

Overview and Scrutiny

Private Rented Sector Housing Review

Housing Select Committee
November 2011



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1. Chair's Introduction

Lewisham has a large proportion of residents living in private rented accommodation, and this is likely to continue to increase – despite its increasing unaffordability - so this review is, we feel, timely. The Housing Select Committee very much hope that our report and recommendations can inform and support the council's efforts to set up new systems and processes for supporting the borough's residents living in the private rented sector and improve services.



A particularly interesting aspect of our investigation was the opportunity to speak first hand with a private rented sector tenant, landlord and letting agent about their experiences and views on how the council could improve its provision for those living and working in this tenure. It was clear that a clearly defined and well communicated approach is needed to ensure that all parties are aware of the support and assistance the council can provide to them.

We noted the need for landlords and agents to be made fully aware of their own rights and also legal responsibilities towards their tenants, in particular smaller, non-professional landlords. We welcome the successful Landlords Day which the council held recently and hope that more events such as this can feature as part of the council's offer to private landlords. If this, and other possible measures, can enhance the council's relationship with landlords, we would hope that there could and would be a subsequent knock-on effect of improvements for tenants.

Our recommendations also include ideas, taking into account what is legally possible, for ensuring better quality of accommodation in the private rented sector and encouraging and increasing landlord and agency accreditation, the investigation of possible further licensing schemes for houses in multiple occupation (HMO's) and the provision of support and advice for tenants experiencing difficulties with their landlord or other issues such as anti-social behaviour.

We are very grateful and would like to thank, in particular our witnesses who gave evidence about the sector: Arthur Klein, a local private landlord; Demetrios Antoniou, a local lettings agent; Lara Robinson, a private rented housing tenant; and Rachel Braverman, from Lewisham CAB; as well as the council officers who assisted.

Finally, of course, thank you to all the committee members who took part and contributed to our lively discussions and suggested ideas for recommendations, and to our scrutiny manager Charlotte Dale for making sense of it all!

A handwritten signature in black ink that reads "A. F. Ibitson".

Cllr Ami Ibitson
Chair of the Housing Select Committee

2. Executive Summary

- 2.1 The private rented sector in Lewisham is large – and growing – with over 33,000 privately rented dwellings representing more than 30% of the borough’s housing stock. The sector serves a large proportion of the Lewisham’s residents as for many households, the private rented sector is their first and only option for housing, as home ownership is financially out of reach and the demand for social housing far outstrips supply. It is for this reason that the sector must be both supported and regulated; so that the residents relying on this form of accommodation, can have access to high quality and much-needed local housing.
- 2.2 Unfortunately, the private rented sector in the UK has more than its fair share of poor landlords and lettings agents, charging excessive fees and rent in exchange for substandard and insecure accommodation. In view of this, the committee decided to investigate the provision of private rented accommodation in Lewisham, focussing on access to the sector, the quality of housing provided and the security of tenancies. Members also chose to examine how the council used the private rented sector and how it worked with private landlords and tenants.
- 2.3 There are many advantages to living in the private rented sector. It offers households flexibility, allowing people to live where they want to and follow employment opportunities; it is more readily available than social housing; and it is, generally, a cheaper option than buying property and paying a mortgage. The committee hopes that the recommendations arising from this review, which aim to improve the council’s regulatory and information provision processes and structures, will allow more residents to enjoy these advantages and reduce the number of residents suffering the disadvantages – poor quality housing and unaffordable rents and charges.

3. Purpose and Structure of Review

- 3.1 The aim of this review was to assess:
- How the council currently uses the private rented sector and how it works with landlords and tenants in the sector.
 - How access to the private rented sector and its quality and security can be improved.
- 3.2 The review was scoped in May 2011 and two evidence sessions were held in July and September 2011. At the July session, the committee considered comprehensive written information relating to the review aims, as stated above. At the September session, the committee heard from the following expert witnesses on the same themes:
- Arthur Klein - A local private landlord
 - Demetrios Antoniou – Director of Omega Lettings (a local lettings agent)
 - Lara Robinson - A private rented accommodation tenant
 - Rachel Braverman - Joint Chief Executive of Lewisham CAB.
- 3.3 To coincide with the review, a landlords information day was held in September 2011 for private sector landlords and established letting agents. The main aim of the day was to provide information on the different types of leasing schemes the council has in place, the improvements being made to

the services offered and the thinking behind the council's establishment of a social lettings agency. The event aimed to attract as many landlords as possible to join council schemes and offer their properties for those in housing need and in receipt of housing benefit.

- 3.4 The committee concluded its review and agreed its recommendations in November 2011.

4. Background

- 4.1 There are around 33,180 privately rented dwellings in Lewisham (33% of which contain households in receipt of housing benefit¹), operated by an estimated 3,700 private landlords² and the sector is growing - Lewisham's private rented sector doubled in size from 14% of the housing stock in 2001 to 30% of the stock in 2007³, which is the largest rate of growth in the private rented sector in London. In terms of the quality of the housing in this sector, 36.7% of privately rented dwellings in Lewisham are believed to be non-decent⁴. (Although this does not mean that these properties are uninhabitable, as it is estimated that only around 1,000 properties are non-decent to the extent that enforcement activity is required⁵). Lewisham is a high turnover borough with residents staying in a property for an average of five years compared to the national average of eight years. The private rented sector is particularly susceptible to churn, with approximately 50% of the market turning over every two years⁶.
- 4.2 For many households, the private rented sector is the first and only option as home ownership is financially out of reach and the demand for social housing far outstrips supply. It is therefore important to ensure that this growing sector in Lewisham is both supported and regulated, to ensure that residents can access high quality and much-needed local accommodation.
- 4.3 Historically, one of the chief functions of the private rented sector has been to provide short term accommodation to those who either require this type of flexible housing or who are unable to access other housing options. Because the council has many more people registered on its housing list than properties available, most people on the housing list face no prospect of being housed by the council and therefore often privately rent instead. There are advantages and disadvantages to the private rented sector. On the one hand it offers households flexibility, allowing them to live where they want to and follow employment opportunities. The private rented sector is also popular amongst students and renting is also, generally, a cheaper option than buying property and paying a mortgage. On the other hand, privately rented accommodation is not always of the quality desired by the tenant, nor is the rent, generally, as affordable as social rent. However, as changes to welfare benefits (see paragraphs 5.72 to 5.75) and changes to the funding framework for new social housing schemes are implemented, the rent differentials between social housing and private sector housing will reduce.
- 4.4 The council uses the private rented sector in various ways to help meet housing need and homelessness obligations and to prevent homelessness. However,

¹ Figures from the Council's benefit team indicate that the number of households receiving housing benefit at the start of May 2011 was 10,551.

² Lewisham Private Rented Sector Study, Opinion Research Services, February 2011, p7

³ Lewisham Local Development Framework: Housing Market Assessment 2007-2008, December 2009, p68

⁴ Lewisham Private Rented Sector Study, Opinion Research Services, February 2011, p15

⁵ Minutes of the Housing Select Committee meeting held on 6 July 2011.

⁶ *ibid*

Lewisham, like other local authorities, has arguably missed some of the opportunities that could be gained through a more effective partnership between the authority and private sector landlords. The council needs to start looking at landlords as private businesses which, if well supported, can pass benefits on to their residents.

4.5 A Housing Programme Project has started working on four separate, but related, projects on key strands of private rented supply. The aim of all of the projects is to improve the supply of properties and services to residents in the private rented sector and, importantly, to improve the relationship the council has with private landlords. The projects are:

- **Bed & Breakfast** to reduce the usage and costs of Bed and Breakfast accommodation whilst delivering a better customer experience for those in need of temporary housing.
- **Private Sector Leasing (PSL)** to implement a range of short-term measures which will secure maximum benefit for the existing PSL scheme, thus reducing pressure on existing temporary accommodation and social housing stock.
- **Housing Register and Related Services** to look at ways of improving the customer experience from the first point of contact.
- **Private Rented Sector** to explore options for the development of a single unit to deal with all private rented sector housing in the borough, drawing together existing services to improve relationships with landlords and other providers, improve the quality of properties, increase procurement and offer secure, sustainable accommodation for customers.

Recommendation 1: The Committee welcomes the potential development of a single unit within the Council to deal with all private rented sector housing in the borough. The services that this unit will be able to provide to private sector tenants requiring advice and assistance should be well publicised. Consideration should also be given to setting up a users forum, to allow private tenants to provide feedback to the unit on their experiences of privately renting and help shape the services provided by the new unit.

5. Findings

ACCESS TO PRIVATE RENTED ACCOMMODATION - COSTS

- 5.1 Access to the private rented sector can be affected by the costs associated with this tenure. Costs include:
- Possible one-off letting agent's fees for 'finding' the property, checking references and drawing up the contract, where the property has been found by a lettings agent.
 - The deposit and 'rent in advance' required – usually adding up to about 8 weeks worth of rent.
 - The rent (this is generally higher than social rent and may not be covered by the Local Housing Allowance⁷).
- 5.2 The fees associated with lettings agents are discussed below. In addition to potential letting agents fees, a deposit of a month's rent is normally required when renting in the private sector, to cover any damage to the property during the rental period. This is repayable when the tenant leaves the property and has to be kept by a neutral tenancy deposit protection scheme in order to prevent disputes⁸. In addition, landlords often ask for rent to be paid four weeks in advance. Various council schemes exist to help residents with deposit and rent-in-advance costs; and in terms of paying the ongoing rent, private tenants on benefits or low incomes can apply for housing benefit. Further information on this is provided in paragraphs 5.11 to 5.16 below.

