

EAST RIDING OF YORKSHIRE COUNCIL

PROCESS FOR THE USE OF THE ABSOLUTE GROUND FOR POSSESSION

1. BACKGROUND

Part five of the Anti Social Behaviour, Crime and Policing Act 2014 introduced a new absolute ground for possession (“the absolute ground”) of secure and assured tenancies where the tenant, a member of their household or visitor has met one of the following conditions (subject to any available human rights defence, including proportionality):

- Convicted of a serious criminal offence¹ in, or in the locality of, the property, affected a person with a right to live in the locality of the property or affected the Council or the Council’s staff or contractors;
- Found by the Court to have breached a Civil Injunction;
- Convicted for breaching a Criminal Behaviour Order;
- Convicted for breaching a Noise Abatement Notice;
- The tenant’s property has been closed for more than 48 hours under a Closure Order for anti social behaviour.

The offence / breach must have occurred in the locality of the property or affected a person with a right to live in the locality or affected the Council, their staff/contractors.

The purpose of the absolute ground for possession is to speed up the possession process in cases where anti social behaviour or criminality has already been proven by another court and removes the requirement to prove that it is reasonable to grant possession. It also offers better protection and faster relief for victims and witnesses, though should only be used in the most serious cases of anti social behaviour.

Secure tenants have a statutory right to request a review of the landlord’s decision to seek possession.

2. NOTICE REQUIREMENTS

In order to use the new grounds, The East Riding of Yorkshire Council (“the Council”), as landlord, must serve a notice of the proceedings on the tenant, either:

¹ <http://www.legislation.gov.uk/ukpga/2014/12/schedule/3/enacted>

- Within 12 months of the relevant conviction or finding of the court being relied on (or if there is an appeal against the finding or conviction, within 12 months of the appeal finally being determined, abandoned or withdrawn), or
- Within three months where the tenant's property has been closed under a Closure Order (or if there is an appeal against the making of a Closure Order, within three months of the appeal being finally determined, abandoned or withdrawn).

The notice will be valid for 12 months.

The notice will include:

- The Council's intention to seek possession under the absolute ground;
- The reasons why the Council is seeking possession;
- Which of the five conditions referred to in section one above the Council proposes to rely on;
- The relevant conviction, finding of the court, or Closure Order the Council proposes to rely on;
- Details of any right that the tenant may have to request a review of the Council's decision to seek possession and the time within which the request must be made;
- Where and how a tenant may seek advice on the notice;
- The date after which possession proceedings may be begun.

If the Council wishes to seek possession on one or more of the existing discretionary grounds as well, the notice must also specify and give details of these grounds.

A notice issued on the absolute ground for possession will only be issued following approval from a Principal Housing Management Officer. .

3. REVIEW PROCEDURE

The review procedure is attached at Appendix 1.

Tenants have a statutory right to request a review of the Council's decision to seek possession under the absolute ground and may be accompanied by a representative. The tenant and local authority may call witnesses. The review will be conducted by a Senior Officer of the Council who has not been involved in the original decision and he/she will be senior to the officer who took that decision. Under normal circumstances the review will be conducted by the Head of Housing, Transportation and Public Protection or in his absence the Director of Communities and Environment.

- The request for a review must be made to the Council within seven days of the notice to seek possession being served on the tenant;
- The Head of Housing, Transportation and Public Protection or in his absence the Director of Communities and Environment, will conduct the review;
- The review will be completed before the end of the notice;
- The officer conducting the review will inform the tenant of their decision in writing;

- If the decision is to confirm the original decision to seek possession, the officer conducting the review will include the reasons behind their decision when writing to the tenant;
- If the review determines that the absolute ground should not be used, the officer conducting the review will notify the tenant of the decision in writing.

