

Banning Order Policy

This policy explains how the Council will use its powers under the Housing and Planning Act 2016 to ban non-compliant landlords and managing agents from renting out properties within the private rented sector.

This policy should be read in conjunction with the council's Corporate Enforcement Policy.

Introduction

The Council is committed to improving standards in private sector housing, with the aim of ensuring that all private rented accommodation is well managed, properly maintained, safe and habitable. Whilst the Council acknowledges that compliant landlords do operate their business responsibly in Welwyn Hatfield, there are a significant number of irresponsible landlords who knowingly rent out accommodation that is unlicensed, substandard, or unsafe.

Part 2, Chapter 2 of the Housing and Planning Act 2016 enabled Local Authorities to apply to the First-Tier Tribunal (FTT) to impose a banning order on a landlord following conviction for a banning order offence. A banning order offence is an offence of a description specified in The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018

The Housing and Planning Act 2016 introduced a range of measures to help local authorities deal more robustly with rogue and irresponsible landlords¹:

- Civil penalties of up to £30,000 as an alternative to prosecution for certain specified offences (came into force on 6 April 2017);
- Extension of rent repayment orders to cover illegal eviction, breach of a banning order, failure to comply with an improvement notice and certain other specified offences (came into force on 6 April 2017);
- Database of rogue landlords and property agents who have been convicted of certain offences or received multiple civil penalties (came into force on 6 April 2018);
- Banning orders for the most serious and prolific offenders (came into force on 6 April 2018)²

To utilise the banning order powers, it is best practice to have in place its own policy as to when to pursue a banning order, and to decide the most appropriate course of action on a case-by-case basis in line with that policy.

This policy gives due regard to the non-statutory guidance issued by the Ministry of Housing, Communities and Local Government, which sets an expectation that banning orders should be aimed at the most serious offenders

¹ [Housing and Planning Act 2016 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

² [The Housing and Planning Act 2016 \(Banning Order Offences\) Regulations 2018 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

Principles Underpinning Enforcement Action

All the Private Sector Housing team's enforcement activity will be:

- Targeted
- Proportionate
- Fair and Objective
- Transparent
- Accountable

Housing and Planning Act 2016- Banning Orders

The Housing and Planning Act 2016 enables local authorities to apply to the First-tier Tribunal (FTT) to impose a banning order on a landlord or managing agent, following conviction for a 'banning order offence'.

A landlord subject to a banning order is prevented 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 (to ensure that any order is effective and to prohibit engagement in other related activities)
- A landlord subject to a banning order is also unable to hold a licence for a House in Multiple Occupation (HMO) and their property may also be subject to a management order
- A landlord is prevented from transferring the property to certain persons whilst the banning order is in force.

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.

Factors in decision making

The following factors will be considered by the local authority in deciding whether to apply for a banning order, and when recommending the length of a 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
- Upper Tribunal Decisions

The decision to commence the procedure to apply for a banning order and length of proposed time for any such order will be authorised by the Head of Service.

Where a banning order is made, and the Landlord is an HMO licence holder, the individual will be determined not to be 'fit and proper' to hold a licence under part 2 or 3 under the Housing Act 2004 and any licences in force under those parts will be revoked.

Publicity following a banning order

Where a successful banning order has been made, details of all banning order offences will be published and held on a national register.

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), having reference to the DLUHC guidance and guidance provided by the Ministry of Justice.

Information on banned landlords will be made available to tenants where it is in the public interest to do so or at the request of the tenant.

Management Orders

There may be circumstances where, following a banning order, the management of the property is taken over by the Council.

In such circumstances the tenant would pay their rent to the local housing authority.

A management order enables the Council to take over the management of a privately rented property in place of the landlord. The aim is to ensure that the health and safety of occupiers of the property and persons living or owning property nearby are protected, and to ensure that a property is still available to rent, particularly in areas of high demand.