



**Policy on the Database of Rogue Landlords and Property Agents under the Housing and Planning Act 2016**

**1. Introduction**

The Housing and Planning Act 2016 introduced a range of measures to help Local Authorities tackle rogue landlords and drive up standards in the private rented sector. These measures include setting up a national database to identify rogue landlords and property agents. Local Housing Authorities including Manchester City Council in England are responsible for maintaining the content of the database.

This policy explains how and when the Local Housing Authority will make a data entry onto the national database and where a person can appeal that decision. This policy should be read in conjunction with the following statutory guidance issued by Government and Council policies:-

- MHCLG, April 2018, Database of rogue landlords and property agents under the Housing and Planning Act 2016: Statutory guidance for Local Housing Authorities
- Housing and Planning Act 2016, Part 2, Chapter 3
- Policy on Civil Penalties as an Alternative to Prosecution

The Database of Rogue Landlords and Property Agents is a new tool for local housing authorities in England to keep track of rogue landlords and property agents. Database users will be able to view all entries on the database, including those made by other local housing authorities. The database can be searched to keep track of known unscrupulous landlords and agents, especially those operating across Council boundaries. This will help local housing authorities to co-ordinate efforts and target enforcement activities. Local Housing Authorities in England are responsible for maintaining the content of the database.

**2. Banning Order**

The Housing and Planning Act 2016 introduced a new power which permits the Local Housing Authority to seek a banning order where landlords or property agents have been convicted of certain criminal offences, known as banning order offences.

Breach of a banning order is a criminal offence and section 26 and schedule 3 of the Act provides that a Local Housing Authority can make a Management Order and take control of property where it is being privately rented in breach of a banning order.

### **3. Banning Order Offences**

Banning Order offences are identified in Schedule 1 to the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 and listed in Appendix A to this Policy.

### **4. Duty to include a person with a Banning Order on the database**

Under section 29 of the Act the Local Housing Authority must make an entry on the database in respect of a person if:-

(a) a banning order has been made against the person following an application by the Local Housing Authority, and

(b) no entry was made under Section 30 of the Act before the banning order was made, on the basis of a conviction for the offence to which the banning order relates. The entry will be maintained for the length of time for which the banning order has effect and must then be removed.

### **5. Discretion to include a person convicted of a Banning Order Offence on the database**

Section 30 of the Act gives the Local Housing Authority a power to include a person on the database who has:-

(a) Been convicted of a Banning Order offence that was committed at a time when the person was a residential landlord or agent, and/ or

(b) Received at least two financial penalties, within a period of 12 months, in respect of a banning order offence at a time when the person was a residential landlord or property agent.

The financial penalties are to be taken into account only if the period for appeal has expired and any appeal has been determined or withdrawn.

### **6. Policy Position**

(a) The Local Housing Authority will add an entry onto the rogue landlord database in respect of a person who receives a banning order. This is a statutory requirement.

(b) The Local Housing Authority will rigorously look to exercise its discretionary power to make an entry onto the rogue landlord database in respect of a person who receives two or more financial penalties in the same year, or is convicted of a banning order offence.

### **7. Justification for using discretionary power**

- (a) To identify rogue landlords and agents especially those operating across Local Housing Authority boundaries
- (b) To assist the Local Housing Authority in targeting enforcement activities against individuals and organisations who knowingly breach their legal obligations
- (c) To encourage joint working between Local Housing Authority areas.
- (d) To demonstrate the Local Housing Authority's commitment to the provision of safe and healthy housing

## **8. Factors to consider before making a database entry under section 30**

The Local Housing Authority will consider each case individually and will take into account the following factors:

### **(a) Severity of the offence**

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

If an offender has received at least two financial penalties, within a period of 12 months, in respect of a banning order offence, the Local Housing Authority will have due regard to both:

- (i) the nature and seriousness of the offence to which the Civil Penalty relates and
- (ii) the Civil Penalty Banding Level applied to the offence.

### **(b) Culpability and serial offending**

Where the offence is a first offence and it is considered relatively minor the Local Housing Authority may decide not to record an offender's information on the database. Where the offender has a history of knowingly committing banning order offences and/or non-compliance then it is more likely that an entry will be made on the database.

