

Adoption of Banning Order and Rogue Landlord Database Policies

Legal Comments

The Housing and Planning Act 2016 amended the Housing Act 2004 and introduced new powers/sanctions which may be used by Local Housing Authorities (“LHAs”) in the form of a Banning Order for the most serious offences committed by landlords and property agents.

The Ministry of Housing, Communities and Local Government (“MHCLG”) has developed non-statutory guidance (“MHCLG Guidance”) to support LHAs to understand how to use their new powers to ban landlords and property agents from renting out property. Within this guidance, it is recommended that all LHAs set out their own policies on when they will pursue a banning order as the appropriate sanction.

The purpose of the recommended Policies are to set out transparently the circumstances and conditions within which the LHA will operate when considering whether either of these enforcement measures would be proportionate and effective approaches given the circumstances of a particular case.

These Policies also require Officers to have regard to the principles contained within the Council’s overarching Enforcement Policy and that they must be read in conjunction with any relevant approved statutory, governmental or other national guidance on enforcement action.

COVID-19 (Coronavirus) and the enforcement of standards in rented properties

Since the final versions of the current recommended Policies were completed, the country has entered into a period during which it is now responding to an unprecedented Covid-19 outbreak. As a result MHCLG has produced non-statutory guidance for local authorities on enforcing standards in rented properties during the Covid-19 outbreak.

The link to the guidance is below:

<https://www.gov.uk/government/publications/covid-19-and-renting-guidance-for-landlords-tenants-and-local-authorities>

Of particular note is Section 4 within the guidance which encourages Local Authorities to respond during this unprecedented time by taking enforcement action that they determine is necessary. Local Authorities are recommended to update and adapt their enforcement policies as required to meet the changing circumstances caused by COVID-19 and latest government advice regarding the outbreak, in order to ensure pragmatic, appropriate and risk-based action is taken.

With the above in mind, it is advised that while the Policies may still be adopted in their current form, any recommended formal enforcement action under these Policies should be considered with specific regard to government guidance on enforcement activity and that all matters would need to be considered on a case by case basis and within the context of a pragmatic, appropriate and risk based action.