

Review of Licencing of Houses in Multiple Occupation

1.0 Executive summary

Portsmouth City Council has a statutory function to regulate the private rented housing sector in the city, and a large part of this is Houses of Multiple Occupation (HMO).

Legalisation has, since 2006, required that some HMOs are licenced and the scope of which properties are licenced in this was expanded on 1st October 2018. There are now nearly 1000 HMOs with a mandatory licence.

The council also has the power to use additional licencing for HMOs not covered by mandatory licencing in specific areas where a significant proportion of the HMOs in the area are being managed sufficiently ineffectively. This was used for five years between 2013 and 2018, ending on 27th August 2018.

Licencing cannot control the number or location of HMOs as this is a responsibility of the council's Planning department. It does however focus on the way that HMO properties are managed and on the amenities and conditions of the property.

The council used a Local Consultation Panel on HMO licencing to oversee the additional licencing scheme. However the terms of reference for this panel no longer reflect the current issues and demographics of the city. A refreshed panel, with a clear purpose, set of attendees, performance measures and outputs would provide guidance to the council on all HMO licencing issues.

HMOs are an important part of the housing make up in the city, but are deemed by some to be a source of neighbour disputes and antisocial behaviour. From the data it can be seen the council receives complaints from the tenant with their landlord, and from neighbours with HMO tenants and more work is needed to understand the nature of the problem. One of the aims of the additional licencing scheme was to see if it could have a positive impact on the way that HMOs effect their local environment. The data gathered is inconclusive in demonstrating this impact.

2.0 Introduction

2.1 Portsmouth City Council has had a statutory duty to license Houses in Multiple Occupation (HMOs) since 2006 under the Mandatory Licensing scheme, which until recently only included larger HMOs in the city.

2.2 Portsmouth is a university city with approximately 22,000⁽¹⁾ full time students over the age of 18 in residence. These students comprise approximately 10% of Portsmouth's population, many of whom live in the PO1, PO4 & PO5 areas, typically in shared terraced pre 1919 houses. Typically these tenancies last

for a period of approximately 10-11 months, so the turnover of tenants is large.

- 2.3 Portsmouth City Council recognises the contribution that the private rented sector makes to the authority's housing stock, the private rented Sector comprises approximately 24% of the total household tenure of the City⁽²⁾ and is continuing to increase.
- 2.4 Portsmouth City Council's Private Sector Housing Team regulates the conditions of privately rented properties in the City through various powers including licensing of HMOs and enforcement of the Housing Act 2004.

3.0 Legislative Context

- 3.1 Section 254 of The Housing Act 2004, lays down the definition of a House in Multiple Occupation together with appropriate exemptions. In summary mandatory Licensing of Houses in Multiple Occupation (HMO) (prior to the new powers as of 1st October 2018) required that HMOs consisting of:

- three or more storeys, and
 - five or more persons living as two or more single households, and
 - sharing some amenities
- are licensed.

- 3.2 Portsmouth City Council has a duty to enforce Part 2 of the Housing Act 2004 which regulates standards in private sector rented accommodation and has, since its implementation in 2006, undertaken the mandatory licensing scheme for all HMOs with five or more people in properties with three or more storeys. The aim of the legislation is to improve the management, amenities, and safety standards of HMOs and tackle anti-social behaviour to improve living standards within the community.
- 3.3 The condition and management standards in HMOs can often be low and the aim of the licensing regime is to ensure that the poorest and highest risk properties in the private rental market meet the legal standards and are properly managed to provide greater protection to the health, safety and welfare of the occupants of this type of property.
- 3.4 Through **The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018** the government have now extended the mandatory licensing regime to remove the 'three storey' requirement which came into force on 1st October 2018. Now any HMO occupied by five or more occupants requires a mandatory license regardless of its location or how many storeys the building has.

⁽¹⁾ www.icp.navitas.com/university-of-portsmouth ⁽²⁾ Office for National Statistics, Towns and Cities in England and Wales, Census 2011

3.5 In addition **The Housing and Planning Act 2016** has also been introduced which includes a number of new provisions associated with combating rogue landlords, such as:

- Civil penalties of up to £30,000 (now enacted). A civil penalty is a financial penalty imposed by the council on landlords as an alternative to prosecution for certain housing offences under the Housing Act 2004. For example failure to comply with an Improvement Notice (section 30) or failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234).
- Extension of Rent Repayment Orders (now enacted). A rent repayment order is an order made by the First-tier Property Tribunal requiring a landlord to repay a specified amount of rent to either the local authority or the tenant. The Housing Act 2004 introduced rent repayment orders to cover situations where the landlord of a property had failed to obtain a licence for a property that was required to be licensed. Rent repayment orders are being extended for example where. Landlord fails to comply with an Improvement Notice under section 30 of the Housing Act 2004; or illegally evicts or harasses a tenant.

3.6 The new Private Sector Housing Enforcement policy was approved by the Cabinet Member for Housing on 3rd July 2018 to include these new enforcement powers.

3.7 Under the Housing Act 2004, additional powers are also available to local authorities to extend the licensing regime to other categories of property, namely:-

- Additional licensing powers enabling the Council to extend the scope of its HMO Licensing to other descriptions of HMO either in all or in part of its district. Section 56(2) of the act states additional licencing can be used where a "significant proportion of the HMOs of that description in the area are being managed sufficiently ineffectively". Section 56(3) confirms that the council must "take reasonable steps to consult persons who are likely to be affected by the designation".
- Selective licensing powers enabling the Council to extend licensing to other types of properties other than just HMO's in an area of the City where there may be issues relating to low housing demand or anti-social behaviour.

4 Additional Licensing

4.1 Due to the initially limited application of the mandatory licensing scheme to houses with three or more storeys, this made only a small impact in any one geographical area and it was believed that extra powers were needed,

particularly in certain wards, to provide better and more effective solutions to the problems identified in these areas. Therefore following an appraisal and consultation exercise, post code areas PO1, PO4 & PO5 of the City were declared Additional Licensing Areas at the Council's Housing Cabinet Meeting on 10th April 2013.



- 4.2 The Additional Licensing Scheme in Portsmouth came into effect on 27th August 2013 and extended the scope of licencing to cover most rented property with three or more occupiers who formed two or more households regardless of how many storeys the property had. The Scheme can run for a maximum period of five years, at the end of which, the Council were required to end the existing scheme. However it could choose to re-introduce the Additional Licensing Scheme if there was sufficient evidence of the need, and after undertaking a comprehensive and thorough appraisal and consultation exercise.
- 4.3 With the introduction of the Additional Licensing Scheme, the total number of properties licenced increased from 392 properties to 2736.
- 4.4 Since its introduced, the Scheme has been routinely evaluated providing an opportunity to regularly appraise the effectiveness of the Scheme, monitor performance and facilitate any necessary improvements. Upon expiry of the additional licencing Scheme on 27th August 2018, the Council can consider whether to extend the scheme.

