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Regulating property conditions in the private rented sector: The complex geography of property licensing in London

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Introduction

Since the turn of the milennium, the UK housing market has been shaped by a resurgence in private renting. During the 1980s and 1990s the proportion of households renting from a private landlord in England hovered around 9–10 per cent, but since 2013–14 this proportion has increased to approximately 19 per cent of all households in the country (MHCLG 2019a). Today, the private rented sector (PRS) is the second largest housing tenure in England, accounting for 4.5 million households (MHCLG 2019a). In London, the proportion of renters is even higher. The latest figures show that approximately 29 per cent of households rent from a private landlord and it is forecast that one in three households will be renting privately by 2025.

The recent growth of the PRS is not unique to London or England. Since the 2008–9 Global Financial Crisis (GFC), many global north countries have witnessed a rise in private renting, with this rise being more pronounced in Anglo-Saxon countries with liberal markets (Kemp 2015; Crook and Kemp 2014a). Explanations extend beyond current trends in household formation and the weakening of the economic position of working populations. They reflect a multitude of factors, such as reduced accessibility to mortgage finance, austerity politics in response to the GFC – which have also negatively impacted the production of subsidised housing – the financialisation of the residential sector, rent liberalisation and reduced tenant protections (Pawson et al. 2017; Hochstenbach 2017; August and Walks 2012).

In many countries, notably those in which the sector is loosely regulated, there is substantial variability in the quality of housing and management of privately rented properties, with substandard accommodation commonly being found at the lower end of the sector. The impacts of poor housing on health have been widely researched (Roys et al. 2010; Marsh et al. 1999) and studies have

shown how some landlords take advantage of reduced tenant protections and the precarious situation of some tenants – such as recipients of housing benefits, ethnic minority groups and undocumented immigrants – to reduce spending on repairs and property maintenance (Desmond et al. 2015; Grineski and Hernández 2010). Others have highlighted the lack of interest from landlords in investing in property maintenance in areas of high housing demand (Ambrose 2015), and recent studies in the United States, Canada and Germany have connected the growing financialisation of rental housing to reduced spending from investors on property maintenance as part of a wider strategy to reduce costs and increase tenant turnover in order to raise rents (August and Walks 2018; Fields and Uffer 2016).

Issues related to poor property conditions have generally been tackled through the provision of direct subsidies for housing improvement and through a regulatory approach. This is generally done through the prescription of minimum standards for privately rented housing and/or through the requirement that landlords register or license their rental properties. Examples range from national landlord registration schemes, such as in Scotland and Wales, to legislation introduced by city, state or regional governments, such as in the case of Toronto, where a by-law passed in 2017 introduced minimum property maintenance standards and the requirement for registration of certain types of purpose-built rental properties. In England, there is no minimum standard of housing condition in the PRS. Instead, property conditions are assessed by a system of risk assessment that identifies hazards to occupants. Local authorities are responsible for enforcing housing standards. They have a duty to license certain types of private rental accommodation and they also have discretionary powers to implement licensing schemes for other types of rental properties under certain conditions. This approach to licensing, however, due to its targeted focus, results in considerable variability in terms of regulation and of enforcement activity when local authorities are compared with one another.

This chapter explores the complex and fragmented regulatory landscape that is forming in London as a result of the various discretionary licensing schemes operating in Greater London's 32 boroughs. The study draws from the analysis of licensing schemes currently in place in each local authority, the analysis of two parliamentary inquiries into the sector and interviews conducted between September 2017 and February 2018 with eight enforcement officers and policy-makers in charge of private sector housing and enforcement in 11 of these local authorities. The chapter reveals that this fragmentation results from the combination of central government's aversion to regulation, austerity politics and differing local political willingness to implement licensing schemes. This results in substantial variation across London in the amount of intelligence held about the sector and in significant disparities in the terms and conditions of schemes as well as in enforcement, affecting both tenants and landlords, with wider impacts to the local community. Finally, it considers how this inconsistent regulatory landscape interacts with the current mayor's plans of introducing rent controls based on information gathered from a London-wide landlord register.

The chapter starts with an overview of the PRS in England and in London, followed by an overview of the regulatory framework that governs property conditions and landlord management and of how the PRS is problematised by different levels of government (central and local). It then gives an overview of the licensing schemes operating in London and discusses the wider implications of these different licensing approaches and capacities. It concludes with a discussion of the views expressed by local authority enforcement officers on the Mayor's proposal for a London-wide register, which highlighted the need to reduce regulatory complexity in order to increase compliance.

