Possessions and Injunctions ASB cases

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Objectives

- Understanding when the ASB injunction can be used
- The evidential test for applying for a civil injunction and possession claim
- Case studies and scenarios
- Drafting of common ASB injunction clauses
- Using positive requirements in ASB injunctions
- What should go into your witness statement to support a claim and how to structure it
- What happens when there is a breach of order?
- Possession proceedings on both discretionary and absolute possession grounds

ASB action plan; Government

- Action plan
- 27th March 2023 the Government launched their “ASB Action Plan”, setting the commitments they are making to tackle ASB.
- Main principles of ASB action plan – address safety, security and respect for others.;
- Immediate justice – reparation within 48 hours on things like graffiti. Community to be involved in setting what consequences/ punishment should be
- Crackdown on illegal drugs – extending the range of drugs police can test for, and the ban on laughing gas
- Encourage orderly behaviour – strengthen powers for PRS and SRS to evict/ sanction. Looking to increase use of mediation in PRS through new Ombudsman.

Definition of ASB

- The Anti-Social Behaviour, Crime and Policing Act, 2014 defines ASB as ;

- *(a) conduct that has caused, or is likely to cause, harassment, alarm or distress to any person,*

- *(b)conduct capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises, or (c)conduct capable of causing housing-related nuisance or annoyance to any person.*

Legal remedies



Injunctions

- S1 to 21 of the Anti-social Behaviour, Crime and Policing Act 2014
- ***Behaviour likely to cause harassment, alarm or distress (non-housing related anti-social behaviour); or***
- ***Conduct capable of causing nuisance or annoyance (housing-related anti-social behaviour); and***
- ***Just and convenient to grant the injunction to prevent anti-social behaviour***
- 10 years +
- Lower level of proof (civil)
- Breach = up to 2 years in prison and/or unlimited fine
- Duration for adults is no time scales / for under 18 up to 12 months
- Breaching an injunction can leave a social housing tenant open to Mandatory Possession Proceedings

Lets break it down.....

- If the behaviour is happening in a residential setting (private or otherwise) the test for ASB is where it is ***capable of causing nuisance or annoyance***

- If the behaviour is happening in a non-residential setting, the test for ASB is whether it has ***caused or is likely to cause harassment, alarm or distress***

- If the applicant is a social landlord then the test is always whether the conduct is capable of causing nuisance or annoyance, as long as the behaviour is **housing related** (e.g. affecting the housing management function of the landlord).

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Who can apply?

- local authority
- private registered provider of social housing (PRPSH)
- charitable housing trust
- housing action trust
- Police
- The above bodies and Transport for London, NHS Protect and the Environment Agency can apply for a non-housing Injunction .
- A local authority or the police can apply for a housing-related injunction against a person in any tenure, including privately rented accommodation and owner-occupied housing
- Housing association can only apply for a housing-related Injunction where the ASB relates to its "*housing management functions*".
- can be made in relation to a person living in or visiting residential premises.

What can we use Injunctions for?



- Definition is so wide that it could cover wide range behaviours
- Eg; threats of violence
- Risk of harm
- overgrown garden affecting neighbours
- Hoarding
- Doug fouling or barking
- Noise nuisance
- Gang injunctions
- Limit number of visitors
- Ban from a property

With or without notice……

- **TIP;** *In an application for an injunction, the perpetrator is called the "Respondent" and the person applying for the order is the "Applicant"*
- A **without notice** injunction means it is obtained without telling the Respondent
- A without notice application can be applied for in order to prevent further antisocial behaviour during proceedings. In exceptional or urgent cases, for example where;
- it is necessary to stop serious harm to victims, an interim injunction can be applied for 'without notice' to the alleged perpetrator.
- Eg, where there is an urgent need to protect witnesses or landlord's staff from an individual acting anti-socially or there is concern over how an individual will react when served with an application.
- An interim injunction made following a 'without notice' application can only include prohibitions, and not positive requirements

Without notice example

- In a case where Council cleaner was assaulted by a tenant and her partner. It was a serious and unprovoked assault due to the fact that the cleaner was in the process of mopping the lift and they were denied immediate access. A number of residents were aware of the incident and were very alarmed. In addition, cleaning staff were frightened to enter the block to carry out their work.
- the court granted a two year injunction with power of arrest. An injunction was in place within 48 hours and was granted without notice to the other side before being fully authorised for the two year period.

