

1. Introduction

- 1.1. Under the Housing and Planning Act 2016, the Council can apply to the First Tier Tribunal (FTT) for a banning order following a conviction of a number of offences including certain housing offences. The legislation also gives the Council the ability to make an entry onto the national rogue landlord database.
- 1.2. This policy covers:
 - when a banning order may be applied for;
 - when an entry on the rogue landlord database may be made;
 - the factors that the Council will take into account when making such decisions,
- 1.3. For the purpose of this document, a person is both an actual person and a body corporate that is considered a “person in law”, for example registered companies.
- 1.4. With regard to banning orders, there is non-statutory guidance that states Local housing authorities are expected to develop and document their own policy on when to pursue a banning order and should decide which option it wishes to pursue on a case by-case basis in line with that policy. This policy note fulfils this requirement and documents Oxford City Council’s approach
- 1.5. This policy takes account of the non-statutory guidance issued by the Government 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
- 1.6. With regard to entries on the rogue landlord database there is statutory guidance that the council must consider. This states: Local Housing authorities should always consider whether it would be appropriate to make an entry on to the database when a landlord has been convicted of a banning order offence or received 2 or more financial penalties over a 12 month period. This policy explains Oxford City Council’s approach.
- 1.7. This policy affects any private rented property within the Oxford City Council area and within England. A Banning Order applies to any private rented property within England. Access to information on the Rogue Landlord Database is currently only available for local authorities within England
- 1.8. This policy will be updated from time to time as necessary to take account of Tribunal decisions and case law.

2. What are banning orders and the rogue landlord database and why do they exist?

- 2.1. The vast majority of landlords and agents provide decent, well managed properties however a small minority do not abide by the laws. Banning orders and the rogue landlord database are key statutory provisions in housing law to help local housing authorities tackle criminal landlords and drive up standards in the private rented sector. It is important a strong stance is taken to ensure tenants are protected

3. Banning Orders

- 3.1. A Banning Order is a legal ban to prevent a person from letting out property for a specified period, introduced under the Housing and Planning Act 2016 from 06 April; 2018. The Council has **the power** to apply for a Banning Order from the First-tier Tribunal when a person has been convicted in Court of a specified offence. The grant of a banning order is by the First-tier Tribunal.
- 3.2. A banning order is an order by the First-tier Tribunal that bans a landlord from:
 - Letting housing in England;
 - Engaging in English letting agency work;
 - Engaging in English property management work; or
 - Doing two or more of those things.
- 3.3. The specified offences, known as “banning order offences” are listed in The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017 and include property-related crimes and more general criminal offences such as immigration offences, fraud, theft, burglary, drugs-related offences and anti-social behaviour offences. The pertinent offences that relate specifically to housing enforcement in private rented properties are:
 - Failure to comply with an improvement notice
 - Failure to comply with a prohibition order
 - Offences in relation to licensing of properties (Part 2 HMO licensing and Part 3 selective licensing)
 - Failure to comply with management regulations in respect of HMOs
 - Unlawful eviction and harassment of occupier
 - Violence for securing entry
 - Failing to comply with gas safety regulations
 - Failing to comply with the Regulatory Reform (Fire Safety) Order 2005 (fire safety offences)
- 3.4. If a person breaches a banning order they are committing a criminal offence. The minimum period for a banning order must be at least 12 months, however there is no upper maximum. Where a banning order is granted, then that person is classed as “not fit and proper” to hold a property licence under Part 2 (HMO licensing) or Part 3 (Selective Licensing).

4. The Rogue Landlord Database

- 4.1. The Housing and Planning Act 2016 established an England-wide database of rogue landlords and property agents. The Council **must** make a database entry if a banning order is granted by the First-tier Tribunal. The Council **may** make an entry if the person was convicted of a banning order offence or has received two financial penalties in respect of specified offences in the previous twelve (12) months. The specified offences in relation to the database are the same as for Banning Orders as above – it is expected that the majority of entries by the Council will relate to the issue of two or more financial penalties within the previous twelve (12) months for housing related offences.
- 4.2. The database can be searched by local authorities to help keep track of known non-compliant landlords, especially those operating across council boundaries and will

help authorities target their enforcement activities and assist councils' decide if a person is a fit and proper person.

- 4.3. Once a person has been added to the Rogue Landlord database, they must remain on the database for at least two years, however no upper time limit is given.

