

Cheshire East Council Unlawful Eviction and Harassment Policy for Private Rented Sector Housing

Unlawful eviction from a private rented property is an indictable criminal offence – Protection from Eviction Act 1977 s.1. If a landlord evicts someone without following the correct legal steps.

The term “unlawful eviction” is an umbrella expression for what is likely to be a number of unlawful acts committed by the landlord or someone acting with them or on their behalf which excludes the occupier from residential property that they have a continuing right to occupy.

“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.” (Protection from Eviction Act 1977 section 1 (2)).

A person guilty of an offence under this section shall be liable—

- (a) on summary conviction, to a fine not exceeding [the prescribed sum] or to imprisonment for a term not exceeding 6 months, or both;
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years or to both.

Private landlords and letting agents must always follow the correct procedures to evict tenants. It is unlawful action if a landlord or anyone acting on their behalf:

- forces someone to leave by threatening or harassing them
- physically throws or kicks someone out
- stops someone from getting into parts of their home
- changes the locks while someone is out

1. Summary

A small number of landlords/agents sometimes resort to using unlawful eviction and/or harassment to force tenants to leave their properties.

The Ministry of Housing, Communities and Local Government recorded 1,040 cases of homelessness caused by illegal eviction in England in 2019-20 – up from 810 the previous year.

However, Ministry of Justice figures show there have been an average of 24 prosecutions in England for unlawful eviction each year between 2016 and 2019, the most recent period for which data is available.

Unlawful eviction can normally be prevented through mediation with the landlord, and Cheshire East Council (CEC) would always advocate this approach unless there are other mitigating factors, such as violence or threats, which would deem this approach unsuitable. However, where there are occasions when the landlord continues to harass or even

unlawfully evict a tenant despite advice and information that they may be committing a criminal offence, then CEC will take action.

CEC provides a wide range of assistance to help landlords comply with their legal responsibilities when asking a tenant to vacate their properties, including support through the Housing Options Team, Housing Standards, and web resources to provide landlords with relevant advice, as well as access to the Cheshire East Private Landlord Forums, where legal updates are available. Harassment and unlawful eviction can cause considerable distress and anxiety to households and may lead to homelessness. They will also be unintentionally homeless, which is likely to result in CEC having a duty to accommodate them. Therefore, the Council will take a proactive stance against unlawful 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.

CEC 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 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. Introduction

There are some private landlords (or their agents) with properties in Cheshire East who do not conduct themselves within the requirements of the legislation relating to rented accommodation, most notably the Protection from Eviction Act, 1977, and Housing Act 1988 whereby a tenant has the right to live, undisturbed, in a property for an agreed period of time and for an agreed amount of rent. The landlord, on the other hand, has the right to set that rent and also has the power to lawfully evict.

These landlords may issue a 'notice to quit' that is not legally valid and/or encourage their tenants/licensees to leave through a variety of means (persistent calling at the property without giving reasonable notice, threat to change the locks and in an extreme case physically removing a tenant/licensee from a property by force or threats of violence).

Some tenants/licensees 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 harassment of tenants and unlawful eviction, and it is likely that many cases go unreported to CEC.

However, when such events occur, they will have a severely disruptive effect on the households involved, possibly leading to unintentional homelessness. This in turn will have a financial impact on CEC in having to find temporary accommodation such as bed and breakfast accommodation for those occupants.

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

- by making unlawful eviction and/or harassment a criminal offence; and
- by enabling someone who is being unlawfully 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 shorthold tenant.

Local Authorities have the power to take criminal proceedings for offences of unlawful 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 CEC will take a proactive stance and investigate any allegation it receives regarding harassment and/or unlawful 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 unlawful eviction and will be deterred from following such courses of action.

3. Strategic context

This Policy is reflected in the strategic aims of CEC, including the Housing Strategy 2018 - 2023 and the Homelessness and Rough Sleeping Strategy 2021-2025.

A number of key priorities under the Housing Strategy 2018-23 is to 'Challenge Poor Quality Housing' in the private rented sector, including the targeting of the worst management and poorest housing standards, as well as promoting the responsibilities of landlords.

