

Crawley Borough Council

Overview and Scrutiny Commission 19 March 2018

Report to Cabinet 21 March 2018

Banning Orders and the Database of Rogue Landlords and Property Agents - The Housing and Planning Act 2016

Report of the Head of Strategic Housing and Planning Services – SHAP/73

1. Purpose

- 1.1 Legislation will come into force in April 2018 enabling local authorities to pursue banning orders for a number of specified offences under the Housing Act 2004. Also coming into force at this time are powers and duties on local authorities to include persons on a nationally held database of rogue landlords and property agents. This report seeks approval to use banning orders and make entries onto the database as laid out in the Housing and Planning Act 2016 as a tool to assist the Council in improving standards within the private rented sector.

2. Recommendations

- 2.1 To the Overview and Scrutiny Commission:

That the Commission consider the report and decide what comments, if any, it wishes to submit to the cabinet.

- 2.2 To the Cabinet:

- 2.2.1 The Cabinet is recommended to:

- 2.2.2 Note and agree to the use of the new powers allowing the Council to apply for banning orders, as summarised in Sections 4.1 - 4.5 of this report.

- 2.2.3 Note and agree to the use of the new duties and powers to make entries onto the database with respect to rogue landlords and property agents, as summarised in Sections 4.6 – 4.8 of this report.

- 2.2.4 Delegate authority to the Head of Strategic Housing and Planning Services in consultation with the Head of Legal and Democratic Services to agree when banning orders are to be applied for on a case by case basis. (*Generic Delegation 3 will be used to enact this recommendation*).

- 2.2.5 Delegate authority to the Head of Strategic Housing and Planning Services in consultation with the Head of Legal and Democratic Services to agree when to exercise the power to include persons convicted of a banning order offence on the database. (*Generic Delegation 7 will be used to enact this recommendation*).

3. Reasons for the Recommendations

- 3.1 The recommendations will enable the Council to utilise additional legislative powers in driving up standards within the private rented sector.

4. Background

Banning Orders

- 4.1 The Housing and Planning Act 2016 amended the Housing Act 2004 and introduced a range of measures to assist Local Authorities to tackle rogue landlords and property (letting and managing) agents, including the imposing of banning orders for certain specified offences, as detailed in 4.2.
- 4.2 Banning Orders – The legislation gives local authorities the power to apply to the First-tier Tribunal for a banning order for the offences set out in Appendix One.
- 4.3 The legislation also sets out the factors which a local housing authority should take into account when deciding whether to apply for a banning order:
- The seriousness of the offence of which the person has been convicted
 - Any previous convictions that the person has for a banning order offence
 - Whether the person is or has at any time been included in the database of rogue landlords and property agents and
 - The likely effect of the banning order on the person and anyone who may be affected by the order
- 4.4 If the Tribunal decides to make a banning order, the order must specify the length of the ban imposed and must last a minimum of 12 months. It may contain exceptions for some or all of the duration of the ban for the purposes of dealing with cases where there are existing tenancies and the landlord does not have the power to bring them to an immediate end, or to allow letting agents to wind down current businesses. It is the Tribunal that issues the banning order and ultimately determines the duration it will be operational for, therefore in deciding the length of ban to recommend to the Tribunal, Officers shall consider the factors listed in 4.3 above.
- 4.5 A person who breaches a banning order commits an offence and is liable on summary conviction to a term of imprisonment or a financial penalty or both. The use of financial penalties was agreed at Cabinet on 29th November 2017 through the paper SHAPS/61.

Rogue Landlord and Property Agent Database

- 4.6 The Housing and Planning Act 2016 amended the Housing Act 2004 and introduced a range of measures to assist Local Authorities to tackle poor practices in the private rented sector, including the duty to include persons with banning orders on a nationally held database of rogue landlords and property (letting and managing) agents, and the power to include persons convicted of banning order offences on the database.
- 4.7 Once in force, section 29 of the Act will impose a duty on the Council to include a person on the database once a banning order is made. In addition to mandatory entries under section 29, section 30 will give authorities the power (discretion) to include on the database those persons convicted of banning order offences and those who have been issued with civil penalties twice in 12 months. In these instances a recommendation would be made to the Head of Strategic Housing and Planning Services in consultation with the Head of

Legal and Democratic Services to agree whether to pursue with the entry of that person on to the database.

- 4.8 Whilst the database will be held nationally, local authorities will be able to access it in order to maintain the content. All local authorities must take reasonable steps to keep information in the database up-to-date. Entries on the database can be removed or varied by the responsible authority in accordance with Section 36 of the Act.

