“Determining the Penalty and Banding the Offence” **to set the Level of the Financial Penalty.**	CROYDON www.croydon.gov.uk
This policy covers: • **‘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.	A BETTER PLACE TO RENT

1.0 Background.

Local Housing Authorities (“LHA”) and Local Weights and Measures Authorities (“LWMA”) (collectively enforcing authorities “EA”) have a significant responsibility for policing property standards, management and the action of landlords, letting agents and property managers who are engaged in operations within the private rented sector (“PRS”). The Government expects serious offenders to be dealt with proportionately and effectively to ensure an appropriate punishment and to act as a deterrent against future offending. The PRS in Croydon is large and significant problems relating to property standards, management and tenant behaviour exist. The London Borough of Croydon (“LBC” or “EA”) recognises the importance of a fit for purpose sector and is proactive in the steps it takes to work in partnership to seek improvements and ultimately make Croydon a ‘Better Place to Rent’.

LBC has adopted the greater majority of powers enacted by central Government and this provides legislative options to solve problems, ensure safety and improve renting in the PRS. Not all intervention taken by the LBC achieve a positive result and some landlords, letting agents and property managers fail to comply, ignoring the Regulator and on occasions leaving tenants at risk. In these situations, empowered through various enactments and statutory guidance, LBC will consider the option of taking formal action against the offender. First stage actions can include a; manager’s warning, simple caution, prosecution in the magistrates’ court or the issuing of a financial penalty notice. All options for dealing with the offences or breaches committed are considered objectively as a way of determining the proportionate penalty.

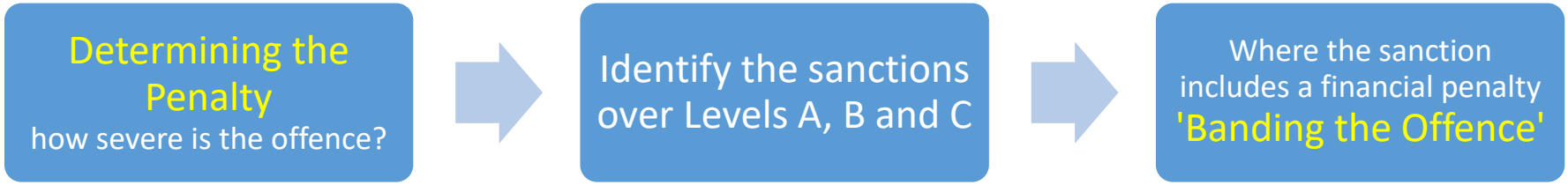
1.1 Making Homes Safer

The original authority to issue a Financial Penalty Notice ("FPN") and Rent Repayment Order ("RRO") came into force on the 6th April 2017 following the making of The Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017 and The Housing and Planning Act 2016 (Commencement No. 5, Transitional Provisions and Savings) Regulations 2017. These Regulations were introduced under the provisions of the Housing and Planning Act 2016 ("2016 Act"); section 126 enabling FPN and all sections in Part 2, Chapter 4 enabling applications for RRO.

On the 3rd May 2017 a report titled 'Making Homes Safer' was prepared for presentation to Cabinet. This paper proposed a policy framework for the use of FPN and RRO with certain housing offences as enabled by the new provisions inserted by the 2016 Act. The policy seeks to ensure consistency and transparency with decision making in this area. This process was termed "Determining the Penalty" and through an Executive Decision [LINK] on the 3rd May 2017, LBC resolved to adopt the policy and the process on the 8th May 2017.

Over three years on, further legislation (listed in table 1) has been passed and created new housing, tenancy related and property agent offences and breaches that can considered for FPN and other sanctions. LBC has adopted these new powers and the decision making framework in the 2017 policy "Determining the Penalty" has been revised and expanded into a new reference document entitled "Determining the Penalty and Banding the Offence". Diagram 1 summarises the two main policy steps. 'Determining the Penalty' is the process by which LBC determines the severity of the offence and the appropriate sanction(s) to be taken against an offending landlord or property agent. Sanctions are set over levels A, B and C. 'Banding the Offence to set the Level of the Financial Penalty' provides a 5 stage approach to determine the level of the penalty where the sanction includes a Financial Penalty. On January 18th 2021, the Cabinet at Croydon resolved to adopt this revised and expanded policy with an implementation date of the 1st February 2021 for offences committed on or after the 1st February 2021.

Diagram 1: The steps included in this policy.



1.2: Table 1: List of statute central to the policy with abbreviation.

Full title of legislation	Abbreviation in this policy
Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme) Regulations 2019	2019 CMP Regulations
Consumer Rights Act 2015	2015 CR Act
Criminal Law Act 1977	1977 Criminal Law Act
Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020	2020 Electrical Regulations
Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015	2015 Energy Regulations
Energy Efficiency (Private Rented Property) (England and Wales) (Amendment) Regulations 2019	2019 Energy Regulations
Housing Act 2004	2004 Act
Housing and Planning Act 2016	2016 Act
Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017	2017 BOO Regulations
Management of Houses in Multiple Occupation (England) Regulations 2006	HMO Management Regulations
Protection from Eviction Act 1977	1977 Eviction Act
Redress Schemes for Letting Agency Work and Property Management Work (Requirement to belong to a scheme) (England) Order 2014	2014 Redress Scheme Order
Smoke and Carbon Monoxide Alarm (England) Regulations 2015	2015 Alarm Regulations
Tenant Fees Act 2019	2019 Fees Act

Note:
For details on the relevant offences and breaches refer to Table 19.

1.3: Table 2: Abbreviations used in this policy.

Abbreviation	Description of the abbreviation
EA	Enforcing Authority - The London Borough of Croydon being duly empowered through statute to take enforcement action against an offending person and acting in the capacity as either the Local Housing Authority ("LHA") or the Local Weights and Measures Authority ("LWMA").
FP	Financial Penalty (also referred to penalty charge (PC) in some Regulations)
FPN	Financial Penalty Notice – as an alternative to a prosecution.
FTT	First-tier Tribunal (Property Chamber).
Landlords	Each piece of legislation has differing definitions of the person that has a duty and can be in breach of a duty or commit an offence. For a full definition reference must be made to the relevant legislation. In this policy the term landlord is used to refer to wider parties that include letting agents, property agents and property managers. It includes persons who are managing or in control of a premise let on a tenancy or licence.
LBC	The London Borough of Croydon in its capacity as either the Local Housing Authority or Local Weights and Measures Authority
LBO	Landlord Banning Order; made by the First-Tier Tribunal on application banning a person from— (a) letting housing in England, (b) engaging in English letting agency work, (c) engaging in English property management work, or (d) doing two or more of those things.
Offence	The legislation makes provision for the EA to take action where the landlord has committed an offence.
PCN	Penalty charge notice – a civil penalty including a penalty charge ("PC") in the sanction in some regulations.
PRS	The Private Rented Sector in Croydon is 35% (58,585) of the total borough housing stock.
Exemptions Register	Private Rented Sector Exemptions Register in relation to the 2015 or 2019 Energy Regulations
RRO	Rent Repayment Order
Tenant	Each piece of legislation has differing definitions of the person affected; so the beneficiary of a tenancy or licence and subject to the actions, breaches, or consequences of the approach of a landlord, letting agent, property agent, property manager or third party. For a full definition reference must be made to the relevant legislation. It can include as in the 2019 Fees Act: a tenant, or a person acting on behalf of, or who has guaranteed the payment of rent by, a tenant.

1.4 Further important reference documentation

The following documents have been duly considered as part of developing this revised policy and should be referred to, as necessary, in future LBC decision making.

1. The statutory guidance issued by the Secretary of State under;
   - Section 41 (4) of the 2016 Act relating to making applications for Rent Repayment Orders [LINK] [6th April 2017].
   - Article 12 of schedule 13A in the 2004 Act (as amended) in relation to FP under the 2004 Act [LINK] [6th April 2018].
   - Section 6(4) of the Tenant Fees Act 2019 [LINK]. [30th September 2020].
   - Section 30 (7) of the 2016 Act relating to making a decision about whether to make an entry in the MHCLG database under section 30 of the Act, and the period to specify in a decision notice under section 31 of the Act [LINK].
   - Publicised statement of principles in relation to the issue of a FP under the 2015 Alarm Regulations [LINK].
   - Regulation 5(3) of the 2019 CMP Regulations regarding 'Mandatory client money protection for property agents - enforcement guidance for local authorities'; MHCLG May 2019 [LINK].
2. The non-statutory guidance issued by the Secretary of State under;
   - The whole of Part 2, Chapter 2 of the 2016 Act (Banning Order Offences and guidance for EA) [LINK].
   - Guide for local authorities: electrical safety standards in the private rented sector 19th June 2020 [LINK]
   - Guide for local authorities: the domestic private rented property minimum standard April 2020 [LINK]
   - Guidance on PRS exemptions and Exemptions Register evidence requirements 22nd March 2019 [LINK]
3. The Code for Crown Prosecutors which gives guidance to prosecutors on the general principles to be applied when making decisions about prosecutions.
4. Sentencing Council Guidance for Health and Food Safety Offences, 1st February 2016 [LINK].
5. Croydon Council Public Protection Enforcement Policy (reviewed October 2020). [LINK].
6. Making Homes Safe – May 3rd 2017. Executive decision to give authority to use 'Determining the Penalty' [LINK].
7. Regulation of Investigatory Powers Act 2000 controlling evidence gathering.
8. Investigatory powers available for the purposes of enforcing the 2019 Fees Act; schedule 5 to the 2015 CR Act.
9. Offences Taken into Consideration and Totality. Sentencing Council for England and Wales. March 2012 [LINK].
10. Policy regarding the granting of property licences under any new licensing designation(s) Cabinet report 11th May 2020 Appendix 11 [LINK].
11. Publicising Sentencing Outcomes Ministry of Justice June 2011. [LINK].
12. Rogue landlord database reform document – April 2019 [LINK].
13. The Smoke and Carbon Monoxide Alarm (England) Regulations 2015: explanatory booklet for local authorities [LINK].

2.0: Offences and breaches where Financial Penalties can be issued

This section considers the legislation that has been introduced since 2015 and the opportunities provided for LBC to deal with the offences and breaches committed; including through the issue of a financial penalty or penalty charge ("FP").

2.1: Offences committed under the Housing Act 2004 and Housing and Planning Act 2016.

With effect from the 6th April 2017, section 249A and schedule 9 of the Housing Act 2004 ("2004 Act") allows the Enforcing Authority ("EA") to issue a FP. A FP can be issued up to a maximum penalty of £30,000 with the EA determining the level of the penalty in line with an agreed policy in each particular case. Under the 2016 Act, a FP can be issued to a landlord or agent (includes other responsible persons) who commits one of the following 2004 Act or 2016 Act offences.

- Section 30 (1) – failure to comply with an improvement notice
- Section 72 (1) – not licence a house in multiple occupation
- Section 72 (2) – licensed house in multiple occupation [HMO] that is overcrowded
- Section 72 (3) – not comply with HMO licence conditions
- Section 95 (1) – not licence a private rented property (including non-mandatory HMO)
- Section 95 (2) – not comply with a private rented property licence condition.
- Section 139 (7) – contravention of an overcrowding notice for HMO
- Section 234 (3) – non-compliance with the HMO management regulations; AND
- Section 21(1) 2016 Act - the breach of a landlord banning order, including sanction for continued breach

A FP is an alternative to a prosecution in the Magistrates Court where the fine is unlimited (level 5 offence or unlimited). A person to whom a final FP is given may appeal to the First-tier Tribunal against the decision to impose the penalty or the amount of the penalty. These are civil penalties so debt recovery will be via the County Court in the event of non-payment.