5. Requesting further information

5.1. The Council must be proportionate in balancing the statutory requirements and Human Rights legislation, in particular Article 8: respect to your private and family life and Protocol 1, Article 1 which protects your right to enjoy your property peacefully. There are statutory provisions within the Housing and Planning Act 2016 which allow the Council to ask for information to help them make decisions about whether to apply for a banning order or make an entry on the rogue landlord database. These statutory provisions mean that the Human Rights Act has already been considered and it is necessary for the Council to ask for this information in this particular circumstance.

5.2. The Housing and Planning Act 2016 provides that a local housing authority

- can require a landlord to provide information for the purpose of enabling the local housing authority to decide whether to apply for a banning order. This could include requiring the landlord to provide information on all of the properties that the landlord owns. and/or
- can require a landlord to provide information relating to entry on the rogue landlord database and to require information to keep it up-to-date.

6. How the Council will make decisions

Banning Orders

6.1. A Banning Order can only be applied for once a conviction in Court has been achieved. However there are specific conditions that may apply depending on the type of conviction. For example, for offences under the Housing Act 2004 where a person has received an absolute and/or conditional discharge for a relevant housing offence then that offence cannot be regarded as a banning order offence. An application [for a Banning Order] can only be made within six months of the date of the conviction.

6.2. The non – statutory guidance issued by Ministry of Housing, Communities and Local Government lists the points the Council should consider when deciding whether to make an application for a banning order:

- **Seriousness of the offence:** All banning order offences are serious. The more severe the sentence imposed by the Court, the more appropriate it will be for a banning order to be made; however, it is not necessarily the level of fine that is important. A low fine may be issued for a serious offence and it is the offence that is important. Given that the Council can now issue a financial penalty of up to £30,000 as an alternative to prosecution then a decision to prosecute will in itself highlight that the offence is considered very serious and it is not necessarily the level of fine that is the important factor.

- **Previous convictions / rogue landlord database entry:** 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. Multiple convictions, even with low fines, demonstrate a pattern of offending and flouting of regulations
 - **Harm caused to the tenant.** The greater the harm or the potential for harm (this may be as perceived by the tenant), the longer the ban should be;
 - **Punishment of the offender.** 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;
 - **Deterring the offender from repeating similar offences and deter others from committing similar offences.** The aim is to prevent landlords/agents committing repeat offences and deter others from committing offences.
- 6.3. Lack of engagement with the authority, no evidence of learning from mistakes, attempting to mislead council officers and not putting right the wrong, are factors that will lead to a banning order being sought following a conviction. Conversely, if the person has since engaged and put right the issues then a banning order may be less likely.
- 6.4. If it is decided not to apply for a banning order, the Council may still use its powers to make an entry onto the Rogue Landlord Database. In addition, the Council may decide to make an entry onto the database and pursue a banning order in parallel.

Rogue Landlord Database

- 6.5. Where a banning order has been granted, then an entry onto the Rogue Landlord Database **must** be made. There is no discretion. In this case, once the First-Tier Tribunal has granted the Banning Order, the Council will make the entry as required by the legislation
- 6.6. An entry onto the Rogue Landlord Database is an optional power for the Council where a person has convictions for certain specified offences or two or more financial penalties have been made.
- 6.7. There is statutory guidance that must be considered when deciding whether an entry is to be made or not, which lists the following factors:
- **Severity of offence.** The more serious the offence, the more justifiable the entry. This also includes the impact on the wider community.
 - **Mitigating factors.** Mitigating factors may lessen the need for an entry. The examples quotes in the guidance are health problems or recent bereavement
 - **Culpability and serial offending.** A history of non-compliance with legislation or committing banning order offences would increase justification for an entry. Conversely, a first or minor offence would lessen the need for an entry.
 - **Deterring the offender from repeating similar offences and deter others from committing similar offences.** Different councils can access the database so would be made aware of actions taken against such rogues, so effective joint working could occur.
- 6.8. With regard to the seriousness of the offences, where at least two penalties have been issued then the level of fine demonstrates the seriousness of that offence.

Where a person has been issued with a high fine, then entry onto the database is more likely. Where a person has received a conviction, then this also demonstrates the seriousness of the offence.