### **(c) Deter the offender from repeating the offence**

Deterring offenders from repeat offending is considered to be a high priority. The national database will be updated to share information with other Local Housing Authorities and where a landlord rents properties in multiple local housing authority areas this will be a major consideration in determining whether an entry will be made on the database.

### **(d) Deter others from committing similar offences**

Entries will be made on the database to deter other landlords from committing banning order offences in the first place. It is envisaged that landlords will be fully aware of the consequences of being convicted of Banning Order offences or receiving multiple financial penalties and as a consequence be mindful to manage/ maintain their properties to the highest possible standards. \_

## **9. Period of time that the entry will remain on the database**

An entry made under section 29 must be maintained for the period for which the banning order has effect and must then be removed.

If an entry is made under section 30 the time period will not be for less than 2 years beginning with the day on which the entry is made. An entry under this section must be maintained by the Local Housing Authority for the period of time specified in the decision notice and must be removed at the time of that period.

## **10. Factors to be considered when determining the period of time to be specified in the decision notice**

In deciding the period of time for which the entry will be maintained i.e. remain on the rogue landlord database, the Local Housing Authority will have regard to the following factors:-

### **(a) Severity of the offence**

The severity of the offence and related factors, such as whether there have been several offences committed over a period of time, should be considered. Where an offence is particularly serious and/or where 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 these factors are absent, it may be appropriate to specify a shorter period.

The Local Housing Authority will have due regard to the Policy on Civil Penalties as an alternative to Prosecution when assessing the level of harm caused by such offending.

### **(b) Culpability and serial offending**

The Local Housing Authority will consider whether the offender has any previous convictions and/or financial penalties which have been issued. If an offender has previous convictions for Banning Order offences and/or financial penalties issued against them, it is likely that the period specified in the decision notice will be increased to reflect a pattern of offending.

The Local Housing Authority will have due regard to the Policy on Civil Penalties as an alternative to Prosecution when assessing the level of culpability to be applied to such offending.

### **(c) Deter the offender from repeating the offence**

The Local Housing Authority will consider whether the period calculated is sufficient to deter the offender from committing further offences. If the Local Housing Authority does not think the period is sufficient, the period may be increased to ensure deterrence is met.

### **(d) Mitigating Factors**

The Local Housing Authority may reduce the time if mitigating factors are prevalent. Examples of mitigating factors may include genuine mistake, health issues or a recent bereavement that has contributed to the commission of the offence.

### **(e) Aggravating Factors**

The Local Housing Authority will give due consideration to the Sentencing Council guidelines and may increase the time if it is felt appropriate to do so given the circumstances of the offending.

## **11. Period of Time Banding**

The Local Housing Authority will take into account the above factors in conjunction with those outlined in the matrix in Appendix B to this Policy when determining the period of time for which the entry will be maintained on the database. The starting point will be determined by the seriousness of the offence.

The starting point in each band will be the mid-point, i.e. for the period of time banding 2 -4 years the mid-point will be 3 years and for the period of time banding 4 -6 years the mid-point will be 5 years.

Once the starting point has been identified, the Local Housing Authority may decide to adjust the mid- point to reflect any mitigating or aggravating factors relevant to the individual circumstances of the case.

The Local Housing Authority will provide a reasoned explanation for its decision making.

## **12. Procedure for making an entry on the database**

The Local Housing Authority will issue the person with a decision notice before making an entry under section 30 of the Act. This will specify:-

- (a) reasons why the Local Housing Authority intend to make the data entry
- (b) the period of time for which the entry will be maintained

(c) that the entry will be made after the end of the period of 21 days from the date on which the notice is given (the notice period) unless a successful appeal is made

Where a decision notice is issued this will not be given after the end of the period of 6 months beginning with the day on which the person: –

- (a) was convicted of the banning order offence to which the notice relates , or
- (b) received the second of the financial penalties to which the notice relates.

