

**Croydon Private Rented Property Licence 2020 [CPRPL 2020].  
Policy decisions relating to granting of licences (proposed).**

**Part 1. Policy relating to the grant of a 5 year licence**

**Part 2. Policy relating to the grant of a multi-let property licence.**

**Part 3. Policy relating to the payment of a fee**

**Part 4. Fit and proper person checks**

**Part 1. Grant of a 5 year licence**

Croydon Borough council has exercised its powers under section 80 Housing Act 2004 (“2004 Act”) and has designated two areas totalling the whole of the borough as an area subject to selective licensing. Under the ‘London Borough of Croydon Designation for an Area for Selective Licensing 2020’, which came into force on 1 February 2021, most privately rented homes in the borough are required to have a private rented selective property licence (“property licence”).

The previous selective licensing designation ran from the 1<sup>st</sup> October 2015 until the 30<sup>th</sup> September 2020; [termed CPRPL 2015]. The schemes will not be contiguous.

This part 1 focuses on new decisions that arise out of the proposed designations which are scheduled to commence on the 1st February 2021 and seeks to ensure the decision making is open, fair and transparent. It details the factors that the council will take into account in determining an application for a property licence including;

1. Issue licences of 5 years [with or without discount].
2. Issue licences of 1 year [shorter-term licence].
3. Refuse to grant a licence.
4. Circumstances where a licence maybe revoked or varied.
5. Other matters.

**Issuing a licence.**

1.1 In determining an application for a property licence, the council must decide whether to grant or refuse a licence. In the situation where the council is minded to grant a licence, there is no prescribed duration period except insofar that the licence period should not exceed 5 years [section 91 of the 2004 Act].

1.2 This document outlines the council’s general approach to granting a licence, either with a 5-year term or a shorter term such as for 1-year.

1.3 The previous Part 3 property licensing scheme closed on the 30<sup>th</sup> September 2020. Properties previously granted a selective licence that fall under the definition of a mandatory houses in multiple occupation should have applied for a MHMO licence prior to the 30<sup>th</sup> September 2020; the end of CPRPL 2015.

**Standard applications under the CPRPL 2020.**

1.4 Where the property is located in the area of the proposed new selective licensing designation(s) and that there are no contra-indications relating to person or property, e.g. concerns about the management or condition of the property, the council will normally grant a licence that has duration of 5 years. In the event that the council grants a shorter-term licence, it will explain its reasons for doing so when it issues the licence.

**Standard applications under the CPRPL 2020 resulting in a one year licence.**

1.5 Where the property is located in the area of the proposed new selective licensing designation(s) and that contra-indications relating to person or property have been identified, e.g. concerns about the management or condition of the property, the council will come to a view about the issue of a licence for a period shorter than 5 years; commonly 1 year. In the event that the council grants a shorter-term licence, it will explain its reasons for doing so when it issues the licence.

1.6 The shorter-term property licence will mean that the landlord will need to submit a new licence application when it expires; after one year. However, the grant of the licence will enable the property to be legally rented, with the licence holder able to remedy the issues causing the shorter-term licence to be issued. Additionally, a relevant conviction can cease to be a factor justifying any future shorter-term licences. [Assuming that any convictions did not result in the outright refusal of the licence application].

1.7 In circumstances where a shorter-term licence would be issued, for contra-indications of the person, the landlord has the option of appointing a willing and competent intermediary third party manager who would also act as licence holder. Where a licence was already in place, a new application would need to be made as licences are not transferrable (s 91 of the 2004 Act). With a property manager employed, the manager would need to sign a declaration of management (see proposed licence conditions).

1.8 The shorter-term property licence, in appropriate cases, will enable the landlord to take action to regularise the use of the property. This can include the landlord being able to obtain possession of the property through the service of a s21 notice [Housing Act 1988], in order to bring about necessary changes in occupation or physical changes to the building.

**Subsequent applications under CPRPL 2020**

1.9 In the event that the council has previously issued a reduced-term licence or refused a licence application, any subsequent licence application will be determined depending upon the circumstances of the individual case. Where the property is located in the area of the proposed new selective licensing designation(s) and that there are no longer any contra-indications relating to person or property that warrant the grant of a shorter-term licence, the council will normally grant a licence that has a duration of 5 years. In the event that it does not do so, the council will summarise its reasons when it issues the licence.

1.10 In addition to there being no clear contra-indications, the council will review positive steps a landlords has taken to improve their professionalism such as successfully becoming accredited as part of determining whether to grant a licence.

