

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](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?

- 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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