The decision notice will detail what information will be added to the database and may include the following:-

- (i) personal information (name, address, date of birth and national insurance number)
- (ii) details of any financial penalties and specified criminal offences which are described in the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018.
- (iii) details of properties owned, let or managed by the person

### **13. Removal or variation of entries to the database**

An entry made in the database may be removed or varied.

If an entry was made based on one or more convictions, all of which are overturned on appeal, the Local Housing Authority will remove the entry.

The Local Housing Authority may remove an entry or reduce the period for which the entry must be maintained where:-

- (a) more than one conviction and some of them (but not all) have been overturned on appeal;
- (b) one or more convictions have become spent (for the purposes of the Rehabilitation of Offenders Act 1974);
- (c) a person has received two or more financial penalties and at least one year has elapsed since the entry was made

The Local Housing Authority also has the power under the above circumstances to;

- (i) remove an entry before the end of the two-year period beginning with the day on which the entry was made.
- (ii) reduce the period for which an entry must be maintained to less than the two-year period

If the Local Housing Authority removes an entry in the database, or reduces the period for which it must be maintained, it must notify the person to whom the entry relates.

### **14. Appeals**

A person receiving a decision notice may appeal to the First-tier Tribunal against:

- (a) the decision to make the entry in the database in respect of the person, or
- (b) the decision as to the period for which the person's entry is to be maintained.

An appeal must be made before the end of the notice period specified in the decision notice.

However the Tribunal may allow an appeal to be made to it after the end of the notice period if satisfied that there is good reason for the persons failure to appeal within the period (and for any subsequent delay).

The Tribunal may confirm, vary or cancel the decision notice upon appeal.

If an appeal is received within the notice period then the Local Housing Authority will not make an entry in the database until the appeal has been determined or withdrawn.

Details of the First Tier Tribunal can be found at-

<https://www.gov.uk/courttribunals/first-tier-tribunal-property-chamber>

## **15. Power to require information**

Under Section 35 of the Act the Local Housing Authority may require a person to provide specified information for the purpose of enabling them to decide whether to make an entry in the database in respect of the person. The Local Housing Authority may require from a person that they have made an entry about or are proposing to make an entry about, any information needed to complete the person's entry or keep it up to date.

It is an offence, punishable on summary conviction to a fine, for a person to fail to comply with a section 35 requirement, unless the person has a reasonable excuse for the failure. It is also an offence for the person to provide information that is false or misleading if the person knows that the information is false or misleading or is reckless as to whether it is false or misleading.

## **Interpretation**

“ the Local Housing Authority” means Manchester City Council

“the Act” means the Housing and Planning Act 2016

“the database” means the national database of rogue landlords and property agents

“Banning Order” means an order, made by the First-tier Tribunal, banning a person 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

“Banning Order offence “means an offence of a description specified in regulations made by the Secretary of State”.

## Appendix A – Banning Order Offences

### Relevant housing offences - Banning Order Offences under Schedule 1 of The Housing and Planning Act 2016 (Banning Order Offences) Regulations [2018]

Legislation	Section	Description
Protection from 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
Housing Act 2004	Section 32(1)	Failing to comply with a prohibition order
Housing Act 2004	Section 72(1), (2) and (3)	Offences in relation to licensing of Houses in Multiple Occupation
Housing Act 2004	Section 95(1) and (2)	Offences in relation to licensing of houses under Part 3 of the Act
Housing Act 2004	Section 139(7)	Contravention of an overcrowding notice
Housing Act 2004	Section 234(3)	Failure to comply with management regulations in respect of Houses in Multiple Occupation
Housing Act 2004	Section 238(1)	False or misleading information
Regulatory Reform (Fire Safety) Order 2005	Article 32 paragraphs (1) and (2)	Fire safety offences
Health and Safety at Work Act 1974	Section 33(1)(c) where a person contravenes Regulation 36 of the Gas Safety (Installation and Use) Regulations 1998(6)	Gas safety offences- duties on landlords
Tenant Fees Act 2019	Section 12	Charging unlawful fees – a second or subsequent breach, within five years.