Exclusion clause

- You can exclude someone from somewhere if you can prove that it is necessary to prevent further ASB. Areas might include shops, certain streets, community buildings, entire estates or sometimes a wide area such as a town or local authority area, landlords offices
- A registered provider can only exclude someone from a home if they own or manage the property concerned.
- **TIP;** You may wish to produce a "**hotspot" map** – using red dots to indicate where incidents have occurred. This will visually show the Judge areas where the incidents have occurred and therefore where it is proportionate to exclude the person from .
- If the area includes the homes of close family members or access to GP/dentist etc consider allowing the respondent a route in and out of the exclusion area or specified times/days when they can enter the area.

More tips!

- take plenty of copies of a map, clearly marking the areas where you want the exclusion to apply in red pen and also unmarked copies.
- Make sure:-
- The road names are clear and legible
- Maps are copied in colour so the red line is still visible
- You draw the line on the correct side of the road so as not to miss an area you want including
- ***If seeking a non-association clause make sure you have the name, addresses and dates of birth of the associates and have evidence of each causing problems with the Respondent***

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Power of arrest

- The court can attach a power of arrest to any prohibition in the order where:
- the ASB, consists of violence, or the threat of violence, against other persons
- OR there is a significant risk of harm to other persons
- A power of arrest cannot be attached to a requirement that the perpetrator participates in a particular activity.
- A police officer can arrest the perpetrator without warrant if they have reasonable cause to believe that a breach of the order has occurred.
- **TOP TIP;** make sure you serve the respondent first with the order send lodge with the police



Exclusion from their home

- can exclude an adult from their home where the court thinks that either;
- *the person has engaged in violence, or threatened violence, against another person*
- *there is a* ***significant risk of harm*** *to another person*
- Harm includes serious ill-treatment or abuse, whether physical or not. It could include emotional or psychological harm, such as harassment or racial abuse
- used rarely and its use will involve considerations under Article 8 ECHR



Clauses for Injunction



- Should be linked to the complaints
- The prohibitions or positive requirements must be reasonable and, so far as practicable, must not:
- 1. *interfere with a person's time at work or school (or other educational establishment)*
- 2. *conflict with requirements of any other court orders in force against that person*
- should also consider any caring responsibilities that the offender may have and whether they have a disability,
- A court will not make an order in circumstances in which there is clear evidence that the respondent lacks the capacity to comply with its terms

The First Defendant MS AMY SMITH
be forbidden (whether by herself or by instructing or encouraging or permitting any other person including children or visitors) from (4)

1. *Engaging in conduct which causes or is capable of causing a nuisance or annoyance to persons residing in or lawfully visiting the locality of Any Road, Anytown, as shown edged in red on the attached plan marked Plan A.*
2. *Engaging in conduct which causes or is capable of causing a nuisance or annoyance to persons employed by Any Housing Association Limited ("Any Housing") or to employees of contractors appointed by Any Housing.*
3. *Using insulting language or using or threatening violence against any persons residing in or lawfully visiting Any Road including employees of Any Housing and their contractors as shown edged in red on the attached plan marked Plan A.*
4. *Inviting or allowing Mr X to enter in or remain at Any Road, Anytown, ("the Property") at any time after 4 PM (date to be inserted) 2020 until 4 PM 25 April 2022 or until further order.*
5. *Contacting or communicating with …….. any Road, Anytown*
6. *Using or allowing to be used or stored or sold or supplied any illegal substances at the Property or within the area shown edged in red on the attached Plan A.*

Positive requirements

- Intentions behind the introduction of positive requirements is to facilitate a **long-term change in the behaviour of that person**
- Positive requirements can also be included to try and address any root causes or support needs eg,
- such as mandating attendance at knife crime awareness classes etc
- unpaid work or specialist support services for mental health.
- attending mediation classes with neighbours;
- No power of arrest can be attached to a positive requirement
- **TOP TIP;** *good idea for the organisation responsible for the requirement to fill out a report, including: An overview of the persons needs, why you think the positive requirements will assist in meeting the need and reducing the likelihood of reoccurring ASB*

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Supervising person for positive requirements must.....