A brief overview of the PRS in England and in London

The PRS in England has been growing since the late 1990s due to a combination of deregulatory policies introduced by the 1988 and 1994 Housing Acts which removed rent controls and introduced shorter tenancy agreements, and new financial products that have allowed homeowners to buy additional properties to let (Buy-to-Let mortgages). Much of the sector's growth has been due to tenure change rather than to new housing construction (Crook and Kemp 2014b), with estimates that over 500,000 privately rented dwellings were originally social housing properties sold under 'right to buy' (Rugg and Rhodes 2018). Decades of undersupply in housing markets, coupled with easy availability of credit, contributed to house prices rising, while the decline of the social housing stock has resulted in social housing being allocated to those most in need. Since the onset of the GFC, the PRS has rapidly changed from being a marginal tenure – housing mainly students, young professionals, recently arrived migrants and newly formed households (Rugg and Rhodes 2008) – to becoming 'the new normal' (Reynolds and de Santos 2013). This has led to the phenomenon of 'Generation Rent', as many more people are renting for longer in their lives and see no prospects of ever changing their housing tenure status (Hoolachan et al. 2017; McKee et al. 2017). In London, where the housing crisis is most acute (see Penny, Chapter 16), rents have been rising substantially faster than earnings, surpassing the average mortgage payment. Londoners already spend on average 42 per cent of their income on rent (MHCLG 2019b) – with 25 per cent of them paying more than half of their wages (GLA 2018) – and welfare reforms introduced by central government have significantly impacted the ability of low-income families to afford rents in the capital.

Differently from countries such as Canada, which has a long history of institutional and corporate investment in purpose-built privately rented housing, the PRS in England has a larger share of older properties and is dominated by small-scale landlordism. Ninety-four per cent of landlords are private individuals, with 45 per cent owning one property and only 17 per cent owning more than five (MHCLG 2019b, 5). Despite active support from central government for institutional investment in the sector – through subsidies for purpose-built developments

solely for private renting, called 'build to rent' – this segment of the PRS is still in its infancy. As of 2019, approximately 32,000 units had been built and another 111,000 are under construction or in planning across the UK (Savills 2019). This predominance of private individual landlords has been associated with great variability in the quality of PRS properties and standards in property management being endemically poor, due to a large proportion of landlords being unaware of their responsibilities (Rhodes and Rugg 2018; Faulkner and Saxena 2016).

Thus, compared with the owner-occupied and social rented sectors, the PRS in England has the highest proportion of housing in poor condition. The latest figures show that over a quarter of PRS homes fail to meet the Decent Homes Standard,[1] a proportion that is well above what is found in the owner-occupied and social rented sectors (19 per cent and 13 per cent respectively) (MHCLG 2019a). Although the proportion of non-decent housing has reduced over time – from almost 47.7 per cent in 2006 (MHCLG 2018) to 25 per cent in 2018 – in absolute terms this figure has increased from 1.29 million to 1.35 million (Rugg and Rhodes 2018, 139). In London, the proportion of non-decent homes in the sector also stands at 25 per cent. Between 2015 and 2016, almost 4,000 serious health and safety hazards in privately rented dwellings were identified by local authorities (Pidgeon 2016). A study by Rhodes and Rugg (2018) showed that almost all vulnerable households living in PRS accommodation in the capital experience problems of unaffordability or overcrowding (living without a sufficient number of bedrooms) due to living in a non-decent home.

The deregulatory measures introduced in the 1980s and 1990s are also partly to blame for property standards and management being poor, because they significantly weakened the position of tenants. The standard tenancy agreement in England usually lasts six months to one year, after which the landlord has the right to repossess the property at two months' notice by serving a Section 21 eviction notice – which allows landlords to evict tenants without a reason once a fixed-term tenancy agreement expires. Over the years, cases of landlords evicting tenants who complain about housing conditions have been widely documented by housing charities and the media. In response, the Deregulation Act 2015 introduced protection for tenants by prohibiting landlords from serving such notices for a period of six months after receiving an improvement notice from a local authority.[2] Although this has been seen as an improvement, it reveals that tenants are highly dependent on the quality of enforcement provided by local authorities once they make a complaint.

