PRIVATE SECTOR HOUSING

TENANT HARASSMENT AND
ILLEGAL EVICTION POLICY
Document Control

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<tr>
<th>Organisation</th>
<th>Copeland Borough Council</th>
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<tr>
<td>Title</td>
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<td>Debbie Cochrane</td>
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Revision History

<table>
<thead>
<tr>
<th>Version Reviewed</th>
<th>Date Reviewed</th>
<th>Reviewed By</th>
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</thead>
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<td></td>
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</tbody>
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<table>
<thead>
<tr>
<th>Version</th>
<th>Approved By</th>
<th>Date</th>
</tr>
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<td>Human Resources</td>
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<td>Corporate Leadership Team</td>
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<td>Trade Union Consultation</td>
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Document Distribution

This policy is to be distributed to all staff and elected members of Copeland Borough Council and placed on the Council’s Intranet Site. A copy must also be provided to contractors and 3rd parties undertaking work on Copeland Borough Council premises.

Contributors
## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>PRIVATE SECTOR HOUSING</td>
<td>1</td>
</tr>
<tr>
<td>TENANT HARASSMENT AND ILLEGAL EVICTION POLICY</td>
<td>1</td>
</tr>
<tr>
<td>Date: Date of final publication</td>
<td>1</td>
</tr>
<tr>
<td>Document Control</td>
<td>2</td>
</tr>
<tr>
<td>Revision History</td>
<td>2</td>
</tr>
<tr>
<td>Document Approval</td>
<td>2</td>
</tr>
<tr>
<td>Document Distribution</td>
<td>2</td>
</tr>
<tr>
<td>Contributors</td>
<td>2</td>
</tr>
<tr>
<td>Contents</td>
<td>3</td>
</tr>
<tr>
<td>Purpose</td>
<td>4</td>
</tr>
<tr>
<td>Policy Details including Procedures</td>
<td>6</td>
</tr>
<tr>
<td>Roles and Responsibilities</td>
<td>8</td>
</tr>
<tr>
<td>Monitoring of Policy Adherence</td>
<td>9</td>
</tr>
<tr>
<td>References</td>
<td>9</td>
</tr>
<tr>
<td>Protection from Eviction Act 1977</td>
<td>9</td>
</tr>
<tr>
<td>Criminal Law Act 1977</td>
<td>9</td>
</tr>
<tr>
<td>Protection from Harassment Act 1997</td>
<td>9</td>
</tr>
</tbody>
</table>
Purpose

1. Summary

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

Illegal eviction can often be prevented through mediation with the landlord, however, 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.

The Council provides a range of assistance to help landlords comply with their legal responsibilities when asking a tenant to vacate their properties including providing landlords with relevant advice and landlord forums.

Harassment and illegal eviction can cause considerable distress and anxiety to households and may lead to homelessness. The Council will therefore take a proactive stance against illegal eviction and/or harassment and offer support, advice and assistance to 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.

Introduction

2. Introduction

Harassment and illegal eviction are not frequently reported to the Council, however when such events occur they can 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.

The law protects people living in residential properties against illegal eviction and/or harassment. It does this in 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 can force a tenant to leave a property is by following the relevant legislation and procedures in the Housing Acts.

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 is as a result of the landlord not undertaking repairs and the property is in poor condition. A local authority also has powers under the Housing Act 2004, by using the Housing Health & Safety Ratings System.
(HHSRS), to take enforcement action to secure improvements to the condition of the property.

**Policy Benefits**

Adoption of this policy will make clear that the Council will actively investigate any allegation it receives regarding harassment and/or illegal eviction. It is hoped that landlords/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. **The problem locally**

There are some private landlords (or their agents) with properties in the Copeland Borough who do not conduct themselves within the requirements of the legislation relating to private rented accommodation, most notably the 'Protection from Eviction Act, 1977'. 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 (persistent calling at the property, threat 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.

There are no available statistics on the number of cases dealt with by the Council or advice agencies. The housing options team has experienced numerous instances where landlords will try to evict their tenants when they are contacted by the private sector housing 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 suggests that the types of household most likely to experience harassment and illegal eviction are those dependent on housing benefit and classed as ‘priority homeless’ (couples with children, lone parents, and elderly households).

**Definitions**

4. **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 "The Guilty Act" and intention "The Guilty Mind".

4.1 The Guilty Act 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 essential repairs
4.2 The Guilty Mind is where the landlord or his agent knows or has reasonable cause to believe that the 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".

5. 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 Acts.

Illegal Eviction and Harassment are Criminal Offences and the maximum penalty in a Crown Court is an unlimited fine and two years’ imprisonment.

Copeland 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, landlord forums, arranging training events for landlords on the right way to evict a tenant, advice and information booklets for landlords and tenants.

Policy Details including Procedures

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.

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 'Service Criteria' in cases of illegal eviction and/or harassment (see section 10.).
At the time of writing this policy there is no accurate data on the incidence of harassment and illegal eviction in Copeland, but the housing team has successfully mediated on a number of occasions to help tenants remain in their homes.

6. Relevant legislation

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

Protection from Eviction Act 1977 the law 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. A landlord cannot, except in a few cases, evict a tenant from a property without gaining consent through the Courts. Only on the Court's authority and by means of an official of the Court can a tenant be forced to vacate their home.

• Criminal Law Act 1977

This act provides that if someone enters a person's 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 premises ....provided that: (a) s/he 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 (b) 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 therefore supports possible action by the Council to help tenants regain possession of their homes.

• Protection from Harassment Act 1977

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

8. 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,
Referrals may also be made in certain circumstances to the local 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.

8.1 Specific principles

In all cases of illegal eviction and/or harassment of a residential occupier the Council will actively consider a formal caution or prosecution on behalf of the customer. In coming to this decision between the 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; 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 outlined below; -

- Strength of evidence obtained
- The severity of the offence and the circumstances of the case
- Voluntary disclosure e 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 Private sector housing Enforcement Policy and seek to do so in a firm but fair, open, consistent and helpful way.

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 available:

- Mediation & negotiation
- Formal Caution
- Prosecution

8.5 Information to consider for prosecution
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

Roles and Responsibilities

9. Roles & 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 customers and to refer relevant cases to the Council's Housing Team.

10. 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.
- 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.

The Council will deal with cases of:

1. Unlawful eviction of tenants by private landlords or people acting on their behalf

2. Threatened unlawful evictions of tenants by private landlords or people acting on their behalf

3. 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

4. Disconnection of essential services (water, gas, electricity) by the landlord or person acting on their behalf.

5. Cases of harassment where the tenant(s) involved may be vulnerable e.g. elderly tenants, tenants with mental or physical health problems.

6. Cases of racial, sexual or other discriminatory issue
7. Cases of Any enquiries over general terms and conditions of tenancies, tenancy deposits, contracts, rent increases or other related matters will be directed to the housing team.

Monitoring of Policy Adherence

11. Review
This policy will be reviewed every three years to ensure it meets its aims and objectives and compliments the priorities contained within the Council's Housing Strategy.

References

Protection from Eviction Act 1977
Criminal Law Act 1977
Protection from Harassment Act 1997