



Bristol City Council – Housing and Landlord Services

Private Housing Service Policy - Rogue landlord database and time period of a banning order.

Version 1

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1. Introduction and Legal framework

The Council and the Government are clear that the 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.

The Housing and Planning Act 2016 introduced a range of measures to crack down on rogue landlords. These include banning orders for the most serious offender; and 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.

This policy explains how Bristol City Council (BCC) will discharge its duty and use the powers in [the Housing and Planning Act 2016](#) (the Act) to determine whether to add a landlord or property agents details to the [National Database of Rogue Landlords and Property Agents](#) (the database).

The database was established and is operated by the Secretary of State, but it is Local Housing Authorities (LHA's) in England that are legally¹ responsible for maintaining and updating the content of the database. Only LHA's and the Secretary of State have access to the database and may only use the information in the ways defined in Section 39 of the Housing Planning Act 2016.

This policy also explains how the Council will decide how long a Banning Order should be made for when it applies for a Banning Order against an agent or landlord under the Act.

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.

When BCC has made the decision to exercise its powers to apply to a First Tier Tribunal to ban a person who has committed a banning order offence. This policy provides details of the factors the Council will take into account when deciding the duration of that banning order when making its application.

2. Aims and Objectives

To document the factors that this Authority will follow to comply with its duties and when it exercises its powers, to make, update or remove an entry from the database.

¹ Housing and Planning Act 2016 – Section 34 - Updating

The policy also documents the procedure BCC will follow when determining the length of time of a Banning Order, when making a Banning Order application.

This policy will be applied on a case by case basis.

The policy takes into account the statutory [guidance](#)² issued by the Ministry of Housing, Communities and Local Government.

The policy also takes into account [non-statutory guidance](#)³ 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.

The policy would be read in conjunction with Bristol City Council's Policy to determine applications for a Banning Order⁴ and Private Housing Enforcement Policy (revised 2017)⁵.

² Database of rogue landlords and property agents under the Housing and Planning Act 2016
Statutory guidance for Local Housing Authorities - 2018- Ministry of Housing, Communities and Local Government

³ Guidance for Local Housing Authorities - Banning Order Offences under the Housing and Planning Act 2016

⁴ [Policy to determine application for a Banning Order \(bristol.gov.uk\)](#)

⁵ [Private housing policies and performance - bristol.gov.uk](#)

3. The Policy

When the Council *must* make an entry on the Database.

The Council **must** make an entry on the database in respect of a person if a banning order has been made against that person.

When the Council *may* decide to make an entry on the Database.

A Local Authority in England **may** decide to exercise its powers to make an entry on the database in respect of a residential landlord or a property agent: -

- if they have been convicted of a banning order offence⁶ or
- received a financial penalty⁷ in respect of a banning order offence at least twice within a period of 12 months.

A. What the Council will consider when deciding to make an entry on the Database.

The statutory guidance sets out the following criteria which the Council will consider: -

Severity of the offence.

The more serious the offence, the stronger the justification for including the offender on the database.

Mitigating factors.

In cases where a less serious offence has been committed and/or there are mitigating factors, local housing authorities may decide not to make an entry on the database. Mitigating factors could include personal issues, for example, health problems or a recent bereavement. It is for local housing authorities to decide on a case by case basis whether mitigating factors are strong enough to justify a decision not to record a person's details on the database.

Culpability and serial offending.

Whether the offender has a history of failing to comply with their obligations. Where there is a clear history of knowingly committing banning order offences and/or non-compliance, the stronger the justification for making an entry on the database.

⁶ [The Housing and Planning Act 2016 \(Banning Order Offences\) Regulations 2018](#)

⁷ [The Housing Act 2004 – Financial penalties for certain housing offences in England.](#)

Conversely, where it is a first offence and/or where it is a relatively minor, a local housing authority may decide that it is not appropriate to record a person's information on the database.

Deter the offender from repeating the offence.

The ultimate goal is to prevent landlords and property agents, who have failed to comply with all of their legal responsibilities, repeating the offence. An important part of deterrence is the realisation by the offender that (a) the local housing authority has the tools and is proactive in recording the details of rogue landlord and property agents and (b) that they will be unable to simply move from one local housing authority to another and repeat the same offences as the information will be available to other local housing authorities. It will also encourage joint working between local housing authorities who will be able to establish whether rogue landlords operate across their local housing authority areas. For example, including someone on the database might be an important deterrent if they rent out property in multiple local housing authority areas, as inclusion on the database will make their information available to other local housing authorities.