- Positive terms are required to be supervised and monitored. Eg by a local authority, community mental health team or youth offending team, HO
- This can be onerous!
- make any necessary arrangements in relation to the requirements.
- Promote compliance with the requirements.
- Inform the person who applied for the injunction and the appropriate chief officer of police that the individual subject to the injunction has complied or failed to comply with it
- The law does not say who is responsible for funding any positive requirements, for example, the attendance of an anger management course

Evidence for Injunction

- At least 1 witness statement in support must be filed; The best evidence for the Court will always be direct evidence,
- This should exhibit all relevant documents and include evidence. This statement will usually be from an officer of landlord, such as an ASB or housing officer, setting out the background of the case and the need for the injunction
- . The evidence will align with the requested prohibitions,
- It may be helpful to include a schedule of incidents that lists when certain events have occurred. This will assist the court in putting together a timeline of what has happened as well as identifying the type of incidents that have occurred.
- Impact statement may help
- **Remember; There is still potential for identifying witnesses even where they have chosen to remain anonymous!**

Evidence continued.....

- In complex cases e.g. where many alleged tenancy breaches, complainants and/or multiple members of family involved, a numbered chronological schedule cross-referencing to evidence is essential for defendant to be able to respond in a proportionate way
- Can the schedule be reduced? Especially where evidence in support is weak e.g. anonymous hearsay, not naming the individual involved or they are a long time ago.
- Must have corroborated evidence
- Is further disclosure needed? E.g. police reports, recordings mentioned by witnesses
- Is there a realistic trial timetable? Are special measures required?
- Standard of proof = civil standard

- **DO NOT use;**
- Multiple hearsay.
- Lack of explanation of where hearsay came from, how it was recorded, who recorded it.
- Whether the source had any reason to mislead, and whether there is any good reason why the evidence could not have been given directly.
- Poorly particularised allegations – they need to allege something happened, not just that Defendant is generally a nuisance.

Civil evidence Act 1995

- There will be cases where a witness wants to provide evidence but is too vulnerable or too frightened of reprisals from the person, or group, committing the anti-social behaviour to do so. In this situation evidence can be presented anonymously on their behalf by a professional such as a Police Officer or Manager
- If a witness is not willing to come to Court then the evidence will by necessity be indirect. Here an officer of the landlord will give evidence that they had been told by the resident that they had seen or heard an incident occurring. As it is second hand evidence and difficult for a Defendant to challenge, it will be given less weight by the Court when deciding the case.

- (Civil evidence Act)

Witness statement tips....

- **1. is the person ok with being name?** are they ok to attend court?
- **2. explain what has happened.** Remember the audience do not know the background to the case; dates/times
- **3. explain any gaps.** Eg, if there has been a period of no complains, why**?**
- **4. do not hide info;** eg, retaliation by the witness. Ie shouted back at perp
- **5. explain impact on victim and neighbours**
- **6. any vulnerability issues of victim or perpetrator**
- **7. what other tools have you used to tackle the ASB before legal route?**
- **8. complete the statement by including exhibits eg, diary sheets/photos**
- **9. if its without notice say why. If arrest power is needed say why**
- **10. must have a statement of truth at the end and signed**

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Arguments made by tenants solicitors against the case;

- They will ask for your **policies!** Have procedures been followed
- They will ask for disclosure of any **counter allegations**
- They will consider the layout of tenants building – are there neighbours close by who have never complained?
- if noise alleged, they may tell the tenant to lay down rugs.
- If building has poor sound insulation, they will consider instructing sound insulation engineer.
- Is this the first complaint against a long-term tenant?
- Did any professionals witness the event
- Are reports vague, inconsistent with other reports?
- Is there anything to indicate the landlords witness is unreliable

Rosebery Housing v Williams (2021)

