

ASB injunctions and possession claims – In depth – when and how to use them

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Contents

Section	Page number
1 Message from Aisha	2

1 Message from Aisha

Hey

Attached slides and proportionality form and info on gang injunctions

More info;

What Happens if the Defendant Refuses to Co-operate with a Capacity Assessment?

- The Mental Capacity Act Code of Practice at paragraph 4.59 states that a person cannot be compelled to undertake a capacity assessment.
- The local authority should try and determine why there is a lack of co-operation.
- If it is because the assessors attend at the wrong time (the tenant is high, in the grip of a hallucination, sleepy) or there is a lack of trust or similar then the local authority will need to try again and again.
- If it appears the tenant is not co-operating then the local authority should explain to the tenant refusing an assessment why it is needed and what the consequences of refusal are.
- The tenant runs the risk of not accessing the help they may need to save the home.
- If the tenant continues to refuse to co-operate then the local authority should obtain a capacity assessment on the papers without an interview

Capacity and deliberate acts of ASB

Section 191(1) of the Housing Act 1996 provides,

"a person becomes homeless intentionally if he deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy".

Paragraph 11.7 of the Homelessness Code of Guidance for Local Authorities 2006 provides: Generally, an act or omission should not be considered deliberate where: *...(ii) the housing authority has reason to believe the applicant is incapable of managing his or her affairs, for example, by reason of age, mental illness or disability; (iii) the act or omission was the result of limited mental capacity; or a temporary aberration or aberrations caused by mental illness, frailty, or an assessed substance abuse problem".*

Possession during the fixed term flexible council tenant eg 5 year

During the fixed term, the same grounds for possession apply to flexible tenancies as are available for periodic secure tenancies.

The local authority must first obtain a termination order. This allows the local authority to bring the fixed term tenancy to an end before the expiry of the original term. A secure periodic tenancy arises automatically. The local authority can then seek a possession order using the secure tenancy grounds for possession.

Ending fixed term secure tenancy ; Croydon London Borough Council v Kalonga

- Miss Kalonga was a Croydon Borough Council ("Croydon") tenant occupying a property under a five-year flexible tenancy. Croydon issued possession proceedings during the fixed term, citing antisocial behaviour and rent arrears. Miss Kalonga defended the proceedings on the basis that her tenancy did not contain a forfeiture clause and that, therefore, Croydon was unable to evict her during the fixed term.
- there are two ways in which a landlord under a fixed term tenancy can recover possession during the fixed term.
- 1. The first is where the tenancy contains a contractual break clause. The landlord can exercise that clause and then seek possession under the usual statutory grounds for possession
- 2. The second is where the tenancy contains a forfeiture clause. In that case, the 1985 Act has provision (ss.82(1A), (3), (4), 86) for a special form of forfeiture to apply.

If the tenancy contains neither type of clause then it cannot be terminated during the fixed term. flexible tenancy agreements would need careful scrutiny to establish whether there was an operative forfeiture clause. For grounds where the tenant is at fault, such as rent arrears, the local authority can seek a termination order in lieu of forfeiture. The tenancy agreement must contain a forfeiture clause.

A successful forfeiture claim terminates the fixed term and a periodic tenancy arises. The local authority must bring a possession claim on grounds to end the periodic tenancy. It can do this at the same time

Possession at the end of the fixed term

A local authority can bring possession proceedings without relying on a ground for possession if it decides not to renew the tenancy at the end of the term.

It must give the tenant at least six months' notice of non-renewal. The tenant has 21 days to request a review of the decision not to renew.

The local authority must also give the tenant at least two months' notice seeking possession. This does not have to be served at the same time as the notice of non-renewal but must be given on or before the date the fixed term ends.

The local authority can then bring a claim for possession. The court must make a possession order if the correct process has been followed.

Croydon London Borough Council (Appellant) v Kalonga (Respondent) - The Supreme Court

Aisha

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