



Bristol City Council – Housing and Landlord Services

# Policy to determine application for a Banning Order

Version 1\_00

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History of most recent policy change or health-check			
Date	Page	Change	Origin of change (e.g. legislation)

## Contents

1. Introduction and Legal framework.....	2
2. Aims and objectives.....	2
3. Policy statement .....	3

## **1. Introduction**

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

Part 2, 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 offence. A banning order offence is an offence of a description specified in [The Housing and Planning Act 2016 \(Banning Order Offences\) Regulations 2018](#).

## **2. Aims and objectives**

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. It will also be taken into account when recommending to the First-tier Tribunal the length of any banning order.

The policy takes into account [non-statutory guidance](#) issued by the Ministry of Housing, Communities and Local Government. This guidance will also be considered in each case when determining whether to apply for a banning order.

Banning orders are aimed at rogue landlords who flout their legal obligations and rent out accommodation which is substandard. It is expected banning orders will only be used for the most serious offenders.

### 3. Policy statement

#### Determining whether to apply for a banning order

When a landlord of a property in the Council's area has been convicted of a housing related offence, as recommended by the MHCLG 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 Council will 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.

- **Previous convictions/rogue landlord database.**

The Council will 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.

- **Upper Tribunal Decisions**

The Council will refer to Upper Tribunal decisions. In particular, the decision contained in [Hussain & Ors v London Borough of Waltham Forest \(HOUSING – licensing\) \(2019\) UKUT 339 \(LC\)](#) and the evidence that may or may not be considered by tribunals in relation to the circumstance, taking account of the Rehabilitation of Offenders Act 1974.<sup>1</sup>

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. These factors should include;

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<sup>1</sup> May take into account when determining whether to apply for a banning order and the length of any banning order the relevant conduct of a rehabilitated person, including conduct which has been treated under the criminal law as an offence and resulted in a conviction which is now spent.

- **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.
- **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.
- **Deter 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.

The Council may also have regard to other relevant matters deemed appropriate to the case.

Having had regard to this policy, a decision to commence the banning order procedure in any case will be confirmed by a Private Housing Manager/Service Manager 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.

The decision will be recorded.

### **Publicity following a banning order**

Subject to the MHCLG 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 to a tenant where it is in the public interest to do so.