Enforcement and homelessness prevention

Challenges and opportunities

Ben Reeve-Lewis Safer Renting

Renters Rights Bill

Regulatory services

Housing options

Renters Rights Bill

Regulatory services

Housing options

The new duty to enforce

106 Enforcement by local housing authorities: general duty

(1) It is the duty of every local housing authority to enforce the landlord legislation in its area.

The landlord legislation?

s106(5) RRB

(a) Chapters 3 and 6 of Part 1 of this Act, (discrimination & rental bidding)

(b) Part 2 of this Act, (breaches of the database and landlord redress schemes)

(c) sections 1 and 1A of the Protection from Eviction Act 1977, (harassment and illegal eviction) and

(d) Chapter 1 of Part 1 of the 1988 Act. (Tenancy reform stuff: prohibition on serving s21 notices, not proposing fixed terms tenancies, providing a written statement of terms, and not knowingly serve a defective s8 notice)

What is not the landlord legislation?

- Housing Act 2004 offences
- S1 Landlord and Tenant Act 1985
- S12 Housing Act 1988
- S7 Protection from Eviction Act 1977
- Decent homes standard
- Awaab’s law

New enforcement powers

Powers of entry without warrant

- This is a significant addition to local authority powers in a range of areas but particularly in harassment and illegal eviction.
- This can be tremendously important in reinstating a household who have been illegally evicted.
- If entry cant be effected the there is a new power for magistrates to issue warrants of entry for the same purposes.

Powers of entry without warrant

- Who is going to do this?
- Councils who dont have TROs tend to devolve TRO functions in one of two ways - either licensing and enforcement or housing options

Regulatory Services

Housing Options

New Penalties

For those that dont know

- **Prosecution** does what it says on the tin - Fines go to government and councils often dont get legal costs back
- **Civil Penalty Notices (CPNs)** are an alternative where the council gets to keep the money from the penalty to pay for enforcement.
- There is a new civil penalty for harassment & illegal eviction @£40,000

Rent Repayment Orders now

- Used for failing licence requirements, harassment and illegal eviction, ignoring prohibition notices etc.
- 12 months worth of rent if done by tenant - 12 months worth of rent paid through benefits if done by the council
- 12 months in which to claim
- Can only be made against the immediate landlord.

RROs under the RRB

- 2 years worth of rent to claim back
- 2 years in which to claim.
- Immediate landlord restriction to be lifted, so claims can be made against the superior landlord (eg the one with the asset) directs of limited companies or both.
- S46 Housing and Planning Act 2016 - Where a CPN has been successfully applied and the appeal times are exhausted, the tribunal must award 100%

CPNs & RROs under the RRB

- Purporting to create a fixed term tenancy
- Failing to provide a written statement of terms.
- Failing to state the proposed rent.
- Breach of rental bidding regs.
- Prohibited pre-tenancy payment.

CPNs & RROs under the RRB

- Rental discrimination.
- Landlord ombudsman breaches. (& RRO)
- Breaching the requirements of the landlord database. (& RRO)
- Decent homes standard breaches/Awaab's law. (& RRO)

CPNs & RROs under the RRB

- Serving an invalid notice seeking possession. (& RRO)
- Citing grounds in a notice that cant be relied upon. (& RRO)
- Marketing, letting (including AirBnB) during the restricted period for Grounds 1 and 1A

CPNs & RROs under the RRB

- **The majority of breaches where CPNs and RROs are likely going to be seen and identified will be by housing options, not enforcement teams.**
- **If local authorities are going to be under a duty to enforce this means that housing options teams will also be in the mix there as well.**
- **What strategies or procedures do you have in place to bridge this gap?**

Housing options or enforcement

- Purporting to create a fixed term tenancy
- Failing to provide a written statement of terms.
- Failing to state the proposed rent.
- Serving an invalid notice seeking possession. (Includes RRO)
- Citing grounds in a notice that cant be relied upon. (Includes RRO)

- **Purporting to create a fixed term tenancy**

- **ASTs will be abolished and it will be an offence to issue contracts that purport to be for a fixed term, even if n ot specifically referred to as an AST.**
- **£7,000 CPN and £40,000 for further breaches within 5 years.**

