

Working with private rented sector landlords

West Suffolk Council Rogue Landlord Policy

April 2025 – this document will be reviewed as and when required and no less than every three years as a minimum.

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1. Introduction

- 1.1 West Suffolk Council is committed to tackling the most serious of offending landlords through utilising the strongest enforcement options at our disposal, including banning orders, rent repayment orders, management orders and entries on the rogue landlord database.
- 1.2 As such, this West Suffolk Council Rogue Landlord Policy sets out in detail how the council will undertake the mandatory duties and utilise all discretionary powers available in relation to these enforcement options.
- 1.3 This document sets out the full policy which covers our use and application of banning orders, rent repayment orders, management orders and entries on the rogue landlord database and sits alongside the West Suffolk Council Enforcement Policy.
- 1.4 The Housing and Planning Act 2016 saw a suite of measures introduced for local housing authorities to use to help tackle rogue landlords and drive up standards in the private rented sector.
- 1.5 These measures included banning orders, expansion of rent repayment orders, expansion of management orders, and entries on to the rogue landlord database. This combined Rogue Landlord Policy sets out how we, the council (herein referenced as 'we', 'us', 'our' within this document), will meet our mandatory duties as well as utilise the discretionary powers under these four areas, being part of a suite of tools we will use in order to tackle the most serious offending landlords and as part of our commitment to ensuring healthy and safe housing within the private rented sector.
- 1.6 In setting this policy, due regard has been made to all relevant statutory and non-statutory guidance issued. This policy covers banning orders, rent repayment orders, management orders and the rogue landlord database. All should be considered collectively, as well as in combination with the council's private sector housing enforcement and civil penalties policies.

2. Banning orders

2.1 Overview

- 2.1.1 Banning orders were a new power given to local housing authorities in England following the Housing and Planning Act 2016. To utilise the banning order powers, the council is required to have a policy in place.
- 2.1.2 This section sets out how the council will utilise the powers in respect of banning orders to determine on a case-by-case basis the most appropriate course of action and when we may pursue a banning order.
- 2.1.3 Regard has been given to the non-statutory guidance issued ([Banning Order Offences under the Housing and Planning Act 2016: Guidance for local housing authorities](#) – accessed 9 February 2024), which sets an expectation that banning orders should be aimed at the most serious offenders.

2.2 Banning order offences

- 2.2.1 The Housing and Planning Act 2016 enables local housing authorities to apply to the First-tier Tribunal (FTT) to impose a banning order on a landlord or managing agent following a conviction for a 'banning order offence'.
- 2.2.2 The offences for which a banning order may be applied are set out in the 2018 regulations ([Housing and Planning Act 2016 \(Banning Order Offences\) Regulations 2018](#) –accessed 12 February 2024)). Banning order offences cannot be applied retrospectively; therefore, a relevant offence must have been committed on or after 6 April 2018 in order to be taken into consideration.
- 2.2.3 Spent convictions should not be considered. A spent conviction is one that is no longer considered to be live after a specified amount time, based on the provision of the Rehabilitation of Offenders Act 1974. If an absolute or conditional discharge for a relevant housing offence has been given, then this would not be classed as an offence.

2.3 Determining the length of banning order to recommend

- 2.3.1 The length of a banning order is a minimum of 12 months, but there is no statutory maximum limit set.
- 2.3.2 Although the length of a banning order is ultimately determined by the tribunal, the council is required to make a recommendation in this regard, along with accompanying reasons, as part of an application to the FTT.
- 2.3.3 The same factors as set out in the following section ('2.4 Determining whether to apply for a banning order') will also be considered when establishing the length of ban to recommend.

2.4 Determining whether to apply for a banning order

- 2.4.1 The council will consider under their discretionary powers applying for a banning order for the most serious offenders. In doing so, we will consider the following factors:
- **The seriousness of the offence:** The level of the sentence imposed is relevant – the more severe the sentence, the more appropriate an application for a banning order is likely to be.
 - **Previous convictions or rogue landlord database entries:** The more entries on the database, the more likely it is that an application will be successful and/or the longer a banning order should stay in force.
 - **Harm caused to a tenant:** The greater harm (or potential for harm), the more likely it is that an application will be successful and/or the longer the duration of the banning order.
 - **Punishment of the offender:** The application of a banning order and the length of such an order must be proportionate to the level of offending and is designed to be applied to the worst landlords.

- **Deterrence from repeat offending:** Banning orders are designed to change the behaviour of the landlord so that the offending behaviour is not repeated. As such, the length of a ban should be long enough to act as a sufficient deterrent.
- **Deterrence to others from committing similar offences:** Awareness among landlords and tenants that the council is willing and proactive in utilising these powers sends a clear message to other landlords within the area.

2.4.2 Lack of engagement with the council, no evidence of learning from mistakes and attempts to mislead officers are also factors that will lead to the council seriously considering the imposition of a banning order. Conversely, if the person has since engaged and demonstrated a change in behaviour or management practices, then an application for a banning order may be less likely.

2.4.3 If it is decided not to apply for a banning order, we may still use our powers to make an entry on the rogue landlord database. Please refer to the section on the [rogue landlord database](#) for further information.

2.5 Power to require information

2.5.1 The council has the power ([Housing and Planning Act 2016, section 19](#) - accessed 9 February 2024) to require persons to provide information for the purpose of deciding whether to apply for a banning order. The information may be necessary to establish culpability or assist with enquiries.

