

Executive Report 06.10.20 – Appendix C (Policies on additional Housing Standards Enforcement Powers)

## **East Hertfordshire District Council**

### **Policies on Additional Housing Standards Enforcement Powers**

**Draft October 2020**

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## Introduction

### **Central Government context and the introduction of new powers**

The Government has repeatedly stated that it wants to support good landlords who provide decent well maintained homes but that there are a small number of rogue or criminal landlords who knowingly rent out unsafe and substandard accommodation. They are clear that this small minority of rogue landlords and property agents who knowingly flout their legal obligations, rent out accommodation which is substandard and harass their tenants should be prevented from managing or letting housing.

This document incorporates policies for a range of measures aimed at improving standards in housing through the use of:

1. Civil penalties of up to £30,000 as an alternative to prosecution for certain specified offences
2. Extension of rent repayment orders to cover illegal eviction, breach of a banning order and certain other specified offences
3. Banning orders for the most serious offenders
4. A database of rogue landlords and property agents against whom a banning order has been made, which may also include persons convicted of a banning order offence or who have received two or more financial penalties

### **Local context and enforcement of housing standards**

The council aims to ensure that all residents living in East Herts have a home that provides a safe and healthy environment that is free from any hazards that have the potential to pose a health and safety risk to any occupier or visitor.

Many landlords in our district work well with the Council and where we find problems they will put things right promptly. Others, whilst they will respond, tend to delay and require significant time and effort from our officers to ensure safety standards are met. Before the introduction of these measures prosecution through the criminal courts was the primary enforcement option adding significant delays and additional officer time. Civil penalties, whilst still requiring the same burden of proof provide us with a more timely option to enforce on landlords who knowingly do not maintain safety features or who delay safety checks or improvement work. Time saved from chasing the second group of landlords will free up officers to target those landlords in our district who chose not to work with us and who have more dangerous properties or who are avoiding HMO licensing. For this group significant civil penalties, as an alternative to prosecution will be considered where this is seen to be appropriate.

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## **This Document**

The Council's policies have been produced with due regard to the government guidance. There is also a Glossary of key terms and a list of relevant legislation and guidance.

The hyperlinks below will take you to each section.

[Policy 1 - The issuing of a civil penalty under the Housing and Planning Act 2016](#)

[Policy 2 - The application for a Rent Repayment Order under the Housing Act 2004 and the Housing and Planning Act 2016](#)

[Policy 3 - The application for a banning order under the Housing and Planning Act 2016](#)

[Policy 4 - Making an entry to the database of rogue landlords and property agents under the Housing and Planning Act 2016](#)

[Glossary of Terms – Housing Enforcement](#)

[Key reference documents](#)

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## **Policy 1 - The issuing of a civil penalty under the Housing and Planning Act 2016**

### **Introduction**

The Housing and Planning Act 2016 enables Local Authorities to impose civil penalties as an alternative to prosecution for certain offences under the Housing Act 2004. This policy supports the use of this enforcement route and specifically identifies the factors to consider when determining the use of civil penalties.

Statutory guidance has been issued by the Ministry for Housing, Communities and Local Government (MHCLG) under section 23 (10) and Schedules 1 and 9 of the Housing and Planning Act 2016. The Council must have regard to this guidance in the exercise of its functions in respect of civil penalties. This guidance can be accessed [here](#).

### **Specified offences for which a civil penalty can be imposed**

The specified offences appropriate to East Hertfordshire District Council are:

- failing to comply with an improvement notice - Housing Act 2004 Section 30
- offences in relation to the licensing of houses in multiple occupation - Housing Act 2004 Section 72
- offences in relation to the contravention of an overcrowding notice - Housing Act 2004 Section 139
- failure to comply with management regulations in respect of houses in multiple occupation - Housing Act 2004 Section 234.

### **Burden of proof**

Civil penalties are an alternative to prosecution and the same criminal standard of proof, that is beyond reasonable doubt, is required. Before taking formal action officers must be satisfied that this is appropriate with respect to the relevant enforcement policies and that if the case was to be prosecuted in a magistrates court there would be a realistic prospect of conviction. This will be determined considering the two stages of the Full Code Test within the Crown Prosecution Service's "Code for Crown Prosecutors" to review both the sufficiency of evidence and whether it is in the public interest to impose a penalty. Due regard will also be given to any potential defences and it may be appropriate to undertake an interview under caution in accordance with the Police and Criminal Evidence Act 1984 (PACE) to explore this.

