

**For General Release**

<b>REPORT TO:</b>	<b>Councillor Tony Newman, the Leader of the Council</b> <b>2<sup>nd</sup> May 2017</b>
<b>AGENDA ITEM:</b>	<b>n/a</b>
<b>SUBJECT:</b>	<b>Making Homes Safer - Taking Action:</b>
<b>LEAD OFFICER:</b>	<b>Shifa Mustafa - Executive Director – Place</b> <b>Shayne Coulter - Public Protection Manager</b>
<b>CABINET MEMBER:</b>	<b>Councillor Alison Butler – Deputy Leader (Statutory)</b> <b>Homes, Regeneration &amp; Planning</b>
<b>WARDS:</b>	<b>All</b>

**CORPORATE PRIORITY/POLICY CONTEXT/ AMBITIOUS FOR CROYDON**

These considerations accord with Croydon Council’s Corporate Plan 2015-18 independence priorities, namely:

- To create a place where people and businesses want to be.
- To provide a decent, safe and affordable home for every local resident who needs one.
- To help families be healthy and resilient and able to maximize their life chances and independence.
- To protect children and vulnerable adults from harm and exploitation.
- To create a place that communities are proud of and want to look after as their neighbourhood.
- To be innovative and enterprising in using available resources to change lives for the better
- To drive fairness for all communities, people and places.

**AMBITIOUS FOR CROYDON & WHY ARE WE DOING THIS:**

Adopting the new powers are proposed as a key part of the Council’s campaign to clean up Croydon ‘**Don’t Mess With Croydon – Take Pride**’ and in improving standards in the private rented sector. Having the options to impose financial penalties, apply for Rent Repayment Orders and ban landlords would be an important addition to the council’s current strategic approach to improving standards for private sector tenants, tackling rogue landlords, improving ASB and environmental nuisance.

**FINANCIAL IMPACT**

The wider enforcement powers will be utilised by the current enforcement team within existing staff resources and present an opportunity for Croydon Council to adopt a more varied approach to issuing penalties, in the form of financial penalty notices.

Under certain circumstances, when a landlord has committed an offence, the council may apply for a ‘Rent Repayment Order’ to recover monies paid to the landlord as universal credit for a period of up to 12 months.

The monies received by the council for both these enforcement options can be used by the authority to further its statutory functions in relation to private housing enforcement

work. Monies received under penalty charge notices (for the Smoke and Carbon Monoxide Regulations) may be used by the authority for any of its functions.

**FORWARD PLAN KEY DECISION REFERENCE NO.: This is not a key decision.**

## **1. RECOMMENDATIONS**

The Leader of the Council is recommended to

1.1 Note the new enforcement powers available to the private sector housing enforcement teams and the various commencement dates.

1.2 Adopt the Financial Penalty and Rent Repayment Order ‘determining the penalty’ process attached at Appendix 1 which has been produced as required under the statutory guidance, to commence on the 8th May 2017 in respect of the powers created under the Housing and Planning Act 2016;

Subject to the adoption of the proposed Financial Penalty “determining the penalty” process attached as Appendix 1; as per recommendation 1.2 above and having regard to the said determination process:

1.3 Agree to the proposed Financial Penalty structure, to commence on the 8th May 2017 in respect of powers created under the Housing and Planning Act 2016;

1.4 Adopt the draft Statement of Principles attached at Appendix 2 which has been produced as required under regulation 13 of The Smoke and Carbon Monoxide (England) Regulations 2015 and agree to the publication of the Statement of Principles.

Subject to the adoption and publication of the Statement of Principles as per recommendation 1.4 above and having regard to the said Principles:

1.5 Agree to the proposed Penalty Charges structure, to commence on the 8th May 2017 in respect of The Smoke and Carbon Monoxide (England) Regulations 2015.

## **2. EXECUTIVE SUMMARY**

2.1 Croydon Council recognises the importance that the private rented sector plays in the Borough and is very proactive with enforcing property and management standards. The primary powers come under Parts 1-4 of the Housing Act 2004 which allow officers to assess risk and require landlords to undertake specific works through serving an improvement notice or to close a property through a prohibition order.

2.2 This report outlines the new private rented sector enforcement powers contained within the Housing and Planning Act 2016. To continue to improve standards the Council would like to utilise the new powers from as soon as

possible after the commencement dates on which the powers came nationally into force; April 6th and October 1st 2017. Members are asked to agree the proposed process for determining the financial penalty and rent repayment applications and, following this, agree the new penalty charge structure. Following approval from Cabinet the proposed date on which authorised Croydon Council officers can commence to use the new powers is Monday 8<sup>th</sup> May 2017.

- 2.3 Additionally, this paper seeks authority to start enforcing the powers within the Smoke and Carbon Monoxide (England) Regulations 2015. To enable this Members are asked to agree the proposed Statement of Principles and, following this, agree the new penalty charge structure. The Regulations came into force on the 1<sup>st</sup> October 2015 and similarly the proposed date on which authorised officers can commence to use the new powers is Monday 8<sup>th</sup> May 2017.
- 2.4 The report also outlines the increasing and widening powers that are available to the Council aimed at improving and maintaining basic standards in private rented housing and dealing with rogue landlords who operate within the Borough.

### **3. MAKING HOMES SAFER IN CROYDON**

- 3.1 The Housing Act 2004 (“the 2004 Act”) is used for the vast majority of enforcement action related to privately rented properties. The 2004 Act introduced a number of measures such as improvement notices, prohibition orders, emergency remedial works and hazard awareness notices to deal with disrepair, and it is an offence to fail to comply with these. The 2004 Act also introduced the mandatory licensing of certain larger Houses in Multiple Occupation (“HMO”).
- 3.2 To further tackle the anti-social behaviour and poor standards of property management, the Council designated the Borough wide Croydon Private Rented Property Licensing Scheme. The designation commenced on 1<sup>st</sup> October 2015 and lasts for a period of up to 5 years. All landlords are required to licence certain privately rented properties. Licensing brings in new powers with offences for, for example, failing to licence and failing to comply with licence conditions. For offences committed under the 2004 Act the only option currently available to the Council is to undertake a prosecution in the Magistrates’ Court.
- 3.3 Since the implementation of the 2004 Act in 2006, the Council’s Housing Enforcement Section has dealt with many hundreds of complaints from private tenants regarding conditions within their properties, approximately 1,400 per year, year on year. Following the implementation of the Croydon Private Rented Property Licensing Scheme the number of enforcement notices under the Act 2004 increased by approximately 50%. The team carry out works in default of landlords who have not responded to statutory action in approximately 40 cases each year. This ensures the living conditions for tenants see an immediate improvement.