Letting agency fees

- 5.3 Letting agencies have an important role in the market for private rented accommodation. They manage properties on behalf of landlords, vetting potential tenants through reference and credit checks and ensuring that the properties they manage adhere to health and safety regulations (e.g. have current gas and electricity safety certificates). They may also be responsible for drawing up tenancy agreements, dealing with the deposit and collecting the rent on a monthly basis. If there are any issues with regards to the state of the property, it is the letting agent who is contacted by the tenants and has to deal with the inquiry. Letting agencies make their money from some or all of the following charges:
- Charging the landlord a fee for managing the property (normally around 10% of the rent).
 - Charging tenants and/or the landlord a finding fee.
 - Charging tenants a fee for checking references.
 - Charging tenants and/or the landlord a fee for drawing up the tenancy agreement (and possibly for renewing it after the initial contract period).
- 5.4 The fees charged by letting agencies can vary considerably. In 2009, the CAB carried out a survey of 424 letting agents and found that 94 per cent imposed additional charges on tenants on top of the deposit and rent in advance. The charge for checking references ranged from £10 to £275 and the charge for

⁷ LHA is used to calculate how much housing benefit an individual or family is entitled to if they rent their home from a private landlord.

⁸ Tenancy deposit protection (TDP) schemes guarantee that tenants will get their deposits back at the end of the tenancy, if they meet the terms of the tenancy agreement and do not damage the property. Landlords must protect their tenants' deposits using a TDP scheme if they have let the property on an assured shorthold tenancy (AST) which started after 6 April 2007.

renewing a tenancy ranged from £12 to £220. In some cases additional charges for a tenancy amounted to over £600⁹. In Lewisham, the fees charged to landlords for managing a property range from 5 to 12% of the rent; and for finding tenants the fees range from one month to six weeks' rent. The fees charged to tenants range from £100 to £420 for references and contract administration.

5.5 The fees charged by letting agencies are sometimes seen as 'unfair', especially if they are:

- Out of proportion with the service provided. (E.g. renewing a tenancy agreement might only involve printing out a standard agreement and getting it signed, but £200+ might be charged for this service.)
- Charged to tenants, but would be more logically charged to the landlord. (E.g. landlords choose to request references so might reasonably be expected to pay for them to be checked.)
- Not transparent. (E.g. agencies are not always upfront with tenants about what they will be expected to pay).

5.6 The CAB recently surveyed 1,289 tenants who visited the Citizens Advice website over a three month period, and found that 73 per cent were dissatisfied with the service provided by their letting agent¹⁰. Common concerns included the imposition of additional charges, difficulties in contacting the agent, delays in getting repairs carried out and inadequacies in the protection of tenants' money.

5.7 Letting agencies are not subject to statutory regulation governing their prices or service quality. Anyone can set themselves up as a letting agency, without any expertise, qualification or accreditation. The Government does not plan to introduce regulation.

5.8 However, the council is taking forward work to establish a social lettings agency, either for Lewisham or sub regionally, to (a) act as a portal through which private properties and tenants can be linked and (b) provide one point of contact for all landlords. The aim would be to improve standards and encourage fair rents, in return for providing landlords with comprehensive advice on rights and responsibilities and help with marketing. There would also be some scope for income generation, as the professional services provided by the council would be charged for, although the charges would need to be set at a level to rival commercial agencies in order to attract business.

Recommendation 2: The Housing Select Committee fully supports the establishment of a social lettings agency, either for Lewisham or sub regionally, and asks to be kept updated on all progress made in relation to this.

Other costs: the deposit and rent-in-advance

5.9 Options for covering the upfront money required when renting privately include saving for the deposit/advance rent (and any letting agent fees) or getting a credit

⁹ Let Down, CAB evidence on letting agents and their charges, May 2009, P2. See: http://www.citizensadvice.org.uk/let_down.htm

¹⁰ Ibid, P2.

union or bank loan. Residents receiving Income Support or Job Seekers Allowance can apply for a budgeting loan to cover rent in advance but not to cover deposits¹¹.

- 5.10 Three council schemes specifically assist residents with the costs of renting privately: the Rent Incentive Scheme (RIS), the Hostel Diversion Project and the Fresh Start Scheme.

(a) The Rent Incentive Scheme

- 5.11 The rent incentive scheme (RIS) helps eligible people rent a home in the private sector. Those eligible for the scheme¹² receive the first two months' rent in advance which will usually cover the deposit and 'rent in advance' required by the landlord. Other benefits include the council (a) checking the chosen property to make sure it is safe and secure to live in; (b) making sure the tenant is guaranteed at least a 12 month tenancy; (c) providing a named person to contact in case there are any problems with the tenancy; and (d) providing assistance in claiming housing benefit.

(b) The Hostel Diversion Project

- 5.12 The hostel diversion project works by 'diverting' people who present as homeless to the Single Homeless Intervention and Prevention service (SHIP) from hostels and into the private rented sector. Clients are eligible for the scheme if they meet the referral criteria for the project: they (a) must have support needs which would qualify them for referral into the hostel system if a vacancy was available; (b) be capable of managing their own tenancy if appropriate support is provided; and (c) must not be eligible for housing under Lewisham's statutory responsibilities.
- 5.13 SHIP clients who are referred to the project are interviewed jointly by the hostel diversion project coordinator and their SHIP liaison worker. If they are accepted onto the waiting list, their housing requirements are passed on to the a RIS procurement specialist who will attempt to source a suitable private rented property. Once an offer is made, the project coordinator attends the viewing with the client, liaises with the landlord and provides any necessary help in setting up the tenancy. The prospective tenant is then passed to the RIS housing benefit specialist who completes the application and fast tracks it to approval stage. Once the claim has been approved, RIS staff authorise payment of two months' rent in advance to the landlord. The Project Coordinator acts as the primary support worker for the first twelve weeks of the tenancy. At the end of this period, the case is closed if the client is managing well on their own. If there are still support needs, the case is transferred either to SHIP's floating support team or to Lewisham Reach, depending on the nature of the support need.

(c) Fresh Start

- 5.14 The Fresh Start scheme is particularly aimed at those on the housing list that are overcrowded and wish to move into private sector accommodation, including in different parts of the country. To be eligible for the Fresh Start scheme, the applicant must be a Lewisham tenant, including those in hostels or temporary accommodation, accepted as priority homeless or registered as an overcrowded applicant on Lewisham's housing register. Applicants with serious rent arrears or a

¹¹ Residents receiving Income Support or Jobseekers Allowance may also be eligible for a Community Care Grant to cover the cost of a removal van, and any redecorating or furnishing costs associated with moving into private rented accommodation.

¹² The scheme is for homeless families or families threatened with homelessness.

history of neighbourhood dispute / anti-social behaviour are not eligible. Fresh Start provides support, advice, information and financial assistance. Officers help residents to find a new home in the private rented sector; liaise with prospective private landlords; and arrange tenancy agreements. The financial support provided includes one month's rent in advance (up to local Housing Benefit levels), the deposit required by the landlord (equivalent to one month's rent) and sometimes a contribution towards removal costs. The scheme helped 46 residents move into private sector rented accommodation in 2010/11 and there are currently 61 active cases being progressed by officers.

Paying the rent: Housing Benefit

- 5.15 Private tenants on benefits or low incomes will usually qualify for housing benefit to cover their rent. The Housing Options Centre has dedicated Housing Benefit officers who can assist residents in claiming their benefits and process claims quickly. Officers also provide debt advice and are trained in benefits and income maximisation. Part of the Housing Options interview establishes the client's income and expenditure so appropriate advice can be provided via a new online manual, which has links to national leaflets and information that can be provided to residents.
- 5.16 Housing Benefit is paid to the tenant directly, not to the landlord, and tenants are expected to take responsibility for paying their rent. However, in exceptional circumstances, to safeguard the interests of a vulnerable tenant and/or where there is evidence that rent is unlikely to be paid (e.g. if eight weeks of rent arrears have built up), tenants can request that the benefit is paid direct to their landlord or landlords can apply for direct payment. Occasionally, landlords are reluctant to rent their properties to tenants in receipt of housing benefit. A 2009 CAB survey of 424 letting agents revealed that almost a quarter of the agents would not let to tenants in receipt of housing benefit – a figure which rose to 48 per cent in the South East¹³.

ACCESS TO PRIVATE RENTED ACCOMMODATION - SUPPLY

- 5.17 The council works with landlords and tenants in the private rented sector through a number of schemes. The Rent Incentive Scheme (RIS), the Hostel Diversion Project and the Fresh Start Scheme are described above. The Private Sector Leasing Scheme (PSL) is a fourth scheme, specifically designed to increase the supply of private rented accommodation for those in housing need.