### **Determining whether to issue a civil penalty or to prosecute**

When the Council is satisfied that a relevant offence has been committed and that it is in the public interest to proceed formally we will decide whether to prosecute or issue a civil penalty.

In deciding whether to impose a civil penalty or to proceed to prosecution we will take into consideration factors including the seriousness of the offence; the culpability of the offender; the harm, or potential harm to tenants; and the impact on the wider community.

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The following, while not exhaustive, are situations where prosecution may be more appropriate;

- the offence was very serious, for example failure to comply with an improvement notice where there was significant risk of injury or loss of life and/or
- the offender has been prosecuted or previously has been issued with civil penalties for similar Housing Act offences.

The following, while not exhaustive, are situations where the issuing of a civil penalty may be more appropriate:

- no history of previous non-compliance with relevant legislation
- no previous convictions of relevant offences
- breaches of management regulations or licence conditions where there was no imminent risk of injury or loss of life
- the offence was committed as a result of a genuine mistake or misunderstanding, although this will be balanced against the seriousness of the offence
- prosecution is likely to have a serious adverse effect upon the offender's physical or mental wellbeing, although this will be balanced against the seriousness of the offence.

### **Determining the level of civil penalty to be imposed**

The Housing and Planning Act 2016 specifies that the amount of penalty that can be imposed is to be determined by the Council but must not be more than the legal set maximum (currently £30,000 per offence). The Council has developed this policy on determining the appropriate level of civil penalties allowing for each specific case to be determined against the recommended factors. The maximum penalty is reserved for the worst offenders. The guidance states that the penalty should be a punishment which has a real economic impact to the offender.

To aid with consistency we have worked with the other Herts and Beds Councils and developed a financial penalty matrix that takes into account relevant matters including, but not limited to:

- the culpability of the offender
- that the penalty should remove any financial benefit obtained as a result of the commission of the offence
- the severity and seriousness of the offence and the past history of the offender
- the harm, or potential harm, caused to the tenant.

Finally the penalty should act as a deterrent to repeating the offence and to others from committing similar offences. The image below gives an indication of the matrix which is included in full as Appendix A to this policy.

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## Appendix 1: Financial Penalty Matrix

Offender Name:			Ref:		
Factors	Score = 1	Score = 5	Score = 10	Score = 15	Score = 20
<b>1. Culpability</b>	Low; Offence committed with little or no fault on the part of the responsible person	Low/Medium; An awareness of the legal framework and systems in place to ensure compliance but these were not implemented	Medium/High; despite an awareness of the legal responsibilities the responsible person failed to put in place suitable systems in place to ensure compliance	High; There was some awareness of the law but the responsible person still allowed/committed the offence.	Very High; intentional breach by responsible person. For example non compliance with a Formal Notice
<b>2. Removal of Financial Incentive</b>	No Significant assets. No or very low financial profit made by offender.	Little asset value. Little profit made by offender.	Small portfolio landlord (between 2-3 properties). Low profit made by offender.	Medium portfolio landlord (between 4-5 properties) or a small Managing Agent. Medium asset value. Medium profit made by offender.	Large portfolio landlord (over 5 properties) or a medium to large Managing Agent. Large asset value. Large profit made by offender.
<b>3. Offence &amp; History</b>	No previous enforcement history. Single low level offence.	Minor previous enforcement. Single offence.	Recent second time offender. Offence has moderate severity or small but frequent impact(s).	Multiple offender. Ongoing offences of moderate to large severity or a single instance of a very severe offence or multiple breaches.	Serial offender. Multiple enforcement over recent times. Continuing serious offence.
<b>4. Harm ,or potential harm, to Tenant(s)</b>	Very little or no harm caused. No vulnerable occupants. Tenant provides no information on impact.	Likely some low level health/harm risk(s) to occupant. No vulnerable occupants. Tenant provides poor quality information on impact.	Likely moderate level health/harm risk(s) to occupant. Vulnerable occupants potentially exposed. Tenant provides some information on impact but with no primary or secondary.	High level of health/harm risk(s) to occupant. Tenant(s) will be affected frequently or by occasional high impact occurrences. Vulnerable occupants more than likely exposed. Small HMO (3-4 occupants), multiple occupants exposed. Tenant provides good information on impact with primary evidence (e.g. prescription drugs present, clear signs of poor health witnessed) but no secondary evidence.	Obvious high level health/harm risk(s) and evidence that tenant(s) are badly and/or continually affected. Multiple vulnerable occupants exposed. Large HMO (5+ occupants), multiple occupants exposed. Tenant provides excellent information on impact with primary and secondary evidence provided (e.g. medical, social services reports).
<b>Total Penalty (£):</b>					<b>Total Score</b>
		£	-		
<b>Final penalty after mitigating or aggravating</b>					
<b>Reasoning (if changed)</b>					

