed policy attached as Appendix 1; 'Determining the Penalty and Banding the Offence' to set the level of the FP.

12. Ministry for Housing, Communities and Local Government's Rogue Landlord Database.

12.1 From the 1st April 2018 a landlord who has been convicted of; and/or received two or more financial penalties in respect of a banning order offence within a period of 12 months is considered for entry on the Ministry for Housing and Local Government's Rogue Landlord Database.

12.2 While it is not compulsory, EA are strongly encouraged to consider a landlord for entry. This will help ensure that other local housing authorities are made aware that formal action has been taken against the landlord. At the moment the information stored is not publicly accessible as it is an information tool for enforcing authorities.

13. Mayor for London Landlord and Letting Agent checker.

13.1 The Council, as with all London Boroughs has agreed to participate in the Mayors' Rogue Landlord and Agent Checker ["the checker"]. This contains information about private landlords and letting agents who have been prosecuted or fined.

13.2 The checker also includes information about landlord and agent offences submitted by the London Fire Brigade and the two letting agent consumer redress schemes - The Property Redress Scheme and The Property Ombudsman.

13.3 Only landlords and agents who've been fined or convicted of a relevant housing offence will appear. The database has a publically and privately accessible tier. All landlords are informed by the Mayor's office that their record is about to be presented on the system, albeit for a limited time. In the public tier records remain accessible as follows; penalties for 12 months and prosecutions until spent. Reference should be made to Table 10 in Appendix 1 for the period offences will remain on the public and private tiers.

13.4 The checker retains the information for 10 years as a resource for EA. An EA has the discretion as how to use a person or organisation's record with respect to housing penalties. The information is useful as part of an investigation and when coming to a decision regards 'Determining the Penalty'.

14. Publicising successful convictions and wider LHA action against a landlord

14.1 Reference is made to this in this report and the proposed policy because of the importance of making public the successful formal actions taken by the Council. In doing so, the Council will however continue to ensure that it adheres to the requirements within the Data Protection Act 2018 and the General Data Protection Regulation.

14.2 Reference also needs to be made to the EA's power to serve a penalty notice on a landlord under the 2015 Energy Regulations. In any case where an EA is satisfied that the landlord is in breach of one or more of regulations 23, 36 or 37 it can impose a financial penalty, a publication penalty, or both. The "publication penalty" means publication for a minimum period of 12 months, or such longer period as the Council may decide, on the Exemptions Register and including; where the landlord is not an individual, the landlord's name; the breach, the subject property and the amount of the FP imposed.

14.3 The statutory guidance published in relation to the 2019 Fees Act covers publicity and states that EA have discretion about publicising a successful penalty for a breach of the legislation at the local level. The statutory guidance directs authorities to the Publicising Sentencing Outcomes produced by the Criminal Justice System (June 2011). For an initial breach of the ban, the guidance states that EA are expected to publicise the successful imposition of a FP where this would have a beneficial effect on awareness of the legislation for the public. With second offences, an EA goes further than successful convictions, banning orders or financial penalties should be covered in the article to look to both deter the offender from repeating the offence and dissuade others from committing similar offences. It should however be noted that this guidance from June 2011 predates the current Data Protection Act 2018 and the General Data Protection Regulation, both of which govern the current requirements on authorities in relation to data protection and what may or may not be appropriate to publish. Specific legal advice will be sought as required before seeking to rely on this old guidance.

15. Mandatory Licensing of Houses in Multiple Occupation.

15.1 The Private Sector Housing Team operates the national mandatory licensing of houses in multiple occupation (HMO) scheme which commenced in April 2006 and that falls under Part 2 of the Housing Act 2004. A HMO is a building, or part thereof, in which more than one household shares a basic amenity, such as bathroom, toilet or cooking facilities. It can also include a building that has been converted and does not entirely comprise of self-contained flats so some

sharing of facilities occurs. Shared houses, hostels and bedsits are common forms.

15.2 To date the Council has issued 695 licences with some HMOs now being licensed for a second or third five-year term. Mandatory licensing is required where the HMO is occupied by five or more persons living in two or more separate households. On the 1st October 2018 the definition of a mandatory HMO changed with the requirement for the HMO to be of three of more storeys removed. A HMO can also be a flat above or below a business premises. With the five year selective licensing scheme closing on the 30th September 2020, the change in definition will see up to 250 rented properties now fall under the mandatory HMO licensing scheme. Legislation had allowed the properties' selective licence to run its term before the new responsibility to apply for a MHMO licence commenced.

16. The need for changes to the mandatory HMO licensing fees and conditions.

16.1 This report recommends amendments to the mandatory HMO licensing scheme licence conditions and application fees to ensure the scheme is updated in line with a number of key legislative changes and Court judgements. The changes take account of further licensing conditions imposed by:

- The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.
- The Smoke and Carbon Monoxide Alarm (England) Regulations 2015,
- The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018.

16.2 This report also recommends a change to the notes section that informs a landlord of the possible penalties of not complying with a licensing condition under section 72(2) of 72(3) of the 2004 Act. The 2016 Act introduced FP as an alternative sanction to the Council instituting criminal proceedings in the Magistrates Court for certain offences. The Council adopted the FP sanction in May 2017. The current conditions, whilst warning landlords about the consequences of not licensing a property or failing to comply with licensing conditions the only sanction is proceedings in a Magistrates Court. The proposed amended conditions informs licence holders of the introduction of FP as an alternative to proceedings in the Magistrates' Court. Additionally changes to the levels of fine were introduced by The Legal Aid, Sentencing and Punishment of Offenders Act 2012 which made the maximum fine (for some offences) allowed in a magistrates' courts, unlimited.

