Access issues: What to do when a resident will not provide access?

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Objectives

- Why is access not given?
- Gas service failed access: Injunctions how to apply
- How to draft the application and witness statement for court
- Fire and electrical safety, no access
- Can forced access ever be used?
- Common scenarios including urgent repairs/leaks and no access
- Hoarding and access
- What to do when a leaseholder fails to provide access
- Top tips for good practice
- Access and vulnerability/mental health.

Why might access be needed by a landlord?

- check gas and electrical safety
- fix things tenant has reported
- deal with anything that makes home unfit to live in
- Eg hoarding
- To inspect
- Fix a leak
- Fire safety issues and repairs
- Electrical safety
- Structural damage that urgently needs attention
- The suspicion of a violent or criminal incident



Why is access important?



- Tenant may be vulnerable
- May be a safeguarding issue
- Not heard from the tenant for a while
- Safety issue
- Damp and mould
- Other repair issues which may become worse
- meet the requirements of Regulator for Social Housing's
- Reputational risk
- Loss of stakeholder confidence
- Prosecution or legal action

Why might access be refused



- Void properties
- Ceased tenancies
- Abandoned properties
- tenants in Care/Prison
- Language problems/Reading difficulties
- working away from home, caring for sick and elderly relatives etc
- Subletting
- Mental health issues
- ASB/drugs

Tenant has a right to quiet enjoyment

- This is an implied right into all tenancy agreements
- the tenancy will have express covenants on landlord to notify the tenant before gaining access
- Cannot get access without permission; criminal offence of harassment set out in the **Protection From Eviction Act 1977**
- *Section 1 (3) of this Act states that landlords or their agents will be guilty of an offence if he/she does an act that likely interferes with the peace or comfort of the residential occupier or a member of the household. If you are found guilty of this offence you will be liable on conviction to a fine or to imprisonment for up to 6 months, or both.*
- The landlord or agent may also be guilty of committing a civil trespass or nuisance. Tenants could seek damages that flow naturally from the breach such as for inconvenience, alleged damage caused to their property

f) Drill holes through solid floors, walls and window frames.

3.18 Access

You must give all authorised employees contractors and agents of Network Homes Limited and any superior landlord reasonable access to the Property to inspect or carry out maintenance, valuation, inspection and repair or other works to the Property or to the building or estate in which the Property is situated. This includes gas servicing, treatment programmes for pest eradication, improvement work, redevelopment and disposal.

We will normally give at least 24 hours notice of our intention to enter the Property, which may or may not be in writing. However, we have the right to enter the Property without notice in the case of an emergency. An emergency can include, but is not limited to the following:

- fire;
- flood;
- leaks;
- risk of physical harm to any person or animal;
- risk of significant damage to the Property or any other properties; or
- if the Property is unoccupied and inadequately secured against unauthorised entry or vandalism.

Rees v Plymouth [2020] EWCA Civ 816

- Tenants who try and prevent their landlords from gaining access to their land will need to be very clear on the detail of their tenancy agreements and ensure that their response is proportionate to the request in hand.
- In (Rees v Plymouth) that went to the Court of Appeal, the judge ruled that the tenant, Mr Rees, had no grounds for refusing his landlord's representatives from gaining access in order to carry out an ecological survey on the basis that the request and activity proposed were reasonable.
- Right of access should be exercised **proportionately** and in context
- *Is the request a reasonable one and is the proposed activity proportionate and is it one that any sensible person would be minded to allow it. how disruptive will it be?*
- Ongoing dialogue should avoid the need to involve the court

Early engagement

- Boost tenant engagement
- Be transparent; avoids misunderstanding
- Offer multiple ways to communicate with you Whilst some tenants will be happy to call, others may find it suits their lifestyle better to text or email.
- Use social media to highlight why we need access
- Gas safety awareness week
- Cross check any vulnerabilities
- Adequate notice
- Give a reason for the visit
- Give enough notice; people may be at work
- Get things right on the first visit

- Clear effective communication is key to building trust
- Simple language; no legal jargon

Gas safety under the law

- Legally obliged to check gas appliances **every 12 months** and give a valid gas safety certificate
- Shared owners and leaseholders are responsible for these tests
- if a tenant wants to fit own gas appliances (such as a fire in a spare fireplace), it's essential that they get Landlords permission first. so that landlord can check the condition of the installation and add the appliance to the annual inspection programme. If landlords gives permission, tenant will need to employ a 'Gas Safe' registered engineer to do the work.
- Failure to carry out annual gas safety inspections is an offence prosecuted by the Health and Safety Executive (HSE). According to the HSE database of prosecutions a number of landlords have been prosecuted including the London Borough of Hammersmith and Fulham who in 2012 were fined **£83,600.00 and ordered to pay costs of £15,553**.
- Can also be a breach of the 'home standard' regulatory repercussions

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- Sheffield City Council, which owns and manages more than 40,000 social homes, was slammed for the failings in a regulatory notice published by the Regulator of Social Housing in 2023
- annual gas safety checks were overdue for hundreds of homes, with some dating back several years.
- exposed tenants to "*the potential for serious detriment*".
- director of housing for housing and neighbourhood services at Sheffield Council, said: "We referred ourselves to the RSH because we knew that around 800 of our 35,000 council properties were not gas safety compliant. We have made another 200 properties gas compliant since then.

When might a gas certificate be needed?