A person convicted of an offence under section 21(1) of the 2016 Act is liable to a FP of up to £30,000 under section 23 or alternatively on summary conviction to imprisonment for a period of up to 51 weeks or to a fine or to both. If the breach continues after conviction, a person commits a further offence and is liable on summary conviction to a fine not exceeding 1/10th of level 2 on the standard scale for each day or part of day in which the breach continues. Following the service of a FP, if a breach continues for more than 6 months, a further FP may be imposed for each additional 6 month period for the whole or part of which the breach continues.

Section 234(3) of the 2004 Act provides that a person commits an offence if he fails to comply with a regulation. Hence, each failure to comply with the regulations constitutes a separate offence for which a civil penalty can be imposed. In situations where a landlord has failed to comply, under section 30(1), with an improvement notice only one civil penalty can be issued.

The 2004 Act and 2016 Act offences listed above are all banning order offences as prescribed in the 2017 BOO Regulations.

2.2: Smoke and Carbon Monoxide Alarm (England) Regulations 2015.

The 2015 Alarm Regulations, under regulation 4, place a duty on a landlord to ensure that from the 1st October 2015 in relation to premises occupied and let on a specified tenancy:

(a)(i) a smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation;

(a)(ii) a carbon monoxide alarm is equipped in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel (coal fire, log burning stove) burning combustion appliance; and

(b) checks are made by or on behalf of the landlord to ensure that each prescribed alarm is in proper working order on the day the tenancy begins if it is a new tenancy.

Under regulation 8(1) an EA can impose a penalty on a landlord for a breach of the duty under regulation 6(1). An EA can, where it is satisfied that, on the balance of probabilities, a landlord on whom it has served a remedial notice is in breach of the duty under regulation 6(1), require the landlord to pay a penalty charge ("PC"). The authority must determine the level of the PC which must not exceed £5,000. A penalty charge notice ("PCN") may specify that if the landlord complies with the requirement to pay or request a review within 14 days the PC will be reduced by an amount specified in the PCN.

The existing penalty charge structure was resolved by Executive decision on May 3rd 2017 to commence on the 8th May 2017 as is set out in the published statement of principles [LINK]. The current Statement of Principles is attached as Appendix 2 to the Cabinet report for January 18th 2021 and version proposed attached as Appendix 3. The proposed penalty charge is provided in Table 3 and comprises two parts;

- a punitive element for failure to comply with the absolute requirement to comply with a remedial notice, and / or
- a reasonable cost element relating to costs incurred by LBC in complying with its duties (including completing the works).

Table 3: Penalty Charge Structure for LBC for 2015 Alarm Regulations.

Breach	Payment period	Penalty Charge[2]	
		Punitive Charge	(and) Costs[3]
Breach of regulation 6(1)	Within 28 days	£5,000[1]	Reasonable costs plus 30% administrative charge

Note:
1. The maximum penalty charge is £5,000. The level of penalty is to be determined using the Statement of Principles in conjunction with the policy 'Determining the Penalty and Banding the Offence'.
2. An early payment opportunity is available for this penalty charge structure as permitted by Paragraph 9(2) of the 2015 Alarm Regulations.
3. There is no other provision made in the regulations for enforcement authorities to redeem costs for any remedial works carried out. Collection of the civil penalty fine is the only method.

Under Regulation 9(2) a PC can be reduced in circumstances where the landlord either makes the required payment to pay the PC, or gives written notice to the EA of a wish for the EA to review the PC. If neither is satisfactorily completed within the 14 days then the PC reverts to the full amount. The PC amount will reflect the determined penalty score using Table 16. The reduced amount will be the determined penalty score reduced by one point, a 'mitigating factor' and this amount will be specified in the notice. Where the PC is Band 2, 7 points or greater, the reduced amount will be Band 2, 6 points at £4,000.

The costs incurred will be added to any penalty not determined as being at its maximum following the determination of the punitive element.

Premises that are required to be licensed under Part 2 (houses in multiple occupation) or Part 3 (selective licensing) of the 2004 Act are exempt from the 2015 Alarm Regulations. Part 6 of the 2015 Alarm Regulations considers Licences under Parts 2 and 3 of the Housing Act 2004 and introduces amendments to Schedule 4 to the 2004 Act; the mandatory conditions. A breach of the amended conditions can be considered for an offence under section 72(3) or section 95(2), as relevant, of the 2004 Act. This can result in the issue of a FP or prosecution in line with the policy 'Determining the Penalty' and 'Banding the Offence'.

A breach of the 2015 Alarm Regulations is not a banning order offence nor can it be considered for a rent repayment order ("RRO"). Regulation 12(6) allows the sums received by a local housing authority under a penalty charge to be used by the authority for any of its functions.

2.3: Tenant Fees Act 2019.

The Tenant Act 2019 ("2019 Fees Act") limits the payments a landlord or letting agent ("landlord") can charge in connection with a tenancy in England. If the payment being charged is not specified as a permitted payment it is not lawful, and a landlord or letting agent under sections 1 and 2 must not ask a tenant (or their guarantor) to pay it. The payments are relevant where the landlord or agent requires the person to do any of those things in consideration of the grant, renewal, continuance, variation, assignment, novation or termination of such a tenancy. Permitted payments [schedule 1 of the 2019 Fees Act] include:

- 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.

From 1 June 2020, the ban on non-permissible fees applies to all assured shorthold tenancies, tenancies of student accommodation and licences to occupy housing. Section 6 makes it a duty of every local weights and measures authority ["LWMA"], LBC being one such authority, to enforce the 2019 Fees Act and determine whether a tenant has been charged an unlawful or unfair payment by a landlord or agent.

A breach of the legislation will usually be a civil breach with a financial penalty ("FP") of up to £5,000. LBC is empowered to issue a FP under section 8 or to take a prosecution in the event of subsequent offences under section 12; see Table 4. A FP can include two separate elements:

1. A penalty in relation to the offence; and
2. The requirement on the landlord to make repayment of the prohibited payment, holding deposit or amount paid under a prohibited contract; to the tenant.

Under section 8, where LBC is satisfied beyond reasonable doubt that a person has breached section 1 (prohibitions applying to landlords), section 2 (prohibitions applying to letting agents), or Schedule 2 (treatment of holding deposits), the authority may impose a FP. The FP may be of such amount as the authority determines, but subject to subsection (3), must not exceed £5,000. Only one FP may be imposed in respect of the same breach. Schedule 3 makes further provision about FPs under this section and other payments required to be made under the 2019 Fees Act.

In circumstances where a landlord or agent commits a further breach within five years of the imposition of a FP or conviction for a previous breach, this is a breach of section 12 and will be a criminal offence. In such a case, LBC will have discretion over whether to prosecute or impose a FP. Upon conviction, the courts can impose an unlimited fine. Alternatively, LBC may impose a FP of up to £30,000. Where a FP is imposed this does not amount to a criminal conviction.

A breach of schedule 2, the requirement to repay the holding deposit is a civil offence and will be subject to a FP of up to £5,000.

Table 4: Financial penalty levels for first and further offences under the 2019 Fees Act.

Breach of:	**First Offence**	**Further breach within 5 years [2]**
Charging unlawful fees	Civil breach – up to £5,000 fine [1].	Criminal offence with a prosecution OR a financial penalty of up to £30,000 can be issued as an alternative [3]. The criminal offence would be a banning order offence under section 14 of the Housing and Planning Act 2016.
Unlawfully retaining the holding deposit	Civil breach – up to £5,000 fine	Civil breach – financial penalty of up to £5,000 fine. Not a banning order offence

Note:

1. The £5,000 maximum relates to the penalty alone. It is not deemed to be the sum of the penalty and the prohibited payment amount.
2. The period of five years (in which a second breach could occur) begins on the day on which the relevant penalty was imposed or the person was convicted. The date on which the penalty is imposed is the date specified in the final notice.
3. A further breach resulting in the issuing of a FP is not deemed a criminal conviction.

Each request for a prohibited payment is a breach. For example, the following would be considered multiple breaches:

- An agent/landlord charging different tenants under different tenancy agreements prohibited fees
- An agent/landlord charging one tenant multiple prohibited fees for different services at different times
- An agent/landlord charging one tenant multiple prohibited fees for different services at the same time
- An agent/landlord charging one tenant one total prohibited fee which is made up of different separate prohibited requirements to make a payment e.g. £200 requested for arranging the tenancy and doing a reference check would represent multiple breaches.

In the guidance to the 2019 Fees Act it says the following “In all instances when determining whether to prosecute or impose a FP, LBC must be fair, independent and objective. They must not let any personal views about ethnic or national origin, gender, disability, age, religion or belief, political view, sexual orientation of the parties involved influence their decisions”. Neither must LBC be affected by improper or undue pressure from any source. LBC must always act in the interest of justice and not solely for

obtaining a conviction. LBC 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.

LBC 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. LBC may decide that a significant FP, rather than prosecution, is the most appropriate and effective sanction in that particular case.

The 2019 Fees Act enables LBC to pursue the repayment of a prohibited fee. The repayment amount can be included in the FP served on the landlord or letting agent. An EA must be satisfied, on the balance of probabilities that that the breach resulted in a tenant making a prohibited payment to a landlord, letting agent or third party and that all or part of the prohibited payment has not been repaid to the tenant.

Section 15 makes provision for tenants to recover unlawfully charged fees through the First-Tier Tribunal Property Chamber ("FTT"). LBC or Citizens Advice Bureaux can provide support with applications to the FTT to regain the prohibited fee; issues with Letting Agents can be referred to the redress scheme. A landlord or agent can agree a repayment method with the tenant. An application cannot be made to the FTT for repayment if the LBC has, in relation to the relevant breach, commenced criminal proceedings or required the landlord or agent to repay the tenant. Section 16 provides that LBC may help a tenant to make an application under section 15, for example, by providing advice or by conducting proceedings.

LBC may further help a tenant in the event that the landlord or agent does not comply with the order of the FTT and needs to apply to the county court.

LBC should consult with the lead enforcement authority to ensure their policies are in line with the national approach to promote consistency, alongside local priorities. This includes the requirement to notify the lead enforcement authority as soon as is reasonably practicable whenever LBC imposes a FP. LBC must consult another local authority when it proposes to take enforcement action outside of its local area. LBC may operate outside its area with landlords owning multiple properties or letting agents acting nationally.

The 2019 Fees Act amends section 14 (4) of the 2016 Act in that an offence under section 12 is also a banning order offence.

EA will be able to retain the money raised through FP for the costs incurred in, or associated with, carrying out any enforcement function in relation to the private rented sector.

2.4: The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020.

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 ("2020 Electrical Regulations") were passed on the 15th March 2020 having been made under the provisions of the 2016 Act and the 2004 Act. The 2020 Electrical Regulations came in force in England on the 20th June 2020 and applied in two stages, to new specified tenancies from the 1st July 2020 and to existing specified tenancies on the 1st April 2021. They place additional duties on landlords with respect to electrical safety in private rented properties. Landlords are to meet this duty by organising for the completion of an electrical inspection condition report ("EICR") or electrical installation report ("IR") and act on recommendations that require the completion of key safety works to the fixed installation.