5.0 Governance of HMO Licencing

- 5.1 The Council set up a Local Consultation Panel on HMO Licencing in 2013 to act as governance to the licencing process and promote a unified and consistent approach to improving standards in the private rented sector, in particular Houses in Multiple Occupation. Members of the panel consisted of the Cabinet member for Housing, the Head of Private Sector Housing, a representative of Portsmouth University's Student Union, a representative of the Portsmouth & District Private Landlords Association, and a local management agent.
- 5.2 The panel chaired by the Cabinet Member for Housing, have met a number of times over recent years.
- 5.3 In summary, by introducing the Scheme, the Council aimed to:-
- Improve housing standards and maintenance within HMOs, with particular emphasis on amenity levels, fire safety and thermal comfort.
 - Allow tenants to live in safe and effectively managed HMOs.
 - Compel Landlords to exercise appropriate management and supervision of the buildings to help reduce any adverse impact of HMOs on the neighbourhood
 - Expand existing partnerships with landlords, letting agents, tenants, the University, and partner agencies.
 - Maintain effective two-way communication, promoting joint working and best practice and through these, facilitating improvements to the HMO sector.
 - Support owners and managing agents of HMOs to work proactively with the Council in achieving clearly defined standards and enhanced management of HMOs.
- 5.4 The Board met on the following dates:
- | | |
|----------------------------------|----------------------------------|
| - 14 th February 2014 | - 18 th February 2016 |
| - 27 th March 2014 | - 13 th October 2016 |
| - 4 th June 2014 | - 18 th December 2016 |
| - 31 st June 2014 | - 18 th December 2017 |
| - 27 th November 2014 | - 5 th February 2018 |
| - 12 th February 2015 | - 9 th April 2018 |
| - 23 rd April 2015 | |
| - 18 th June 2015 | |
| - 3 rd December 2015 | |

5.5 Appendix 1a details the terms of reference for the panel. This has not been revised since its inception in 2013 and now is an opportunity to review the purpose, aims and objectives, and performance measures of the panel. This would enable reflection of recent changes to the HMO licencing regime in, and changes within the tenant demographic of, Portsmouth.

5.6 By re-establishing the panel, its terms of reference could include:

- Agreement on the specific issues around HMOs which the city needs to resolve
- Reviewing of specific data around types of problem and location
- Develop a range of proposed options to be brought back to the council for approval.

5.7 The re-established board could consist of, for example:

- Cabinet member for Housing as Chair
- Manager or Head of Service from Private Sector Housing team
- Representative from local landlord association
- Representative from large local HMO occupants group (such as the University of Portsmouth)
- Representative from local letting agency

6.0 Operation of a licencing scheme

6.1 It is important to note that the process for operating and executing a licence is fundamentally the same for mandatory and additional licences.

6.2 An applicant, who is the person managing the property, must apply for a licence to operate a HMO. This does not need to be the owner of the property as a managing agent can do this on their behalf.

6.3 The current costs of a mandatory licence are on a sliding scale, starting at £790 per applicant per property (with a reduced fee of £730 if the applicant is a member of the landlord accreditation scheme).

6.4 Mandatory licencing fee structure

Basic property with 5 or more occupants:	Non LAS* Member	LAS* Member
Single Application	£790	£730
Multiple Application	£700	£640
Property of 3 storeys or more with 6 to 10 occupants:		
Single Application	£920	£860
Multiple Application	£835	£775
Property of 3 storeys or more with 11 to 15 occupants:		
Single Application	£1070	£1010
Multiple Application	£980	£920
Property of 3 storeys or more with 16 to 20 occupants:		
Single Application	£1230	£1170
Multiple Application	£1180	£1090
Property of 3 storeys or more with 20 plus occupants:		
Single Application	£1390	£1330
Multiple Application	£1230	£1150

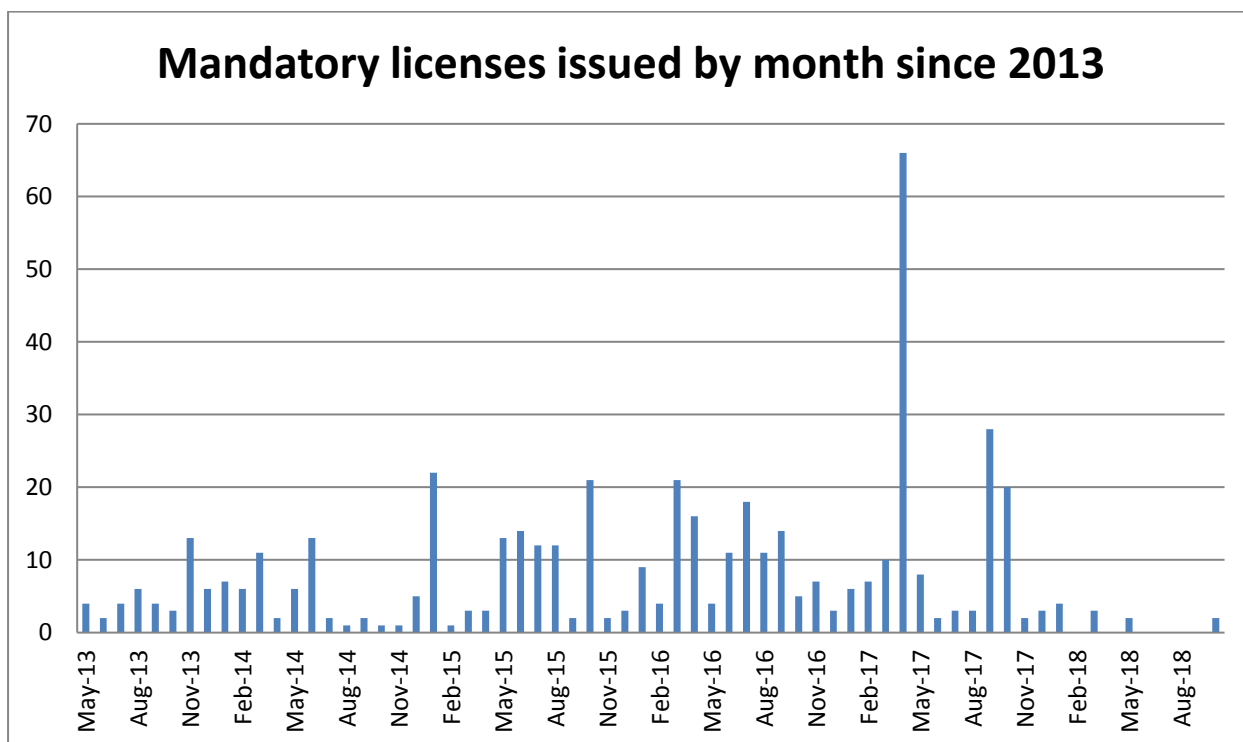
- 6.5 Following an initial review of the application and accompanying documentation, a decision is made by officers on the need for a property inspection before a licence is issued. At the same time a decision is made as to whether the applicant is a 'fit and proper person', as defined under the Housing Act 2004, to manage a HMO.
- 6.6 When a licence is issued it includes a number of conditions as to how the property must be managed, for example how waste must be stored and disposed of. This requirement of new mandatory licences ties in with the council's new waste collection policy as decided by the Environment & Community Safety Portfolio on 25th June 2018.
- 6.7 Each licence issued lasts for up to 5 years, and a new licence is required if there is a change of property manager; a licence is not transferrable to a new owner if the property is sold.
- 6.8 The regulations require that an officer inspects each licenced property once in the five year license period. For the new mandatory licences, council officers aim to do this as soon as practicable after the licence is issued.
- 6.9 If a property is found to be a HMO but does not have the required licence, the council do not have the power to close down the HMO. Instead officers work with the owner to either put someone in place who is suitable to manage it and apply for a licence, or take legal action and possibly take control of the property (through an interim management order in accordance with Section 102 of the Housing Act 2004) until a suitable licence holder can be put in place or the current tenancies come to an end.
- 6.10 If a HMO property is found to have a licence but is not meeting the conditions of the license, officers would inform the landlord of the contraventions and possibly take enforcement action, including fines or prosecution.

6.11 Licensing cannot control the number or location of HMOs as this is a responsibility of the council's Planning department. It does however focus on the way that HMO properties are managed and on the amenities and conditions of the property. One of the aims of the additional licensing scheme was to see if it could have a positive impact on the way that HMOs effect their local environment. The data gathered is inconclusive in demonstrating this impact.