1.11 In situations where a shorter-term licence has been granted, due to identified planning breaches, the council would expect the landlord to regularise the use of the property during the term of that granted licence. This could be achieved either by obtaining the necessary consent or by taking steps to remedy the breach [e.g. by returning an unauthorised HMO to single family usage or through a retrospective application]. In the event that the council decides that the landlord has not taken all possible steps to regularise an unauthorised use, it would usually not grant a further property licence on expiry of the short-term licence, in accordance with the judgment in *LB of Waltham Forest v Khan* [2017] UKUT 153

**Refusal to grant a licence.**

1.12 Where the council has determined to refuse an application, it will consider granting up to two Temporary Exemption Notices [TENs] in situations where a landlord is unable to obtain possession other than by taking proceedings in the County Court. A short-term

licence may also be appropriate in circumstances where there was clear evidence that the landlord had failed to maintain the rented property evidenced by a failure to comply with relevant standards and/or remedy/take action to remedy significant hazards.

### **Revoking or varying a licence**

1.13 The council may vary or revoke a property licence; refer to sections 92 or 93 of the 2004 Act. This can occur with the agreement of the licence holder or be varied by the council if there is a change in circumstances. A licence holder or relevant person can make the application. A relevant person includes a person with an estate or interest in the house, who is a person managing or having control of the house or on whom any restriction or obligation is imposed by the licence in accordance with section 90(6) (2004 Act).

1.14 A licence holder and property manager is required to keep the council informed of changes to contact details, involvement with the property and any relevant offences.

1.15 A property licence may be varied:

1. to increase or decrease the number of permitted occupants, or
2. to add conditions relating to amenities, or
3. to remove any conditions that are no longer applicable, or
4. to change the manager (unless they are also the licence holder), occupation, a change of address or details of any interested party such as the manager, owner, mortgagor, freeholder or leaseholder.

1.16 A property licence may be revoked where:

1. the licence holder or other person has committed a serious breach(s), including of a condition of the licence (no longer fit and proper), or
2. the licence holder moves outside of the British Isles, or
3. the licence holder, which is a limited company, dissolves or ceases trading, or
4. the management of the house is no longer being carried on by someone who is a fit and proper person to be involved in its management, or
5. where the property ceases to be a licensable HMO or licensable property or is a house no longer subject to selective licensing, or
6. where, in the case of a house subject to selective licensing, an HMO licence has instead been granted in respect of that property, or
7. where a licensed property is sold, then, when a new licence is granted, the old licence would be revoked with the agreement of the licence holder, or
8. where a multi-let property licence sees a change in the number or configuration of dwellings it relates to, or
9. a multi-let property licence sees a change in ownership of part of the property, or
10. for a particular reason relating to the structure of the house.

1.17 In making a decision about revoking a licence the council will make due consideration of this policy. Following a variation or revocation of a property licence, the authority must apply the same conditions as were applicable when the licence was originally granted.

1.18 A variation or revocation made with the agreement of the licence holder takes effect at the time when it is made. Otherwise, it does not come into force until the period for appealing has expired, should there be no appeal. If there is an appeal then it does not come into effect until the decision is given on the appeal.

### **Death of a licence holder**

1.19 A licence is terminated on the death of the licence holder. A licence may not be transferred to another person. Only one person can be the named licence holder. However, the property is treated as if a temporary exemption notice has been served for a period of three months after the death of the licence holder [section 91(6) of the 2004 Act]. To further extend the period where a temporary exemption applies this must be applied for to the council by a representative of the previous licence holder for consideration.

### **Licence Conditions**

1.20 In the event that the council grants a new 5-year licence or varies an existing licence in its existing licensing scheme, the Licence Holder will be expected to comply from the date of the grant or, as the case may be, variation, with the same licence conditions that will be imposed in respect of licences approved under its selective licensing scheme at that time. Accordingly, the licence holder will be required to agree to a corresponding variation of any existing licence conditions.