5. Description of Issue to be Resolved

- 5.1 The provisions of the Housing and Planning Act 2016 empower local authorities to apply to the First-tier Tribunal to impose banning orders and to make entries onto a database of rogue landlords and property agents will be in effect from 6th April 2018. This report is to request that Cabinet notes the Council's new duties and endorses the use of the new powers.

6. Information & Analysis Supporting Recommendation

- 6.1 Government are not planning to release guidance regarding use of these powers until after they are introduced in April 2018.

7. Implications

- 7.1 Financial – The use of financial penalties (for breaching a banning order) was included in report SHAPS/61 and the accompanying policy, which was agreed by Cabinet on 29th November 2017.
- 7.2 Application to the First-tier Tribunal has financial impact in terms of the Legal Division's staffing resources, possible fees and cost orders against the Council, however given the likely frequency of making such an application the impact is anticipated to be low.
- 7.3 Legal – There are legal implications for the Council:
- Work will be required to develop administrative and legal procedures for applying to the First Tier Tribunal for banning orders.
 - Upon imposing a banning order, the landlord has the right to apply to the Tribunal to revoke or vary the banning order, to which the Council would need to respond.
- 7.5 Equalities Impact – The Equalities Impact Assessment has identified that the implementation of this legislation will not have an adverse equalities impact. A copy of the assessment is at Appendix Two.
- 7.6 Environmental – There are no environmental implications resulting from use of this legislation.

8. Background Papers

<http://www.legislation.gov.uk/ukpga/2016/22/contents>

<https://www.legislation.gov.uk/ukdsi/2017/9780111162224>

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Appendix One

	Act	Section	Content
1.	Protection from Eviction Act 1977	Section 1(2), (3) and (3A)	Unlawful eviction and harassment of occupier
2.	Criminal Law Act 1977	Section 6(1)	Violence for securing entry
3.	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)	Providing false or misleading information
4.	Regulatory Reform (Fire Safety) Order 2005	Article 32(1) and (2)	Fire safety offences
5.	Health and Safety at Work etc. 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	Gas safety offences - duties on landlords
6.	Immigration Act 2014	Section 33A(1) and (10)	Residential tenancies – landlord offences
		Section 33B(2) and (4)	Residential tenancies – agent offences
7.	Fraud Act 2006	Section 1(1)	Fraud
		Section 6(1)	Possession 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
8.	Criminal Justice Act 2003	Schedule 15	Specified violent and sexual offences
9.	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 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
10.	Proceeds of Crime Act 2002	Section 327	Concealing criminal property
		Section 328	Arrangements
		Section 329	Acquisition, use and possession
11.	Protection from Harassment Act 1997	Section 2	Offence of harassment
		Section 2A	Offence of stalking
12.	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
13.	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

14.	Theft Act 1968	Section 7	Theft
		Section 9	Burglary
		Section 21	Blackmail
		Section 22	Handling stolen goods

APPENDIX TWO - EQUALITY IMPACT ASSESSMENT

Name of activity:	Introduction of powers through the Housing and Planning Act 2016	Date Completed:	January 2018		
Division responsible for activity:	Strategic Housing & Planning Services	Lead Officer:	Hannah Martin		
Existing Activity	<input type="checkbox"/>	New / Proposed Activity	<input checked="" type="checkbox"/>	Changing / Updated Activity	<input type="checkbox"/>

What are the aims / main purposes of the activity?

The Housing and Planning Act 2016 amended the Housing Act 2004 and introduced a range of measures to assist Local Authorities to tackle rogue landlords and property (letting and managing) agents in the private rented sector, including the power to apply to the First-tier Tribunal to impose a banning order with regard to certain specified offences, the duty to include persons with banning orders on a nationally held database, and the power to include persons convicted of banning order offences on the database.

Banning Orders - The banning order must specify the length of the ban imposed and must last a minimum of 12 months. It may contain exceptions for some or all of the duration of the ban for the purposes of dealing with cases where there are existing tenancies and the landlord does not have the power to bring them to an immediate end, or to allow letting agents to wind down current businesses. A person who breaches a banning order commits an offence and is liable on summary conviction of imprisonment or a financial penalty or both.

Database - As per section 29 of the Act, duties are explicit and therefore the Council has no discretion as to whether it includes persons with a banning order on the database. Section 30 gives authorities the power, not the duty, to include persons convicted of banning order offences on the database. In these instances so a recommendation would be made to the Head of Strategic Housing and Planning Services in consultation with the Head of Legal and Democratic Services to agree whether to pursue with the entry of that person on to the database.

Whilst the database will be held nationally, local authorities will be able to access it in order to maintain the content. All local authorities must take reasonable steps to keep information in the database up-to-date. Entries on the database can be removed or varied by the responsible authority in accordance with Section 36 of the Act.

What are the main actions and processes involved?