7.0 Data

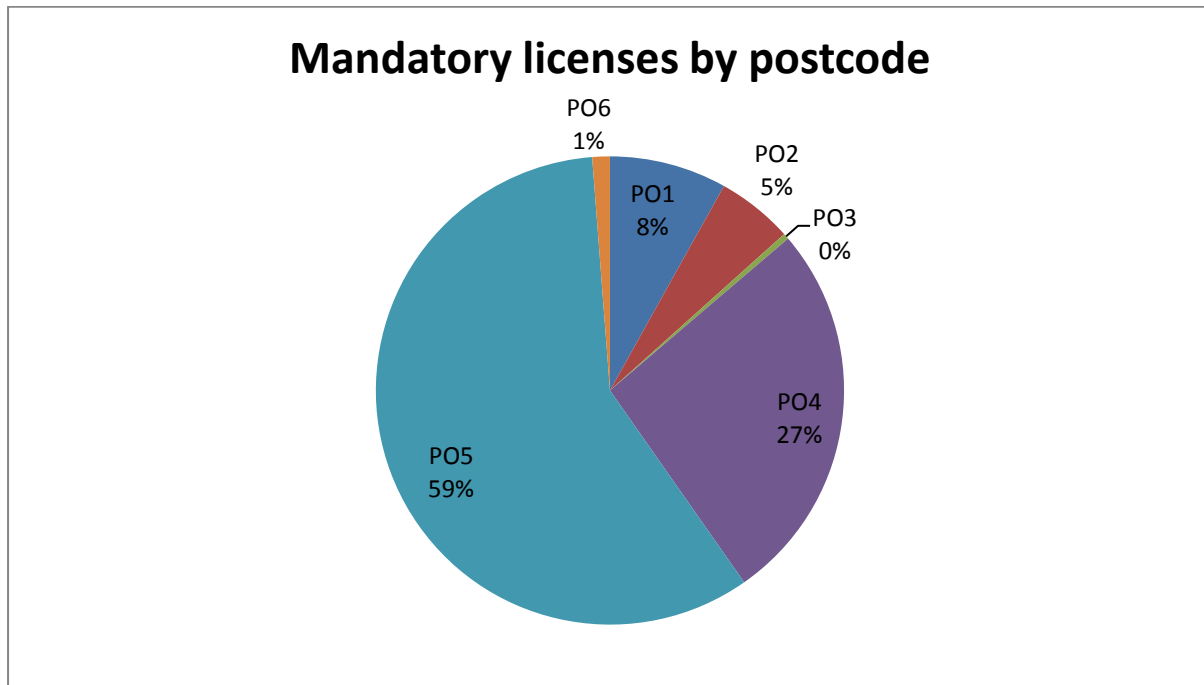
7.1 Prior to the changes introduced on 1st October 2018, 552 properties had a mandatory license in the city. Initial calculations indicate that there are in the region of 600 further HMOs that require this new mandatory license due to the new criteria. Prior to the new mandatory licensing criteria become active it was anticipated that approximately 600 HMOs would require a license under this new criteria. As of 1st October 426 new applications had been received. 978 HMOs have currently been granted a mandatory license or are in the process of being issued one. A further 186 applications are anticipated to be received based on current data of suspected HMOs in the city.

7.2 Prior to the introduction on the additional licensing scheme only 392 properties had a mandatory license. During the additional licensing designation period a further 160 properties became licensable under the mandatory scheme, either through becoming new HMOs or as being newly identified as properties that had already required a mandatory license.

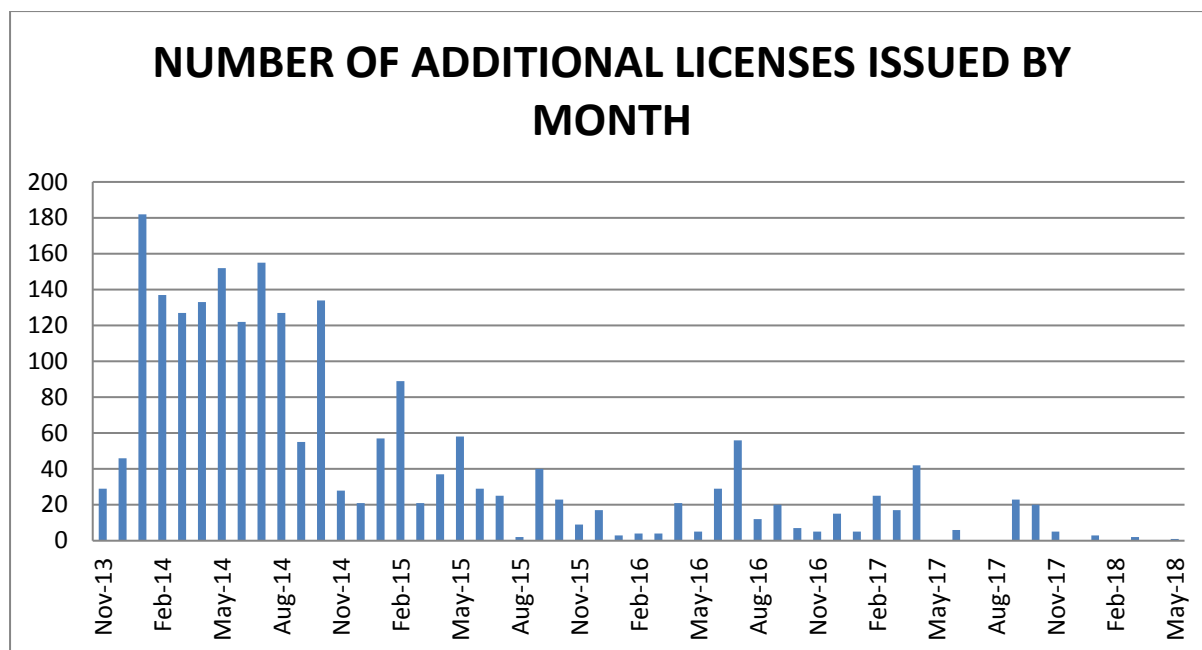


7.3 As mandatory licenses are usually issued for a 5 year period, there are approximately 7-8 licenses issued per month on average, with the exception

of April 2017 when 66 licenses were issued, the majority of these were renewals of historic mandatory licenses which is a result of the five year licencing cycle.



- 7.4 The vast majority of mandatory licenses (prior to the changes made on 1st October 2018) have been located in postcode areas PO4 & PO5 due to the criteria of being 3 or more storeys.