Deter others from committing similar offences.

Knowing that they may be included on the database if they are convicted of a banning order offence or receive multiple financial penalties, may deter some landlords from committing banning order offences in the first place.

B. What the Council will consider when deciding how long an entry should remain on the database or determining the length of a Banning Order.

Where a banning order has been made, the entry on the database must be maintained for the period for which the banning order has effect and must then be removed.

If the Council decides to use its power to make an entry on the database, it cannot be for less than two years.⁸ There is no maximum length of time an entry may remain on the database.

The statutory guidance for determining how long an entry to the database made on discretionary grounds should remain, lists a number of factors that must be considered. These factors are listed below.

The non-statutory guidance for determining the length of a banning order provides a similar list and have been amalgamated into the list below.

⁸ [Section 31 Housing and Planning Act 2016](#)

Severity of offence.

The severity of the offence and related factors, such as whether there have been several offences over a period of time, should be considered. Where an offence is particularly serious and/or there have been several previous offences; and/or the offence(s) have been committed over a period of time, then the decision notice should specify a longer period of time. Where one or more of those factors are absent, it may be appropriate to specify a shorter period.

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, a local housing authority may decide to specify a shorter period of time in the decision notice.

Culpability and serial offending.

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.

The period that an entry will be made for will be decided based upon a consideration of the individual circumstances and having regard to the statutory guidance and the following additional matters.

- Any aggravating and mitigating factors considered relevant to the banning order offence(s) committed
- The type of offence
- The sentence imposed by the court, considered in light of the sentencing guidance and including any comments made in the sentencing
- The size of any civil penalty imposed for the offence
- The degree to which the offender appears to have learnt a lesson(s) since committing the banning order offence(s) and has changed their compliance behaviour

C. Determining the length of time for an entry on the database or the duration of a Banning Order.

When BCC has made the decision to exercise its powers under the Act to make an entry on the database, it will use the following steps and considerations to determine the length of time that the subject should be added to the database.

After a Banning Order has been made, an entry must be made on the database and it must be maintained for the period for which the banning order has effect and must then be removed⁹.

When BCC has made the decision to make an application for a Banning Order under the Act, it will use the following steps and considerations to determine the length of time of the Banning Order it is applying for.

Step 1

The effect of “Severity of offence” and the “Culpability and serial offending” will be considered by using the matrix below to determine an initial length of time that an entry should remain on the database.

		Severity of offence.		
		Low	Medium	High
Culpability and serial offending	Very High	10yrs	10yrs	15yrs or more
	High	5yrs	10yrs	10yrs
	Medium	2yrs	5yrs	10yrs
	Low	2yrs	2yrs	5yrs

Step 2

Apply any mitigation presented in relation to the initial calculation and recalculate as necessary.

Step 3

Determine if the current outcome is of sufficient length to deter the offender from repeating the offence and recalculate as necessary.

The calculated timescale of an entry on the database cannot be less than 2 years¹ as the minimum timescale for an entry on the database for a person convicted of a banning order offence is two years beginning on the day that the entry is made¹⁰.

The calculated timescale for the duration of a Banning Order cannot be less than 12 months¹¹.

⁹ Housing and Planning Act 2016 – Section 29

¹⁰ Housing and Planning Act 2016 – Section 31

¹¹ Section 17 – Duration and effect of banning order – Housing and Planning Act 2016

Indefinite Bans

The matrix in step one allows for a banning of 15 years or more to be considered. In the very worst cases Bristol City Council may apply for an indefinite ban.

The Council makes clear that under this policy it can apply for an indefinite ban.

It will be for the Tribunal to decide if an indefinite ban should be imposed.

Extracts of Banning Orders decisions made by First Tier Tribunals provided in Appendix 2.

When the Council *must* remove or vary an entry from the Database.

This Council **must** remove an entry it made if **all** the convictions on which the entry was based have been overturned on appeal or if or ordered to do so by the First Tier Tribunal.

When the Council *may* decide to remove or vary an entry from the Database.

In some circumstances¹² the Council has the power to remove or vary an entry on the database including reducing the period for which the entry it made must be maintained.

In those circumstances, the Council will consider the same factors set out in this policy to be used, when making the decision whether or not to make an entry on the database and the same factors of how long an entry shall remain on the database.

Rights of appeal.

The procedures the Council must follow are set out in the Act. There are legal rights of appeal set out to the First Tier Tribunal in relation to decisions the Council makes to use its powers in relation to the database.