2.5.2 It is an offence for a person to fail to comply with the requirement to provide the information requested, unless that person can demonstrate they had a reasonable excuse for the failure. It is also an offence for a person to provide information that is false or misleading if the person knows that it is so, or they are reckless as to whether it is false or misleading. Such an offence would attract a fine on summary conviction.

2.6 Process

2.6.1 Applications for banning orders can be made against landlords or managing agents. Banning orders can also be made against a body corporate and an officer of a body corporate too. If a banning order offence has been committed by a body corporate and an officer of the body corporate, the council must apply for a banning order against both parties.

2.6.2 Where it has been decided to apply for a banning order, the first stage of the process is to issue a 'notice of intent' to the landlord or managing agent ([Housing and Planning Act 2016, section 15](#) - accessed 12 February 2024). (This also applies to a body corporate and officer of the body corporate, and should be read as being the case throughout the remainder of this section on banning orders.) The notice must be served within six months of the conviction for the banning offence and before an application is submitted to the FTT.

2.6.3 The notice of intent must set out:

- That the council is proposing to apply for a banning order
- The reasons why an application is being made
- The length proposed for the ban
- Details of the right to make representations, how this can be done, and the time limit.

2.6.4 A landlord or managing agent has a minimum of 28 days to make written representations to the council during the period of the notice of intent, and if representations are made, we will consider these fully and record these considerations in writing and, where appropriate, may provide these considerations to the landlord or managing agent.

2.6.5 At the end of the period for representations, the council will decide whether to pursue a banning order based on any representations received and our consideration of these. If the decision is made to proceed, we will then apply to the FTT. If the decision is made not to proceed, we will notify the landlord or managing agent of that decision and may still choose to use our powers to make an entry on the rogue landlord database if we have not already done so. Please refer to the section on the [rogue landlord database](#) for further information.

2.6.6 The FTT will consider the council's application and decide whether to issue a banning order and, if issued, its duration.

2.6.7 In making an order, the tribunal may include exceptions for some or all of the period: this could include allowing a landlord to manage a property for a specified time (to cover existing tenancies) or allowing time for a managing agent to wind down their business. The tribunal may also include specific provisions banning the person from being involved in any corporate body that carries out activity stipulated in the ban.

2.7 Effect of a banning order

2.7.1 Where the FTT makes a banning order, then the order has the effect of banning the landlord or managing agent from:

- letting housing in England
- engaging in English letting agency work
- engaging in English property management work, or
- doing two or more of the above.

2.7.2 A landlord or managing agent subject to a banning order is also prevented from holding a licence for a house in multiple occupation (HMO) or a licence under a selective licensing scheme. Where they already hold a relevant licence, they will, upon the banning order being made, be determined not to be a 'fit and proper person' to hold a licence, and any current licence(s) will be revoked. When a licence is revoked, there may be a duty or a power on the council to proceed to a management order for the property or properties.

2.7.3 Please refer to the section on [Management orders](#) for further information.

2.7.4 While the banning order is in place, the landlord is prevented from transferring the property to:

- a person associated with the landlord (including family members, spouses, and civil partners)
- a business partner of the landlord
- a person associated with the business partner of the landlord
- a business partner of a person associated with the landlord
- a body corporate in which the landlord or someone mentioned above is an officer
- a body corporate in which the landlord has a shareholding or other financial interest, or
- in the case where the landlord is a body corporate, any body corporate that has an officer in common with the landlord.

2.7.5 If the landlord attempts to dispose of a property to one of the prohibited persons (set out above), then the disposal will be considered void.

2.8 Tenancies following a banning order

2.8.1 A banning order does not invalidate a tenancy agreement held by occupiers in the property, regardless of whether it was entered into before or after the making of the banning order. As such, the tenants' rights under the terms and conditions of their tenancy agreement are not affected by the making of the order.

2.8.2 Information on banned landlords will be made available to tenants on request.

2.9 Appeals

2.9.1 The landlord or managing agent may appeal ([Housing and Planning Act 2016, section 53](#) –accessed 15 February 2024) a decision to make, or the duration of, a banning order to the Upper Tribunal (UT) but only in circumstances where either the FTT or UT have granted permission for an appeal.

2.10 Revocation or variation of a banning order

2.10.1 FTTs have the power to revoke or vary a banning order. The council does not have the power to revoke or vary an order.

2.10.2 The tribunal can revoke or vary a banning order only in response to an application from the person on whom the order was made.

2.10.3 In circumstances where a banning order has been made on the basis of convictions, all of which are subsequently overturned on appeal, the tribunal must revoke or vary the banning order.

2.10.4 Where some, but not all, of the convictions on which basis the order was made have been overturned on appeal, or where one or more convictions have become spent, the tribunal may revoke or vary the order.

2.10.5 A tribunal may vary a banning order by doing one or more of the following:

- Adding new exemptions to a ban
- Varying the banned activities listed on the order
- Varying the length of the ban, or
- Varying existing exceptions to a ban.

2.11 Publicity

2.11.1 One of the objectives of banning orders is to improve the management practices of landlords and property agents locally and across the country. Therefore, local housing authorities (LHAs) are encouraged to publicise successful applications for banning orders.

