

Appendix A

Rossendale Illegal Eviction and Harassment Policy

17th March 2011

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1.0 Summary

There are a small number of private landlords or their agents with properties in Rossendale who do not conduct themselves within the requirements of the legislation relating to private rented accommodation. These landlords/agents sometimes resort to using illegal eviction and/or harassment to force tenants to leave their properties.

Illegal eviction can normally be prevented through mediation with the landlord and the Council would always advocate this approach unless there are other mitigating factors such as violence which would deem this approach unsuitable. However, where there are occasions when the landlord continues to harass or even illegally evict a tenant despite advice and information that they may be committing a criminal offence then the Council will take action. The Council provides a wide range of assistance to help landlords comply with their legal responsibilities when asking a tenants to vacate their properties including support through the Housing Options Team; Environmental Health Residential Service and web resources to provide landlords with relevant advice, as well as access to landlord forums/groups both at a local and pan Lancashire level.

Harassment and illegal eviction can cause considerable distress and anxiety to households and may lead to homelessness. Therefore, the Council will take a proactive stance against illegal eviction and/or harassment, and advise and, where necessary, assist residents in this situation including taking appropriate action to help tenants regain occupancy of their home. The Council will also prosecute landlords or their agents where it is deemed appropriate to do so.

The purpose of the policy is to identify and ensure a fast, clear, and co-ordinated response by the Council, in partnership with its customers, landlords and partner agencies to deal with allegations of harassment and illegal eviction.

2.0 Introduction

Harassment and illegal eviction are not frequently reported to the Council, however when such events occur they will have a severely disruptive effect on the households involved, possibly leading to homelessness. This in turn will have a financial impact on the Council in having to find temporary accommodation such as bed and breakfast for those occupants.

The law protects people living in residential properties against illegal eviction and/or harassment through two ways:

- by making illegal eviction and/or harassment a criminal offence; and
- by enabling someone who is being illegally evicted and/or harassed to claim damages through the civil courts.

The only way a landlord or Agent can force a tenant to leave a property is by following the relevant legislation and procedures in the Housing Act 1988.

Local Authorities have the power to take criminal proceedings for offences of illegal eviction and/or harassment. If the evidence justifies it, they can carry out investigations and prosecute if they believe an offence has been committed. Where the harassment takes the form of the landlord/agent not undertaking necessary repairs, and the property is in poor condition, a local authority also has powers under the Housing Act 2004, through the Housing Health and Safety Ratings System (HHSRS), to take enforcement action to secure improvements to the condition of the property.

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This policy states clearly that the Council will take a proactive stance and investigate any allegation it receives regarding harassment and/or illegal eviction. It is therefore hoped that landlords and agents will be prompted to ensure that they do not take any action that could constitute harassment or illegal eviction and will be deterred from following such courses of action.

3.0 The problem locally

There are some private landlords (or their agents) with properties in Rossendale who do not conduct themselves within the requirements of the legislation relating to private rented accommodation, most notably the 'Protection from Eviction Act, 1977' and as the 'Housing Act 1988'. These landlords may issue a 'notice to quit' that is not legally valid and/or encourage their tenants to leave through a variety of means (for example, persistent calling at the property, threatening to change the locks and in the extreme case physically removing a tenant from a property by force).

Some tenants are not aware of their rights and may end up leaving their home without any support or advice. It is therefore difficult to assess the frequency of tenant harassment and illegal eviction and it is likely that many cases go unreported, as tenants are too frightened to come forward for help, however, statistics from Rossendale's Housing Options Team state that we receive on average between 3 - 7 suggested cases per year.

Research shows that the types of household most likely to experience harassment and illegal eviction are vulnerable households, those dependent on housing benefit and those classed as 'priority homeless' (for example; couples with children, lone parents and elderly households). Evidence suggests that much of this harassment has been as a result of rent issues and / or where the Council has been asked to take action on disrepair issues under the 2004 Housing Act.