The Private Sector Leasing Scheme

- 5.18 PSL is a scheme where the council takes out a lease (for two or more years) from a private owner or landlord on their property, if it meets certain property standards. The council then uses the property to provide affordable accommodation for homeless families. Benefits to landlords, to encourage them to join the scheme, include:
- Protection from Local Housing Allowance changes (the rent level is fixed for the duration of the lease)
 - Guaranteed rent 52 weeks of the year
 - No voids or bad debts

¹³ Let Down, CAB evidence on letting agents and their charges, May 2009, P2. See: http://www.citizensadvice.org.uk/let_down.htm

- Professional housing management services
- Property inspections
- Minor repairs service up to a fixed sum.

5.19 Unfortunately, procurement for the PSL scheme (and the Rent Incentive and Fresh Start schemes) has become more challenging as a result of market competition and there is a significant gap in supply against procurement targets as follows:

Target 2010/11	Current Supply	Shortfall
460 Private Sector Leasing units	400	60 units
400 Rent Incentive Scheme	282	118
75 Fresh Start properties for overcrowded households	46	29

5.20 Events such as the landlords information day held in September 2011, which aimed to attract as many landlords as possible to join council schemes, are being used by the council to try to increase supply.

Empty Houses

5.21 Empty homes represent a waste of valuable resources. The council can use Empty Dwelling Management Orders (EDMOs) to bring private sector empty homes back in to use and available for rent. Since the 2004 Housing Act introduced EDMOs, Lewisham has applied for more than 20. Of those, seven have been granted and two final EDMOs have been invoked as a last resort by the council. By offering to match-fund grants with property owners, the council has managed to bring 65 long-term empty properties back into use since 2009 - the highest in south east London.

5.22 In 2010 the council used powers under the Housing Act to take possession of a run-down terraced cottage that had stood empty for more than 15 years. Slate tiles were falling from the roof, render was falling from the walls onto the pavement and neighbours had long complained about damp, vermin and flytipping around the property. An Interim EDMO was granted in June 2010 and the final EDMO order invoked in September 2010 which allowed the council to assume full management control from the owner (who did not appeal against or oppose the council's action). The council then paid £22,000 to overhaul the roof; install central heating, a new kitchen and a new bathroom; put in a course of damp treatment and completely re-wire the property. The council will recoup the costs via the rent generated from the property being brought back in to use. The property is now rented out by the council, under an assured shorthold tenancy agreement, in partnership with an accredited private lettings agency which receives 12% of the rental income as a management fee. Any surplus rent once costs have been recouped will be passed on to the owner.

- 5.23 Applying for a compulsory purchase order¹⁴ (CPO) is another method of bringing an empty property back into use. A number of Lewisham's neighbouring boroughs have had some success in using CPOs. However, the costs to the council in using this method would be high and the resources to do this are not available at the current time, although applying for a CPO is still an option that can be considered in extreme cases.

THE QUALITY OF PRIVATE RENTED ACCOMMODATION

- 5.24 The previous Government, as a result of the Rugg Review¹⁵, considered introducing a range of new initiatives to improve the standard and safety of private rented accommodation. Rugg encouraged councils to take a more strategic approach and make the right links within and beyond the authority, as well as working to improve local and national accreditation schemes. Rugg also supported the creation of local lettings agencies to provide a central access point for more effective engagement with the sector, the development of a national register of landlords, mandatory written tenancy agreements, compulsory regulation of letting agents and protection for tenants whose landlords default on a buy-to-let mortgage. However, the current Government will not be taking forward the Rugg Review proposals on the grounds that the rules already in place strike the right balance between the rights and responsibilities of landlords and tenants, with the vast majority of private tenants satisfied with the service they get¹⁶. Local authorities, including Lewisham, therefore rely on existing legislation and their own individual initiatives to improve the quality of private rented accommodation in their areas.
- 5.25 Local Authorities have a strong regulatory role in safeguarding standards in private rented sector accommodation. The Housing Act 2004 radically overhauled the way councils regulate standards in private housing. It introduced the compulsory licensing of certain houses in multiple occupation and enabled local authorities to introduce further selective and additional licensing. The Act also changed the way housing fitness is assessed with the introduction of the Housing Health & Safety Rating System (HHSRS) – see paragraph 5.31 below.
- 5.26 At its September evidence session, the Committee asked the invited witnesses what they thought private landlords could do to improve the quality of private rented accommodation. The witnesses suggested that it was important for all landlords to understand what the relevant legal requirements were, including non-professional landlords. In this respect, (a) landlord information days held by local authorities; (b) awareness raising around recent regulations; (c) encouraging accreditation schemes; and (d) the use of management agents could all be useful.

Recommendation 3: Regular landlord information days should be held by the Council, with smaller landlords in particular encouraged to attend, to ensure that local landlords are aware of their rights and responsibilities under the law.

¹⁴ See section 17 of the Housing Act 1995.

¹⁵ The Private Rented Sector: its contribution and potential, Julie Rugg and David Rhodes, 2008 See: <http://www.york.ac.uk/inst/chp/Projects/PRSreview.htm>

¹⁶ See: <http://www.communities.gov.uk/newsstories/housing/16026231>

The standard and safety of accommodation

- 5.27 The Decent Homes Standard created in 2000 contains four broad criteria that a property should:

A - be above the legal minimum standard for housing (dwellings which fail to meet this criterion are those containing one or more hazards assessed as serious ('Category 1') under the HHSRS); and

B - be in a reasonable state of repair (e.g. the roof, walls, chimneys, windows, doors, heating and boiler); and

C - have reasonably modern facilities (such as kitchens and bathrooms) and services; and

D - provide a reasonable degree of thermal comfort (wall construction, effective insulation and efficient heating).

- 5.28 In 2000, the government set out a Decent Homes target (PSA7)¹⁷ which included ensuring that all social housing met the Decent Homes Standard by 2010, although some local authorities, including Lewisham, later applied for an extension to 2012 on the grounds that the works required major regeneration. In terms of private rented housing, PSA 7 included targets relating to increasing the proportion of vulnerable households in the private sector, including families with children, who live in homes that are in decent condition. The targets were: 'to increase the proportion of vulnerable households in decent homes to 65% in 2006, 70% by 2010 and 75% by 2020'¹⁸. The proportion measured is derived from the number of private sector vulnerable households in decent homes divided by the number of all private sector vulnerable households.

- 5.29 The recently published final report of the London Housing Investment Taskforce has recommended that the Mayor of London, in partnership with London Councils, develops 'proposals for the introduction of a 'Decent Homes' kitemark scheme for the private rented sector in London and agree light-touch arrangements for monitoring and reporting publicly on performance'¹⁹.

Recommendation 4: The proposals being taken forward by the Mayor of London, in partnership with London Councils, for the introduction of a 'Decent Homes' kitemark scheme for the private rented sector should be supported. If introduced, acquiring the kitemark should be compulsory for all landlords used by the Council via the PSL, RIS, Fresh Start schemes.

- 5.30 Private Sector House Condition Surveys (PSHCS) are conducted on a regular basis by local authorities as a means of maintaining a detailed picture of housing conditions in the private sector (owner occupied and privately rented homes). The Lewisham Private Rented Sector Study 2011, which built on and used the information gathered by the Lewisham Private Sector House Condition Survey 2010, indicated that 36.7% of privately rented dwellings in Lewisham are believed to be non-decent²⁰. The table below shows that private rent dwellings in the borough are more likely to be assessed as being non-decent when compared to owner occupied dwellings, under all of the criteria in the Decent Home Standard except for the category 'Category 1 hazards', where there is actually a higher

¹⁷ PSA Target 7 – Decent Homes, CLG, See:

<http://www.communities.gov.uk/documents/corporate/pdf/psa-target7.pdf>

¹⁸ Ibid, p8

¹⁹ The final report of the London Housing Investment Taskforce, May 2011, p3. See:

<http://www.london.gov.uk/sites/default/files/housing-taskforce-report.pdf>

²⁰ Lewisham Private Rented Sector Study, Opinion Research Services, February 2011, p15

incidence of failure of the standard under this criteria in the owner/occupied sector than in the private rented sector.

Non Decent Homes by Reason by Tenure (Source: Lewisham Stock Condition Survey 2010)

Tenure	Category 1 hazards	Repair	Lacking modern facilities	Thermal comfort failure	Percentage of stock non-decent
Owner Occupied	20.3%	9.5%	1.8%	15.1%	36.0%
Private Rent	18.4%	11.4%	4.2%	17.9%	37.8%
Total Private Sector	19.5%	10.3%	2.9%	16.3%	36.7%

5.31 The table also provides information on Category 1 hazards. The Housing Act 2004 introduced the Housing Health and Safety Rating System (HHSRS), a prescribed method of assessing individual hazards, rather than a general standard to give a judgment of fit or unfit. The HHSRS is evidence based (national statistics on the health impacts of hazards encountered in the home are used as a basis for assessing individual hazards) and 29 hazards are covered in total. (Appendix C lists all 29 hazards). Hazards are rated according to how serious they are and the effect they are having, or could have, on the occupants. Each hazard is assessed separately, and if judged to be 'serious', with a 'high score', it is deemed to be a Category 1 hazard. All other hazards are Category 2 hazards. Local authorities have a duty to deal with hazards which are assessed as 'Category 1' and discretionary powers to deal with 'Category 2' hazards. The enforcement regime can require the improvement or prohibition of the use of the dwelling or its parts. The full range of legal powers available to local authorities for alleviating unacceptable HHSRS Hazards are:

- Improvement Notice
- Prohibition Order
- Emergency Remedial Action Notice
- Emergence Prohibition Order
- Demolition Order (Housing Act 1985)
- Clearance Areas (Housing Act 1985)
- Management Orders / Interim Management Orders.
- Hazard Awareness Notice.