### **Contra-indications relating to a licence application include:**

1.21 Various issues deemed contra-indications for the person and property for the purpose determining applications.

- Past housing or housing related financial penalties or prosecutions.
- Service of past formal notices or prohibition orders (housing act and public health),
- An unpaid debt (including through works in default, financial penalty or notice service charge) or wider relevant council debt (relevant to competency to manage) that remains outstanding.
- Previous housing related warnings about housing related contraventions.
- Licences issued previously that were of a reduced term or revoked.
- Conviction, penalties or warning with respect to other offences (newly declared or identified) or offences listed as a banning order offence or offences within fit and proper person definition.
- Not licensing a licensable property under the previous licensing scheme(s).
- Identification on the Mayor for London Landlord and Agent Checker or MHCLG Rogue Landlords database.
- Property management is not of a satisfactory standard, including repair.
- Property has not got planning approval to be converted into the current arrangement (e.g. self-contained flats).
- Parts of the property is being use contrary to planning permission and/ or without building control approvals.
- A property is operating as a HMO without permission [note Article 4 designation for small HMOs in Croydon]
- An application for a licence or information or documentation provided to the council to achieve compliance with a licensing condition; completed with misleading or incorrect information

1.22 Part 3 of this document outlines the policy as regards the need for an appropriate fee to accompany any application, including the discounts available such as to landlords who make applications for property licences for more than one separate dwelling in the same building, at the same time. The council has exercised its powers to charge under section 87(3) and (7) 2004 Act and does so taking into account the Provision of Services Regulations 2009, which themselves implement the Services Directive. This is covered in Part 3.

### **Granting a Temporary Exemption Notice (TEN).**

1.23 A temporary exemption notice (“TEN”) provides an exemption from the need to licence a property for a limited period of up to three months. It is intended to allow landlords who have unexpectedly found that their property needs a licence, a short period of exemption from that requirement so that they can put the situation right. A landlord must make the application. A landlord is expected to come back to the council at the end of the term to clarify if the property is still licensable. There will be a limit on its use and in many cases a licence application will be expected. A TEN protects the landlord from prosecution or rent repayment order for the period of time when the exemption is in force.

1.24 By granting the TEN the council gives the landlord a short window to put the property in a position where it no longer needs to be licensed. This might involve serving a section 21 notice or selling the property. The council is aware that it can take much longer than three months to achieve sale or regain possession of the property. It is only those activities that can be comfortably completed within the three month time period that will be considered.

1.25 The grant of a further (second) TEN will only be granted in “exceptional circumstances”. The landlord should make the application. A landlord would need to show real progress in demonstrating the property concerned will no longer require a licence. Legislation does not permit a second extension (third “TEN”) so the maximum length of any TEN is six months, given in two three-month blocks.

1.26 Before granting a TEN, the council will look at the length of time a property has not been licensed and the use of the property in that period before the application for a TEN was received. If the period was over 3 months that the property was licensable then it is unlikely a TEN will be granted. A landlord is expected to be proactive with ensuring the property meets legislative requirements.

## **Part 2. Grant of a multi-let property licence under CPRPL 2020.**

2.1 The council's policy recognises that the legislative provisions in section 79 of the 2004 Act allow circumstances in which an "individual property licence" may relate to more than one separate dwelling in the same property. Croydon has termed this property licence a "multi-let property licence". The aim of Part 2 (of this policy) is to provide clarity for landlords, agents and tenants and to recognise the wider duties of the council to promote the health and safety of tenants.

2.2 Section 79 of the 2004 Act allows the council to use its discretion to grant a multi-let property licence for a property where the whole of it is occupied under two or more tenancies or licences in respect of different dwellings contained in it, none of which is an exempt tenancy or licence under sub section (3) or (4) in respect of different dwellings.

2.3 The council considers individual property licences as the licence that offers the most benefit to both landlords as well as tenants. For landlords, it provides the benefits of a clearer and long-term less bureaucratic scheme. A landlord should be aware of some of the constraints that come with a five year multi-let property licence including both at the application stage and if and when issued (section 79 of the 2004 Act). Proper consideration is needed to allow; changes to managing agents, the addition of flats through extension or conversion; the carrying out of major works, or the sale of individual flats in buildings. For tenants, it removes ambiguity where the council is required to enforce landlord obligations and duties owed to them.

2.4 The following property conditions need to be met to allow the council to be able to consider the grant of a multi-let property for a property which covers more than one separate dwelling:

- Each of the dwellings are separate dwellings (usually self-contained flats), which are contiguous to one another in the same building; and
- Each of the dwellings are occupied under non "exempt tenancies"; and
- Each of the dwellings are within common ownership and management control.
- The dwellings together form the whole of the house/ property.
- Clear responsibility for the CPRPL licensing conditions is achievable and appropriate parties accept and sign for accepting responsibility.

