



# TRAFFORD COUNCIL

## UNLAWFUL EVICTION AND HARASSMENT POLICY

**Please note if a case is of an urgent nature it can be passed to Keoghs, Nicholls, Lindsell and Harris Solicitors on 0161 928 9321.**

**If violence is threatened or used, call the Police on 999.**

## **UNLAWFUL EVICTION & HARASSMENT POLICY**

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## **1. Summary**

There are a small number of private landlords with properties who do not conduct themselves within the requirements of the legislation relating to private rented accommodation. These landlords sometimes resort to using unlawful eviction and / or harassment to force tenants to leave their properties.

Unlawful eviction can normally be prevented through mediation with the landlord. However, there are occasions when the landlord continues to harass or even unlawfully evict a tenant / licensee despite advice and information that they may be committing a criminal offence.

The Council provides a range of assistance to help landlords comply with their legal responsibilities when asking a tenant to vacate their properties including a landlord forum. Trafford Housing Trust also operates a landlord scheme to promote responsible behaviour.

Harassment and unlawful eviction can cause considerable distress and anxiety to households and may lead to homelessness. The Council will therefore take a proactive stance against unlawful eviction and / or harassment and offer support, advice and assistance to residents in this situation including taking appropriate action to help tenants / licensees regain occupancy of their home. The Council 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 fast, 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**

Harassment and unlawful eviction are not frequently reported to the Council, however when such events occur they will have a severely disruptive effect on the households involved, possibly leading to homelessness. This in turn may have a financial impact on the Council in having to find temporary accommodation such as bed and breakfast.

The law protects people living in residential properties against unlawful eviction and / or harassment. It does this in 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 can force a tenant / licensee to leave a property is by following the relevant legislation and procedures in the Housing Acts to ensure that the eviction is carried out in a legal manner.

Local Authorities have the power to carry out investigations into allegations of unlawful eviction and / or harassment. They can also take criminal proceedings if satisfied that there is sufficient evidence to prove that an offence has been committed and that it is in the public interest to prosecute.

Where the harassment is as a result of the landlord not undertaking repairs and the property is in poor condition, local authorities also have powers under the Housing Act 2004 (by using the Housing Health & Safety Ratings System (HHSRS), to take enforcement action to secure improvements to the condition of the property. HHSRS is a risk-based evaluation tool to help local authorities identify and protect against potential risks and hazards to health and safety from any deficiencies identified in dwellings.

Retaliatory eviction is where a landlord evicts a tenant who complains about repairs or poor conditions in the property. Most private landlords are keen to keep their properties in good shape, but a few refuse to spend time and money doing repairs. Most private tenants have an assured shorthold tenancy. It is legally straightforward to evict tenants from this type of tenancy, and so some landlords ask tenants to leave if they complain about repairs or poor property conditions.

Adoption of this Policy will make clear that the Council will actively investigate any allegation it receives regarding harassment and / or unlawful eviction. It is hoped that landlords / 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. The problem locally**

There are some private landlords (or their agents) with properties in Trafford who do not conduct themselves within the requirements of the legislation relating to rented accommodation, most notably the 'Protection from Eviction Act, 1977'. 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, threat to change the locks and in an extreme case physically removing a tenant / licensee from a property by force). 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 tenant harassment and unlawful eviction, and it is likely that many cases go unreported.

### **4. What is Harassment?**

There are two separate offences of harassment, one where the accused is the victim's landlord (or an agent of the landlord) and the other where the accused is some other person. The offence of harassment comprises two elements: Culpable Behaviour, "**The Guilty Act**", and Intention, or "**The Guilty Mind**".

**4.1 The Guilty Act** comprises doing anything to interfere with the peace and comfort of a residential occupier (tenant / licensee) or members of their household and includes: -

- Making threats to persuade a tenant / licensee to leave
- Cutting off services such as gas, electricity or water
- Preventing access to shared kitchens and bathrooms

- Entering a tenant's / licensee's room / property without giving reasonable notice / permission
- Not carrying out essential repairs

**4.2 The Guilty Mind** is where the landlord or his agent knows or has reasonable cause to believe that the 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, harassment may also be an offence under the Protection from Harassment Act 1997. Under that Act, it only has to be shown that someone has pursued a course of conduct which "amounts to harassment of another" and "which he knows or ought to know amounts to harassment of the other".

## 5. What is 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 or 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.

Trafford Council will encourage best practice within the rented sector by working closely with individual landlords, landlord groups and letting agents by providing information and support. This will be done in a variety of means such as through the Landlord Forum, arranging training events for landlords on the correct procedures to evict a tenant / licensee, and advice and information booklets for landlords and tenants / licensees.