2.11.2 In determining how and the extent to which information is publicised and the names of individual landlords, the council will obtain legal advice where appropriate as well as giving consideration to the Ministry of Justice guidance ([Publicising Sentencing Outcomes: Guidance for public authorities on publicising information \(including via the internet\) about individual sentencing outcomes within the current legal framework \(June 2011\)](#) – accessed 9 February 2024).

2.12 Breaching a banning order

2.12.1 A person commits an offence ([Housing and Planning Act 2016, section 21](#) – accessed 9 February 2024) if they breach a banning order and are liable, on summary conviction, to imprisonment for a period not exceeding 51 weeks, to a fine, or to both.

2.12.2 Once a banning order is in place, the council will monitor the banned person's activity. Any complaints in relation to the banned person will be investigated immediately and evidence will be gathered where a breach is believed to have been committed.

2.12.3 When an offence has been committed, the council will determine, on a case-by-case basis, which is the most appropriate course of action, being one of the following options:

- Issue a financial penalty notice
- Prosecute
- Take no further action.

2.12.4 If a body corporate commits an offence and breaches a banning order and this is proved to have been committed with the consent or connivance of an officer of the corporate body, the officer as well as the body corporate commits the offence.

2.12.5 If the council decides to issue a financial penalty, the amount will be determined and process followed in accordance with the council's Civil Penalties Policy.

2.13 Management order

- 2.13.1 The provision of management orders, contained within Part 4 of the Housing Act 2004, were extended ([Housing and Planning Act 2016, section 26](#) – accessed 9 February 2024))([Housing and Planning Act 2016, Schedule 3](#) – accessed 9 February 2024) to include circumstances where a banning order has been made and a property is being let in breach of that order.
- 2.13.2 In such circumstances, the council may take over the management of the property or properties to safeguard the tenants, persons living nearby and also to ensure that the property is available for rent (particularly in areas of high demand).
- 2.13.3 Please refer to the section on [Management orders](#) or further information.

2.14 Rent repayment order

- 2.14.1 The council or tenant can apply to the FTT for a rent repayment order when a landlord has breached a banning order.
- 2.14.2 Please refer to the section on [rent repayment orders](#) for further information.

3. Rent repayment orders

3.1 Overview

- 3.1.1 Rent repayment orders (RROs) were initially introduced by the Housing Act 2004, but the powers were extended following the Housing and Planning Act 2016.
- 3.1.2 An RRO is an order that requires a landlord to repay a specified amount of rent paid by either a tenant and/or the council or the Department for Work and Pensions (in respect of a relevant award of Housing Benefit or housing element of Universal Credit), up to a maximum of 12 months.
- 3.1.3 RROs can only be made by a First-tier Tribunal (FTT) but an application to the FTT can be made by either the council and/or a tenant.
- 3.1.4 This section sets out how we will utilise the powers in respect of RROs and determine on a case-by-case basis when an RRO may be sought, and the amount to be recovered.
- 3.1.5 Regard has been given to the statutory guidance issued ([Rent repayment orders under the Housing and Planning Act 2016: Guidance for Local Housing Authorities](#) – accessed 13 February 2024).

3.2 Applicable offences

- 3.2.1 An RRO can be applied for when a landlord has committed a prescribed offence. The offences for which an application for an RRO may be made include:

- a. Using violence to secure entry, contrary to section 6(1) of the Criminal Law Act 1977
- b. Unlawful eviction or harassment of occupiers, contrary to section 1(2), 1(3) or 1(3A) of the Protection from Eviction Act 1977
- c. Failure to comply with an improvement notice issued under the Housing Act 2004, contrary to section 30(1)
- d. Failure to comply with a prohibition order issued under the Housing Act 2004, contrary to section 32(1)
- e. Operating a house in multiple occupation (HMO) or other house, if the property requires a licence under Part 2 or 3 of the Housing Act 2004, without a licence, contrary to sections 72(1) or 95(1), respectively
- f. Breaching a banning order issued under section 21 of the Housing and Planning Act 2016.

3.2.2 The offences specified in c. and d. above must relate to hazards within the occupied premises only, and not common parts.

3.2.3 The offence must have been committed on or after 6 April 2017.

3.2.4 An RRO can be applied for regardless of whether the landlord has been convicted of the offence.

3.2.5 It should be noted that the council may issue a financial penalty and apply for an RRO for the same offence. However, this is only available for the offences c. and e. above.

3.3 Determining when to apply for a rent repayment order

Duty in the event of a conviction

3.3.1 The council must, ([Housing and Planning Act 2016, section 48](#) – accessed 13 February 2024) upon becoming aware that a landlord has been convicted for any of the above offences, consider applying for an RRO.

3.3.2 There will be a strong presumption in favour of the council applying for an RRO on all cases where the landlord has been convicted of a relevant offence and some or all of the rent for the relevant period was paid through Housing Benefit or the housing element of Universal Credit.

3.3.3 Where there has been a conviction, a certificate of conviction will suffice to establish commission of the specified offence to the tribunal.

3.3.4 Where a landlord has been convicted of the offence, the FTT must award the RRO and must set the amount to be repaid to the maximum it has the power to order.