- 3.4 The Housing and Planning Act 2016 (“The 2016 Act”) introduces, subject to the provisos within that Act, the ability for the Council to impose a financial penalty (“FP”) as an alternative to prosecution for certain housing offences under the 2004 Act. In seeking to impose such a FP the Council is required to be satisfied beyond reasonable doubt that an offence has been committed, which is the criminal standard of proof. The maximum level for a FP has been fixed at £30,000. Financial penalty charges will be quicker and easier to issue than taking a prosecution case and will enable the Council to have an element of control regarding the level of penalty issued. Their use will send a clear message to all concerned in the private rented sector – rogue landlords will be aware of what to expect, good landlords will see that we are dealing with their criminal counterparts, and tenants will recognise the level of protection provided by the Council taking robust action against landlords who fail to uphold their responsibilities, act in a discriminating manner or are motivated by illegal practices.
- 3.5 Another new change is that following the successful prosecution of a landlord or letting agent, the 2016 Act allows the Council to make an application to a First Tier tribunal to make a Banning Order. If the Banning Order is granted the landlord or letting agent is then prohibited from involvement in property management work for at least 12 months. The offences that are deemed to be Banning Order Offences are the subject of further Regulations.
- 3.6 The 2016 Act states that a landlord who is the subject of a Banning Order, who subsequently breaches a Banning Order, commits an offence. A landlord who commits an offence can either be tried in a Magistrates Court or be the subject of a FP. On conviction the landlord is liable to imprisonment for a period not exceeding 51 weeks or to a fine or to both. Alternatively under section 23 a FP of up to £30,000 can be imposed.
- 3.7 Further penalties for rogue landlords have been introduced with the extension of the Rent Repayment Order (“RRO”). RROs were first introduced in the 2004 Act where the LHA or tenant could apply to the First Tier Tribunal (“FTT”) for the repayment of rent during periods where the landlord was operating an unlicensed premises. Under the 2016 Act, the relevant offences have been widened and the award is up to 12 months’ rent. Where the rent was paid from housing benefit or universal credit the sum awarded under the RRO is returned to the Council be used by the authority to further its statutory functions in relation to private housing enforcement work.
- 3.8 The Smoke and Carbon Monoxide (England) Regulations 2015 (“2015 Regulations”) places a duty on Local Authorities to serve a remedial action notice (“RAN”) on a landlord who does not comply with their duty to provide and maintain smoke and carbon monoxide alarms. For premises licensed under Parts 2 and 3 of the 2004 Act the new responsibilities are included within the amended Part 2 (Mandatory HMO) and Part 3 (selective) Croydon Private Rented Property Licence conditions.

#### **4. THE HOUSING AND PLANNING ACT 2016 (“the 2016 Act”)**

- 4.1 The new powers under the 2016 Act will be enforceable this year having the following commencement dates:
- 6<sup>th</sup> April 2017 – (made by Regulations) extension to Rent Repayment Orders (RRO) and Financial Penalty (FP) as enforcement options.
- 1<sup>st</sup> October 2017 (proposed by Government) – Landlord Banning Order, Banning Order Offences and Database of Rogue Landlords
- 4.2 A FP can be issued to a landlord who commits one of a number of housing related offences. With HMO or property licensing this includes the failure to licence a licensable property or when licenced, a failure to comply with the conditions, including controlling numbers of tenants. A FP can also be served as an alternative to prosecution for the failure of a landlord to comply with an improvement notice requiring works. In a HMO a FP can be issued to a landlord who fails to comply with an overcrowding notice or does not manage the property properly so that there are breaches of the HMO Management Regulations
- 4.3 From October 2017, a FP can be issued to a landlord who breaches the requirements of a Banning Order.
- 4.4 An application to the FTT for an RRO can be made in respect of the a number of 2004 Act offences, including the failure of a landlord to comply with an improvement notice or prohibition order. Additionally it includes offences linked to poor tenancy management including using violence to secure entry to a property and offences of illegal eviction and harassment of the tenant.
- 4.5 From October 2017 a RRO application can be made to a FTT for a landlord who breaches the requirements of a Banning Order.
- 4.6 The statue requires the Council to develop and document its own policy on determining both when to prosecute or serve a FP and then the appropriate level of FP which ought to be applied up to the statutory maximum. The Government has stated that it expects the maximum amount to be reserved for the very worst offenders with the actual amount levied reflecting the severity of the offence and any previous record of offending.
- 4.7 The recommended policy for Croydon in determining what approach and in setting its financial penalty is set out at Appendix 1; entitled “Determining the Penalty”. Appendix 1 proposes a process to provide a framework to assist with determining the approach and appropriate level of FP which will ensure consistency, transparency and a fair treatment for all parties. In preparing the proposals for Members’ consideration, regard has been had by officers to the 2016 Act, the statutory guidance issued by the Secretary of State in relation to making applications for Rent Repayment Orders and Financial Penalties (referred to as Civil Penalties within the guidance)
- 4.8 The decision whether to prosecute will be considered for each offence but Croydon will regard it as the preferred option for the higher banded offences

and offences that the LHA determine fall at the threshold where it is proportionate to look to seek further redress ultimately through recording of a prosecution on the Rogue Landlord Database and banning through an application for Banning Order. Reference will be made to Table 1. This approach will meet the Government’s aim of clamping down heavily on a criminal landlord or letting agents. It will also ensure Croydon acts to work together with other LHA.

**Table 1:** Banding the Offence to Determining the Action (using scoring matrix)

Band 1				Band 2				Band 3				Band 4			
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Caution															
Financial Penalty – Rent Repayment Order optional															
		Financial Penalty and Rent Repayment Order Register on Rogue Landlord Database (2 FP within 12M period)													
						Prosecution and Rent Repayment Order Banning Order Offence – register on Database									
										Consider -application to Ban Landlord					

4.9 The process for determining the penalty involves consideration five stages. These consider the statutory guidance in that the FP should reflect: the severity of the offence, the culpability and track record of the offender, the harm caused to the tenant, ensure the punishment of the offender, to need to deter the offender from repeating the offence, the need to deter others from committing similar offences and any financial benefit the offender has from offending.

Stage 1: Banding the offence. The initial FP band is decided following the assessment of two factors;

- Culpability of the landlord; and
- The level of harm that the offence 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 ensure it is proportionate and reflects the landlord’s ability to pay.

Stage 5: Totality Principle. To ensure the total penalty is just and proportionate to the offending behaviour in the case of multiple offences or where a RRO is to be applied for.

4.10 The five stage process enables the Council to determine a penalty score and FP amount. Table 2 provides details on the four Bands and Penalty Scores.