The Council will also take a proactive approach in supporting the rights of residents and tenants in relation to unlawful eviction and / or harassment. This will include

taking appropriate action to help the tenant / licensee regain entry to their home and the possible prosecution of any person, organisation or agency who are acting unlawfully.

The Council recognises the rights as well as the responsibility of landlords, and will actively encourage all tenants / licensees to observe their legal obligations as tenants / licensees, including being a considerate tenant and neighbour.

## **6. The strategic context**

This Policy and its key components have been developed to reflect local and national housing strategies and policies. The future priorities for Trafford are contained in the Trafford's Vision 2021: a blueprint (Community Strategy) which sets out the vision and outcomes for Trafford. This Policy can make a significant contribution to meeting a number of the priorities outlined in the Corporate Plan and in particular Trafford's vision that *"All Trafford's people and communities will enjoy the highest quality of life in a safe, clean, attractive, healthy and sustainable environment with excellent education and first class services"*.

Harassment and unlawful eviction are criminal offences. Trafford tenants / licensees should feel safe in their homes and not fear either harassment or the threat of unlawful eviction. Adoption of this Policy will assist in helping to remove the fear of harassment and / or unlawful eviction. If tenants / licensees are being harassed and are fearful of being forced from their homes, this will have an impact on their social and economic wellbeing. Additionally, some tenants / licensees may be afraid to report disrepair in their property for fear of being forced to leave their home. This means that these tenants / licensees will continue to live in substandard and unhealthy housing. Adoption of this Policy will give tenants / licensees more confidence to request help from the Council if they are living in sub-standard housing, and so bring about improvements in their living conditions.

Promotion of this Policy is also one of the aims of the Council's Homelessness Strategy 2015 – 2018, which wants to improve the information available to tenants and landlords. If the Policy is implemented successfully there should be a reduction in homeless presentations in Trafford.

## **7. Relevant legislation**

There are three main pieces of legislation that deal with unlawful eviction and harassment:

### 1) Protection from Eviction Act 1977

The law makes it an offence for a landlord, landlord's agent or any person to:

- carry out acts likely to interfere with the peace or comfort of a tenant / licensee or anyone living with him or her; or
- to persistently withdraw or withhold services for which the tenant / licensee has a reasonable need to live in the premises as a home, with the intention of causing the tenant / licensee to give up occupation of the whole or any part of the property, or to refrain from exercising any right or pursuing any

remedy, or knowing or having reasonable cause to believe that the tenant will do so

A person will not be guilty of an offence if he proves that he had reasonable grounds for doing the acts or withdrawing or withholding the services

It is also an offence for any person to unlawfully deprive a tenant / licensee of the whole or any part of premises he or she occupies or attempt to do so. The landlord has a defence if he can prove that he believed or had reason to believe that the tenant / licensee had ceased to occupy the property.

## 2) Criminal Law Act 1977

This Act provides that if someone enters a person's home using, or threatening to use violence, they are committing a criminal offence. Specifically the Act states that

- it is an offence for any person, without lawful authority, to use or threaten violence for the purpose of securing entry into any premises provided that:
  - (a) S/he knows that there is someone on those premises at the time, who is opposed to the entry which the violence is intended to secure; and
  - (b) the person using or threatening the violence knows that is the case

This applies even if the person being evicted has no legal right to be there (for example a squatter or an excluded tenant or excluded licensee) whose right to occupation has ended.

This Act therefore supports possible action by the Council to help tenants / licensees regain possession of their homes.

## 3) Protection from Harassment Act 1977

This Act creates four criminal offences:

1. harassment
2. putting another person in fear of violence
3. breach of restraining order and
4. breach of an injunction

A landlord commits an offence if the landlord or someone acting on their behalf carries out a course of conduct which amounts to harassment of the tenant / licensee and they know that the conduct amounts to harassment.

Harassment includes alarming a person or causing a person distress. A course of conduct involves speech and must involve conduct on at least two occasions.

## **8. How the Policy will operate**

The Council has the legal power to investigate and prosecute offences under the provisions of the Protection from Eviction Act 1977. Referrals may also be made in appropriate cases to the local Police who may investigate with a view to taking a

prosecution for other related factors for example, theft of a tenant's / licensee's belongings, criminal damage, assault or protection from harassment.

### **8.1 Specific principles**

In all cases of unlawful eviction and / or harassment of a tenant / licensee, where there is sufficient evidence, the Council will consider a formal caution or prosecution. In considering these two options, the Council will have regard to the issues detailed in 8.2 below.

Where the perpetrator refuses a formal caution, a prosecution will normally be pursued.