Figure 1 - Financial Penalty Matrix

### Factors when considering culpability

In determining the level of culpability we will have regard to the following:

- whether there was the intention to commit the offence
- whether the offence has resulted from reckless behaviour for example where the offender had some appreciation of the effects their actions would have but proceeded regardless
- whether the offender had knowledge of the risks of harm that their actions could cause
- whether the offender's actions are considered to be negligent.

### Factors when considering the harm, or potential harm, caused

In determining the level of harm we will have regard to:

- the persons affected in terms of physical injury, negative impacts on their health, and any psychological distress
- any vulnerability of the persons affected
- the number of persons affected
- the community in terms of economic loss and the effects on public health, public complaints and the effects of poor housing condition on the neighbourhood.



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The degree of harm will depend on the personal characteristics and circumstances of the person affected, normally the tenant. Where no actual harm has resulted from the commission of the offence we will consider the relative danger and the potential of harm that could have resulted as a result of the offences.

The use of the matrix then generates a score which corresponds to a representative penalty as follows:

Score	Penalty	Possible situation
1-5	£250	Landlord failing to provide certain certificates required under HMO Management Regulations or HMO licence
6-10	£500	
11-20	£750	
21-30	£1,000	
31-40	£2,500	Failure to comply with Housing Act Improvement Notice for Category 1 hazard having previously committed a minor offence
41-55	£5,000	
56-65	10,000	
66-75	£15,000	Portfolio landlord evading HMO licensing and non-compliance with Improvement notices for Category 1 hazards
76-85	£20,000	
86-95	£25,000	
96-100	£30,000	

### Aggravating Factors

The amount of penalty can be increased into the next band if there are any relevant aggravating factors.

### Multiple Offences

Only one penalty can be imposed in respect of the same offence. However, where we are satisfied that more than one offence has been committed multiple civil penalties can be issued, for example for multiple breaches of the Management Regulations in a House in Multiple Occupation. However, we will consider whether the issuing of multiple penalties would result in an excessive cumulative amount and this policy gives discretion in this situation. For instance we could decide that it is appropriate to issue a civil penalty for the most significant offences and warn the offender that continuation or repeating of the other offences may result in further formal enforcement action being taken.

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## **Determining the decision**

The decision to continue and serve a civil penalty will be made by the Service Manager - Environmental Health in consultation with the Head of Housing and Health.

## **The process for imposing a civil penalty**

Where we have determined that a civil penalty as opposed to prosecution is the appropriate course of action we will follow the following process (references to days are to calendar days):

- 1) a 'Notice of Intent' will be served on the person(s) responsible for the commission of the offence(s). The notice will specify:
  - the amount of the proposed penalty
  - the reasons for the proposed penalty
  - information relating to the right of the recipient to make representation to the Council
- 2) the recipient of the Notice is given 28 days to make representation to the Council regarding the proposal to impose a civil penalty
- 3) following the 28 day period we will decide whether to impose the proposed civil penalty and the appropriate value. This could be varied taking into account any representations received from the recipients
- 4) if we decide that a civil penalty is still appropriate a Final Notice will be served which will specify:
  - the amount of the penalty
  - the reasons for imposing the penalty
  - information on how and when to pay the penalty
  - information regarding the right of appeal against the imposition of a civil penalty to the First Tier Tribunal
  - the consequences of failure to comply with the notice.

## **Consequences of non-payment and miscellaneous provisions**

If the landlord or property agent fails to pay a civil penalty, the Council will seek to recover the penalty by order from a County Court including the costs incurred in taking such action where deemed appropriate.

The Council may at any time withdraw any notices it has served or amend the amount of penalty specified. This would be decided by the Service Manager – Environmental Health in consultation with the Head of Housing and Health.