The power imbalance between central and local government and its impacts on London

The main tools available to local authorities for enforcing housing conditions in both the PRS and the owner-occupied sector were introduced by the New Labour government (1997–2010) in the Housing Act 2004. New Labour endorsed the

earlier deregulation of the sector initiated by the Conservative Party and created regulation targeting only the underperforming portion of the PRS (Lowe 2007), after it was acknowledged that the sector contained a disproportionate amount of housing in poor condition and a sizeable portion of landlords providing poor management and profiteering from tenants (DETR 2000). This new regulatory framework comprised a system for assessing housing conditions – the Housing Health and Safety Rating System, a risk-based assessment that identifies 29 categories of hazards attributable to property conditions and the degree to which they can affect the health and safety of any potential occupier and visitor – and a new licensing model comprising three forms of licensing. The first is *mandatory licensing* for large Houses in Multiple Occupation (HMOs),[3] which then applied to HMOs with three or more storeys (including cellars, basements and loft conversions) and occupied by five or more people forming at least two households.[4] The other two forms of licensing are *discretionary* and include (i) *additional licensing*, which applies to smaller HMOs, and (ii) *selective licensing*, which initially applied to all privately rented properties located in areas of low housing demand but currently includes areas with high rates of properties in poor conditions or that are experiencing a rapid increase in PRS properties, inward migration or high levels of deprivation or crime.

However, it is widely known that decision-making and the systems in place for funding public services and local government in England are highly centralised. It has been argued that this high level of centralisation impacts on local democracy, as local authorities are generally seen by ministers as 'agencies for the provision of services in accordance with national policies rather than as local government meeting the needs and aspirations of local communities and citizens' (Stewart 2014, 846). Despite central government's signalling to devolve more powers to local government through the Localism Act (2011) and through legislation that will allow local authorities to retain business rates and council tax, in reality, the latter often have to abide by rigid terms and conditions which limit their ability to take initiatives and innovate. Their situation is exacerbated by the fact that since 2010 they have been severely impacted by austerity measures implemented by central government which have resulted in cuts of nearly 50 per cent to local authorities' budgets without any reduction in their statutory obligations to provide services (NAO 2018). The enforcement of housing standards is funded by local authorities' environmental health budgets and these have been reduced by an average of 30 per cent despite the rapid growth of the PRS (LGA 2018). Consequently, many local authority enforcement teams have been reduced to a handful of officers and have just enough resources to provide basic statutory service, thus lacking capacity to take complex cases to court, particularly given the often protracted nature of the enforcement process.

The discretionary powers given to local authorities were not free from rigid conditions. On the contrary, they can only implement discretionary licensing schemes if they provide evidence that licensing is the most appropriate response

to problems in the PRS and conduct extensive public consultation. Once implemented, discretionary schemes can only run for a maximum period of five years during which their need must be occasionally reviewed. In 2010, the need for additional and selective licensing schemes to be reviewed by the Secretary of State was abolished. However, in 2015, in a move that resembles Stoker's (1991, 150) description of the Thatcher government 'setting for local authorities arbitrary and non-negotiated goals and targets', central government reintroduced this requirement for selective licensing designations covering more than 20 per cent of a local authority geographical area or more than 20 per cent of its privately rented housing stock. This change was in response to four London boroughs and Liverpool City Council rolling out district-wide selective licensing schemes. Despite much criticism for interfering in local democracy, central government defended its position, stating that:

> as its name implies, selective licensing should be targeted to deal with specific local problems. Blanket licensing of all landlords may impose unnecessary costs on responsible landlords, which would be passed on to tenants in the form of higher rents. (MHCLG 2018b, para. 72)

This change in legislation has particularly affected London as some boroughs have attempted to either implement or continue with large or borough-wide selective licensing schemes to deal with a rapid increase in private renting in their areas. Soon after the legislation was passed, Redbridge Council was barred from introducing a borough-wide selective licensing scheme despite it arguing that licensing would allow it to respond more effectively to significant and persistent problems with anti-social behaviour in the PRS, crime and inward migration (Phillipson and Baker 2016). In 2017, the London Borough of Newham's application to continue with its borough-wide selective licensing scheme was approved with modifications by the Secretary of State.[5] Despite the outcome being considered a success because Newham's new selective licensing designation still covers 97 per cent of the borough, the decision-making process was severely criticised by the borough mayor, who stated that 'local people showed their overwhelming support for a borough-wide scheme and these decisions should be taken on the ground by local authorities who know their local area rather than ministers sitting in Whitehall' (Hopps 2017).[6]