### Immigration Offences - Letting to someone disqualified from renting as a result of their immigration status, resulting in an offence under Part 3 of the Immigration Act 2014 (as amended).

Legislation	Section	Description
Immigration Act 2014	Section 33A(1) and (10)	Residential tenancies – landlord offences
Immigration Act 2014	Section 33B(2) and (4)	Residential tenancies – agent offences



**Serious Criminal Offences - These are serious criminal offences for which an offender may have received a custodial sentence upon conviction**

<b>Legislation</b>	<b>Section</b>	<b>Description</b>
Fraud Act 2006	Section 1(1)	Fraud offences
Fraud Act 2006	Section 6(1)	Fraud offences
Fraud Act 2006	Section 7(1)	Fraud offences
Fraud Act 2006	Section 9(1)	Fraud offences
Fraud Act 2006	Section 11(1)	Fraud offences
Fraud Act 2006	Section 12(2)	Fraud offences
Criminal Justice Act 2003	Schedule 15	Specified violent and sexual offences
Misuse of Drugs Act 1971	Section 8	Offences involving the misuse of drugs
Misuse of Drugs Act 1971	Section 9	Offences involving the misuse of drugs
Misuse of Drugs Act 1971	Section 9A(1) and (3)	Offences involving the misuse of drugs
Misuse of Drugs Act 1971	Section 18(1), (2), (3) and (4)	Offences involving the misuse of drugs
Misuse of Drugs Act 1971	Section 19	Offences involving the misuse of drugs
Misuse of Drugs Act 1971	Section 20	Offences involving the misuse of drugs
Misuse of Drugs Act 1971	Section 21	Offences involving the misuse of drugs
Proceeds of Crime Act 2002	Section 327	Concealing criminal property
Proceeds of Crime Act 2002	Section 328	Arrangements
Proceeds of Crime Act 2002	Section 239	Acquisition, use and possession
Protection from Harassment Act 1997	Section 2	Offence of harassment
Protection from Harassment Act 1997	Section 2A	Offence of Stalking
Anti-social behaviour, Crime and Policing Act 2014	Section 30	Breach of criminal behaviour order
Anti-social behaviour, Crime and Policing Act 2014	Section 48	Failure to comply with Community Protection Notice
Criminal Damage Act 1971	Section 1(1)	Destroying or damaging property
Criminal Damage Act 1971	Section 2	Threats to destroy or damage property
Criminal Damage Act 1971	Section 3	Possessing anything with intent to destroy or damage property
Theft Act 1968	Section 7	Theft
Theft Act 1968	Section 9	Burglary
Theft Act 1968	Section 21	Blackmail
Theft Act 1968	Section 22	Handling stolen goods