Discretion – in the event of an offence but no conviction

3.3.5 The council may ([Housing and Planning Act 2016, section 41\(3\)](#) –accessed 15 February 2024) also consider applying for an RRO where it is satisfied that a person has committed one or more of the relevant offences and it related to housing within our area, but that person has not been convicted.

- 3.3.6 In the absence of a conviction, the tribunal will need to be satisfied that sufficient evidence has been demonstrated to the required standard, that is beyond reasonable doubt, that the landlord committed the specified offence(s). As such, in determining whether it is appropriate to apply for an RRO, the council will first need to be confident that there is sufficient evidence to meet the required burden of proof and will have due regard to the CPS Code for Crown Prosecutors ([Crown Prosecution Service Code for Crown Prosecutors](#) – accessed 15 February 2024) in doing so.
- 3.3.7 Where the council does consider there to be sufficient evidence of the offence(s), we will then decide whether an application for an RRO is appropriate and, if so, how much should be recovered, taking the following factors into account:
- **Punishment of the offender:** Consideration of the conduct of the landlord and tenant, the financial circumstance of the landlord and if there have been convictions for similar offences.
 - **Deterrence from repeat offending:** Deterring repeat offending is considered a high priority and the level of penalty should be suitably high so as to be effective.
 - **Deterrence from others committing similar offences:** Issue of an RRO will be in the public domain and robust and proportionate use will help ensure and encourage others to comply with their responsibility.
 - **Removal of any financial benefit that may have been obtained as a result of committing the offence:** It is an important element of an RRO that there should be no benefit accrued to the landlord through their disregard for their responsibilities.

Process

- 3.3.8 Where it has been determined that an application for an RRO will be pursued and the amount established, the council, prior to an application to the FTT, must ([Housing and Planning Act 2016, section 42](#) – accessed 15 February 2024) first issue a 'notice of intended proceedings' on the relevant landlord.
- 3.3.9 The notice must be served within 12 months of the date on which the landlord committed the offence to which it relates.
- 3.3.10 The notice must include the following information:
- Notification that we are proposing to apply for an RRO, setting out the reasons why
 - The amount we are seeking to recover
 - Details of the landlord's right to make representations, how this can be done and the time in which to do so (which must not be less than 28 days).
- 3.3.11 We will fully consider any representations made during the notice period before deciding whether to continue with applying for an RRO.
- 3.3.12 An application to the FTT for an RRO may only be made by the council once we have completed going through the process of issuing a notice; the time given for representations has passed, with any received being duly considered; and a decision has then been made to continue.

Appeals

- 3.3.13 The landlord may appeal ([Housing and Planning Act 2016, section 53](#) – accessed 15 February 2024) a decision by the FTT to make an RRO, or the amount specified, to the Upper Tribunal (UT) but only where either the FTT or UT have granted permission for an appeal.

Income and recovery

- 3.3.14 Income received from an RRO is retained by the council provided it is only used in connection with our enforcement functions in relation to the private rented sector ([The Rent Repayment Orders and Financial Penalties \(Amounts Recovered\) \(England\) Regulations 2017, Regulation 5](#) – accessed 13 February 2024).
- 3.3.15 The amount payable under an RRO is recoverable by the council as a civil debt, and in accordance with the statutory guidance, we will seek to recover any unpaid RROs through the county court and, if necessary, the use of county court bailiffs.

Support for tenants

- 3.3.16 Council officers may offer advice to tenants who are eligible to claim an RRO in respect of rent paid themselves, but in such cases the tenant will usually be referred directly to other appropriate bodies for further support.

4. Management orders

4.1 Overview

- 4.1.1 Management orders were initially introduced under Part 3 of the Housing Act 2004, and the powers were further extended following the Housing and Planning Act 2016.
- 4.1.2 A management order allows the council, in certain circumstances, to take over temporary management of a property where a landlord is failing, so as to protect the health, safety or welfare of the occupiers, the neighbourhood and/or to ensure any other appropriate steps are taken for the proper management of the property.
- 4.1.3 Management orders are a vital tool in guaranteeing that, while steps are taken to improve the skills and/or approach of a landlord, occupiers are not left at risk.
- 4.1.4 This section sets out how we will utilise the powers in respect of management orders and how, on a case-by-case basis, decisions will be reached on whether to pursue the making of a management order.
- 4.1.5 Regard has been given to the non-statutory guidance issued ([A guide to the licensing and management provisions in Part 2, 3 and 4 of the Housing Act 2004](#) – accessed 16 February 2024).

4.2 Effect of a management order

- 4.2.1 A management order allows the council possession of the property against the immediate landlord, and consequently, subject to existing rights to occupy, we have the authority to:
- Do anything that could have been done by the landlord, in relation to the property, including repairs, collecting rents, etc.
 - Spend monies received through rents and other charges on carrying out our responsibility of management, including the administration of the property
 - Create new tenancies (if the property is under an interim management order, new tenancies must be with the consent of the landlord).
- 4.2.2 However, the council will not be the owner of the property and will not have the right to sell it or use it to secure a mortgage.
- 4.2.3 Upon a management order coming into force, the landlord can no longer:
- receive any rent from those living in the property
 - exercise any rights or powers in respect of the management of the property
 - grant any new tenancies or licences or other rights to occupy it.
- 4.2.4 That said, the landlord remains responsible for any mortgage payments where there is an existing mortgage on the property, and the landlord is not prevented from exercising their right to sell or otherwise dispose of the property if they so choose.
- 4.2.5 Sale of a property does not automatically end a management order that is in force on the property, but the existence of a new landlord would be a factor taken into consideration by the council as to whether the management order needs to continue. A management order is a local land charge. We can apply to the Land Registry to have it entered on the register of title relating to the property. Doing so ensures that any prospective purchaser of the property is aware that a management order is in force.
- 4.2.6 The making of a management order has no impact upon the legal interest of other interested parties such as the mortgage lender or freeholder or the validity of any pre-existing mortgage or tenancy, and does not prevent any parties with a legal interest in the property from exercising any of their rights.