It is also recommended that the MHMO licensing scheme is updated in line with a key court judgement regarding the licensing fee payment system. The judgement in the case R (Gaskin) v Richmond-upon-Thames London Borough Council and Anor [2018] EWHC 1996 requires the Council to levy licensing fees in two separate parts: Part A – a fee levied at the point of application, to cover the costs of the scheme's 'authorisation procedures and formalities', i.e. the costs of processing the application; and Part B – if the application is successful,

a further fee to cover the costs of running and enforcing the scheme. The MHMO licensing fee needs to be updated to reflect this requirement.

17. Proposal for the revision of the mandatory HMO licence conditions.

17.1 The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 came into force on the 1st June 2020 and place duties on a landlord to ensure the safe condition of the property electrical installation.

17.2 Paragraph 13 of Part 6 of the 2020 Electrical Safety Regulations amend Schedule 4 of the Housing Act 2004 [mandatory conditions] to introduce a new condition for licences issued under Parts 2 and 3 of the Housing Act 2004. The condition requires that a licence holder takes steps;
"to ensure that every electrical installation in the house is in proper working order and safe for continued use; and to supply the authority, on demand, with a declaration by him as to the safety of such installations".

17.3 The 2020 Electrical Regulations are very prescriptive with further duties placed on a landlord. It is for that reason and also to mirror condition 3.1A of the proposed selective licensing conditions that the Council has decided to propose further conditions, namely: 1.2.1, 1.2.1(i), 1.2.1(ii) and 1.2.1(iii). These conditions give licence holders up to 14 days in which to provide the Council with a declaration about the safe condition of the installation, require the licence holder to further test the installation within a period of not more than five years and also, require licence holders to retain a copy of the current electrical inspection and certification report ["EICR"] to give to the electrician completing the further test. Condition 1.2.1(i) is found in Part 2 of the 2020 Electrical regulations, regulation 3(3)(c) where a maximum 7 day period to supply the Council with a copy of the EICR certificate is stipulated. The licensing condition proposed by the Council gives a landlord a 14 day period to provide the Council with a certificate and 7 days from receipt of the written request. Conditions 1.2.1(ii) and 1.2.1(iii) mirror duties in regulations 3(2)(a) and 3(3)(d) of the 2020 Electrical Safety Regulations, respectively.

17.4 The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018 ["2018 HMO Regulations"] came into force on the 1st October 2018 having been made on the 23rd May 2018. The additional condition to be included in HMO licences under Part 2: household waste is in paragraph 2 of the said regulations;
"Where the HMO is in England, a licence under Part 2 must include conditions requiring the licence holder to comply with any scheme which is provided by the local housing authority to the licence holder and which relates to the storage and disposal of household waste at the HMO pending collection."

17.5 The mandatory licensing of HMO conditions see the insertion of this new household waste management condition as 1.6.1. HMOs, being properties occupied by separate and multiple households, generate more waste and rubbish than single family homes. In addition to the need for the licence holder to comply with the requirements of such a scheme, it is felt appropriate to ask a licence holder to proactively manage the possible negative impact caused by

the absence of, or improper use of waste storage receptacles within the grounds of a HMO. To manage such expectations, that are not felt to be burdensome, the Council proposes the addition of further conditions 1.6.2 and 1.6.3 which require the licence holder to regularly inspect the property for waste issues and where a problem is identified, it is investigated and where the problem has arisen from the behaviour of the occupiers or their visitors; a letter of warning is written to the occupiers within 14 days. It is considered that taking immediate action will help correct the problem.

17.6 The 2018 HMO Regulations came into force on the 1st October 2018 having been made on the 23rd May 2018. The additional condition to be included in HMO licences under Part 2: minimum room sizes is in paragraph 2 of the 2018 HMO Regulations and included as paragraphs 2.1.1 to 2.1.5 of the mandatory HMO licensing conditions (Appendix 7 of this report). The 2018 HMO Regulations legislate to ensure that minimum room sizes for HMOs exist nationally to prevent unreasonable conditions. EAs' can adopt higher standards, as the Council does and provided as Table 2, but this approach ensures a minimum stipulated by statute. The 2018 HMO Regulations see the minimum rooms sizes for sleeping accommodation for; a person over the age of 10 at least 6.51m^2 , for two people over the age of 10 at least 10.22m^2, for a person under the age of 10 at least 4.64m^2 and a room of less than 4.64m^2 cannot be used as sleeping accommodation.

Table 2: Croydon Council, HMO minimum sleeping accommodation sizes.

	Bedsit room containing kitchen facilities only	**Bedsit room containing ensuite facilities only**	**Bedsit room where shared kitchen and bathroom facilities are in a separate room**	**Shared house where kitchen and bathroom facilities are in a separate room <u>and</u> there is a communal living room**
Single room	13.5m^2	12.5m^2	10m^2	6.5m^2
Double room	18.5m^2	17.5m^2	15m^2	10.2m^2

17.7 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 came into force on the 1st October 2015 and place duties on landlords to provide and maintain smoke and carbon monoxide alarms in private rented properties. Premises licensable under Parts 2 and 3 of the Housing Act 2004 Act are exempt from the 2015 Alarm Regulations as licence holders are given wider responsibilities through the amended Housing Act 2004 Part 2 (Mandatory HMO) and Part 3 (selective) CPRPL conditions. Until a new selective licensing scheme is confirmed the 2015 Alarm Regulations apply.