Appendix B – Matrix to determine a time period for an entry on the database

<b>RECOMMENDED TIME PERIOD FOR AN ENTRY ON THE ROGUE DATABASE TO BE MAINTAINED</b>			
	All submissions for an entry on the rogue landlord database will be made for at least 2 years, representing the minimum term that will be imposed. The length of time that the details will be maintained on the rogue landlord database will be increased based on the factors below, with other considerations applied on a case by case basis.		
<b>TIME PERIOD→ FACTORS ↓</b>	<b>24 months 2 years (minimum)</b>	<b>25 – 48 months 2-4 years</b>	<b>49 – 72 months 4-6 years</b>
<b>Severity of offence</b>	<p>Any banning order offence conviction or any case where 2 or more financial penalties have been imposed in a 12 month period</p>	<p>Although all Banning Order offences are serious having considered the facts of the case it has been determined the <u>offence is less serious</u>. In considering the seriousness of any offence, the Local Housing Authority will consider:</p> <p>a) The type of offence committed. Typically this may be:</p> <ul style="list-style-type: none"> <li>➤ Housing Act 2004 offences with category 2 hazards</li> <li>➤ Offences that are not directly related to fire or health and safety (i.e failing to comply with an IMP notice with cat 2 hazards, Failing to comply with a condition of their licence or HMO regs that do not directly relate to fire or have serious health and safety implications)</li> <li>➤ Procedural (i.e. providing false or misleading information or failing to obtain a licence for selective licensing)</li> </ul> <p>b) The sentence imposed by the court - consideration will be given to the maximum sentencing powers available to the court and whether the sentence imposed was at the lower or mid-range of sentencing powers available to the court as well as any sentencing guidelines applicable in relation to the offence. Sentencing remarks made by the sentencing court will be taken into account when assessing the seriousness of the offence.</p> <p>c) If the offence is one for which there are no current sentencing guidelines then the Council will make a determination of seriousness by an assessment of the offender's culpability in committing the offence and any harm the offence caused, was intended to cause or might foreseeably have caused based on the overarching principles of seriousness by the Sentencing Council. Typically, this would be at the following level:-</p>	<p>Although all Banning Order offences are serious having considered the facts of the case it has been determined the <u>offence is more serious</u>. In considering the seriousness of any offence, the Local Housing Authority will consider:</p> <p>a) The type of offence committed. Typically this may be:</p> <ul style="list-style-type: none"> <li>➤ Housing Act 2004 offences with category 1 hazards (i.e failing to comply with an IMP notice with Cat 1 hazards)</li> <li>➤ Offences directly related to fire or health and safety (i.e Breach of a Prohibition Order or Breach of Management regs related to fire or serious health and safety)</li> <li>➤ Serious criminal and immigration offences</li> <li>➤ Procedural (i.e failure to licence an HMO property for Mandatory HMO or additional licensing).</li> </ul> <p>b) The sentence imposed by the court - consideration will be given to the maximum sentencing powers available to the court and whether the sentence imposed was at the mid or higher range of sentencing powers available to the court as well as any sentencing guidelines applicable in relation to the offence. Sentencing remarks made by the sentencing court will be taken into account when assessing the seriousness of the offence.</p> <p>c) If the offence is one for which there are no current sentencing guidelines then the Council will make a determination of seriousness by an assessment of the offender's culpability in committing the offence and any harm the offence caused, was intended to cause or might foreseeably have caused based on the overarching principles of seriousness by the Sentencing Council. Typically, this would be at the following level:-</p>

		<ul style="list-style-type: none"> <li>➤ Low or no to medium culpability (negligent act)</li> <li>➤ Actual or potential for low to medium physical and psychological harm on individual(s) or wider community. Either short term with rapid recovery or temporary health effects which can be recovered in a reasonable time frame (excluding immigration or serious criminal offences)</li> </ul> <p>d) The Civil Penalty Banding Level and financial penalty imposed in relation to the Banning Order offence(s). Typically, this would be at the lower - medium end of the banding levels.</p> <p>e) Period of offending - The offence(s) have been committed over a short period of time, such as within a 12 month period (excluding immigration or serious criminal offences)</p>	<ul style="list-style-type: none"> <li>➤ High (reckless act) to Very High (deliberate act) culpability</li> <li>➤ Actual or potential for medium to high physical and psychological harm on individual(s) or wider community. Temporary health effects which can be recovered from in a reasonable period of time or death, permanent /life changing consequences, progressive permanent or irreversible health effects</li> </ul> <p>d)The Civil Penalty Banding Level and financial penalty imposed in relation to the Banning Order offence(s). Typically, this would be at the higher end of the banding levels.</p> <p>e)Period of offending - The offence(s) have been committed over a longer period of time – over 12 months - which would indicate a blatant disregard for the law. Some offences, may be committed over a very short period of time, but may be so serious that they warrant an entry on the database with a longer time period.</p>
<b>Mitigating factors</b>	<p>Any banning order offence conviction or any case where 2 or more financial penalties have been imposed in a 12 month period</p> <p>Any banning order offence conviction or any case where 2 or more financial penalties have been imposed in a 12 month period</p>	<p>a) The Local Housing Authority may reduce the time if mitigating factors are prevalent. Examples of mitigating factors may include genuine mistake, health issues or a recent bereavement that has contributed to the commission of the offence.</p> <ul style="list-style-type: none"> <li>➤ Very strong mitigating factors, e.g. unavoidable, personal – health, bereavement</li> <li>➤ Reasonable mitigating factors, however little done to overcome these to prevent offence from occurring</li> <li>➤ No mitigating factors</li> </ul> <p>The Local Housing Authority may increase the time if</p> <ul style="list-style-type: none"> <li>➤ Falsified and / or brazen mitigating factors</li> </ul>	<p>a)The Local Housing Authority may reduce the time if mitigating factors are prevalent. Examples of mitigating factors may include genuine mistake, health issues or a recent bereavement that has contributed to the commission of the offence.</p> <ul style="list-style-type: none"> <li>➤ Very strong mitigating factors, e.g. unavoidable, personal – health, bereavement</li> <li>➤ Reasonable mitigating factors, however little done to overcome these to prevent offence from occurring</li> <li>➤ No mitigating factors</li> </ul> <p>The Local Housing Authority may increase the time if</p> <ul style="list-style-type: none"> <li>➤ Falsified and / or brazen mitigating factors</li> </ul>
<b>Culpability and serial offending</b>		<p>The following factors will be taken into consideration:-</p> <p>a) The offender has no previous relevant offences (no previous convictions for banning order offences and/or no financial penalties issued).Local Housing Authority may reduce the time if mitigating factors are prevalent. Examples of mitigating factors may include genuine mistake, health issues or a recent bereavement that has contributed to the commission of the offence.</p>	<p>The following factors will be taken into consideration:-</p> <p>a) The offender has committed several previous relevant offences (This does not preclude a first time offender if the offence was more serious). There may be a number of offences over a period of time, which by themselves are less serious, however taken together increase the seriousness.</p>