4.0 What is Harassment?

There are two separate offences of harassment, one where the accused is the victim's landlord (or an agent of the landlord) and the other where the accused is some other person. The offence of harassment comprises two elements: Culpable Behaviour and Intention.

4.1 Culpable Behaviour comprises doing anything to interfere with the peace and comfort of a residential occupier or members of their household and includes: -

- Making threats to persuade a tenant to leave.
- Cutting off services such as gas, electricity, or water.
- Preventing access to shared kitchens and bathrooms.
- Entering a tenant's room without permission.
- Not carrying out or completing essential repairs, demand to carry out excessive repairs.
- Anti social conduct by the landlord's agent.
- Physical violence.
- Verbal abuse.
- Withholding keys.
- Changing locks.
- Stopping a tenant from using part of your home e.g. Locking toilet.
- Removing belongings.
- Stopping a tenant having visitors staying.
- Sending in builders without notice.
- Visiting at unsociable hours.
- Constant telephone calls or text messages.

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- Harassment because of age, disability, gender, race, religion, nationality, or sexuality (as extended to all new protected characteristics and protected groups within the 2010 Equality Act).

A landlord should provide reasonable notice of any intended visit to his tenant's property. As a general rule, this should be at least 24 hours, unless there is an emergency such as a burst waterpipe.

4.2 Intention is where the landlord or his agent knows or has reasonable cause to believe that their conduct is likely to cause the residential occupier to: -

- Give up their occupancy of part or all of the property,
- Refrain from exercising any right in respect of the whole or part of the premises (e.g. applying for a fair rent), and
- Refrain from pursuing any remedy in respect of the whole or part of the premises (e.g. taking court action to get repairs done).

As well as being an offence under the Protection from Eviction Act 1977 there may also an offence under the Protection from Harassment Act 1997, where it only has to be shown that an act by somebody pursues a course of conduct which 'amounts to harassment of another' and 'which he knows or ought to know amounts to harassment of the other'.

5.0 What is Illegal Eviction?

A landlord's right to get his or her property back from a residential tenant can normally only be enforced through the courts. Illegal or unlawful eviction is when the landlord, the landlord's agent or someone acting on their behalf, unlawfully deprives a tenant of all or part of the home or where any other person forces or attempts to force a tenant to leave the accommodation without following the correct legal procedure and serving the proper notice(s) under the relevant Housing Act (1988).

Illegal Eviction and Harassment are Criminal Offences and the maximum penalty in the Magistrates Court is a fine of up to £5,000 and/or imprisonment of up to six months. At Crown Court the penalty is an unlimited fine and/or two years imprisonment.

The Council will encourage best practice within the rented sector by working closely with individual landlords, landlord groups and letting agents by providing information and support. This will be done in a variety of means through regional landlord forums, online WebPages, advice and information for landlords and tenants provided through the Housing Options Team.

The Council will also take a proactive approach to supporting the rights of residents and tenants in relation to illegal eviction and/or harassment. This will include taking appropriate action to help the tenant regain entry to their home and the possible prosecution of any person, organisation or agency who are acting illegally.

In all cases the Council will adhere to the stated 'Service Standards' in cases of illegal eviction and/or harassment (see Section 10.0).

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6.0 The strategic context

This Policy and its key components have been developed to reflect local and national housing strategies and policies. The future priorities for Rossendale are contained in the Corporate Plan 2009-12, which sets out the vision and outcomes for the next three years. This policy makes a significant contribution towards meeting the Council's Corporate Priorities, in particular:-

6.1 Delivering Quality Services to Customers

Harassment and illegal eviction are criminal offences. Tenants should feel safe in their homes and not fear either harassment or the threat of an illegal eviction. Adoption of this policy will help ease the fear of harassment and/or illegal eviction as tenants and support agencies will be clear who to contact regarding incidents.