2.5 The council will duly consider an application (commonly from the landlord) to apply for a multi-let property licence where the applicant considers that each of these conditions is met. On receipt of the application, the council may exercise its discretion to grant a multi-let property licence where it is further satisfied that:

- The conditions set out in paragraph 2.4 are met; and
- The application is duly made providing information (as required by the council) and the relevant fee for each dwelling current forming the house with two or more un-exempt tenancies.
- There are no other contra-indications that would mean that such a licence should not be granted; and
- The council has duly taken into account any representations made by the applicant or other interested party as to why the council should not exercise its discretion to grant a multi-let property licence.

2.6 If the council decides not to exercise its discretion, but is otherwise satisfied that individual property licences should be granted, it will give notice of this to the applicant and every relevant person. There is a right of complaint and a statutory right of appeal (within a time period), notwithstanding the grant of these individual property licences. These will be detailed in any notification to the applicant.

2.7 The council notes that there are certain risks which impact on all parties which need to be considered in making an application for a multi-let property licence. Central to the usual approach for each separate licensable dwelling to hold an individual property licence is the council's belief that this approach provides important clarity, certainty and benefits to all parties impacted by the administration and enforcement of the licensing regime. Under section 79, Part 3 of the 2004 Act, a 'house' is required to be licensed if:

- The whole of it is occupied under a single non-exempt tenancy or licence; or
- The whole of it is occupied under two or more non-exempt tenancies or licences in respect of different separate dwellings within the building.

2.8 There will be circumstances during the licensing term that a multi-let property licence is granted that there may be a reason to revoke the licence. Such as a change in circumstances which results in there being more or fewer dwellings in the building than met the conditions described in paragraph 2.4. This change would result in the granted licence no longer reflecting the 'house' now present. In such circumstances, the existing licence would need to be revoked and a new application with fee made that reflects the property or 'house' now defined by the dwellings let in accordance with the conditions in paragraph 2.4.

2.9 For landlords who own two or more individually licensed dwellings in the same building, the individual property licence approach will mean that:

- A dwelling may be sold without affecting the licence[s] granted in respect of any other dwellings in the building;
- A dwelling may be let on an exempt tenancy without affecting the licence[s] granted in respect of any other dwellings in the building;
- A dwelling may be left vacant [for example, to allow major refurbishment] without affecting the licence[s] granted in respect of any other dwellings in the building;
- Enforcement action may be better, and more proportionately, targeted on the individual, non-compliant dwelling, without affecting the licences granted in respect of other dwellings in the building. This includes cases where, for example, the council considers it necessary to serve a Prohibition Order to preclude the use of an individual dwelling for human habitation or where it has identified planning breaches in relation to an individual dwelling.

2.10 The council acknowledges that it is the applicant's decision which licence will be appropriate for the circumstances at the property and the slightly reduced costs should not be the main driver as there are limits to how a multi-let property licence can be varied. The council believes that the common approach of granting individual property licences has clear benefits for both landlords and tenants.

### **Part 3. Policy relating to the payment of a fee**

3.1 Section 87 of the 2004 Act permits the council to require that any application for a licence under Part 3 of the 2004 Act is accompanied by a licence fee and that this fee may properly cover all costs incurred by the council in carrying out its Part 3 functions.

3.2 The current standard fee for an individual property licence is £750. The council has assessed that £397.50 of this reflects the costs of processing and determining the application for a licence, with the balance of £352.50 covering the wider management and enforcement costs it is permitted to recover through the fee, in accordance with section 87(7) (2004 Act).

3.3 The council has had regard to the European Court of Justice ruling in R (Hemming) v Westminster City Council (Case C-316/15), which holds that the Services Directive should be interpreted as precluding charging in advance for costs other than those directly related to the authorisation process. The council understands this to mean that it is not permitted to demand fees in advance for anything other than the costs of administering the application for a licence, even if it makes clear that unsuccessful applicants will be reimbursed the remaining part of the fee. The council may legitimately recover its wider costs, over and above those relating to the administration of applications, at the point at which it has been determined that a licence is to be granted.

3.4 Since the introduction of Selective Licensing in October 2015, the council has sought to keep the running costs of the scheme to a minimum, such as to minimise the levied licence fee. The judgment in Hemming, which envisages the payment of the required licence fee in two stages, has the clear potential to increase the administrative and financial burden on the council, for example in handling double the previous amount of licence payments as part of a two-stage process, with the resultant pressure to increase licence fees.

3.5 The council has decided that it will proceed as follows with the two stage fee:

- To provide that the making of an application under section 87(1) is subject to the following published requirements:
- The payment of a fee for the consideration of an application for an individual property licence in the sum of £397.50, which is payable regardless of outcome.
- The payment of a further fee of £352.50 for an individual property licence, which is payable by a successful applicant prior to the grant of a licence. 14 days' notice is given.
- That the full £750 fee is payable when the council proposes to grant a licence, and serves notice to that effect on the applicant under paragraph 1 to Schedule 5 2004 Act.