N.B. Improvement Notices and Prohibition Notices can be 'suspended' in appropriate circumstances.

5.32 The council carries out its statutory duty to resolve all Category 1 hazards identified and will always take appropriate enforcement action where properties are tenanted. Available resources do not allow the Council to take action in relation to all Category 2 hazards, but action is generally taken under the following circumstances:

- Where Category 2 hazards are found alongside Category 1 hazards, then action will be taken to address all hazards.
- Where certain vulnerable groups such as drug and alcohol dependant people occupy the premises and there are Category 2 hazards that are felt to require immediate action.
- Where a Category 2 hazard or hazards are found in a property subject to ongoing neglect. (e.g. in cases where it is likely that further structural deterioration will occur over the next two years then preventative, action may be taken so as to prevent the occurrence of a Category 1 hazard.)

- 5.33 All notices and orders have a statement of reason attached to them which states why one type of enforcement action was taken instead of another. Consideration is given to the views of owners, landlords and tenants before formal action is taken except in very urgent cases. Where the proposed notice includes a schedule of works, this is sent to all interested parties asking for their views, prior to the notices being formally served. Primary hazard failures in Lewisham are excess cold, falling on level surfaces and falling on stairs. Appendix B provides a summary of recent enforcement action taken in Lewisham in relation to HHSRS assessments. It should be borne in mind that intensive efforts are made to resolve problems by negotiation or other informal means.
- 5.34 At its first evidence session, the Committee heard that whilst prosecution delivered a strong message, it was time consuming and resource intensive. Although increased resources would allow more inspectors and more prosecution, the Council, along with a number of other local authorities, had signed an enforcement concordat which emphasised prosecution as a last resort only. However, there have been indications from the new Government that it would not be averse to an increase in prosecution.
- 5.35 The Standard Assessment Procedure (SAP) is a government rating for energy efficiency, expressed on a 0 – 100 scale. The higher the number the better the energy rating for that dwelling. The 2011 Lewisham Private Rented Sector Study found that the mean SAP rating for privately rented dwellings was 53 compared with 50 for owner occupied dwellings²¹.
- 5.36 The following table summarises the key findings of the 2010 Lewisham Private Sector House Condition Survey:

Characteristic	Owner occupied	Privately rented	All private sector stock	England
Dwellings <i>Per cent of stock</i> ¹	48,410 42%	33,180 29%	81,590 71%	82.0%
Non-decent <i>As a % of each tenure</i>	17,410 36.0%	12,540 37.8%	29,950 36.7%	35.8%
Vulnerable in decent homes ² <i>% vulnerable households in decent homes</i>	5,070 57.9%	6,220 60.2%	11,290 59.2%	61.0%
Category 1 Hazard <i>As a % of each tenure</i>	9,830 20.3%	6,090 18.4%	15,920 19.5%	23.5%
In Fuel Poverty <i>As a % of each tenure</i>	5,080 10.8%	2,770 8.8%	7,850 10.0%	13.2%
Mean SAP ³	50	53	51	48
Residents over 65 <i>As a % of each tenure</i> ⁴	11,810 25.4%	2,270 7.2%	14,080 18.0%	24.4%
Households in receipt of benefit <i>As a % of each tenure</i> ⁴	8,750 19.0%	10,340 33.0%	19,090 24.0%	17.0%

²¹ Ibid, P16

1. Percentages given as a proportion of total housing stock, the remaining 29% is all social housing, which was not surveyed as part of this study
2. Refers to households in receipt of an income or disability benefit, as defined under former Public Service Agreement objectives
3. SAP is the government's Standard Assessment Procedure for rating energy efficiency on a scale of 1 (poor) to 100 (excellent)
4. As a percentage of occupied dwellings, not all dwellings

5.37 In terms of the standard of accommodation in council schemes, properties in the Private Sector Leasing (PSL) scheme are inspected before they are admitted to the scheme, to ensure they meet set standards; visited within the first six weeks of the tenancy; and thereafter visited at least once every 12 weeks. Properties in the Rent Incentive Scheme (RIS) are inspected before they were admitted to the scheme only, as thereafter the relationship is between the landlord and tenant. However, a letter is sent to the tenant after six months to check that the tenancy is working out. Temporary housing such as bed and breakfast accommodation is only used by the Council to provide emergency accommodation and for a short a period as possible; and is inspected prior to use. A written contract setting out expected standards is used, although it is accepted that the shortage of temporary accommodation in the South East London sub-region means that the Council can not always be as choosy as it might like to be.

Houses in multiple occupation

5.38 In addition to the council's regulatory role in taking enforcement action in relation to hazards under the HHSRS, referred to above, the council also has a regulatory role in licensing houses in multiple occupation. Under the Housing Act 2004 it is compulsory for local authorities to licence HMOs²² that are 3 or more storeys high, have five or more people in more than one household, share amenities such as bathrooms, toilets and cooking facilities. (Councils can also choose to introduce additional licensing for HMOs – see paragraph 5.41 below). Under the Act, anyone who owns or manages an HMO that falls under the compulsory licensing scheme must apply to the council for a licence. The council must give a licence if it is satisfied that the:

- HMO is reasonably suitable for occupation by the number of people allowed under the licence.
- Proposed licence holder is a fit and proper person.
- Proposed licence holder is the most appropriate person to hold the licence
- Proposed manager, if there is one, is fit and proper.
- Proposed management arrangements are satisfactory, the person involved in the management of the HMO is competent and the financial structures for the management are suitable.

5.39 The licence specifies the maximum number of people who may live in the HMO and includes the following conditions, which apply to every licence:

- A valid current gas safety certificate, which is renewed annually, must be provided.
- Proof that all electrical appliances and furniture are kept in a safe condition must be provided.
- Proof that all smoke alarms are correctly positioned and installed must be

²² HMOs are Houses in multiple occupation - buildings or parts of buildings which are occupied by more than one household. These may be occupied as bedsits, shared houses, self-contained flats or hostels, or a combination of these. The majority of HMO accommodation is privately rented.

provided.

- Each occupier must have a written statement of the terms on which they occupy the property (e.g. a tenancy agreement).

5.40 It is a summary offence to operate an HMO without having a licence. Additionally, an offence is committed by a licence holder if they knowingly permit the HMO to be occupied by a number of occupants exceeding that specified on the licence. The maximum fine for these offences is £20,000. The council encourages applications in all cases where they believe that a licence is required. Two examples of action taken against HMO landlords who fell foul of the legislation is attached at Appendix A; and the final section of the table attached at Appendix B provides a summary of recent HMO applications.

Discretionary Licensing Schemes

5.41 Discretionary licensing schemes, permissible under the Housing Act 2004, aim to address poorly managed private rented properties. The Act gives local authorities the power to designate areas for additional HMO licensing or selective licensing. Additional licensing can be introduced to tackle HMOs being poorly managed, or that are overcrowded, where their conditions affect the environment and/or where tenants are causing anti-social behaviour (ASB). Selective licensing can be introduced where there is low demand for housing and/or where there is a problem with anti-social behaviour, some of which is caused by private tenants. Successful discretionary licensing schemes can result in private tenants living more securely in reasonable housing conditions. They can also contribute towards regeneration and a reduction in ASB, if they are combined with other initiatives which deal with the problems in the area as a whole. Up until March 2010 discretionary licensing schemes could only be set up with approval from Communities and Local Government (CLG), but from 1 April 2010 schemes could be approved by local authorities (known as general consent).

5.42 The setting up of a discretionary licensing scheme is resource intensive. It involves researching and collating the evidence to provide the business case for the scheme and carrying out an extensive consultation exercise. Under general consent, the government requires that the consultation must last for a minimum of ten weeks. The scheme can then come into force three months after the local authority approves the designation and it can last for up to five years. Local authorities need to keep their schemes under review to show whether the designation is achieving the desired effects. Schemes work by:

- Only granting licences to landlords or managing agents who have demonstrated that they are fit and proper persons to hold a license.
- Attaching conditions to the licence to control the management, occupation and use of the property. (Some mandatory conditions must be applied, such as a requirement to take up references for new tenant and to provide a written tenancy agreement).

Local authorities running a discretionary licensing scheme may choose to require landlords to join up to an accreditation scheme (such as the London Landlord Accreditation Scheme – see paragraph 5.46) to help landlords improve their management skills. Appendix D highlights the differences between selective and additional licensing schemes.

