

# Illegal Eviction and Harassment Policy

Date of Issue – February 2018

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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 give advice 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.

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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 set in law. For example, for assured shorthold tenants this means the relevant notice must be served and then possession order and warrant obtained. Only a court bailiff can evict an assured short hold tenant.

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 (as amended by the Deregulation Act 2015), through the Housing Health and Safety Ratings System (HHSRS), to take enforcement action to secure improvements to the condition of the property.

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**

Both the Housing Options and Environmental Health Team receive enquiries about the legality and/or correctness of notices/requests to leave accommodation from both tenants and landlords.

Most landlords follow the advice given and take the correct procedures to evict their tenants.

However there are some private landlords (or their agents) 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'.

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.

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The Housing Options Team has experienced instances where landlords will try to evict their tenants when they are contacted by the team following a request for service. It is believed that a number of these may have resulted in harassment or an illegal eviction, but tenants are too frightened to come forward for help.

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?

Harassment is defined in the Protection from Eviction Act 1977 as:

- Acts likely to interfere with the peace and comfort of those living in the property, or
- Persistent withdrawal of services that are reasonably required for the occupation of the property.

The Protection from Eviction Act 1977 creates two separate offences of harassment:

- The first offence can be committed by any person if it can be shown that s/he had an intent to cause an occupier to leave all or part of the property or refrain from exercising any right or remedy of the premises.
- The second can only be committed by a landlord or her/his agent. This offence is committed if it can be shown that the landlord or her/his agent should have known or had reasonable cause to believe that her/his action(s) was likely to have this effect. This Act creates four criminal offences – harassment, putting another person in fear of violence, breach of restraining order and breach of an injunction.

Examples of behaviours which may be classed as harassment include:

- 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.

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- 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.
- 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 water pipe.

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 be 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'.

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## 5.0 What is Illegal Eviction?

The majority of occupiers cannot be evicted unless specific legal procedures have been followed (Protection from Eviction Act 1997). The exact procedures vary according to the particular type of tenancy or licence agreement the occupier has.

Action taken by a landlord or any other person to deprive an occupier of access to all or part of their accommodation without following the correct legal procedures constitutes illegal eviction.

The Council will 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.

The Council also recognise the rights as well as the responsibility of landlords and will actively encourage all tenants to observe their legal obligations as tenants.

In all cases the Council will adhere to its written procedures in reported or suspected cases of illegal eviction and/or harassment.

At the time of writing this policy there is no accurate data on the number of harassment and illegal evictions in Rossendale but the Housing Options and Environmental Health teams have successfully mediated on a number of occasions to help tenants remain in their homes.

## 6.0 Retaliatory eviction

Tenants with Assured Shorthold tenancies created after 1st of October 2015, can be protected from what is known as 'retaliatory eviction'.

Retaliatory eviction is a term used to describe situations where a landlord chooses to evict a tenant who has made a request for repairs rather than carrying out any necessary work. Tenants will only be protected from eviction in these circumstances where the Council's Environmental Health team have undertaken a risk assessment of the property and served a relevant notice as a consequence of a disrepair issue that is hazardous to health or safety. In such circumstances the landlord cannot issue the tenant with a notice under Section 21 of the Housing Act 1988 until 6 months after the service of the notice.

Tenants who receive notice from their landlord before the Council takes this action may only be protected if they have made their initial repair request to the landlord in writing. Normally the landlord is allowed 14 days to respond appropriately to the request for repairs. We recommend that tenants keep any copy of any correspondence that they

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send to their landlord for their own records as this could be important. If you are a tenant and you are worried about retaliatory eviction then please speak to the Council's Environmental Health Team.

## **7.0 Relevant legislation and legal requirements**

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

- Protection from Eviction Act 1977

Under S1 (2) Protection from Eviction Act 1977 it is an offence for any person to unlawfully deprive a residential occupier of the premises (or any part of it) and they occupy.

The law makes it an offence to:

- Do acts likely to interfere with the peace or comfort of a tenant or anyone living with her/him; 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 either 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 so. It is also an offence to take someone's home away from them unlawfully.

- Protection from Harassment Act 1997

This Act creates four criminal offences, harassment, putting another person in fear of violence, breach of restraining order and breach of an injunction.

## **8. Service Criteria**

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 within the boundaries of Rossendale. We will signpost anyone from outside the Borough to talk to their own local authority.
- Where mediation fails or is inappropriate the Council may decide to pursue an investigation which may lead to a criminal prosecution under the Protection from Eviction Act 1977 or the Protection from Harassment Act 1997.

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The Council will deal with cases of:-

- Unlawful eviction of tenants by private and registered social landlords or people acting on their own behalf.
- Threatened unlawful evictions of tenants by private and registered social landlord tenants or people acting on their own 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 intimidating 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 issue.
- Any enquiries over general terms and conditions of tenancies, tenancy deposits, contracts, rent increases or other related matters will be directed to the Environmental Health Team.

## 9. How the policy will operate

The Council will 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.

The Council will also recognise the rights as well as the responsibility of landlords and will actively encourage all tenants to observe their legal obligations as tenants.

Referrals will be made to the Housing Options team where appropriate. The service provides information, advice, help and support about a wide range of housing solutions and for those who maybe homeless or threatened with homelessness.

The Council has the legal power to investigate and prosecute under the provisions of the Protection from Eviction Act 1977 and the Protection from Harassment Act 1997.

Referrals may be made in certain circumstances to the local Police e.g. where threats of violence have been made or where we feel they may be needed to assist with stopping an attempted illegal eviction. The Police may review the circumstances when taking a

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prosecution for other related factors that might include theft of residential occupier's belongings, criminal damage, assault or protection from harassment.

### **9.1 Specific principles**

In all cases of illegal eviction and/or harassment of a residential occupier the Council will consider a simple 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 simple caution is refused by the landlord; prosecution will usually commence having regard to the issues outlined in the following section.

### **9.2 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.

### **9.3 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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Enforcement options will also include the provisions under the Housing and Planning Act 2016, such as rent repayment orders. When enacted, the use of banning orders and recording relevant information on the rogue landlord database will also be utilised.

Any case will need to meet both the Evidential Test and Public Interest Test as laid out in the Code for Crown Prosecutors

[https://www.cps.gov.uk/publications/code\\_for\\_crown\\_prosecutors/](https://www.cps.gov.uk/publications/code_for_crown_prosecutors/)

The case will be prepared and discussed with senior managers and Legal Services.

## **10. 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 Housing Options and Environmental Health Teams

## **11. 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. Complaints procedure**

Rossendale Borough Council has an established corporate complaints procedure for dealing with complaints. Information on how to make a complaint is outlined on the Council's website

[https://www.rossendale.gov.uk/forms/form/10290/en/compliments\\_complaints\\_and\\_fee\\_dback](https://www.rossendale.gov.uk/forms/form/10290/en/compliments_complaints_and_fee_dback)

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### 13 Enquiries

Any enquires about this policy can be made to:

Rossendale Borough Council Environmental Health Team

Email: [envhealth@rossendalebc.gov.uk](mailto:envhealth@rossendalebc.gov.uk)

Telephone: 01706 217777 option 5

Or for Housing advice contact Rossendale Borough Council Housing Options Team

[housingoptions@rossendalebc.gov.uk](mailto:housingoptions@rossendalebc.gov.uk)

Telephone: 01706 252555

The Business Centre

Futures Park

Newchurch Road

Bacup

OL13 0BB

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