The 2020 Electrical Regulations apply equally to houses in multiple occupation ("HMO"). The Management of Houses in Multiple Occupation (England) Regulations 2006 previously, through regulation 6(3), put specific duties on landlords around electrical safety. This requirement has now been repealed, and electrical safety in HMOs is now covered by the 2020 Electrical Regulations.

Where a private landlord has, on the balance of probabilities breached a duty under regulation 3, the EA must serve a remedial action notice ["RAN"]. If a landlord does not complete the work in the RAN schedule the EA can complete them in default; in the case of works deemed urgent; the EA can complete them immediately. A landlord prevented from gaining access by his tenants will not be deemed in breach of this duty. A landlord must organise for an inspection and test at least every five years and must retain a copy of the certification for the tenant and future authorised electrical inspector.

An EA may impose a financial penalty ("FP") (or more than one penalty in the event of a continuing failure) in respect of the breach. A FP may be of such amount as the EA determines; but must not exceed £30,000. The breaches that may attract a FP on a landlord are in situations where he fails to ensure:

- Regulation 3 (1) (a) ensure that the electrical safety standards are met during any period when the residential premises;
- Regulation 3 (1) (b) ensure every electrical installation in the residential premises is inspected and tested at regular intervals by a qualified person; and
- Regulation 3 (1) (c) ensure the first inspection and testing is carried out—
  (i) before the tenancy commences in relation to a new specified tenancy; or
  (ii) by 1st April 2021 in relation to an existing specified tenancy.
- Regulation 3 (4) Where a report under sub-paragraph (3)(a) indicates that a private landlord is or is potentially in breach of the duty under sub-paragraph (1)(a) and the report requires the private landlord to undertake further investigative or remedial work, the private landlord must ensure that further investigative or remedial work is carried out by a qualified person within—

(i) 28 days; or
(ii) the period specified in the report if less than 28 days, both starting with the date of the inspection and testing.

- Regulation 3 (6) Where further investigative work is carried out in accordance with paragraph (4) and the outcome of that further investigative work is that further investigative or remedial work is required, the private landlord must repeat the steps in paragraphs (4) and (5) in respect of that further investigative or remedial work.

The EA must follow the prescribed steps as part of imposing a FP on a landlord for a breach of a duty under regulation 3. The EA must serve a notice of intent within 6 months beginning with the first day on which the authority is satisfied, in accordance with regulation 11, that the private landlord is in breach. If the offence was a continuing offence, within 6 months of the date that the breach stopped. A landlord can make representations that must be considered as part of the EA deciding whether or not to proceed to a full FP.

Where an EA imposes a FP under the 2020 Electrical Regulations, it may apply the proceeds to meet the costs and expenses incurred in, or associated with, carrying out any of its enforcement functions in relation to the private rented sector.

2.5: The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (as amended by the Energy Efficiency (Private Rented Property) (England and Wales) (Amendment) Regulations 2019).

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 ("2015 Energy Regulations") came into force on the 1st October 2016 using powers conferred to the Secretary of State in the Energy Act 2011. The rules came into force on various dates beginning with the 1st April 2018 and apply to all domestic private rented properties that are let on specific types of tenancy agreement and legally required to have an Energy Performance Certificate ("EPC").

Part Two of the 2015 Energy Regulations allow the tenant of a private rented property to request permission from their landlord to make energy efficiency improvements in the property they rent. Part Three of the Regulations outline that private sector landlords must not, after 1st April 2018 grant a new tenancy of a property (including an extension or renewal), nor continue to let the property (on an existing tenancy) after 1 April 2020, where the EPC is below the minimum level of energy efficiency. The Domestic Minimum Energy Efficiency Standard (MEES) Regulations set a minimum energy efficiency standard ("MEES") for domestic private rented properties. The MEES is Energy performance indicator of Band E and where a property is sub-standard, landlords make energy efficiency improvements which raise the EPC rate to at least a minimum of Band E before they let the property.

The Energy Efficiency (Private Rented Property) (England and Wales) (Amendment) Regulations 2019 make changes to Part 3 of the 2015 Energy Regulations. Since 1 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 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. Time periods exist for the length of an exemption registered before the 2019 Energy Regulations made amendments.

AN EA may serve a compliance notice on a landlord who appears to be, or to have been at any time within the 12 months preceding the date of service of the compliance notice, in breach of Regulation 23. Giving at least one month, the compliance notice enables the EA to monitor compliance by requesting relevant information which can include copies or the original of:

- the EPC that was valid for the time when the property was let;
- any other EPC for the property in the landlord's possession;
- the current tenancy agreement used for letting the property;
- any Green Deal Advice Report in relation to the property;
- any other relevant document that the enforcement authority requires in order to carry out its functions.

The compliance notice may also require the landlord to register copies of the requested information on the PRS Exemptions Register. The compliance notice will specify both the name and address of the person that a landlord must send the requested information to and the date by which the requested information must be supplied.

An EA may serve a financial penalty notice on a landlord who appears to be, or has been at any time in the 18 months preceding the date of service of the FPN, in breach of Regulation 23 and / or Regulation 37(4)(a). Regulation 33 allows for a temporary exemption to Regulation 23in certain specified circumstances. The FPN may include a FP (saying how much and with the calculation), a publication penalty or both. The FPN will explain which of the provisions the landlord is believed to have breached, whether they must take any action to remedy the breach and, if so, the date for compliance. Under regulation 38(4) a further FPN may be issued if the action required is not completed in the time specified.

Table 5: Maximum financial penalty levels under Regulation 40 for the different breaches of 2015 Energy Regulations

Breach of:	Length of breach on issue of FPN	Financial penalty (not exceeding)	Publication penalty
Regulation 23 - landlord has let a sub-standard property in breach of the 2015 Energy Regulations	Less than 3 months	£2,000	✓
	3 months or more	£4,000[1]	✓

Regulation 36(2) – landlord has registered false or misleading information on the PRS Exemptions Register		£1,000	✓
Regulation 37(4)(a) – landlord has failed to comply with the compliance notice		£2,000	✓
Regulation 38(4) – landlord has failed to comply with the action in a penalty notice (new penalty notice served)		£5,000[2]	✓

Notes.

[1.] £5,000 is the maximum level of penalty which applies to each property. If, for instance, a landlord is fined £2,000 for being in breach of Regulations 23 for less than three months, and they continue to let the property below the minimum standard after three months, the most they can be fined for a three months or more breaches, will be £3,000. £5,000 in total.

[2.] Where a landlord fails to take the action required by a penalty notice within the period specified in that penalty notice in accordance with paragraph (2) (c) a further penalty notice can be served. The total of all fines for the same breach remain capped at £5,000.

The 2015 Energy Regulations introduce some FP fine maximums. 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. The penalty notice may include a financial penalty, a publication penalty or both. Local authorities can decide on the level of the penalty, up to maximum limits set by the Regulations.

This maximum amount of £5,000 applies per property, and per breach of the 2015 Energy Regulations. This means that if, for instance, a landlord is fined £2,000 for being in breach of the 2015 Energy Regulations for less than three months, and the landlord continues to let the property below the minimum standard after three months, the most the landlord can be further fined for a three months or more breach, will be £3,000 so £5,000 in total.

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 but the ability to issue a further financial penalty starts again with a new tenancy.

Under Regulation 31, a landlord has a defence against the breach under Regulation 23 where he has, within the preceding five years, been unable to increase the energy performance indicator of the property to not less than the MEES as a result of the tenant refusing or despite reasonable attempts third party consent is not achieved. To rely on these exemptions the landlord must register the information on the PRS Exemptions Register. In fact, if a landlord wants to reply on any of the following regulations; 24(2), 25, 31(1), 32(1), 33(1) or 33(3) he must also register the information set out in the Schedule on the PRS Exemptions Register. This

exemption lasts 5 years after that, it will expire and a landlord must try again to improve the property's EPC rating to E. If it is still not possible, a further exemption must be registered.

If a House in Multiple Occupation (HMO) is legally required to have an EPC (Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007), and if it is let on one of the qualifying tenancy types, then it will be required to comply with the minimum level of energy efficiency. However, individual rooms within HMOs are not required to have their own EPC, so a property which is an HMO will only have an EPC if one is required for the property as a whole.

The PRS Exemptions Register is an online platform which allows landlords (or an agent acting on their behalf) to register valid exemptions from the minimum energy efficiency requirements. The Register can be accessed on the Department for Business, Energy and Industrial Strategy ["BEIS"] website. Landlords must register both the exemption type and the information required to support that exemption before they can rely on it and let (or continue to let) the property. There is no fee or charge. It is a breach of the Regulations to put false or misleading information. From 1 April 2018, where the EA considers that a landlord may be in breach of the Regulations or a landlord has been in breach of the rules at any time in the past 12 months, it may serve a Compliance Notice requiring the landlord to provide evidence to the enforcement authority.

A publication penalty 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.

The enforcement authority may 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 EA, or while their decision to uphold the penalty notice could be, or is being, appealed.

2.6: The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme) Regulations 2019

The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme) Regulations 2019 ("2019 CMP Regulations") is made under section 133 of the 2016 Act and amended by the 2019 Tenant Fees Act. The 2019 CMP Regulations are enforced by LWMA in England, who must have regard to the statutory guidance which has been issued [LINK].

The 2019 CMP Regulations apply to letting agency work and property agency work where the premises consist of housing let under a tenancy. The definition of a property agent is found at s133 (4) of the 2016 Act; and there are further definitions in s.54 (5) and s55 (3) of that Act for letting agency work and property management work. A property agent includes both a letting agent and property manager.

It is a legal requirement that property agents in the private rented sector holding client money obtain membership from a Government approved or designated client money protection scheme from 1 April 2019 (no transition period). 'Client money' means money received by a property agent in the course of English letting agency or property agency work. Examples of client money include the rent, a holding deposit, and monies paid to a property agent for repairs and maintenance work or maintenance floats.

Client money does not include money held in accordance with an authorised tenancy deposit scheme (when deposited) within the meaning of Chapter 4 of Part 6 Housing Act 2004. Agents can demonstrate that they do not hold client money by providing evidence which may take the form of, but is not limited to evidence that; the tenant pays rent directly to landlord, deposits are paid directly to the landlord for the landlord to protect and any invoices for maintenance / remedial work on a client property is given directly to the client to pay.

If the scheme provides a certificate of membership, the agent must:

- Display the certificate where it's likely to be seen at each of the agent's premises in England at which the agent deals face-to-face with persons using or proposing to use the agent's services
- Publish a copy of the certificate on the agent's website (if any); and
- Produce a copy of the certificate to any person who may reasonably require it, free of charge.

Table 6 summarises the two main requirements in the 2019 CMP Regulations with which property agents must comply.

Table 6: Maximum financial penalty levels under Regulations 6 and 7 for the different breaches of 2019 CMP Regulations

Breach of:	Financial penalty (not exceeding)	Continued breach[1] (regulation 9)
Regulation 3 – Requirement to belong to an approved or designated client money protection scheme from 1 April 2019.	£30,000	✓
Regulation 4 – Transparency Requirements; breaches include;	£5,000[2]	✓

• fails to display a certificate of its membership of an approved client money protection scheme prominently in their office(s) or on their website, and/ or • fails to provide copies of these certificates free of charge to anyone who reasonably asks, and/or • fails to notify its clients of any change in the status of its membership of an approved scheme within 14 days of the occurrence.		

Note:
1 - A continued breach includes the authority for an EA to serve a further FP after a 28 day period from the day after the date of the previous FP.
2 – Each breach can be subject to a separate FP, each with a maximum of £5,000.