5.43 Lewisham does not operate any discretionary licensing schemes. Most of the discretionary licensing schemes that are operating are selective licensing schemes

in the North of England where there are areas of very low demand (streets of abandoned houses resulting in problems with criminal activity linked to ASB) in areas including: Manchester, Salford, Bolton, Blackburn with Darwin, Burnley, Blackpool and Pendle in the North West; Newcastle, Gateshead, Durham, Sunderland, Middleborough, Hartlepool and Leeds in the North East; and Stoke on Trent in the East Midlands. However, there are some schemes in the South of England, including in Thanet, where the council has adopted a Selective Licensing scheme for two wards to tackle high numbers of former guesthouses being used to house single people in HMOs. Slough Borough Council has also introduced a selective licensing scheme to tackle 'Slough Sheds' (residential buildings, often converted garages or outbuilding, located at the rear of occupied properties, often lacking sanitation and other necessary facilities and used to house migrant workers, failed asylum seekers and other vulnerable persons), as well as other ASB problems. In London, Newham has developed and introduced a proposal for selective licensing focused on ASB in an area of 580 properties.

- 5.44 Not all selective licensing schemes succeed. In 2010 Hyndburn, near Manchester, had plans to launch a selective licensing scheme that were quashed by legal challenge. The judge held that the council had failed to consult properly, had not followed the relevant guidance and had made misrepresentations to the Secretary of State. He therefore held that the decision to designate an area for selective licensing and the resulting designation were both unlawful.
- 5.45 There are some additional licensing schemes in operation. Oxford City Council has recently adopted additional licensing for all HMOs throughout the city to tackle the problems of poor management of HMOs for their very high student population. The London Boroughs with, or proposing, additional licensing schemes are mainly in North West London. Schemes in Ealing, Hillingdon, Harrow and Hounslow are designed to tackle a variety of issues from preventing the exploitation of migrant workers and other tenants in relation to poor housing standards, management and overcrowding; to the reduction of noise disturbance and ASB associated with high densities of student HMOs. In South London, Croydon has introduced an additional licensing scheme to support the council's Crime Reduction Strategy by making irresponsible landlords accountable for their tenants' ASB and reducing large scale fraud and people trafficking.

Recommendation 5: The Council should consider whether Lewisham should adopt an Additional Licensing Scheme for HMOs to drive up standards and tackle anti-social behaviour.

The London Landlord Accreditation Scheme

- 5.46 The London Landlord Accreditation Scheme was set up in 2004 with the aim of improving landlord knowledge and awareness around key property management issues, in the hope that this would make it more likely that their properties would be maintained to a higher standard, their tenants' safety and health would be improved and their businesses would be better protected against falling foul of the complex laws surrounding the letting of residential properties.
- 5.47 The scheme is funded through member contributions and administered by the London Borough of Camden; and currently all London boroughs are members. In Lewisham there are currently 275 LLAS accredited landlords and the project team working on this scheme are undertaking action locally to increase the number of accredited landlords.

- 5.48 Participating landlords attend a one day course and are given training on issues such as current legislation, basic structural requirements, tenancy agreements, inventory control, gas/electrical safety, harassment and illegal eviction, Housing Benefit procedures and other relevant matters. As the scheme develops it is envisaged that further training modules may be offered to provide interested landlords with more training in particular areas.
- 5.49 The cost to landlords is £110 (reduced to £79.90 for online payment) and the benefits include:
- Understanding legal rights and responsibilities (a comprehensive reference manual is provided).
 - Having access to the latest, up-to-date information via the LLAS website, newsletters and future development courses.
 - Business advantages as tenants seek out accredited landlords.
 - Use of the LLAS logo when advertising properties.
 - Reduced HMO licensing fees (20% discount in Lewisham).
 - Availability of grant money to improve premises.
 - Preferential treatment by landlord organisations and universities.
 - Discounts and preferential consideration opportunities with insurance companies, banks, building societies, materials supplies etc.
 - Improved access to local authority services for housing advice, housing benefit advice, etc.
- 5.50 Accreditation lasts for 5 years and to be re-accredited landlords must take steps to maintain their knowledge and keep up to date with changes in the law.

Recommendation 6: The London Landlord Accreditation Scheme (LLAS) should be promoted and made compulsory for all landlords used by the Council via the PSL, RIS, Fresh Start schemes and landlords used to provide emergency temporary accommodation.

Grants and loans

- 5.51 Council grants to private landlords to (a) bring their property up to the decent homes standard; (b) resolve any category 1 or 2 hazards included on an Improvement or Prohibition Notice served by the council; or (c) provide 270mm loft insulation and cavity wall insulation (where appropriate) were suspended in January 2010 due to possible overspend on budgets. The grants will be re-instated when a revised policy comes into use later in the year, but at a much lower level. However, grants are still available to help HMO licence holders with works necessary to comply with licence conditions when obtaining their licence. Approximately £80,000 was approved for grants to landlords last year which is approximately 12% of the Discretionary Grants and Loans budget. Grants normally have a five year grant condition period during which time:
- The property must be rented out to tenants who are in receipt of housing benefit (at the start of their tenancy). If the property is already tenanted, this condition will not come into force until the current tenants vacate the property.
 - Rent levels must not exceed the Local Housing Allowance rates.
 - The tenants must not be members of the Landlord's family.
 - The property must not be rented out as a holiday let.
 - The property must be kept in good repair and maintained in accordance with all necessary legal requirements.

- The owner must provide the council with full details of how the property is being occupied and/or maintained within 21 days of a written request.

The grant is registered with the Local Land Charges Section as a local land charge and must be repaid in full if the owner disposes of the property or fails to comply with any of the grant conditions within 5 years of the certified date.

- 5.52 Repeat applications from private landlords for grants for different properties are not a particular feature of the Council's grant programme. Approximately £80k of grants were provided in 2010/11 and the maximum individual grant offered was approximately £8k.
- 5.53 In previous years Empty Homes Grants, designed to bring empty homes back into use and increase the supply of safe, warm and decent housing accommodation in the private rented sector, have been available, financed through the South East London Housing Partnership (SELHP). However, there is no funding for Empty Homes for 2011/12, so at the moment these grants are not available. SELHP have put a bid in for funding, and this may be available later in the year, but this funding will be reduced and it is likely that the qualification criteria will be much tighter.

THE SECURITY OF PRIVATE TENANCIES

Types of tenancy agreements

- 5.54 The most common form of tenancy agreement is an assured tenancy or assured shorthold tenancy, both of which allow landlords to charge full market rent. An assured or assured shorthold tenancy is the usual form of letting if:
- The tenant is a private tenant and the landlord is a private landlord.
 - The tenancy began on or after 15 January 1989.
 - The house or flat is let as separate accommodation and is the tenant's main home.
- 5.55 *Assured shorthold tenancies* allow landlords to let their property for a short period only – usually six months, although this can be renewed. For most residential tenancies created after 1997, this is the default type of tenancy created. The rent is agreed between the landlord and the tenant, and after the period of the tenancy agreement, the property automatically reverts back to the landlord, unless the landlord and tenant agree to a new tenancy. *Assured tenancies* allow the tenant the right to renew the lease as long as he or she has not persistently breached the terms of the original lease. The lease contract is negotiated between the landlord and tenant for any rent and for any length of time and the terms and conditions of the lease stated in the contract are negotiable between the landlord and tenant. Detailed information on all types of tenancy agreement is provided at Appendix E.
- 5.56 Short tenancies do not offer much security to private tenants and can discourage an attachment to, or pride in a property. They can also send the unhelpful social message that renting is a short-term option, or something for the less settled. This is not the way renting is seen in many other countries.
- 5.57 The Committee heard from Rachel Braverman, Lewisham CAB, that the Residential Landlords Service advises its members to issue a section 21 notice (the notice a landlord can give to a tenant to regain possession of a property at the end of an Assured Shorthold Tenancy) at the start of each

tenancy agreement, meaning that tenants were made to feel insecure throughout their tenancy.

- 5.58 Through the various schemes offered by the council, negotiations are undertaken with landlords to extend the length of tenancies so they are longer than the assured shorthold six month period. In the RIS scheme 12 months tenancies are negotiated and in the PLS scheme the lease with the landlord is now for up to three years.

Recommendation 7: The Council should consider whether there is sufficient provision in the borough for legal and housing advice for tenants, and keep this issue under review, particularly in the light of cuts in Legal Aid. The Council should investigate ways in which information about local landlords and lettings agents and the services they deliver, including the fees they charge, can be made publically available.

Understanding tenancy agreements

- 5.59 The Committee, following discussion with expert witnesses including a private tenant, agreed that it would be helpful if landlords and lettings agents had a meeting with the tenant at the start of the tenancy to go through the landlord's and the tenant's rights and responsibilities under the tenancy agreement, as contracts were not always written in plain English and were often difficult to understand. Whilst letting agencies such as Omega Lettings provided a 30min/1hr 'induction' meeting in the first month of tenancy to explain how to use the property and to set out the obligations on both sides of the contract, this practice is not believed to be widespread. Setting out the key points in the contract at the front of the document in plain English would also be helpful.