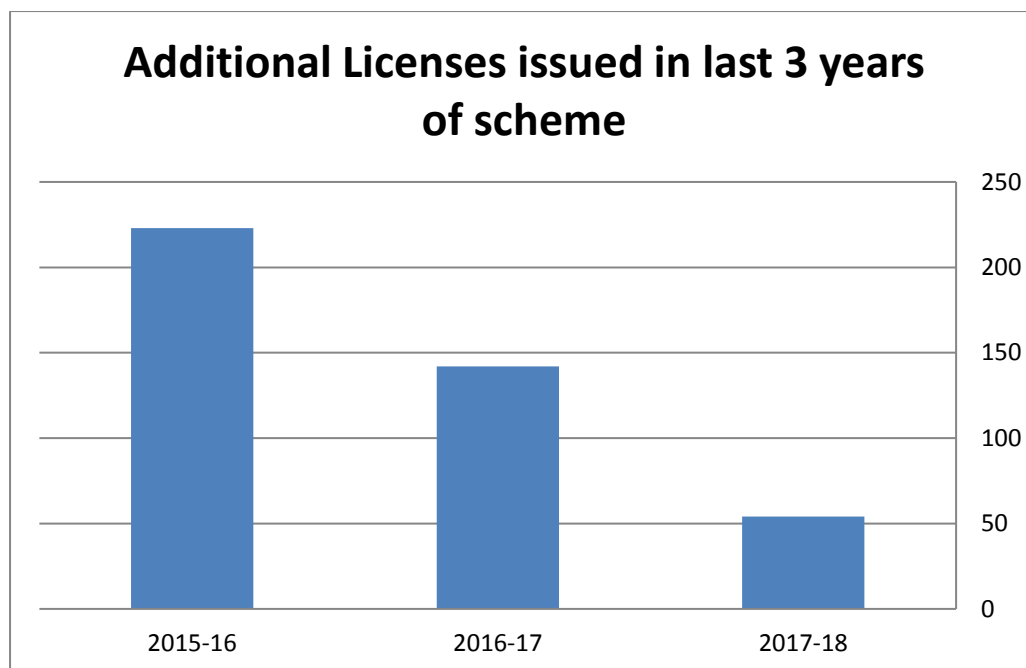


7.5 2184 additional licenses were issued over the 5 year additional licensing designation period.

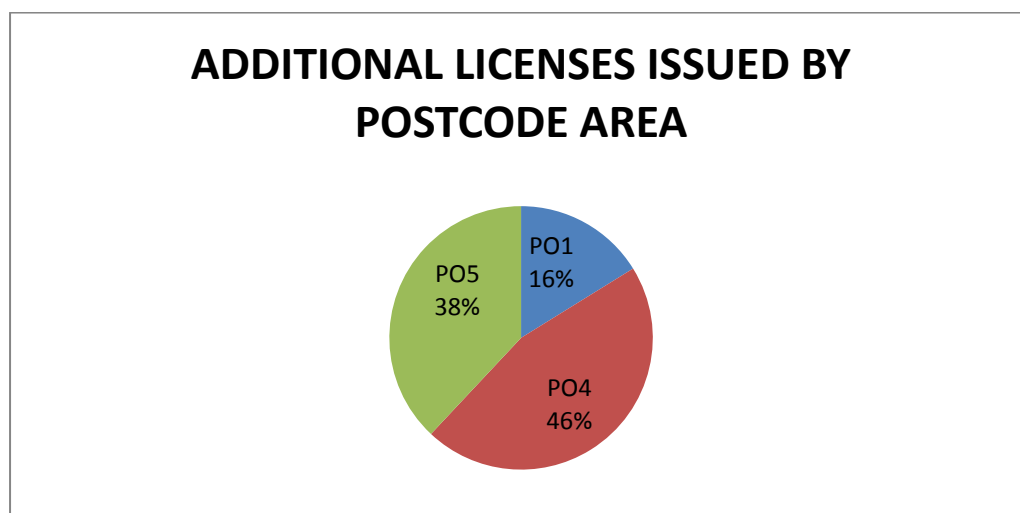
7.6 The initial 12 months saw the largest number of licenses issued, there was an initial 6 month grace period for landlords to make their application with a further lag time in the Private Sector Housing issuing licenses due to the high demand.

7.7 The following year shows a reduced number of licenses issued which is due to late applicants and reflects some turnover in the ownership and management of some of the properties (a new manager requires a new license).

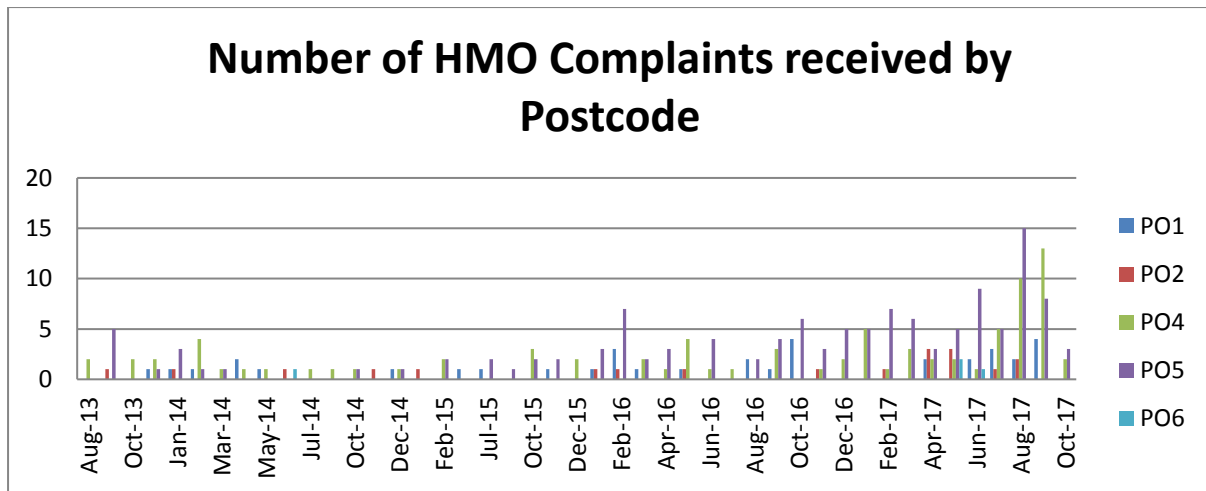
7.8 After the initial high demand for licenses was processed, the average number of licenses issued per month was 21-22 for the rest of the scheme.



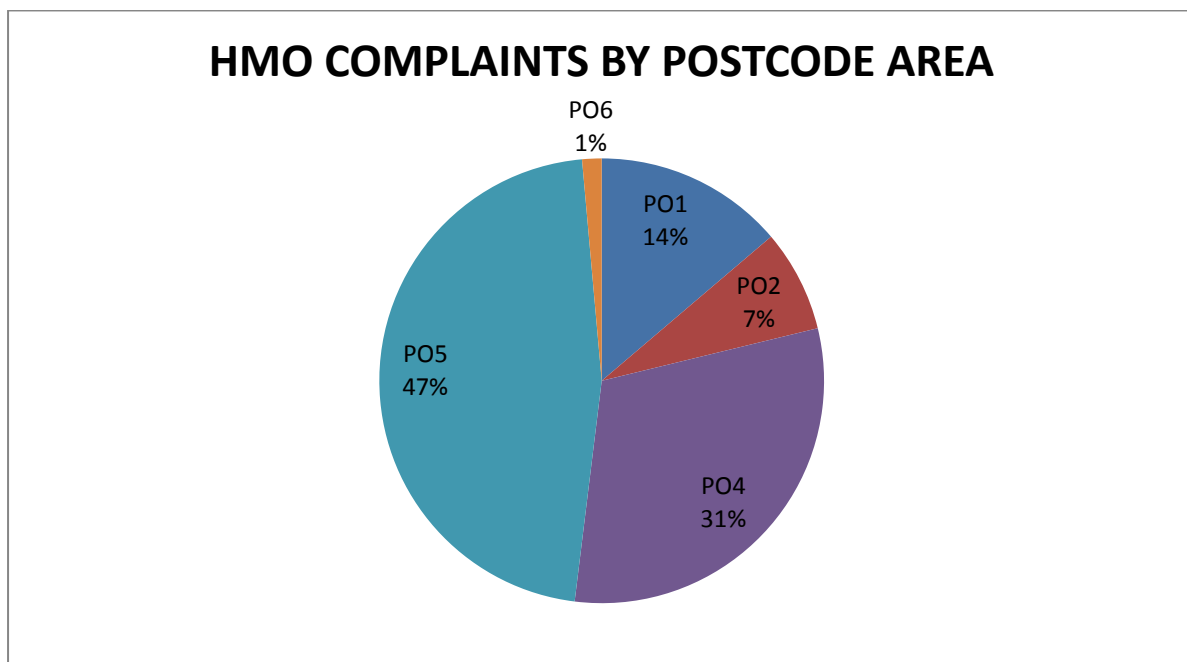
7.9 The last 3 years of the scheme show a relatively low number of licenses issued which reflects the natural turnover of HMOs in the local property market, either through new owners (and managers) or new HMOs being introduced in these areas.



