Policy to prevent illegal eviction and harassment to tenants by their landlords

1. Introduction

The vast majority of landlords operate in a legally compliant manner in their dealings with tenants. However a minority of landlords 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, 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 law protects people living in residential properties against illegal eviction and/or harassment through the ‘Protection from Eviction Act, 1977’. 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.

Harassment and illegal eviction can cause considerable distress and anxiety to households and may lead to longer term 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 (although the Council has no legal power to enforce this). The Council will also prosecute landlords or their agents where it is deemed appropriate to do so. 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. 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. The Council provides a range of assistance to help landlords comply with their legal responsibilities when asking a tenant to vacate their properties including advice, leaflets and up-to-date website information. 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.
New legalisation coming into force in October 2015 through the Deregulation Act 2015 will strengthen tenancy rights further from eviction and include a set of provisions designed to prevent retaliatory eviction and improve the eviction process for landlords and tenants. This new legislative landscape will take some time to bed in and inevitably some landlords will not be aware of the new requirements which may result in an increase in landlords taking evictions into their own hands rather than following the new processes.

2. The problem in Mendip

The vast majority of landlords and agents comply with their legal obligations in respect of taking possession of their property. However, there are some private landlords (or their agents) with properties 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 knowingly issue a ‘notice to quit’ that is not legally valid and/or encourage their tenants to leave through a variety of means (persistently 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.

In 2014/2015, there were 4 strong allegations of illegal eviction made to the Council which progressed to investigation and while these numbers are relatively low across the district, the Housing Options Team are dealing with numerous cases of potential harassment / illegal eviction each year. There is no facility to interrogate the case management system to count these instances, however officers say that these instances are not uncommon. Additionally the Private Sector Housing team has experienced numerous instances where landlords threaten 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 sometimes too frightened to come forward for help or are not aware of what their rights are.

3. What is harassment?

Harassment is a criminal offence and 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 premises.

Harassment is action taken by the landlord to deliberately disrupt the tenants life at their home or make them leave. A landlord could be guilty of harassment if they:
• won't let the tenant live in their home in peace
• act in a way that's meant to make the tenant leave their home
• try to take away the tenants legal rights
• making threats to persuade a tenant to leave
• cutting off services such as gas, electricity or water
• entering a tenant’s room/home without permission unless dealing with urgent repairs
• are not carrying out essential repairs within a timely manner

Harassment can also be committed by someone else, for example the landlord’s agent, family or letting agent. 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”.

4. 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) followed by court proceedings 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.

Mendip District 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. The Council will also take a proactive approach to supporting the rights of tenants in relation to illegal eviction and/or harassment. This may 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 addition the Council will provide up-to-date information for landlords and tenants on its website as well as an online form for reporting illegal evictions.

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, principally to pay the rent as it falls due and use the premises in a tenant like manner.

5. Relevant legislation

The main piece of legislation that deals with illegal eviction and harassment is
The 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. To a lesser extent, the Criminal Law Act 1977 and the Protection from Harassment Act 1977 may also apply to some cases.

6. How the policy will operate

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 Cautions
- Prosecution

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.

6.1 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. The Council will also advise the residential occupier on their housing rights and options. The Council does not have any powers to reinstate an illegally evicted tenant nor has the ability to deal with claims for damages against a landlord. In these circumstances the Council will provide options where the evicted tenant can pursue these matters with the help of a law centre or solicitor.
6.2 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 including the reliability of witness testimony.
- 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.

6.3 Enforcement

The Council will adhere to its Corporate Enforcement Policy and 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 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.

6.4 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

Any case will need to meet both the Evidential Test and also the Public Interest Test (see 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. If the evidential test is met, a prosecution will usually take place unless public interest criteria are against it.
7. 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. In particular the following departments within the Council may identify residents that are being harassed or illegally evicted:

- The Housing Options Team
- Empty Homes and Landlord Liaison Officer
- The Housing Benefit Team
- The Private Sector Housing Team
- Community Safety Officer

Partner agencies have a responsibility to advise and assist customers and to refer relevant cases to the Council (see attached referral form – Appendix 2). Cases of illegal eviction and Harassment can also be reported face to face at the Council offices in Shepton Mallet or via the Councils main telephone number for residents that unable to access the web form.

8. Agencies/Officers involved and consulted in the drafting of the Policy

Mendip District Council:

- Housing Options Team
- Fraud Officer
- Private Sector Housing
- Empty Homes and Landlord Liaison Officer
- Legal Services
- Corporate Equality Manager (Tom Rutland)

Private Rented Sector Accreditation Scheme (PRSAS)
Appendix 1 – Public Interest Test

Prosecutors should consider each of the following questions:

a) How serious is the offence committed?
The more serious the offence, the more likely it is that a prosecution is required. When deciding the level of seriousness of the offence committed, prosecutors should include amongst the factors for consideration the suspect’s culpability and the harm to the victim by asking themselves the questions at b) and c).

b) What is the level of culpability of the suspect?
The greater the suspect’s level of culpability, the more likely it is that a prosecution is required. Culpability is likely to be determined by the suspect’s level of involvement; the extent to which the offending was premeditated and/or planned; whether they have previous criminal convictions and/or out-of-court disposals and any offending whilst on bail or whilst subject to a court order; whether the offending was or is likely to be continued, repeated or escalated; and the suspect’s age or maturity (see paragraph d) below for suspects under 18). Prosecutors should also have regard when considering culpability as to whether the suspect is, or was at the time of the offence, suffering from any significant mental or physical ill health as in some circumstances this may mean that it is less likely that a prosecution is required. However, prosecutors will also need to consider how serious the offence was, whether it is likely to be repeated and the need to safeguard the public or those providing care to such persons.