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## **Links with the National Database of ‘Rogue Landlords and Letting Agents’**

Where a landlord receives two or more civil penalties, from East Herts Council, over a rolling 12 month period the Council may make an entry on the National Database of ‘Rogue Landlords and Letting agents’ in accordance with Housing & Planning Act 2016 s30. When considering if this is an appropriate course of action the Council will have regard to its policy on making an entry to the database of rogue landlords and property agents under the Housing and Planning Act 2016 (Policy 4 in this document) and to the statutory guidance issued by the MHCLG in April 2018 or any updated statutory guidance.

Appendix A – Financial Penalty Matrix

(see excel file Financial Penalty Matrix)

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## **Policy 2 - The application for a Rent Repayment Order under the Housing Act 2004 and the Housing and Planning Act 2016**

### **Introduction**

The Housing and Planning Act 2016 has extended the powers introduced in the Housing Act 2004 to seek a Rent Repayment Order against landlords in the private rented sector for a range of offences. A Rent Repayment Order is an order made by the First-tier Tribunal requiring a landlord to repay a specified amount of rent to either the tenant or the local housing authority depending on whether the rent was paid by the tenant or through a benefit route. This policy supports the use of this enforcement option and specifically identifies the factors to consider when determining whether to apply for a Rent Repayment Order and the level of rent to be recovered.

Statutory guidance has been issued by Ministry for Housing, Communities and Local Government (MHCLG) under section 41 of the Housing and Planning Act 2016. Local housing authorities must have regard to this guidance in the exercise of their functions in respect of Rent Repayment Order. This guidance can be accessed [here](#).

### **Specified offences for which a Rent Repayment Order can be imposed**

The specified offences appropriate to East Hertfordshire District Council are:

- control or management of unlicensed HMO – Housing Act 2004 Section 72
- failing to comply with an Improvement Notice - Housing Act 2004 Section 30
- failure to comply with a Prohibition Order - Housing Act 2004 Section 32
- breach of a banning order – Housing and Planning Act 2016 Section 21
- using violence to secure entry to a property - Criminal Law Act 1977 section 6
- illegal eviction or harassment of the occupiers of a property - Protection from Eviction Act 1977 section 1.

An application for a Rent Repayment Order can be made when the landlord has committed an offence, whether or not a landlord has been prosecuted or received a civil penalty for that offence.

It should be noted that the Council can both impose a Civil Penalty and apply for a Rent Repayment Order for certain offences. Both Civil Penalties and Rent Repayment Orders are available for the following offences under the Housing Act 2004:

- failure to comply with an Improvement Notice (section 30)
- offences in relation to licensing of Houses of Multiple Occupation (section 72(1))
- offences in relation to licensing of houses under Part 3 of the Act (section 95(1)).

### **Who can apply for a Rent Repayment Order?**

Either a tenant or the Council can apply for a Rent Repayment Order.

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Where a landlord has been convicted of an appropriate offence the Council will consider making an application.

Where a landlord has committed an offence but has not been prosecuted and housing benefit or universal credit has been paid (to the tenant or directly to the landlord) the Council will consider making an application.

The amount of award to be paid to the tenant and/or to the Council where benefit has been paid is determined using a formula given in the MHCLG statutory guidance.

Where a landlord has committed an offence but has not been prosecuted and the tenant has not been in receipt of benefits the Council will consider supporting the tenant in making a claim for rent repayment, subject to the appropriate fee where applicable, and may decide to make the application on their behalf.

### **Determining whether to apply for a Rent Repayment Order**

Where we become aware that a landlord has been convicted of any of the offences for which a Rent Repayment Order can be imposed and where the offence was committed in East Herts, we will consider applying for a Rent Repayment Order. Where there has been no conviction but we are confident that there would be a realistic prospect of the order being granted we will consider making an application. In deciding whether it is appropriate to apply for a Rent Repayment Order for the commission of a relevant offence, we will consider each case individually taking into account:

- the seriousness of the offence
- the culpability of the offender
- the harm, or potential harm to tenants
- the impact on the wider community
- the deterrent effect on the landlord and other landlords.

The following, while not exhaustive, are situations where an application for a Rent Repayment Order may be appropriate:

- the offender has had a civil penalty imposed or was prosecuted and convicted for an offence with actual or significant risk of harm to tenants or significant impact on the community
- the offender has had a civil penalty imposed or was prosecuted and convicted for an offence and has made profit or savings of costs from the action or omission involved in the offence
- the offender has been prosecuted or previously has been issued with Civil Penalties for similar Housing Act offences.