17.8 Part 4, regulation 15 of the 2015 Alarm Regulations amends the mandatory licensing conditions of Schedule 4 sub paragraph 4 of the Housing Act 2004 to require a licence holder; for licences granted or renewed on or after the 1st October 2015;

- “to ensure that a smoke alarm is installed on each storey of the house on which there is a room (including landing) used wholly or partly as living accommodation (including bathroom or lavatory), and to keep each such alarm in proper working order;” and
- “to ensure that a carbon monoxide alarm is installed in any room in the house which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance; and to keep any such alarm in proper working order; and
- “to supply the authority, on demand, with a declaration by him as to the condition and positioning of any such alarm.”

17.9 The proposed change introduces new HMO licensing conditions at 1.3.1 covering smoke alarms and 1.3.2 covering carbon monoxide alarms. The proposed conditions adopt the wording in the 2015 Alarm Regulations but are widened to make reference to fire detection systems; “All smoke alarms or fire detection systems within the house must be maintained in good working order at all times during the period of this licence”. Similarly the requirement to supply the Council with a declaration about safety is widened to fire detection systems; “As and when required, the licence holder must make a declaration as to the positioning and operation of the smoke alarms or provide copies of the annual test certificates for smoke alarms and fire detection systems to the Council within 14 days of request”. The widening of the condition to include fire protection systems is made because this is the common alarm system necessary in houses in multiple occupation which are of higher fire risk. Fire protection systems are interlinked hard wired systems installed in compliance with British Standard 5839.

18. Two part fee HMO structure following Gaskin v Richmond Council

18.1 On 31 July 2018, the Divisional Court held in R (Gaskin) v Richmond-upon-Thames London Borough Council & Anor [2018] EWHC 1996 that schemes for the licensing of houses in multiple occupation ['HMOs'] under Part 2 of the Housing Act 2004 ('the 2004 Act') are authorisation schemes, within the meaning of EU Directive 2006/123/EC ('the Directive') and regulations incorporating the Directive in domestic law: the Provision of Services Regulations 2009 ['the 2009 Regulations']. Part 2 schemes are seen as authorisation schemes.

18.2 As a consequence, a fee for a licence to let accommodation under the mandatory HMO licensing scheme must be levied in two, separate parts, in accordance with the type A scheme endorsed by the Supreme Court in R (Hemming, t/a Simply Pleasure Ltd) v Westminster CC [2015] UKSC 25; [2015] AC 1600.

18.3 The new fee structure sees the HMO fee levied in two parts;
Part A fee – a fee levied at the point of application, to cover the costs of administration and inspection to allow a decision regarding the issuing of the HMO licence application; and

Part B fee – if the application is successful, a further fee to cover the costs of

running and enforcing the (rolling) mandatory HMO licensing scheme. This fee is to be paid just prior to the issuing of a HMO licence. The payment of the Part B fee is deemed a part of making a duly made application so if it is not made the duty on a landlord to license will not have been met.

18.4 The London Borough of Croydon currently charges a standard fee of £250 for each habitable rooms (bedroom or living room) in the HMO property. For example, the fee to accompany an application for a licence for a HMO with three bedrooms and one living room is £1,000. The licence being issued for up to 5 years.

18.5 The proposed HMO licensing fee structure sees one proposed change with the introduction of a one-year licence at a reduced fee. This type of licence was agreed at Cabinet on the 11th May 2020 for the proposed selective licensing fee structure. A one-year licence is proposed to be issued in situations where the Council determine a license for less than 5 years should be granted. It will be for HMOs where there is a need for a higher levels of monitoring or a licence holder needs time to get his/ her property management in order. A number of applications for HMO licences are made for a property without the correct planning permission in place and whilst not having the correct planning permission is not a reason to refuse a licence application, a one-year licence could be appropriate in such a circumstance. With a one-year licence, the Part A fee remains identical to a five-year licence fee but the Part B fee is for one fifth of the Part B payment for a five-year licence fee. At the end of the one year, a further application with full fee would need to be made where the HMO remains licensable. To date, the Council would have issued a licence for up to five years and charged the full five-year fee. The one-year licence will give the Council increased flexibility and the fee be a fairer reflection of costs

18.6 The current fee structure is Appendix 4 to the Report. The proposed two stage fee amounts are covered in the proposed fee structure attached as Appendix 5 to the report.

19. CONSULTATION

19.1 The Cabinet report presents the revised and extended policy “Determining the Penalty and Banding the Offence” as the approach that will be used by the Council’s Private Sector Housing and Trading Standards teams for making a decision as to the most appropriate sanction(s) to impose on a landlord and if a financial penalty is this sanction then in determining the level of the penalty.

19.2 The advantage for the Council is that in extending the policy to cover a range of new pieces of legislation, we are able to build on the work completed and experience gained over the past 3 years. In May 2017, when the current Council policy was adopted, only two months had passed since the introduction of the statutory guidance on the issuing of FP and RR0 under the 2004 Act (as amended). Two appeals have been heard in the FTT and whilst the FTT varied the penalty score, the policy ‘Determining the Penalty’ was accepted.

19.3 The majority of the changes proposed within this report pertain to legislative changes or interpretation of legislative provisions arising from case law. As such, those elements have not been consulted on. However, landlords and letting agents have been made aware of legislation in relation to these matters via previous forums and using the landlord newsletter that goes out to approximately 20,000 previously licensed landlords. The newsletter scheduled for January 2021 will cover the changes proposed in this report and the webpage "Landlord Information Pack" [LINK] will be duly updated in first two weeks of the New Year. Additionally, the introduction of the various pieces of legislation has been shared with landlords and letting agents through the day to day work of the Private Sector Housing and Trading Standards teams.

20. PRE-DECISION SCRUTINY

20.1 Decisions relevant to the PRS are subject to the Scrutiny of the Scrutiny Streets, Environment & Homes Sub-Committee. The committee meeting diarised for November 17th 2020 was cancelled and the next meeting is scheduled for February 2nd 2021. The agenda for this meeting is full.