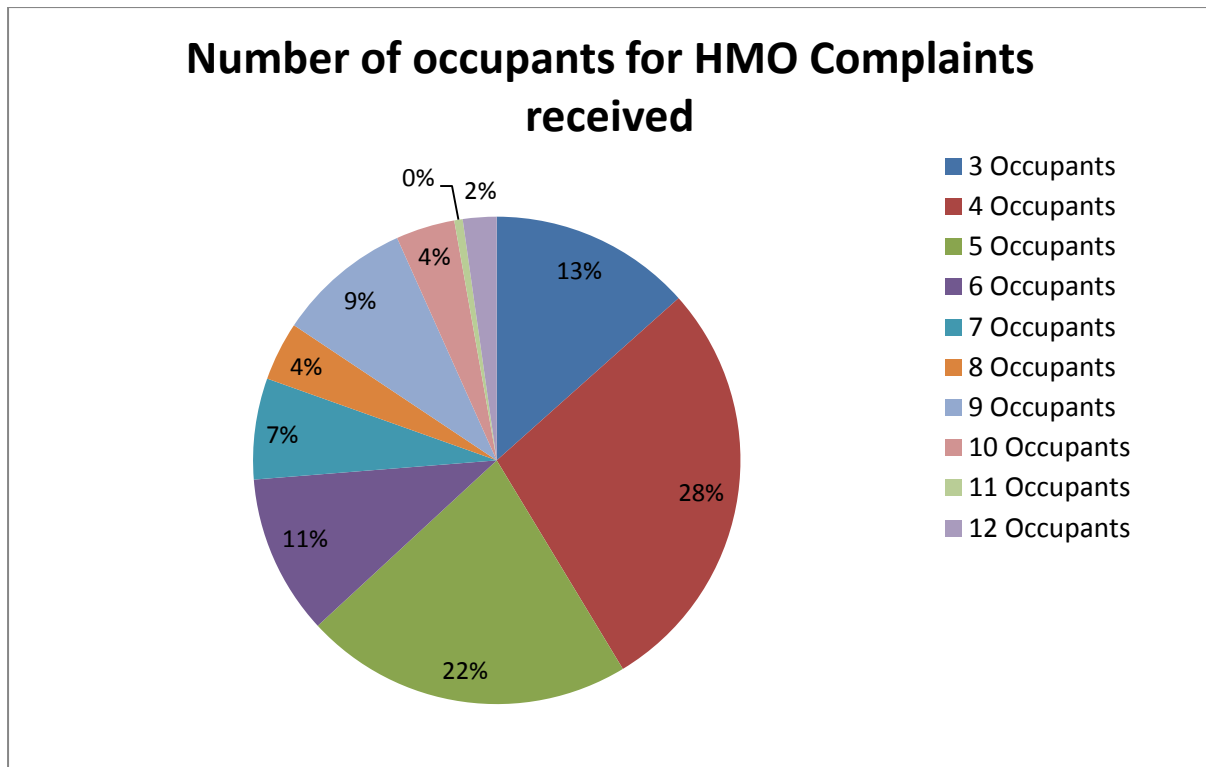
7.10 Nearly half of all additional licenses issued were in postcode area PO4, whereas the area with the highest concentration of mandatory licenses under the previous criteria was in PO5.



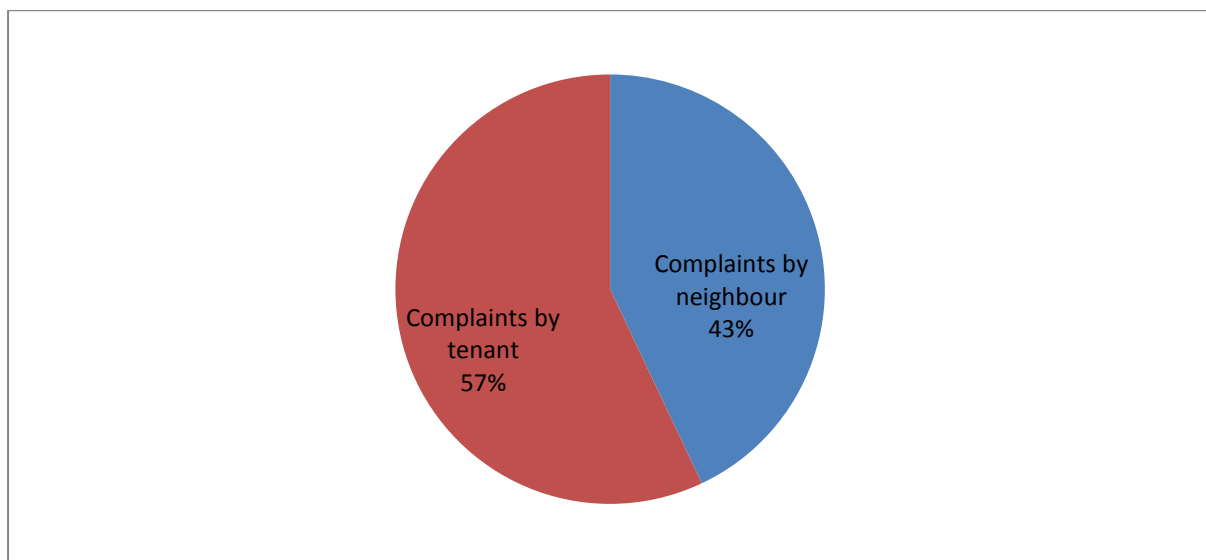
7.11 The number of complaints received regarding HMOs has increased over the last 5 years. It has not been possible to distinguish which complaints are from properties with additional licenses, or mandatory licenses, but all complaints about HMOs are handled in the same manner.