c) What are the circumstances of and the harm caused to the victim?
The circumstances of the victim are highly relevant. The greater the vulnerability of the victim, the more likely it is that a prosecution is required. This includes where a position of trust or authority exists between the suspect and victim. A prosecution is also more likely if the offence has been committed against a victim who was at the time a person serving the public. Prosecutors must also have regard to whether the offence was motivated by any form of discrimination against the victim’s ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity; or the suspect demonstrated hostility towards the victim based on any of those characteristics. The presence of any such motivation or hostility will mean that it is more likely that prosecution is required. In deciding whether a prosecution is required in the public interest, prosecutors should take into account the views expressed by the victim about the impact that the offence has had. In appropriate cases, this may also include the views of the victim’s family. Prosecutors also need to consider if a prosecution is likely to have an adverse effect on the victim’s physical or mental health, always bearing in mind the seriousness of the offence. If there is evidence that prosecution is likely to have an adverse impact on the victim’s health it may make a prosecution less likely, taking into account the victim’s views.
However, the CPS does not act for victims or their families in the same way as solicitors act for their clients, and prosecutors must form an overall view of the public interest.

d) Was the suspect under the age of 18 at the time of the offence?
The criminal justice system treats children and young people differently from adults and significant weight must be attached to the age of the suspect if they are a child or young person under 18. The best interests and welfare of the child or young person must be considered including whether a prosecution is likely to have an adverse impact on his or her future prospects that is disproportionate to the seriousness of the offending. Prosecutors must have regard to the principal aim of the youth justice system which is to prevent offending by children and young people. Prosecutors must also have regard to the obligations arising under the United Nations 1989 Convention on the Rights of the Child. As a starting point, the younger the suspect, the less likely it is that a prosecution is required. However, there may be circumstances which mean that notwithstanding the fact that the suspect is under 18, a prosecution is in the public interest. These include where the offence committed is serious, where the suspect’s past record suggests that there are no suitable alternatives to prosecution, or where the absence of an admission means that out-of-court disposals which might have addressed the offending behaviour are not available.

e) What is the impact on the community?
The greater the impact of the offending on the community, the more likely it is that a prosecution is required. In considering this question, prosecutors should have regard to how community is an inclusive term and is not restricted to communities defined by location.

f) Is prosecution a proportionate response?
Prosecutors should also consider whether prosecution is proportionate to the likely outcome, and in so doing the following may be relevant to the case under consideration:

The cost to the CPS and the wider criminal justice system, especially where it could be regarded as excessive when weighed against any likely penalty. (Prosecutors should not decide the public interest on the basis of this factor alone. It is essential that regard is also given to the public interest factors identified when considering the other questions in paragraphs 4.12 a) to g), but cost is a relevant factor when making an overall assessment of the public interest.)
Appendix 2 – Illegal Eviction or Harassment Referral Form.

Alleged Illegal Eviction or harassment Referral Form

If you suspect someone of an alleged illegal eviction, please complete the following sections of this form, giving as much information as you can. Don’t worry if you do not know the answers to some of the questions, we will still consider the information you provide and decide whether an investigation is appropriate.

We look at every report we receive however investigations can take some time and it should not be obvious to the person concerned that they are under investigation. The law says we have to keep information about people confidential, so we cannot give progress reports to the person who reported the possible illegal eviction or harassment.

Section 1:

1.1 What type of Eviction do you think is being committed?

1.2 Please provide detailed information about the allegation
Section 2: Details

2.1 Details of the person/s

<table>
<thead>
<tr>
<th>Tenant</th>
<th>Landlord</th>
</tr>
</thead>
<tbody>
<tr>
<td>Surname/Family Name</td>
<td></td>
</tr>
<tr>
<td>Forename</td>
<td></td>
</tr>
<tr>
<td>Gender</td>
<td></td>
</tr>
<tr>
<td>Title</td>
<td></td>
</tr>
<tr>
<td>Other names, nicknames</td>
<td></td>
</tr>
<tr>
<td>Address</td>
<td></td>
</tr>
<tr>
<td>Postcode</td>
<td></td>
</tr>
<tr>
<td>Are they potentially violent?</td>
<td>Yes [ ] No [ ]</td>
</tr>
</tbody>
</table>

2.2 Details of the suspect:

Is it the person described above as landlord that you suspect of carrying out the illegal eviction? Yes [ ] No [ ]

If no, please indicate who you suspect of carrying out the illegal eviction:

[Blank space for input]
Section 3: About you

Your name
Address

Your telephone number
Your email address

Section 4: Other details

If there anything else you think we should know?

Signed: Your contact number:

Print name:

Thank you for the information you have provided. We will let you know whether an investigation will commence. If the referral is not accepted, we will provide you with details of why this decision has been made.

Please send this form to:

Illegal Evictions,
Housing Options Team,
Mendip District Council,
Cannards Grave Road,
Shepton Mallet,
BA4 5BT.

Or email it to: housing.admin@mendip.gov.uk