6.2 Improving health and well being across the Borough

If tenants are to benefit from social and economic regeneration they need to feel safe in their homes. If tenants are being harassed and are fearful of being forced from their homes, this will have an impact on their health and wellbeing. Additionally some tenants are afraid to report disrepair in their property for fear of being forced to leave their home. This will mean that some tenants remain living in substandard, unhealthy housing. Adoption of this policy will give tenants more confidence to request help from the Council if they are living in substandard housing and so bring about improvements in their living conditions and their health.

7.0 Relevant legislation and legal requirements

7.1 Requirement of Notice

In the majority of cases, tenants are entitled to a written notice to leave a property, even if the landlord did not give them a written agreement to live there in the first place.

The main exception to this is an excluded occupier. This will be the case if a person shares living accommodation such as a kitchen or bathroom with the landlord. In this case the landlord only has to ask the person to leave verbally.

In some cases the landlord may only have to give a tenant reasonable notice to leave and once a Notice has expired, then the tenant has no alternative but to leave. For example, if a tenant moved into his/her accommodation after 15 January 1989 and their landlord lives in the property and the tenant shares the accommodation with the landlord or a member of their family.

If a tenant is in doubt of what notice he/she is entitled to and the landlord has asked them to leave, the tenant should always seek advice before leaving. A landlord cannot, except in a few cases, evict a tenant from a property without gaining consent through the Court.

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7.2 Relevant Legislation

There are four main pieces of legislation that deal with illegal eviction and harassment:-

1. **Protection from Eviction Act 1977.** This act makes it an offence to:-
 - Do acts likely to interfere with the peace or comfort of a tenant or anyone living with him or her; or
 - Persistently withdraw or withhold services for which the tenant has a reasonable need to live in the premises as a home.

It is an offence to do any of the things described above intending, knowing, or having reasonable cause to believe, that they would cause the tenant to leave their home, or stop using part of it, or stop doing the things a tenant should normally expect to be able to do. It is also an offence to take someone's home away from them unlawfully. Only by way on a Court Order can a tenant be forced to vacate their home.

2. **Criminal Law Act 1977.** This act provides that if someone enters a persons home using or threatening to use violence they are committing a criminal offence. Specifically this act states it is an offence for: - any person, who without lawful authority, uses or threatens violence for the purpose of securing entry into any premisesprovided that:-
 - he/she knows that there is someone on those premises at the time who is opposed to the entry which the violence is intended to secure; and
 - the person using or threatening the violence knows that is the case.

This applies even if the person being evicted has no legal right to be there for example a squatter or an excluded tenant or excluded licensee, whose right to occupation has ended. This act supports possible action by the Council to help tenants regain possession of their homes.

3. **Protection from Harassment Act 1977.** This act creates four criminal offences:-
 - harassment;
 - putting another person in fear of violence;
 - breach of restraining order (that is, an order that protects you from harassment or fear of violence); and
 - breach of an injunction (an order requiring something to be done or not to be done).
4. **Housing Act 1988.** This act provides supplementary guidance to the Protection from Eviction Act 1977. Particularly around tenancies created after 1989 and clarity around tenancies such as excluded tenancies and licences. It also provided further information around assessment of damages and the provision of damages following an unlawful eviction.

8.0 How the policy will operate

The Council has the legal power to investigate and prosecute under the provisions of the Protection from Eviction Act 1977 and Housing Act 1988. Referrals may also be made in certain circumstances to the Police who may review the circumstances when taking a prosecution for other related factors that might include theft of residential occupier's belongings, criminal damage, assault or protection from harassment.

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8.1 Specific principles

In all cases of illegal eviction and/or harassment of a residential occupier the Council will consider a formal **caution** or **prosecution** on behalf of the tenant. In coming to this decision between these two options, the Council will have regard to the seriousness of the alleged incident of illegal eviction or harassment and where a formal caution is refused by the landlord; prosecution will usually commence having regard to the issues outlined in the following section.