- **ASBI**; 123 allegations reduced to 6 for trial inc verbal abuse, taking photos, noise
- T was part S/O she was driving up ad down the Road filming residents
- T suffered from huge **OCD**, which meant she would obsessively film her surroundings, drive up and down the road or sit in it to calm herself
- her counter claim; was the LL breached the EA 2010 '*LL had unlawfully subjected T to detriment because of something arising form her disability*' ; She suffered from OCD which since 2009 and resulted in a number of referrals to mental health teams and inpatient stays at psychiatric facilities. She was described by the experts as being "severely disabled" and having "severe mental health problems
- Lack evidence to support the claim lots of hearsay 5 out of 5 allegations not proved
- Court said; LL aims were legitimate **BUT** not proportionate;
- Allegations were not put to T in a timely manner,
- No medical advice was sought to understand T's disability
- LL did not seek to foster relations between neighbour and T
- LL did not explore T's offer to move
- T awarded **£27,500** LL was criticised

Lessons from Roseberry case

- Landlords should strive to objectively analyse the situation on the ground, as it were. Whilst it maybe tempting to prefer the accounts given by a group of neighbours over that of a lone individual, quantity does not trump the importance of quality, accuracy and credibility of evidence.
- Had Rosebery not taken a certain view and investigated issues more fully and put the allegations to Ms W, they would have been provided with extensive video and camera footage which would likely have changed the perspective of the case long before trial.
- Landlords should put to the alleged perp allegations as soon as possible
- The proportionality exercise isn't just a tick box! Roseberry's form said *"may have a disability of OCD" and that we do "not know, and are unable to say, whether the ASB that Ms W causes is attributable to any disability"* yet they did little to obtain any such info of the impact of her OCD
- The multi-agency approach had been minimal; the LA had infact dropped their own action!
- Think about any possible counter claims

Breach of Injunction and committal

- Need a good relationship with the local Police
- we may need information from them to use as evidence to support us, and we may need an officer to assist in serving the order and an arrest if the order is breached.
- **What are some of the issues you see with your local police?**
- lack of time and resources
- conflicting priorities
- a lack of understanding of what the injunction is
- being let down by housing teams in the past, etc.
- No local hub
- They don't see the urgency



Tips

- **Raise awareness** of injunctions with the police ; arrange early meeting with a senior officer, explain about mutual interest you both have
- **Factors to consider**; who do police call for out of hours? Who coordinates the arrest? You or the police, info sharing agreements
- **Meeting expectations**; frustration eg, court delays and adjournments; give realistic timescales ;share sentencing guidelines
- **Reduce police burden;** try to investigate the breach and begin the process of evidence gathering; Obtain statements from witnesses Notify the court and explain to the custody/arresting officer this will be done by you. Be aware of any shift changes ; provide contact details
- **How to deal with the breach** eg, where there is a power of arrest, designate a person to deal with it, guidance notes for the custody desk

Things to consider on breach;

- Another consideration will be whether it is appropriate to apply for committal immediately, or whether a warning letter may be more suitable.
- It is not mandatory for the landlord to apply for committal for each and every alleged breach of the Injunction; the landlord has complete discretion over whether to do so or not
- the Court is unlikely to look favourably on a landlord who applies for committal for a first time technical or very minor breach
- **BURDEN OF PROOF FOR BREACH IS A CRIMINAL STANDARD SO BEYOND REASONABLE DOUBT**

Injunctions with Power of Arrest attached

- it is necessary to produce the individual to the Court **within 24 hours** of arrest (excluding except on Sundays, Christmas Day or Good Friday).
- The police ought to have obtained their own evidence (usually witness evidence) to support their decision to arrest, should give it to landlord and to court
- Landlord or landlords legal team should formulate 'Allegations of Breach' to submit to the Court on arrival
- the person will be asked by the Judge to confirm whether they admit or deny the Allegations of Breach. Where the breach is are admitted, the Judge will usually sentence there and then. If not can be remanded on bail or custody (custody remand not for more than 8 days); if remand is for a medical report; can be in custody for 3 weeks or on bail for 4 weeks
- When the allegations are denied, the matter should be set down for directions to allow the Defendant the opportunity to respond within 28 days; judge will then decide on sentence
- **TOP TIPS;** *Speak to the victims and witnesses to make sure they know what to say when reporting a breach and have a copy of the power of arrest order to show any attending police officers.*

Injunctions without Power of Arrest attached ...(cont'd)