**Table 2:** Financial Penalty Banding and Penalty Scores

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

<b>Financial Penalty</b>	£250	£500	£750	£1,000	£2,000	£4,000	£6,000	£8,000	£10,000	£12,000	£15,000	£18,000	£20,000	£23,000	£26,000	£30,000
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After Council officers have calculated the level of the FP, this will then be checked by a manager within the service (senior environmental health officer, the team leader or the head of service) prior to being passed for processing. A checklist will be completed and kept on file.

- 4.10 It is felt that the FTT is best placed to determine the RRO award to either the Council or tenant following a respective application. On this basis, “Determining the Penalty”, Appendix 1, looks for the Council to apply to the FTT for the maximum rent repayment based on the rent paid over the relevant period in each case and to permit the FTT to determine the sum of the RRO.

**5. THE SMOKE AND CARBON MONOXIDE (ENGLAND) REGULATIONS 2015**

- 5.1 The Smoke and Carbon Monoxide (England) Regulations 2015 (“the 2015 Regulations”) came into force on the 1<sup>st</sup> October 2015. The Government passed the 2015 Regulations as a way of tackling the increased risk of fire deaths and carbon monoxide poisoning in the private rented sector.
- 5.2 New duties are placed on both the Council and the landlord (some exemptions exist). The 2015 Regulations place a requirement to have smoke alarms in all private rented accommodation and carbon monoxide alarms where solid fuel combustion appliances exist. Landlords are required to ensure that all smoke and carbon monoxide alarms are in working order at the start of the tenancy.
- 5.3 For those premises that require a property licence (Houses in Multiple Occupation subject to mandatory licensing and premises subject to Selective Licensing), the 2015 Regulations amend existing requirements to make compliance with the Regulations a mandatory licence condition.
- 5.4 It is the responsibility of the Local Housing Authority (“LHA”) to enforce the 2015 Regulations, and ensure compliance. This includes the use of a remedial notice and, if that is not complied with, to carrying out the works in default.
- 5.5 Where the LHA is satisfied, on the balance of probabilities (civil standard of proof), that a landlord has not complied with a remedial notice a Penalty Charge Notice (“PCN”) can be served. The option of taking a criminal prosecution in a Magistrates Court is not available. Regulation 12 (6) states that the sums received by the local authority can be used for any of its functions.
- 5.6 The regulations require that the LHA must prepare and publish a Statement of Principles which it is required to follow in determining the amount of penalty charge (“PC”). The proposed statement is attached as Appendix 2 for Members’ consideration and approval for publication. Whilst there is no guidance issued in relation to setting of the PC pursuant to the 2015

Regulations, one of the grounds for an appeal, which is made to the FTT, against the decision of the LHA to impose a PC is that the penalty imposed is unreasonable. Furthermore, no PC may exceed £5,000.

- 5.7 In considering the recommended levels as part of the Statement of Principles it is noted that the provision of smoke detectors and carbon monoxide alarms does not place an excessive burden on a Landlord, and the lack of compliance directly impacts the safety and security of tenants, especially those that are vulnerable and those with families.
- 5.8 It is understood that the imposition of the maximum PC, being £5,000 under the Regulations, can present an excessive financial burden however this is balanced against the risk and the fact that reasonable opportunity will have been given to the Landlord to comply prior to any penalty charge being levied. Additionally such alarms are readily available for purchase and are inexpensive, and Fire Authorities continually run schemes that provide such detectors for free, which includes the current scheme: <http://www.london-fire.gov.uk/freesmokealarms.asp>. As such, it is not considered that a failure to comply cannot be based on financial or legal burden.
- 5.9 Government figures suggest that a person is 4 times more likely to die from a fire in a property which does not have a smoke detector in place. Additionally, the successful implementation of these regulations is estimated, in terms of smoke detectors, to prevent 231 deaths and 5,860 injuries over a 10 year period, at a benefit to the economy of £606.7 million. In terms of Carbon Monoxide it is estimated that this could result in 6-9 fewer fatalities and 306-460 fewer injuries, at a saving of £16.8 million.
- 5.10 In light of the above, it is proposed that the penalty charge level set comprises two specific elements with the Regulations setting the maximum at £5,000:
- a punitive (or fine) element for failure to comply with the absolute requirement to comply with a remedial notice, and
  - a “reasonable cost element” relating to costs incurred by the Council in its duties as LHA in complying with its duties to undertake the remedial works in default of the landlord. This includes the cost of a builder, materials, and administration.

**Table 3:** The proposed penalty charges:

	Payment period	Penalty Charge	
		Punitive Charge	(and) Costs
<b>First Offence</b>	Within 28 days	£2,500	Reasonable Costs
	Early Payment Reduction Within 14 days	£1,500	
<b>Second and subsequent offences</b>	Within 28 days	£4,500	Reasonable costs

- 5.11 The level of reasonable costs in completing the works in default is unlikely to



exceed £500 in any case. With access, the installation of a smoke or carbon monoxide alarm is not time consuming and each item is in the region of £30. The current approved method for recovering works in default costs is 30% of the builders net cost. The Statement of Principles allows the option of charging the current officer hourly rate to ensure the Council recovers monies that reflect the reasonable costs employed in meeting its duties.

- 5.12 Prior to issuing a PCN the Council must serve a remedial notice, and it is only if the landlord fails to comply with the requirements of the notice within the prescribed time limit (28 days) that we could proceed to issue the PCN.
- 5.13 The Council has discretion to offer an early payment reduction. An early payment must be made by the landlord within 14 days. We propose that the Council will offer, in the PCN, an early payment reduction to the landlord where it is the landlords first offence. It is proposed that the early payment will reduce the penalty by £1,000. A landlord is only entitled to the offer of one early payment reduction regardless of number of rented properties.

## **6. CONSULTATION**

- 6.1 The draft Smoke and Carbon Monoxide Alarm (England) Regulations 2015 FP structure was presented at the Croydon Landlords Forum on December 15<sup>th</sup> 2016. Additionally, the new powers relating to FP and RRO were raised and discussed although the banding and matrix approach were not available for discussion. The landlords present did not offer any objection to Croydon Council using these powers to penalise criminal landlords. Additionally, no negative comments were received regarding the PC structure relating to the 2015 Regulations.
- 6.2 The FP and RRO banding under the 2016 Act offers a staged approach to determine the level of fine so is more difficult to consult about. The proposed approach has been determined following guidance in a number of statutory and non-statutory documents. It is difficult to run a public engagement or consultation on this process as no specific levels of fine can be offered. If the Cabinet supports the proposals in this paper, the process and fine structure will be promoted in a specific email to all landlords who we have contact details for from their licence applications, on our website, in the landlord e-newsletter and on the agenda of the next Landlords Forum currently proposed for Monday May 15<sup>th</sup> 2017. The aim here will be to increase the awareness of the new powers and implications for those who fall short of the requirements imposed on landlords.
- 6.3 Any person issued with a FP can appeal to the First Tier Tribunal and the grounds for appeal are the decision to award a FP and the amount of the penalty.