The lead enforcement authority has the power to take steps to enforce the relevant letting agent legislation where necessary or expedient to do so. Where an EA proposes to impose a FP under the 2019 CMP Regulations for a breach of regulation 3 and or 4 that occurs in the area of a different local authority the EA must notify the EA in the relevant local authority of its intent to do so.

An EA is under a duty to enforce the 2019 CMP Regulations and will be able to retain the money raised through FP for carrying out any of their enforcement functions in relation to the private rented sector.

Where in addition to breaching the 2019 CMP Regulations, a property agent breaches the requirements in the Consumer Rights Act 2015 relating to the disclosure of client money protection scheme membership, enforcement action could also be brought under the Consumer Rights Act. Where an EA is satisfied, on the balance of probabilities, that a property agent has breached the Consumer Rights Act 2015 the EA may impose a FP in respect of the breach which;

- may be of such amount as the authority imposing it determines; but
- must not exceed £5,000

2.7: The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to belong to a scheme) (England) Order 2014

EA have a duty, in their area, to enforce The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to belong to a scheme) (England) Order 2014 [2014 Redress Scheme Order“]. The 2014 Redress Scheme Order creates, from the 1st October 2014, the legal requirement for a person engaging in letting agency work or property management work to belong to an approved redress scheme and to provide details of the scheme to which they belong. As of 2nd December 2020 there are only two approved schemes.

The Order was made in exercise of powers conferred by sections of the Enterprise and Regulatory Reform Act 2013 with letting agency work and property management work defined in sections 83 and 84. Lettings agency work is work done by an agent in the course of a business in response to instructions from:

- a private rented sector landlord who wants to find a tenant: or
- a tenant who wants to find a property in the private rented sector

But it does not include matters such as publishing advertisements or providing information; or providing a way for landlords or tenants to make direct contact with each other in response to an advertisement or information provided.
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.

Table 7: Maximum FP levels for breaches under Part 2, article 3 and Part 3 article 5 of the 2014 Redress Scheme Order

Breach of requirement:	**Financial penalty (not exceeding)**
Article 3 – Requirement to belong to an approved redress scheme, when required to belong to one by the order, letting agency work[1].	£5,000
Article 5 – Requirement to belong to an approved redress scheme, when required to belong to one by the order, property management work.	£5,000

Note:
1 – For dealing with complaints when made by a person who is or has been a prospective landlord or prospective tenant [subject to exclusions].

An EA has authority under article 8 to require, by notice, a property agent to pay a monetary penalty of such amount as the EA may determine up to a maximum of £5,000.00. The 2014 Redress Order requires that a notice of intent must be first served and within 6 months of the date on which the EA is first satisfied that the person has failed to comply with either article 3 or 5.

EA will be able to retain the money raised through FP for any of its functions. Guidance for the sector is provided here [LINK].

2.8: Consumer Rights Act 2015

The Consumer Rights Act 2015 ["2015 CR Act"] came into force on 1 October 2015. It is the duty of a LWMA as EA in England and Wales to enforce Part 3, Chapter 3 of the 2015 CR Act. This chapter creates a duty, under section 83(1), for certain information to be publicised, refer to Table 8, by any person engaging in letting agency work or property management work; these roles are defined in s 86 of the 2015 CRA Act.

Table 8: Publicity responsibilities for letting agents engaged in letting agency and/ or property management work.

Summary of duty	The Duty – section in Consumer Protection Act 2015	Relevant to letting agents engaged in		Maximum Level of financial penalty
		'Letting agency work'	'Property management work'	
A list of 'relevant fees' under section 83 (1) as charged by the agent.	Section 83 (2), and section 83 (3)	a) Fee description b) a tenants liability, and c) a fee breakdown.	×	£5,000
Information about client money protection scheme membership	Section 83 (6)	a statement – of whether the agent is a member of a client money protection scheme	a statement – of whether the agent is a member of a client money protection scheme	£5,000
Information about redress scheme membership	Section 83 (7)	a statement— (a) that indicates that the agent is a member of a redress scheme, and (b) that gives the name of the scheme.	a statement— (a) that indicates that the agent is a member of a redress scheme, and (b) that gives the name of the scheme.	£5,000

The required information must be displayed:

- Visibly at each of the agents premises where face to face contact is made with customers and clients,
- On the agent's own website (if they have one),
- On any third party website, or provide a link to the information on their own website

The EA may impose a penalty under section 83(3) in respect of a breach which occurs in England and Wales (for Wales with consent of that authority) but outside of the LBC area (as well as in respect of a breach which occurs within that area). Only one penalty under this section may be imposed on the same letting agent in respect of the same breach.

The amount of penalty imposed can be determined by the EA up to a maximum of £5,000.00 using any guidance issued by the Secretary of State about compliance by letting agents with duties imposed by or under section 83 or the exercise of its functions under this section or Schedule 9. EA will be able to retain the money raised through FP for any of its functions.

3.0 Other sanctions against Landlords that commit an offence.

3.1: Rent Repayment Orders

As of April 2017, a tenant or EA could apply for a Rent Repayment Order ("RRO") under sections 73 and 96 of the 2004 Act for the offence of either failing to license an HMO (Part 2, section 72(1)) or failing to license a licensable house (Part 3, section 95(1)) of the 2004 Act. Here a tenant could only make an application where the EA had either secured a conviction *or* following a successful RRO award, within 12 months of either event, whichever is the later. Section 96(8) enables further applications from further tenants. For offences wholly committed on or after 6 April 2017, the provisions in the 2016 Act then apply.

Chapter 4 of Part 2 of the 2016 Act widened the options for an EA or tenant, during or within 12 months of the date of offence, to be able to make an application to the First Tier Tribunal (FTT) for a RRO against a landlord who commits one of the following offences (whether or not convicted).

- Failure to comply with an Improvement Notice under section 30* $,
- Failure to comply with a Prohibition Order under section 32(1) $,
- Offence of failing to license an HMO under section 72(1)* $,
- Offence of failing to license a licensable house under section 95(1) Part 3* $,
- Using violence to secure entry to a property under section 6 of the Criminal Law Act 1977 $, and
- Illegal eviction or harassment of the occupiers of a property under section 1(2), (3) and (3A) of the Protection from Eviction Act 1977 $,
- The breach of a banning order under section 21(1) of the 2016 Act*;

Note:

* - The sanction can be to prosecute in the Magistrates Court, to issue a financial penalty and / or an application for RRO.

$ - This offence falls under the definition of a banning order offence.

Under section 46 of the 2016 Act, where a landlord has been convicted of the offence or issued with a FP, to which the RRO relates, the FTT must award the RRO and require that the maximum amount of rent in its power is repaid (capped at a maximum of 12 months) (for certain offences). 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. In exercising their functions in respect of RRO, an EA must have regard of the statutory guidance issued.

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. An application for a RRO can be made or supported by an EA if no conviction has been secured. 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.

A decision about an application for a RRO will normally take place at the stage "*Determining the Penalty*" as part of a review of proposed actions. A decision can also be held in abeyance pending the securing a conviction or issuing a FPN as the notice of intention to apply can be made within 12 months. Before applying for a RRO an EA must give the landlord a notice of intended proceedings including information explaining how a landlord can make representations within a period of not less than 28 days.

3.2: Landlord Banning Order

Chapter 2 of the 2016 Act introduced the "Landlord Banning Order" (LBO) to be pursued for the most serious and prolific offenders. The power was available from the 6th April 2018 to allow an EA to determine, in line with their policy, on whether to pursue a LBO on a case-by-case basis following conviction for a banning order offence. An EA makes the application for a banning order which is an order by the First-tier Tribunal that bans a landlord or letting 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.

Before an application, an EA must first serve a notice on the landlord or agent stating; why it is applying for a banning order, the length of order it will apply for and that s/he has at least 28 days to make representations in their defence. The notice must be served within six months beginning with the date of the conviction for the banning order offence.

A landlord can be banned for a minimum of 12 months with no maximum; the length proposed in the application by the EA but determined by the FTT. A banning order may contain exceptions to the ban to some or all of the period the ban lasts for. The exceptions may also be subject to conditions. If an EA believes a banning order offence has been committed by a body corporate with the consent or knowledge of an officer of that body corporate then they should seek separate banning orders for both the body corporate and the officer of the body corporate. AN EA must apply for a banning order against any officer who has been convicted of the same offence as a body corporate.

A banning order offence is an offence of a description specified in the schedule to The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018. A list of the 41 banning order offences is also in at Annex A of the non-statutory guidance.

They also include the unlawful eviction or harassment, under s.1 Protection from Eviction Act 1977 and using or threatening violence for securing entry into premises, under s.6 Criminal Law Act 1977

A spent conviction is a conviction which, under the provisions of the Rehabilitation of Offenders Act 1974, is considered spent, the offender having completed the specified rehabilitation period specified in the Act, which is subject to exemptions. A spent conviction should not be taken into account when determining whether to apply for and/or make a banning order.

The Government's expectation is that a local housing authority will pursue a banning order for the most serious offenders who have been convicted of a banning order offence. The level of fine is a consideration but a low fine does not prevent an application.

A criminal offence was created by section 21(1) of the 2016 Act; breach of a Banning Order; this power became available on the 6th April 2018. A person who, without reasonable excuse, breaches a banning order commits an offence which can result in the imposition of a financial penalty or prosecution proceedings in the Magistrates Court. A FP, under section 23, maybe imposed to a maximum of £30,000 as a result of the breach. Where the person is guilty of a breach, following a summary conviction, they are liable to imprisonment for a period not exceeding 51 weeks or a fine or both. A person banned who commits further breaches can be subject to further criminal sanctions or where the breach continues for over 6 months a further FP.

If the Tribunal makes a banning order, the local housing authority must make an entry in the database of rogue landlords and property agents under the 2016 Act. An entry may also be made if a person is convicted of a banning order offence.

The LBC will also publicise the name of any person or business that is made subject of a Banning order.

A person against whom a banning order is made may apply to the First-tier Tribunal for an order under this section revoking or varying the order.

3.3 Ministry for Housing Communities and Local Government's Rogue Landlord and Property Agents database.
The database is a new tool for local housing authorities in England to keep track of rogue landlords and property agents. Database users will be able to view all entries on the database, including those made by other local housing authorities. The database can be searched to help monitor known rogues, especially those operating across council boundaries and will help authorities target their enforcement activities. The Government has published statutory guidance and local housing authorities must have regard to the criteria in this guidance in deciding whether to;

1. Make an entry in the database under section 30 of the 2016 Act, and
2. The period to specify in a decision notice under section 31 of the 2016 Act.

An entry can be made for a person or organisation (who was a residential landlord or property agent at the time) who has:

- been convicted of a banning order offence; and/or
- received two or more financial penalties in respect of a banning order offence within a period of 12 months.

In October 2018 the Prime Minister committed to opening up access to information on the database of rogue landlords and property agents to tenants. The consultation ran from July to October 2019 and sought views on both widening access to the database to allow tenants and prospective tenant's access to the database and expanding the scope of offences and infractions which could lead to entries on the database. Where further offences and infractions are included this policy will be widened to consider the action against a landlord that has committed one of those wider breaches.

An EA must consider the variation or removal of an entry pursuant to sections 36 or 37 of the 2016 Act.

3.4 Mayor of London Landlord and Letting Agent checker.

All London councils have agreed to participate in the Rogue Landlord and Agent Checker, which contains information about private landlords and letting agents who have been prosecuted or fined for certain offences (Table 9). LBC will therefore publish all convictions or penalties issued where no appeal was made or the conviction/penalty was upheld on appeal.