3.6 If the applicant does not pay the full £750 fee within 14 days of that notice, the application will cease to have been duly made under section 87, and no licence will be granted.

3.7 That where an application for a multi-let property licence is made or granted, the fees will be as follows:

- The initial application fee will be £344.50 for the first and each dwelling,
- The further fee payable when the council gives notice of its proposal to grant such a licence, is to be £305.50 multiplied by the numbers of dwellings that are to be subject to that licence.

3.8 The council will inform applicants that the above are requirements of making applications under section 87.

3.9 Failure to pay the fees within the required periods will result in applicants having failed to make applications in accordance with the council's requirements under section 87(2) and (3) 2004 Act, and render them liable to enforcement action in accordance with its Public Realm Enforcement Policy.

3.10 The council has come to this fee structure based on the costs of processing applications received. Whilst a discount per dwelling has been offered, it is modest. This is because the council's experience is that the administration and then wider management and enforcement costs it is permitted to reflect in the relative parts of the fee are similar per dwelling, when viewed across the borough. It also considers this is the fairest and simplest way to divide the fee amongst the thousands of property licence holders.

3.11 The licensing fee structure allows for a reduced fee in some circumstances and an applicant is expected to comply with the council's application process to be eligible for this.

#### **Part 4. Fit and proper person checks**

4.1 On receipt of an application for a property licence, the council will make an assessment as to whether the proposed licence holder, and manager if different, meets a 'fit and proper person' test. The fit and proper person test is found as sections 66 and 89 of the Housing Act 2004.

4.2 Following assessment, any identified failings against the 'fit and proper' person criteria may have significant implications and may result in one or more of the following:

- An outright refusal of a property licence
- A revocation of an existing licence
- A decision to grant a shorter-term licence than the usual 5 year licence period, which would normally be for a single year – 'landlords of concern with a contra-indication identified.'

4.3 A Government document 'A guide to the licensing and management provisions in Parts 2, 3 and 4 of the Housing Act 2004' indicates that 'the purpose of this fit and proper person requirement is to ensure that only fit and proper persons hold licences or are in any way involved in the management of licensed properties'. It states that it 'would not be appropriate for a licence to be granted to someone, or for someone to be the manager of a property, if that person was merely acting as a "front" for someone else who, if he or she were not unfit, would be entitled to be the manager or licence holder'.

4.4 The guidance states that, in taking account of an associated person:

- There is actual evidence of wrong doing by the associated person; and
- The associate's fitness is directly relevant to the applicant or proposed licence holder's fitness to manage the property or licence

It is not acceptable to put someone purely as a front to achieve a licence application. A specific example of a husband and wife is given where a wife has applied for a licence and the husband has committed 'wrong doings'. It is stated that the status of the husband would be sufficient to affect the licence application if this was relevant to the wife's management of the property.

4.5 This fit and proper person test can also applied to any person 'associated or formerly associated' with the licence holder and any manager, 'whether on a personal, work or other basis' (section 89(3) of the 2004 Act). Croydon Council is looking for persons given the responsibility of licence holder or property manager to be of high integrity as part of making Croydon 'A Better Place to Rent'.

4.6 As part of an assessment the council will take into account any identified wrong doings of relatives and other associates of the licence holder and any separate manager that it believes are relevant.

#### **The 'Fit and Proper' person test.**

4.7 In making the fit and proper person assessment, the council will consider factors that indicate whether those responsible for operating the licence and managing the property are of sufficient integrity and good character to be involved in the management of the particular property, and as such they do not pose a risk to the welfare or safety of persons occupying the property.

4.8 Council's do have some discretion as to the matters that can be considered when assessing 'fit and proper' but some standard tests are prescribed in Section 89 (2) of the 2004 Act and include whether the licence holder/manager has:

- (a) committed any offence involving fraud or other dishonesty, or violence or drugs, or any offence listed in Schedule 3 to the Sexual Offences Act 2003 (c. 42) (offences attracting notification requirements);
- (b) practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying on of any business; or
- (c) contravened any provision of the law relating to housing or of landlord and tenant law.
- (d) the fit and proper test may be amended following enactment of section 126 of the Housing and Planning Act 2016

4.9 This Part 4 of the policy explains how the fit and proper person test will be applied to any matter that is relevant to the enforcement of housing-related law by the Public Realm Division and the new selective licensing designation including other relevant matters that the council will take into account when determining an application and the duration of any licence to be granted.

