

APPENDIX 5

Wirral Council

Banning Order Policy and Procedure 2019

This policy explains how the Council will use the powers under the Housing and Planning Act 2016 to ban landlords from renting out property in the private rented sector

1.0 Introduction

- 1.1 Chapter 2 of the Housing and Planning Act 2016 enables Local Authorities to apply to the First Tier Tribunal to impose a banning order on a landlord following conviction for a banning order offence¹. In order to make use of banning order powers the Council is required to have in place its own policy on when to pursue a banning order and to decide which option it wishes to pursue on a case-by-case basis in line with this policy.
- 1.2 This policy takes account of the non-statutory guidance issued by the Government² which makes clear that banning orders are aimed at rogue landlords who flout their legal obligations and rent out accommodation which is substandard, and which also confirms the Government's expectation that banning orders will be used for the most serious offenders.
- 1.3 In this policy the term 'landlords' also includes property agents, letting agents and property managers defined under Chapter 6 of Part 2 of the Housing and Planning Act 2016.

2.0 Effect of a banning order

- 2.1 A landlord subject to a banning order is prevented from
 - Letting houses in England
 - Engaging in English letting agency work
 - Engaging in English property management work
 - Doing two or more of those things
- 2.2 Where a banning order is made, the individual will be determined not to be 'fit and proper' to hold a licence under Part 2 or 3 of the Housing Act 2004 and any licences in force under those parts will be revoked.
- 2.3 It is a Criminal Offence to breach a banning order.

3.0 A banning order offence

- 3.1 A 'relevant housing offence' is a conviction for any of the following offences on or after 6 April 2018:
 - (a) Illegally evicting or harassing a residential occupier in contravention of the Protection from Eviction Act 1977 or the Criminal Law Act 1977 or;

¹ [The Housing and Planning Act 2016 \(Banning Order Offences\) Regulations 2017](#)

² [Guidance for Local authorities for Banning Order Offences under the Housing and Planning Act 2016](#)

- (b) Any of the following offences under the Housing Act 2004:
- i) Offences in relation to licensing of Houses in Multiple Occupation (HMOs) (section 72);
 - ii) Offences in relation to licensing of houses under Part 3 of the Act (section 95);
 - iii) Allowing a HMO that is not subject to licensing to become overcrowded (section 139);
 - iv) Failure to comply with management regulations in respect of HMOs (section 234);
 - v) Failure to comply with a Prohibition or Emergency Prohibition Order under sections 20, 21 and 43 of the Housing Act 2004;
- (c) If a person has committed a serious criminal offence they must have been sentenced in the Crown court to be regarded as a banning order offence
- (d) Spent Convictions should not be taken into account
- (e) If a landlord receives an absolute/conditional discharge for a relevant housing offence then that offence cannot be regarded as a banning order offence.

4.0 Length of a banning order

- 4.1 The Council is not able to determine the length of a banning order but can make a recommendation to the First-tier Tribunal as to how long the banning order should be imposed for.
- 4.2 A banning order must be for a minimum period of 12 months
- 4.3 There is no statutory maximum period

5.0 Decision making

- 5.1 As recommended by the Government's guidance, the Council will consider the following factors when deciding whether to apply for a banning order and when recommending the length of any banning order:
- The Seriousness of the offence
 - Previous convictions/rogue landlord database
 - Harm caused to the tenant
 - Punishment of the offender
 - Deterrence to the offender from repeating the offence
 - Deterrence to others from committing similar offences

5.2 The Seriousness of the Offence

All banning order offences are serious. When considering whether to apply for a banning order the local housing authority should consider the sentence imposed by the Court in respect of the banning order offence itself.

5.3 **Previous convictions/rogue landlord database**

A local housing authority should check the rogue landlord database in order to establish whether a landlord has committed other banning order offences or has received any civil penalties in relation to banning order offences. A longer ban may be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities.

5.4 The Council will also consider the likely effect of the banning order on the person and anyone else that may be affected by the order and will take into account the following:

5.5 **The harm caused to the tenant**

This is a very important factor when determining whether to apply for a banning order. The greater the harm or the potential for harm (this may be as perceived by the tenant), the longer the ban should be. Banning order offences include a wide range of offences, some of which are more directly related to the health and safety of tenants, and could therefore be considered more harmful than other offences (such as fraud)

5.6 **Punishment of the offender**

A banning order is a severe sanction. The length of the ban should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending. It is, therefore, important that it is set at a high enough level to remove the worst offenders from the sector. It should ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.