## **7. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS**

- 7.1 The penalties levied through the financial penalty and rent repayment orders

can be retained by the Council, provided that the income is used to further the local authority's statutory functions in relation to enforcement activities in the private rented sector.

- 7.2 Penalties will be issued on a sliding scale basis depending on the severity of the offence, with penalties ranging from £250 to £30,000. At this stage, it is not possible to estimate the level of income from these penalties as the number of penalty notices that could be issued is unknown.
- 7.3 The penalties levied through the Smoke and Carbon Monoxide order will be issued according to offence and will range from £2,500 (discounted to £1,500k for prompt payment) to £4,500. Again, at this stage, it is not possible to estimate the level of income from penalties as the number of penalty notices that could be issued is unknown.
- 7.4 The effect of the decision  
While it is not possible to estimate the level of income that could be earned from these penalty notices. It is anticipated that the implementation of this scheme will encourage landlords to comply and therefore the need to issue fines and the corresponding work associated with the administration of the scheme will be kept to a minimum and can be funded from the fee income.
- 7.5 Risks  
There is a risk that the administration (including processing appeals) of this scheme will be greater than the level of income earned from fines and therefore the implementation of this scheme will fail to be cost neutral and will need investment. The cost associated with running the schemes will need to be reviewed regularly to ensure it remains efficient and effective.
- 7.6 Options  
There is the option to not implement a fining scheme. This is not considered appropriate as it is anticipated that the introduction of fines will encourage a greater level of compliance across the Borough, making homes safer.
- 7.7 Future savings / efficiencies  
It is anticipated that the implementation of these fines will fund the cost of administering the service and if additional income is generated this will be used to further enhance services.

Approved by: Lisa Taylor, Director of Finance, Investment and Risk , and Deputy S151 officer.

## **8. COMMENTS OF THE COUNCIL SOLICITOR AND MONITORING OFFICER**

- 8.1 The Council Solicitor to the Council comments that Schedule 9 read with section 126 of the 2016 Act sets out the matters to which the Council as housing authority must have regard in setting a FP as an alternative to prosecution for failure to comply with certain Housing Act functions- including provisions in relation to the imposition and enforcement of financial penalties and appeals in respect of such financial penalties.

- 8.2 The LHA may impose a FP on a person if satisfied, beyond reasonable doubt (the criminal standard of proof), that the person's conduct amounts to a relevant housing offence in respect of premises in England.
- 8.3 For these purposes a “relevant housing offence” means an offence under—
- section 30 (failure to comply with improvement notice),
  - section 72 (licensing of HMOs),
  - section 95 (licensing of houses under Part 3),
  - section 139(7) (failure to comply with overcrowding notice), or
  - section 234 (management regulations in respect of HMOs).
- 8.4 Only one FP under this section may be imposed on a person in respect of the same conduct and the LHA may not impose a FP in respect of any conduct amounting to a relevant housing offence if—
- (a) the person has been convicted of the offence in respect of that conduct, or
  - (b) criminal proceedings for the offence have been instituted against the person in respect of the conduct and the proceedings have not been concluded.
- 8.5 The duties The Smoke and Carbon Monoxide (England) Regulations 2015 (“the regulations”) do not apply to a landlord who is a registered provider of social housing.
- 8.6 Under the 2015 Regulations, where a remedial notice has been served, if the LHA is satisfied, on the balance of probabilities, that a landlord has breached the duty to comply with a RN within 28 days, they must arrange for remedial action to be taken where the occupier consents. Remedial action can include installing a required alarm (or alarms), repairing an installed alarm or checking an installed alarm is in proper working order.
- 8.7 Failure to comply with a remedial notice would also render the landlord liable for a PC. The LHA may not seek to impose a PC unless they have adopted and published a Statement of Principles and have had regard to these principles in setting the PC. Where a landlord is dissatisfied with the PC imposed, there is provision for an appeal to the FTT on a number of grounds, namely:
- (a) the decision to confirm or vary the PCN was based on an error of fact;
  - (b) the decision was wrong in law;
  - (c) the amount of the PC is unreasonable;
  - (d) the decision was unreasonable for any other reason.
- 8.8 Accordingly, in setting the penalty charges, the Council needs to be satisfied that the reasoning for the levels are both clearly set out and well evidenced as part of its Statement of Principles in order to mitigate against the risk of successful challenge.
- 8.9 Where a landlord appeals to the FTT, the operation of the PCN is suspended until the appeal is finally determined or withdrawn. The Tribunal may quash, confirm or vary the PCN, but may not increase the amount of the PC.

8.10 Approved for and on behalf of Jacqueline Harris-Baker, Director of Law, Council Solicitor and Monitoring Officer

## **9. HUMAN RESOURCES IMPACT**

9.1 There are no immediate human resource impacts.

9.2 Approved by: Jason Singh on behalf of the Director of Human Resources

## **10. EQUALITIES IMPACT**

10.1 The 32,038 private rented sector properties makes up 22% of the 145,010 total properties in the Borough. In Croydon 3,032 (or 9.5%) dwellings in the private rented sector have category 1, Housing Health and Safety Rating System (HHSRS) hazards. The national picture is similar with the private rented sector offering the worst housing conditions. In 2014, 28% of private renters (1.2 million households) lived in dwellings that were non-decent, compared to 47% in 2006 (1.1 million)<sup>2</sup>.

10.2 Whilst there remains a high number of tenants who have vulnerabilities associated with disability, life long illness, financial means, ethnicity or age statistics are showing that, as a percentage, these groups are reducing and lower when compared to owner occupation or social renting. The lower percentages come at a time that the private rented sector has seen a growth from 11% of all households (bout 3M) in 2004-5 to 19% (4.3M) in 2014-15. The range of renters is diverse with many needs and the vulnerabilities remain for many households.

10.3 Croydon Council has already a selective licensing designation and the new powers compliment and build on the options already available for enforcement for the private sector housing team in tackling bad practice and criminal landlords. The new maximum penalties will increase to a £30,000 penalty charge and £25,000 rent repayment order (4 bed average annual rent) and the banning order offer the option for excluding criminal landlords or letting agents. The revised Public Protection Enforcement Policy and paragraph 3.4 explains how control over penalties will be managed.