### **8.2 Issues to be taken into account**

In deciding whether a case is suitable for a caution or prosecution, the authority will take a number of issues into account, including: -

- Strength of the evidence obtained
- The severity of the offence and the circumstances of the case
- Voluntary disclosure
- Social factors
- The Code for Crown Prosecutors

A case will not be deemed unsuitable for a prosecution or caution solely because either the Council has successfully enabled the tenant / licensee to regain possession of their home or because the landlord or their agent has allowed or is about to allow the tenant / licensee back into their home.

### **8.3 Enforcement**

The Council will adhere to its Enforcement 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 and the requirements of:

- The Human Rights Act 1998
- The Regulation of Investigatory Powers Act 2000
- The Police and Criminal Evidence Act 1984 (PACE)
- The Criminal Procedures and Investigations Act
- The Code for Crown Prosecutors

The Council 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.

### **8.4 Enforcement options**

The Council has a staged approach to enforcement wherever possible to ensure solutions are initially sought through education, co-operation and agreement.

Where this is not successful, formal action will be necessary, which may ultimately lead to prosecution or other summary action. The following options where appropriate will be made available:

- Mediation & negotiation
- Formal Cautions
- Prosecution

### **8.5 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 1 – 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**

The Council 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 Council 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 the Council.

## **10. Service Criteria**

In dealing with cases of unlawful eviction and / or harassment the Council: -

- Aims to mediate and negotiate in cases of serious landlord and tenant / licensee disputes in the rented housing sector
- Where mediation fails or is inappropriate, the Council may decide to pursue an investigation which may lead to a criminal prosecution under the Protection from Eviction Act 1977.

The Council will investigate cases of: -

1. Unlawful eviction of tenants / licensees by private / registered social landlords or people acting on their behalf
2. Threatened unlawful evictions of tenants / licensees by private / registered social landlords or people acting on their behalf
3. Serious cases of harassment of tenants / licensees by their landlord or people acting on their behalf. This could include violence, threats of violence, abusive, discriminatory, aggressive or intimidating behaviour
4. Disconnection of essential services (water, gas, electricity) by the landlord or person acting on their behalf
5. Cases of harassment where the tenant(s) / licensee(s) involved may be vulnerable for example elderly tenants, or tenants with mental or physical health problems
6. Cases of racial, sexual or other discrimination

## **11. Review**

This Policy will be reviewed every three years to ensure it meets its aims and objectives, and compliments the priorities contained within the Council's Homelessness Strategy. The Council 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 Housing Services at:

Trafford Council, Housing Services, Trafford Town Hall, Talbot Road, Stretford Manchester, M32 0TH