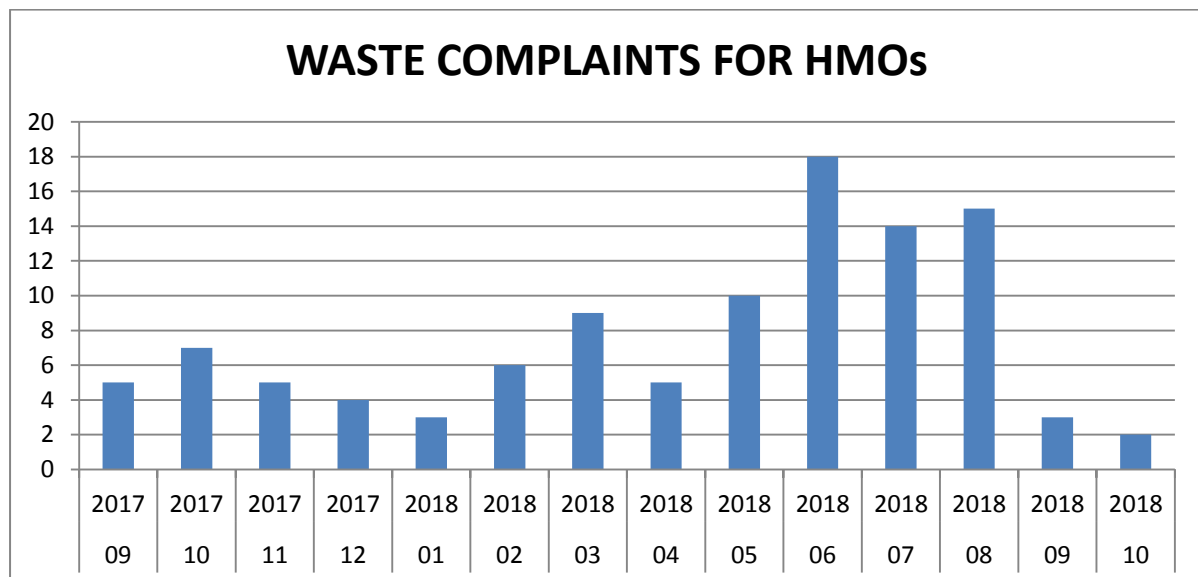
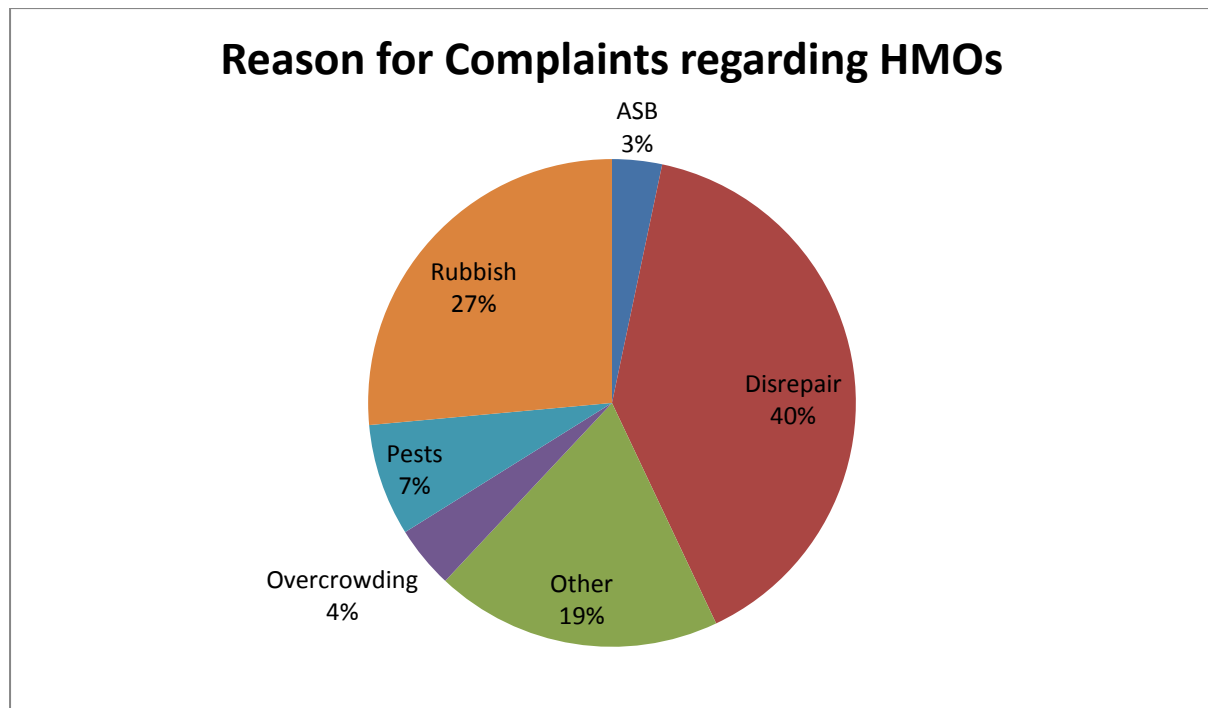
7.12 The postcode area with the highest number of HMO complaints received over the last 5 years is PO5, where the highest number of larger mandatory licensed HMOs has been issued.



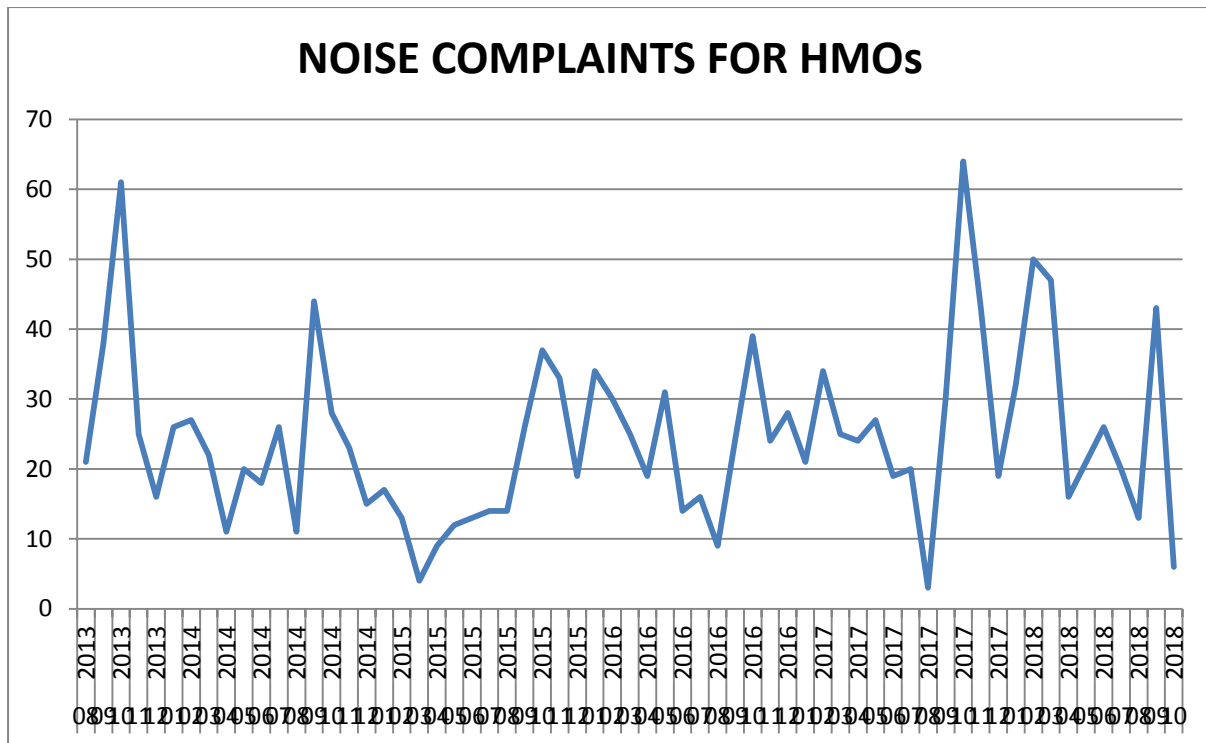
7.13 59% of complaints received about HMOs are occupied by five or more people, although the largest percentage of complaints come from properties occupied by four or five people, with a combined total of 50% of all complaints.