4.3 Interim management orders (IMO)

- 4.3.1 An IMO is a short-term measure that is in effect for a maximum of 12 months. If it does not stipulate an earlier expiry date than the 12 months, it will cease to have effect after this time. IMOs made due to a banning order will cease to have effect when the banning order expires where this is earlier than 12 months.
- 4.3.2 A management order comes into force on the date it is made unless as a result of a licence being revoked but that revocation has not yet come into effect. In

such circumstances, the IMO comes into effect when the revocation of the licence becomes effective.

4.3.3 Once an IMO has come into force, the council has a number of duties imposed upon us in relation to it, namely:

- taking any immediate steps we consider necessary for the purposes of protecting the health, safety and welfare of the occupiers of the property or of persons owning or occupying property in the vicinity
- collecting the rent
- properly managing the house, carrying out repairs, carrying out routine maintenance (paid for through the collection of rent)
- remedying any Category 1 hazards immediately
- creating new tenancies, with the written consent of the original landlord
- managing finances including:
- keeping income and expenditure accounts
- making these accounts readily available to the landlord
- paying the original landlord any surplus on income over expenditure (and any interest accrued on this amount)
- ensuring the property is adequately insured against destruction by fire or other causes.

4.3.4 At the earliest opportunity, we must plan for and work towards resolving the conditions that led to the IMO originally and revoking the order as soon as it is appropriate to do so.

4.4 Final management orders (FMO)

4.4.1 FMOs are a longer-term measure and can be made for a maximum of 5 years. An FMO will cease to have effect on the expiry date stipulated. If made as a result of a banning order, it will cease to have effect when the banning order expires where this is less than five years.

4.4.2 They can only be issued where an IMO or another FMO has already been made in respect of the property and has not yet expired.

4.4.3 FMOs come into effect only after the appeal period of 28 days has expired (which must also be the date on which the IMO or previous FMO expires). If there is any appeal made, the existing IMO or FMO remains in force until it has been fully determined or withdrawn. It should be noted that:

- where the property is required to be licenced under Parts 2 or 3 of the Housing Act 2004, the existing IMO or FMO automatically continues to be in force while the appeal is in progress
- where the property is not required to be licenced, the council would need to apply to the First-tier Tribunal (FTT) to request the existing order remain in force while the appeal is in progress.

4.4.4 It is a key requirement of an FMO, unlike with an IMO, that it contains a management scheme for the property. The management scheme will set out details of how the council intends to manage the property for the duration of the FMO. This will be split into two parts; the first will set out such matters as the following:

- Any works proposed to be carried out.
- Estimates of expenditure likely to be incurred whilst the order is in effect.
- The amount of rent or other charges we will seek to obtain whilst the order is in effect.
- The amount of any compensation that may be payable to third parties, and the provisions for making such payment.
- Provisions for the payment of any surplus income to the landlord after the deduction of relevant expenditure, including information on our intention as to any interest (such as the rate) to be paid on it.
- Provisions as to any balance due to the landlord or third parties at the end of the FMO.
- Provisions as to the recovery of any expenditure from the landlord that cannot otherwise be covered by the collected rent.

4.4.5 The second part will set out in general terms how the council will address the matters which led to the making of the FMO.

4.4.6 Once an FMO has come into force, we have very similar duties imposed upon us to those set out above for IMOs. However, there are the following key additions and differences:

- Since the FMO follows a previous order, there is no requirement to take immediate steps to protect health and safety
- We can create new tenancies without the need for consent from the landlord, provided they are:
 - not for a fixed term which would expire after the end of the current FMO
 - assured shorthold tenancies created at least 6 months before the end of the current FMO, or otherwise are not licences or tenancies that cannot be terminated on less than four weeks' notice
- The order must be reviewed from time to time to ensure that operation of the order and stipulated management scheme are sufficient. We must take the appropriate action if, on review, one of the following options is considered a better alternative; these being:
 - to vary the FMO
 - to grant a licence
 - to revoke the FMO and take no further action.

4.5 Determining when to make a management order

Duty

4.5.1 The council must ([Housing Act 2004, section 102\(2\), \(3\)](#) – accessed 19 February 2024) make an IMO in respect of a property if:

- a. It should be licenced under Part 2 or 3 and isn't, and either:
 1. we consider there is no reasonable prospect of a licence being granted in the near future, or
 2. the health and safety condition applies ([The health and safety condition is defined within the Housing Act 2004, section 104.](#) – accessed 19 February 2024).
- b. It is licensed, but we have decided to revoke the licence; however, the revocation is not yet in force, but when it does come into force, either:

1. We consider there is no reasonable prospect of a licence being granted in the near future, or
2. The health and safety condition applies.