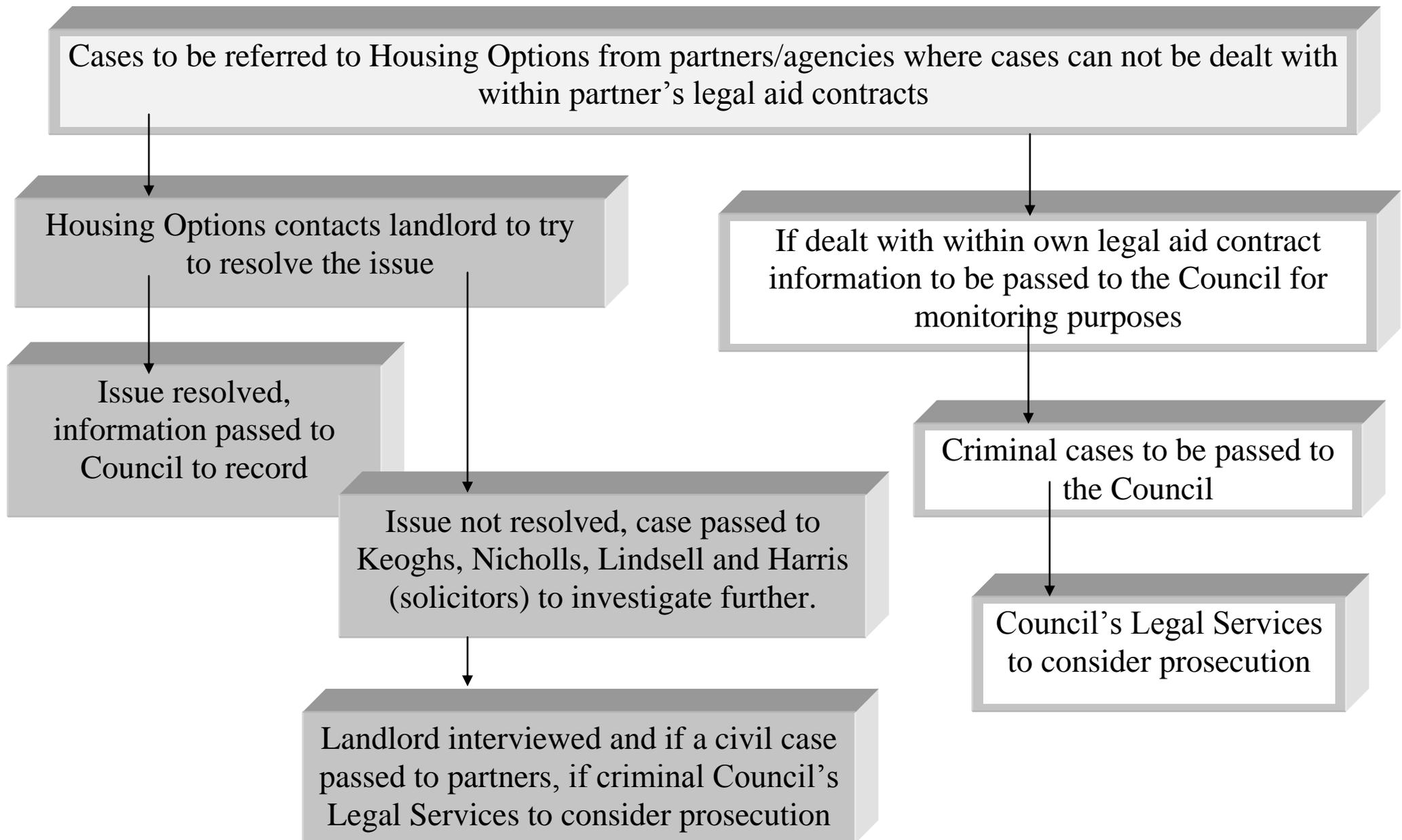
Telephone 0161 912 4435

If you require copies of this Policy or a copy in large print, in Braille, on tape or in a language other than English, please call 0161 912 4435.

## **13. Agencies / organisations involved and consulted in the drafting of the Policy**

Keoghs, Nicholls, Lindsell and Harris Solicitors  
Trafford Housing Options  
Trafford Citizens Advice Bureau  
Trafford Landlords' Forum  
Shelter  
Trafford Law Centre  
Dobson's Solicitors  
Trafford Council  
Greater Manchester Police

Process



### **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 unless:
  - Serious delay is wholly or partly due to the defendant
  - A complex offence necessitating long investigation
  - A serious offence
  - The offence recently came to light

## Report of Unlawful Eviction and / or Harassment in Trafford

Please complete this form to report any possible cases of unlawful eviction and / or harassment for investigation and possible prosecution, and send to Louise Murphy, [l.murphy@keoghssolicitors.co.uk](mailto:l.murphy@keoghssolicitors.co.uk) at Keoghs, Nicholls, Liddell and Harris Solicitors or telephone them on 0161 928 9321.

### Housing Legal Advice Clinic

On the first Tuesday of each month at Sale Waterside between 1pm and 4pm there is free legal advice in connection with:

- Rent arrears
- Eviction and unlawful eviction
- ASB Injunctions
- Repossession
- Homelessness
- Disrepair

The reporting form is next.

<b>Details of referring agency</b>	
Contact Name:	
Address (include postcode):	
Telephone:	
<b>Details of aggrieved person(s)</b>	
Contact Name:	
Tenancy / licence Address (include postcode):	
Current address (if different than above):	
Date of Birth:	
Please list income details:	
Telephone:	
<b>Details of Landlord</b>	
Contact Name:	
Address (include postcode):	
Is Landlord / Lady a company? If yes, give the company name:	
<b>Details of Landlords agent (if</b>	

<b>applicable)</b>	
Contact name:	
Address (include postcode):	
Telephone:	
<b>Details of Tenancy/Licence</b>	
Type of tenancy/licence:	
Tenancy / licence start date:	
Type of Notice issued:	
Eviction date:	
Any shared facilities with Landlord / Lady? If yes please state:	
If any rent arrears please state:	
<b>Other relevant information</b>	
Reason for harassment, if known:	
Are there any witnesses?	
Is any person's safety at risk? If yes, please give name(s) and reason:	
Have the Police been informed? If yes, please state any involvement:	
<b>Events to date</b>	
Please include all events that have taken place, including full details, dates of harassment / eviction, timescale of	

<p>events, who is involved etc. Please attach copies of any notices, correspondence to date, and a copy of the tenancy / licence agreement (please use an additional sheet if necessary):</p>	
<p>What action / steps have you taken to assist this person / issue:</p>	
<p>Signed (Referring Officer):</p> <p>Date:</p>	
<p><b>Customer's authority for disclosure of information</b></p>	
<p>I hereby give permission for the agency named above to disclose details and information on my behalf to Trafford Council in relation to the matter of unlawful eviction / harassment</p>	
<p><b>Signed:</b></p> <p><b>Date:</b></p>	