

## **Economy and Growth Committee**

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<b>Date of Meeting:</b>	17 March 2022
<b>Report Title:</b>	Unlawful Eviction and Harassment Policy
<b>Report of:</b>	Jayne Traverse – Executive Director - Place
<b>Report Reference No:</b>	EG/21/21-22
<b>Ward(s) Affected:</b>	All Wards

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### **1. Purpose of Report**

- 1.1. The majority of Cheshire East landlords offer good quality housing and manage their properties in a professional manner; however, we are aware that some landlords do not operate in this way and do not follow the correct process when wishing to gain possession of their properties from tenants.
- 1.2. To ensure that tenants are aware of their rights and the process that landlords should follow when seeking possession of their properties, the Council's Housing Services in collaboration with Legal Services has developed a policy which outlines their rights and the process and actions the Council will follow when we are made aware that a tenant has been unlawfully evicted or is being subjected to harassment in order to encourage a tenant to leave their home.

### **2. Executive Summary**

- 2.1 Most landlords and agents will follow the lawful process when seeking possession of their properties, however we are aware that this may not always be the case and that not all unlawful evictions are reported to the Council.
- 2.2 If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to

reside in the premises under the Protection from Eviction Act 1977 section1 (2).

- 2.3** In order to ensure that our residents know their legal rights and the support they can access if they are or are threatened with eviction, Housing Services in collaboration with Legal Services have developed an Unlawful Eviction and Harassment Policy.
- 2.4** The purpose of the policy is to identify and ensure a prompt, clear, and co-ordinated response by the Council, in partnership with its customers, landlords, and partner agencies to deal with allegations of harassment and unlawful eviction.
- 2.5** The policy is presented in sections covering:
- An overview of the strategic context and the current position.
  - An explanation of Harassment and Unlawful eviction.
  - The enforcement approach to be taken by the Council.
  - Roles and responsibilities.

### **3. Recommendations**

- 3.1.** Committee are recommended:
- 3.2.** To approve the Unlawful Eviction and Harassment Policy (Appendix 1).
- 3.3.** To authorise the Director of Growth and Enterprise, in consultation with the Chair of the Economy and Growth Committee, to make further amendments to the Policy to ensure ongoing compliance with the law and guidance from the Government.

### **4. Reasons for Recommendations**

- 4.1.** The Council's Corporate Plan 2021-25 sets out our vision for a more open, fairer, greener Cheshire East. The plan also sets out priorities under the three broad aims including "a great place for people to live, work and visit", and the Unlawful Eviction and Harassment policy links to the action to "enable access to well designed, affordable and safe homes for all our residents"
- 4.2.** There are a number of key priorities which are highlighted within both the Housing Strategy 2018-2023 and the Homelessness and Rough Sleeping Strategy 2021-2025 which include challenging poor quality housing in the private rented sector, targeting of the worst management and poorest housing standards, as well as promoting the responsibilities of landlords.
- 4.3.** Preventing homelessness is a key priority and to ensure that our residents are fully informed of their legal rights we have produced the Unlawful Eviction and Harassment Policy, which sets out their rights but also what actions the Council will take against those who do not follow the legal process. We wish

to encourage more residents to report landlords and agents who try to repossess their properties by unlawful means, to highlight that this will not be tolerated.

## 5. Other Options Considered

5.1. One option considered was the production of a procedure for staff to follow should they receive reports of unlawful eviction, however this would not be a public document and wouldn't demonstrate to the public and private landlords/agents that we have transparent, robust policies in place to support those facing eviction and the actions which the Council are prepared to take.

5.2.

Option	Impact	Risk
<b>Do nothing</b>	We continue to be reactive to reports which are few	Increase in hidden homelessness, as tenants do not seek support from the Council and unlawful practices continue.
<b>Committee not approving the recommendation</b>	We continue to be reactive to reports which are few and develop a procedural approach to guide staff, but this doesn't inform the general public	Increase in hidden homelessness, as tenants do not seek support from the Council and unlawful practices continue.

## 6. Background

6.1. The Protection from Eviction Act 1977 (as amended by the Housing Act 1988) outlines what constitutes unlawful eviction and harassment of an occupier. Unlawful eviction occurs when a landlord or another person deprives a residential occupier of their occupation of the property without following the correct legal process. It is a criminal offence to unlawfully evict or harass a tenant.

6.2. The Act outlines the legislation and actions in which a Council can take when a tenant approaches the Council for assistance. The Act has been used to formulate the Council's Unlawful Eviction and Harassment Policy.

6.3. Government guidance advises tenants to approach their Local Council for support, stipulating that Councils have the power to start legal proceedings for offences of harassment and illegal eviction under the Protection from Eviction Act. Housing and Legal services need to work together in order to

be able to respond quickly to reports of unlawful eviction or harassment in order to take the most appropriate action.