#### **Fit and proper person tests – Desk top checks**

4.10 Upon receipt of a complete licence application for an address, a Selective Licensing Officer will undertake a records search using Uniform/CRM/relevant database. Any address that has a relevant flag will be referred for review. For Public Realm the agreed flags are (where 5 years reflects the period of the last designation):

- Any address where there is a recorded formal notice served in the past 5 years;
- Any warning, penalty, prosecution against a person;
- Any address where there has been a complaint regarding living conditions in the past 18 months;
- Any address where the council have undertaken works in default of the property owner.

4.11 The internal review should be completed within a period of 5 days. The review will consider a wider review of the person including other addresses and the existence of any other relevant complaint and/or formal action arising from other addresses within the same ownership and/or management control.

4.12 The process of flagging and referring addresses is intended to highlight addresses where there is an increased probability that the licence holder and/or manager might not meet the fit and proper criteria. However, in determining whether this test is met, each case will be judged on its own merits and nothing should be inferred at the outset simply because an address has been referred to the service unit.

4.13 Where the council has determined that the proposed licence holder and/or manager is/are not 'fit and proper', the licence application will be refused unless a landlord is able to identify a third-party licence holder and/or manager who is/are considered 'fit and proper'. The council may decide, on application of the fit and proper person test against a person's identified failings that the person does not fail the test outright and a shorter-term licence is suitable.

4.14 Judgments will be made in line with the then current Enforcement Policy and will take account of, for example:

- The nature of any convictions – Convictions relating to running an unlicensed HMO or dwelling or the need to have undertaken works in default of the owner are likely to be relevant. A conviction based upon the existence of a significant hazard may give some clue as to the applicant's approach to health and safety. An administrative or technical breach of a provision is unlikely to carry any significant weight in determining 'fit and proper' status.
- The weight of convictions – multiple contraventions or convictions will normally carry more weight than isolated or one-off incidents, unless the single breaches are particularly serious.

4.15 The above guidance is not intended to be exhaustive and the council is entitled to take into account any factors that it considers relevant to the fitness and propriety of the relevant person and the duration of any granted property licence. Some of those factors are now considered.

### **Complaints**

4.16 The existence, in itself, of a recent complaint would not indicate any outright or partial failure to meet relevant legal obligations. Some complaints may not be substantiated or relate to minor hazards. Some responses may have been encountered practical issues or complaints were motivated by other goals.

4.17 In cases where more significant hazards were identified, investigations may indicate that the landlord responded quickly and responsibly to carry out necessary repairs, actions and/or improvements, without the need for the council to instigate any formal proceedings.

4.18 The landlord's response to reported housing defects or other enforceable issues at an address is important. Licensing promotes professionalism and the expectation is that licence holders are competent and proactive with issues. A failure to act quickly or to deal with highlighted issues informally such that formal action is necessary, is likely to indicate a relevant failing.

4.19 Situations where there is a severe nature to the problem, housing defects, unlawful use or other issues identified through any complaint or compliance visit is also relevant. The council may also have decided on a course of action such as instigating formal proceedings, but has not yet done so. Multiple substantiated complaints relating to one or other addresses including management, is also relevant.

### **Formal action across council teams**

4.20 The existence of formal action is likely to be a significant factor. Formal action can include an investigation resulting in a formal notice, a prohibition order, work in default, unpaid debt (relevant to competency to manage), financial penalty or prosecution. Each are likely to be a significant factor. However, regard must be had to the nature and status of any formal actions, noting these can be at different stages:

- Notices of entry, such as those issued under section 239 Housing Act 2004 or The Town & Country Planning Act 1990, are generally served through a legal obligation to notify the landlord of an impending visit. No weight should be given to such notices unless followed by other formal action such as warrant entry or obstruction proceedings arising from the landlord's response.
- Notices requiring information, such as those issued under section 235 Housing Act 2004 or section 16 Local Government [Miscellaneous Provisions] Act 1976 should

be afforded no weight unless there was a need for a number of reminders, the information provided was inconclusive or non-compliance led to legal proceedings.