- The process to apply for the individual's committal due to an alleged contempt of Court
- Application for breach **MUST** be supported by evidence in Affidavit format and must comply with all of the procedural requirements of CPR 81. the date and terms of any order allegedly breached
- The application will be listed by the Court, and the papers sent back to the landlord to arrange personal service upon the person. Proof of service is needed!
- At the first hearing, it is open to the Court to deal with the matter in the person's absence where the person does not attend. Where a Committal Order is made, a Warrant of Arrest will also be issued. Alternatively, where the Judge may require the attendance of the person before determining the application, a Warrant of Arrest may be issued for execution, to bring the person before the Court

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Committal and sentencing

- Breach of an Injunction is a contempt of court and punishable with an unlimited fine or imprisonment for a period of up to **two years**; s.14, Contempt of Court Act 1981
- s.258 of the Criminal Justice Act 2003, a person will be released from custody upon serving half of any period of imprisonment imposed in committal cases
- the court making the committal order may also order that its execution will be suspended
- There are three main objectives in sentencing;
- **1. punishment for breach of the court order;**
- **2. securing future compliance with it; and;**
- **3. rehabilitation**

- However, there is no tariff for "sentences" for contempt of court. It is entirely a matter for the Judge and every case must inevitably depend upon its own facts:
- Suspension is possible in a much wider range of circumstances than it is in criminal cases. It does not have to be the exceptional case. Indeed, it is usually the first way of attempting to secure compliance with the court's order
- **Lovett v Wigan and others (2022 COA)**
- **Who was intended to be protected and against what? Targetting**
- **How strong was the evidence against the appellant in the original injunction proceedings?**
- **Was the breach of a carefully drafted term or a more general prohibition?**
- **Was the breach deliberate?**
- **How serious was the conduct and breach? Eg violence or threats**
- **Level of harm posed by the breach**
- **Was the defendant of good character? Any history of disobedience of orders**
- **Any vulnerability/disability**

Injunctions for under 18's; Youth court

- Any person applying for an injunction in relation to someone under the age of 18 must consult the local youth offending team (YOT) and also inform any other body or individual that it considers appropriate (for example, a mental health team)
- The obligation to consult a local YOT does not give it a power to veto an injunction application,
- When making an injunction in relation to a young person there is no specific form for making an application but a written complaint under the Magistrates' Court Act 1980 should be used
- breach of a civil injunction will result in a supervision order (with a supervision, curfew or activity requirement)
- A detention order can also be used where a respondent has breached a supervision order imposed following breach of an injunction and where the severity and extent of a particular breach merits it. A detention order should only last for a maximum of three months and can only be imposed on those between the ages of 14 and 17
- landlord is able to report on instances of when they have successfully applied for injunctions in the case of young people engaging in ASB
- Must consider proportionality and the likely level of interference of the persons privacy
- **TOP TIP;** If the Respondent was a minor when the order was obtained but is over 18 when the order is breached, the breach hearing is dealt with by the County Court.

Committal continued....

- Burden is on landlord to prove breach 'beyond reasonable doubt'

- Common arguments by tenants solicitors;

- Breach did not happen while injunction in force
- Not sufficient to constitute a breach (e.g. is not nuisance)
- Unclear recordings
- Lack of corroborating evidence
- Complainant motivated to lie
- Complainants are inconsistent

CONSULTATION

- Make sure you speak to partners such as the Police, Local Authority and Registered Providers at an early stage to make sure that you are not duplicating action.

Who do I need to speak with?

Minors	Adults
CONSULT The Youth Offending Team (YOT) for the area where the Respondent lives; and	
INFORM Any other person you think appropriate – this may include: • Parent / Guardian • Police • Local Authority • School • Support Worker / Social Care	**INFORM** Any person that you think appropriate – this may include: • Police • Local Authority • Support Worker • Adult care • Probation

POSSESSION

ASB Ground Assured and Secure ; Ground 14 schedule 2 HA 1988 or Ground 2 schedule 2 HA 1985

- The tenant or a person residing in or visiting the dwelling-house—

- *(a) has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting or otherwise engaging in a lawful activity in the locality,*
- *(aa) has been guilty of conduct causing or likely to cause a nuisance or annoyance to the landlord of the dwelling-house, or a person employed in connection with the exercise of the landlord's housing management functions, and that is directly or indirectly related to or affects those functions, or*
- *(b) has been convicted of—*
- *(i) using the dwelling-house or allowing it to be used for immoral or illegal purposes, or*
- *ii) an indictable offence committed in, or in the locality of, the dwelling-house.*