### **Burden of proof**

A criminal standard of proof is required. This means that the First-tier Tribunal must be satisfied beyond reasonable doubt that the landlord has committed the offence or the landlord has been convicted in the courts of the offence for which the Rent Repayment Order application is being made.

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Before applying for a Rent Repayment Order, officers must be satisfied that this is appropriate with respect to the relevant Enforcement Policies and that, if the offence leading to the application was to be prosecuted in a magistrates' court, there would be a realistic prospect of conviction. This will be determined considering the two stages of the Full Code Test within the Crown Prosecution Service's "Code for Crown Prosecutors" to review both the sufficiency of evidence and whether it is in the public interest to impose a rent repayment order. Due regard must also be given to any potential defences and it may be appropriate to undertake an interview under caution in accordance with the Police and Criminal Evidence Act 1984 (PACE) to explore this.

### **Determining the amount of rent the Council will seek to recover**

Rent repayment orders should have a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities. Where the offender has been convicted of a relevant offence the First Tier Tribunal must award the maximum amount, capped at 12 months' rent to be repaid. Where the offender has not been convicted the Council will determine an amount up to the maximum that it will seek to be repaid taking into account the published guidance.

Factors that the Council will consider include:

- the conduct of the landlord and tenant
- the financial circumstances of the landlord
- whether the landlord has previously been convicted of similar offences
- the level appropriate to deter the landlord from repeating the offence and to dissuade others from offending
- the level necessary to remove any financial benefit the offender may have obtained as a result of committing the offence.

### **Determining the decision to apply**

The decision to continue and apply for a Rent Repayment Order (and where necessary to respond to an appeal) will be made by the Service Manager - Environmental Health in consultation with the Head of Housing and Health.

### **Use of money recovered**

(This excludes any amount payable to the tenant.)

An amount payable to East Herts under a Rent Repayment Order does not constitute an amount of Universal Credit/benefits recovered. The Council may apply any amount recovered under a Rent Repayment Order to meet the costs and expenses (whether administrative or legal) incurred in, or associated with, carrying out any of its enforcement functions in relation to the private rented sector. Any remaining amount remains with the council.

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## **The Process for the Council applying for a Rent Repayment Order**

Where it has been determined that an application for a Rent Repayment Order will be made the Council will follow the process set out in the legislation (references to days are to calendar days):

- 1) a notice of our intention to apply to the First Tier Tribunal for a Rent Repayment Order will be served on the landlord. The notice will specify:
  - the reasons for the application
  - the amount that we are seeking to recover
  - the right of the recipient to make representation to the Council giving a period of at least 28 days for the recipient do so
- 2) following the notice period we will consider any representations made and will decide whether to continue and make the application to the First-tier Tribunal
- 3) After submitting an application we will comply with any Directions of the First-tier Tribunal and where necessary the case for the Council will be made at a hearing with the support of the Councils Legal Services team
- 4) Following the decision of the First-tier Tribunal to award a Rent Repayment Order the landlord or agent may decide to appeal to the Upper Tribunal. Officers will review the Appeal submission and determine the Councils response. Confirmation of such response will be made by the Service Manager - Environmental Health in consultation with the Head of Housing and Health.

## **Consequences of non-payment and miscellaneous provisions**

Where a landlord fails to pay a Rent Repayment Order awarded to the Council, including after an appeal has been finally determined and the order upheld, we will seek to recover the penalty by order from a County Court including the costs incurred in taking such action where deemed appropriate.

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## **Policy 3 - The application for a banning order under the Housing and Planning Act 2016**

### **Introduction**

The Housing and Planning Act 2016 introduced powers for a local housing authority to seek a banning order against landlords or property agents in the private rented sector for a range of offences. A banning order is an order made by the First-tier Tribunal banning a landlord or agent from

- letting accommodation in England
- engaging in letting agency work in England
- engaging in property management work in England

Breach of a banning order is a criminal offence.

This policy supports the use of this enforcement option and specifically considers the factors to consider when determining whether to apply for a banning order and when recommending the length of any banning order.

This policy takes account of the guidance issued by the Ministry for Housing, Communities and Local Government. This guidance can be accessed [here](#).

