

APPENDIX 6

Wirral Council

Rogue Landlord Database Policy and Procedure 2019

Rogue Landlord Policy

This policy explains how the Council will use its discretionary powers under the Housing and Planning Act 2016 to consider placing residential landlords or property managers renting within the private rented sector onto the national rogue landlords database.

1.0 Introduction

- 1.1 The Housing and Planning Act 2016 (“the Act”) introduced a range of measures to help local housing authorities tackle rogue landlords and drive up standards in the private rented sector. These measures include establishing and operating a database of rogue landlords and property agents. In this policy the term residential landlords and property agent are the same as the interpretations defined under Chapter 6 of Part 2 of the Housing and Planning Act 2016.
- 1.2 The database is a new tool for local housing authorities in England to keep track of rogue landlords and property agents. Database users will be able to view all entries on the database, including those made by other local housing authorities. The database can be searched to help keep track of known rogue landlords and agents, especially those operating across council boundaries and will help authorities target their enforcement activities.
- 1.3 Chapter 3 of Part 2 of Housing and Planning Act 2016 places a duty on local housing authorities to make an entry onto the rogue landlord database in cases where a banning order has been made against a person. Local housing authorities are also able to place landlords onto the national rogue landlord’s database when they have been convicted of a banning order offence or have received two or more civil penalties within a 12 month period. In order to make use of these new powers Wirral Council has produced its own policy when considering placing a landlord on the rogue landlord’s database.
- 1.4 This policy takes account of the statutory guidance issued by the Government¹ which makes clear that there is a wish to crack down on rogue landlords and property agents who flout their legal obligations and rent out substandard accommodation.
- 1.5 Each case will be considered on a case-by-case basis.

2. Background

- 2.1 The local housing authority must have regard to the criteria in the statutory guidance in deciding whether to make an entry in the database under the Act, and the period to specify in a decision notice.
- 2.2 The local authority may make an entry on the rogue landlord’s database in respect of a person if they have:-

¹ [Database of rogue landlords and property agents under the Housing and Planning Act 2016](#)

- i) been convicted of a banning order offence that was committed at a time when the person was a residential landlord or property agent; and/or
- ii) received two or more financial penalties in respect of a banning order offence within a period of 12 months committed at a time when the person was a residential landlord or a property agent.

2.3 Banning order offences are made under the provisions of The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018².

3. Decision making

3.1 The local authority will consider whether it should make an entry on to the database where a conviction of a banning order offence has been made or two or more civil penalties have been issued within a 12 month period.

3.2 The local authority must issue the landlord or property manager with a decision notice before making an entry on the database. The decision notice will specify the period of time the entry will be made and maintained.

3.3 Under the Government's statutory guidance document, the local authority will consider the following factors when deciding whether to make an entry on the database:-

- i) Severity of the offence.
- ii) Mitigating factors.
- iii) Culpability and serial offending.
- iv) Deter the offender from repeating the offence.
- v) Deter others from committing similar offences.

3.4 The local authority will also consider the following criteria when deciding the period to specify in the decision notice of how long the entry will last for:

- i) Severity of the offence.
- ii) Mitigating factors.
- iii) Culpability and serial offending.
- iv) Deter the offender from repeating the offence.

4. Appeals

4.1 A person who has been given a decision notice may appeal to the First-tier Tribunal against the notice within 21 days beginning with the day on which the notice was given.

5. Information to be included on the database

5.1 The Secretary of State may, by regulations, make provision about the information that must be included on the database. The local authority may include such information as

² [The Housing and Planning Act 2016 \(Banning Order Offences\) Regulations 2018](#)

- i) the person's name and address and other contact details.
- ii) the period for which the entry is to be maintained.
- iii) details of properties owned, let or managed by the person.
- iv) details of any banning orders offences of which the person has been convicted.
- v) details of any banning orders made against the person, whether or not still in force.
- vi) details of financial penalties that the person has received.

5.2 Where a body corporate is entered in the database, the information may require information about its officers.

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6.0 Introduction

6.1 *Officer Group* to convene and consider should the landlord or property agent be added to the rogue landlords database under the powers set out in The Housing And Planning Act 2016 (“the Act”).