Locality

- matter of fact for the judge
- incident in a shopping centre three streets away from the tenant's property was within the boundaries of the local estate and therefore within the locality
- In ***Knowsley Housing Trust v Prescott (2009),*** Knowsley issued possession proceedings against joint tenants for rent arrears and also for the conviction of Mr Prescott who pleaded guilty to conspiracy to supply cocaine and amphetamines; he had been involved in a drugs factory which was found approximately ½ a mile away from their property on the same housing estate. The criminal activity was found to have occurred in the locality.
- the more closely the criminal conduct in question is connected to the house in respect of which possession is sought, the more compelling the case for an immediate order for possession
- Prepare a **map** of the area identifying the tenant's property and where the incident occurred

- Who was the behaviour directed towards – was it another of the landlord's tenants for example who lives on the same estate?
- What type of place or property did the incident occur in or on – what service if any does it provide to the local community?

- How, if at all, does the incident link back to the tenant's property?

- Grounds for possession can be mandatory or discretionary. When the ground is proven, the court must:
- make a possession order when the landlord is using a mandatory ground
- only make a possession order when the landlord is using a discretionary ground if it is reasonable to do so;
- *length of time the tenant has lived in the property*
- *breaches of earlier agreements or court orders*
- *health and age of the tenant and their household*
- *respective financial position of the landlord and tenant*
- *conduct of the tenant and their willingness to remedy any breach*
- *in cases of antisocial behaviour, the wider effects of the nuisance or annoyance caused.*

Top Tips for possession ASB

- All legal housing interventions should be discussed with appropriate partner agencies to ensure that relevant information can be shared. Housing providers will
- follow your own process and policies
- Legal housing interventions can run alongside any legal or non-legal intervention
- Where perpetrators have a suspected or diagnosed disability or mental health issue, all housing providers who are considering possession or other legal action should have considered and discussed the full implications of the **Equality Act 2010 and the 2014 Care Act** with relevant partner agencies.
- The tenant should be advised to seek assistance, if needed, from the Citizens Advice Bureau, a housing aid centre, a law centre or a solicitor.
- All interactions between recipients and partner agencies should be logged

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Tackling Cannabis use

- Police have different priorities and availability of resources, public interest?
- Need **partnership** working ; enforcement must be proportionate
- resolve complaints by focusing on the nuisance caused by “odorous smells” as opposed to evidencing the specific smell of cannabis.
- Not appropriate to take action in all cases; Look at aggravating factors, such as the smoke exasperating a neighbour’s health condition
- Must manage residents expectations; even if it’s a tenancy breach it might not be **realistic** to enforce; hard to pin point where its coming from
- Cannabis smoking does not always need to be professionally witnessed
- can be met from officers or residents explaining how they know it to be cannabis.
- is it the smoke causing the nuisance rather than the specific substance? Vapes
- Is there suitable ventilation- explore makeup of flat- get out and check

- CPW/CPN may wok well; don't need to be specific on cannabis smell eg e.g. to (not allowing noxious smells to seep into neighbouring properties that will affect others in the vicinity)
- Mediation/ABC/ vary existing the rent SPO
- If court action is needed do an impact statement/ community impact if it's a block of flats ; eg asthma or exasperating a lung condition - show attempts to intervene with non-legal tools first, the support you have tried to put in place, any non engagement ; are the residents having to close their windows or not be able to use the garden? Like a prisoner- as you need to show why the court should give you the order
- Is there an addiction issue? Support may be needed
- Police disclosure if the police have been out/ environmental health
- Using if for 'medical use' is not a defence- Cancard (mitigating factor) A Cancard is a medical ID card, recognised by the police

Absolute grounds for possession

- Last resort
- Section **84A Housing Act 1985 7A Housing Act 1988** schedule 2
- One of five conditions:
    1. Convicted of a serious offence.
    2. Breached ASB injunction.
    3. Convicted for breaching a CBO.
    4. Convicted for breaching a noise abatement notice.
    5. Property closure order in place.