There are three parts to the checker;

- **Public tier** - a list of private landlords and agents who have faced certain enforcement action. The types of enforcement action are described below. This is a publicly available list;
- **Private tier** – a database accessible only to London boroughs and the London Fire Brigade ('LFB') containing a greater range of enforcement actions with records viewable for a longer period; and
- **Reporting tool** – this is a facility to enable private tenants to make a complaint about a landlord or agent to their local authority.

Table 9: Relevant offences or breaches for the purposes of the Rogue Landlord and Agent Checker

Legislation [1]	Section(s)	Description of offence or breach
Housing Act 2004	30(1)	Offence of failing to comply with improvement notice
	32(1)	Offence of failing to comply with prohibition order etc.
	72(1)(2)(3)	Offences in relation to licensing of HMOs
	95(1) or (2)	Offences in relation to licensing of houses under this Part
	139(7)	Service of overcrowding notices
	234(3)	Management regulations in respect of HMOs
	236(1)	Enforcement of powers to obtain information
	238(1)(2)	Information Provisions
	249A	Financial penalties for certain housing offences in England
Prevention of Damage by Pests Act 1949	4(1)	Power of local authority to require action
Protection from Eviction Act 1977	1	Unlawful eviction and harassment of the occupier
	2	Restriction on re-entry without due process of law
	3	Prohibition of eviction without due process of law
Environmental Protection Act 1990	80(4)	Summary proceedings for statutory nuisances
Local Government (Miscellaneous Provisions) Act 1976	16(2)	Power of local authorities to obtain particulars of persons interested in land.
Housing Act 1985	331	Penalty for landlord causing or permitting overcrowding
The Redress Schemes for Letting Agency Work and Property Management Work Order 2014	3	Requirement to belong to a redress scheme: letting agency work
	5	Requirement to belong to a redress scheme: property management work
The Energy Performance of Buildings Regulations 2012	6	Energy performance certificates on sale and rent
	7	Energy performance certificates on marketing
	11	Statement of energy performance indicator
Consumer Rights Act 2015	83	Duty to publicise fees etc.
Furniture and Furnishings (Fire) (Safety) Regulations 1988	15	Prohibition on supply

Note.
1 - The range of offences that can be incorporated is regularly reviewed and updated.

It 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.

Table 10: Relevant offence/breach disposal for the purposes of the Rogue Landlord and Agent Checker

Enforcement action	Public tier	Max public retention	Private tier	Max private retention
Criminal conviction	Yes	Until spent	Yes	10 years
Civil penalty (Housing and Planning Act 2016.	Yes – Penalties of £500 or more	One year	Yes – No threshold	10 years
Civil penalty (Trading standards)	Yes – Penalties of £500 or more	One year	Yes	10 years
Conditional discharge	Yes	Length of discharge	Yes	10 years
Criminal caution	No	N/A	Yes	10 years

The Mayor of London has clearly set out the background to the database, data protection implications, policies and procedures and the current use on the public website [LINK]. As LBC is a member borough it will act in line with the Mayor's policies and procedures as regards the database.

3.5 Informing landlords, publicising successful convictions and wider EA action against a landlord

The Council will always inform landlords of the consequences of committing an offence. This information is made available in the policies of the Council and in letters to parties where enforcement action is under consideration. On occasion, action will be immediate and with no warning. At the point, during an investigation, LBC has sufficient evidence that an offence(s) has been committed it conducts a full case review; this requires a decision whether to proceed with enforcement action against an offending person(s). On conclusion of the full case review, if the decision is taken to proceed, all parties will be written to. The FPN contains a notes section that makes reference to both the Mayor for London Landlord and Agent checker and the MHCLG Rogue Landlord database so that a landlord in receipt of an FPN would be aware of potential further sanctions.

LBC's policy considers two factors in 'Determining the Penalty', the need to both

- Deter the offender from repeating the offence.
- Dissuade others from committing similar offences.

In some cases, the need to publicise in the media a successful conviction or sanction is an important part of raising awareness, deterring others and, importantly, improving compliance and ultimately making Croydon a 'Better Place to Rent'.

The Council will usually publicise the outcome of a successful prosecution, which is in the public domain, but will selectively choose to publicise the issue of a FP. Rent repayment orders ("RROs") are imposed by the FTT and so the fact someone has received a RRO will be in the public domain. The publication of a RRO awarded will be decision based on the severity of the case. Robust and proportionate use of RROs is likely to help ensure others comply with their responsibilities.

Where the EA proposes to publish the details of a relevant conviction or the issue of two separate FP issued within a 12 month period on the MHCLG database, the EA must inform the landlord or property agent through the service of a Decision Notice. An appeal period of 21 days exists to the FTT who will make a decision as to publication as well as the proposed time period. The issue of a banning order to an individual or organisation must be published on the MHCLG database.

Table 11: A summary of the legislation in sections 2 and 3 this report and powers available to EA.

Section	Legislation	Standard of proof	FP maximum	Prosecution	RRO (3.1)[1]	BOO (3.2)[2]	Enabled to help tenants	Publicity[3] (3.4)	Income from FP[4]
2.1	Housing Act 2004	Beyond reasonable doubt	£30,000	✓	✓	✓	n/a	Databases	✓
2.2	Smoke and CO Alarm (England) Regulations 2015.	Balance of probabilities	£5,000	×	×	×	n/a	✓	✓✓
2.3	Tenants Fees Act 2019.	Beyond reasonable doubt	£30,000 or £5,000	✓	×	✓	✓	Discretion	✓
2.4	Electrical Safety Standards in the PRS (England) Regulations 2020.	Beyond reasonable doubt	£30,000	×	×	×	n/a	✓	✓
2.5	Energy Efficiency (PRS) (England and Wales) Regulations 2015	Beyond reasonable doubt	£5,000	×	×	×	n/a	Publications register	✓✓
2.6	The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme) Regulations 2019	Beyond reasonable doubt	£30,000 or £5,000	×	×	×	n/a	✓	✓
2.7	2014 Redress Scheme Order	Balance of probabilities	£5,000	×	×	×	n/a	Databases	✓✓
2.8	Consumer Rights Act 2015	Balance of probabilities	£5,000	×	×	×	n/a	✓	✓✓
3.1	Rent repayment order	Beyond reasonable doubt	Rent capped at 12 months	n/a	n/a	×	✓	✓	✓✓
3.2	Housing and Planning Act 2016	Beyond reasonable doubt	£30,000	✓	✓	×	n/a	Databases	✓

Notes:

1. RRO –Indicates whether there is scope to apply for a rent repayment order as part of the sanctions for non-compliance with this offence or breach.
2. BOO – banning order offences are included in The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017.
3. Publicity makes reference to the general ability to publicise successful actions, the databases run by the Mayor of London and the MHCLG
4. Income from the issue of the financial penalty can be used (having regard to the relevant legislative wording) for;
   - ✓✓ any function within the local authority, or
   - ✓ use limited to functions associated with the enforcement of standards and renting in the private rented sector.

4.0: <u>What course of action should the Local Housing Authority take to deal with offenders?</u>
An EA must determine what action it will take against a landlord. Croydon Council has developed this process over the past three years to provide a framework to assist with "*Determining the Penalty*" which will ensure consistency, transparency and a fair assessment for all parties.

4.1: Financial Penalties as an alternative disposal of offences to prosecution.
The Government first introduced the FP as part of its campaign to clamp down heavily on criminal landlords; Ministers have made it very clear that they expected this power to be used robustly and that FPs, whilst an alternative, are not a lesser alternative to a prosecution. EAs have been given the authority to both determine the penalty and the level of FP to impose; at up to £30,000 [with lower caps set by some legislative provisions]. The level of penalty in the Magistrates Court is now unlimited for all offences where a FP could also be issued. All monies collected following the issue of a FP can be retained by the EA to further its statutory functions in relation to private housing enforcement work (table 9), or its some cases for any functions. The 2016 Act has also introduced the "Landlord Banning Order" (LBO) for the most serious and prolific offenders.

4.2: General Principles.
LBC will consider the following general principles when deciding whether to take formal action against a landlord or agent:

a) there is sufficient admissible and reliable evidence that the offence has been committed and there is a realistic prospect of conviction; and
b) the enforcement authority believes that it is in the public interest to do so.

An enforcement authority's determination should be fair and proportionate reflecting the severity of the breach as well as taking into account the landlord's or agents' previous record of non-compliance. LBC have considered the guidance 'The Code for Crown prosecutors by the Crown Prosecution Service' in formulating this policy and with the purpose of reviewing advice on the extent to which there is likely to be sufficient evidence to secure a conviction.

4.3: 'Determining the Penalty'
Local housing authorities are expected to develop and document their own policy on what action to take when an offence has been committed. Following review of the general principles (report section 4.2) and the evidential and public interest tests; the EA should decide which option it will pursue on a case-by-case basis and in line with that policy. This document creates the policy and decision making framework that allows LBC to decide the appropriate sanction and it is called locally 'Determining the Penalty'.

A number of sanctions remain open to EAs for landlords who have committed an offence and decisions need to be taken to ensure the penalty given reflects the seriousness of the offence committed; it needs to be a proportionate sanction. The statutory and non-statutory Government guidance (report section 1.3) considers the most appropriate sanction to reflect the seriousness of the offence. For example; "a prosecution may be the most appropriate option where an offence is particularly serious or where the offender has committed similar offences in the past", and "our expectation is that a local housing authority will pursue a banning order for the most serious offenders".

Under the 2004 Act, the issue of a FP is an alternative to prosecution for the relevant offences. If a person has been convicted or is currently being prosecuted, the EA cannot also impose a FP in respect of the same offence. Similarly, if a FP has been imposed, a person cannot then be convicted of an offence for the same conduct.

LBC has considered the range of sanctions available as part of this stage; 'Determining the Penalty'. The sanctions have been put into one of three levels. Some sanctions will be conditional on the outcome of a hearing in the Tribunal system or Magistrates court and are subject to any appeal.

Level A – this is the immediate penalty for committing the offence with the option chosen reflecting the seriousness.
Level B – where a steeper Level A penalty is appropriate further sanctions are considered at Level B. These options again focus on the landlords approach to the single property where it was determined an offence had been committed.
Level C – Where the more serious sanctions have been chosen for Levels A and B, the option to impose further sanctions at Level C will be considered; such will impact more widely on the landlord's ability to work in letting or property management.

Table 12: The sanctions are considered at 3 levels; A, B and C.

Determining the penalty		
Level A	**Level B**	**Level C**
1. Managers warning 2. Simple caution 3. Financial penalty [1] 4. Prosecution in Magistrates Court	1. Register on Mayor of London RLMAC [2] 2. Publication penalty - PRS Exemptions Register [3] 3. Issue a 1 – year licence [4] 4. Apply for rent repayment order [5] 5. Recover prohibited fees [6] 6. Revoke / refuse licence [7]	1. Register on MHCLG database [8] 2. Banning order application and term [9] 3. Review wider licences [10] 4. Review action against landlord debts [11] 5. Management order – Part 4 2004 Act

Notes:

1. Financial Penalty include use of either term used; a financial penalty (FP) or penalty charge (PC) that can be issued under the various Acts or Regulations.