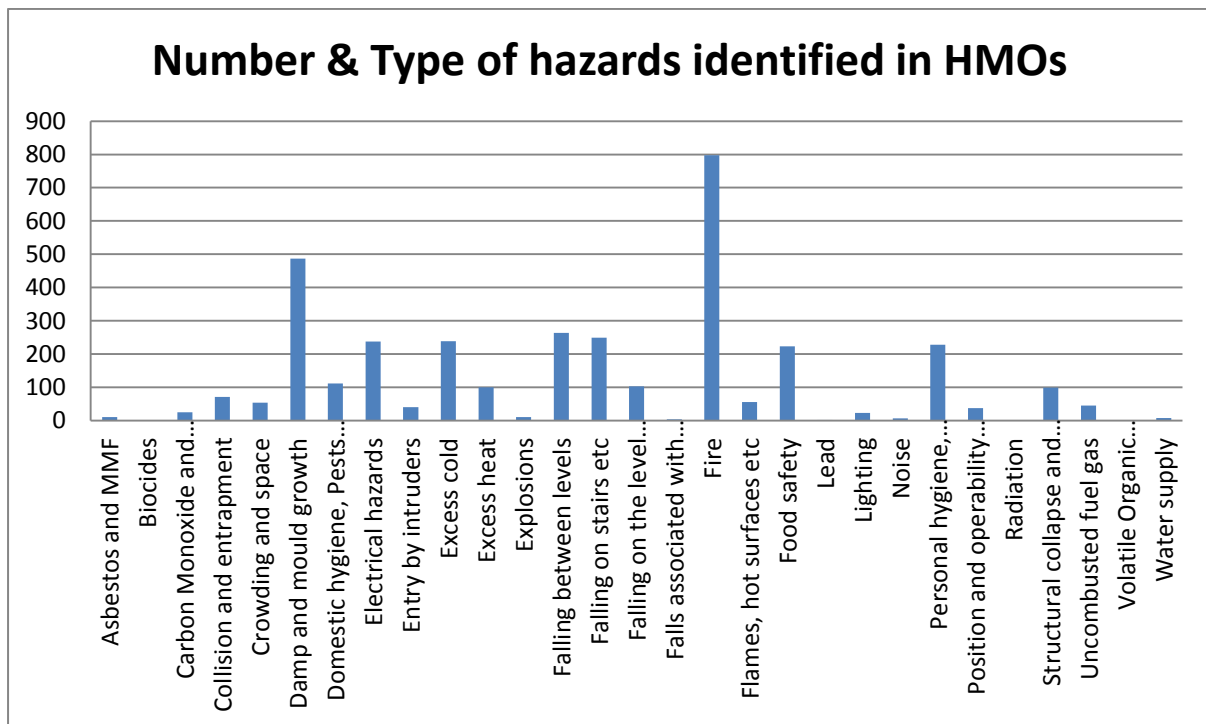
7.14 The complaints received have been made predominately by tenants of HMOs regarding issues such as disrepair of the property. 43% of complaints received were made by neighbours of HMOs, particularly regarding issues such as rubbish accumulations.



7.15 The number of complaints received regarding waste for HMOs for the last 12 months (Data from the city council's waste management team) has increased over this period.



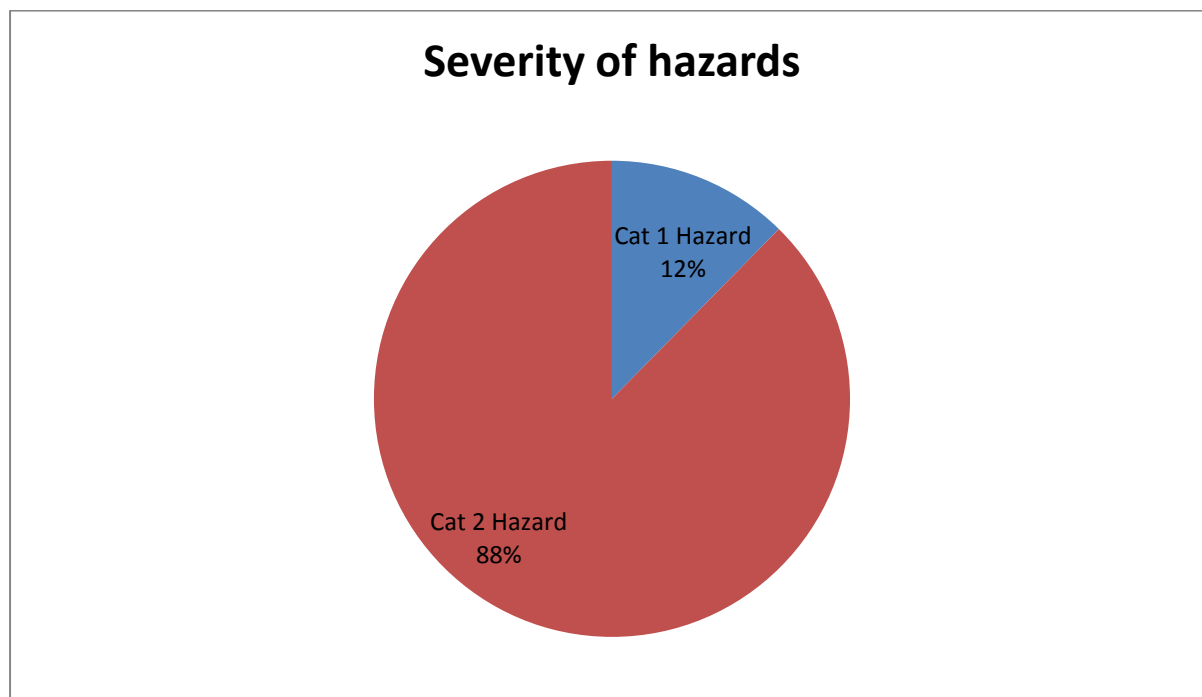
7.16 The number of noise complaints for HMOs for the last 5 years (data from the city council's noise team) has increased over this period.



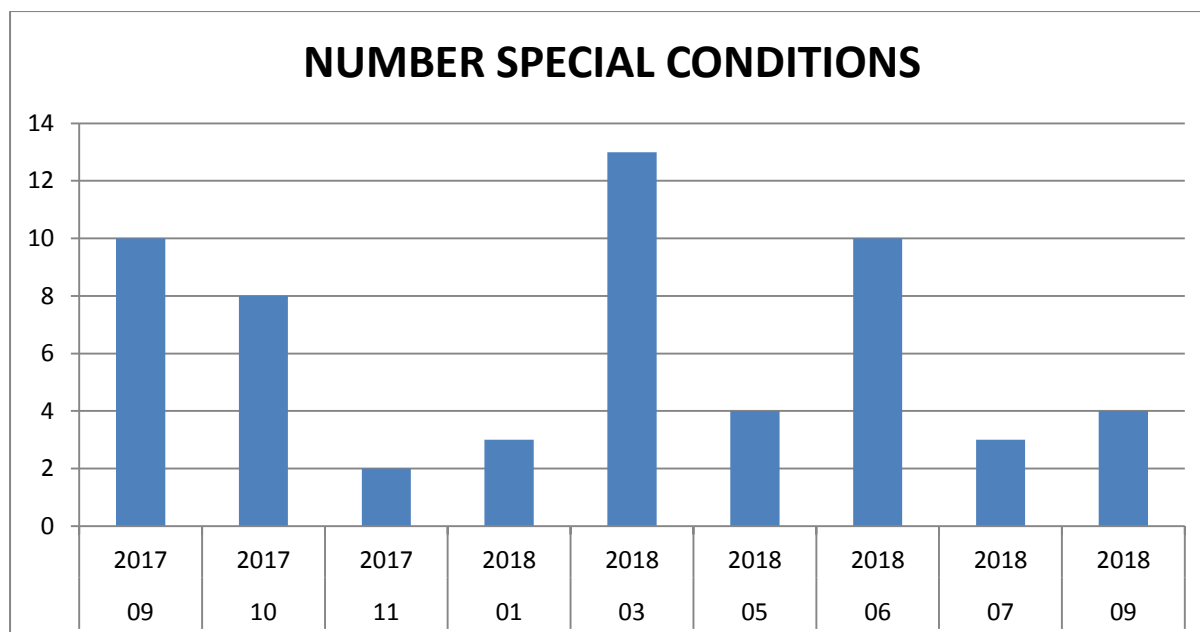
7.17 When the Private Sector Housing team inspect a property using the Housing Health & Safety Rating system (HHSRS), any deficiencies are identified and

classified as specific hazards. The hazards most frequently identified in HMOs inspected over the last five years are

- Fire,
- Damp & Mould and
- Some hazards relating to the risk of falling.