- 4 weeks notice must be given
- Section 85ZA of HA 1985 gives tenants of LA's and housing action trusts a statutory right to request a review before the end of 7 days after notice served
- Home Office guidance expects housing associations to follow a non-statutory review procedure

Condition 1; What is a serious offence?

- It was committed on or after 20 October 2014.
- It is specified, or falls within a description specified, in **Schedule 2A of the HA 1985** eg,
- murder,
- Manslaughter
- threats to kill
- malicious wounding
- Burglary
- Misuse of drugs
- Sexual offences

Serious offence

- *(a) the tenant, or a person residing in or visiting the dwelling-house, has been convicted of a serious offence, and*
- *(b) the serious offence—*
- *(i) was committed (wholly or partly) in, or in the locality of, the dwelling-house,*
- *(ii) was committed elsewhere against a person with a right (of whatever description) to reside in, or occupy housing accommodation in the locality of, the dwelling-house, or*
- *(iii) was committed elsewhere against the landlord of the dwelling-house, or a person employed (whether or not by the landlord) in connection with the exercise of the landlord's housing management functions, and directly or indirectly related to or affected those functions.*

Difference between absolute and discretionary grounds;

- Unlike the discretionary grounds for possession, the landlord is **not** required to prove to the court that it is reasonable to grant possession. This means the court is more likely to determine cases in a single, short hearing;
- This offers better protection and faster relief for victims and witnesses of ASB, saves landlords costs, and frees up court resources and time;
- It provides flexibility for landlords to obtain possession through this route for persistently anti-social tenants;
- The court cannot postpone possession to a date later than 14 days after the making of the order except in exceptional circumstances and cannot postpone for later than six weeks in any event.
- Landlords are able to choose to use the absolute ground, in addition to or instead of the discretionary grounds for ASB

Using the breach of ASBI for Absolute ground for possession

- If the person is a social housing tenant **OR** a household member **OR** a visitor to a social housing tenant and a breach of their injunction occurs which is:
- In *the locality of the tenant's property*; or
- *Outside the locality but is a breach of a term intended to prevent nuisance or annoyance to someone who lives in the locality of the property (e.g. a neighbour); or*
- *Outside the locality but is a breach of a term intended to prevent nuisance or annoyance to the landlord or someone employed to carry out the landlord's duties*
- Then the Absolute ground for possession may be relied upon by the landlord
- The Possession Notice must have been served within 12 months of the breach finding (or outcome of any appeal)
- Cant use where positive requirement has been breached

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Example of Absolute possession ground use

- Our tenant was evicted using absolute grounds for possession to close down a flat that was being used for County Lines activity.
- The tenant had been linked to County Line drug activity for quite some time but refused to accept repeated offers of help from us and the Police to address the drug dealing happening within his home and area; other residents were scared
- We worked with the police successfully secured a closure order resulting in the premises being sealed for a period of three months while proceedings for possession started.
- Possession proceedings commenced at court within 3 months and an outright possession order was granted, giving respite to residents

- Condition 1, 2, 3, 4 or 5 is not met if—

- (a)there is an appeal against the conviction, finding or order concerned which has not been finally determined, abandoned or withdrawn, or
- (b)the final determination of the appeal results in the conviction, finding or order being overturned.

Arguments made by tenants solicitors against Possession or ASBI;

- Common arguments; **there has been a change in situation;**
- Prolonged period without problems, improvement in state of property
- Sustained engagement with therapeutic and/or support services – direct evidence from them
- Prolonged abstinence from drugs and/or alcohol
- Departure of problematic family member
- Change of circumstances e.g. back in work or education,
- Remorse
- Reconciliation with neighbours.

What is the public sector equality duty (PSED) in ASB?

- **What is the background?** Stephen Lawrence murder
- **S149 of the Equality Act 2010;**
- *eliminate any form of unlawful discrimination (including direct or indirect discrimination, harassment, victimisation, and any other conduct prohibited under the Act)*
- *advance equality of opportunity between people who share a relevant characteristic and people who do not*
- *foster good relations between people who share a protected characteristic and people who do not*
- PSED is often raised as a defence to a possession claim at Court to a rent arrears case or ASB; make sure you have not discriminated

So how do we face this scenario? TOP TIPS

- Social landlords may have a defence to a claim of discrimination if they can show the alleged discriminatory act, i.e., possession claim, was a proportionate means of achieving a legitimate aim.

