

Introduction

Welcome to the fourth edition of Emsleys' quarterly newsletter for Registered Social Landlords. Comments and suggestions are positively encouraged to ensure that we continue to deliver what our clients need.

John Murray September 2004

ASB Update

Anti Social Behaviour : New Powers and Responsibilities

Part 2 of the 2003 Anti Social Behaviour Act came into force on 30 June 2004. The main provisions include:

1. New Definition:

- A much wider range of conduct is caught by the 2003 Act definition of anti social behaviour, but this only relates to those remedies covered by the 2003 Act. There has been no change to the Housing Act 1985/1988 grounds for possession based on nuisance, or the definition of anti social behaviour relevant to ASBOs.
- The new definition applies to behaviour that is capable of causing nuisance or annoyance to any person, which directly or indirectly affects the housing management functions of any social landlord.
- It is immaterial where the conduct occurs.

2. Policies and Procedures:

- All social landlords must have prepare and publish both a policy in relation to anti social behaviour (2003 Act definition), and procedures for dealing with it, plus a summary of both.
- These must be in place by 30 December 2004.
- Housing Corporation Regulatory Circular 08/04 reminds RSLs to have regard to its guidance on the subject, as well as setting out the timeframes. Associations will be expected to certify to the Corporation that they have complied.
- The Housing Corporation has issued helpful guidance (August 2004) on this area, which makes suggestions about what both documents should include.
- The guidance (2.11 / 2.12) makes it clear that the Corporation expects RSLs to consult tenants and residents on these documents, as well as a range of other interested groups including staff, BME communities, social services, probation, and even local leisure facilities.
- The policy and procedure documents must be kept under review regularly using performance data (Circular para 3)

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3. Tenancy Demotion:

- RSLs are now able to apply to Court for a demotion order, reducing secure or assured tenancies to assured shorthold tenancies.
- Landlords can seek a demotion order within possession proceedings as an alternative to a possession order, or as a free-standing remedy.
- The landlord must give notice to the tenant that this is what they intend to do. The Court can waive this if it is just and equitable
- The Court can only make a demotion order if it is satisfied that the tenant, or someone visiting the property or residing there has engaged in, or threatened to engage in, the 2003 Act definition of anti social behaviour; and if it is also satisfied that it is reasonable to make the order.
- The demotion order ends the assured or secure tenancy and creates a new assured shorthold tenancy. If the landlord wants possession because of the conduct of the demoted tenancy, possession can be claimed under s8 or s 21 1988 Housing Act.
- Once the demotion order has been made, the landlord has 12 months to give a s 8 or s 21 notice; if that isn't done, the tenancy becomes assured automatically, even if the original tenancy was secure.
- Landlords can use the accelerated possession procedure under s 21 1988 Housing Act; an order for possession under s 21 can take effect before 6 months from the date of the demoted tenancy being created by the demotion order.

4. Anti Social Behaviour Injunctions:

- RSLs can apply for injunctions against anyone whose conduct is capable of being anti-social under provisions replacing s 152 1996 Housing Act, which was only available to Councils.
- These injunctions are free-standing.
- Injunctions can be made to protect owner-occupiers in the locality of accommodation owned by an RSL landlord, or tenants of any social landlords.
- It is immaterial, except as mentioned above, where the conduct occurs.



CASE LAW

Manchester City Council v Romano & Samari (2004) Court of Appeal

In this important case the Court of Appeal has had its first opportunity to look at the impact of the 1995 Disability Discrimination Act (DDA) on housing possession proceedings where the reason for the eviction-typically nuisance and anti social behaviour- is caused by the tenant's disability. Key points include

- The behaviour must be caused by the disability for the DDA to apply; this may involve detailed medical evidence;
- A disability for the purposes of the DDA does not include a tendency to steal, set fires or physically or sexually abuse other people;
- Addictions are not within the meaning of disability unless they were the result of medical treatment;
- However, psychiatric problems that are caused by drugs or alcohol may be within the definition of a disability;
- Disability includes conditions controlled for the time being by medication;
- If the person is being evicted or subjected to any other detriment in relation to their home because of a disability, that is indirectly
- An eviction/other treatment will not be discriminatory if it is necessary in order not to endanger the health or safety of the disabled person or any other person;

- Landlords will be able to proceed with evictions of they can show that, at the points include time of making the decision to begin possession action, they had reasonable grounds to believe that the eviction was necessary for that reason;
- The Court was concerned that, with the DDA worded as it stands, tenants could try to raise the DDA defence to rent possession proceedings ("I could not manage my finances because of a mental disability"), or in cases where there was no need to show that possession was reasonably required (-eg s21 1988 Housing Act claims against assured shorthold tenants)
- On the facts the Council did believe that it was necessary to evict because of the neighbour's health and safety; (one neighbour was depressed and suicidal; another, a driving examiner, suffered from sleep deprivation), and believed so at the time of deciding to issue proceedings: The Court accepted this, and ruled that there was no breach of the DDA.