The examples discussed above highlight the importance of examining the effects on Greater London of the different approaches to property licensing taken by London boroughs as these create spatial disparities in terms of housing quality, enforcement response and landlord obligations. Despite the mayor having little power over housing and no statutory powers over the PRS,[7] the housing crisis is London-wide, as evidenced by the fact that housing increasingly plays a central part in mayoral elections. London-wide measures to improve housing conditions in the PRS have been proposed since the 2012 elections, when it was acknowledged

that private renting had risen by 75 per cent between the 2001 and 2011 censuses. Although these initially relied on voluntary action by landlords – such as Labour Party mayoral candidate Ken Livingstone's proposal to set up a not-for-profit London Lettings Agency (Mulholland 2011), and former mayor Boris Johnson (Conservative Party) creating the 'London Rental Standard', a voluntary set of rental standards which was severely criticised for accrediting only 1,800 landlords in the capital – in the 2016 mayoral election, some candidates (particularly from the Labour and Green parties) pledged to take a more interventionist approach towards the sector. The winner and current mayor, Sadiq Khan, has so far fulfilled his pledge to create a London-wide database of criminal landlords,[8] has been playing a coordinating role with London boroughs to share best practice in terms of enforcement of housing standards and, most importantly, has been lobbying central government for more powers to introduce rent controls and increase tenant security. These were unveiled in his blueprint for reform of the PRS (GLA 2018) which calls for devolution on the basis that 'London's housing market self-evidently presents particular challenges', and in other global cities such as 'Paris, Berlin, and New York, it is common for these powers to be devolved to a city, state or regional level to allow for appropriate local decision-making' (33).

Mayor Sadiq Khan's strategy revolves around the introduction of rent controls informed by a light-touch universal register of landlords intended to collect accurate data about PRS properties and rent prices. The register is supposed to work in tandem with licensing, as explained by the Mayor's Housing Strategy: 'landlord registration helps to ensure landlords are fulfilling their legal duties, while property licensing ensures the homes themselves meet relevant legal requirements' (GLA 2019, para. 6.25). By doing this, it is clear that the mayor wants to tip the power balance towards the metropolitan level without interfering with local authority autonomy over licensing schemes. It is to these schemes that the chapter will now turn.

The complex geography of licensing in London

There are multiple property licensing schemes operating across London and when these are seen together, a complex and fragmented regulatory landscape emerges. Overall, three situations are found across the capital: (i) local authorities that do not run any discretionary licensing scheme, (ii) local authorities that run either additional HMO or selective licensing schemes and (iii) local authorities that run both additional HMO and selective licensing schemes (see Figure 3.1). This fragmentation is also materialised by differing prices and the way fees are calculated,[9] terms and conditions, types of HMOs that qualify for additional licensing, dates that licences start and cease to operate and, most importantly, their spatial coverage. While some licensing schemes cover entire boroughs, others cover wards, portions of wards or a certain number of streets. For example, Islington Council's