Recommendation 8: The Council should encourage landlords and lettings agents to carry out inductions for all new tenants (where the rights and responsibilities of the landlord and the tenant are outlined.) The provision of inductions should be made compulsory for all landlords (and lettings agents) used by the Council via the PSL, RIS and Fresh Start schemes.

Reasons why tenancy agreements end

- 5.60 Most private tenancies come to an end because the tenant positively chooses to move to another property. However, private tenancies can end for less positive reasons. For example, the tenant may get into rent arrears or breach the tenancy agreement in another way. Alternatively, the landlord might get into mortgage arrears leading to the property being repossessed, choose to sell the property, or in a minority of cases undertake an illegal eviction. As prosecutions for illegal evictions are taken forward by local authorities, the police are often unaware of the specific legislative framework relating to evictions.

Recommendation 9: A pocket guide to housing law should be produced and provided to local police who are often unaware of the legal framework around illegal evictions.

- 5.61 Taking a case to court costs the council significant time and money and because severe penalties are rarely issued, such action is unlikely to act as a deterrent. For this reason the council has not taken forward any prosecutions for some time, but mediation has been provided, together with assistance in getting injunctions for the reinstatement of tenants.
- 5.62 For those clients supported into the private rented sector by the Housing Needs team, the most common cause of tenancy failure is rent arrears and damage to the property/ poor conduct of the tenant. Although problems with Housing Benefit claims can be an issue, the Housing Needs team is normally able to look into the case quickly, establish that the client was not at fault and work with the Housing Benefit team to get the payments made. Sometimes clients who do not want to be in the private rented sector will not work to sustain their placement.
- 5.63 Demetrios Antoniou from Omega Lettings reported to the Committee that some solicitors were automatically issuing disrepair notices in the case of rent arrears, even if there was no disrepair issue, which was taking up a lot of court time and landlord time and stretching out the non-payment of rent period.

Anti-Social Behaviour

- 5.64 Tenancies may end because of anti-social behaviour on the part of the tenant. At its September evidence session, the Committee heard from a local lettings agent, Demetrios Antoniou, that his agency would send two warning letters prior to eviction being sought. Arthur Klein, a local private landlord, reported that, if other means failed, a section 21 notice would be issued to secure eviction.
- 5.65 As part of the review, the Committee considered a written submission from a member of the public who was suffering from anti-social behaviour (ASB) perpetrated by private tenants, where the landlord refused to take action. It was accepted that, in this instance, there was very little the council could do. It was suggested that affected neighbours should be advised to keep a diary to evidence the ASB and present this to the landlord and the police.

Recommendation 10: The Committee supports the ongoing provision of the noise abatement service in its current form and believes there should be a single number for reporting ASB in the borough, regardless of tenure; and the information reported should be passed on to relevant housing providers or private landlords as appropriate.

Buy to let landlords

- 5.66 Although the recession initially saw the number of buy to let investors fall, current high rent levels are encouraging more investment and new mortgage products on the market are likely to increase this area of the private rented sector. Upcoming EU regulation of buy to let mortgages will see mortgages advanced on the basis of both assessed rental income and the landlord's income, whereas at the moment it is based on assessed rental income only. Again, this is likely to bring more buy to let landlords into the market.
- 5.67 A large proportion of the workload of the Housing Rights Team relating to harassment and illegal eviction relates to buy to let landlords. By their nature, these landlords are not professional landlords and they are sometimes ignorant of their

legislative responsibilities. Buy to let landlords are also more likely to sell or lose their properties than other landlords. They are often subject to an 'all monies charge' in their mortgage agreement, meaning that the lender secures all debt against the mortgaged property, including any additional borrowing such as personal loans or overdrafts. This means they are entitled to repossess the property should the borrower default in any area. Banks can also repossess if the value of the property drops into negative equity.

- 5.68 In the case of private landlords falling behind in their mortgage payments, the council, if made aware of the situation, tries to work with the lender, landlord and tenant to resolve the situation. This might involve (a) assisting the tenant directly by negotiating with the lender to allow the tenant to remain in the property after the bailiff's notice, to provide extra time for finding alternative accommodation; or (b) assisting the landlord (to assist the tenant) by using the mortgage rescue scheme or getting the lender to repackage the loan. The Housing Options Service has a debt advice officer who can provide specific advice in such cases.

Advice and assistance

- 5.69 The Housing Rights team has two specialist housing advisors who can offer advice to private tenants, including advice on tenancy agreements, deposits, landlord responsibilities, housing conditions, harassment and illegal eviction. All housing options officers have training in landlord and tenant issues and have access to an online manual to guide them, linked to local and national leaflets.
- 5.70 There are a range of agencies and groups that also provide support for, and have influence on, the private rented sector. Locally this includes Lewisham Citizens Advice Bureau and various local lettings agencies. Nationally, there are a wide variety of organisations including the Association of Residential Lettings Agents, the National Landlords Association and the Federation of Private Residents' Associations.
- 5.71 At its September evidence session the Committee heard from Rachel Braverman, Joint Chief Executive of Lewisham CAB, who reported that the main housing related problems reported to Lewisham CAB were illegal evictions, harassment, the retention of deposits, the non-registering of deposits, agents taking a number of deposits for the same property and tenants being evicted because the landlord has fallen behind on mortgage payments.

Recommendation 11: The Council should adopt a more proactive approach to enforcement and prosecution of the worst landlords, taking into account what is legally possible and with regard to the relative costs and benefits:

(a) The Council should consider escalating to enforcement action where landlords do not quickly respond to informal action in connection with poor housing conditions and disrepair; and to prosecution where they fail to respond to enforcement action and/or a landlord is known to be a serial offender. The council should aim to prosecute in all cases where landlords have illegally evicted tenants and the tenants have not been immediately readmitted to their homes following contact with the landlord by the council and/or a tenant has been unable to access their accommodation overnight.

(b) The Council should ensure that sufficient resources are available to support prosecutions of rogue landlords, and should seek so far as possible to ensure that prosecution provides an effective remedy for tenants and for the community, in pushing for penalties that reflect the impact of the offence on the tenant or on the community. This may be achieved by way of a community or victim impact statement being prepared as part of the evidence given to the court or tribunal.

(c) The Council should celebrate successful prosecutions of rogue landlords and publicise its successes in the local press and news media and in Lewisham Life (including the e-edition).

Changes to the Local Housing Allowance and welfare benefit

5.72 Private sector rented accommodation is becoming less financially viable and therefore less secure for many residents on housing benefit because, from April 2011, the Local Housing Allowance (LHA) (used to calculate how much housing benefit an individual or family is entitled to if they rent their home from a private landlord) has been subject to caps on the maximum LHA payable for each property size:

£250 for a one-bed property
£290 for a two-bed property
£340 for a three-bed property
£400 for a four-bed (or larger) property.

The £15 per week excess payment²³ has also been removed and the LHA maximum permitted payment has moved from the 50th percentile of local market rents to the 30th percentile²⁴.

5.73 Looking to the future, from April 2012 single room rent restrictions will be extended to all single claimants and couples under 35 (it is currently under 25) meaning that their housing benefit will be restricted to the 'shared room' rate as opposed to the rate for a self-contained one bedroom property. The impact this will have generally, but especially on persons with special needs such as Multi-Agency Public Protection Arrangements (MAPPAs) and Drug Intervention Project (DIP) clients is a serious concern. As there are no exemptions currently proposed, the likely numbers of special needs persons impacted are being gathered by the SHIP service and other directorates/services.

5.74 For Lewisham, the most significant LHA change being introduced is setting the LHA levels at the 30th percentile. It is estimated that 5,111 households will be affected. The average reduction is £12.97 per week and this will result in a total reduction of £3.44m. However, research to date indicates that only a small number of vulnerable families in Lewisham will need financial support to prevent them from a forced move due to the LHA impact on their rent level. Discretionary Housing Payments could be used to 'top up' LHA payments, but how many vulnerable households can be sustained this way will depend on how many there are. The Council submitted a bid to the Department for Work

²³ Tenants had been eligible for a £15 weekly payment if they found a property to rent at less than the weekly LHA – this was stopped in April 2011, although for individuals receiving the payment it will stop on their anniversary date (after April 2011).

²⁴ Although for existing claims there is a period of transitional protection which means the earliest a claim will be affected is January 2012.

and Pensions (DWP) for funding for a support officer to visit vulnerable households affected by the changes, but unfortunately this was unsuccessful.

- 5.75 The Government is hopeful that the LHA changes will encourage landlords to reduce rents accordingly. However, anecdotal evidence across the private rented sector community both locally and online indicates that many landlords resent this and would rather move away from Housing Benefit tenants.