2. Mayor for London's Rogue Landlord and Managing Agent Checker [LINK].
3. Private Rented Sector Exemptions Register. Created under the 2015 Energy Regulations.
4. Policy on the granting of licences under a new housing designation (report section 1.3.9)
5. Chapter 4 of the 2016 Act allows an EA or tenant to apply to the Tribunal for a RRO, whether or not a Level A sanction has been imposed.
6. Section 10 of the 2019 Fees Act allows an EA to make a landlord repay a prohibited payment.
7. Revoke an issued licence or refuse a licence application made under Part 2, mandatory HMOs and / or Part 3 property licences of the 2004 Act.
8. Ministry for Housing Rogue Landlord and Letting Agent Database created under the 2016 Act. Statutory guidance for Local Housing Authorities. April 2018 version. Access to the database is for EA only [review of database completed by MHCLG in 2019].
9. Banning Order Offences under the Housing and Planning Act 2016. Non-statutory guidance for Local Housing Authorities. April 2018 version
10. Licences refer to mandatory HMO licences as under Part 2 and property licences under Part 3 of the 2004 Act. If there has been a serious offence then a review of all licences issued to that landlord or letting agent and licences issued to parties associated to them.
11. The ability to manage relies on funding. What is the financial position of the landlord in relation to wider housing or tenancy related debts?

To assist officers with the process a five step matrix has been developed and is covered in 'Banding the Offence'. The first of the five stages of this matrix additionally provides a means of Determining the Penalty based on the seriousness of the offence, culpability of the landlord and impact on tenant and community. The five stages allow a wide review of the appropriateness of the sanction chosen including a consideration of the financial means of the offender (when known and including that income derived from the asset) and the anticipated impact of the issued penalty. Table 13 and Table 14 are a guide to the process. As part of reviewing whether to prosecute, the EA should consider the scope for working together with other EAs where a landlord has committed breaches in more than one local authority area. London Borough of Croydon works closely with both the sub region and the Private Sector Housing team within the Greater London Authority who support all London Boroughs.

The decision whether to prosecute will be considered for each offence but LBC will regard consideration for prosecution as the preferred option for the higher banded offences and offences that the EA determine fall at the threshold where it is proportionate to look to seek further redress ultimately through the Ministry for Housing, communities and Local Government Rogue Landlord Database, the Mayor of London Landlord and Letting Agent checker and BO penalties. This approach will meet the Government's aim of clamping down heavily on a criminal landlord or letting agents. Tables 13 and 14 link the penalty score and banding with the appropriate sanction with Determining the Penalty.

Table 13: Determining the Penalty (using scoring matrix in section 5)

Band 1				Band 2				Band 3				Band 4			
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Simple Caution															

Financial Penalty									
Greater London Authority; Mayor's Rogue Landlord and Letting Agent Checker									
			Register on Rogue Landlord Database (2 FP within 12M period)						
					Rent Repayment Order / Recover Prohibited Fees				
					Prosecution				
									Banning order application

Table 13 guides authorised officers in determining the penalty in relation to the penalty score and banding where;

- A simple caution is for low Band 1 offences.
- A financial penalty can be considered for any Band 1 to 4 offences. As the penalty score increases, alternative Level A sanctions may apply and additionally Level B or C sanctions. A FP maximum is set by the applicable legislation.
- All offences are registered on the Mayor for London's Rogue Landlord and Letting Agent checker tool.
- To considering registering on the MHCLG rogue landlord database either two Band 2 FPN need be served in a 12 month period or a single prosecution conviction achieved.
- Prosecutions are to be considered for Band 3 and 4 offences where the stage 1 of Banding the Offence sees a score of 3 or 4 attributed to either of the culpability or harm considerations. Some flexibility is introduced where either a mitigation factor allows the score to be reduced, or an aggravating factor allows the score to be increased; to a high Band 2 offence.
- An application for a banning order is saved for the more serious offences where the stage 1 of Banding the Offence sees a score of 3 and 4 attributed to either of the culpability or harm considerations. Some flexibility is given for a situation where a mitigating factor sees the offence move to a high Band 3 offence. If banned, entry onto the MCLG database is mandatory.
- For LBC to proceed with an application for a banning order, the landlord will generally need to have been convicted of a second serious banning order offence; either concurrently or soon after to meet the 6 month application deadline. Other convictions from within the last 24 months may also be considered. The offence could be in the same authority area or across the country. Unless sufficiently serious on its own, an element of repeat offending is needed to achieve this threshold. The notice of intention must be issued within 6 months of the relevant conviction under section 15(1) of the 2016 Act.
- Consideration needs to be given to the wider sanctions in Levels B and C in the "Determining the Penalty" stage.
- Consideration needs to be given to EA resources when considering multiple sanctions.
- RRO or recovery of prohibited payments can be progressed with no Band A sanction.
- Not all powers will be available to the EA at all times; e.g. a selective licensing designation lasts for up to 5 years.

Some of the higher scores may only be achieved where a further offence is committed and the approach of the landlord, letting agent or property manager is clear in that there is a continuous and flagrant disregard to the law.

Table 14: Linking stage 1, culpability and harm, with the appropriate sanction.

Determining the Penalty					
Penalty for Landlord			**Banding the Offence Penalty Score**	**Offender [level of culpability]**	**Offender [level of harm to tenant or community]**
Financial Penalty	Simple Caution		Band 1 offence – score of 1 (both factors low) or score of 2 (where one of the factors is moderate)	**LOW** committed with little fault, (significant effort to mitigate, minor failing, little indication of risk)	**LOW** Low risk of an adverse effect on individual(s). Public misled but little or no risk of actual adverse effect on individual(s)
			Band 1 offence – score of 1 score of 4 (both factors moderate)	**MODERATE** committed through act or omission which a landlord exercising reasonable care would not commit	**MODERATE** Moderate risk of an adverse effect on individual(s) (not low). Public misled but little or no risk of actual adverse effect on individual(s)
	Prosecution		Band 2 offence – score of 6 (where 1 factor is moderate) score of 8 (where one factor is moderate and other is significant		
		Application for Banning Order (where prosecution achieved)	Band 3 offence – score of 9 (both factors high) or score of 12 (where one of factors is significant)	**HIGH** actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken.	**HIGH** Serious adverse effect on individual(s) (not significant) (assess vulnerabilities). (Tenant /consumer mislead) Regulator and/or legitimate industry substantially undermined by offender's activities
			Band 4 offence – score of 16 (both factors significant)	**SIGNIFICANT** deliberately or intentionally breached, or flagrantly disregarded, the law.	**SIGNIFICANT** Serious adverse effect(s) on individual(s) (assess vulnerabilities) and/or having a widespread impact. Significant disregard of Regulator with significant deceit.

4.4 Other considerations when 'Determining the Penalty'

Prosecutions.

The following factors (from the tenant fees act statutory guidance) may be considered as part of "Determining the Penalty" when deciding whether to prosecute:

- History of non-compliance and any relevant debts
- Severity of the breach
- Deliberate concealment of activity or evidence
- Knowingly or recklessly supplying false or misleading evidence
- Intent of the landlord/agent, individually and/or corporate body
- Attitude to regulation of the landlord/agent
- Deterrent effect of a prosecution on the landlord/agent and others
- Extent of financial gain as result of the breach.

Making an Entry on the MHCLG Rogue Landlord and Letting Database and the period the entry remains live.

An EA must have regard to the following criteria when deciding whether to make an entry in the database under section 30 and section 32 of the Act. A landlord is informed through the service of decision notice that they can make representations about.

Table 15: Considerations when making an entry in the MHCLG database.

	Making an entry (s30)	Period the entry remains live (s31)
Severity of the offence.	✓	✓
Mitigating factors.	✓	✓
Culpability and serial offending	✓	✓
Deter the offender from repeating the offence	✓	✓
Deter others from committing similar offences.	✓	×

Banning Order Applications

An EA should consider the following factors when deciding whether to apply for a banning order for a landlord or property agent and when recommending the length of any banning order:

- The seriousness of the offence. All banning order offences are serious. The more severe the sentence imposed by the Court, the more appropriate it will be for a banning order to be made. Past Rogue landlord database entries reviewed.

- Previous convictions/rogue landlord database. The rogue landlord database can be reviewed for other conviction and knowledge of legal responsibilities.
- The harm caused to the tenant.
- Punishment of the offender. A banning order is a severe sanction. It should ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.
- Deter the offender from repeating the offence.
- Deter others from committing similar offences.
- The likely impact of the banning order on the landlord and other persons affected.

5.0 Banding the Offence to set the Level of the Financial Penalty.

This section relates to the steps the EA should take when making a decision about the level of the FP.

Principles in the Statutory Guidance for Financial Penalties.
This explains that the FP should; reflect the severity of the offence, the culpability and track record of the offender, the harm caused to the tenant or client, the punishment of the offender, to deter the offender from repeating the offence, to deter others from committing similar offences and to remove any financial benefit the offender has gained from the offending.

5.1 The five Stages in 'Banding the Offence to Determine the Level of Financial Penalty'.
The Council has adopted a five stage approach to determine the level of the FP that should be imposed on the offender. This sees the penalty falling into one of four bands each with four penalty scores.

Table 16: The penalty score falls has sixteen levels of fine over four bands.

Penalty band	Band 1				Band 2				Band 3				Band 4			
Penalty Score	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Financial Penalty	£250	£500	£750	£1000	£2,000	£4,000	£6,000	£8,000	£10,000	£12,000	£15,000	£18,000	£20,000	£23,000	£26,000	£30,000

Stage 1: Banding the offence. The initial FP band is decided following the assessment of two factors. The scores are multiplied to give a penalty score which sits in one of four penalty bands;

- Culpability of the landlord or agent; and
- The level of harm that the offence or breach has had.

Stage 2: Amending the penalty band based on aggravating factors.
Stage 3: Amending the penalty band based on mitigating factors.
Stage 4: A Penalty Review. To review the penalty to ensure it is proportionate and reflects the landlord's or agent's ability to pay.
Stage 5: Totality Principle. A consideration of whether the enforcement action is against one or multiple offences and ensuring the total penalties are just and proportionate to the overall offending behaviour.

Stage 1: Banding the level of Offence, (there are two factors to assess).