### **Offences for which a Banning Order can be imposed**

The specified offences appropriate to East Hertfordshire District Council are given in [The Housing and Planning Act 2016 \(Banning Order Offences\) Regulations 2018](#) they include both specific housing related offences and a number of offences not directly related to housing, such as fraud, sexual assault, misuse of drugs, theft and stalking

A banning order can only be applied for when the landlord or agent has been convicted of one of the specified offences. They can only be considered for offences committed after the introduction (April 2018) and if applying, a notice of intention to apply must be served within six months of the day that the landlord or agent was convicted.

### **Determining whether to apply for a Banning Order**

Where the Council has successfully prosecuted a landlord or where we are made aware that a landlord or agent has been prosecuted by the Police or other enforcement agencies for a banning order offence we will consider making an application. A banning order must be for a minimum period of 12 months. There is no statutory maximum period for a banning order. Whilst the Council will recommend the period of a banning order the actual period is determined by the First Tier Tribunal.

As recommended by the guidance, we will consider the following factors when deciding whether to apply for a banning order and when recommending the period for any banning order:



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## **The seriousness of the offence**

All banning order offences are serious. We will take into account 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?

## **Previous convictions/rogue landlord database**

We will check the rogue landlord database in order to establish whether a landlord or agent 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 and agents are running businesses 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 noncompliance could also be taken into account.

Under Section 19 of the act the Council can require information from a landlord or agent to support determination of whether to apply for a banning order. We will typically use this provision to request details of other private sector rental properties that the landlord or agent has an interest in and may use this information to check with other authorities for any other relevant information.

As indicated by the guidance we 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 will include;

## **The 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. 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**

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.

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## **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.

## **Confirming the Decision to Apply**

The decision to continue and apply for a Banning Order (and where necessary to respond to an appeal) will be made by the Service Manager - Environmental Health in consultation with the Head of Housing and Health.

## **The Process for applying for a banning order**

Where it has been determined that an application for a banning Order will be made the Council will follow the process set out in the legislation:

- 1) a notice of our intention to apply to the First Tier Tribunal for a banning order will be served on the landlord or agent. This notice will specify:
  - the reasons we are applying for the banning order
  - the proposed length of the ban
  - the right of the recipient to make representation to the Council giving a period of at least 28 days for the recipient do so
- 2) following the notice period we will consider any representations made and will decide whether to continue and make the application to the First-tier Tribunal
- 3) After submitting an application we will comply with any Directions of the First-tier Tribunal and where necessary the case for the Council will be made at a hearing with the support of the Councils Legal Services team
- 4) Following the decision of the First-tier Tribunal to make a Banning Order the landlord or agent may decide to appeal to the Upper Tribunal. Officers will review the Appeal submission and determine the Councils response. Confirmation of such response will be made by the Service Manager - Environmental Health in consultation with the Head of Housing and Health.

## **Implications following the making of a banning order.**

A person who is the subject of a banning order may no longer be involved in letting accommodation in England, engaging in letting agency work in England or engaging in property management work in England. They are also not suitable to hold an HMO licence. The First Tier tribunal may make some exceptions to the order for example allowing a period of time for an agent to wind down their current business or to allow a landlord to continue to let a property until the end of existing tenancies.

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This Council must make an entry into the Rogue Landlords database for any landlord or organisation that has received a banning order. We will also consider publicising any banning orders made taking into account the encouragement to do so in the guidance but also considering the Ministry of Justice guidance that sets out the factors a local housing authority should consider when deciding whether to publicise sentencing outcomes. Where we are aware of the landlord's involvement in properties in other authorities we will inform those other authorities.

Where the landlord/organisation holds an HMO licence or is the manager of an HMO we will revoke the licence and either work with the landlord to issue a new licence with a suitable licence holder or will consider making an interim management order in order to take over the management of any 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 also to ensure that a property is still available to rent, particularly in areas of high demand.

Breach of a banning order is a criminal offence and where we have evidence that a landlord is acting in breach of a banning order we will consider either prosecution or the use of a civil penalty in accordance with our Civil penalties policy. We will also consider making a special interim management order for any properties let in breach of a banning order.

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## **Policy 4 - Making an entry to the database of rogue landlords and property agents under the Housing and Planning Act 2016**

### **Introduction**

The Housing and Planning Act 2016 (“the Act”) introduced a range of measures to help local housing authorities tackle rogue landlords and drive up standards in the private rented sector. These measures include establishing and operating a database of rogue landlords and property agents (the database).