The issue for RSLs is to ensure that witness evidence from the victims of anti social behaviour highlights any health and safety effects on the witnesses.



Rogerson v Wigan MBC (2004)
High Court

- Once a Local Authority has accepted that it owes someone the full homelessness housing duty contained in s 193 1996 Housing Act, and provides long term temporary accommodation on anything other than a transient basis, the occupier is no longer outside the scope of the 1977 Protection From Eviction Act.
- The occupier can only be evicted by Court Order, unless the agreement is an excluded agreement under s3A of the same Act eg a licence to occupy non self contained accommodation provided by a Council or RSL.

- Compare with:
Gibson v Paddington Churches HA (2003)

Housing Law Newsletter 3, relating to temporary accommodation pending investigation and up to and including a negative decision.

R (Keating) v Knowsley MBC (2004) High Court

- Anti Social Behaviour Orders (ASBOs) are made in the Magistrates' Court; children and young people involved in such proceedings cannot be identified in the press unless the Court allows it;

- The facts of this case involved an interim ASBO against a 15 year old who was identified after the hearing in a leaflet distributed in the area by the Council and police.
- The High Court gave guidelines about when it would be appropriate for the Court to allow the Defendant to be identified in the press and emphasised that at the interim ASBO stage, no anti social behaviour had been proven (making it more reasonable to preserve the anonymity of the Defendant)

Lambeth LBC v Kay (2004) Court of Appeal

- Lambeth granted informal licences to RSLs to use various properties as short life housing for homeless people. Some remained in occupation for long periods.
- The Council replaced the licenses with leases of the individual properties to the RSLs, which it ended in 2000; Lambeth then claimed possession from the occupiers.
- The occupiers tried to argue that they were secure tenants of the Council and/or that they were protected by the Human Rights Act. Both arguments were rejected by the Court.



Evictions and Eligibility: Housing Corporation Regulatory Guidance

Housing Corporation regulatory circular 07/04 makes a number of important points, including:

- Associations should not generally seek guarantors for tenancies
- If an applicant has been guilty of anti social behaviour that occurred more than 2 years in the past, and has maintained a tenancy since without difficulties, that applicant should be allowed on the housing waiting list;
- Suspensions should be reviewed regularly and should not exceed 2 years;
- Eviction should be a last resort;
- Possession proceedings on ground 8 should only be pursued where Ground 8 forms part of a rent arrears recovery policy that has been approved by the Association's governing board and that has been put to tenants for consultation;
- Tenants who are likely to be entitled to Housing Benefit, who have claimed and provided all information that is needed for that claim, and who are paying their contribution (if any) should not have possession proceedings for rent arrears started against them (para 3.1.1)

EC Procurement Directive:

- The Housing Corporation has issued guidance on 10 September 2004 in the wake of the ODPM's concession that the EC Procurement Directive applies to RSLs. Most contracts that RSLs enter into, other than those for purchasing interests in land or dwellings, are covered, and there must be an element of competition in the contracting process, where the value of the contract exceeds prescribed levels. Associations are encouraged to take specialist legal advice.

Unfair Terms in Tenancies

- The NHF has issued a briefing following its discussions with the Office of Fair Trading (OFT) about the impact of the Unfair Terms in Consumer Contracts Regulations on RSL tenancies.
- The Court of Appeal recently reaffirmed that these regulations do apply to standard form tenancies.
- The NHF briefing points out that the OFT does not intend to take enforcement action in relation to the NHF's Model Tenancy Agreements.
- However there is a difference of opinion between to 2 bodies about the enforceability of clauses dealing with nuisance that go beyond the scope of the statutory nuisance grounds, and those dealing with possessions left behind in premises by tenants who have been evicted.
- There is still a risk that tenants will challenge the validity of many tenancy clauses in possession proceedings or other Court claims based on those tenancy clauses; the Court can make a decision on whether an individual clause is enforceable. Associations may therefore wish to take their own advice on specific clauses that they wish to rely on.



NEWS ROUNDUP

Home Loss Payments

Home Loss Payments have gone up again where the date of displacement occurs on or after 1 September 2004; the minimum is now £3400 and the maximum £34,000.

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