4. Equalities and diversity

We will act sensitively towards the diverse needs of individuals and communities and we will take positive action to reduce discrimination and harassment.

An Equalities Impact Assessment has been carried out and agreed by the Equalities Team.

¹² Section 36 - Removal or variation of entries - Housing and Planning Act 2016.

5. Roles and responsibilities and authority

The Director of Housing and Landlord Services and his authorised officers are responsible for the implementation of this policy.

6. Monitoring, review and evaluation

The content of this policy will be reviewed where necessary.

7. Appendix 1 – Table of Banning Order Offences.

At the date of writing, 20 October 2021 the following table is the list of Banning Order offences as described by The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018.

Statute	Provision	Offence
Protection of Eviction Act 1977	Section 1(2), (3) and (3A)	Unlawful eviction and harassment of occupier
Criminal Law Act 1977	Section 6(1)	Violence for securing entry
Housing Act 2004	Section 30(1)	Failing to comply with an improvement notice
	Section 32(1)	Failing to comply with a prohibition order
	Section 72(1), (2) and (3)	Offences in relation to licensing of Houses in Multiple Occupation
	Section 95(1) and (2)	Offences in relation to licensing of houses under Part 3
	Section 139(7)	Contravention of an overcrowding notice
	Section 234(3)	Failure to comply with management regulations in respect of Houses in Multiple Occupation
	Section 238(1)	False or misleading information
Regulatory Reform (Fire Safety) Act 2005	Article 32(1) and (2)	Fire safety offences
Health and Safety Act 1974	Section 33(1)(c) where a person contravenes any requirement specified in regulation 36 of the Gas Safety (Installation and Use) Regulations 1998(6)	Gas safety offences - duties on landlords
Immigration Act 2014	Section 33A(1) and (10)	Residential tenancies – landlord offences
	Section 33B(2) and (4)	Residential tenancies – agent offences
Fraud Act 2006	Section 1(1)	Fraud
	Section 6(1)	Possession etc. of articles for use in frauds
	Section 7(1)	Making or supplying articles for use in frauds
	Section 9(1)	Participating in fraudulent business carried on by sole trader etc.
	Section 11(1)	Obtaining services dishonestly
	Section 12(2)	Liability of company officers for offences by company

Statute	Provision	Offence
Criminal Justice Act 2003 – Schedule 15 (specified violent and sexual offences)	Schedule 15	Specified violent and sexual offences
Misuse of Drugs Act 1971	Section 8	Occupiers etc. of premises to be punishable for permitting certain activities to take place there
	Section 9	Prohibition of certain activities relating to opium
	Section 9A(1) and (3)	Prohibition of supply etc. of articles for administering or preparing controlled drugs
	Section 18(1), (2), (3) and (4)	Miscellaneous offences
	Section 19	Attempts etc. to commit offences
	Section 20	Assisting in or inducing commission outside United Kingdom of offence punishable under a corresponding law
	Section 21	Offences by corporations
Proceeds of Crime Act 2002	Section 327	Concealing etc. criminal property
	Section 328	Arrangements
	Section 329	Acquisition, use and possession
Protection from Harassment Act 1997	Section 2	Offence of harassment
	Section 2A	Offence of stalking
Anti-social Behaviour, Crime and Policing Act 2014	Section 30	Breach of criminal behaviour order
	Section 48	Failure to comply with a community protection notice
Criminal Damage Act 1971	Section 1(1)	Destroying or damaging property
	Section 2	Threats to destroy or damage property
	Section 3	Possessing anything with intent to destroy or damage property
Theft Act 1968	Section 7	Theft
	Section 9	Burglary
	Section 21	Blackmail
	Section 22	Handling stolen goods

8. Appendix 2 - Extracts from Banning Orders made by First Tier Tribunals

Case Ref: - CHI/00HB/HBA/2021/0003

What should be the terms of the Order?

33. The Council requested an order for ten years. The Tribunal considers that such a period of ten years is longer than is reasonably required. The Tribunal determines that a period of 5 years is sufficient to reflect the risks posed by the Respondent as a residential landlord.

34. The Tribunal determines that this is the correct period of time having taken account of all the evidence. In this Tribunal's determination any order made should be for a period which reflects the harm identified by the Respondent's behaviour but for no longer period than reasonably reflects the same. The harm is significant, however five years provides sufficient period for the Respondent to rehabilitate and educate himself as to the statutory requirements. In this Tribunal's determination a period of exclusion from the letting and management of residential property for 5 years properly reflects the offences and harm identified.