- The service of a formal notice requiring works, such as an Improvement Notice served under part 1 Housing 2004 or a planning enforcement notice for unlawful conversion, would normally be afforded significant weight. Less weight should normally be afforded to notices that have been served through emergency procedures, where the landlord has not had the usual opportunity to remedy any defects informally [although the circumstances by which the conditions arose in the first instance would still be relevant]. Less weight should also be given to formal notices that are subject to appeal/RPT proceedings, until such time as the appeal has been heard and the notice upheld, varied or quashed as appropriate. Less weight is also likely to be afforded through action to address, for example, overcrowding that has arisen through the actions of occupiers [although any action taken by the landlord to address such issues would also be relevant].
- The existence of a successful prosecution will, in all cases, be afforded significant weight. Regard should be had, however, to the nature of the offence and the time that has elapsed since the offence. An historic conviction relating to a failure to provide information, for example, would be afforded much less weight than a recent prosecution relating to a failure to remedy one or more significant hazards. Spent convictions should generally not be taken into account.
- The time spent as recorded in the Rehabilitation of Offenders Act 1974 will be considered when making an assessment of the weight given to formal action.
- The existence of any work in default of the landlord, completed or otherwise, will in all cases be afforded significant weight. Any work in default carried out with the agreement of the landlord, is likely to be afforded less weight but is still likely to reflect upon their ability to manage and maintain their property.
- Financial 'civil' Penalty Notices issued using powers introduced through the Housing and Planning Act 2016 or any other relevant legislation. Financial penalties imposed in respect of a relevant Housing Act offence are an alternative to criminal prosecution proceedings but with lower standing in the Rehabilitation of Offenders Act 1974 in determining a licence application or reviewing a licence that is already in force they should be afforded a reduced weight as a successful prosecution.
- The past level of cooperation from the landlord with a review of compliance with various notices served; such as under section 16 of the Local Government (Miscellaneous Provisions) Act 1976 or section 235 of the 2004 Act or section 35 of the Housing and Planning Act 2016. This carries more weight where there has been a conviction.
- The volume of any formal actions taken is also relevant. Multiple actions relating to the referred address or to other addresses in the same ownership and/or management, will usually carry more weight than an isolated formal notice or prosecution.
- Considerations will not be limited to legislation enforceable by the private housing enforcement teams. Licensing competencies cover all housing, tenancy or similar legislation.

#### **Any previous licensing history**

4.21 In the case of any referred address, where the licence holder and/or manager is also involved as licence holder or manager of an HMO subject to mandatory licensing, regard should be had to any previous decision to refuse a licence or to grant for a shorter time period. Each such case would be treated on its merits and any decision to refuse a licence or grant for a reduced term would be based upon the circumstances of the previous decisions and the time period that has elapsed since the original actions.

### **Payment of charges or fines**

4.22 In the situation where charges have been levied against the landlord [for example, in respect of a notice served under Part 1 Housing Act 2004] or works in default costs and charges levied, or a fine has been imposed by the Court following conviction or through a Financial Penalty Notice, the council will take into account whether or not these fines/charges have been settled. Any other significant monies owed to the council, such as Council Tax payments, will also be considered. Each such case would be treated on its merits and on the individual circumstances of the case.

### **Objections by mortgagees**

4.23 In granting or refusing a property licence, the council must notify all parties that have a prescribed estate or interest in the address of their proposed and actual decision as regards the determination of a licence application [schedule 5]. A mortgagee of a property would have a relevant interest in the rented property. In situations where the mortgagee indicated that the landlord does not have the correct buy-to-let mortgage or permission to let the address (such as an HMO) and they object to the grant of the licence, then a one-year licence would normally be issued. This would give the landlord a period to look to obtain the right permissions.

4.24 Where the objection is received after a full-term licence has already been issued, the licence may be varied to one year on the basis that new information is available. The grant of a one-year licence in such cases recognises the fact that the landlord has breached the terms of their mortgage, which would normally be regarded as a form of fraud. The landlord would then be expected to regularise their mortgage during the reduced term licence before it expired, and then submit a new application

### **Immigration Act 2014 – Right to Rent checks**

4.25 Under 'The Immigration Act 2014', right to rent rules require landlords and agents check the immigration status of their prospective tenants at the outset of the tenancy. The council will take account of any identified failure of a Landlord to carry out necessary checks, as advised by Home Office/UKBA officers, in undertaking fit and proper person checks. The Housing and Planning Act 2016 will make such checks a mandatory fit and proper person criterion, at the point that the relevant provisions are enacted.

### **Failure to maintain property and breach of licence conditions**

4.26 Any inability of a landlord to adequately maintain a rented property will be a relevant fit and proper consideration. This includes any failure to ensure that required safety checks are undertaken and/or to supply required documentation associated with a rented property.