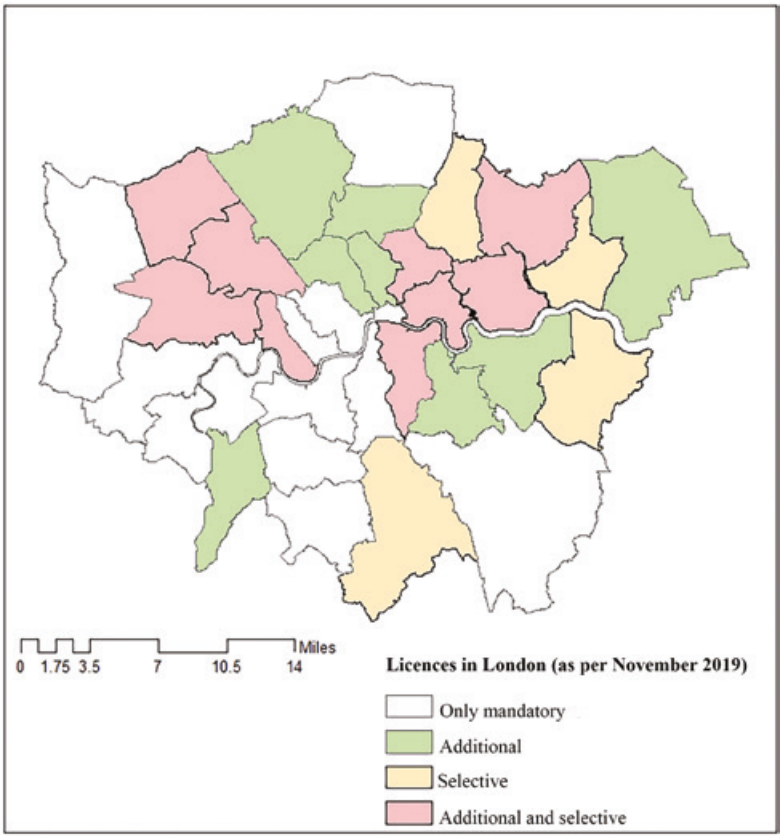

Figure 3.1 Map of all licensing schemes operating in London (based on data from London Datastore 2017)

additional licensing scheme covers only two main roads in the borough while the London Borough of Tower Hamlets' additional and selective licensing designations cover three wards. The complexity of this regulatory geography is evidenced by the large amount of online forum discussion and advice on the topic, as well as the existence of a website,[10] 'London Property Licensing', solely created for those looking into, as its slogan puts it, 'making sense of property licensing in London'.

The interviews revealed that this fragmented licensing landscape reflects substantial disparities in the amount of intelligence held about the sector across London. Currently, licensing is the only instrument that allows local authorities to directly gather detailed information about the location of private rented properties and those in charge of managing them (landlords or managing agents). Without it, local authorities have to rely on stock condition surveys produced from aggregated data obtained from council tax returns, housing benefits and other sources to estimate the size of the sector and location of properties. At the time of the interviews, some of these surveys – which are commissioned to external consultancies – were

over three years old and did not capture recent fluctuations in the sector. These disparities were also reflected in the human, financial and technical capacities of private sector housing teams as the local authorities that operated schemes – especially of the selective type – were able to hire staff to work on matters related to licence registration and data analysis with the income generated from licensing, which is ring-fenced to its function only.

Regarding enforcement, the findings bear a resemblance to the results of a survey conducted by London Assembly member Caroline Pidgeon (Pidgeon 2016) which showed significant variation in enforcement activity across London, with much more vigorous work taking place in local authorities that ran borough-wide selective licensing schemes, such as the London Borough of Newham, responsible for more than two-thirds of all prosecutions in London. The interviews with officers working for local authorities that did not run discretionary schemes revealed that their teams were generally only able to carry out their statutory duty of responding to complaints: 'they've been a very reactionary team. They are just about keeping their heads above water.' Conversely, those working for local authorities that ran licensing schemes, particularly selective licensing, were able to conduct enforcement in a proactive manner as they were able to more easily identify non-compliant landlords, as noted by one officer: 'everyone that didn't license became conspicuous by their absence'.

Thus it can be argued that this fragmented licensing landscape is also creating a 'postcode lottery' in London in terms of tenant protection, landlord obligations and the overall quality of neighbourhoods. Landlords, particularly those who have more than one property, might have to license their property and adhere to certain conditions in one borough, or in one area within a borough, but not in another, and they might be fined or face prosecution if they fail to license a property in an area that requires a licence. Besides improved housing standards, tenants living in areas subject to licensing will be better protected against unfair use of a Section 21 eviction notice as these are invalidated if the landlord does not have a licence in such areas. Lastly, since licensing allows local authorities to impose certain conditions related to property standards, management, use and occupation,[11] officers spoke of a noticeable improvement to certain neighbourhoods due to a reduction in overcrowding, criminal activity in the PRS and fly-tipping as a result of more active enforcement in areas where licensing schemes, particularly selective licensing, are in operation.