4.5.2 The council must([Housing Act 2004, Section 113\(2\),\(5\)](#) – accessed 19 February 2024) make an FMO in respect of a property if:

- a. an IMO has been made in respect of a property required to be licensed, and on its expiry, we would still be unable to grant a licence
- b. an FMO has been made in respect of a property required to be licensed, and on its expiry, we would still be unable to grant a licence.

Discretion

4.5.3 The council may ([Housing Act 2004, section 102\(4\)](#) – accessed 19 February 2024) make an IMO (or 'special IMO' in the case of (b) below) in respect of a property if:

- a. It is an HMO that is not required to be licensed and the health safety condition is satisfied, or
- b. It is a privately rented property that would otherwise be licensable under Part 3 were such a scheme ever in effect and:
 1. the health and safety condition is satisfied, and
 2. occupants of the property are causing significant and persistent anti-social behaviour, or
- c. it is let in breach of a banning order.

4.5.4 However, in relation to (a) and (b) above, before any such order can come into force, it must be first authorised by the FTT.

4.5.5 Also, in relation to (b) above, the making of a special IMO cannot happen in isolation and must be part of a combination of other measures also being taken by the council or other organisations/persons working with us that is intended to lead to a measurable reduction or elimination of the anti-social behaviour.

4.5.6 The council may ([Housing Act 2004, section 113\(3\),\(3A\),\(6\),\(6A\)](#) – accessed 19 February 2024) make an FMO in respect of a property if:

- a. An IMO or FMO has been made:
 1. in respect of a property not required to be licenced, and
 2. we consider, on the current order's expiry, an FMO is necessary to protect, on a long-term basis, the health, safety or welfare of those living in the property, or those living or owning properties in the vicinity.

4.5.7 The council's use of our discretionary powers for management orders for properties that are not required to be licensed will generally be considered only in exceptional circumstances as a last resort and where all other attempts and means to ensure the health, safety or welfare of occupiers have been exhausted.

Process

- 4.5.8 Upon the council making an IMO (having obtained the authorisation of the FTT where it relates to a non-licensable property) or an FMO, we must serve a notice and copy of the order (including the management scheme where it is an FMO) on the landlord, all relevant persons ([Relevant persons is defined for this purpose within the Housing Act 2004, Schedule 6, para 8\(4\)](#) – accessed 22 March 2024) and the occupiers of the property. Fixing the document to a conspicuous part of the property is sufficient for service on the occupiers.
- 4.5.9 The notice must include:
- a. the reasons for making the order
 - b. the date on which it was made
 - c. the general effect of the order or, for an FMO, a general description of how the property is to be managed in accordance with the management scheme, and
 - d. the date on which the order ceases to be in effect (or, where it is an IMO being made on the revocation of a licence, how that date is determined).
- 4.5.10 The notice must also include, on those served on the landlord and other relevant persons, in addition to the above, the details of the right of appeal and the time limit for lodging an appeal.
- 4.5.11 The notice and copy of the order must be served on the landlord and relevant persons within seven days of the order being made. It must be served on the occupiers as soon as is reasonably practicable.
- 4.5.12 Before making an FMO, the council must first serve notice and a copy of the proposed order (including management scheme) on the landlord and all relevant persons. The notice must include:
- a. The reason why we are proposing to make the order
 - b. The main terms of the order (in particular, the management scheme), and
 - c. The length and end date of the consultation period (no less than 14 days) and how any representations can be made.
- 4.5.13 Should, on consideration of representations made, we decide to make any modifications to our proposed order, the process would then be repeated (unless the modifications are considered not material or not materially different from the previous proposal).

Variation and revocation

- 4.5.14 The council has the power to vary the terms of management orders (including the management scheme under an FMO) ([Housing Act 2004, section 111](#) – accessed 19 February 2024)([Housing Act 2004, section 121](#) – accessed 19 February 2024), and it is for us to determine when a variation may be appropriate and the nature and extent of any such variation.
- 4.5.15 We have the power to revoke a management order, ([Housing Act 2004, section 112](#) – accessed 19 February 2024) ([Housing Act 2004, section 122](#) – accessed 19 February 2024), thus bringing it to an end before the date scheduled for it

to cease to be in force. It is for the council to determine if a revocation is appropriate.

4.5.16 An order may be varied or revoked either:

- a. on the request of the landlord or other relevant person, or
- b. by our own initiative.

4.5.17 The council must serve a notice of our intention to vary, revoke or refuse a request to vary or revoke an order on the landlord and all relevant persons known to it. The notice must include:

- a. details of the variation proposed, or information pertaining to our proposal to revoke the order or our refusal to a request to vary or revoke the order
- b. the reasons for the variation, revocation, or refusal,
- c. the length and end date of the consultation period (no less than 14 days) and how any representations can be made.

4.5.18 The council must consider any representations made within the consultation period.

4.5.19 Once the consultation period has passed and due consideration has been given to any representations received, if we have decided to proceed with the variation, revocation or refusal to vary or revoke the order, a further notice with the decision made must be served on the landlord and all relevant persons known to us. The notice must include:

The decision to vary, revoke or refuse to vary or revoke the order:

- a. the reasons for the decision
- b. details of the right of appeal including the time limit for lodging an appeal.