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

## **11. ENVIRONMENTAL IMPACT**

- 11.1 There are no identifiable environmental sustainability impacts as a consequence of this report.
- 11.2 Poorly managed private rented properties will cause neighbourhood problems with refuse, noise and cause a blight through poor appearance. The energy used in homes accounts for more than a quarter of energy use and carbon dioxide emissions in the United Kingdom. More energy is used in housing than either road transport or industry.<sup>3</sup>
- 11.3 9.0% (2,783) of private rented dwellings in Croydon are estimated to have an Energy Performance Certificate rating below band E, nationally the figure is 7.1% (2004).<sup>1</sup>
- 11.4 Improving private rented housing therefore represents a major opportunity to control the environmental and neighbourhood problems as well as cut energy use and CO<sub>2</sub> emissions for fuel poor tenants.

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1. BRE Croydon Council Stock Modelling 2011

2. English House Condition Survey 2014

3. DECC United Kingdom housing energy fact file 2013

## **12. CRIME AND DISORDER REDUCTION IMPACT**

- 12.1 A small number of landlords operating private rented properties are operating as criminals. Their lifestyles are being supported by these criminal activities. The new powers will support Croydon Council's continued drive to improve the practices in the private rented sector and ensure penalties are proportionate to the offence. The new penalties are limited to the offences list in paragraphs 3.2 and 3.3.

## **13. REASONS FOR RECOMMENDATIONS/PROPOSED DECISION**

The report sets out the new enforcement and penalty powers that have been introduced under the Housing and Planning Act 2016 and Smoke and Carbon Monoxide Alarm (England) Regulations 2015.

The Government has made Regulations legislating that the commencement of the 2016 Act Financial Penalty (FP) and Rent Repayment Orders (RRO) will be April 6<sup>th</sup> 2017. The Government identified the negative impact of criminal landlords and early adoption of the powers continues the proactive approach to private sector housing enforcement taken by Croydon Borough Council.

Additional funding received following the successful use of the FP and RRO will further the local authority's statutory functions in relation to their enforcement activities covering the private rented sector.

## **14. OPTIONS CONSIDERED AND REJECTED**

- 14.1 The new powers are contained within national legislation and are available (from the implementation dates) for all Council's to use. We feel they are a significant new tool to address poor housing conditions and rogue landlords and that choosing not to use them is not an option. In addition, the Government has issued strongly worded guidance and it is clear that it expects Councils to make full use of them.
- 14.2 The process to determine the actual FP for each offence and individual case is complex and we can use discretion. We considered a range of starting points for FPs, for example £2,000, but rejected this approach as being too punitive in some cases. Government guidance is clear that aggravating and mitigating factors should be taken into consideration, and having a fixed starting point would not do this. Therefore this option was rejected in favour of a wide range of financial penalties even though this is more complicated.

### **CONTACT OFFICER:**

Shayne Coulter, Public Protection Manager, Safety Division.  
Telephone number (direct dial) - 020 8760 5631

### **BACKGROUND PAPERS - LOCAL GOVERNMENT ACT 1972**

Equalities Analysis Form

### **APPENDICES:**

1. Determining the Penalty – Housing Act 2016
2. Statement of Principles which has been produced as required under Regulation 13 of The Smoke and Carbon Monoxide (England) Regulations 2015

**Financial Penalties under s126, Chapter 6 and applications for Rent Repayment Orders, Chapter 4.**

The new authority to issue a Financial Penalty and Rent Repayment Order came into force on April 6 2017 following the making of the 'The Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017' (SI 2017 No. 367) and 'The Housing and Planning Act 2016 (Commencement No. 5, Transitional Provisions and Savings) Regulations 2017'.

**Introduction - Financial Penalty (FP).**

The new powers to issue a Financial Penalty came into force on April 6 2017 under Chapter 6 and schedule 9 of the Housing and Planning Act 2016 ("2016 Act") and The Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017. A FP can be issued to a landlord (includes other responsible persons) who commits one of the following Housing Act 2004 ("2004 Act") offences.

- Section 30 – not comply with an improvement notice
- Section 72 (1) – not licence a house in multiple occupation
- Section 72 (2) – licensed HMO that is overcrowded
- Section 72 (3) – not comply with HMO licence conditions
- Section 95 (1) – not licence a private rented property (non-mandatory HMO)
- Section 95 (2) – not comply with a private rented property licence condition.
- Section 139 – overcrowding notice for HMO
- Section 234 – non-compliance a HMO Management Regulation

A new offence is created by section 21(1) of the 2016 Act; the breach of a Banning Order. The option to issue a FP is available. This power will not be available until later in 2017 with the current proposed commencement date; 1<sup>st</sup> October 2017.

The new section 249A of the Housing Act 2004 ("2004 Act") allows the Local Housing Authority (LHA) to issue a FP limiting the maximum penalty at £30,000.

**Introduction - Rent Repayment Orders (RRO)**

Rent Repayment Orders can already be applied for by a LHA or tenant under sections 73 and 96 of the 2004 Act for the following offences;

- Offence of failing to license an HMO under section 72 (1) of the 2004 Act;

- Offence of failing to license a licensable house under section 95(1), Part 3 of the 2004 Act.

A tenant can only make an application where the LHA had either secured a conviction *or* following a successful RRO award.

Chapter 6 of the 2016 Act widened the option to make an application to the First Tier Tribunal (FTT) for a RRO. This came into force on April 6 2017 under Chapter 4 of the 2016 Act. An application for a RRO can be made, within 12 month period, by a LHA or tenant against a landlord who commits one of the following Housing Act 2004 (“2004 Act”) offences (whether or not convicted) (\*application for RRO - in addition to issuing a FP).

- 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 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 of the Protection from Eviction Act 1977

A new offence is created by section 21(1) of the 2016 Act; the breach of Banning Order. The option to apply for a RRO is available. This power will not be available until later in 2017 with the current proposed commencement date; 1st October 2017.

### **Financial Penalties as an alternative penalty to taking a prosecution.**

The Government have 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 they are not a lighter option to a prosecution. LHA have been given the authority to both determine whether to convict and the level of FP to impose; at up to £30,000. 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 LHA to further its statutory functions in relation to private housing enforcement work.

The 2016 Act has also introduced the “Landlord Banning Order” (LBO) for the most serious and prolific offenders and the “Rogue Landlord Database” (RLD) of rogue landlords and property agents convicted of certain offences. Both elements are scheduled to come into force on 1 October 2017. Whilst a landlord issued with a FP\* can be placed on the RLD (\* requiring two FP within a 12 month period) a FP will not be a “Banning Order Offence” and so the issuing of a FP will preclude a LHA from seeking to apply to a FTT for a LBO.



The legislation does not permit LHA to both issue a FP and prosecute for the same offence. If a person has been convicted or is currently being prosecuted, the LHA 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. A LHA must determine which route to follow

The Statutory Guidance says that 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. The first of five stages of ‘Setting the Penalty’ offers a means of Banding the Offence based on the seriousness of the offence, culpability of the landlord and impact on tenant and community. The five stage allow a wide review of the appropriateness of the penalty chosen including the means and the table below acts as a guide. As part of reviewing whether to prosecute the LHA should consider the scope for working together with other LHA 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 Boroughs.