8.2 Issues to be taken into account

In deciding whether a case is suitable for the application of a caution or prosecution the authority will take a number of issues into account, and these are: -

- Strength of evidence obtained.
- The severity of the offence and the circumstances of the case.
- Voluntary disclosure.
- Social factors.

A case will not be deemed unsuitable for a prosecution or caution because either the Council has successfully enabled the tenant to regain possession of their home or because the landlord or their agent has allowed or is about to allow a displaced residential occupier back into their home.

8.3 Enforcement

The Council will adhere to its Corporate Enforcement Strategy and Policy and will seek to do so in a firm but fair, open, consistent, and helpful way. Any enforcement action will be compliant with relevant legislation and guidelines in line with the principles of good enforcement outlined in the Enforcement Concordat. All investigations into alleged reports of illegal eviction and/or harassment will follow best professional practice and the requirements of:-

- The Human Rights Act 1998.
- The Regulation of Investigatory Powers Act 2000.
- The Police and Criminal Evidence Act 1984 (PACE).
- The Criminal Procedures and Investigations Act.
- The Code for Crown Prosecution.

The Council will investigate non-compliance with statutory requirements and take firm action, including prosecution where appropriate, against those who breach or fail to fulfil their legal obligations.

8.4 Enforcement options

The Council regards enforcement from a holistic view whilst encompassing all actions that can be taken to achieve compliance with a statutory requirement. It has a staged approach to enforcement wherever possible to ensure solutions are initially sought through education, co-operation and agreement. Where this is not successful, formal action will be necessary, which may ultimately lead to prosecution or other summary action. The following options will be made available:-

- Mediation and negotiation.
- Formal Cautions.
- Prosecution.

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8.5 Information to consider for prosecution

Complainants will be asked to provide evidence such as:-

- Keeping a diary of incidents, including dates and times with photographs. This could be evidence in any court action.
- Recording details of any conversations tenants may have with their landlord or threats that he/she may have made.
- Asking their landlord to put everything in writing.
- Keeping a copy of their tenancy agreement, any notices and letters that the landlord sends them.
- Having someone else with them to witness meetings/dealings with their landlord.
- Noting the names and addresses of people involved including witnesses.
- Forming a tenants association with anyone else affected.
- Reporting incidents to the police and ensuring they log the complaints.

When considering which cases to prosecute consideration will be given to:-

- The merits of each case.
- The code of practise for Crown Prosecutors.
- The Criminal Procedure and Investigations Act 1996.

Any case will need to meet both the Evidential Test and also the Public Interest Test (Appendix 1) in that if there is sufficient evidence of a suitable quality to give a realistic prospect of conviction, consideration will also be given as to whether a prosecution will serve the public interest. A prosecution will usually take place unless public interest criteria are against it.

Where the Council undertakes a prosecution and are successful in securing a conviction the Council will apply for costs incurred during the case including any fees for temporarily rehousing tenants.

9.0 Roles and Responsibilities

The Council is ultimately responsible for ensuring that any case of illegal eviction and/or harassment will be investigated and where appropriate, will take any necessary action including prosecution. All staff are responsible for adhering to the policy and for reporting any matters where they suspect illegal eviction and/or harassment may be taking place. Partner agencies have a responsibility to advise and assist tenants and to refer relevant cases to the Council's Environmental Health Residential Section. A referral form for this purpose is provided at Appendix 2.

The Council is charged with the delegated power to investigate and prosecute under the provisions of the Protection from Eviction Act 1977. The power to prosecute is a matter delegated to the Director of Business.

Prosecutions will be brought on behalf of the Council in the name of the Director of Business by powers delegated from the Constitution. The Assistant Head of Legal Services is obliged to consider and review the decision to prosecute in accordance with the criteria set down in the Code of Conduct for Crown Prosecutors. The Law Society Practice Rules require observance of this code by all prosecutors.