Legislation has come into force to allow local authorities to pursue the imposition of banning orders through the First-tier Tribunal for a number of specified offences (see section 4.2 of report SHAPS/68), the duty to include persons with banning orders on a nationally held database, and the power to include persons convicted of banning order offences on the database.

Who is intended to benefit & who are the main stakeholders?

These powers were introduced by Government to tackle rogue landlords and managing agents and are designed to benefit [the increasing number of] households that are living in private rented accommodation.

Have you already consulted on / researched the activity?

Government carried out a consultation in 2016 therefore further consultation is not required.

Impact on people with a protected characteristic

Protected characteristics / groups	Is there an impact (Yes / No)	If Yes, what is it and identify whether it is positive or negative
Age (older / younger people, children)	No	Banning orders can be applied for if certain specified offences have been committed. The Act advises on the factors to be considered when deciding whether to pursue action under this legislation. The inclusion of persons on the database is dependent on the offence committed and whether the local authority has the power or duty to include them. The age of the offender or victim is not a factor in deciding whether to take action, nor will it affect/impact the outcome.
Disability (people with physical / sensory impairment or mental disability)	No	Whether a person has a disability or not has no bearing on the use of this legislation or the impact.
Gender reassignment (the process of transitioning from one gender to another.)	No	Whether a person is undergoing gender reassignment has no bearing on the use of this legislation or the impact.
Marriage & civil partnership	No	Whether a person is married or in a civil partnership or not has no bearing on the use of this legislation or the impact.
Pregnancy & maternity (Pregnancy is the condition of being pregnant & maternity refers to the period after the birth)	No	Whether a person is pregnant or on maternity has no bearing on the use of this legislation or the impact.
Race (ethnicity, colour, nationality or national origins & including gypsies, travellers, refugees & asylum seekers)	No	A person's race has no bearing on the use of this legislation or the impact.

Religion & belief (religious faith or other group with a recognised belief system)	No	A persons religious beliefs have no bearing on the use of this legislation or the impact.
Sex (male / female)	No	A person's gender has no bearing on the use of this legislation or the impact.
Sexual orientation (lesbian, gay, bisexual, heterosexual)	No	A person's sexual orientation has no bearing on the use of this legislation or the impact.

Whilst Socio economic disadvantage that people may face is not a protected characteristic; the potential impact on this group should be also considered	No	A person's socio economic status has no bearing on whether this legislation would be used.
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What evidence has been used to assess the likely impacts?
Government have already carried out an impact assessment, a link to which is included in the Cabinet report.
What resource implications are there to deliver actions from this EIA?
<p>Financial – The use and impact of financial penalties (for breaches of banning orders) were covered in report SHAPS/61 and the accompanying policy which was agreed at Cabinet on the 29th November 2017.</p> <p>Application to the First-tier Tribunal has financial impact in terms of the Legal Divisions staffing resources, however given the likely frequency of making such an application the impact is anticipated to be low.</p> <p>Inclusion of persons on the database has no financial impact on the Council.</p> <p>Legal – There are legal implications for the Council:</p> <ul style="list-style-type: none"> • Work will be required to develop administrative and legal procedures for applying to the First Tier Tribunal for banning orders. • Upon imposing a banning order, the landlord has the right to apply to the Tribunal to revoke or vary the banning order, to which the Council would need to respond. • The only potential legal implication regarding the inclusion of persons on the database would be if they appealed to the First-tier Tribunal and Legal representation was required, however given the likely frequency of including a person on the database the impact is anticipated to be low.

Outcome following initial assessment		
Does the activity have a positive impact on any of the protected groups or contribute to promoting equality, equal opportunities and improving relations within target groups?	No	
Does the activity have a negative impact on any of the protected groups, i.e. disadvantage them in any way.	No	

Decision following initial assessment			
Continue with existing or introduce new / planned activity	Yes	Amend activity based on identified actions	No

Action Plan (Has the EIA identified any positive or negative impact on any of the protected groups which requires action? E.g. adjustments to the approach or documents, changes to terminology, broadening parameters of policy, etc. If so record any actions to be undertaken and monitored)

Impact identified	Action required	Lead Officer	Deadline
Periodically review the use of banning orders to ensure that we are being fair and proportionate in their application. Periodically review the inclusion of persons on to the database where we have the power (not the duty) to do so to ensure that we are being fair and proportionate.	Periodically review use of banning orders and inclusion of persons onto the database.	HM	NA

Monitoring & Review	
Date of last review or Impact Assessment:	Not applicable
Date of next 12 month review:	
Date of next 3 year Impact Assessment (from the date of this EIA):	

Date EIA completed:	
Signed by Person Completing:	Hannah Martin
Date Sent to HR and Equalities Team:	
Approved by Head of Service:	