Banding the Offence	
Factor 1. **Culpability of Landlord or Agent** **(seriousness of offence and culpability)** **To consider as part of assessment** • the scale and scope of the offences or breaches, • what length of time did the offence or breach continue for or repeat over? • what was the legislation being breached? • to what extent was the offence or breach premeditated or planned, • whether the landlord or agent knew, or ought to have known, that they were not complying with the law (business operator), • the steps taken to ensure compliance. • the likelihood of the offence or breach being continued, repeated or escalated. • the responsibilities the landlord or agent had with ensuring compliance in comparison with other parties	**Assessment:** **The landlord or agent is to be assessed against four levels (low, moderate, high or significant) of culpability:** **Significant -** Where the offender deliberately or intentionally breached, or flagrantly disregarded, the law. **High** – Landlord or agent had actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken. **Moderate -** Offence committed through act or omission which a landlord or agent exercising reasonable care would not commit **Low** - Offence committed with little fault, for example, because: Significant efforts were made to address the risk although they were inadequate on this occasion There was no warning/circumstance indicating a risk Failings were minor and occurred as an isolated incident
Factor 2 **Level of Harm** **(for tenant, client or community)** **To consider as part of assessment** • circumstances or vulnerabilities or actual discrimination against the tenant(s) or client(s). (age, illness, language,	**Assessment:** **The landlord or agent is to be assessed against four levels (low, moderate, high or significant) of harm or consequence:** **Significant.** □ Serious adverse effect(s) on individual(s) and/or having a widespread impact

ability to communicate, young children, disabilities or in relation to any protected characteristic (Equalities Act 2010) • tenant's or client's views about the impact that the offence or breach has had on them. • the extent to which other people in the community have been affected, for example, because of anti-social behaviour, excessive noise and damage to adjoining properties. • Established evidence of longer term impact on the (wider) community as a consequence of activities. • was more than one other household affected, • the level of actual or potential physiological or physical impact on tenant(s), client(s) and third parties? • what regulation, legislation, statutory guidance or industry practice governed the circumstances of the offence or breach? • has the level of trust been breached and have landlord or agent actions impacted on sector?	□ Significant risk of an adverse effect on individual(s) – including where persons are vulnerable □ Significant disregard of Regulator or legitimate industry role with significant deceit. **High** □ Adverse effect on individual(s) (not amounting to significant) □ High risk of an adverse effect on individual(s) or high risk of serious adverse effect, some vulnerabilities. □ Regulator and/or legitimate industry substantially undermined by offender's activities □ Consumer/tenant/client misled **Moderate** □ Moderate risk of an adverse effect on individual(s) (not amounting to low risk) □ Public misled but little or no risk of actual adverse effect on individual(s) **Low** □ Low risk of an adverse effect on individual(s) □ Public misled but little or no risk of actual adverse effect on individual(s)

Table 17: Scoring Matrix after stage 1 of Banding the Offence

Stage 1: Scoring Matrix for Financial Penalty					
LEVEL OF CULPALABILITY	**Significant**	4	8	12	16
	High	3	6	9	12
	Moderate	2	4	6	8
	Low	1	2	3	4
		Low	**Moderate**	**High**	**Significant**
FACTORS	**IMPACT, LEVEL OF HARM**				

Note: The score for each factor is multiplied to determine the score and then the financial penalty band (smaller penalty points)

Stage 2: Amending the penalty band based on aggravating factors.

Objective: to consider aggravating factors of the offence that may influence the FP. A significant aggravating factor may allow the FP to be increased by a FP point.

Example aggravating factors:

- Previous convictions or record of non-compliance, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence or breach; and b) the time that has elapsed since the conviction (is conviction spent) (source including MHCLG Rogue Landlord or Mayor for London Landlord and Letting Agent checker),
- Motivated by financial gain, profited from activities.
- Deliberate planned concealment of activity resulting in offence or breach and obstructive nature of landlord or agent towards investigation
- Whether the landlord has recent unspent relevant housing related convictions (source Ministry for Housing, Communities and Local Government Rogue Landlord database and Mayor of London Landlord and Letting Agent checker
- Role within the private rented sector and familiarity with responsibilities and current level of responsibility with managing and letting private rented properties.
- Refusal to accept offer of, or respond to EA advice regarding responsibilities, warnings of breach or learned experience from past action or involvement of EA or other Regulatory Body.

Stage 3: Amending the penalty band based on mitigating factors.

Objective: to consider any mitigating factors and whether they are relevant to the offence or breach. A significant mitigating factor may allow the FP to be decreased by a financial penalty point.

Example mitigating factors:

- No evidence of previous convictions or no relevant/recent convictions or breaches.
- Steps voluntarily taken to remedy problem (application to license premises or for temporary exemption, repayment of prohibited charge to tenant, scheme membership or display of information).
- High level of co-operation with the investigation, beyond that which will always be expected
- Good record of maintaining property and compliance with legislation, statutory standards and industry standards

- Self-reporting, co-operation and acceptance of responsibility / admittance of guilt.
- Mental disorder or learning disability, where linked to the commission of the offence or breach preventing reasonable compliance
- Serious medical conditions requiring urgent, intensive or long-term treatment where linked to the commission of the offence or breach.
- Age and/or lack of maturity where it affects the responsibility of the offender; vulnerabilities.
- Whether landlord or agent's primary trade or income is connected with the private rented sector

Stage 4: A review of the financial penalty to ensure that the case can be made and that the chosen approach is proportionate:

Step 1: to check that the provisional assessment, proposed FP meets the aims of the Sentencing Council's sentencing Code:

- Punishment of offenders
- Reduction of/stopping crime
- Deterrent of the offender or for other potential offenders
- Rehabilitation of the offender
- Protection of the public
- Reparation by offender to victim(s)
- Reparation by offender to community
- Removal of any financial benefit the offender may have obtained as a result of committing the offence or breach.

Step 2: to check that provisional FP assessment, proposed FP is proportionate and will have an appropriate impact. Is it set at a high enough level to help ensure that it has a real economic impact on the landlord or agent and demonstrates the consequences of not complying with their legal obligations?

A financial penalty should not be regarded as an easy or lesser option compared to prosecution.

Local authorities should use their existing powers to, as far as possible, make an assessment of a landlord's or agent's assets and any income (not just capital valuation or rental income) they receive when determining an appropriate penalty by making an adjustment to the financial penalty band. The general presumption should be that a FP should not be revised downwards simply

because an offender has (or claims to have) a low income. Similarly, if a landlord with a large portfolio was assessed to warrant a low FP, the FP might require adjustment to have sufficient impact, and to conform to sentencing principles.

Schedule 16 Part 6 of the Crime and Courts Act 2013 permits the value of any assets owned by the landlords, e.g. rental property portfolio, to be taken into account when making an assessment and setting the level of penalty.

The FP is meant to have an economic impact on the landlord or agent, removing incentive/benefit for criminal activities and acting as a deterrent to offending. Thought should be given to the impact of the financial penalty on the landlord or agent's ability to comply with the law and whether it is proportionate to their means (e.g. risk of loss of home) and the impact of the financial penalty on third parties (e.g. employment of staff or other customers).

In setting a financial penalty, the EA may conclude that the offender is able to pay any financial penalty imposed unless the offender has supplied any financial information to the contrary. It is for the offender to disclose to the EA such data relevant to his financial position as will enable it to assess what he can reasonably afford to pay. Where the EA is not satisfied that it has been given sufficient reliable information, the EA will be entitled to draw reasonable inferences as to the offender's means from evidence it has heard and from all the circumstances of the case which may include the inference that the offender can pay any financial penalty.

Process**:** The offender will be asked to submit relevant information as part of the process and the request for financial information will be incorporated into the notes on the "notice of intended action", the first step with issuing a FP notice.

Stage Five: Totality principle

Objective: Where the offender is issued with more than one financial penalty, the EA should consider the following guidance from the definitive guidelines on Offences Taken into Consideration and Totality. "Where separate financial penalties are passed, the EA must be careful to ensure that there is no double-counting". Section 249A of the 2004 Act (amended) states that 'only one financial penalty under this section may be imposed on a person in respect of the same conduct'. The 2016 Act does permit the EA to issue a FP and also apply for a RRO. Under section 46 of the 2016 Act, where the FP is issued and there is no prospect of an appeal, the FTT must award, for certain offences, the maximum RRO the FTT has the power to award.

"The total financial penalty is inevitably cumulative". The EA should determine the financial penalty for each individual offence based on the seriousness of the offence and taking into account the circumstances of the case including the financial

circumstances of the offender so far as they are known, or appear, to the EA. The EA should add up the financial penalties for each offence and consider if they are just and proportionate to the overall offending.

If the aggregate total is not just and proportionate the EA should consider how to reach a just and proportionate financial penalties. There are a number of ways in which this can be achieved.

Examples:

- where an offender is to be penalised for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind (management offences or breach of conditions), especially when committed against the same person, it will often be appropriate to impose a sanction for the most serious offence, e.g. a financial penalty which reflects the totality of the offending where this can be achieved within the maximum penalty for that offence. No separate penalty should be imposed for the other offences;
- where an offender is to be penalised for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate financial penalties for each of the offences. The EA should add up the financial penalties for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the EA should consider whether all of the financial penalties can be proportionately reduced. Separate financial penalties should then be passed.
- where an EA has determined that it will apply for a RRO within the 12 month deadline the FP should be reviewed to ensure the total penalty is proportionate as guided by Stage 4. The FP may be adjusted accordingly knowing that, *if successful*, the RRO award will be the maximum.

5.2: Setting the Rent Repayment Order (RRO) for a Landlord.

A tenant or an EA may individually apply to a FTT for a RRO award in respect of their rent payments within 12 months of an offence. Under section 73 (7 iii) and section 96 (7iii) of the 2004 Act and section 42 (2b) of the 2016 Act; the EA is required to stipulate, in the notice of intended proceedings, how much the order for repayment of rent is. The level or rent relates to a defined period of 12 months in the period leading up to the offence or during the 12 month period whilst the offence was being committed. The local investigation will determine the levels of rent paid. An EA has no control over the level of rent a tenant may apply for.

The Government has advised that the RRO should reflect the; punishment of the offender, the recipient of any recovered rent, deter the offender from repeating the offence, deter others from committing similar offences and remove any financial benefit the offender may have obtained as a result of committing the offence. EA must have regard to the statutory guidance issued under section 41(4) of the 2016 Act when exercising their functions in respect of RRO.

Where a conviction has been achieved the LBC will apply to the FTT for the maximum rent repayment; within a 12 month period. Section 46 of the 2016 Act states this is the level that must be awarded to either a tenant (except for section 72(1) or 95(1) offences) or an EA where the landlord has been convicted or a FP issued in relation to that offence. In these cases there is no discretion within "Determining the Penalty and Banding the Offence".

If no conviction or FP is issued or no FP can also be issued, and a RRO is applied for, LBC will apply to the FTT for the maximum rent repayment. If a FP is to be issued, the penalty point/ banding first determined will be reviewed under Stage 4 to ensure the 'Proportionality Principle' is met. This aims to ensure that the total penalties are just and proportionate to the offending behaviour.

The legislation places the ultimate decision for determining the financial award under a RRO with the FTT in line with section 74 and 97 of the 2004 Act and the tables in section 44 and 45 of the 2016 Act. The FTT must take into account; the conduct of the landlord, the financial circumstances of the landlord, and whether the landlord has at any time been convicted of an offence to which this Chapter (Part 2 Chapter 4) applies. Whilst the Council has discretion to specify the amount it seeks to recover, the general approach will be to apply for the maximum amount.

A person aggrieved by the decision of the FTT may appeal under the provisions of Part 2 Chapter 5 of the 2016 Act.

5.3 Financial Penalty Process and Right for Person to make Representations.

Before imposing a financial penalty on a person under section 249A of the 2004 Act, or Schedule 3 of the 2019 Fees Act (examples) the EA must, within 6 months of the date of the offence (unless continuing), give the person notice of the EA proposal to do so (a "notice of intent" or "NOI"); incorporating why and the level of fine.

A person in receipt of the notice of intent ("NOI") can make written representations within 28 days. Following consideration of any further information and representations the EA must decide whether to issue a final FPN include the amount of the FP.

Table 18 provides further details including the requirement to issue a NOI and the date it needs to be served, the FP maximum and the time period for a landlord, letting agent or property manager to make representations. The landlord has the right to make representations and any representation must be duly considered. There is no legislative time period in which an EA must review the representations and inform the person making representations of the EA decision, a decision notice must state whether the penalty will be withdrawn, varied or upheld. LBC has set a target time of 21 days to both review any further information and / or representations and then issue the decision notice or final FPN.

LBC will not shorten the time period for a landlord to make representations even in a situation where the person receiving the NOI FPN has made representations and requests an early review or suggests that no representations will be made. When making a decision whether or not to issue the final FPN, LBC will consider any further information and representations received in the period from the date that LBC decided to issue a NOI FPN. This will commonly predate the issue of the NOI FPN.

