

Banning Order Policy 2018

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

1. Introduction

- 1.1 The Housing and Planning Act 2016 enables local housing authorities to apply to the First-tier Tribunal (FtT) for a banning order following conviction of an individual for a significant number of different offences under a number of different Acts, including certain housing offences.
- 1.2 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 that policy.
- 1.3 This policy takes account of the non-statutory guidance issued by the Government¹ 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.
- 1.4 The power to apply for banning orders in appropriate cases is one of a number of enforcement tools available to the Council which include prosecution, carrying out works in default, applying for Rent Repayment Orders and the imposition of Civil Penalties. This policy should be read in conjunction with the current versions of the following policies:
 - *Joint Enforcement Policy– SNC & CDC*
 - *House Condition Enforcement Policy - CDC*
 - *Housing Health and Safety Rating System Policy – CDC*
 - *Private Sector Housing Enforcement Policy – SNC*
 - *Other policies relating to enforcement powers under the Housing and Planning Act 2016 – SNC & CDC*

2. Background

- 2.1 Following conviction of an individual for a 'banning order offence'² the Council can apply to the First-tier Tribunal for a banning order. An Order can ban a landlord 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 A banning order must be for a minimum of 12 months but there is no maximum. The FtT will set the banning period but the Council is required to recommend a period as part of an application.
- 2.3 Breach of a banning order is a criminal offence.

¹ Banning Order Offences under the Housing and Planning Act 2016, Guidance for Local Housing Authorities, MHCLG April 2018

² Specified in the Guidance document and in the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017

- 2.4 The process for applying for a banning order is set out in section 15 of the Housing and Planning Act 2016. Prior to making an application the process includes serving a notice of intent on the landlord and provision for consideration of representations made by the landlord.

3. Decision making

- 3.1 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**

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.

- **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 noncompliance could also be taken into account.

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:

- **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)

- **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.

- **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

- **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.

- 3.2 Having had regard to this policy, a decision to commence the banning order procedure in any case will be confirmed by the Assistant Director Housing 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.
 - 3.3 Subject to its own legal advice and guidance provided by the Ministry of Justice, the Council will consider publishing details of successful banning orders including the names of individual landlords. The Council will also consider making information on banned landlords available on request by a tenant.
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