

Welcome to Landmark Chambers'

Property In Quarantine:

The Regulation of the Private Rented Sector in England

Part 4: Enforcement Activities

The recording may be accessed [here](#).

Your speakers today are...



Justin Bates



Brooke Lyne

Outline

- Financial penalties for housing offences
 - When they may be imposed
 - How much?
 - The procedure
- Rent Repayment Orders
 - When are they available?
 - How much?
 - The procedure

Financial Penalties – when they may be imposed

- LHA may impose financial penalties as an alternative to criminal prosecution.
- Section 249A, Housing Act 2004
“The local housing authority may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England.”

Financial Penalties – when they may be imposed

- What is a “Relevant housing offence”?
 - Failure to comply with improvement notice (s.30, Housing Act 2004)
 - Failing to hold HMO licence when one is required or breach of HMO licence condition (s.72, Housing Act 2004)
 - Failing to hold selective licence when one is required or breach of selective licence condition (s.95, Housing Act 2004)
 - Failure to comply with overcrowding notice (s.139, Housing Act 2004)
 - Breach of the HMO management regulations (s.234, Housing Act 2004)
- *IR Management Services Ltd v Salford City Council* [2020] UKUT 81 (LC)

Financial Penalties - how much?

- A penalty of up to £30,000 may be imposed
- Where multiple offences have been committed, multiple fines can be imposed
 - *(1) Sutton (2) Faiths' Lane Apartments Ltd v Norwich CC* [2020] UKUT 90 (LC)
- LHAs encouraged to develop a policy on the level of penalties to be imposed
 - *Waltham Forest LBC v (1) Marshall (2) Ustek* [2020] UKUT 35 (LC)

Financial Penalties – the procedure

- Schedule 13A, Housing Act 2004
- LHA serves a “notice of intent” setting out
 - the amount of the proposed financial penalty,
 - the reasons for proposing to impose the financial penalty, and
 - information about the right to make representations
- Must be served within 6 months of the date upon which the LHA had sufficient evidence of the conduct to which the financial penalty relates

Financial Penalties – the procedure

- Recipient had 28 days to make written representations
- Then, LHA must decide whether to impose a financial penalty
- If LHA decides to proceed, then it must serve a “final notice” setting out
 - the amount of the financial penalty
 - the reasons for imposing the penalty
 - information about how to pay the penalty
 - the period for payment of the penalty
 - information about rights of appeal
 - the consequences of failure to comply with the notice

Financial Penalties – the procedure

- Recipient can appeal to the FTT within 28 days
 - the decision to impose the penalty, or
 - the amount of the penalty
- The final notice is suspended until the appeal is finally determined or withdrawn
- It is “re-hearing”, where the FTT may confirm, vary or cancel the final notice

Rent Repayment Orders – when are they available?

- A rent repayment order is an order made by the First-tier Tribunal
 - Ordering the repayment of rent to a tenant
 - Ordering the repayment of Housing Benefit or Universal Credit to the LHA

Rent Repayment Orders – when are they available?

- FTT must be satisfied that the offence has been committed beyond reasonable doubt
 - *Mortimer v Calcagno* [2020] UKUT 122 (LC)
 - *Opara v Olasemo* [2020] UKUT 96 (LC)
- But, there is no requirement for a criminal conviction
- 12 month rule

Rent Repayment Orders – when are they available?

- The FTT may make an RRO in respect of a “landlord” who has committed a specified offence
 - Not the “appropriate person” as under the Housing Act 2004
 - *Goldsbrough v CA Property Management Ltd* [2019] UKUT 311 (LC)

Rent Repayment Orders – when are they available?

- The specified offences are
 - Violence to secure entry (s.6, Criminal Law Act 1977)
 - Eviction or harassment of tenants (ss.1, 3, 3A, Protection from Eviction Act 1977)
 - Failing to comply with improvement notice (s.30, Housing Act 2004)
 - Failure to comply with prohibition order (s.32, Housing Act 2004)
 - Control or management of unlicensed HMO (s.72, Housing Act 2004)
 - Control or management of a house that requires a selective licence but does not have one (s.95, Housing Act 2004)
 - Breach of banning order (s.21, Housing and Planning Act 2016)

Rent Repayment Orders – how much?

- The maximum is 12 months' rent
- Calculation is done by reference to the amount of
 - Rent actually paid; or
 - Housing Benefit or Universal Credit paid to the landlord

Rent Repayment Orders – how much?

- Following conviction – no discretion
- No conviction, then the tribunal has a discretion and must consider
 - The conduct of the landlord
 - The financial circumstances of the landlord
 - Whether the landlord has at any time been convicted of a specified offence
- Is *Parker v Waller* [2012] UKUT 301 (LC) still applicable?

Rent Repayment Orders – the procedure

- LHAs
 - Pre-application steps similar to financial penalties (e.g. notice of intent)
- Tenants simply need to issue an FTT application
 - Form RR01 and supporting documents
 - Lawyers?
 - Tenant groups helping with the process

Rent Repayment Orders – the procedure

- FTT will issue directions
 - Usually requiring the landlord to a statement of case and evidence in response
- How are hearings to be conducted?

Q&A

We will now answer as many questions as possible.

Please feel free to continue sending any questions you may have via the chat section which can be found along the top or bottom of your screen.

Thank you for listening

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