6. Recommendations

6.1 The Committee would like to make the following recommendations:

1. The Committee welcomes the potential development of a single unit within the Council to deal with all private rented sector housing in the borough. The services that this unit will be able to provide to private sector tenants requiring advice and assistance should be well publicised. Consideration should also be given to setting up a users forum, to allow private tenants to provide feedback to the unit on their experiences of privately renting and help shape the services provided by the new unit.
2. The Housing Select Committee fully supports the establishment of a social lettings agency, either for Lewisham or sub regionally, and asks to be kept updated on all progress made in relation to this.
3. Regular landlord information days should be held by the Council, with smaller landlords in particular encouraged to attend, to ensure that local landlords are aware of their rights and responsibilities under the law.
4. The proposals being taken forward by the Mayor of London, in partnership with London Councils, for the introduction of a 'Decent Homes' kitemark scheme for the private rented sector should be supported. If introduced, acquiring the kitemark should be compulsory for all landlords used by the Council via the PSL, RIS, Fresh Start schemes.
5. The Council should consider whether Lewisham should adopt an Additional Licensing Scheme for HMOs to drive up standards and tackle anti-social behaviour.
6. The London Landlord Accreditation Scheme (LLAS) should be promoted and made compulsory for all landlords used by the Council via the PSL, RIS, Fresh Start schemes and landlords used to provide emergency temporary accommodation.
7. The Council should consider whether there is sufficient provision in the borough for legal and housing advice for tenants, and keep this issue under review, particularly in the light of cuts in Legal Aid. The Council should investigate ways in which information about local landlords and lettings agents and the services they deliver, including the fees they charge, can be made publically available.
8. The Council should encourage landlords and lettings agents to carry out inductions for all new tenants (where the rights and responsibilities of the landlord and the tenant are outlined.) The provision of inductions should be made compulsory for all landlords (and lettings agents) used by the Council via the PSL, RIS and Fresh Start schemes.
9. A pocket guide to housing law should be produced and provided to local police who are often unaware of the legal framework around illegal evictions.

10. The Committee supports the ongoing provision of the noise abatement service in its current form and believes there should be a single number for reporting ASB in the borough, regardless of tenure; and the information reported should be passed on to relevant housing providers or private landlords as appropriate.
11. The Council should adopt a more proactive approach to enforcement and prosecution of the worst landlords, taking into account what is legally possible and with regard to the relative costs and benefits:
 - (a) The Council should consider escalating to enforcement action where landlords do not quickly respond to informal action in connection with poor housing conditions and disrepair; and to prosecution where they fail to respond to enforcement action and/or a landlord is known to be a serial offender. The council should aim to prosecute in all cases where landlords have illegally evicted tenants and the tenants have not been immediately readmitted to their homes following contact with the landlord by the council and/or a tenant has been unable to access their accommodation overnight.
 - (b) The Council should ensure that sufficient resources are available to support prosecutions of rogue landlords, and should seek so far as possible to ensure that prosecution provides an effective remedy for tenants and for the community, in pushing for penalties that reflect the impact of the offence on the tenant or on the community. This may be achieved by way of a community or victim impact statement being prepared as part of the evidence given to the court or tribunal.
 - (c) The Council should celebrate successful prosecutions of rogue landlords and publicise its successes in the local press and news media and in Lewisham Life (including the e-edition).

Appendices

Appendix A – Enforcement case studies

Appendix B – Summary of recent enforcement activity

Appendix C – Hazards covered by the HHSRS

Appendix D - Selective and additional licensing schemes

Appendix E – Types of tenancy agreements

References

Let Down, CAB evidence on letting agents and their charges, May 2009

Lewisham Local Development Framework: Housing Market Assessment 2007-2008, December 2009

Lewisham Private Rented Sector Study, Opinion Research Services, February 2011

The Private Rented Sector: its contribution and potential, Julie Rugg and David Rhodes, 2008

The final report of the London Housing Investment Taskforce, May 2011

Enforcement Action - Case Study A

Landlord fined for poor housing conditions

In 2010 the joint landlords and owners of a property in New Cross, together with their agent were prosecuted by Lewisham Council after officers found that their property failed to meet housing health and safety standards for a house in multiple occupancy. Complaints were received by the council that residents at the address were living in damp conditions, with no fire safety information or notices, unsafe wiring and with constant rat and cockroach infestations. The landlords were fined £3,000 and ordered to pay £1,008.60 in costs, for failing to meet health and safety regulations at an address in New Cross. The agent for the landlords was fined £2,000 and ordered to pay £788 costs.

The agent disagreed with the council about the conditions at the property and appealed against the Court's decision. In his defence he said that "damp, disrepair, absence of satisfactory fire precautions, rat and cockroach infestations and health and safety hazards are the usual things you are likely to find in any house in the UK, including hostels, hospitals, restaurants."

The agent's appeal was dismissed by the judge who said that the conditions in which the landlord had allowed the tenants to live in were "primitive" and an exploitation of tenants who could not fend for themselves. He ordered the agent to pay additional costs of £1,442.

Enforcement Action - Case Study B

Landlords prosecuted for failing tenants

In 2009, Lewisham Council prosecuted a landlord and agent for putting tenants' health and safety at risk and for failing to licence the property as a House in Multiple Occupation. Despite numerous attempts by the council they failed repeatedly to carry out repairs at the property and protect tenants in the event of a fire.

The landlord was prosecuted under Section 72(1) of the Housing Act 2004 for failing to licence the property. He was found guilty and fined £ 3,500 and ordered to pay costs of £1000. A payment of £100.00 was made on 23 June 2009, with the balance to be paid at £300.00 per month thereafter.

The managing agent was also prosecuted under Section 234(3) of the Housing Act 2004 for contraventions of the Management of Houses in Multiple Occupation (England) Regulations (No 372). He was fined £2500 and ordered to pay costs of £1000. The Judge was shown conditions including dangerous electrics, and concluded that they amounted to criminal negligence. There were bare wires and conditions which could have led to electrocution or fire. There were inadequate fire safety measures within the 4 storey property to safeguard tenants, and no means to give early detection and warning of fire. Such protection would have been required as part of the licence.

Appendix B

HHSRS enforcement activity and HMO licensing

	2006/7	2007/8	2008/9	2009/10	Total
Complaints/enquiries received	507	509	530	533	2079
Properties inspected	333	340	426	453	1552
HHSRS assessments carried out	333	340	426	453	1552
Category 1 Hazards identified (overall)	144	173	87	52	456
Excess Cold	52	56	24	17	149
Damp and mould growth	6	66	33	13	118
Falling on level	7	11	5	6	29
Falling on stairs	26	18	16	4	64
Improvement Notices Served	1	12	6	5	24
Prohibition Orders	0	0	2	1	3
Of which Emergency Prohibition Orders	0	0	1	1	2
Emergency action performed by PSH	0	0	0	0	0
Hazard Awareness Notice	0	2	3	4	9
Demolition Order	0	0	0	0	0
Clearance Order	0	0	0	0	0
Orders complied with within timeframe specified in the o	0	0	0	0	0
Orders enforced without prosecution	0	0	0	0	0
Breaches prosecuted	1	0	1	1	3
Convictions	1	0	1	1	3
Category 2 Hazards Identified (overall)	268	276	114	57	715
Excess Cold	7	8	0	2	17
Damp and mould growth	68	74	28	11	181
Falling on level	11	3	2	2	18
Falling on stairs	10	4	2	1	17
Improvement Notices Served	0	0	0	0	0
Prohibition Orders	0	0	0	0	0
Of which Emergency Prohibition Orders	0	0	0	0	0
Emergency action performed by PSH	0	0	0	0	0
Hazard Awareness Notice	0	0	0	0	0
Demolition Order	0	0	0	0	0
Orders complied with within timeframe specified in the o	0	0	0	0	0
Orders enforced without prosecution	0	0	0	0	0
Breaches prosecuted	0	0	0	0	0
Convictions	0	0	0	0	0
HMO Licence applications received	82	27	31	30	170
Licences granted	10	81	45	14	150
Licences refused	0	0	0	1	1
Properties inspected and found to be operating as unlicensed HMOs	0	0	0	3	3
Properties subsequently licensed as a result	0	0	0	3	3
Properties subsequently refused a licence	0	0	0	0	0
Prosecutions	0	1	1	1	3
Convictions	0	1	1	1	3

Environmental Health Residential Team - Enforcement Activity

Hazards covered by the HHSRS

1. Damp & Mould Growth

Threats to mental & physical wellbeing from living with dampness, mould & fungal growths and dust mites.

Most Vulnerable: 14 years or less

2. Excess Cold

Threats to health from exposure to sub-optimal indoor temperatures.

Most Vulnerable: 65 years plus

3. Excess Heat

Caused by excessively high indoor temperatures.

Most Vulnerable: 65 years plus

4. Asbestos & MMF

Caused by exposure to asbestos and manufactured mineral fibres (MMF).

Most Vulnerable: No specific group

5. Biocides

Threats to health from those chemicals used to treat mould growth and timber in dwellings.

Most Vulnerable: No specific group

6. Carbon Monoxide & Fuel Combustion Products

Hazards due to high levels of CO, NO₂, SO₂ & smoke in the atmosphere.

Most Vulnerable: For CO - 65 years plus, for NO₂, SO₂ & smoke – no specific group

7. Lead

Threats to health from the ingestion of lead.