The decision whether to prosecute will be considered for each offence but Croydon will regard it as the preferred option for the higher banded offences and offences that the LHA determine fall at the threshold where it is proportionate to look to seek further redress ultimately through the RLD and BO penalties. This approach will meet the Government’s aim of clamping down heavily on a criminal landlord or letting agents.

**Banding the Offence and Determining the Penalty (using scoring matrix)**

Band 1				Band 2				Band 3				Band 4			
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Caution															
Financial Penalty – Rent Repayment Order optional															
		Financial Penalty and Rent Repayment Order Register on Rogue Landlord Database (2 FP within 12M period)													
				Prosecution and Rent Repayment Order Banning Order Offence – register on Database											
								Consider -application to Ban Landlord							

### **Setting the Financial Penalty (FP) for a Landlord.**

A Local Authority must determine the level of FP that can be awarded against a landlord. Croydon Council has developed this five stage process to provide a framework to assist with “*determining the level of fine*” which will ensure consistency, transparency and a fair assessment for all parties.

The process has taken into account the following documents;

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.
  - Article 12 of the new schedule 13A in the 2004 Act.
2. The Code for Crown Prosecutors which gives guidance to prosecutors on the general principles to be applied when making decisions about prosecutions.
3. Sentencing Council Guidance for Health and Food Safety Offences (2016)
4. Croydon Council Public Protection Enforcement Policy (incorporating the Private Sector Housing Enforcement Policy)
5. Making Homes Safe – May 2nd 2017. Cabinet authority to use procedure for *determining the level of financial penalty*.

### **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, 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 from offending.

### **The five Stages in ‘Determining the Level of Financial Penalty’.**

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; and
- The level of harm that the offence 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 ability to pay.

Stage 5: Totality Principle. A consideration of whether the enforcement action is against one or multiple offences, whether recent related offences have been committed and ensuring the total penalties are just and proportionate to the offending behaviour.

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

Banding the Offence	
<p><b>Factor 1.</b> <b>Culpability of Landlord</b> <b>(seriousness of offence and culpability)</b></p> <p><b>To consider as part of assessment</b></p> <ul style="list-style-type: none"> <li>• the scale and scope of the offences,</li> <li>• was length of time did the offence continue for or repeat over?</li> <li>• what was the legislation being breached?</li> <li>• to what extent was the offence premeditated or planned,</li> <li>• whether the landlord knew, or ought to have known, that they were not complying with the law,</li> <li>• the steps taken to ensure compliance.</li> <li>• whether the landlord has previous relevant unspent housing offence related convictions (source National Landlord database),</li> <li>• the likelihood of the offence being continued, repeated or escalated.</li> <li>• the responsibilities the landlord had with ensuring compliance in comparison with other parties</li> </ul>	<p><b>Assessment:</b> <b>The landlord is to be assessed against four levels (low, moderate, high or significant) of culpability:</b></p> <p><b>Significant</b> - Where the offender deliberately or intentionally breached, or flagrantly disregarded, the law.</p> <p><b>High</b> – Landlord had actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken.</p> <p><b>Moderate</b> - Offence committed through act or omission which a landlord exercising reasonable care would not commit</p> <p><b>Low</b> - 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</p>
<p><b>Factor 2</b> <b>Level of Harm</b> <b>(for tenant, community)</b></p> <p><b>To consider as part of assessment</b></p> <ul style="list-style-type: none"> <li>• circumstances or vulnerabilities or actual discrimination against the tenant or tenants. (age, illness, language, ability</li> </ul>	<p><b>Assessment:</b> <b>The landlord is to be assessed against four levels (low, moderate, high or significant) of harm or consequence:</b></p> <p><b>Significant.</b> <input type="checkbox"/> Serious adverse effect(s) on individual(s) and/or having a widespread impact</p> <p><input type="checkbox"/> Significant risk of an adverse effect on individual(s) – including where persons are vulnerable</p>

<p>to communicate, young children, disabilities or in relation to any protected characteristic (Equalities Act 2010)</p> <ul style="list-style-type: none"> <li>• tenant's views about the impact that the offence has had on them.</li> <li>• 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.</li> <li>• was more than one other household affected,</li> <li>• the level of actual or potential physiological or physical impact on tenant(s) and third parties?</li> <li>• what regulation, legislation, statutory guidance or industry practice governed the circumstances of the offence?</li> <li>• has the level of trust been breached and have landlord actions impacted on sector?</li> </ul>	<input type="checkbox"/> Significant disregard of Regulator or legitimate industry role with significant deceit.
	<b>High</b> <input type="checkbox"/> Adverse effect on individual(s) (not amounting to significant)
	<input type="checkbox"/> High risk of an adverse effect on individual(s) or high risk of serious adverse effect, some vulnerabilities. <input type="checkbox"/> Regulator and/or legitimate industry substantially undermined by offender's activities <input type="checkbox"/> Consumer/tenant misled
	<b>Moderate</b> <input type="checkbox"/> Moderate risk of an adverse effect on individual(s) (not amounting to low risk)
	<input type="checkbox"/> Public misled but little or no risk of actual adverse effect on individual(s)
	<b>Low</b> <input type="checkbox"/> Low risk of an adverse effect on individual(s)
	<input type="checkbox"/> Public misled but little or no risk of actual adverse effect on individual(s)

**Scoring matrix to determine the level of fine.**

Scoring Matrix for Financial Penalty					
LEVEL OF CULPALABILITY (SERIOUSNESS OF OFFENCE)	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				

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

## Financial Penalty Banding.

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
<b>Financial Penalty</b>	£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

<b>Penalty Banding Grid</b>	Band 1				Band 2				Band 3				Band 4			
<b>Penalty Score</b>	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
S30(1) – IN HA 2004 (£5,000) By completion time	£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
S30(1) – IN HA 2004 (£5,000) Start on time	£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
S32 (1)– PO HA 2004 (£5,000) Breach of Order																
S32 (1)– PO HA 2004 (£20 daily) Continuing offence																
Section 72 (1) – not licence HMO (£20,000)	£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
Section 72(2) –HMO overcrowding (£5,000)	£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
Section 72(3) –HMO licence conditions (£5,000)	£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
Section 95 (1) – not licence PRP (£20,000)	£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
Section 95 (2) – PRP licence condition. (£5,000) per condition	£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
Section 139 – HA 2004 O/C (£2,500)	£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
Section 234 – HMO Regulation (£5,000) per breach	£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
Section 21(1) Housing Planning Act 2016. Breach of Banning Order (imprisonment)	£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
Section 6(1) Criminal Law Act 1977; (£5,000 or Imprisonment)																
Section 1 92) (3) or (3A) Protection from Eviction Act 1977 (fine or imprisonment)																
Breach of a banning order made under section 21 of the 2016 Act;	£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

Offence	Subject to FP and RRO
Offence	Subject to FP only
Offence	Subject to RRO only

## 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, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction (is conviction spent)?
- Motivated by financial gain, profited from activities.
- Deliberate planned concealment of activity resulting in offence and obstructive nature of landlord towards investigation
- Established evidence of longer term impact on the (wider) community as a consequence of activities.
- 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 LHA advice regarding responsibilities, warnings of breach or learned experience from past action or involvement of LHA or other Regulatory Body.
- Any further factor that can be deemed of sufficiently aggravating nature that is not covered above or within the culpability and harm banding factors.