5.7 **Deterring the offender from repeating the offence**

The ultimate goal is to prevent any further offending. The length of the ban should prevent the most serious offenders from operating in the sector again or, in certain circumstances; help ensure that the landlord fully complies with all of their legal responsibilities in future. The length of ban should therefore be set at a long enough period such that it is likely to deter the offender from repeating the offence

5.8 **Deterring others from committing similar offences**

An important part of deterrence is the realisation that (a) the local authority is proactive in applying for banning orders where the need to do so exists and (b) that the length of a banning order will be set at a high enough level to both punish the offender and deter repeat offending.

5.9 Having had regard to this policy, a decision to commence the banning order procedure in any case will be confirmed by the Officer Group (as defined in the procedure below) who will also be responsible for considering any representations made by a landlord served with a notice of intention and for the decision to make an application for a banning order, including the recommended duration of the ban.

6.0 **Banning Order application process**

6.1 The process for applying for a banning order is set out in section 15 of the Housing and Planning Act 2016.

6.2 Prior to making an application the Council must give the landlord a notice of its proposal to apply for a banning order. This is called a 'notice of intent'

- 6.3 The notice of intent must be served within 6 months of the landlord being convicted of the offence
- 6.4 The landlord has a right to make representations to the Council during the period of the notice of intent. A landlord must be given 28 days from the date of the notice to make representations
- 6.5 The Council must consider any representations made by the landlord and will not apply for a banning order until the 28 day period has expired
- 6.6 If after the 28 days the Council decides to proceed with a banning order then they make their application to the first tier tribunal.

7.0 Requests for Information

- 8.1 Section 19 of the Housing and Planning Act 2016 provides that a local housing authority (the Council) can require a landlord to provide information for the purpose of enabling the Council to decide whether to apply for a banning order. This can include requiring the landlord to provide information on all the properties that the landlord owns.
- 8.2 It is an offence to ignore a request for further information unless the landlord can provide a reasonable excuse.
- 8.3 It is also an offence to provide false and misleading information
- 8.4 Failure to provide information or providing false or misleading information is punishable on summary conviction to a fine

9.0 Publicity following a banning order

- 9.1 Subject to the Governments guidance and guidance provided by the Ministry of Justice details of all banning order offences will be published and held on a national register. Also subject to legal advice, the Council will consider publishing details of successful banning orders including the names of individual landlords/ any business (managing or lettings agency). The Council will also consider making information on banned landlords available on request by a tenant.

Banning Order Procedure 2019

This procedure explains how the Council will use their powers under the Housing and Planning Act 2016 to consider applying for a Banning Order to the First-tier Tribunal.

10.0 Introduction

- 10.1 *Officer Group* to convene and consider should the local authority apply for a banning order in respect of a landlord or property agent being convicted of a banning order offence³ under the powers set out in The Housing and Planning Act 2016 (“the Act”).
- 10.2 The *Officer Group* to consist of:
- i) the case officer,
 - ii) senior housing standards officer
 - iii) the case officer’s line manager,
 - iv) representative from Legal Services (for advisory purposes only)
- 10.3 At least three members need to be present to reach an agreement that the local authority is correct to apply for a banning order. A Legal Services representative is there to provide legal advice only.
- 10.4 In advance of the *Officer Group* meeting, the Case Officer will complete and circulate a ‘*banning order evidence sheet*’ (referred to as *evidence sheet*) to all *Officer Group* members, at least 7 days before the meeting. This sheet to include background information on the case being considered and the Case Officer’s recommendation to the *Officer Group*, including the reasoning used to make recommendation.
- 10.5 At the *Officer Group* meeting the Case Officer will present the contents of the ‘*evidence sheet*’.
- 10.6 The *Officer Group* must have regard to the guidance document⁴ when considering whether or not to make an application to the First-tier Tribunal for a banning order. The officer group must consider the following:
- i) **The seriousness of the offence.** All banning order offences are serious. When considering whether to apply for a banning order the local housing authority should consider the sentence imposed by the Court in respect of the banning order offence itself. The more severe the sentence imposed by the Court, the more appropriate it will be for a banning order to be made. For example, did the offender receive a maximum or minimum sentence or did the offender receive an absolute or conditional discharge? Such evidence will later be considered by the First-tier Tribunal when determining whether to make, and the appropriate length of a banning order.