Case Reference: - CHI/00HP/HBA/2019/0002

What should be the terms of the Order?

46. The Applicant requested an Order for ten years on the basis of his blatant disregard for the safety of his tenants and of his continuous flouting of the law. The Applicant contended that a term of ten years would send a clear message that such conduct was not tolerated and would act as deterrent to others.

47. The Applicant confirmed that it was not aware of any other properties let by the Respondent.

48. The Tribunal on balance considers a period of ten years too long. The Tribunal decides that a period of five years is appropriate for the seriousness of the offending and the particular circumstances of the case. The Tribunal considers a period of five years constitutes a significant deterrent to the Respondent and to others who might stray into the path of being a rogue landlord.

**Case Reference: - LON/00AG/HBA/2020/0001
LON/00AG/HBA/2020/0002
LON/00AG/HBA/2020/0003
LON/00AG/HBA/2020/0004**

Discussion and Determination:

86. As to the length of the order we note that the minimum period is 12 months but there is no upper limit. There may be circumstances when the relevant behaviour is so extreme that it would merit a significantly long or permanent ban on the activities. In this case xxxxx has proposed a ban for five years.

87. The proposal of five years needs to be measured against a scale of a minimum period of 12 months and a lifetime ban. In these cases given the nature of the offences, the management at xxxxx Road, the opaque relationship between the three companies and the four Respondents and the lack of contrition and the failure to engage with the Local Housing Authority and this process we consider that a period of five years is sufficient to ensure that the Banning Orders will have the appropriate punitive effect on the Respondents. It is also important that the Orders have a real deterrent effect, both on the Respondents and on other landlords.

Case Reference: - LON/00BC/HBA/2020/0007 V:CVP

Discussion and Determination:

74. As to the length of the order we note that the minimum period is 12 months but there is no upper limit. There may be circumstances when the relevant behaviour is so extreme that it would merit a significantly long or permanent ban on the activities. In this case Redbridge has proposed a ban for four years. This proposal was based upon the scoring set out in the matrix created by xxxxx. As mentioned previously, it is not the role of the Tribunal to consider the details of the LHA's policy or matrix. However, the Tribunal noted that Mr xxxx accepted that the flaws identified by xxxxx in relation to the inconsistencies with the sentencing guidelines and the potential for double counting may mean that a review of the policy was required.

75. Although the Respondent suggests that the proposed four years is exceptionally excessive, this needs to be measured against a scale of a minimum period of 12 months and a lifetime ban. In this case given the nature and volume of offences we do not think the minimum period of 12 months is sufficient. However, we have reduced the period of the ban from four years to three years. We have done this as we recognise that the potential flaws in the LHA's matrix may have produced a lower recommendation, but we are concerned to ensure that the length of the ban is sufficient so that the Banning Order will have the appropriate punitive effect on Mr xxxxx, given the very serious nature of his offending. It is also important that the order has a real deterrent effect, both on the Respondent and on other landlords.

Case Reference: - CHI/00HB/HBA/2020/0001

What should be the length and terms of the Banning Order?

86. The Applicant contended that the offences were very serious, the conditions were appalling and so ten years would be an appropriate level of punishment. The

Applicant further submitted that a term of ten years would send a clear message that such conduct was not tolerated and would act as deterrent to others.

87. The Applicant confirmed that it was not aware of the Respondent being a “portfolio landlord” and of any other properties let by the Respondent. The Applicant accepted that a Banning Order may therefore have limited impact on this particular landlord, although the Respondents failure to respond to the Applicant’s request for information pursuant to section 19 of the Act limited the information available. There was no evidence as to the circumstances in which the Respondent came to create the structure containing the flats within the storage building.

88. The Tribunal on balance considers a period of ten years is not appropriate.

89. The Tribunal decides that a period of four years is appropriate in the particular circumstances of the case.

Case Reference: - MAN/00CE/HBA/2019/0002

What should be the length and terms of the Banning Order?

52 .xxxxxx Council has proposed that the bans imposed by the order should last for two years. However, whilst we agree that a ban for a significantly longer period than that would be unduly harsh and would be disproportionate, we are concerned to ensure that the length of the bans is sufficient so that the banning order will have the appropriate punitive effect on Mr xxxx, given the very serious nature of his offending. It is also important that the order has a real deterrent effect, both on Mr xxxxxx himself, and on other landlords. Being mindful of the fact that, because of the exception, the operative period of the ban on letting housing would otherwise be just 21 months, we consider that all the bans imposed by the order should last for two years and six months.