

# EXECUTIVE DECISION

made by a Cabinet Member



## REPORT OF ACTION TAKEN UNDER DELEGATED AUTHORITY BY AN INDIVIDUAL CABINET MEMBER

Executive Decision Reference Number – HC4 21/22

Decision	
1	<b>Title of decision:</b> Approval and adoption of a Banning Orders Policy
2	<b>Decision maker (Cabinet member name and portfolio title):</b> Councillor Mrs Vivien Pengelly, Cabinet Member for Homes & Communities
3	<b>Report author and contact details:</b> Mark Chubb, Technical Lead - 01752 308989
4	<b>Decision to be taken:</b> To approve the proposed Banning Orders Policy so that delegated officers from Community Connections Housing Improvement Team can make applications to the First-tier Tribunal (Property Chamber) for granting of a Banning Order in relation to Rogue Landlords and Property Agents who have committed a Banning Order offence.
5	<p><b>Reasons for decision:</b></p> <p><b><u>Utilisation of available powers under the Housing &amp; Planning Act 2016</u></b> The Council is committed to improving standards in private sector housing, with the aim of ensuring that all private rented accommodation is well managed, properly maintained, safe and habitable. Whilst the Council acknowledges that the vast majority of landlords are compliant and do operate their business responsibly in Plymouth, there are some irresponsible landlords who knowingly rent out accommodation that is unlicensed, substandard, or unsafe.</p> <p>The Housing and Planning Act 2016 introduced a range of measures to help local authorities deal more robustly with rogue and irresponsible landlords, and we have utilised this in respect of Civil Penalties and the Database of Rogue Landlords and Property Agents. However, for the most serious and prolific offenders, there is also the power to apply for a Banning Order. A Banning Order, if granted, would prevent the subject (for a minimum of 12 months – no maximum period) from;</p> <p><b>Letting housing in England Engaging in English letting agency work Engaging in English property management work; or Doing two or more of those things</b></p> <p><b>Additionally;</b> <b>A landlord subject to a banning order is also unable to hold a licence for a House in Multiple Occupation (HMO) and their property may also be subject to a management order</b> <b>A landlord is prevented from transferring the property to certain persons whilst the banning order is in force.</b></p>

	<p>To utilise the banning order powers, the council is required to have in place its own policy as to when to pursue a banning order, and to decide the most appropriate course of action on a case-by-case basis in line with that policy.</p>
<p><b>6</b></p>	<p><b>Alternative options considered and rejected:</b></p> <p>In theory we could consider doing nothing in respect of creating and adopting a Banning Order policy. However, this would limit our powers to tackle the most serious and prolific offenders of housing condition and compliance offences in the city. This option has been considered and rejected, as not utilising the powers available to us, when appropriate, is not in line with the Council's approach to tackling Rogue Landlords and Property Agents, and would not be in alignment with Pledge 81;</p> <p><b><i>We believe tenants who live in Houses of Multiple Occupancy (HMO's) have the right to live in affordable, good quality and safe accommodation. To ensure these standards are met we will scrutinise HMO's across the city so that such accommodation makes a valued contribution to Plymouth's housing stock.</i></b></p> <p>There are no reasonable other options available for consideration.</p>
<p><b>7</b></p>	<p><b>Financial implications and risks:</b></p> <p>It is not anticipated that there will be a significant number of cases where the Council will need to utilise the power to apply for a Banning Order as this firstly requires a conviction for a relevant offence, and secondly requires the subject to be a serious or prolific offender.</p> <p>Where the Council do wish to make applications for a Banning Order, there is a set process to follow that can only be taken by officers of Community Connection Housing Improvement Team under their delegated authorities. This process consists of;</p> <p>The Council will give the landlord a notice of our proposal to apply for a banning order. This is called a 'notice of intent'. The council will serve the notice of intent within six months of the landlord being convicted of the offence.</p> <p>A landlord has a minimum of 28 days to make representations to the local housing authority during the period of the notice of intent. The Council will consider any representations made during the notice period and will apply for the banning order once this period has expired.</p> <p>Section 19 of the Housing and Planning Act 2016 provides that a local housing authority can require a landlord to provide information for enabling the local housing authority to decide whether to apply for a banning order. It is an offence for the landlord not to comply with this request, unless they can provide a reasonable excuse. It is also an offence to provide information that is false or misleading. Failure to provide information or providing false or misleading information is punishable on summary conviction to a fine.</p> <p>At the end of the period for representations, the Council will decide whether to pursue a banning order based on any representations received. If the decision is to proceed the Council will apply to the First-tier Tribunal who have the power to make the banning order.</p> <p>Where a banning order is made, and the Landlord is an HMO licence holder, the individual will be determined not to be 'fit and proper' to hold a licence under part 2 or 3 under the Housing Act 2004 and any licences in force under those parts will be revoked.</p> <p>Officer time would be required to produce; check, approve and issue the relevant notices, applications, supporting enforcement action documentation, update case details and manage communications. Furthermore, officers will likely be required to attend a physical or virtual hearing with the First-tier Tribunal (Property Chamber). If successful, additional time would also be required to review publication guidance and work with Senior Managers, Cabinet Member/Portfolio Holder and Corporate Communications for a suitable press release. It is likely that this work would be absorbed into the existing team, providing the use of this power is infrequent.</p>