20.2 In discussion with the chair of the Scrutiny Streets, Environment & Homes Sub-Committee it was agreed that this paper, Making Croydon's Private Rented Homes Safer and Protecting Residents, would be shared with the sub-committee during the latter stages leading up to the Cabinet meeting on the 18th January 2021. Any views, concerns and recommendations can then be made, considered and adopted as appropriate.

20.3 The Council awaits a decision from the Government on its application for confirmation on the proposed selective licensing scheme. The application is currently being assessed as part of the Government process. Following the Government's determination it is proposed that the Council's approach to improve standards in the PRS will be subject to scrutiny. The review will consider; the impact of the Government's decision, the decision by Cabinet on the 18th January 2021 with respect to the proposed policy "Determining the Penalty and Banding the Offence" and the fee structure and conditions for the mandatory houses in multiple occupation licensing scheme that have not been reviewed since 2017.

21. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

21.1 The penalties levied through the financial penalty and rent repayment orders can be retained by the Council, provided that, in most cases, the income is used to further the local authority's statutory functions in relation to enforcement activities in the private rented sector. Refer to table 11 of Appendix 1 for a summary of the permitted uses.

21.2 Penalties will be issued on a sliding scale basis depending on the severity of the offence, with penalties ranging from £250 to £30,000. In the last 3 years all but two penalties related to the offence of not licensing a property under the selective licensing scheme. With the widening of offences where a penalty can

be issued and at the same time the uncertainty of the proposed future selective licensing scheme, it is not possible to estimate the level of income from these penalties as the number of penalty notices that could be issued is unknown. It is likely that the fine income received will cover any additional legal and tribunal costs incurred to pursue.

21.3 The penalties levied in some legislation has a legislative cap that the penalty charge can rise to. This is either £30,000 or £5,000 but in the 2015 Energy Regulations there are smaller amounts for different breaches that can collectively rise to £5,000.

21.4 Experience has shown that not all penalties are immediately paid but only two have reached the Tribunal for an appeal hearing. Again, at this stage, it is not possible to estimate the level of income from penalties as the number of penalty notices that could be issued is unknown as is the number that will be paid.

21.5 The fee charged to landlords for mandatory houses in multiple occupation licence applications will remain the same with no changes to the amount. The fee will be collected in two stages instead of in one. The first part of the fee will be levied at the point of the application and the second element before the license is issued. This change ensures that the scheme is update in line with key legislative changes and court judgements.

21.6 The changes proposed within this report do not require additional revenue or capital budget and the over income versus expenditure can be monitored over the next 24 months.

21.7 The income budget for HMO licensing is £203k for 2020/21. The proposed change to move fees from a single payment to a two payment is not expected to result in a change, therefore the budget will remain.

21.8 **The effect of the decision**

It is not currently possible to estimate the level of income that could be earned from penalty notices. It is evident that fines are only issued to the worst offenders with prosecutions saved for the more serious offending. The implementation of this penalty charging scheme did encourage landlords to comply (apply for a licence) and therefore the need to issue fines and the corresponding work associated with the administration of the scheme was and again, if the scheme is confirmed, will be kept to a minimum and can be funded from the fee income.

The changes to mandatory HMO licensing fee collection will be managed within the existing budget and no additional resource required.

21.9 **Risks**

There is a risk that the administration (including processing appeals) of this scheme will be greater than the level of income earned from fines and therefore the implementation of this charging scheme will fail to be cost neutral and will

need investment. The cost associated with running the schemes will need to be reviewed regularly to ensure it remains efficient and effective.

Updating the mandatory HMO charging structure ensures that the Council's current mandatory houses in multiple occupation licensing scheme is in line with relevant legislation. There is a risk of reduced or delayed fee levels, if an application is unsuccessful. This however is mitigated by the fact that the initial fee covers the cost of processing.

21.10 **Options**

There is the option to not implement a penalty charging scheme. This is not considered appropriate as it is anticipated that the introduction of fines will encourage a greater level of compliance across the Borough, making homes safer.

In order to ensure the Council complies with legal requirements, the option presented with the changes to the licence fee structure in this paper meets that objective.

21.11 **Future savings/efficiencies**

The licensing scheme is a self-financing scheme. The changes to the fee structure will enable the Council to match the processing costs to the fee and the running costs of the scheme and make efficiencies where necessary.

Approved by: Lisa Taylor, Director of Finance, Investment and Risk and s151 Officer

22. LEGAL CONSIDERATIONS

22.1 The Head of Litigation and Corporate Law comments on behalf of the Council Solicitor that the various legislative provisions applicable to the recommendations are detailed throughout the body of the report. In addition, many of the provisions have specific statutory and /or non-statutory guidance to which the Council either must have regard (statutory guidance) or is recommended to consider (non-statutory guidance). Statutory guidance issued in relation to the subject matter of the recommendations includes:

- Building Regulations 2010 Combustion appliances and fuel storage systems Approved Document J, 2010 edition as updated in 2013
- Civil penalties under the Housing and Planning Act 2016, April 2018
- Rent repayment orders under the Housing and Planning Act 2016, April 2017
- Houses in Multiple Occupation and residential property licensing reform, December 2018
- Database of rogue landlords and property agents under the Housing and Planning Act 2016, April 2018
- Mandatory client money protection for property agents :Enforcement guidance for local authorities, May 2019

- Tenant Fees Act 2019 Statutory guidance for Enforcement Authorities, updated September 2020

22.2 In relation to financial penalties, the statutory guidance "Civil Penalties under the Housing and Planning Act 2016" places a requirement on Local housing authorities to develop and document their own policy on when to prosecute and when to issue a civil penalty and should decide which option it wishes to pursue on a case-by-case basis in line with that policy. This requirement is reiterated in the various statutory guidance: Tenant Fees Act 2019 Statutory guidance for Enforcement Authorities, updated September 2020; the statutory guidance: Mandatory client money protection for property agents Enforcement guidance for local authorities, May 2019; statutory guidance: Rent repayment orders under the Housing and Planning Act 2016, April 2017. Similar provision is made in the non-statutory guidance in respect of Landlord Banning Orders: Banning Order Offences under the Housing and Planning Act 2016, April 2018. The purpose of Appendix 1 is to make provision for such a policy and means of determination.