The database is a new tool for local housing authorities in England to keep track of rogue landlords and property agents. The database is designed and hosted by MHCLG and authorised users will be able to view all entries on the database, including those made by other local housing authorities. This will support work to tackle some of the worst offenders, especially those operating across council boundaries.

Local housing authorities provide input to the database and are responsible for maintaining the entries they make.

This policy supports the use of this enforcement option and specifically considers the factors to consider when determining whether make an entry to the database and in determining the period for which the entry will remain.

This policy takes account of the guidance issued by the Ministry for Housing, Communities and Local Government. This guidance can be accessed [here](#).

### **Circumstances under which an entry to the Database can be made**

Where a person or organisation has received a Banning Order the Council must make an entry onto the database (see our Policy on the application for a banning order under the Housing and Planning Act 2016).

The Council may also make entries for a person who has:

- been convicted of a banning order offence that was committed at a time when the person was a residential landlord or property agent; and/or
- received two or more financial penalties in respect of a banning order offence within a period of 12 months committed at a time when the person was a residential landlord or a property agent.

Before making a discretionary entry to the database (under section 30 of the Housing and Planning Act), we will serve on the person a decision notice and this notice must be served no later than 6 months after the person was either convicted of the banning order offence or received the second of the financial penalties to which the notice relates

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## **Determining whether to make an entry to the Database**

In addition to making an entry where a landlord has received a Banning Order this Council will consider whether making 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.

Government has issued statutory guidance regarding the criteria that must be made in deciding whether to make an entry and therefore the following factors will be taken into account :

### **Severity of the offence**

All Banning Order offences are serious, where convicted of an offence we will take into account the sentence imposed by the Court. Where the Council has imposed civil penalties we will review the criteria used for determining the level of the penalty and the level of penalty imposed.

### **Mitigating factors**

In cases where there are mitigating factors, the Council will decide on a case by case basis if these are strong enough to justify a decision not to record a person's details on the database.

### **Culpability and serial offending**

Where there is a clear history of the landlord knowingly committing banning order offences and/or non-compliance, there is a stronger justification for making an entry on the database.

The Council will also consider the deterrent effect on both the offender and other landlords of committing banning order offences in the future.

## **Determining the period an entry will remain on the Database**

An entry made where a landlord has received a Banning Order must be maintained for the period for which the banning order has effect and must then be removed.

For discretionary entries and the guidance specifies the following criteria to consider when deciding the period for which the entry will remain on the database (the minimum period for an entry is two years):

### **Severity of offence**

The severity of the offence and related factors, such as whether there have been several offences over a period of time, will be considered.

### **Mitigating factors**

These could include a genuine one-off mistake, personal issues such as ill-health or a recent bereavement. Where this is the case, the Council may decide to specify a shorter period of time.

### **Culpability and serial offending**

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A track record of serial offending or where the offender knew, or ought to have known, that they were in breach of their responsibilities may suggest a longer time period would be appropriate.

## **Deter the offender from repeating the offence**

The data should be retained on the database for a reasonable period of time so that it is a genuine deterrent to further offences.

## **Confirming the Decision to make an entry to the database**

The decision to continue and make an entry to the database will be made by the Service Manager - Environmental Health in consultation with the Head of Housing and Health.

## **The Process for making an entry to the database**

Where it has been determined that an entry to the database will be made the Council will follow the process set out in the legislation (references to days are to calendar days):

- 1) Before making a discretionary entry to the database (under section 30 of the Housing and Planning Act), a decision notice will be served on the person. The decision notice will specify:
  - the reasons for our decision
  - the period for which the person's entry will be kept on the database
  - information relating to the right of the recipient appeal our decision to the First Tier Tribunal
- 2) If no appeal has been made within 21 days of serving the decision notice, the Senior Officer – Environmental Health (Residential) will make the entry in the database by submitting the information required to the MHCLG.
- 3) If we are notified by the First-tier Tribunal that an appeal has been made we will not make the entry to the database until the appeal has been determined or withdrawn and there is no possibility of further appeal (ignoring the possibility of an appeal out of time).
- 4) For an appeal the Council will follow directions of the First-tier Tribunal and where necessary the case for the Council will be made at a hearing with the support of the Council's Legal Services team.
- 5) On an appeal the tribunal may confirm, vary or cancel the decision notice. Where confirmed or varied the entry will be made in the Database once any period for further appeal has passed.
- 6) Any decision by the Council to vary or remove an entry to the database will be made in accordance with sections 36 and 37 of the Act.