7.18 The severity of Hazards identified through the HHSRS are categorised as either category 1 (being the most sever) or category 2 (less sever). The city council has a mandatory duty to take action where Category 1 hazards are identified.



7.19 Special license conditions are used to improve the amenities of properties, such as giving clearly defined timescales for the provision of a further facilities in the property to meet the needs of the number of occupants.

8.0 What else has Private Sector Housing done?

8.1 Although licencing of HMOs gives the Private Sector Housing team the ability to have more control over HMOs in the city, there are a number of other things that have done that can be achieved regardless of a licencing regime.

8.2 To allow tenants to live in safe and effectively managed HMOs.

8.2.1 Officers will inspect approximately 2500 rented properties each year. Officers will inspect with the tenant initially, discuss their concerns and conduct a Housing Health & Safety Rating system (HHSRS) survey of the property. If required officers write to the landlords requesting works to be undertaken, and then work with the landlord and tenant to ensure that these works are undertaken in a timely fashion. This includes RSLs as well as individual private landlords or agents.

8.2.2 All landlords are treated in the same manner as above, unless an imminent risk to the health, safety or welfare of the tenant is found and more robust steps have to be taken at that time, which could include closing the property through serving a prohibition order.

8.3 Landlords to exercise appropriate management and supervision of the buildings to help reduce any adverse impact of HMOs on the neighbourhood

8.3.1 The introduction of waste storage bins as part of license conditions has meant that waste in HMOs is now stored more appropriately, helping to reduce the impact on neighbouring properties.

8.3.2 Community engagement initiatives have also been set up with the community including street scene improvements, student events and resident focus groups. These have helped to identify some of the key issues experienced by local residents and establish ways in which this can be reduced.

8.4 To expand existing partnerships with landlords, letting agents, tenants, the University, and partner agencies.

8.4.1 Working pro-actively with the University of Portsmouth, particularly at the beginning and end of the academic year to ensure that students can find good quality accommodation, but also to ensure that they understand the impact their actions can have on the local community.

8.4.2 Working closely with Hampshire Fire and Rescue in ensuring that fire safety measures are in place within all types of privately rented properties in Portsmouth. Officers undertake pro-active campaigns periodically where a large number of rented properties are inspected. These are normally ones above business premises.

8.4.3 Private Sector Housing also work very closely with the Police, Environmental Protection, ASB unit and Trading Standards teams to ensure that landlord's, tenants and the community as a whole does not have a negative view of the Private Rented Market in Portsmouth.

8.4.4 Private Sector Housing also co-ordinate with the waste management team and Development control (planning) teams to ensure that knowledge of HMOs is shared amongst the teams that have a regulatory role for HMOs.

8.5 Maintaining effective two-way communication, promoting joint working and best practice and through these, facilitating improvements to the HMO sector.

8.5.1 The council have produced a guide to the standards required within HMO's to help landlords understand there legal duty to provide safe and secure accommodation.

8.5.2 A new approach in communicating works required to landlords has also been introduced, where officers ask them to undertake works to remove any high risk hazards found within the property and allow them to deal with other issues within the property as advisory works.

8.6 To support owners and managing agents of HMOs to work proactively with the Council in achieving clearly defined standards and enhanced management of HMOs.

8.6.1 The council run a Landlord Accreditation Scheme (LAS), a voluntary scheme that anyone who is involved in renting or managing properties in the private rented sector can join. A new campaign was launched in 2017 to revamp the LAS to the new "Rent it Right" initiative. Currently there are 229 landlords with 148 tenants and 453 properties registered on the Rent It Right website. This is a significant growth in the scheme, but there is still scope for further growth and this is currently being developed by officers.

8.6.2 If the scheme can be expanded upon, it could act as an opt-in self-registration for landlords, allowing the council to then focus their efforts on those landlords that are not proactive in registering themselves on the scheme.

9.0 Key conclusions

- 9.1 As a result of a decision taken by the Housing executive on 3rd July 2018, the housing enforcement policy now gives officers wider authority to deal with problem properties.
- 9.2 From the 1st October 2018, the number of HMOs with a mandatory licence has risen from 552 to 978, with more expected.
- 9.3 Complaints have risen during the period of additional licencing, not fallen. Also complaints can be categorised as those by HMO tenants against their landlord, and those by neighbours against an HMO.
- 9.4 The Local Consultation Panel on HMO licencing had a set of terms of reference which have not been reviewed in five years and may no longer relevant to the current issues faced within Portsmouth. In addition, new attendees to the group may be needed, and new performance measures required ensuring that progress of the issue meets the aims of licencing.
- 9.5 By refreshing the aim and terms of reference of this panel, there is an opportunity for better engagement with a wide range of stakeholders through a more focussed group, which will help to fully identify the problems that need to be solved, and how best to tackle them.
- 9.6 The council must be able to evidence the need for, and consult on, additional licencing before it is reintroduced.

Clare Hardwick

Acting Head of Private Sector Housing

October 2018

Appendix 1a

(Terms of Reference for) Local Consultation Panel

(November 2013)

Vision.

To provide a local service, with local professionals, to assist landlords and agents in dissolving disputes between themselves and the City Council, to alleviate the need for formal action to be taken.

Aims and Objectives:

The core aim is to promote a unified and consistent approach to improving standards in the private rented, in particular within Houses in Multiple Occupation.

With particular emphasis on:

- To improve housing standards and maintenance within HMOs, relating to amenity levels, fire safety and thermal comfort.
- To allow tenants to live in safe and effectively managed HMOs.
- To help landlords to exercise appropriate management and supervision of the buildings to help reduce any adverse impact of HMOs on the neighbourhood.
- To expand existing partnerships with landlords, letting agents, tenants, the University, and partner agencies.
- Maintaining effective two-way communication, promoting joint working and best practice and through these, facilitating improvements to the HMO sector.
- To support owners and managing agents of HMOs to work proactively with the Council in achieving clearly defined standards and enhanced management of HMOs.

Operational Approach of the Panel.

To provide a mediation service on disputes between the city council and persons in control of a private rented property in respect of:

- Person responsible for the works.
- **What works are required. - Separate note#**
- Timescales for the start and completion of works set due to Part 1, Housing Act 2004.

Panel Membership.

Chair - TBC.

- Expert panel member(s) - Officer from Private Sector Housing Team.
- Landlord: Representative of Portsmouth and District Private Landlords Association.
- Letting Agent or Management agent: Local letting agent.
- Representative from a local residents group / student volunteer.

Persons allowed to appeal the panel.

Landlord or letting agent, who have been considered the most appropriate person by the City Council.

Decision Making:

The panel will consider all the information provided by both parties and make an informed decision in respect of the appeal brought forward by the appropriate person.

Both parties will abide by the decision made unless:

- A statutory function for the city council.
- Materially changes the overall legislation.
- Changes local policy or process, unless agreed by the Governance board.

Appeals.

There is no formal appeal to this decision. However, this does not prevent the appropriate person from undertaking a formal appeal to the RPT, should formal action be undertaken by the City Council.