A key action within the Homelessness and Rough Sleeping Strategy 2021-2025 is to develop CEC's relationships with private landlords, enabling communication and positive working relationships to "encourage landlords to pre-notify Housing Options about 'notices to quit' given to tenants".

4. The situation in Cheshire East

Within Cheshire East there are 21,755 (12.2%) households living in the private rented sector. The highest percentage is in Crewe Central (35.6%) and is significantly larger than most of the other wards, although Macclesfield Central and Crewe South are also large. The lowest is Wistaston (6.1%) (<https://assets.publishing.service.gov.uk>). 35 of the 52 wards show that the private rented sector is larger than the social rented sector.

At risk groups and vulnerable households

For the PRS to be suitable for homeless and/or vulnerable people it needs to offer good quality, well located housing, with an appropriate degree of security, and at an affordable price. It needs to be accessible to groups who may be reliant on Housing Benefit/Local Housing Allowance. Ideally, it should provide some choice of location and the scope to give to those who want it, a long-term home. Many households are reliant on lower quarter and quintile housing due to less than average household income.

The PRS provides an important housing option to households who present to the local authority for assistance as they are at risk of homelessness. In the first three quarters of 2021/22, 74 Cheshire East households were prevented or relieved from homelessness through securing housing in the PRS.

Cheshire East has a relatively high concentration of migrant workers in the Crewe area, many of whom live in private rented accommodation, especially Houses of Multiple Occupation (HMOs). CEC recognises that migrant workers can be subject to poorer living conditions and experience exploitation of their rights as renters in the UK (CIH Housing and Migration: a UK practice 2012). Often issues will be 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.

The Council aims to tackle the issue through increased awareness-raising within communities and workplaces, as well as improved website information, by specifically carrying out promotion and marketing of housing, homelessness and Homechoice services. This will mean that the Housing Options Team is better promoted among hard-to-reach groups and those with accessibility issues. The CEC website will be kept up to date with good quality information and useful links (ensuring access to translated documents and services for those needing them). Many migrant workers will not have English as a first language.

5. 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.
 - 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/agent.
 - Physical violence.
 - Verbal abuse.
 - Withholding keys.
 - Changing locks.

- Removing belongings.
- Visiting at unsociable hours.
- Constant telephone calls or text messages.

There may be 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). For example, there is evidence nationally of some landlords exploiting vulnerable tenants if the tenant wishes to stay in the landlord's property.

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, which provides protection from harassment. Specifically, a person must not pursue a course of conduct—

- (a) which amounts to harassment of another, and
- (b) which he knows or ought to know amounts to harassment of the other.

Harassment is both a criminal offence and a civil action under the Protection from Harassment Act 1997.

This means that someone can be prosecuted in the criminal courts if they harass a tenant.

A person guilty of an offence is liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding level 5 on the standard scale, or both.

It also means a tenant can take action against the landlord in the civil courts.

The Anti-social Behaviour, Crime and Policing Act 2014 Part 2 applies where a person ("the offender") is convicted of an offence.

The court may make a criminal behaviour order against the offender if two conditions are met.

The first condition is that the court is satisfied, beyond reasonable doubt, that the offender has engaged in behaviour that caused or was likely to cause harassment, alarm or distress to any person.

The second condition is that the court considers that making the order will help in preventing the offender from engaging in such behaviour.

6. What is an unlawful eviction?

To gain possession of a property a Landlord must:

- Give the proper legal written notice
- Get a court order for possession, and
- Get a bailiff's warrant for possession.

If the tenant/licensee and landlord share living accommodation, the landlord does not have to get a court order to evict the tenant/licensee but must give the correct written notice.

Unlawful eviction occurs when the landlord, the landlord's agent or someone acting on their behalf unlawfully deprives a tenant/ licensee of all or part of their home, or where any other person forces or attempts to force a tenant/licensee to leave the accommodation without following the correct legal procedure and serving the proper notice(s) under the relevant Housing Acts. Unlawful Eviction and Harassment are criminal offences and the maximum penalty in a Crown Court is

- an unlimited fine and
- two years' imprisonment

7. Enforcement

CEC will adhere to this Policy and seek to do so in a firm, fair, open, consistent, and helpful way. All investigations into alleged reports of unlawful eviction and/or harassment, and any subsequent enforcement action will comply with relevant legislation and follow best professional practice.