22.3 Regulation 13 of The Smoke and Carbon Monoxide (England) Regulations 2015 places a requirement on the Council to agree and publish a Statement of Principles which it proposes to follow in determining the amount of a penalty charge.

22.4 The Tenant Fees Act 2016 provides that where an enforcement authority (such as the Council) is satisfied beyond reasonable doubt that a person has breached section 1 or 2 or Schedule 2 of that Act, the authority may impose a financial penalty on the person in respect of the breach. The financial penalty— may be of such amount as the authority determines, but subject to section 8(3), must not exceed £5,000. Section 8(3) provides that where the enforcement authority is satisfied beyond reasonable doubt that the person has committed an offence under section 12 of the Act, the financial penalty may exceed £5,000, but must not exceed £30,000. Enforcement authorities must apply the principles of the European Convention on Human Rights, in accordance with the Human Rights Act 1998, at each stage of a case.

22.5 Paragraph 10 of Schedule 3 of the Tenant Fees Act 2019 provides that where an enforcement authority imposes a financial penalty under the Tenant Fees Act 2019, it may apply the proceeds towards meeting the costs and expenses (whether administrative or legal) incurred in, or associated with, carrying out any of its enforcement functions under that Act or otherwise in relation to the private rented sector. Any proceeds of a financial penalty imposed under this Act which are not applied in accordance with paragraph 10 must be paid to the Secretary of State.

22.6 Guidance issued in relation to the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 provide that following failure to comply with the Regulations, a local housing authority can impose a financial penalty of up to £30,000 on a landlord. Proceeds of financial penalties can be used to carry out private rented sector enforcement. Any amount that is not used in this way must be paid into the Consolidated Fund, the government's general bank account at the Bank of England. Local housing authorities should

develop and document their own policy on how they determine appropriate financial penalty levels.

22.7 Where the Local Authority decides to impose a financial penalty under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015, as amended, they have the discretion to decide on the amount of the penalty, up to maximum limits set by the Regulations. The maximum penalties are as follows: (a) where the landlord has let a sub-standard property in breach of the Regulations for a period of less than 3 months, the Local Authority may impose a financial penalty of up to £2,000 and may impose the publication penalty. (b) Where the landlord has let a sub-standard property in breach of the Regulations for 3 months or more, the Local Authority may impose a financial penalty of up to £4,000 and may impose the publication penalty. (c) Where the landlord has registered false or misleading information on the PRS Exemptions Register, the Local Authority may impose a financial penalty of up to £1,000 and may impose the publication penalty. (d) Where the landlord has failed to comply with the compliance notice, the Local Authority may impose a financial penalty of up to £2,000 and may impose the publication penalty.

22.8 A publication penalty in the context of the above referenced regulations means that the enforcement authority will publish some details of the landlord's breach on a publicly accessible part of the PRS Exemptions Register. The enforcement authority can decide how long to leave the information on the Register, but it will be available for view by the public for at least 12 months. The information that the enforcement authority may publish is:

- the landlord's name (except where the landlord is an individual);
- details of the breach;
- the address of the property in relation to which the breach occurred; and
- the amount of any financial penalty imposed.

It is for the enforcement authority to decide how much of this information to publish. However, the authority may not place this information on the PRS Exemptions Register while the penalty notice could be, or is being reviewed by the Local Authority , or while their decision to uphold the penalty notice could be, or is being, appealed. In addition, the Council needs to have regard to its duties and requirements under the Data Protection Act 2018 and the General Data Protection Regulation in this regard.

22.9 The Statutory Guidance (Mandatory client money protection for property agents Enforcement guidance for local authorities, May 2019) provides that, in relation to the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019 as amended by the Tenant Fees Act 2019, enforcement authorities are expected to develop and publish their own policy on determining the appropriate level of financial penalties to impose which may be part of pre-existing enforcement policy. Enforcement authorities are expected to consider each breach on a case by case basis and for the maximum amount to be reserved for the worst offenders.

22.10 Non-Statutory Guidance for Local Authorities on The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 provides that the enforcement

authority can impose a fine of up to £5,000 where it is satisfied, on the balance of probability that someone is engaged in letting or management work and is required to be a member of a redress scheme, but has not joined. The Guidance suggests that the expectation is that a £5,000 fine should be considered the norm and that a lower fine should only be charged if the enforcement authority is satisfied that there are extenuating circumstances. It will be up to the enforcement authority to decide what such circumstances might be, taking into account any representations the lettings agent or property manager makes during the 28 day period following the authority's notice of intention to issue a fine.

22.11 In relation to breaches of the Consumer Rights Act 2015 duties of letting agents to publicise fees as detailed within this report, the amount of a financial penalty imposed by the Council may be such as the authority imposing it determines, but must not exceed £5,000.