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- 7) The entry will be removed from the Database on the specified date or any amended date determined following a decision to vary or remove the entry.
- 8) The Council will update information on the Database when it becomes aware that the information recorded there has changed.

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## Glossary of Terms – Housing Enforcement

<a href="#">Housing Act 2004</a>	<p>This act introduced significant changes to the way Housing Standards were assessed and enforced. It introduced the Housing Health and Rating System (HHSRS) and HMO Licensing. This Act also introduced Residential Property Tribunals (now First Tier Tribunals) as an appeal route for housing Notices or appeals against HMO licensing decisions.</p>
<a href="#">The Management of Houses in Multiple Occupation (England) Regulations 2006</a>	<p>These regulations frequently referred to as the HMO Management Regs impose duties on managers of houses in multiple occupation (“HMOs”) and corresponding duties on occupants. The manager’s duties include the duty to take safety measures, the duty to maintain the water supply and drainage, to supply and maintain gas and electricity and have tested regularly gas and electricity installations, the duty to maintain common parts, fixtures and fittings and living accommodation. The Regulations set out what occupiers must do with a view to assisting managers to undertake their duties.</p>
<a href="#">Housing and Planning Act 2016</a>	<p>Part 2 of this Act provides greater powers for local authorities to identify and tackle rogue landlords and property agents</p>
<p>HHSRS</p>	<p>The Housing Health and Safety Rating System (HHSRS) was introduced by the <i>Housing Act 2004</i> and has been in force since April 2006. It is the main system for assessing and enforcing housing standards in England and Wales. The HHSRS is a risk based assessment tool which is used to assess the risk (the likelihood and severity) of a hazard in residential housing to the health and safety of occupants or visitors. The HHSRS is tenure neutral; it can be used to assess hazards in private and social rented housing and also in owner occupied housing.</p>
<p>Improvement Notice (Housing Act)</p>	<p>An Improvement Notice under the Housing Act Part 1 (s11 or s12) is one of the enforcement routes available to the Council where significant hazards are found in a residential dwelling. The notice will explain the nature of the hazard and give a schedule of works and a date by when these works must be completed. Failure to comply with an Improvement is an offence.</p>



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<a href="#">Housing Act 2004</a>	This act introduced significant changes to the way Housing Standards were assessed and enforced. It introduced the Housing Health and Rating System (HHSRS) and HMO Licensing. This Act also introduced Residential Property Tribunals (now First Tier Tribunals) as an appeal route for housing Notices or appeals against HMO licensing decisions.
First Tier Tribunal Property Chamber	The Housing Act 2004 changed the need to use the magistrates' courts for various appeals of notices and applications relating to housing and instead moved these to The First tier Tribunal Property Chamber (Residential Property). Which whilst still within HM Courts and Tribunal Service this was intended to give a speedier and more appropriate process in many housing related situations. More information about the process can be found <a href="#">here</a>
Upper Tribunal	Appeals against a decision from the First Tier Tribunal Property Chamber is to the Upper Tribunal (Lands Chamber)

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## Key reference documents

### Legislation

- [Housing and Planning Act 2016](http://www.legislation.gov.uk/ukpga/2016/22/part/2/chapter/2/enacted)  
<http://www.legislation.gov.uk/ukpga/2016/22/part/2/chapter/2/enacted>
- [Housing Act 2004](https://www.legislation.gov.uk/ukpga/2004/34/contents) <https://www.legislation.gov.uk/ukpga/2004/34/contents>
- [The Management of Houses in Multiple Occupation \(England\) Regulations 2006](http://www.legislation.gov.uk/uksi/2006/372/contents/made) <http://www.legislation.gov.uk/uksi/2006/372/contents/made>

### Guidance for Local Authorities:

- [Civil penalties under the Housing and Planning Act 2016](#)
- [Rent repayment orders under the Housing and Planning Act 2016](#)
- [Banning Order Offences under the Housing and Planning Act 2016](#)
- [Database of rogue landlords and property agents under the Housing and Planning Act 2016](#)