- **Failing to provide a written statement of terms.**

As you now you dont need a written tenancy agreement to create tenancy but there is to be a requirement for a written statement of terms:-

(i) the tenancy;

(ii) the dwelling-house let on the tenancy;

(iii) the tenant;

(iv) the landlord;

(v) the rights of the landlord or the tenant in relation to the tenancy or the dwelling-house let on it. 16D RRB

• Failing to state the proposed rent

• **56 RRB**

(1) (2) Requirement to state rent and to avoid rental bidding

This section applies to a letting of a dwelling (a “proposed letting”) if the letting is to be on an agreement which may give rise to a relevant tenancy.

A relevant person must not advertise in writing, or otherwise offer in writing,

the proposed letting unless—

(a) (b) the rent that is to be payable under the letting is a specific amount (the “proposed rent”), and

the advertisement or offer states the proposed rent

Serving an invalid NSP

- **Currently if your notice seeking possession is faulty all that happens is possession will most likely fail.**
- **Under the RRB a faulty NSP can leave a landlord open to a £7,000 CPN (£40,000 for further breaches within 5 years) AND an RRO**

Citing grounds that cant be relied upon

- **This will end the standard practice of top loading a notice with multiple grounds for possession (CPN & RRO)**

- **16J RRB**

A relevant person is guilty of an offence if, in relation to an assured tenancy—

(a) the person relies on a ground in Schedule 2, knowing that the landlord would not be able to obtain an order for possession on that ground, or being reckless as to whether the landlord would be able to do so, and

(b) the tenant surrenders the tenancy within the period of four months beginning with the date the ground was relied on

The database

- The majority of breaches where CPNs and RROs are likely going to be seen and identified will be by housing options, not enforcement teams.
- If local authorities are going to be under a duty to enforce this means that housing options teams will also be in the mix there as well.
- What strategies or procedures do you have in place to bridge this gap?

The new Database

Something else to consider

- **Clause 75 RRB**
- **A new database for access by councils and tenants**

The database in theory

s82 RRB (“tenancy” includes a licence to occupy).

Restrictions on marketing, advertising and letting dwellings

(1) A person must not market a dwelling for the purpose of creating a residential tenancy unless—

(a) there is an active landlord entry in the database in respect of the person who will be the residential landlord if the tenancy is granted, and

(b) there is an active dwelling entry in the database in respect of the dwelling.

The database in theory

- There is to be a unique property identifier.
- Landlords must keep their entries up to date.
- There is a fee to be paid independently of a licensing fee.
- Landlords must register banning orders and CPNs levied.
- Part of the fee for registering may be given to local authorities to fund enforcement

Problems in practice

- The database is still being worked on with no date for implementation yet.
- We dont know exactly what will be required to be on it, such as gas safe certificates, EPCs etc because “The secretary of State may, by regulations” add other things.
- So much of enforcement is going to rely on breaches of the database but the RRB will be in force quite a while before the database

Problems in practice

“(5ZC) RRB

The court may not make an order for possession of a dwelling-house while the landlord (or, in the case of joint landlords, any of the joint landlords) is in breach of section 82(3)(a) of the Renters’ Rights Act 2025 in relation to the dwelling-house, unless the ground for possession is Ground 7A in Part 1 of Schedule 2 to this Act or Ground 14 in Part 2 of that Schedule.”

- **The trigger for the prevention duty where a person is threatened with homelessness is going to be in limbo**

Recapping

- The new duty to enforce the landlord legislation applies to the council as a whole not just a designated team.
- CPNS and prosecutions are normally the preserve of regulatory services but nowadays housing options teams perform TRO functions - so where do such duties end given the new duty to enforce?

Recapping

- Many of the CPN and RRO breaches will likely be identified by housing options before regulatory services - what strategies and polices do you have in place to bridge a gap where normally such services dont interact at all?
- So much of the RRB will be active on the day of commencement and this affects how tenancies are created, how possession proceedings are conducted and what triggers a prevention duty BUT so much of that is also dependant on the database which is nowhere near ready

Thank you for your time

Ben Reeve-Lewis