

AnthonyGold

HMO Network- Legal Update

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Fixed Penalties

- Mainly applies to offences under Housing Act 2004
 - No licence
 - Overcrowding or breach of licence condition
 - Breach of management regulations
 - HHSRS improvement notices- not Prohibition Orders
 - Banning orders- eventually
- Max penalty of £30,000
 - Per offence
- Some guidance from DCLG on how penalties should be applied
- Choice of penalty or prosecution
 - Cannot do both
 - Although the choice is for the LHA only
- Only offences committed after 6 April

- Intention notice with penalty and reasoning
 - Must be given within 6 months of offence
 - But ongoing conduct allows time limit to extend
- Representation within 28 days
- Final penalty notice
- Appeal by landlord to FTT
 - FTT is a re-hearing so complete replacement of LA notice
 - No appeal means penalty applies
 - Oddly no time limit on appeal- although FTT not likely to allow very late appeals
- Penalty can be converted by county court to court order
 - Standard form for this which can then be enforced as if it was a judgement

- Must have a written policy
 - When to prosecute, when to penalise
 - How to set the penalty
- DCLG guidance refers to code for crown prosecutors
 - Does that mean adherence to the code?
 - If so, penalties are not an easy alternative to prosecution
 - Same evidence should be gathered and prepared
- Overcharging is likely to lead to appeals
- DCLG is working on an illustrative tariff matrix
 - However a set of fixed tariffs is probably unlawful
- FTT operates to criminal standard
 - Its rules don't really work for this



*Rent
Repayment
Orders*

Housing and Planning Act 2016 – Local Authority Application

- Landlord commits specified offence
- Must give notice of intended proceedings
 - Within 12 months of offence
 - More than fixed penalty!
- Notice must state
 - Proposal to apply for RRO
 - Reasons why
 - Amount LA seeks to recover
 - Time to make representations (not less than 28 days)
- Application to FTT after representation period
- Criminal standard of proof if no conviction or penalty notice first

Housing and Planning Act 2016 – Tenant Application

- Landlord commits specified offence
- No need for conviction or local authority RRO first
- No notice
- Changes make it easier for tenants to apply for RRO
 - Grace periods are a problem here
- Criminal standard of proof
- 12 month time limit to apply

Local authority – How much?

- Limit of 12 months
 - Prior to notice
- UC only
- Tribunal must consider
 - Conduct of landlord
 - Financial circumstances of landlord
 - Landlord convictions
- On conviction or financial penalty
 - FTT must award maximum allowed, unless exceptional circumstances
- Otherwise no set figure
 - Wording about such sum as is reasonable has gone but may be assumed

Tenant application – How much?

- Limit of 12 months
 - Prior to application
- Any UC must be deducted
- Tribunal must consider
 - Conduct of landlord **and** tenant
 - Financial circumstances of landlord
 - Landlord conviction
- Must award a sum subject to consideration
 - Again the wording about reasonableness has gone
- Unless convicted or financial penalty for non-licensing offence
 - Then maximum award

Other changes in HPA

- New duty to consider applying for an RRO
 - Where penalty or prosecution
- LHA empowered help a tenant apply for an RRO either by providing advice or by conducting proceedings
 - Advice guides
 - Active assistance
 - Possibility of joint applications

- DCLG says DWP will not provide details of UC paid!
 - However DWP says they will
 - How to obtain?
- Late RRO is possible after penalty or prosecution option has passed
- RROs underused in past
 - Will they now be used more?

- New regulations on allocation of funds from Penalties and RROs
- Must be allocated against enforcement of PRS standards
 - If so LHA may keep
 - Otherwise payable to central funds
- Need to demonstrate cost of PRS enforcement
- This may stretch beyond Environmental Health
 - TROs
 - Trading standards



Tenancy Deposit Data

- LHAs can seek data from scheme
- Summary in DCLG document
 - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/605056/Obtaining_and_using_Tenancy_Deposit_information.pdf
 - Not formal guidance, just a summary of the law
- Limits on use
 - Purposes connected with parts 1-4 HA 2004
 - HHSRS and licensing
- Can share data derived with third parties for the same purposes
 - Only for those purposes
 - Need to review data restriction agreements

What can be sought?

- PRS property addresses
- Addresses of landlords letting at those addresses
- Agents managing that property
- Number of deposits independently registered
- Cannot have
 - Actual landlord names

Getting the data

- Write formal request letter
 - Sample letter in guide
 - Must be on headed paper
- Select scheme to write to
 - In practice will have to write 3 letters
- Must have wet signature on letter
 - From requesting officer
 - And senior authorising officer
- Print and scan letter
- Email to relevant scheme email
 - This makes all the wet signatures pointless!
- Email acknowledgement
 - Schemes aim to supply data within 5 working days



Other Bits

- Option to ban landlords who commit offence from banning list
- Consultation on list closed
- Regulations were prepared to go before minister
 - But not an option now
- Slated for October 2017 introduction
- Unexpectedly these provisions are now in force for making regulations
 - From later October
- Possibly April 2018 introduction
 - But database is unlikely to be ready by this date
 - Can banning really work without the database

- Database for all banned landlords
- Option to add others who committed offence on banning list
- And those who get two fixed penalties in 12 months
- Election more of an issue here
 - IT project which underlies this may be delayed
- October still stated as the start date
 - Seems unlikely
- Cross-cut by the mayor in London
 - Who has his own publicly-accessible version
 - Already in pilot
 - Is this legal though?

Abandonment

- Gives landlords easier methods to deal with abandoned property
- 8 week process with 3 written notices
- Also slated for October 2017
 - But all very quiet right now
- One notice can be prescribed
 - Which has yet to be done

- Consulted on but everything has gone a bit quiet
- Bit of a messy proposal
 - LHAs can consider room size as part of an overall property consideration
 - So a minimum is arguably unnecessary
 - Potentially dangerous as it may create a new floor which will be hard to move above
- Structure is also odd
 - Proposed as a licence condition
 - Arguably means that licences cannot be refused on small rooms although they will then be banned by conditions
- What about pregnant women?
 - Should they be evicted because on birth the room will be too small?

- UT has held that a selective licence can be limited in length due to planning breaches
 - *Waltham Forest v Khan*
- Probably allows for a wider consideration of planning for all licence approvals
 - Makes Article 4 directions for HMOs far more enforceable
 - Potentially heals the breach between planning and licenseing

- UT decision in *Foxtons v Camden*
 - Relevant to existing situation
- UT was not impressed by current government guidance
 - Especially as it was issued before the CRA became law
- Agents can use the phrase Administration Fees
- But must properly describe their fees
- Still very poorly enforced area
- Draft fee ban bill published
 - Not agency fee ban, total fee ban
 - A lot of holes and flaws though
 - Still only a draft bill so not in force for some time

Deposit Limits

- Mention of caps on tenancy deposits in agent fee consultation
- Proposal is one month's rent
- Industry norm is currently 6 weeks
 - What will this mean for marginal tenants?
- Draft bill has gone for 6 weeks
 - May change again before being finalised

- CMP already covered in Housing and Planning Act
- Needed regulations
- Consultation now published
- Bit odd as it does not propose much
- So very hard to see where we are going with this
- CMP also covered in draft fee bill so there is clearly some determination
 - But little clarity as to end product

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