

Banning Order Procedure for Blackburn with Darwen Borough Council 2019

Introduction

Blackburn with Darwen council is committed to improving the welfare of residents living within private rented accommodation, making sure properties operated by private landlords are well managed, free from hazards and safe for those that occupy them.

We recognise that the majority of landlords operate in a legal and professional manner and work to ensure that their properties are fit for habitation and that they have a positive relationship with their tenants. There are however a minority of landlords who poorly manage and maintain their properties and take advantage of tenants, particularly those that are vulnerable.

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. 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 this policy.

This policy is an appendix to Blackburn with Darwen Council Enforcement and Prosecution Policy and should be read in conjunction with the current version of that policy. The policy outlines how Blackburn with Darwen Borough Council will utilise banning orders under the Housing and Planning Act 2016.

1. Legislative context

Before applying for a banning order, the council must first serve a notice (notice of intent) on the landlord or agent stating:

- why it is applying for a banning order
- the length of order it will apply for
- that s/he has at least 28 days to make representations in their defence.

The notice must be served within six months of the conviction for the banning order offence.

1.1 Banning order offences are set out in regulations (Regulation 3 and Schedule Housing and Planning Act 2016).[1]

1.2 In line with Government guidance, the council will consider applying for a banning order where an alternative qualifying offence has been committed and is not directly related to housing, for example fraud, sexual assault, misuse of drugs, theft and stalking and it is:

- Against or in collusion with her/his tenant or licensee (or member of her/his household) or at (or in relation to) the property let out, and
- At a time when the offender was a landlord or property agent of that property, and
- By an offender who was sentenced in the Crown Court.

[1] reg 3 and Sch Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 SI 2018/216.

[2] Banning Order Offences under the Housing and Planning Act 2016: Guidance for local housing authorities, MHCLG, April 2018.

[3] s.101 Housing Act 2004.

1.3 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)

2. Decision-Making

2.1 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.[2]

The process for applying for a banning order is set out in section 15 of the Housing and Planning Act 2016.

Any decision to proceed with a banning order should follow the 'Banning Order Procedure' – detailed below.

2.2 Prior to making an application the Council must give the landlord a notice of its proposal to apply for a banning order. This is called a 'notice of intent'

2.3 The notice of intent must be served within 6 months of the landlord being convicted of the offence detailed in Regulation 3 and Schedule Housing and Planning Act 2016 (see Legislative Context 1.1) or an alternative qualifying offence (see Legislative Context 1.2).

2.4 The landlord has a right to make representations to the Council during the period of the notice of intent. A landlord must be given 28 days from the date of the notice to make representations

2.5 The Council must consider any representations made by the landlord and will not apply for a banning order until the 28 day period has expired

2.6 If after the 28 days the Council decides to proceed with a banning order then they make their application to the first tier tribunal.

3. Request for information

3.1 Section 198 of 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.

3.2 It is an offence for the landlord not to comply with this request, unless they can provide a reasonable excuse. It is also an offence to provide information that is false or misleading. Failure to provide information or providing false or misleading information is punishable on summary conviction to a fine.

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[2] Banning Order Offences under the Housing and Planning Act 2016: Guidance for local housing authorities, MHCLG, April 2018.

[3] s.101 Housing Act 2004.

4. Banning Order

4.1 The Director of Environment and Operations will authorise its use where the order is being considered because of the condition of the property and or the breach of a license. Consultation will take place with the Director of Adults and Prevention if it concerns safeguarding of tenants or other of concern within their functions matters .

4.2 Although the council does not determine the length of a banning order, a recommendation will be made to the First-tier Tribunal as to how long an order should be, with accompanying reasons. The following factors will be considered by the council in deciding whether or not 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

4.3 Where a banning order is made, 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.

4.4 Where a successful banning order has been made, the council will consider whether to publish details of these, including the names of individual landlords. Legal advice will be sought prior to this, and consideration will be given to the Ministry of Justice guidance as to whether to publish sentencing outcomes.