- 6.9. Culpability links to the persons' letting experience. While all landlords are running a business and should make themselves' aware of relevant legislation and comply, a person with a large portfolio should clearly have more experience and ensure they comply compared with one person with experience of letting one property.
- 6.10. Mitigating factors are also important together with any action taken since the issue of the second fine. For example, if the person has now accepted responsibility for their wrong-doing and put it right (for example, promptly paid the fine and has undertaken work required), thus demonstrating they have learnt from the offence, then it may be decided that entry on to the database is not appropriate.
- 6.11. An entry is only possible where two financial penalties have been issued within the previous twelve (12) months. The statutory guidance makes it clear that concurrent penalties (those issued at the same time) are to be considered as two penalties. It is common that a landlord may receive a penalty for failing to licence an HMO and failing to comply with management regulations at the same time. In this case, careful consideration is necessary whether an entry is needed as to whether this is an example of serial and repeated offences. However, it may be that the seriousness of the offences is such that it is judged an entry onto the database is required.
- 6.12. The length of time that an offence has been on-going is also relevant to seriousness and culpability. For example, failing to licence a property over a number of years is more serious and leads to higher culpability than a person who has failed to licence for a few months.
- 6.13. Where two penalties have been issued in different time periods, then this is a clear indication the person has a history of serial offending and has not been deterred from committing a similar offence. In this case, an entry onto the database would be considered appropriate.

7. Duration

- 7.1. A banning order must be for a minimum period of 12 months. There is no statutory maximum period for a banning order. The First-tier Tribunal determines the length of the ban. The Council will recommend the length of the ban, dependent on circumstances.
- 7.2. As a person will not be fit and proper to hold a property licence when a banning order is granted. This will have implications for any property licences in place and could result in the council making interim or final management orders. A final management order can be issued for five years.
- 7.3. In relation to an optional entry onto the Rogue Landlord Database, the minimum period is two years.
- 7.4. When deciding the length of the entry, the statutory guidance states the factors to be considered are:
 - Severity of the offence

- Mitigating factors
- Culpability and serial offending
- Deterring the offender from repeat offending

7.5. The severity of the offence is linked to the level of fine and therefore high fines will justify a longer entry. Where there is a history of serial offending (whether resulting in enforcement action or not) which demonstrates the person has not been previously deterred then this will justify a longer entry. Entries that result from two or more financial penalties will not be longer than five (5) years.

8. Link to Fit and Proper Person policy

8.1. Consideration of entry onto the rogue landlord database also sits alongside a decision as to whether someone is “fit and proper person” to hold a property licence. If a person has contravened legislation (i.e. been issued with penalties) then they may not be fit and proper to hold a licence – in which case, entry on to the database is an important consideration as this will allow other local authorities to make decisions when deciding to issue a licence or not

9. Notification of decision and Appeal

9.1. Following the decision to make an application for a Banning Order or entry onto the Rogue Landlord Database, the following procedure applies:

Banning Orders

- 9.2. A person will receive a notice informing of the Councils’ intention to apply for a banning order. There is a period to make representations (objections) against the decision
- 9.3. Any representations will be considered by a senior manager and the Head of Service. If these representations are accepted, you will be informed of this. In the case no further action will be taken.
- 9.4. If these representations are rejected, the Council will apply to the First-tier Tribunal for a banning order (in which case, there will be a hearing and you can make your case). The First-tier Tribunal will decide whether to make the order or not.
- 9.5. If a banning order is granted, the Council must make an entry onto the Rogue Landlord Database and will do so as soon as reasonably practical.
- 9.6. In addition, once a banning order is granted then any property licences will be revoked or refused. The Council may then need to follow up with service of interim and final management orders.

Rogue Landlord Database Entry

- 9.7. A person will receive a notice informing you of the Council has decided to make the entry in the database after the end of the period of 21 days beginning with the day on which the notice is given.
- 9.8. During this 21 day period, the person has a right of appeal to the First-Tier Tribunal. If an appeal is made, the Council will wait until the appeal has been determined before

making the entry. If there is no appeal, after 21 days the Council will make the entry onto the database.

10. Enforcement Policy

10.1. This policy forms an appendix to Corporate Enforcement Policy, which promotes efficient and effective approaches to regulatory inspection and enforcement to improve regulatory outcomes without imposing unnecessary burdens.

11. Data sharing

11.1. Information used and ascertained for the purpose of deciding whether to apply for a banning order or make an entry onto the rogue landlord database can be shared with other statutory bodies, particularly other local authorities and the police. Selective and HMO licence applicants agree to this when they sign the licence application form.

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