4.5.20 This notice must be served on the landlord and all relevant persons known to the council within seven days of the date the decision was made.

Appeals

4.5.21 Where an order has been made in respect of a property, the landlord or other relevant person may make an appeal to the FTT as to the making of the order and/or the terms of the order. Any such appeal must be made within 28 days from the date the order was made.

4.5.22 Where an appeal is heard, the FTT may choose to confirm, vary or revoke the order.

4.5.23 The right of appeal is limited where the order is an IMO that has already been authorised by the FTT. In such cases, any appeal is limited only to the financial arrangements contained within the order (not to whether it should have been made at all).

4.5.24 An appeal as to the financial arrangements under the order can be made by the landlord or other relevant person at any time while an order is in force, to

the FTT. With such appeals, the tribunal's power is limited only to considering whether to vary the terms of the order.

- 4.5.25 All relevant persons have a right of appeal to the FTT against a decision to vary, revoke or refuse a request to vary or revoke an order. Any such appeal must be made within 28 days from the date of the decision by the council.

4.6 Powers of entry

Inspection

- 4.6.1 Where it is considered appropriate to conduct a survey or examination of a property on which a management order is in force, the council has a power of entry ([Housing Act 2004, section 239\(1\)\(c\)](#) – accessed 16 February 2024) for purpose of inspection at a reasonable time provided the owner and occupiers have been given at least 24 hours' notice.
- 4.6.2 If, having given the required notice, entry is refused, we may apply to the magistrates' court for a warrant authorising entry (by force, if necessary). Anyone who obstructs entry commits an offence liable, on summary conviction, to a fine.

Carrying out works

- 4.6.3 Once a management order is in effect, the council has a power of entry ([Housing Act 2004, section 131](#) – accessed 16 February 2024) for the purpose of carrying out works. Entry to any part of the property is permitted at all reasonable times and, save for emergencies, the occupiers have been given reasonable written notice of access being required.
- 4.6.4 If, after receiving reasonable written notice, entry is prevented by any of the occupiers, we may obtain an order from the magistrates' court requiring the occupiers not to interfere with access or prevent the works required. A person who fails to comply with such an order commits an offence liable, on summary conviction, to a fine.

Information gathering

- 4.6.5 The council has a number of existing powers to require information or documents to be provided, ([Housing Act 2004, section 235](#) – accessed 16 February 2024) ([Local Government \(Miscellaneous Provisions\) Act 1976, Section 16](#) – accessed 16 February 2024) and we will utilise any and/or all of these as may be necessary. We may also utilise information which has been obtained via our Housing Benefit or Council Tax function ([Housing Act 2004, section 237](#) – accessed 16 February 2024). Gathering such information may be crucial in allowing us to determine whether a management order should be made or if revoking or varying the terms of an order once it is in force may be appropriate.

4.7 Rogue landlord database

4.7.1 Overview

- 4.7.2 The rogue landlord database, a government initiative, is a tool for LHAs in England to keep track of rogue landlords and property agents.
- 4.7.3 LHAs are able to view all entries on the database, including those made by other LHAs. The database can also be searched to help keep track of known rogues, especially those operating across council boundaries, and assist LHAs in the targeting of their enforcement activities.
- 4.7.4 While the database was established by the Secretary of State for Housing, Communities and Local Government, it is local housing authorities who have the responsibility for maintaining and updating the content of the database.
- 4.7.5 Details held on the database are not available to members of the public. The information contained in the database may be used only as specified in the act ([Housing and Planning Act 2016, section 39](#) – accessed 8 February 2024).
- 4.7.6 This section sets out when the council will make a data entry on the national database and how it will determine the length of time an entry will be maintained for.
- 4.7.7 Regard has been given to the statutory guidance issued ([Database of rogue landlords and property agents under the Housing and Planning Act 2016: Statutory guidance for Local Housing Authorities](#) accessed 8 February 2024).

4.8 Deciding to make an entry

Mandatory entry

- 4.8.1 The council has a duty ([Housing and Planning Act 2016, section 29](#) – accessed 8 February 2024) to make an entry on the rogue landlord database for anyone, following an application by the council, issued with a banning order (please refer to the section on [banning orders](#) for further information).
- 4.8.2 Such an entry must be maintained for the period for which the banning order has effect, and it must then be removed.

Discretionary entry

- 4.8.3 The council has discretion ([Housing and Planning Act 2016, section 30](#) – accessed 8 February 2024) to make an entry on the rogue landlord database in respect of a person where, although they have not had a banning order issued, they have either:
 - a. been convicted of at least one banning order offence (Housing and Planning Act 2016 ([Banning Order Offences](#)) [Regulations 2018](#) – accessed 8 February 2024), or
 - b. have received two or more financial penalties for banning order offences within a 12-month period.