4.5 For any banning order successfully obtained, an entry onto the Rogue Landlord Database will be made against the Landlord or Agent. Information on banned landlords will be made available to tenants on request.

5. Breaches of a Banning Order/ Rent Repayment Orders (RRO)

5.1 If a landlord breaches a Banning Order the matter will be investigated by the council.

5.2 The landlord can be prosecuted at the Magistrates Court by the council (for breach of a Banning Order) (using its powers under section 222 Local Government Act 1972) or the police. If convicted s/he can be imprisoned and/or fined.

5.3 The council can impose a civil penalty of up to £30,000 as an alternative to prosecution

5.4 A council may apply for a Rent Repayment Order (RRO) order where housing benefit has been paid to that landlord during any period when such an offence was being committed. An RRO can require the repayment of a sum of up to a maximum of 12 months' rent.

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[2] Banning Order Offences under the Housing and Planning Act 2016: Guidance for local housing authorities, MHCLG, April 2018.

[3] s.101 Housing Act 2004.

5.5 An application to the First Tier Tribunal for an (RRO) order may only be made if the landlord has been convicted of the offence of breaching a banning order, or the council is satisfied the offence has been committed (even though the landlord has not been prosecuted for the offence).

5.6 The First-Tier Tribunal may make an (RRO) order if it is satisfied that the landlord has been convicted of the offence, or, that he has committed it.

5.7 The Housing Act 2004 initially introduced RROs to cover situations where a landlord had failed to obtain a HMO licence for a property that was required to be licensed as such under that Act. Section 40 of the Housing and Planning Act 2016 extended this power so that the First -tier Tribunal may now make rent repayment orders for a much wider range of offences including:

- Failure to comply with an Improvement Notice (under section 30 of the Housing Act 2004)
- Failure to comply with a Prohibition Order (under section 32 of the Housing Act 2004)
- Breach of a banning order (made under section 21 of the Housing and Planning Act 2016)
- Using violence to secure entry to a property (under section 6 of the Criminal Law Act 1977)
- Illegal eviction or harassment of a residential occupier (under section 1 of the Protection from Eviction Act 1977).

5.8 RROs can be granted to either the tenant or the council. If the rent was paid by Housing Benefit or through the housing element of Universal Credit (UC), then the rent will be repaid to the council/Department of Work & Pensions (DWP). If the rent was paid partially by the tenant with the remainder paid through Housing Benefit/Universal Credit, then the rent (will) should be repaid on the same basis. In all other cases, the rent will be repaid to the tenant.

5.9 If a landlord has been convicted of an offence for which a RRO can be made and the offence was committed in the borough, the council will consider applying for a RRO. In such cases, the council will, where it is considered appropriate, normally pursue a RRO (where the council has paid housing benefit or the housing element of Universal Credit) and the First Tier Tribunal must order the maximum amount of rent be repaid in such cases (12 months).

5.10 The council will normally make an application for a rent repayment order to recover sums paid as housing benefit or through the housing element of Universal Credit. The council will offer advice, guidance and support to assist tenants to apply for a rent repayment order if the tenant has paid the rent themselves.

5.11 Where there is a sufficient evidence to the criminal standard of the commission of a qualifying offence for the purposes of a RRO and housing benefit/UC paid to landlord over the relevant period, but the matter has not been prosecuted and/or conviction secured, the council may consider applying for a rent repayment order. In such cases, the council will take into account the following factors when considering how much rent to recover:

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[2] Banning Order Offences under the Housing and Planning Act 2016: Guidance for local housing authorities, MHCLG, April 2018.

[3] s.101 Housing Act 2004.

Punishment of the offender – RROs should have a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities. Factors that the council may wish to consider include the conduct of the landlord and tenant, the financial circumstances of the landlord and whether the landlord has previously been convicted of similar offences;

Deter the offender from repeating the offence – The level of the penalty will be set at a high enough level such that it is likely to deter the offender from repeating the offence;

Dissuade others from committing similar offences – RROs are imposed by the First Tier Tribunal and so the fact someone has received a RRO will be in the public domain. Robust and proportionate use of rent repayment orders is likely to help ensure others comply with their responsibilities.