	<p>Any banning order offence conviction or any case where 2 or more financial penalties have been imposed in a 12 month period</p>	<p>b) No track record of offending. Typically, this is a first time offender and may be an isolated offence. no historic involvement with landlord before, e.g. no previous notices served or interventions taken.</p> <p>c) The offender knew, or ought to have known, that they were in breach of their responsibilities but the offence committed was through an act or omission which a person exercising reasonable care would not commit, or with little fault. Landlords and property agents are running a business and should be aware of their legal obligations. Consideration will however be given to what extent the person fell short of what was required and their personal circumstances.</p>	<p>b) The offender has a track record of serial offending or committed several banning order offences over a period of time, e.g. previous notices served, previously prosecuted, financial penalties previously issued, history of non-compliance, multiple convicted offences, poor attitude towards legal obligations.</p> <p>c) The offender knew, or ought to have known, that they were in breach of their responsibilities. Landlords and property agents are running a business and should be aware of their legal obligations. Consideration will however be given to what extent the person fell short of what was required and their personal circumstances. For example, is the offender an:</p> <ul style="list-style-type: none"> <li>➤ Institutional landlord/agent</li> <li>➤ Portfolio landlord/agent</li> <li>➤ Experienced Landlord/agent who has rented properties for a number of years or has previously been licensed</li> </ul>
<p><b>Deter the offender from offending in the future</b></p>		<p>a) The 2 to 4 year period is a reasonable period of time and is a genuine deterrent to further offences. Typically, the following factors have been met:</p> <ul style="list-style-type: none"> <li>➤ Little / no chance of re-offending in the future, remorse shown etc.</li> <li>➤ Lessons have been learnt since being convicted of a Banning Order offence or receiving at least two financial penalties, within a period of 12 months</li> <li>➤ Changes have been made to the landlords/agents behaviour/processes, procedures or approach to renting.</li> </ul>	<p>a) The 4 to 6 year period is a reasonable period of time and is a genuine deterrent to further offences. Typically, the following factors have been met:</p> <ul style="list-style-type: none"> <li>➤ Medium-high chance of landlord or landlord community from offending in the future, no remorse shown etc.</li> <li>➤ Lessons have not been learnt since being convicted of a Banning Order offence or receiving at least two financial penalties, within a period of 12 months</li> <li>➤ Changes have not been made to the landlords/agents behaviour/processes, procedures or approach to renting.</li> <li>➤ landlord/agent operates across multiple local authority areas</li> </ul>