Most Vulnerable: Under 3 years

8. Radiation

Threats to health from radon gas, airborne, or dissolved in water. E.g., leakage from microwaves might be considered.

Most Vulnerable: People aged 60-64 who have had a lifetime exposure to radon

9. Uncombusted Fuel Gas

The threat of asphyxiation due to fuel gas escaping into the atmosphere within a dwelling.

Most Vulnerable: No specific group

10. Volatile Organic Compounds

VOC's are diverse group of organic chemicals which includes formaldehyde that are gaseous at room temperature, and are found in a variety of materials within the home.

Most Vulnerable: No specific group

11. Crowding and Space

Health hazards linked to a lack of living space for sleeping and a normal family/household life.

Most Vulnerable: No specific group

12. Entry by Intruders

Problems keeping a dwelling secure against unauthorised entry, and the maintenance of defensible space.

Most Vulnerable: No specific group

13. Lighting

Threats to physical and mental health linked to inadequate natural and/or artificial light. It includes the psychological effect associated with the view from the dwelling through glazing.

Most Vulnerable: No specific group

14. Noise

Threats to physical and mental health caused by noise exposure inside the dwelling or within its cartilage.

Most Vulnerable: No specific group

15. Domestic Hygiene, Pests & Refuse

Health hazards due to poor design, layout and construction to the point where the dwelling cannot readily be kept clean and hygienic; access into and harbourage within dwelling for pests; inadequate and unhygienic provision for storing and disposal of household waste.

Most Vulnerable: No specific group

16. Food Safety

Threats of infection due to inadequate facilities for the storage, preparation and cooking of food.

Most Vulnerable: No specific group

17. Personal Hygiene, Sanitation & Drainage

Threats of infection and threats to mental health associated with personal hygiene, including personal washing and clothes washing facilities, sanitation and drainage.

Most Vulnerable: Under 5 years

18. Water Supply for Domestic Purposes

The quality and adequacy of the water supply for drinking and for domestic purposes such as cooking, washing, cleaning and sanitation.

Most Vulnerable: No specific group

19. Falls Associated with Baths etc.

Falls associated with a bath, shower or similar facility.

Most Vulnerable: 60 years plus

20. Falls on the Level

Falls on any level surface such as floors, yards and paths. It also includes falls associated with trip steps, thresholds or ramps, where the change in level is less than 300mm.

Most Vulnerable: 60 years plus

21. Falls Associated with Stairs and Steps

Falls associated with stairs, steps and ramps where the change in level is greater than 300mm. It includes falls on stairs or internal ramps within the dwelling, internal common

stairs or ramps within a building, access to the dwelling and to shared facilities or means of escape in case of fire. It also includes falls over stair, step or ramp guarding (balustrading).

Most Vulnerable: 60 years plus

22. Falls between Levels

Falls from one level to another, inside or outside a dwelling, where the difference in levels is more than 300mm. For example, falls out of windows, falls from balconies or landings, falls from accessible roofs, into basement wells, and over garden retaining walls.

Most Vulnerable: Under 5 years

23. Electrical Hazards

Hazards from electric shock or electricity burns, including from lightning strikes.

Most Vulnerable: Under 5 years

24. Fire

Threats from uncontrolled fire and smoke. It includes injuries from clothing catching alight, which appears to be common when people attempt to put out a fire. It does not include

clothing catching alight from a controlled fire by reaching across a gas flame or an open fire used for space heating.

Most Vulnerable: 60 years plus

25. Hot Surfaces & Materials

Burns or injuries caused by contact with a hot flame or fire, and contact with hot objects or hot non-water based liquids, and scalds – injuries caused by contact with hot liquids and vapours. It includes burns caused by clothing catching alight from a controlled fire or flame.

Most Vulnerable: Under 5 years

26. Collision & Entrapment

This includes risks of physical injury from: Trapping body parts in architectural features, e.g. trapping limbs or fingers in doors / windows; Colliding with objects e.g. glazing, windows, doors, low ceilings and walls.

Most Vulnerable: Under 5 years

27. Explosions

Threat from the blast of an explosion, from debris generated by the blast, and from the partial or total collapse of a building as the result of an explosion.

Most Vulnerable: No specific group

28. Position & Operability of Amenities

Threats of physical strain associated with functional space and other features at dwellings.

Most Vulnerable: 60 years plus

29. Structural Collapse & Falling Elements

The threat of the dwelling collapsing, or a part of the fabric falling because of inadequate fixing or disrepair, or as a result of adverse weather conditions. Structural failure may occur internally or externally.

Most Vulnerable: No specific group

Discretionary Licensing Schemes

	Additional	Selective
Types of properties included	Only HMOs can be licensed. The designation must specify the number of storeys in the property, households, and occupiers of HMOs to be licensed. Some buildings converted to self-contained flats can be included, if mainly rented by private landlords.	All private rented properties in the area will need to be licensed.
Reasons for introducing a licensing scheme	A significant proportion of HMOs are poorly managed and cause or could cause problems to occupiers or the public. The problems will include at least one of the following: <ul style="list-style-type: none"> • poor external conditions affecting the local environment • spatial overcrowding • insufficient kitchen and bathroom facilities • ASB affecting other residents or community • Poor management or bad practice by the landlord is affecting the tenants. 	There must be evidence of low demand or ASB. Evidence for low demand should be shown by trends in: <ul style="list-style-type: none"> • value of properties • turnover of occupiers • number of properties available to buy or rent and the time unoccupied. The Council needs to be of the opinion that the designation combined with other action in the area will improve social and economic conditions. If ASB (crime, nuisance neighbours, environmental crime), need to demonstrate that the ASB in the area: <ul style="list-style-type: none"> • is significant and persistent, and causes a considerable adverse impact • is attributable to private sector tenants in the area • at least some landlords are failing to deal with the problem. The Council needs to be of the opinion that the designation combined with other action in the area will lead to a reduction in ASB.
Licence conditions	Mandatory conditions for smoke alarms, gas safety certificates, to ensure electrical appliances and furniture are safe and that tenancy agreements are provided for tenants. Discretionary conditions can be applied for the management, use, occupation, condition and contents of the HMO.	Mandatory conditions as for additional HMO scheme plus taking up references for new tenants. Discretionary conditions can be applied for the management, occupation and use of the property, including prohibition of the use of part of the property.

Reference: Approval steps for additional and selective licensing designations in England (Communities and Local Government December 2007).

Types of tenancy agreement

Assured shorthold tenancies allow landlords to let their property for a short period only and to regain the property 6 months after the beginning of the tenancy, provided that they give 2 months' notice requiring possession. For most residential tenancies created after 1997, this is the default type of tenancy created. The rent is agreed between the landlord and the tenant, and the tenant has little protection from fair rent controls. After the period of the tenancy agreement, the property automatically reverts back to the landlord; unless the landlord and tenant agree to a new tenancy. If, after the period of the tenancy has expired, the tenant does not go willingly, the landlord has to obtain a court order to evict the tenant.

Assured tenancies allow the tenant the right to renew the lease as long as he or she has not persistently breached the terms of the original lease. Therefore they offer more security as they give the tenant the right to remain in the property unless the landlord can prove to the court that he or she has grounds for possession. The lease contract is negotiated between the landlord and tenant for any rent and for any length of time and the terms and conditions of the lease stated in the contract are negotiable between the landlord and tenant. On renewal of the contract, a new rental payment may be negotiated. Failing an agreement, an open market rent may be applied. The tenant may claim compensation from the landlord if the landlord has been unreasonable when offering a new lease to the tenant.

A tenancy will not be an assured or assured shorthold tenancy if:

- The tenancy began before 15 January 1989.
- It is a business or holiday let.
- No rent or a very low or very high rent is charged.
- The landlord is a "resident landlord" .

Most residential lettings by non-resident private landlords which began before 15 January 1989 are **regulated tenancies**. A regulated tenant has certain important rights concerning the amount of rent he or she can be charged and security of tenure. With a regulated tenancy:

- The landlord cannot evict the tenant unless he or she gets a possession order from the courts, and the courts can grant an order only in certain circumstances.
- If the tenant dies his or her spouse will normally take over the regulated tenancy.
- Either the landlord or the tenant can apply to the rent officer for a fair rent to be registered.
- Once a rent is registered it is the maximum the landlord can charge until it is reviewed or cancelled.
- Even if a rent is not registered, the landlord can only increase the rent in certain circumstances.
- The landlord is usually responsible for major repairs.
- The landlord, or in some cases the tenant, can ask the local authority for a grant towards certain repairs and improvements

However, since 15 January 1989 most new lettings have been assured or shorthold tenancies and it is only possible to have regulated tenancies in very limited circumstances.

A lodger is a person who rents one or more rooms or part of a room from the home owner or tenant. Usually there is a formal arrangement in place that sets out the conditions of the arrangement. To be classed as a **lodging arrangement**, the lodging arrangement must provide that the landlord:

- Uses the property as his or her only or main home.
- Has direct access from his or her accommodation to the lodger's.

Lodgers are not seen as tenants in the eyes of the law. Landlords can end the lodging agreement without needing a court order but if the lodger refuses to leave they may need to get a court order to evict them.