6.2 The *Officer Group* to consist of:

the case officer,

a Senior Housing Standards Officer and the case officer’s line manager appropriate representative from Legal Services, where necessary

6.3 At least three members need to be present to reach an agreement that the local authority is correct in adding a landlord or property agent to the database. A Legal Services representative may be requested to attend to provide legal advice only.

6.4 In advance of the *Officer Group* meeting, the *Case Officer* will complete and circulate an ‘*evidence sheet*’ to all 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.

6.5 At the *Officer Group* meeting the *Case Officer* will present the contents of the ‘*evidence sheet*’.

6.6 The *Officer Group* must have regard to the statutory guidance document and the following, in deciding whether to make an entry on the database under the provisions set out in the Act consider the following:

- i) **Severity of the offence.** The more serious the offence, the stronger the justification for including the offender on the database.
- ii) **Mitigating factors.** In cases where a less serious offence has been committed and/or there are mitigating factors, local housing authorities may decide not to make an entry on the database. Mitigating factors could include personal issues, for example, health problems or a recent bereavement. It is for local housing authorities to decide on a case by case basis whether mitigating factors are strong enough to justify a decision not to record a person’s details on the database.
- iii) **Culpability and serial offending.** Whether the offender has a history of failing to comply with their obligations. Where there is a clear history of knowingly committing banning order offences and/or non-compliance, the stronger the

justification for making an entry on the database. Conversely, where it is a first offence and/or where it is a relatively minor, a local housing authority may decide that it is not appropriate to record a person's information on the database.

- iv) **Deter the offender from repeating the offence.** The ultimate goal is to prevent landlords and property agents, who have failed to comply with all of their legal responsibilities, repeating the offence. An important part of deterrence is the realisation by the offender that (a) the local housing authority has the tools and is proactive in recording the details of rogue landlord and property agents and (b) that they will be unable to simply move from one local housing authority to another and repeat the same offences as the information will be available to other local housing authorities. It will also encourage joint working between local housing authorities who will be able to establish whether rogue landlords operate across their local housing authority areas. For example, including someone on the database might be an important deterrent if they rent out property in multiple local housing authority areas, as inclusion on the database will make their information available to other local housing authorities.
- v) **Deter others from committing similar offences.** Knowing that they may be included on the database if they are convicted of a banning order offence or receive multiple financial penalties, may deter some landlords from committing banning order offences in the first place.

6.7 The *Officer Group* must also have regard to the following criteria when deciding the period to specify in the decision notice:

- i) **Severity of offence.** The severity of the offence and related factors, such as whether there have been several offences over a period of time, should be considered. Where an offence is particularly serious and/or there have been several previous offences; and/or the offence(s) have been committed over a period of time, then the decision notice should specify a longer period of time. Where one or more of those factors are absent, it may be appropriate to specify a shorter period.
- ii) **Mitigating factors.** These could include a genuine one-off mistake, personal issues such as ill-health or a recent bereavement. Where this is the case, a local housing authority may decide to specify a shorter period of time in the decision notice.
- iii) **Culpability and serial offending.** A track record of serial offending or where the offender knew, or ought to have known that they were in breach of their responsibilities may suggest a longer time period would be appropriate.

- iv) **Deter the offender from repeating the offence.** The data should be retained on the database for a reasonable period of time so that it is a genuine deterrent to further offences.

6.8 The *Officer Group* may also have regard to the following before issuing a decision notice:

- (a) **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. This class of landlord includes those that have inherited rented property and not necessarily actively pursued a 'career' of becoming a portfolio landlord.

- (b) **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?

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

- ii) Is this a first offence?

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

- iv) 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.

6.9 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.

6.10 Upon considering the above, the *Officer Group* will decide the most appropriate action (likely to deter the landlord from acting in a similar way again) regarding whether to add the landlord to the database and the specified period. This decision will 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. 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 completed evidence sheet will form part of the evidence to support the action taken.

7.0 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.