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The Council also has the power to caution landlords for offences relating to illegal eviction and harassment.

10.0 Service Standards

In dealing with cases of illegal eviction and/or harassment the Council:-

- Aims to mediate and negotiate in cases of serious landlord and tenant disputes in the rented housing sector.
- Where mediation fails or is inappropriate because of violence etc. the Council may decide to pursue an investigation which may lead to a criminal prosecution under the Protection from Eviction Act 1977.

The Council will deal with cases of: -

- Unlawful eviction of tenants by private and registered social landlords or people acting on their behalf.
- Threatened unlawful evictions of tenants by private and registered social landlord tenants or people acting on their behalf.
- Serious cases of harassment of tenants by their landlord or people acting on their behalf. Serious could be violence, threats of violence, abusive, discriminatory, aggressive or intimidatory behaviour.
- Disconnection of essential services (water, gas, electricity) by the landlord or person acting on their behalf.
- Cases of harassment where the tenant(s) involved may be vulnerable e.g. elderly tenants, tenants with mental or physical health problems.
- Cases of racial, sexual or other discriminatory issues.

Any enquiries over general terms and conditions of tenancies, tenancy deposits, contracts, rent increases, or other related matters will be directed to the Council's Housing Options Team.

11.0 Review

This policy will be reviewed every three years to ensure it meets its aims and objectives and compliment the priorities contained within the Council's Corporate Plan. The Health Housing and Regeneration Team will be responsible for the implementation and review of this Policy and relevant procedures.

12.0 Enquiries

Any enquires about this policy can be made by:

Email: regeneration@rossendalebc.gov.uk

Telephone: 01706 252402

Letter:

Health, Housing and Regeneration

The Business Centre

Futures Park

Newchurch Road

Bacup

OL13 0BB

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13.0 Complaints Procedure

If a person is unhappy about the way action the Council has dealt with an issue or the way an officer has acted you can make a complaint under the [Complaints Procedure](#) available on the Council's Website and from the One Stop Shop. In summary the complaint procedure has two stages.

- Stage 1 – Complaint reviewed by the officer concerned, line manager or supervisor and a written response given within 10 days.
- Stage 2 – If you are unsatisfied with a response you can make a Stage 2 complaint. A stage 2 complaint is reviewed by a Head of Service Manager or Director and a written response provided.

13.1 Ombudsman Complaints

If you are unhappy with the Council's response to your complaint(s) you can complain to the [Local Government Ombudsman](#). The Ombudsman will normally only accept a complaint when you have exhausted the Council's own internal complaints procedure.

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Appendix 1

Public Interest Test

For Prosecution

- Violence, actual or threatened, including threatening behaviour.
- Premeditated offence/ongoing harassment, i.e. where landlord has previously received warnings.
- Victim vulnerable/put in considerable fear/suffered personal attack.
- Discriminatory motivation – racial, sexual or disability
- Relevant previous convictions.
- Grounds for believing offence likely to be repeated, i.e. previous complaints received.
- Widespread offence in the area and prosecution likely to act as a disincentive.
- Help ensure person can remain in their home

Against Prosecution

- Offence committed due to genuine mistake/misunderstanding.
- Minor loss or harm due to a single incident, especially if caused by misjudgement.
- Long delays between commission and trial unless:
 - serious delay is partly due to defendant
 - complex offence
 - due to prosecuting authority
- Vulnerable defendant
 - unless serious offence/possibility of repetition
- Risk to witness.
- Defendant has put right the loss or harm caused.
- Possible motives of complainant including delay in making complainant.

Appendix 2

Report of Illegal Eviction and/or Harassment

Please complete this form to report any possible cases of illegal eviction and/or harassment for investigation by the Council's Environmental Health Residential Service E:environmentalhealth@rossendalebc.gov.uk Telephone 01706 217777 and possible prosecution by Legal Services.