22.12 Part 2 of the Housing Act 2004 ("the 2004 Act") provides for local housing authorities to license HMOs in their areas if they meet the definition of an HMO prescribed under section 55 of the 2004 Act. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 ('the Prescribed Description Order 2018') has the effect of extending the scope of section 55(2)(a) of the 2004 Act, so that mandatory HMO licensing also applies to HMO properties which are less than three storeys high. A second statutory instrument, the Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 20185 ('the Mandatory Conditions Regulations 2018') amends Schedule 4 of the Act, introducing new conditions that must be included in licences that have been granted under Part 2 of the Act. These are: Mandatory national minimum sleeping room sizes; and Waste disposal provision requirements.

22.13 In respect of fixing fees under section 63(7) of the Housing Act 2004 for HMO applications under Part 2 of the 2004 Act, the local housing authority may (subject to any regulations made under subsection (5)) take into account—
(a) all costs incurred by the authority in carrying out their functions under this Part, and
(b) all costs incurred by them in carrying out their functions under Chapter 1 of Part 4 in relation to HMOs (so far as they are not recoverable under or by virtue of any provision of that Chapter).

22.14 In respect of the imposition of licence conditions, Section 67 of the 2004 Act provides that a licence may include such conditions as the local housing authority consider appropriate for regulating the management, use and occupation of the house concerned, and its condition and contents. Those conditions must include the conditions required by Schedule 4 of the 2004 Act and may, in particular, include (so far as appropriate in the circumstances)–
(a) conditions imposing restrictions or prohibitions on the use or occupation of particular parts of the house by persons occupying it;
(b) conditions requiring the taking of reasonable and practicable steps to prevent or reduce anti-social behaviour by persons occupying or visiting the house;

(c) conditions requiring facilities and equipment to be made available in the house for the purpose of meeting standards prescribed under section 65;
(d) conditions requiring such facilities and equipment to be kept in repair and proper working order;
(e) conditions requiring, in the case of any works needed in order for any such facilities or equipment to be made available or to meet any such standards, that the works are carried out within such period or periods as may be specified in, or determined under, the licence;
(f) conditions requiring the licence holder or the manager of the house to attend training courses in relation to any applicable code of practice approved under section 233.

22.15 On 31 July 2018, the Divisional Court held in R (Gaskin) v Richmond-upon-Thames LBC [2018] EWHC 1996 (Admin) that schemes for the licensing of houses in multiple occupation ('HMOs') under Part 2 of the Housing Act 2004 ('the 2004 Act') are authorisation schemes, within the meaning of EU Directive 2006/123/EC ('the Directive') and regulations incorporating the Directive in domestic law: the Provision of Services Regulations 2009 ('the 2009 Regulations').

22.16 The consequence is that the fee for a HMO licence under Part 2 of the 2004 Act and, indeed, for a licence to let other accommodation under Part 3, must be levied in two, separate parts, in accordance with the type A scheme endorsed by the Supreme Court in R (Hemming, t/a Simply Pleasure Ltd) v Westminster CC [2015] UKSC 25; [2015] AC 1600:

Part 1 – a fee levied at the point of application, to cover the costs of the scheme's 'authorisation procedures and formalities', i.e. the costs of processing the application; and
Part 2 – if the application is successful, a further fee to cover the costs of running and enforcing the scheme.

22.17 Finally in relation to the publication of details pertaining to successful prosecutions or in consideration of adding information to databases such as the Rogue Landlord and Property Agent Database and Mayor for London Landlord and Letting Agent checker due regard will be had to any relevant enabling provisions and the requirements of the Data Protection Act 2018 and the General Data Protection Regulation. Officers responsible for such publication or inclusion on databases will ensure that appropriate advice is sought to ensure compliance with the necessary requirements.

Approved by Sandra Herbert, Head of Litigation and Corporate Law on behalf of the Council Solicitor & Monitoring Officer.

23. HUMAN RESOURCES IMPACT

23.1 There are no immediate HR impact issues in this report. If any HR issues should arise these will be managed under the Council's Policies and Procedures.

Approved by Jennifer Sankar, Head of HR Place, for and on behalf of, Sue Moorman, Director of Human Resources.

24. EQUALITIES IMPACT

24.1 The 55,585 PRS properties makes up 35% of the 156,136 properties in the Borough. In Croydon 12,704 (or 23%) dwellings in the PRS have a significant (category 1) property hazard when assessing using the Housing Health and Safety Rating System (HHSRS). The national picture estimates that 14% of the 4.6M properties in the PRS have a significant hazard offering the worst housing conditions.

24.2 Throughout the 1980s and 1990s, the proportion of private rented households was steady at around 9% to 11%. From 2002 the sector has doubled in size and from 2013-14 the rate has remained around 19% / 20%. The sector is home to a diverse sector and whilst there remains a high number of tenants who have vulnerabilities associated with disability, life long illness, financial means, ethnicity or age statistics are showing that, as a percentage, these groups are lower when compared to owner occupation or social renting.

24.3 Croydon Council's recent and proposed selective licensing designation and the new powers compliment and build on the options already available for enforcement for the private sector housing team in tackling bad practice and criminal landlords. The new maximum penalties for the power to issue a FP are up to a £30,000 and Appendix 1 and the earlier sections in this report explain wider sanctions such as rent repayment orders, publicity and in the extreme case the banning order, the option for excluding criminal landlords or letting agents. The Public Realm Enforcement Policy will now need to be updated and in line with the policy "Determining the Penalty and Banding the Offence" will provide the framework for decision making that can ultimately impact on the livelihoods of the landlords, letting agents and property managers operating in this Borough.

24.4 It is recognised that some of the worst properties offer accommodation at the lower end with respect to standards and affordability. The use of the new powers will consequently be more prevalent in some wards compared to others. An aim of adopting these new powers is to continue to bring parity to the private rented housing sector so all renters get an increased confidence and can enjoy at least a minimum in terms of service. The Council wants Croydon to be the "Better Place to Rent". Enforcement staff will continue to promote good practice, support landlords with renting and act as a point of contact for all stakeholders supporting the market. The valuable role of private landlords in providing low cost accommodation is acknowledged. The benefits of an improved sector will be felt borough wide.