What would the future of licensing be if the mayor's plans come to fruition? In the interviews, local politics played a significant role in local authorities' responses to the increase in private renting in their areas. In certain local authorities, officers reported that some councillors believed in 'not burdening landlords' with any type of discretionary licensing despite being aware of problems related to poor housing conditions and management in their areas. Conversely, interviews with officers working in two local authorities that had borough-wide licensing schemes revealed that there was 'a push from the top', referring to local

councillors reaching a consensus over the need to improve conditions in the PRS and setting aside a considerable amount of funding to initiate the licensing process despite cuts to their budgets. For this reason, there was strong support from officers for a system of compulsory registration of landlords with a universal set of terms and conditions, which most officers believed should be nationwide rather than London-wide.[12] In the absence of a national system, many supported the idea of a London-wide approach, with the responsibility of registration falling to the Greater London Authority and enforcement being conducted by local authorities. The removal of regulatory complexity – rather than the introduction of regulation – was seen as crucial to increase compliance and produce more effective enforcement. The view was that a system of landlord registration would render licensing redundant, exactly because of the fragmentation of rights and obligations that it currently produces as a result of central government legislation and the different terms and conditions imposed by local authorities. However, since the proposal for a register is not accompanied by a minimum standard for property conditions and management, some of the improvements to PRS properties found in licensing designation areas – which also have spillover effects to the wider community – could be potentially lost.

Conclusion

This chapter has given an overview of the regulations governing property standards in the PRS in England and its impacts on London, where the housing crisis is most acute and where one in three households are renting privately. It argues that central government's targeted approach to regulation – focused on regulating accommodation either at the bottom end of the sector or in problematic areas – is producing a patchy licensing landscape in London. This is producing a complex geography of rights and obligations and creating disparities in the intelligence held by local authorities on the sector and their enforcement activities, with wider implications for the mayor's ability to implement his rent control policy.

The interviews also highlighted that local politics as well as austerity play an important role in local authorities' decisions to use their discretionary powers over licensing schemes – whether or not to roll them out, as well as their type and reach. If the system continues as it is, with time, the already noted disparities in terms of data and enforcement activities might become even more accentuated, as local authorities that run licensing schemes can build more capacity since the income from both licensing registration and civil penalties are ring-fenced to their respective departments.

Although one could argue that this loose and disjointed licensing landscape can be found elsewhere in England, the challenges imposed by the London housing market and the rapid increase in private renting in the capital undoubtedly call for a more London-focused response. If this response comes in the form of more powers to the mayor to introduce rent control and increase security of tenure, it

is important that property and management standards and their enforcement are also consistent across the capital in order to reduce possibilities of disinvestment in maintenance.

Notes

1. The Decent Homes Standard was introduced in 2000 to provide a minimum standard of housing conditions in the social rented sector. In 2006, it was updated to include the Housing Health and Safety Rating System, introduced by the Housing Act 2004. The Standard only applies to the social rented sector but is used to compare property conditions in all tenures.
2. Central government recently carried out consultation on abolishing Section 21 eviction notices after it was announced that the end of a tenancy through Section 21 notices is one of the biggest causes of homelessness.
3. HMOs are residential properties where facilities such as toilets, kitchens and bathrooms are shared by more than one household. These generally fall under the category of bedsits, shared flats or houses and households with lodgers (Lowe 2007).
4. In 2018 the three-storey condition was scrapped, and requirements were added for minimum room sizes for sleeping accommodation and for the provision of refuse disposal.
5. Newham was the first council in England to implement such a scheme and it has been highly successful in disrupting criminal operation, reducing overcrowding and anti-social behaviour, and increasing tax collections from landlords' rental income (Collinson 2017).
6. Whitehall is a street in London where many government departments are located and thus is a metonym for the UK government.
7. The mayor's role is mostly confined to setting the overall amount, type and location of new housing across London in their Housing Strategy, to distributing some funding for affordable homes and to calling in planning applications that are of potential strategic importance to London – generally those with 150 residential units or more.
8. The Rogue Landlord and Agent Checker (https://www.london.gov.uk/rogue-landlord-checker) was launched in December 2017 and shows information from all London councils about private landlords and letting agents who have been prosecuted or fined.
9. This calculation is based on the costs of operating licensing schemes, which vary according to borough. For example, while the London Borough of Enfield charges a flat fee of £650 for mandatory licences, Bromley charges £185 per unit of accommodation at the time an application is submitted, followed by £75 per unit of accommodation once a licence is granted. This means that a mandatory licence for a five-bedroom HMO in the borough would cost £1300 ((185 x 5) + (75 x 5)).
10. See http://www.londonpropertylicensing.co.uk.
11. Examples include the imposition of limits on the number of occupants in a dwelling, and the requirement for the licence holder to provide details of the arrangements in place to prevent or reduce anti-social behaviour and for repairs and property management.
12. Many officers drew parallels to drivers being required to have a driving licence or business owners needing to register their businesses.

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