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

Objective: to consider any mitigating factors and whether they are relevant to the offence. 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
- Steps voluntarily taken to remedy problem
- 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
- Mental disorder or learning disability, where linked to the commission of the offence
- Serious medical conditions requiring urgent, intensive or long-term treatment where linked to the commission of the offence.
- Age and/or lack of maturity where it affects the responsibility of the offender
- Any further factor that can be deemed of sufficiently mitigating nature that is not covered above or within the culpability and harm banding factors.

**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 Crown Prosecutions sentencing principles:

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

**Step 2:** to check that provisional FP assessment, proposed FP is proportionate and will have an appropriate impact.

Local authorities should use their existing powers to, as far as possible, make an assessment of a landlord's assets and any income (not just 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.

Part 6, Schedule 6 of the Crime and Courts Act 2013 permits the value of any assets owned by the landlords, eg 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, removing reward for criminal activities and acting as a deterrent to bad practice.

In setting a financial penalty, the LHA 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 LHA such data relevant to his financial position as will enable it to assess what he can reasonably afford to pay. Where the LHA is not satisfied that it has been given sufficient reliable information, the LHA 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 LHA should consider the following guidance from the definitive guideline on Offences Taken into Consideration and Totality. Where separate financial penalties are passed, the LHA 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 LHA to issue a FP and also apply for a RRO. Where the FP is issued the FTT must award the maximum RRO.

"The total financial penalty is inevitably cumulative". The LHA 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 LHA. The LHA should add up the financial penalties for each offence and consider if they are just and proportionate.

If the aggregate total is not just and proportionate the LHA 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 for the most serious offence 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 LHA 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 LHA should consider whether all of the financial penalties can be proportionately reduced. Separate financial penalties should then be passed.
- where a LHA 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.

### **Setting the Rent Repayment Order (RRO) for a Landlord.**

A tenant or a LHA 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 LHA 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. A LHA has no control over the level of rent a tenant may apply for.

The Government have advised that the RRO should ensure it considers 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. LHA 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 LHA 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 a LHA 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".

If no conviction or FP is issued or no FP can also be issued, and a RRO is applied for, Croydon Borough Council 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 5 to ensure the Totality 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 Rent Repayment Order 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. It is also felt that not making the application for the maximum award would undermine the discretion of the FTT.

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

#### NOTE

#### **Financial Penalty Process and Right for Person to make Representations..**

Before imposing a financial penalty on a person under section 249A the local housing authority must, within 6 months of the date of the offence, give the person notice of the authority's proposal to do so (a "notice of intent"); incorporating why and the level of fine. A person in receipt of the notice of intent can make written representations within 28 days. Subsequently the LHA must decide whether to issue a financial penalty and the amount and to do so must issue a final notice.

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

The landlord has the right to make representations and any representation must be duly considered. The LHA will provide a response within 21 days (no statutory time period) with a decision notice stating whether the penalty will be withdrawn, varied or upheld.

**All communications** for representations made against the intended FP or RRO are to be written and sent to:

Shayne Coulter  
**Public Protection Manager**  
Croydon Borough Council  
Place department  
Safety Division  
6th floor zone A  
Bernard Weatherill House  
8 Mint Walk  
Croydon  
CR0 1EA

All representations must be written. If help is needed please make contact as early as possible.

Telephone: 020 8760 5631 (direct dial with answerphone)

Web: [www.croydon.gov.uk](http://www.croydon.gov.uk)

Or by email to: [hsg-privatehousing@croydon.gov.uk](mailto:hsg-privatehousing@croydon.gov.uk)

Appendix 2

<b>Statement of Principles.</b>	
<u>Private Housing Enforcement Team - Smoke and Carbon Monoxide (England Regulation 2015.</u>  Last updated 7 <sup>th</sup> April 2017	

**Introduction:**

The Council is required under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 (“the 2015 Regulations”) to prepare and publish a Statement of Principles which it must follow when determining the amount of a penalty charge.

The Council may revise its statement of principles at any time, but where it does so, it must publish the revised statement. The current statement of principles which is in force at the time of the commission of the offence is to be used when deciding on the amount for the penalty charge.

**Duties on Landlords**

The Regulations require that landlords for all let properties (some exemptions exist) ensure that:

- a smoke alarm is installed on each storey of premises where there is living accommodation
- a carbon monoxide alarm is installed in any room of premises used as living accommodation, which contained a solid fuel burning appliance.

AND for tenancies starting from 1 October 2015

- that checks are made by the landlord, or someone acting on his behalf, that the alarm(s) are in proper working order on the day the tenancy starts.

Properties subject to Part 2 or Part 3 licensing are exempt from the 2015 Regulations although compliance is achieved through an additional clause being added to the property licensing conditions.

**Enforcement**

Where the Council believe that a landlord is in breach of one or more of the above duties, the Council must serve a Remedial Notice (RN) on the landlord under Regulation 5. This will list the remedial works required to be taken by the Landlord.

**SMOKE & CARBON MONOXIDE ALARM (ENGLAND) REGULATIONS 2015**  
**Statement of Principles:**

Regulation 5(e) makes provision for the landlord to be able to request a written review of the RN within 28 days.

If the Landlord fails to take remedial action, within the specified timescale, a penalty charge notice ("PCN") may be issued. The penalty charge ("PC") may not exceed £5,000.00. The 2015 Regulations require the Council to carry out the works in default and can then reclaim all reasonable costs incurred by the builder and themselves in organising the works.

Where a PC is to be imposed for non-compliance, the landlord subject to the PC shall be notified in writing by a PCN. This PCN shall include;

- the reason for imposing the penalty;
- the premises to which it relates;
- the number and type of alarms the Council has installed at the premises;
- the amount of the penalty (including eligibility for first offence early payment discount);
- details to make payment; and,
- details of the right to request a review and how to request it.