1. **MAKE ENQUIRES** Are their known disabilities? Were those taken into account? What information do you hold on your records? What information can you gather from third parties and or the perpetrator themselves.

2. **MAY NEED MEDICAL EVIDENCE; any** link is there between the disability and the ASB

- What is the prognosis? Would the behaviour change if they were able to access appropriate treatment. Consult with specialist agencies (doctors, social services, mental health teams, tenancy support
- Especially in cases with children with disabilities, is an injunction a proportionate response to behaviour linked directly to the disability?

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3. **CONSIDER IS THERE A LINK** BETWEEN THE BEHAVIOUR AND THE DISABILITY?

4. **REASONABLE ALTERNATIVES** TO POSSESSION; have these been ruled out? You need evidence to show this; What assistance has been provided to the defendant? Have they been referred to support services?

5. IS POSSESSION **PROPORTIONATE?** What's the aim; is it to keep the community safer

6. COMPLETE A **JUSTIFICATION** FORM; revisit when you get new evidence/info; ongoing duty

7. FOLLOW YOUR OWN **POLICES**

8. **INVESTIGATE** complaints eg, made by the disabled occupier against their neighbours

9. **RECORD KEEPING**! Keep evidence to prove what alternatives you have tried

Birmingham City Council v Stephenson [2017]

- Eviction proceedings of a schizophrenic tenant
- COA state the landlord needed to ensure it had looked at alternative action before possession and document the reasons
- In this case there was evidence that the tenant's condition and behaviour could be moderated with treatment/medication
- Court stated other options might have been; the tenant receiving support from social services reminding him to take his medication and attend treatment appointments, support from other mental health professionals, a change of medication and/or investigation as to whether the LA might be able to provide more suitable, supported alternative accommodation for the tenant.
- It was for the landlord to show that nothing less than an eviction would do. PO was set aside

Lessons learnt.....

- Get your ducks in a row....carry out a full investigation into the potential disability!
- What is known about any actual or possible disability?
- Whether there is any less drastic action which could be taken to solve the problem?
- Would the likely effect of a possession claim on the tenant is outweighed by the advantages of taking possession?
- Eg “the tenant’s aggressive and intimidating behaviour towards the local community could not be said to be as a result of a known condition”

ASB and mental health issues

- **Is the Person Disabled?**
- Section 6 of the Equality Act 2010 defines disability:

(1) A person (P) has a disability if—

(a) P has a physical or mental impairment, and

(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

- **Long term?** Is at least 12 months; can fluctuate ie, likely to reoccur
- Past disability ; person is protected permanently
- **Deemed disabilities;** cancer, HIV, MS, certified as blind,

Is a mental health condition a disability?

- Must last at likely to last 12 months
- Affects normal day to day activities eg, interacting with people

- The following are examples that can lead to a disability;
- - dementia
- -bipolar disorder
- -OCD
- -Schizophrenia

Does the person lack mental capacity; Mental Capacity Act 2005

- Always presume capacity is present unless its proven otherwise/ can fluctuate

- Test; a) Does the person have an impairment of, or disturbance in the functioning of, the mind or brain (whether temporary or permanent)?AND

- b) Is the person unable to make the decision in question because of that impairment

ASB and capacity in injunction case....questions to consider...

- **Wookey v Wookey** [1991] 3 All ER:
- – The court should not make an injunction that cannot be enforced.
- – If tenant incapable of understanding what he was doing, or that it was wrong, then should not grant injunction;
- Key questions:
- – *Can D understand terms of injunction?*
- – *Can D understand what he is doing when he breaches the injunction, i.e. the nature of his acts?*
- – *Can D understand it would be wrong to breach the injunction*

Capacity considerations for possession....

- Does the tenant understand they have a Tenancy agreement?
- Do they understand if they continue the ASB they are breaching tenancy?
- Do they understand that landlord will take action if they continue
- Would they be able to comply with a suspended possession order?
- At court a medical report would be needed to show no capacity
- A capacity assessment can be undertaken by for example a social worker or mental health worker or a local authority should strongly consider instructing a consultant psychiatrist

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Questions

