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Colliver, Kit and HUNTER, CAROLINE MARGARET (2025) Banning Orders:Guidance note for local authority enforcement teams on making a successful application. UNSPECIFIED.

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# Banning Orders

## Guidance note for local authority enforcement teams on making a successful application

Kit Colliver and Caroline Hunter

2025

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### About this guidance

This guidance note was first developed in March 2024 by Kit Colliver and Caroline Hunter following an analysis of the published banning order cases brought to the First Tier Tribunal Property Chamber (Residential Property) (the FTT) under the Housing and Planning Act 2016. That analysis has been supplemented with data from two focus groups and an individual interview with judges from the London and Northern region of the FTT to create this second edition of the Guidance note in November 2025. It also reflects the guidance on banning orders published by the MHCLG on 13 November 2025.

Of approximately 30 applications since the commencement of this legislation until March 2024, only six bans have been refused and two others have failed at the preliminary stage because the notice of the intended proceedings was not correct. Two successful banning orders have been appealed to the Upper Tribunal - in both cases the order was upheld.

Almost all cases brought to the tribunal related to severe housing offences. Analysis showed little indication that the outcome of cases was determined by the nature of the offences (beyond meeting a threshold of severity) or respondent characteristics or defence. Rather, successful or unsuccessful applications hinged on the quality of the local authority's submission. For example, the Tribunal made comments about the local authority enforcement policy or quality of applicant submission in ten cases. In six of these cases, they declined to make a banning order.

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### Law, policy and procedures

#### Law / Legislative context

Under the Housing and Planning Act 2016, a banning order can be used to prevent a person from letting housing as well as acting as a letting agent or managing property (s.14). An order can be made if the person has been convicted of a 'banning order offence' (s.15(1)). To start the process, the local authority must give notice of the intended proceedings to the person(s) who will be banned and consider any representations received (s.15(2)). Then the local authority applies to the Tribunal for a banning order.

In deciding to make the order the Tribunal must consider (s.16(4)):

- (a) the seriousness of the offence of which the person has been convicted,
- (b) any previous convictions that the person has for a banning order offence,

- (c) whether the person is or has at any time been included in the database of rogue landlords and property agents, and
- (d) the likely effect of the banning order on the person and anyone else who may be affected by the order.

The meaning of a 'banning order offence' is key to making an order. The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 set out 41 offences. These can be grouped in to 'landlord' offences (e.g. unlawful eviction or harassment under the Protection from Eviction Act 1977 or failing to comply with a Housing Act 2004 notice), immigration offences (under the Immigration Act 2014, ss.33A and 33B) and offences not directly related to housing (e.g. fraud, sexual assault, misuse of drugs, theft and stalking).

## MHCLG guidance

The MHCLG guidance provides advice on factors a local housing authority should consider in deciding whether to seek a banning order and when assessing its likely effect (on the banned person(s) and anyone else that may be affected). The guidance states that:

*Local housing authorities are expected to develop and document their own policy on when to pursue a banning order and should decide which option it wishes to pursue on a case-by-case basis in line with that policy.*

*It also suggests that, when making an application, the local authority should include a recommendation on how long a banning order should be for and set out their reasons.*

*Local authority enforcement policy*

## Local authority enforcement policy

Analysis of Tribunal decisions highlights the importance of local authorities developing and abiding by their own enforcement policies when making an application for a banning order. These are expected to be formal documents, signed off under the Council's constitution, rather than merely 'guidance notes' for its officers.

Whether incorporated into Private Housing Sector Enforcement policies or dedicated Banning Order policies, local authority enforcement policies should include the following details:

- Guidance for deciding when formal enforcement action is warranted, including aggravating factors;
- Standards of evidence required for pursuing enforcement;
- Enforcement measures that should be considered prior to pursuing a Banning Order, such as Management Orders, Prohibition Orders, and Civil Penalty Notices;
- Internal processes for enforcement officers to follow;
- Checks and balances for decision-making about enforcement actions, including requirements for senior officer and/or legal oversight where appropriate; and
- Guidance on the length of a ban.

In addition, local authorities should ensure that policies are designed to be consistent with the law (particularly the criteria for making a Banning Order in s.16 of the Housing and Planning Act 2016) and MHCLG guidance. Procedures and decision-making criteria should be sufficiently clear that they could be understood and applied by a reasonable person with no prior knowledge of local working practices. It should be possible to assess the seriousness of relevant offences both individually and multiply, with guidance on how they should be weighted or aggregated when deciding whether or not to pursue a ban.

## Pursuing a ban

### Local authority enforcement practices

Tribunals typically expect local authorities to have utilised 'softer' enforcement strategies to encourage compliance prior to seeking a Banning Order. In particularly egregious cases, Tribunals may accept a decision to immediately pursue a ban after one conviction, but local authorities should be prepared to explain why alternative enforcement strategies were inappropriate to these cases.

