

# Private Sector Housing Banning Order Policy

City of Wolverhampton Council

# Contents

1.0 Introduction and Legal Framework	3
2.0 Purpose / Aim	3
3.0 Policy Application	4
4.0 Publicity Following a Banning Order	5

# Private Sector Housing Banning Order Policy

## City of Wolverhampton Council

### 1.0 Introduction and legal framework

- 1.1 Part 2, Chapter 2 of the Housing and Planning Act 2016 (“The Act”) 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.
- 1.2 In this policy, the term “landlords” also includes “property agents” (letting agents and property managers as defined under Chapter 6 of Part 2 of the Housing and Planning Act 2016) unless specified.
- 1.3 A banning order is an order imposed 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
- 1.4 A landlord subject to a banning order is unable to hold a licence for a House in Multiple Occupation (“HMO”) and their property may also be subject to a management order.
- 1.5 A landlord would also be prevented from transferring the property to certain persons (as defined in the Act, noted below) whilst the banning order is in force, unless approved by the First-tier Tribunal.
- Certain persons:*
- (a) a person associated with the landlord,
  - (b) a business partner of the landlord,
  - (c) a person associated with a business partner of the landlord,
  - (d) a business partner of a person associated with the landlord,
  - (e) a body corporate of which the landlord or a person mentioned in paragraph (a) to (d) is an officer,
  - (f) a body corporate in which the landlord has a shareholding or other financial interest, or
  - (g) in a case where the landlord is a body corporate, any body corporate that has an officer in common with the landlord.
- 1.6 A banning order may include provision banning the person against whom it is made from being involved in any body corporate that carries out an activity that the person is banned by the order from carrying out.
- 1.7 The First-tier Tribunal make banning orders and set the banning period, but the Council is required to make recommendations as part of an application. A banning order must be for a minimum of 12 months but there is no maximum.
- 1.8 Failure to comply with a banning order is a criminal offence.

### 2.0 Purpose/Aim

- 2.1 The Council is expected to have its 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.
- 2.2 This policy documents when Wolverhampton City Council (“the Council”) will consider pursuing a banning order, in accordance with the expectations

of the non-statutory guidance ‘**Banning Order Offences under the Housing and Planning Act 2016**’ (published April 2018, Ministry of Housing, Communities and Local Government).

## 3.0 Policy Application

### 3.1 **Factors in determining whether to apply for a banning order**

3.2 The following factors will be considered by the Council in deciding whether to apply for a banning order, and when recommending the length of a banning order:

#### 3.3 **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.

#### 3.4 **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.

3.5 *Waltham Forest Vs. Hussain* now overrides the non-statutory guidance and spent convictions, and the conduct underlying such convictions, will be taken into consideration when making decisions in relation to applications for a banning order.

3.6 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;

#### 3.7 **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).

#### 3.8 **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.

#### 3.9 **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.

#### 3.10 **Deter others from committing similar offences**

An important part of deterrence is the realisation that (a) the Council 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.

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

3.12 **Power to require further information**

The Act provides that the Council can require a person to provide information for the purpose of enabling the Council to decide whether to apply for a banning order.

## 4.0 Publicity following a banning order

4.1 The Council will publish details of banning order offences and banning orders on the appropriate national register. The Council will consider publishing details of successful banning orders, including the names of individual landlords/any business (managing or lettings agency), which would be available to a tenant where appropriate.

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or in another language by calling 01902 551155  
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