24.5 An Equalities Analysis has been carried out to ascertain the impact of revising and expanding the policy "Determining the Penalty and Banding the Offence", changing how the MHMO licensing fees are paid and updating the licence conditions attached to a new MHMO licence. The key findings were that there is no reason to believe that the protected groups will be at any greater risk than

the rest of the population. The policy promotes objective, consistent and transparent decision making and opportunities to advance equality through greater awareness have been taken, so no change to the recommendations is suggested.

24.6 The widened enforcement framework will continue to have a positive impact relevant to all protected characteristic groups. The awareness of and rigorous enforcement of the legislation will reduce the opportunities for landlords and letting agents to victimise residents, through; improved living and environmental conditions, providing enhanced protection against retaliatory eviction, preventing charging of prohibited fees, increased transparency to letting agency fee charging, client money protection and property redress scheme membership, the signposting to other services and joint working with other enforcement agencies to deal with crime and anti-social behaviour. Income received from a FP can be used in relation to private sector housing enforcement

24.7 In developing this proposal, regard has been had to the council's Corporate Plan and its equality objectives contained in the Opportunity and Fairness Plan 2016-20.

24.8 The outcome of our Equality Analysis in relation to the recommendations contained in this report are as follows:-

- No major change – Enforcement and licensing protects all vulnerable tenants. It would be a serious breach of licencing conditions if a landlord were to discriminate against any of the protected groups. Landlords who have been convicted of a housing or tenancy or discriminatory offence cannot receive a licence and may be considered for a banning order. Enforcement and licensing provides additional safeguards because of the joint working arrangements and signposting which are built into the scheme.

Approved by: Yvonne Okiyo, Equalities Manager.

25. ENVIRONMENTAL IMPACT

25.1 There are no identifiable environmental sustainability impacts as a consequence of this report.

25.2 Poorly managed private rented properties will cause neighbourhood problems with refuse, noise and cause a blight through poor appearance. The energy used in homes accounts for more than a quarter of energy use and carbon dioxide emissions in the United Kingdom. More energy is used in housing than either road transport or industry [DECC United Kingdom housing energy fact file 2013].

25.3 In section 6 of this report, information was provided on the energy banding of Croydon's Private Rented housing stock. It is estimated that 27% of PRS properties in Croydon have an E, F or G EPC rating. 5.5% of PRS properties have an F and G rating which is below the current MEES. [London Borough of

Croydon - Private Rented Sector: Housing Stock Condition and Stressors Report – Metastreet – September 2019].

25.4 The recommendations set out in this report should have a positive impact on energy use and energy efficiency in Croydon, as the adopted of the proposed revised policy 'Determining the Penalty and Banding the Offence' includes the new 2015 Energy Regulations (as amended) and will allow the Council to enforce against non-compliant landlords letting properties below the MEES. It also ties in the with the proposed selective licensing objective to 'Ensure that all licensed properties have an energy performance rating ["EPC"] of at least "E" by the end of the scheme and that 75% have an energy rating of at least "D" (subject to exemptions)'.

25.5 The recommendations set out in this report should also have a positive impact on the living environment in Croydon. The new legislation, including through licensing conditions, brings duties and responsibilities for landlords, letting agents and property manager to take further responsibility for safety, energy use, property conditions, management and reducing ASB such as waste disposal in the area relevant to a property.

26. CRIME AND DISORDER REDUCTION IMPACT

26.1 A small number of landlords operating private rented properties are operating as criminals. Their lifestyles are being supported by these criminal activities. The new powers will support Croydon Council's continued drive to improve the practices in the PRS and ensure penalties are proportionate to the offence. The new penalties are limited to the offences list in section 3 to 14 of this report and summarized in an offences and breaches table in Table 19 of Appendix 1.

26.2 The recommendations set out in this report should facilitate the prevention of crime in Croydon under Section 17 of the Crime and Disorder Act 1998 and reduction of crime and disorder under Section 6 of the same Act. Private rented properties are increasingly used for unlawful purposes such as high density living, for growing or smoking cannabis, or housing illegal immigrants who are poorly employed. The increased enforcement and through penalties the increased income for resources in the area of private sector housing standards and property management should help improve the problems faced in the sector in Croydon. Enforcement enables, subject to data protection requirements, intelligence sharing between multiple agencies and provides for the Council to take a lead in bringing together other appropriate agencies to address the problems which may be present at a single address.

27. REASONS FOR RECOMMENDATIONS/PROPOSED DECISION

27.1 The report sets out the new enforcement and penalty powers that have been introduced, in alphabetical order, under the; Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme) Regulations 2019, Consumer Rights Act 2015, Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020, Energy Efficiency (Private Rented

Property) (England and Wales) Regulations 2015 (as amended), Housing Act 2004 (as amended), Housing and Planning Act 2016; Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017; Redress Schemes for Letting Agency Work and Property Management Work (Requirement to belong to a scheme) (England) Order 2014; Smoke and Carbon Monoxide Alarm (England) Regulations 2015 and Tenant Fees Act 2019 The Government has made new statutes legislating to improve standards and letting arrangements and to widen the scope for the Council to take action including the issuing of Financial Penalties, and Rent Repayment Orders The Government identified the negative impact of criminal landlords and the adoption of the powers continues the proactive approach to private sector housing enforcement taken by Croydon Borough Council. Additional funding received following the successful use of the FP and RRO will further the local authority's statutory functions in relation to their enforcement activities covering the PRS.