- 6.4.** Within Cheshire East there are approximately 21,755 (12.2%) households living in the private rented sector, which is lower than the national figure of 19% (<https://assets.publishing.service.gov.uk>). The highest percentage is in Crewe Central (35.6%) and is significantly larger than most of the other wards, followed by Macclesfield Central (31.6%) and Crewe South (29/8%).
- 6.5.** Reports of unlawful eviction directly to the Council are low with only 9 tenants reporting to Housing Options that they had been unlawfully removed from their property during 2020/21. Whilst many of these reports did not warrant further action or were retracted by the tenants, we do not however feel that this level of reporting maybe a true representation of the number of unlawful evictions which are taking place across Cheshire East.
- 6.6.** Housing have received a number of anecdotal reports and in addition concerns have been raised by Ward Members, especially within Crewe Wards where there are a higher number of migrant workers residing, where unlawful eviction may go undetected due to non-reporting, and challenges such as literacy, language barriers, and a lack of awareness of the housing rights of non-UK nationals.
- 6.7.** One way in which to inform tenants of their legal rights is promotion and Housing in collaboration with Legal Services have produced a policy which outlines the legal rights of tenants and the actions which are available to the Council to pursue, should tenants be unlawfully evicted or are being subjected to harassment to encourage them to leave their homes.
- 6.8.** If Committee Members are minded to approve the policy it is our intention to promote this, utilising a number of forums including:
- Social Media platforms
  - Press releases
  - Promoting the policy on Cheshire East website including providing translated copies.
  - Promotion through local networks including Landlord's forums, charitable organisations, and support groups
- 6.6** The Council will take a staged approach to enforcement wherever possible, to ensure solutions are initially sought through increased awareness, co-operation, mediation, and agreement. Where this is not successful, formal action will be necessary, which may ultimately lead to prosecution or other action. The following options where appropriate are available:
- Mediation & negotiation
  - Formal Cautions
  - Prosecution
  - Support, and signpost tenants seeking a civil remedy to a housing solicitor

## **7. Consultation and Engagement**

- 7.1.** The Unlawful Eviction and Harassment Policy will not be subject to public consultation due to the fact that it produced in line with legislation and therefore cannot be amended.
- 7.2.** There is no statutory requirement to have a policy in place, this is an approach which has been taken to enable the Council to inform landlords, agents and tenants of their legal rights and duties and the enforcement action which is available to the Council.
- 7.3.** Following the committee decision, a note will be circulated to all Members advising them of the implementation of the policy.

## **8. Implications**

### **8.1. Legal**

- 8.1.1.** There is no legal obligation to produce or adopt a policy on prosecution of unlawful evictions. The Council has a power to prosecute but not a duty and so is not bound to prosecute. Therefore, the legal implications of adopting this policy are few.
- 8.1.2.** However, having adopted a policy a failure to adhere to it without good reason may give rise to challenge either through the courts on public law grounds for example, or the Ombudsman on maladministration grounds.
- 8.1.3.** There are legal cost implications which are set out below. In the event of an unsuccessful prosecution the Council may be liable for the successful defendants' costs which will need to be met from Council budgets. This would be the case however, whether there was a policy in place or not.

### **8.2. Finance**

- 8.2.1.** Implementing the Unlawful Eviction and Harassment Policy will incur staff time but no additional costs. Staffing costs are already covered by base budgets within Housing.
- 8.2.2.** Court and Legal Services costs will be covered by Housing utilising their Homelessness Prevention funding to ensure that cost is not a barrier to action being taken.

### **8.3. Policy**

- 8.3.1.** The introduction of the Unlawful Eviction and Harassment Policy will provide a very clear message that Cheshire East will not tolerate unlawful eviction and outline the support that our tenants can access if they are subjected to either unlawful eviction or harassment.

#### **8.4. Equality**

- 8.4.1.** An Equality Impact Assessment has been completed during the process of developing the policy (Appendix 2) and it was recognised that improvements in the promotion of services amongst hard-to-reach groups and those with accessibility issues will increase access to services.

#### **8.5. Human Resources**

- 8.5.1.** There are no HR implications.

#### **8.6. Risk Management**

- 8.6.1.** Currently there are low levels of reports of unlawful eviction and harassment and this may be due to a lack of knowledge in relation to tenant rights. Through promotion we aim to highlight the fact that tenants can seek assistance from the Council, however this may result in increased demand. Staff have been therefore been trained to undertake investigations and interviews under caution and the process flowchart contained within the policy, explains the process that staff should follow.

#### **8.7. Rural Communities**

- 8.7.1.** This policy will support tenants residing in all neighbourhoods in Cheshire East, including rural communities.

#### **8.8. Children and Young People/Cared for Children**

- 8.8.1.** This Policy will protect the health and wellbeing of children and young people living in the private rented sector.

#### **8.9. Public Health**

- 8.9.1.** Homelessness is a major public health concern and is strongly associated with poor health and wellbeing. People experiencing homelessness are significantly more likely to experience mental and physical health problem(s), while also often struggling to access health services. The impacts on children can be particularly traumatic and long-lasting, severely affecting life chances through adverse effects on their development, education and health. Any policy that prevents homelessness wherever possible is a valuable public health intervention.

#### **8.10. Climate Change**

- 8.10.1.** This policy in isolation will not have an impact on climate change, however it will assist us to identify properties which may be in breach of other Housing Enforcement policies for example enforcement of minimum energy efficiency standards which will then improve the thermal comfort of homes, lowers fuel costs for residents and reduces carbon emissions

<b>Access to Information</b>	
Contact Officer:	Karen Carsberg- Head of Housing Karen.carsberg@cheshireeast.gov.uk 07710975438
Appendices:	Appendix One – Unlawful Eviction and Harassment Policy Appendix Two - Equality Impact Assessment