4.27 A physical inspection of a property by a licensing officer is not routinely undertaken as part of the Part 3 licensing process. Inspections, either at application or post grant of a licence, are prioritised as part of meeting the objectives and wider joint action enforcement. All applications are submitted on line and the landlord makes certain self-declarations regarding the property. Desk based auditing will monitor compliance with licensing conditions.

4.28 For properties that have a gas installation, the landlord is required to submit a valid Gas Safe Certificate. It is a legal requirement to arrange for annual Gas Safe inspection and certification and ensure a current certificate is in place at all times. The council views the failure of a landlord to be able to supply a valid Gas Safe certificate, on request, to be a significant health and safety failing. The council would normally refuse a licence application

if the landlord was unable to provide this certification within a reasonable time period following an application being made. A similar failure to maintain annual safety checks, once a licence is in place, would normally result in the revocation of that licence.

4.29 Where properties are inspected before issuing a licence, the property condition and management would be a relevant consideration. A property that was in a very poor state of repair would indicate a lack of adequate management and maintenance over an extended period of time. Where repairs and improvements are identified as being necessary at the time of the licence application, then the landlord would normally be asked to carry out these works alongside a granted 5-year licence. However, if the property is found to be in a very poor condition, it may be determined that a shorter-term licence is warranted, particularly if the landlord does not engage positively with actions to rectify the identified defects.

4.30 In cases where a licensed premises is inspected, following a complaint or as part of a programmed property audit, identified disrepair would, as a potential/actual breach of licence conditions, be a relevant consideration. Past 6-monthly inspection notes can be sought [property licensing condition 1.6]. Housing defects should be brought to the attention of the licence holder with a request that they provide details of their action plan to remedy the issues within a 28-day period. In the event that the licence holder fails to adequately respond, evidence would normally be taken with a view to instigating prosecution proceedings for breach of licence conditions and/ or the service of a formal notice. The licence would not normally be revoked/varied until such time as a conviction was obtained, although such action may also be precipitated by the service of a formal notice requiring works to be carried out.

**Wider responsibilities for letting and property management agents.**

4.31 Those letting and property management agents who are proposing to be licence holders or property managers, will be asked to prove compliance with legislation relating to tenants fees, client money protection scheme membership and government approved redress scheme membership as part of the application process. Compliance with wider relevant legislation is part of the assessment for competency and fitness to take a responsibility. The Trading Standards Team have been working hard to promote the various legislation and ensure compliance. A declaration of management is needed to clearly indicate acceptance of responsibilities.

**Fit and Proper person and wider considerations – Decision**

4.32 At the conclusion of the assessment process, and having regard to this policy guidance, a decision will be made as to whether to grant or refuse a licence application or, where a licence is to be granted, the duration of that licence. Where the assessment has highlighted issues (described in the document), the licensing officer allocated the case should discuss and agree the proposed decision with their Team Manager. Where necessary, further approval is sought from the Service Manager for ratification of complex decisions.

4.33 Following a review of any highlighted issues, relating to the proposed licence holder and any separate property manager, the council's decision will reflect one of the following:

- a) A full-term licence should be issued with the appropriate fee- The issues flagged against the address are not such as to prevent the granting of a property licence for the full term; or
- b) A shorter-term licence should be issued with the appropriate fee – The council has confirmed some significant issues in respect of the proposed licence holder and/or manager [or an associated person]. The council does not consider that these failings are sufficient in their own right to conclude that the person fails the 'fit and proper

person test' outright. Nonetheless, these failings highlight a 'landlord of concern' to the council and, as such, it would not be appropriate to issue a full-term licence. Sufficient detail should be provided in order that the decision notice is able to confirm the grounds relied upon for the shorter licence period granted. Licences issued in accordance with this sub-paragraph would highlight 'landlords of concern'.

- c) The licence should be refused with the appropriate fee retained by the council. The council has confirmed significant issues that mean that a relevant person cannot be regarded 'a fit and proper person'. As a result, this must result in the refusal of the licence application. Sufficient detail should be provided in order that the decision notice is able to confirm the grounds relied upon for the proposed refusal of the licence.

4.34 The council's decision will also need to reflect any concerns regarding the property.

4.34 A similar process should be followed in respect of addresses where licences are already in place and new issues come to light or arise. The relevance and weight of these issues should be assessed and a decision made as to whether the licence or licences should be varied or revoked. The process will involve the confirmation from the relevant service Team Manager and/or Service Manager.