27.2 In a similar way, the report seeks to update the MHMO licensing scheme that reflect the various legislative changes and the current legal interpretation by the Courts which have occurred over the past few years. A revised set of MHMO licensing conditions for licence holders in the MHMO licensing scheme is proposed and also authority to introduce a one year HMO licence and a split fee structure that sees the fee total remain the same but the fees being collected in two stages; Part A and Part B. These changes will ensure the scheme protects tenants in line with the aims of the legislative changes.

27.3 These decisions are sought to ensure all residents, regardless of tenure, have access to decent, safe housing, feel protected and are treated fairly. These decisions are also aimed at improving the living environment and letting experience across Croydon, and will enable targeted responses to the range of issues across the borough.

28. OPTIONS CONSIDERED AND REJECTED

28.1 The new powers are contained within national legislation and are available (from the implementation dates) for all Councils to use. It is felt that these are a significant new tool to address poor housing conditions and letting practices used by rogue landlords, letting agents and property managers and that choosing not to use them is not an option. In addition, the Government has issued strongly worded statutory guidance and it is clear that it expects Councils to make full use of them.

28.2 This report recommends the adoption of the revised and expanded policy "Determining the Penalty and Banding the Offence". The result is that the Private Sector Housing and Trading Standards team have one policy to refer to for offences included within 12 Acts or sets of Regulations. The policy covers two steps;

- ‘Determining the Penalty’ steps to determine what is the most appropriate sanction(s) to be taken against an offending landlord or property agent; and
- ‘Banding the Offence to set the Level of the Financial Penalty’ steps where the sanction includes a Financial Penalty to determine the level of the penalty.

28.3 Because of the wide range or offences and breaches that were available to an EA, the option existed to have a process that considered the sanction individually for each offence or collectively for all offences; for all offences with sufficient evidence where in the public interest. The option to consider the offences and breaches collectively was felt to be by far to be the better option where the ability to seek further redress for multiple issues was made available. It also ensures that officers have duly considered the wider picture when proposing enforcement action. The collective decision is captured on a Case Summary Form where background information is collated to allow a proportionate decision.

28.4 When the framework for banding the offence is used to set the level of the penalty, the option again existed for the EA to introduce a process to determine the level of penalty for each offence; there being 12 statutes. The process for determining the banding of an offence is complex. An officer needs to work in a defined framework but needs discretion so a penalty can be determined on a cases by case basis. A range of starting points for FPs, for example £2,000, was considered but rejected this approach as being too punitive in some cases. Government guidance is clear that aggravating and mitigating factors should be taken into consideration and having a fixed starting point or a prescriptive framework would not do this. Therefore this option was rejected in favour of a wide range of financial penalties, across 4 bands and 16 penalty points, even though this is more complicated. After due consideration, it was therefore decided that the framework for banding the offence to set the level of the penalty should be the same 5 stage process for all offences, including proposed the 2015 Alarm Regulations. If the legislation imposes a cap, the maximum penalty at the cap is used where the assessed penalty would exceed this.

28.5 With the MHMO licensing scheme this report sees minimal changes recommended. The proposed changes to property conditions see only a small number of change proposed; which allow the scheme to fall in line with legislative change. The revision to the fee structure is again introduced to fall in with recent case law about the fee structure. As the MHMO licensing scheme has not been reviewed since 2017 it is proposed that a full review will take place later in 2021 and where changes are proposed a report to Cabinet will seek further more in-depth changes. These changes will, as appropriate, be consulted with the scheme landlords.

29. DATA PROTECTION IMPLICATIONS

29.1 WILL THE SUBJECT OF THE REPORT INVOLVE THE PROCESSING OF ‘PERSONAL DATA’?

YES

The data relates to the person, so the following stakeholders: property owners, private landlords, applicants, licence holders (Part 2 for HMOs or Part 3 other premises), managing agents, tenants, property managers, letting agents, mortgage companies, freeholders, applicants and leaseholders and property agents. This can be someone acting as an individual or company. The company can be a partnership or limited.

The data relates to the property, including the following areas; gas safety certification, electrical installation certification, declarations regarding smoke alarm, carbon monoxide alarm and furnishings, energy performance and further fire safety certification (risk assessments, installation, periodic inspections, external walling etc.).

The data relates to the working practice of landlords, letting agents and property managers and data relates to client money protection scheme membership, property redress scheme membership, tenancy agreements, protection of deposits, fees charged and paid, fees advertised. Some documentation referred to may contain name and address details of the persons mentioned to allow identification.

Details of wider offences maybe collated from partner services or databases including the Mayor of London Landlord and Letting Agency Checker, Ministry for Housing Communities and Local Government Rogue Landlord and Letting Agent database, the PRS Exemptions Register for property exemptions and publications database for offending landlords.

29.2 HAS A DATA PROTECTION IMPACT ASSESSMENT (DPIA) BEEN COMPLETED?

YES.

The Director of Public Realm confirms that a DPIA has been completed and signed off and will be kept under review.

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APPENDICES TO THIS REPORT:

Appendix 1: 'Determining the Penalty' and 'Banding the Offence' to set the Level of the Financial Penalty. The London Borough of Croydon's approach to taking enforcement action against offending landlords, letting agents and property managers in the Borough.

Appendix 2: Current Statement of Principles under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015.

Appendix 3: Proposed Statement of Principles under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015.

Appendix 4: Current mandatory houses in multiple occupation licensing fee structure.
Appendix 5: Proposed mandatory houses in multiple occupation licensing fee structure.
Appendix 6: Current mandatory houses in multiple occupation licensing conditions.
Appendix 7: Proposed mandatory houses in multiple occupation licensing conditions.

BACKGROUND DOCUMENTS: None