³ [The Housing and Planning Act 2016 \(Banning Order Offences\) Regulations 2018](#)

⁴ [Banning Order Offences under the Housing and Planning Act 2016](#)

- ii) **Previous convictions/rogue landlord database.** A local housing authority should check the rogue landlord database in order to establish whether a landlord has committed other banning order offences or has received any civil penalties in relation to banning order offences. A longer ban may be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be aware of their legal obligations. For example, in the case of property agents, they are required to be a member of a redress scheme and any evidence of non-compliance could also be taken into account.

10.7 The *Officer group* should also consider the likely effect of the banning order on the person and anyone else that may be affected by the order. These factors should include;

- i) **The harm caused to the tenant.** This is a very important factor when determining whether to apply for a banning order. The greater the harm or the potential for harm (this may be as perceived by the tenant), the longer the ban should be. Banning order offences include a wide range of offences, some of which are more directly related to the health and safety of tenants, and could therefore be considered more harmful than other offences (such as fraud).
- ii) **Punishment of the offender.** A banning order is a severe sanction. The length of the ban should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending. It is, therefore, important that it is set at a high enough level to remove the worst offenders from the sector. It should ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities.
- iii) **Deter the offender from repeating the offence.** The ultimate goal is to prevent any further offending. The length of the ban should prevent the most serious offenders from operating in the sector again or, in certain circumstances; help ensure that the landlord fully complies with all of their legal responsibilities in future. The length of ban should therefore be set at a long enough period such that it is likely to deter the offender from repeating the offence.
- iv) **Deter others from committing similar offences.** An important part of deterrence is the realisation that the local authority is proactive in applying for banning orders where the need to do so exists.

10.8 The *Officer Group* may also have regard to the following before considering applying for a banning order:

i) **Class of landlord in terms of scale of operation**

Is the landlord considered to be a 'professional' landlord, having a portfolio of at least 3 properties for rent. This class of landlord is more likely to derive a reasonable income from his/her properties and be operating as business. Whereas, a landlord having only 1 or 2 dwellings is less likely to be operating as a business and may well have a main income from employment elsewhere.

ii) **Previous history and dealings with the Council.**

Has the landlord had previous dealings with the Council in terms of the legislation applicable to the potential banning order offences? If yes, was the landlords deemed to be cooperative?

Has the Council taken previous enforcement action against the landlord? If yes, was the landlord compliant?

Is this a first offence?

No history or a record of previous co-operation – strengthens case for a banning order offences

History of previous enforcement action, poor co-operation, prosecution and/or unspent conviction – strengthens case for consideration to and their details to the rogue landlord's database.

10.8 The *Officer Group* can consider other matters deemed to be relevant to the case being discussed and these will be added to the *evidence sheet* following the meeting.

10.9 Upon considering the above, the *Officer Group* will decide the most appropriate action; this will include the reasons taken into account in arriving at the decision. The decision must be recorded on the *evidence sheet* submitted by the Case Officer, along with a record to show that all matters previously mentioned have been considered and other relevant matters. The completed *evidence sheet* to be signed by the group members and a copy kept against the property record (relevant worksheet on M3 Public Protection or alternative system being used at the time of the decision) for reference and made available to the First-tier Tribunal. A copy of the *evidence sheet* will form part of the evidence to support the action taken.

10.10 If a decision is made to proceed and apply for a banning order, the Case Officer will first issue a 'Notice of Intent' to the landlord. The Notice of Intent will invite *the landlord* to make representations within a period specified in the notice (*the notice period*). The *Officer Group* must consider any representations made within the notice period by the landlord. Where representations are made the Officer Group must consider these and decide whether to pursue a banning order on the basis of any representations received. The decision and additional information must be entered on the *evidence sheet*, and *this* must be signed by the group members and a copy kept against the property record and for reference and made available to the First-tier Tribunal. A copy of the completed evidence sheet will form part of the evidence to support the action taken.

10.11 The local authority must wait until the notice of intent period has ended before applying for a banning order to the First-tier Tribunal. Should the local authority proceed they will apply to the First-tier Tribunal who have the power to make the banning order.

10.12 Definitions

'Landlord' also relates to the term property agent

'banning order offences' are described in 'The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018.