Where possible this must be submitted the same day in order that early communication with the Landlord can commence.

Details of referring agency

Contact Name

Address (inc. postcode)

Telephone

Details of aggrieved person(s)

Contact Name

Tenancy Address (inc postcode)

Current address (if different than above)

Telephone

Details of any other persons living at the property e.g. names of children, date of birth

Details of Landlord

Contact Name

Address (inc postcode)

Telephone

Is Landlord/Lady a company? If yes, company name

Details of Tenancy

Type of tenancy (please attach a copy of the agreement if possible)

Tenancy start date

Type of Notice issued?

Eviction date

Any shared facilities with Landlord/Lady? If yes please state

Current weekly/monthly rent

Any rent arrears?

Other relevant information

Reason for harassment, illegal eviction if known.

Are there any witnesses? Please provide names, addresses, telephone, e.mail contact details)

Is any person's safety at risk? If yes, please give name(s) and reason.

Have the Police been informed?

If yes, please state any involvement. (Details – names, collar numbers, contact details).

Details of any vulnerability issues eg. health, disabilities

Other documentary evidence

Please list and attach e.g. photographs.

Events to date

Please include what events have taken place, including details of harassment, timescale of events, who is involved etc. Please attach copies of any notices or correspondence to date.

Signed (Referring Officer)

Date

Customer’s authority for disclosure of information

I hereby give permission for the agency named above to disclose details and information on my behalf in relation to the matter of illegal eviction/harassment.

Signed

Date

Thank you for bringing this matter to our attention. Please submit the completed form to the Council’s Environmental Health Residential Service, Council Offices, Futures Park, Newchurch Road, Bacup, Rossendale, OL13 0BB.

Appendix 3

The following organisations can also provide advice and assistance and can make referrals to the Council.

Citizens Advice Bureau

18 King Street
Bacup
Rossendale
OL13 0AH
Tel: 08444 99 4121 - Monday to Thursday
9:30am - 12:30am.
Email: admin@rossendalecab.cabnet.org.uk

Shelter Lancashire

69 Preston New Road
Blackburn
BB2 6AY
Tel: 0344 515 1831

Shelter

Freephone: 0808 800 4444

Specialist Mediation in Lancashire East (SMILE)

The Schoolhouse
Smirthwaite Street
Burnley
BB11 4AZ
Email: info@smile-ltd.co.uk

Rochdale Law Centre

15 Drake Street
Rochdale
OL16 1RE
Tel: 01706 657766
Email: info@rochdalelawcentre.org.uk

Bury Law Centre

8 Bank Street
Bury
BL9 0DL
Tel: 0161 272 0666
Email: info@burylawcentre.co.uk

M3 Project (16 – 25 year olds)

St John's Court
Bacup Road
Rawtenstall
Lancashire
BB4 7PA
Tel: 01706 216 600
Email: info@rossendalem3.org

Age Concern

Darwen Town Hall
Croft Street
Darwen
BB3 1BQ
Tel: 01254 773440

Accredited Private Practice Solicitors with Legal Services Commission franchise for housing law

Woodcocks

3-5 Irwell Terrace
Bacup
OL13 9AN
Tel: 01706 874487
Email: info@woodcocks.co.uk

Fieldings Porter

Silverwell House
Silverwell Street
Bolton
BL1 1PT
Tel: 01204 540900
Email: info@fieldingsporter.co.uk

Darwen Law Chambers

17 – 19 Railway Road

Darwen

Lancashire

BB3 2RG

Tel: 01254 761234

Email: info@dlcsolicitors.co.uk

GLP

20A Lakeland Court

Langley

Middleton

Manchester

M24 5QJ

Tel: 0161 653 6295

Email: admin@fosterlaw.co.uk

Switalskis Solicitors LLP

Venture House

Silver Street

Halifax

HX1 1HS

Tel: 01422 284350

Email: help@switalskis.com