**The Purpose of Imposing a Financial Penalty Charge ("PC"):**

- Protect the interests of the public
- Lower the risk to tenant's health and safety
- Reimburse the costs incurred by the Council in arranging remedial action in default of the landlord
- Change the behaviour of the landlord and aim to prevent future non-compliance
- Penalise the landlord for not installing alarms in line with the Regulations and after being required to so, under notice
- Eliminate financial gain or benefit from non-compliance with the Regulations.
- Be proportionate to potential harm outcomes, the nature of the breach, and the cost benefit to comply with these legal requirements.

**Determining the Penalty Charge (Punitive Element):**

In deciding whether a financial penalty is appropriate, the Council will take account of the relevant facts and circumstances of this breach and past breaches. The expectation is that a landlord is proactive with complying with his duties to ensure that the number and type of alarms at least meets the expectations of the 2015 Regulations. Any vacant rental periods and the RN process offers the landlord additional time in which to comply.

The PCN will be issued where the Council is satisfied, on the balance of probabilities, the landlord has failed to comply with his duties. To take account of relevant facts the LHA will review that evidence available concerning the breach and what action the landlord has taken to try to comply with his duties including steps at the start of a tenancy, in response to a request from a tenant and/ or in response to the RN. The offence is aggravated in high fire risk situations such as where the property is

## **SMOKE & CARBON MONOXIDE ALARM (ENGLAND) REGULATIONS 2015**

### **Statement of Principles:**

overcrowded, is occupied by vulnerable persons, the means of escape is difficult, the height of the premises above ground level or risk from electrical safety.

To determine relevant facts the Council will try to collect evidence, including; information from a property inspection or provided by the tenant, landlord or agent on property management and whether any remedial action has been satisfactorily completed.

Landlords can demonstrate compliance with their duty to install by supplying dated photographs of alarms, together with installation records or signed confirmation by the tenant that a system is in proper working order at the start of the tenancy. Tenancy agreements can specify the frequency that a tenant should then test the alarm to ensure it is in proper working order.

### **Criteria for determining the amount of Penalty Charge**

The Regulations state the amount of the penalty charge must not exceed £5,000. The penalty charge comprises two parts;

- a “punitive element” for failure to comply with the absolute requirement to comply with a remedial notice, and
- a “reasonable cost element” relating to costs incurred by the Council in complying with its duties. This includes the cost of a builder, materials, and administration (for further explanation - see below).

	Payment period	Penalty Charge	
		Punitive Charge	(and) Costs
<b>First Offence</b>	Within 28 days	£2,500	Reasonable costs
	Early Payment Option Within 14 days	£1,500	
<b>Second and subsequent offences</b>	Within 28 days	£4,500	Reasonable costs

### **Reasonable costs.**

The Council is able to recover its costs with complying the RN. The reasonable costs incurred by the Council could include time spent with; investigating, surveying, contacting relevant parties, administration and any remedial works (labour and materials) arranged and carried out by the Council's contractors.

The level of reasonable costs in completing the works in default is unlikely to exceed £500 in any case. With access, the installation of a smoke or carbon monoxide alarm is not time consuming and each item is in the region of £30. The current approved method for recovering works in default costs is 30% of the builders net cost. This Statement of Principles allows the option of charging the current officer hourly rate to ensure the Council recovers monies that reflect the reasonable costs employed in meeting its duties. The current rate for an officer is £80.00 per hour.

A breakdown of the level of reasonable cost applied will be available to any landlord issued with a PCN. The maximum PC is capped at £5,000.

### **Early Payment Option**

The Council has discretion to offer an early payment reduction where payment is made within 14 days. The Council will offer an early payment reduction of £1,000 to the landlord where it is the landlord's first offence. Each landlord is only entitled to one early payment reduction regardless of number of rented properties.

### **Review of Penalty Charge Notices**

The Landlord can request in writing that the Council review the service of a PCN. The request for a review must be made within 28 days from the date which the PCN is served.

A landlord offered the early payment option can request a review. This review must be requested within 14 days from the date which the PCN is served if the Landlord to continue to be eligible for the early payment fee.

Information on how to request a review will be on the reverse of the PCN and is explained at the end of this statement.

The Council must consider any representation and decide whether to confirm, vary or withdraw the PCN. The Council in making decision will consider the following:

1. Whether the facts of the matter supported the service of the PCN
2. Whether the decision was correct having regard to the relevant laws.
3. The amount of the PC was reasonable having regard to any mitigating, aggravating or other circumstances submitted with the request for review. Adjustments to the PC will be in steps of £250, including to increase subject to the maximum PC being capped at £5,000.
4. Whether the early payment reduction has already been offered.
5. That there must be a significant factor to make an adjustment.

### **Appeal of Penalty Charge Notices**

A Landlord who has requested a review of a PCN and has been served with a decision notice confirming or varying the PCN, may appeal to the First-tier Tribunal against the Council's decision. Appeals should be made within 28 days from the date of the decision notice served by the Council.

### **Recovery of Penalty Charges.**

If the PCN is not paid, then recovery of the PC will be pursued as laid out in the 2015 Regulations. Where landlords do make an appeal to the First-tier Tribunal, recovery will commence after the appeal period has elapsed or from when the appeal is finally determined or withdrawn.

### **Remedial Works to comply with Regulations**

## **SMOKE & CARBON MONOXIDE ALARM (ENGLAND) REGULATIONS 2015**

### **Statement of Principles:**

To comply with these Regulations the type of smoke alarm deemed acceptable is either a mains powered alarm or one operated with a sealed battery with a 10 year life with one fitted on each floor.

It is important to remind landlords that a full fire risk assessment should be undertaken to ensure that this level of detection meets the risk within the premises. The Council can assess risk using the Housing Act 2004 and this may require additional detection. Such circumstances include mode of occupation, nature of tenants, property layout or height of building. Freeholders may also be required to risk assess the common ways under the Regulatory Reform (Fire Safety) Order 2005.

Carbon Monoxide Alarms – In order to comply with these Regulations, a carbon monoxide alarm will be installed in every room containing a solid fuel combusting appliance.

**All communications** for representations made against the Remedial Notice (Regulation 5) or the Penalty Charge Notice (Regulation 8) are to be sent to:

Shayne Coulter  
Public Protection Manager  
Croydon Borough Council  
Place department  
Safety Division  
6th floor zone A  
Bernard Weatherill House  
8 Mint Walk  
Croydon  
CR0 1EA

All representations must be written. If help is needed please make contact as early as possible.

Telephone: 020 8760 5631 (direct dial with answerphone)

Web: [www.croydon.gov.uk](http://www.croydon.gov.uk)

Or by email to: [hsg-privatehousing@croydon.gov.uk](mailto:hsg-privatehousing@croydon.gov.uk)