Interviews under caution (commonly known as "PACE interviews")

CEC carries out interviews in accordance with the Code of Practice for the treatment and questioning of persons with respect to suspected offences. The Code has been prepared in accordance with the Police and Criminal Evidence Act 1984 (PACE).

An "interview" is defined as the questioning of a person regarding their involvement or suspected involvement in a criminal offence or offences. Such an interview must always be carried out under caution. For those requiring one, a translation service will be provided.

The suspect's responses to questions put to him/her during an interview under caution may be used as evidence against him/her in any subsequent criminal proceedings. This is explained to the suspect by the caution. Evidence obtained during the interview can only be used against the person being questioned; it cannot be used in evidence against another person (for example, a co-defendant), although it may suggest additional lines of enquiry.

CEC 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.

The Council has 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 to CEC:

- Mediation & negotiation
- Formal Cautions
- Prosecution
- Support, and signpost tenants seeking a civil remedy to a housing solicitor

8. Information to consider for prosecution

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

- The merits of each case
- The Code of Practice for Crown Prosecutors
- The Criminal Procedure and Investigations Act 1996

A case will need to meet both the Evidential Test and the Public Interest Test before a caution or prosecution is pursued.

The Evidential Test is based on an objective assessment of all the evidence to establish whether there is sufficient and reliable evidence to provide a realistic prospect of a conviction.

The Public Interest Test assesses whether a prosecution is required in the public interest having regard to the Code for Public Prosecutors outlined at Appendix 2 – do the factors against prosecution outweigh the factors in favour of prosecution?

A prosecution or caution will usually take place if a case meets both the Evidential Test and the Public Interest Test.

9. Roles & responsibilities

CEC is ultimately responsible for ensuring that any case of unlawful eviction and/or harassment is investigated, and where appropriate, any necessary action is taken, including prosecution.

All CEC staff are responsible for adhering to the Policy and for reporting any circumstances where they suspect unlawful eviction and/or harassment may be taking place. Partner agencies have a responsibility to advise and assist customers and to refer relevant cases to CEC.

10. Review

This Policy will be reviewed every three years to ensure it meets its aims and objectives, and compliments the priorities contained within CEC's Homelessness and Rough Sleeping Strategy. CEC will be responsible for the implementation and review of this Policy and relevant procedures. A request for a copy of the Policy or any comments on the Policy should be directed to CEC Housing Services at:

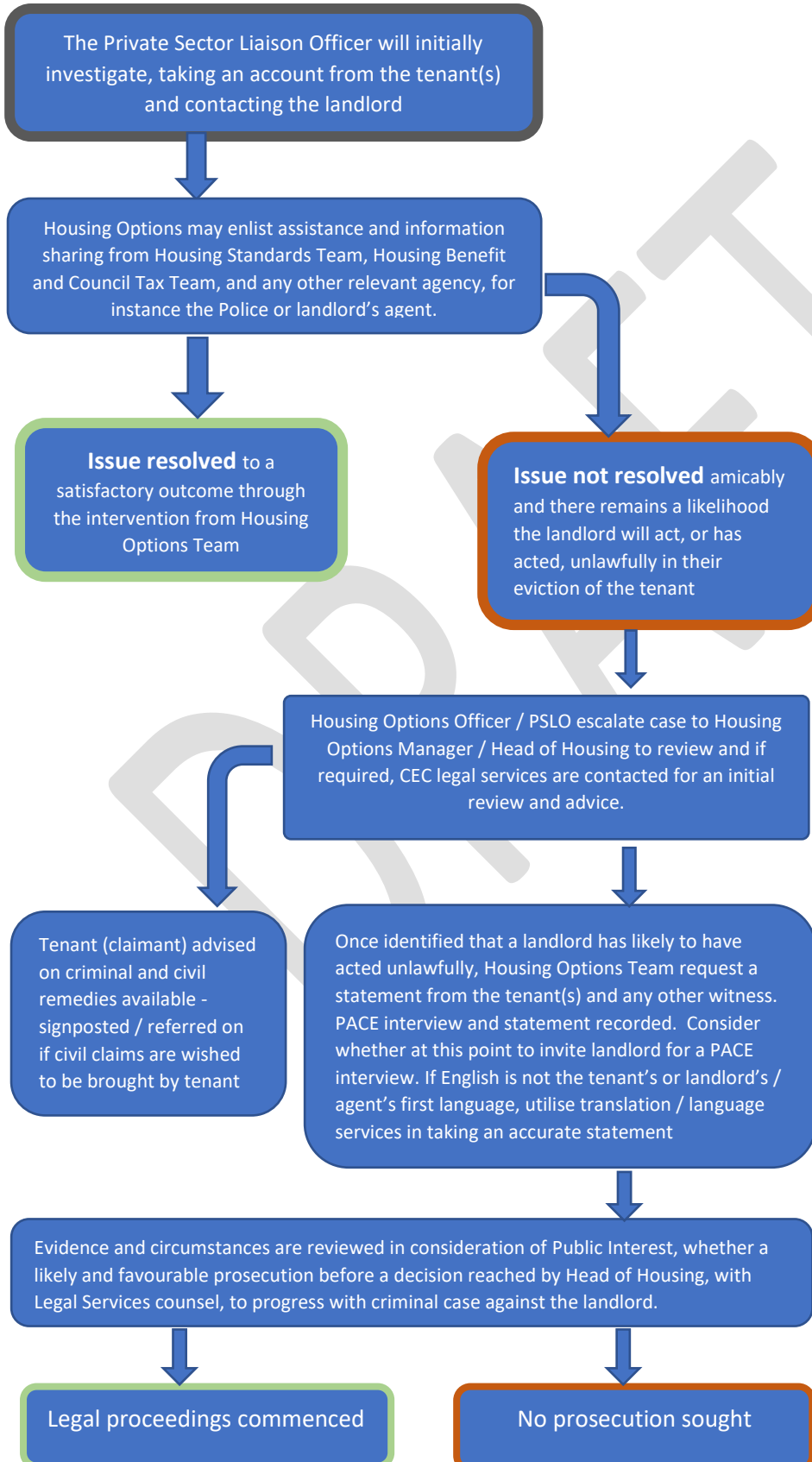
Cheshire East Council | Housing Strategy and Development | Westfields | Sandbach | Cheshire | CW11 1HZ

If you want to contact us, or if you require copies of this Policy in a language other than English, please e-mail us at housingpolicy@cheshireeast.gov.uk

11. Appendices

Appendix one – The Process

Once an Initial report is received by CEC of unlawful Eviction, threat of unlawful eviction, or Harassment, the Lead Service - **Housing Options Team** – will initiate the following process



Appendix two – Crown Prosecutors Code of Practice Public Interest Test

Factors in favour of Prosecution

- The offence included actual or threatened violence, or threatening behaviour
- The offence was premeditated or part of on-going harassment, that is, where a landlord has previously received warnings
- The victim is vulnerable/put in considerable fear/suffered personal attack
- The offence was motivated by any form of discrimination – racial, sexual, disability, etc.
- The defendant has relevant previous convictions
- There are grounds for believing that the offence is likely to be repeated, that is, previous complaints have been received that have been substantiated
- The prosecution would have a significantly positive effect in maintaining community confidence

Factors Against Prosecution

- The offence was committed due to genuine mistake/misunderstanding
- Minor loss or harm due to a single incident, especially if caused by misjudgement
- A nominal penalty is likely
- Prosecution is likely to have an adverse effect on the victims' mental or physical health
- The defendant has put right the loss or harm caused
- The defendant is suffering from significant mental or physical illness
- The motives of the complainant, including delay in making a complaint
- Long delays between commission and trial