Not all communication received in response to a NOI FPN will be deemed representations. Any relevant further information collected or representations received will result in a review being conducted by the relevant Head of Service; see section 5.6.

Table 18: Time periods with respect to penalty, representations and appeal.

Section	Legislation	Notice of Intention (NOI) to issue a FPN	Time to issue a NOI	FP maximum	Time period for landlord to make representations[5]	Time period set by LBC to review and respond to representations	Time period for landlord to make an appeal to Tribunal[6]	Time to pay penalty
2.1	Housing Act 2004	✓	6 months	£30,000	28 days	21 days[1]	28 days	28 days
2.2	Smoke and CO Alarm (England) Regulations 2015.	✓	6 weeks[2]	£5,000	28 days	28 days	28 days [3]	28 days
2.3	Tenants Fees Act 2019.	✓	6 months	£5,000 and £30,000	28 days	21 days[1]	28 days [4]	28 days[4]
2.4	Electrical Safety Standards in the PRS (England) Regulations 2020.	✓	6 months	£30,000	28 days	28 days	28 days	28 days
2.5	Energy Efficiency (PRS) (England and Wales) Regulations 2015	✓	18 months	£5,000	28 days[7]	21 days[1]	1 month	1 month
2.6	The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme) Regulations 2019	✓	6 months[5]	£5,000 and £30,000	28 days	21 days[1]	28 days	28 days
2.7	The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to belong to a scheme) (England) Order 2014	✓	6 months	£5,000	28 days	21 days[1]	28 days[8]	28 days
2.8	Consumer Rights Act 2015	✓	6 months	£5,000	28 days	21 days[1]	28.days	28 days

3.1	Rent repayment order	✓	12 months	12 months' rent	28 days	21 days[1]	n/a	n/a
2.1	Housing and Planning Act 2016	✓	6 months	£30,000	28 days	21 days[1]	28 days	28 days

Notes:

1. No statutory time period exists so this is the internal process time target LBC will aim for.
2. In the 2015 Alarm Regulations there is no notice of intention stage.
3. 28 days by virtue of what is implied by paragraph 12(2).
4. Under the 2019 Fees Act, in relation to an amount which is required to be paid under section 10(2), (5) or (8) or 11(1), the period specified for payment or appeal in the notice must be a period of at least 7 days but not more than 14 days beginning with the day after that on which the notice is served. The penalty element has to be repaid in 28 days.
5. It is 6 months beginning with the first day on which the authority has sufficient evidence of the breach but extending in line with a continuing breach.
6. A person on whom a notice of intent is served may within 28 days beginning with the day after the date on which the notice was sent or issued.
7. Representations are to be made in period specified under regulation 38(2) (h) (ii). With no time specified in the Regulations it will be a minimum of 28 days.
8. 28 days by virtue of the guidance to the Regulations.

Similarly, section 42 of the 2016 Act requires that the EA must first serve a notice of intended proceedings for an RRO on the landlord. The landlord can then make written representations within 28 days of the date of service to the EA about the proposed RRO.

An EA may at any time withdraw a notice of intent or final notice. The EA may also reduce the amount specified in a notice of intent or a final notice or amend a notice to remove a requirement to repay a prohibited payment or holding deposit or works costs. The person who has received the notice must be notified in writing of any such withdrawal, reduction or amendment.

5.4 Recovering unpaid financial penalties from a landlord or agent.

The legislation sets out what information needs to be included in the final notice. The final notice will require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was served. An invoice will accompany the final notice and information will be provided about how a payment can be made. If a landlord or agent fails to pay all or part of a FP, the EA may recover the outstanding amount on the order of the county court, as if it were payable under the order of that court.

Where a landlord, property agent, property manager, letting agent or other recipient has failed to pay the FP the Council may regard this as a contra-indication when taking a view as to the fit and proper status of a prospective licence holder, managing agent, or person with responsibility and this will inform the decision whether or not to issue a licence under Part 2 or Part 3 of the Housing Act 2004.

The EA expects all penalties to be paid within the time period stipulated in the final notice. Where other particular circumstances exist the recipient is expected to communicate with the LBC's Debt Recovery Team to agree a reasonable re-payment plan. Debts from the penalty may be included with other debts as part of the EA debt recovery plan.

5.5 Right of Appeal against a financial penalty.

The final notice must set out; the amount of the financial penalty; the reasons for imposing the penalty; information about how to pay the penalty; the period for payment of the penalty; information about rights of appeal; and the consequences of failure to comply with the notice.

A person on whom a final notice is served may appeal to the First-tier Tribunal against the decision to impose the penalty and / or the amount of the penalty. An appeal under this paragraph must be brought within the period of 28 days beginning with the day after that on which the final notice was issued. An appeal suspends the final notice until the appeal is finally determined or withdrawn.

An appeal is to be a re-hearing of the local housing authority's decision; but may be determined having regard to matters of which the authority was unaware.

On an appeal under this paragraph the First-tier Tribunal may quash, confirm or vary the final notice. The decision of the FTT can also be the subject of an appeal by either party to the Upper Tier Tribunal.

5.6 Making representations and communicating with the Council.

All communications for representations made against the intended FP or RRO or BO or MHCLG database proposed entry are to be in writing and sent within the prescribed timescale to:

Head of Public Protection and Licensing Manager

Croydon Borough Council
Place Department
Public Realm Division
6th floor zone A
Bernard Weatherill House
8 Mint Walk
Croydon
CR0 1EA

All representations must be in writing and may be considered by an officer of similar grade where the Head of Public Protection and Licensing is not available.

Private Sector Housing Team
Information is available from the case officer or by contacting telephone: 020 8760 5631 (direct dial with answerphone)
Web: www.croydon.gov.uk/betterplacetorent
Or by email to: hsg-privatehousing@croydon.gov.uk

Trading Standards Team.
Information is available from the case officer or by contacting telephone: 020 8407 1311 (direct dial with answerphone)
Web: www.croydon.gov.uk/tradingstandards
Or by email to: trading.standards@croydon.gov.uk

5.7 Data Protection Matters

Reference is made to this in the Cabinet 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.

Table 19: A summary of the offences or breaches relevant to the policy 'Determining the Penalty and Banding the Offence'.

No	Full title of legislation	Date(s)	Offence(s) or Breach(es)
1	Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme) Regulations 2019	1.04.2019 and 1.4.2020	• Regulation 3 – Requirement to belong to an approved client money protection scheme. • Regulation 4 – Transparency requirements relating to the publishing or display of certification and steps when membership changes.

2	Consumer Rights Act 2015	1.10.2015	• Section 83 (1) A letting agent must, publicise details of the agent's relevant fees.
			• Section 83 (2) The agent must display a list of the fees (meeting fee description in s83(4))
			  • at each of the agent's premises at which the agent deals face-to-face with persons using or proposing to use services to which the fees relate, and
			  • at a place in each of those premises at which the list is likely to be seen.
			• Section 83 (3) The agent must publish a list of the fees on the agent's website (if one).
			• Section 83 (6) Publish a statement of whether the agent is a member of a client money protection scheme.
			• Section 83 (7) Publish a statement that indicates that the agent is a member of a redress scheme, and the scheme name.

3	Criminal Law Act 1977	29.07.1977	• Section 6 - Using violence to secure entry to a property.

4	Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020	01.07.2020 and 01.04.2021	• Regulation 3 (1) (a) ensure that the electrical safety standards are met during any period when the residential premises are let.
			• Regulation 3 (1) (b) ensure every electrical installation in the residential premises is inspected and tested at regular intervals by a qualified person;
			• Regulation 3 (1) (c) ensure the first inspection and testing is carried out—
			  • before the tenancy commences in relation to a new specified tenancy; or
			  • by 1st April 2021 in relation to an existing specified tenancy.
			• Regulation 3 (4) Where a report under sub-paragraph (3)(a) indicates that a private landlord is or is potentially in breach of the duty under sub-paragraph (1)(a) and the report requires the private landlord to undertake further investigative or remedial work, the private landlord must ensure that further investigative or remedial work is carried out by a qualified person within (starting with the date of the inspecting and testing)—
			  • 28 days; or
			  • the period specified in the report if less than 28 days,
			• Regulation 3 (6) - Where further investigative work is carried out in accordance with paragraph (4) and the outcome of that further investigative work is that further investigative or remedial work is required, the private landlord must repeat the steps in paragraphs (4) and (5) in respect of that further investigative or remedial work.

5	Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015	1.4.2018 and 1.4.2020	• Regulation 23 – Breach for landlord who has let a sub-standard property (unless regulation 25 or schedule 4 applies).

	(as amended by 2019 Energy Regulations)		• Regulation 36(2) – Breach for landlord who has registered false or misleading information on the PRS Exemptions Register • Regulation 37(4)(a) – landlord has failed to comply with the compliance notice • Regulation 38(4) – landlord has failed to comply with the action in a penalty notice
6	Energy Efficiency (Private Rented Property) (England and Wales) (Amendment) Regulations 2019	1.4.2019	• Regulation 4 – widens the definition of a relevant energy efficiency improvements to include those financed (wholly or partly) by the landlord to no more than the cost cap. • Regulation 6 - "the cost cap" means £3,500 (including valued added tax) less monies spent by the landlord on unregistered energy efficiency improvements in the period 1st October 2017 and ending with 31st March 2019, or made on or after 1st April 2019.
7	Housing Act 2004	6.04.2017	• Section 30 – failure to comply with an improvement notice. • Section 72 (1) – not licence a house in multiple occupation. • Section 72 (2) – licensed house in multiple occupation [HMO] that is overcrowded. • Section 72 (3) – not comply with HMO licence conditions. • Section 95 (1) – not licence a private rented property (including non-mandatory HMO). • Section 95 (2) – not comply with a private rented property licence condition. • Section 139 (7) – contravention of an overcrowding notice for HMO. • Section 234 (3) – non-compliance with the HMO management regulations
8	Housing and Planning Act 2016	6.4.2018	• Section 21(1) - the breach of a landlord banning order, and sanction for continued breach.
9	Protection from Eviction Act 1977	29.8.1977	• Section 1(2) Offence where any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, • Section 1(3) Offence for any person with intent to cause the residential occupier of any premises— (a) to give up the occupation of the premises or any part thereof; or (b) to refrain from exercising any right or pursuing any remedy or does acts calculated to interfere with the peace or comfort of the residential occupier or persistently withdraws or withholds services reasonably required for the occupation. • Section 1(3A) Offence where the landlord, or agent of landlord, of a residential occupier (a) does acts likely to interfere with the peace or comfort of the residential occupier or (b) persistently withdraws or withholds services reasonably required for the occupation of the premises and has reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up the occupation or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.
10	Redress Schemes for Letting Agency Work and Property Management Work (Requirement to belong to a scheme) (England) Order 2014	1.10.2014	• Article 3 – Requirement to belong to an approved redress scheme, when required to belong to one by the order, letting agency work. • Article 5 – Requirement to belong to an approved redress scheme, when required to belong to one by the order, property management work.
11	Smoke and Carbon Monoxide Alarm (England) Regulations 2015	1.10.2015	• Regulation 6(1). Non-compliance with a remedial action notice

12	Tenant Fees Act 2019	1.6.2019 1.6.2020	• Section 1. Prohibitions applying to landlords, • Section 2. Prohibitions applying to letting agents, and • Schedule 2. The treatment of holding deposits.
Note: for a full detailed description of a breach or offence reference must be made to the full legislation, readily available for no charge on the internet.			