	<p>However, if the applications for Banning Orders were to be frequent occurrences, or the subject of a Banning Order also happened to be a licence holder of HMO properties, this would then likely require a significant amount of work that the existing team would have significant challenge in absorbing. If this were the scenario, it is likely that there would be a significant issue identified in respect of the Private Rented Sector in Plymouth which would require political focus on tackling a serious, or prolific offenders. In these instances, consideration of resource levels and/or availability of grant funding could be explored.</p>			
8	<p><b>Is the decision a Key Decision?</b> (please contact <a href="#">Democratic Support</a> for further advice)</p>	<b>Yes</b>	<b>No</b>	<b>Per the Constitution, a key decision is one which:</b>
			X	in the case of <b>capital</b> projects and contract awards, results in a new commitment to spend and/or save in excess of <b>£3million</b> in total
			X	in the case of <b>revenue</b> projects when the decision involves entering into new commitments and/or making new savings in excess of <b>£1million</b>
		X	is <b>significant</b> in terms of its effect on communities living or working in an area comprising <b>two or more</b> wards in the area of the local authority.	
	<p>If yes, date of publication of the notice in the <a href="#">Forward Plan of Key Decisions</a></p>	N/A		
9	<p><b>Please specify how this decision is linked to the Council's corporate plan/Plymouth Plan and/or the policy framework and/or the revenue/capital budget:</b></p>	<p><b><u>Corporate Plan</u></b></p> <p>Our Values – Fair – Introducing a Banning Order policy sets out openly and honestly how we will act to tackle the most serious and/or prolific offenders of housing conditions and compliance related offences. This action will be taken in severe circumstances to champion fairness by making it clear to Rogue Landlords and Property Agents that we wish for the Private Rented Sector to be a valued contribution to Plymouth's housing stock, filled with affordable, good quality and safe accommodation.</p> <p>Priorities – Unlocking The City's Potential – We want to offer a wide range of homes, including homes in the Private Rented Sector. Having access to utilising the Banning Order power will help to promote positive messages to good landlords in the city, by tackling the worst. This will help towards ensuring that PRS accommodation is good quality, safe, managed and maintained correctly.</p> <p>Priorities - Caring For People &amp; Communities – Improving housing conditions, enforcing on issues of non-compliance, and tackling Rogue Landlords and Property Agents helps to drive standards in accommodation up. By improving the standards in the Private Rented Sector we are able to improve the living conditions of some of the most vulnerable persons, and families on low-income, in our society. This action helps to reduce health inequalities, improve safety, and create sustainable tenancies.</p>		