In their decision rejecting an application for a Banning Order in *Wandsworth LBC v Stalter* the Tribunal said:

*The offence for which the Respondent was prosecuted, and of which he was convicted, was a single failure to license. If a Landlord fails to engage with the LHA ... the Tribunal would expect other formal steps to be taken to secure convictions in appropriate cases. The more enforcement needed, the more relevant a failure by the Landlord to cooperate with the LHA might be.*

Despite this case, in general the experience of the FFT judges was the cases for banning were of the worse landlords.

*My experience to date is that the local authorities have been quite reticent to issue banning orders except in the most extreme cases. In those situations I think the individuals have been really out and out rogues and so they pay very little heed to any local authority fines, they very often have got a criminal background. (FTT-FG-2)*

But authorities must recognise 'the seriousness of what they were asking us [the FTT] to do (FTT-FG-1). Accordingly, in line with general good practice, local authority officers should ensure that all formal and informal enforcement activity is thoroughly documented in their case files. In the early stages of considering a ban, case officers should seek legal advice to ensure that they have prepared the necessary evidence of relevant convictions and enforcement activity to bring the case to Tribunal.

### Preparing for the tribunal

When preparing to take a banning order case to the Tribunal, local authorities must ensure they have given the landlord appropriate notice (compliant with s.15) of their intent to pursue a ban. Cases have failed due to simple errors such as sending the notice to the wrong address; failing to give reasons for seeking a banning order within the notice; and the fact the convictions had been set aside.

The case for seeking a banning order should clearly set out the local authority's reasons alongside its own enforcement policy and the MHCLG guidance. Local authorities must ensure all relevant evidence and all relevant policy documents are included in the bundle for the Tribunal and the respondent. Any items that the local authority intends to reference or may consider referencing at the Tribunal should be included.

In some cases, queries have arisen about whether evidence of spent convictions can be considered; these are inadmissible, 'unless the FTT is persuaded, pursuant to section 7(3), that "justice cannot be done" except by admitting that evidence' (Hussain v Newham LBC).

Accordingly, we recommend that local authorities include spent convictions in their bundle and leave it to the Tribunal to decide whether they should be admitted. The FTT judges were used to judging the underlying conduct in spent convictions. Similarly, civil cases (e.g. a claim for damages of illegal eviction) and non-banning order offences that are relevant to the case, for instance in demonstrating persistent patterns of behaviour, may be admitted as evidence by the Tribunal.

However, the FTT judges were clear that a scatter-gun approach, including every bit of evidence about that landlord, does not help in building a case. This is particularly true when evidence is circumstantial, e.g. statements from other local authorities or services such as Trading Standards which lists complaints against that landlord. What is needed is:

- Good evidence that includes a clear audit trail: inspection notes, photographs, detailed witness statements.
- Showing how the established evidence supports the argument in favour of a ban.

### Presenting to the tribunal

The Tribunal has two key decisions to make: whether to make a ban and, if so, its appropriate duration. In each case, much consideration is given to the seriousness of offences and local authorities should be confident in stating their view. The Upper Tribunal in *Knapp v Bristol C.C.* recognised that:

*... in concluding that the offences were serious, the FTT was accepting the submission made on behalf of the Council. The Council is the body responsible for the enforcement of housing standards and the prosecution of offences and is ideally placed to comment on the relative severity of different penalties imposed by magistrates. The FTT was entitled to give weight to the Council's view of the level of the fines.*

The account of any fine – including large single sums indicative of offence magnitude or multiple smaller sums indicating multiple or repeat offending – is relevant to 'seriousness'. The Tribunal is not bound by the magistrate's court decisions in determining seriousness, but both they and the local authority can draw on their experiences to observe whether a fine sits at the upper or lower end of the scale for housing offences.

Tribunals will give weight to the local authority's account of why they have submitted for a particular ban length. The length of a ban should reflect factors such as severity, persistence, and effective punishment and deterrence. A banning order must last at least 12 months and there is no limit to the length that may be requested: some local authorities have pursued a lifetime ban. Existing banning orders have been issued from between 15 months to 10 years, with a 5 year period being the most common decision when the Tribunal is convinced that the offender is at the upper end of both severity and persistence.

Where a banning order may impact upon others, for instance a sitting tenant, then the Tribunal may delay its commencement. A transitional period of some weeks or months can allow the local authority to put a management order in place, a property agent to be appointed, or the landlord to make appropriate disposals of their tenanted properties and/or serve notice to the tenants.

### Sources

<sup>1</sup> MHCLG (2025) Banning Order Offences under the Housing and Planning Act 2016.  
<https://www.gov.uk/government/publications/banning-order-offences-under-the-housing-and-planning-act-2016/banning-order-offences-under-the-housing-and-planning-act-2016>

### How to cite this guidance

K. Colliver & C. Hunter (2025) Banning orders: Guidance note for local authority enforcement teams on making a successful application, University of York.

### Further information

This guidance draws on research in the ESRC project *Understanding criminality in the private rented sector and co-producing solutions*, a collaboration by researchers from the University of York, the University of Sheffield, and Northumbria University.

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