Remove any financial benefit the offender may have obtained as a result of committing the offence. This is an important element of RROs: the landlord will be forced to repay rent, and thereby loses much, if not all, of the benefit that is accrued to them by not complying with their responsibilities.

5.12 The council can apply for a management order, in respect of a house of multiple occupation (HMO), in order to protect the health, safety or welfare of residents where a breach of a banning has occurred. Management orders are used when the licensing regime fails and allows the council to take over the management of a HMO where there is no fit and proper person available to manage it. [3]

6. Revocation and variation

6.1 A landlord or agent can apply to the First Tier Tribunal to revoke or vary the banning order.

Date:

Banning Order Procedure - 2019

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[2] Banning Order Offences under the Housing and Planning Act 2016: Guidance for local housing authorities, MHCLG, April 2018.

[3] s.101 Housing Act 2004.

This procedure explains how and why Blackburn with Darwen Borough Council will use their powers under the Housing and Planning Act 2016 to consider applying for a Banning Order to the First-tier Tribunal.

1. Introduction

1.1 If it is identified that a Landlord (or relevant agent) has been convicted of a banning order offence, relevant officers from Blackburn with Darwen Borough Council will convene and consider whether to apply for a banning order in respect of a landlord or property agent being convicted of a banning order offence under the powers set out in The Housing and Planning Act 2016 (“the Act”).

1.2 The relevant officers should consist of: i) the case officer(s), ii) senior housing standards officer iii) the case officer’s line manager, iv) representative from Legal Services (for advisory purposes only)

1.3 At least three members need to be present to reach an agreement that it would be correct to apply for a banning order. A Legal Services representative is there to provide legal advice only.

1.4 In advance of the officers meeting, the case officer will complete and circulate a report to all relevant officers taking part in the decision process. The report should include background information on the case being considered and the case officer’s recommendations, including the reasoning used to make recommendation.

1.5 At the meeting the case officer will present the case.

1.6 Officers will consider the following:

i) 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. 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.

ii) Previous convictions/rogue landlord database.

Officers 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. For example, in the case of property agents, they are required to be a member of a redress scheme and any evidence of non-compliance can also be taken into account.

1.7 Officers 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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[3] s.101 Housing Act 2004.

i) 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).

ii) 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.

iii) 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.

iv) Deter others from committing similar offences.

An important part of deterrence is the realisation that the council is proactive in applying for banning orders where the need to do so exists.

1.8 Officers will also have regard to the following before considering applying for a banning order:

i) 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.

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

Is this a first offence?

No history or a record of previous co-operation – strengthens the case for a banning order offence

History of previous enforcement action, poor co-operation, prosecution and/or unspent conviction – strengthens the case for consideration to put their details on the rogue landlords database.

1.9 Officers will consider other matters deemed relevant to the case being discussed.

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[2] Banning Order Offences under the Housing and Planning Act 2016: Guidance for local housing authorities, MHCLG, April 2018.

[3] s.101 Housing Act 2004.

1.10 Upon considering the above, officers will decide the most appropriate action; this will include the reasons taken into account in arriving at the decision.

1.11 If a decision is made to proceed and apply for a banning order, the Community Safety Officer/Housing Standards Officer will first issue a 'Notice of Intent' to the landlord. The Notice of Intent will invite the landlord/agent to make representations within a period specified in the notice (the notice period).

Where representations are made within the notice period, consideration will be given to this and a decision whether or not to pursue a banning order on the basis of any representations received will be made.

The Community Safety Officer/ Environmental Health Officer will then wait until the notice of intent period has ended before applying for a banning order to the First-tier Tribunal.

1.12 Definitions

'Officer/Relevant officer' relates to an employee of Blackburn with Darwen Borough Council.

'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.

Date:

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