<b>10</b>	<b>Please specify any direct environmental implications of the decision (carbon impact)</b>	Limited/Minimal Impact: primarily paper usage for printing documents, when digital records are not appropriate. A physical attendance at a Tribunal hearing will require travel. The action is anticipated to be infrequent and therefore the impact is considered to be limited/minimal.		
<b>Urgent decisions</b>				
<b>11</b>	<b>Is the decision urgent and to be implemented immediately in the interests of the Council or the public?</b>	<b>Yes</b>		(If yes, please contact Democratic Support ( <a href="mailto:democraticsupport@plymouth.gov.uk">democraticsupport@plymouth.gov.uk</a> ) for advice)
		<b>No</b>	X	<b>(If no, go to section 13a)</b>
<b>12a</b>	<b>Reason for urgency:</b>			
<b>12b</b>	<b>Scrutiny Chair Signature:</b>		<b>Date</b>	
	<b>Scrutiny Committee name:</b>			
	<b>Print Name:</b>			
<b>Consultation</b>				
<b>13a</b>	<b>Are any other Cabinet members' portfolios affected by the decision?</b>	<b>Yes</b>		
		<b>No</b>	X	<b>(If no go to section 14)</b>
<b>13b</b>	<b>Which other Cabinet member's portfolio is affected by the decision?</b>	N/A		
<b>13c</b>	<b>Date Cabinet member consulted</b>	N/A		
<b>14</b>	<b>Has any Cabinet member declared a conflict of interest in relation to the decision?</b>	<b>Yes</b>		If yes, please discuss with the Monitoring Officer
		<b>No</b>	X	
<b>15</b>	<b>Which Corporate Management Team member has been consulted?</b>	<b>Name</b>	Craig McArdle	
		<b>Job title</b>	Strategic Director for People	
		<b>Date consulted</b>	29/11/21	

Sign-off								
16	Sign off codes from the relevant departments consulted:	Democratic Support (mandatory)						DS94 21/22
		Finance (mandatory)						djn.21.22.171
		Legal (mandatory)						LS/37635/HM
		Human Resources (if applicable)						N/A
		Corporate property (if applicable)						N/A
		Procurement (if applicable)						N/A
Appendices								
17	Ref.	Title of appendix						
	A	Briefing report for publication ( <i>mandatory</i> )						
	B	Banning Orders Draft Policy						
	C	EIA						
Confidential/exempt information								
18a	Do you need to include any confidential/exempt information?	Yes						If yes, prepare a second, confidential ('Part II') briefing report and indicate why it is not for publication by virtue of Part I of Schedule 12A of the Local Government Act 1972 by ticking the relevant box in <b>18b</b> below.  (Keep as much information as possible in the briefing report that will be in the public domain)
		No	X					
		Exemption Paragraph Number						
		1	2	3	4	5	6	7
18b	Confidential/exempt briefing report title:							
Background Papers								
19	Please list all unpublished, background papers relevant to the decision in the table below.  Background papers are <u>unpublished</u> works, relied on to a material extent in preparing the report, which disclose facts or matters on which the report or an important part of the work is based. If some/all of the information is confidential, you must indicate why it is not for publication by virtue of Part I of Schedule 12A of the Local Government Act 1972 by ticking the relevant box.							

Title of background paper(s)	Exemption Paragraph Number						
	1	2	3	4	5	6	7
<a href="https://www.legislation.gov.uk/ukpga/2016/22/part/2/chapter/2">https://www.legislation.gov.uk/ukpga/2016/22/part/2/chapter/2</a> Housing & Planning Act 2016 – Banning Orders							
<a href="https://www.legislation.gov.uk/uksi/2018/216/pdfs/uksi_20180216_en.pdf">https://www.legislation.gov.uk/uksi/2018/216/pdfs/uksi_20180216_en.pdf</a> Housing & Planning Act 2016 (Banning Order Offences) Regulations 2018							
<a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697643/Banning_order_guidance.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697643/Banning_order_guidance.pdf</a> Ministry for Homes, Communities, and Local Government Guidance Document.							
<b>Cabinet Member Signature</b>							
<b>20</b>	I agree the decision and confirm that it is not contrary to the Council's policy and budget framework, Corporate Plan or Budget. In taking this decision I have given due regard to the Council's duty to promote equality of opportunity, eliminate unlawful discrimination and promote good relations between people who share protected characteristics under the Equalities Act and those who do not. For further details please see the EIA attached.						
<b>Signature</b>			<b>Date of decision</b>	18/01/2022			
<b>Print Name</b>	Councillor Vivien Pengelly						