4. MATTERS TO BE TAKEN INTO ACCOUNT WHEN CONDUCTING THE REVIEW

- Has the tenant, a member of their household or visitor met one of the following conditions:
 - Being convicted of a serious criminal offence² in, or in the locality of, the property, affected a person with a right to live in the locality of the property or affected the Council or the Council's staff or contractors;
 - Being found by the Court to have breached a Civil Injunction;
 - Being convicted for breaching a Criminal Behaviour Order;
 - Being convicted for breaching a Noise Abatement Notice;
 - The tenant's property has been closed for more than 48 hours under a Closure Order for anti social behaviour.
- If yes, did the offence / breach occur in the locality of the property or affected a person with a right to live in the locality or affected the Council, their staff/contractors.
- If yes, has the tenant raised any human rights defence, including proportionality, which the officer conducting the review feels will meet the high threshold of being 'seriously arguable' established by the Supreme Court.
- If no, did the notice contain all the required information.
- If yes, was the notice served within the correct time periods set out in section two.
- If yes, the officer conducting the review will instruct the Head of Legal Services to apply to the court for possession under the absolute ground.

If the officer conducting the review is satisfied that any of the above criteria was not met, or the tenant has raised a human rights defence that will meet the 'seriously arguable' threshold, possession under the absolute ground must not be sought.

5. COURT HEARING AND DEFENCES

- The Council will apply to the court for possession under the absolute ground no sooner than seven days and no later than 28 days after the serving of the notice;
- Tenants may raise any available human rights defence, including proportionality, against possession proceedings under the absolute ground;
- The court will consider whether such a defence meets the high threshold of being 'seriously arguable' established by the Supreme Court;

² <http://www.legislation.gov.uk/ukpga/2014/12/schedule/3/enacted>

- Subject to any available human rights defence raised by the tenant, the court must grant an Order for possession where the Council has followed his procedure.
- The court may not postpone the giving up of possession to a date later than 14 days after the making of the Order unless exceptional hardship would result, in which case it may be postponed for a period no longer than six weeks.

ORDER OF PROCEDURE**Request for Review of Decision to Seek Possession under the Absolute Ground for Possession in accordance with Part Five of the Anti Social Behaviour, Crime and Policing Act 2014**

- The Housing Services Group Manager (or their representative) to make oral submissions in support of their statement setting out the reasons for their decision (witnesses may be called);
- The tenant (or their representative) may question the Housing Services Group Manager (or their representative) and / or witnesses on statements made. The tenant must not make their statement at this stage – this is for questions only;
- The Head of Housing, Transportation and Public Protection to ask questions of the Housing Services Group Manager (or their representative) and / or witnesses;
- The tenant (or their representative) to make oral submissions in support of written representations which have been submitted (witnesses may be called);
- The Housing Services Group Manager (or their representative) may question the tenant (or their representative) and / or witnesses on statements made;
- The Head of Housing, Transportation and Public Protection to ask questions of the tenant (or their representative) and / or witnesses;
- The Head of Housing, Transportation and Public Protection to ask additional questions of both parties if appropriate. Both parties will be given the opportunity to comment if new evidence arises;
- The Housing Services Group Manager (or their representative) to make a closing submission;
- The tenant (or their representative) to make a closing submission;
- The Head of Housing, Transportation and Public Protection will advise the tenant and Housing Services Group Manager (and / or their representatives) either to wait for a decision or to leave and wait for the decision in writing;
- The Head of Housing, Transportation and Public Protection to deliberate in private. If required, the Head of Housing, Transportation and Public Protection may recall the tenant and the Housing Services Group Manager (or their representatives) in order to clarify evidence heard;
- The Head of Housing, Transportation and Public Protection will record their decision in writing and this will be sent to the tenant and Housing Services Group Manager within seven days of the review hearing.

NOTE: the Director of Communities and Environment will conduct the review if the Head of Housing, Transportation and Public Protection was involved in the original decision to seek possession under the absolute ground. Alternatively the Director of Communities and Environment may appoint another officer more senior to the officer making the original decision, to hear the review.