- 4.8.4 Only financial penalties where the appeal period has expired and/or any appeal has been determined or withdrawn, can be taken into account for the above criteria.
- 4.8.5 The council will look to exercise our discretionary power at all appropriate opportunities. Such an approach is considered necessary as part of:
- a. encouragement and improvement of joint working between local housing authorities
 - b. assisting us and other LHAs in the area with targeting enforcement activities
 - c. ensuring effective identification of rogue landlords and agents, in particular those operating across boundaries, and
 - d. demonstrating the our commitment to the provision of safe and healthy housing.
- 4.8.6 In determining whether to make a discretionary entry, the council will consider the following factors:
- a. **The severity of the offence:** Where the offence is more serious, there is stronger justification for inclusion on the database.
 - b. **The culpability and track record of the offender:** Where there is a history of non-compliance and that banning order offences have knowingly been committed, there is stronger justification for inclusion on the database.
 - c. **Any mitigating factors:** In cases of a less serious offence and/or if mitigating factors are present (which could include personal issues such as health problems or recent bereavement), it may be appropriate for the council to decide not to make an entry. We will consider, on case-by-case basis, whether any mitigating factors are strong enough, in conjunction with the other criteria, to justify not making an entry.
 - d. **Deterrence from repeat offending:** Deterring offenders from repeat offending is considered to be a high priority. There will be a strong justification for inclusion on the database where a landlord and/or property agent operates in multiple local housing authority areas.
 - e. **Deterrence to others from committing similar offences:** There is, in general, a strong justification for inclusion on the database, as some landlords and property agents will be deterred from committing banning order offences in the first place if they know they may be included on the database.

Determining the duration of an entry

- 4.9.1 A discretionary entry cannot be made for a period of less than two years, but there is no maximum limit.
- 4.9.2 In considering the length of time for which an entry should be present on the rogue landlord database, the council will consider the following factors:
- a. **The severity of the offence:** Where the offence is more serious or there are related factors such as there have been previous offences and/or the offence(s) have been committed over a period of time, then specifying a longer period for inclusion on the database would be appropriate.

- b. **The culpability and track record of the offender:** Where there is a history of non-compliance, a track record of serial offending and/or the offender knew, or should have known, that they were in breach of their responsibilities, then specifying a longer period for inclusion on the database would be appropriate.
- c. **Any mitigating factors:** Where there are relevant mitigating factors (which could include personal issues such as health problems or recent bereavement), we may decide to specify a shorter period of time for inclusion on the database.
- d. **Deterrence from repeat offending:** The data should be maintained on the database for a reasonable period of time so that it acts as a genuine deterrent to further offences. Relevant determinants in this consideration may include:
 - 1. whether the offender appears to us to have learnt a lesson(s) and changed their management/compliance behaviour since committing the banning order offence(s)
 - 2. the size of financial penalty issued or, where entry is made on basis of conviction for a banning order offence, the sentence imposed by the court.

Power to require information

- 4.9.3 The council has the power ([Housing and Planning Act 2016, section 35](#) – accessed 8 February 2024) to require a person to:
- a. provide specified information to enable us to decide whether to make an entry in the database in respect of that person
 - b. provide any information needed to complete the proposed entry for that person or keep it up to date.
- 4.9.4 It is an offence for a person to fail to comply with the requirement to provide the information requested, unless that person can demonstrate they had a reasonable excuse for the failure. It is also an offence for a person to provide information that is false or misleading if the person knows that it is so or is reckless as to whether it is false or misleading. Such an offence would attract a fine on summary conviction.

Making an entry

- 4.9.5 Before making a discretionary entry on to the rogue landlord database, the council must issue the person with a decision notice. The decision notice must set out:
- a. the reasons why we intend to make the entry
 - b. the length of time the entry will be maintained on the database
 - c. that the entry will be made after the end of the period of 21 days from the date the notice is given
 - d. the type of information that may be added to the database
 - e. the person's appeal rights.
- 4.9.6 A decision notice must be given no later than six months after **either** the person's date of conviction for the banning order offence to which the notice

relates **or** they received the second of the financial penalties to which the notice relates.

Appeals

4.9.10 A person who receives a decision notice from the Council (that is for discretionary entries only) may appeal to the First-tier Tribunal (FTT) against either:

- 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.

4.9.11 An appeal must be made within 21 days of the notice being given. If an appeal is received within the notice period, then the council will not make an entry in the database until the appeal has been determined or withdrawn.

4.9.12 Where an appeal is heard, the FTT may choose to confirm, vary or cancel the decision notice.

Removal or variation of an entry

4.9.13 A person in respect of whom a discretionary entry has been made on to the rogue landlord database can make a request in writing to the council for removal of the entry or for the period for which it is maintained on the database to be reduced.

4.9.14 Where such a request is received, we will consider whether to agree to the request and give notice of the decision. If we decide not to agree to the request, the notice of decision will include the reasons and a summary of the rights of appeal to the decision.

4.9.15 If a banning order has its duration varied or is revoked by the FTT, we will update the duration of the mandatory entry into the rogue landlord database or remove the entry accordingly.

4.9.16 The council must remove a discretionary entry on the database if the conviction(s) on which it was based is/are overturned on appeal.

4.9.17 The council may choose ([Housing and Planning Act 2016, Section 36](#) – accessed 9 February 2024) to remove or reduce the duration of a discretion entry on the database if:

- a. The entry was made on the basis of more than one conviction, and some of them (but not all) have been overturned on appeal, or
- b. The entry was made on the basis of one or more convictions that have become spent, or
- c. The entry was made on the basis of the person having received two or more financial penalties and at least one year has elapsed since the entry was made.

4.9.18 If the council chooses to remove a discretionary entry or reduce the period for which it shall be maintained, it must notify the person to whom the entry relates.

4.9.19 All database entries will be removed promptly once the duration of the database entry has expired.