- Prior to a new letting with a LGSR being given to the incoming tenant on sign-up.
- Following the uncapping of a gas supply
- At a mutual exchange.
- Following installation of new or replacement gas appliances.
- It is good practice for landlords to schedule annual appointments well before the due dates. Inspections can be carried out in the two months before the due date (ie within ten months) while retaining the existing expiry date. This avoids the potential of missing the renewal date because they have been unable to gain access in time.

- **Cross Keys Homes (202106073)**
- the Housing Ombudsman made a finding of reasonable redress for Cross Keys Homes following its treatment of a vulnerable tenant. The tenant, who was elderly and in ill-health, refused access to the landlord when self-isolating during the Covid pandemic. The landlord did not check at any stage whether the resident was vulnerable or had any health conditions and capped the property's gas supply, leaving the resident without gas for 10 months. In doing so, they failed to act in accordance with their own gas safety policy which states that vulnerable residents must be supported by the landlord's specialist interventions team.
- The Ombudsman's decisions highlight the importance of a landlord's responsibility to take pre-emptive action when a vulnerable tenant is renting a property, whilst also being sensitive to the tenant's vulnerabilities.

Procedure; Gas access

- **1. send letter 1** giving a date and time for the appointment. If there is no one home the contractor should leave a calling card
- **2. send letter 2**; State a reasonable time of the day that you or your agents will be visiting the property and the reason behind it i.e. routine inspection; intended repair work, gas/electric inspection. Consider stating that if for any good reason the date and time is not convenient to the tenant then can they provide dates and times that are convenient.
- try calling the resident again
- If you are sending contractors around state who they are, details and what work they intend to do.
- **3. final notice**; Make clear that the tenant will be liable for any costs related to failed appointments

TIP; State if appropriate in your letter that tenant will be liable for any deterioration in the property due to the landlord being unable to carry out repairs and that you the Landlord will not be liable for any injuries incurred as a result of a damaged item. State that tenant is now liable for costs related to the failed appointments.

Continued....

- Inform tenant that you will have to apply to court for an injunction to gain access together with a claim for tenant to pay associated legal costs. Consider notifying tenant that you will serve them with a notice to vacate the property
- **TIP** – send the next two letters via special delivery post and via email to the tenant allowing at least 7 days notice. A few days before your visit, call the tenant and send a second email reminding them of your visit.

Legal action is a last resort



- Usually in urgent cases only
- Landlord will have to pay legal costs including court fee
- Is the tenant vulnerable? Does a proportionality assessment form need to be carried out
- Any disability?
- Liaise with other teams including the neighbourhood team for info
- Consider is a lifetime injunction appropriate?
- Injunction hearings, even in the most efficient courts, can still take two to three weeks to list and hear!

How to make an application for gas injunction?

- Claim form
- Draft the application on form N16A
- Draft order
- Support it by a witness statement ; landlords will need to prove to the Court that they have taken all reasonable steps to gain access to carry out the gas Inspection. The HSE suggest in their guidance that this could include leaving notices at the property following failed visits, writing to tenants explaining that it is a legal requirement to carry out the check for the tenants' own safety and showing that repeated attempts were made to try and arrange an appointment.
- Ask the court for forced access in the event that the tenant still does not allow access upon being served ; and making good of any damage
- entirely at the discretion of the Judge
- Ask for legal costs

What goes into the application?

- ✓ Full name of person the injunction is intended for
- ✓ The proposed terms of the injunction
- ✓ Any proposed mandatory orders requiring acts to be done
- ✓ Any further terms, asked for, including provision of costs
- ✓ Names of all persons who have signed statements to support the application. This is the personal account of the person who has been dealing with this matter, usually the Maintenance Services Officer and the gas contractor. It must outline the full chronology of events that have been taken. It is important to convince the court that you have done all that you could, and must leave the court with no doubt that you are entitled to have the Order granted
- ✓ Name and address of person of whom the injunction is to be served on
- ✓ Name and address of landlord

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- **ATTENDING COURT**



- Sign in with the usher at court
- Refer to the judge as 'JUDGE'
- explain what you are seeking, reasons why, Judge might ask;
- The dates that the gas contractor attended
- ✓ Dates of all letters sent
- ✓ Dates of any visits and outcome
- ✓ Details of any telephone calls made and outcome
- ✓ Date of the gas safety check
- ✓ Tenant's date of birth
- ✓ Whether anyone else lives in the property, if so ages and relationship
- ✓ Whether the tenant is working or in receipt of housing benefit/universal credit
- ✓ Whether there are any health or mental health issues
- ✓ Costs

- If an injunction is granted the Judge will advise when the court order can be collected from the court and served on the property the same day
- Must be served by **PERSONAL service** on tenant; provide letter with the date access is needed; Part 81 of the Civil Procedure Rules
- The reasoning behind this was because when a defendant breaches an injunction you need to prove you served it
- If access is still not given and there is a clause for forced access this may be carried out
- Good idea to have in attendance an officer and the gas contractor and a locksmith.

Access injunction example;

IF YOU ..... DO NOT OBEY THIS ORDER YOU WILL BE GUILTY OF CONTEMPT OF COURT AND YOU MAY BE SENT TO PRISON OR FINED, OR YOUR ASSETS MAY BE SEIZED.

- *1. Upon being served with this Injunction order, the Defendant: Shall on 24 hours' notice permit the claimant, its officers, agents or contractors to enter the Property at XXXXXXXX for the purposes of carrying out any necessary works of repair or maintenance thereto.*

- *2. If the Defendant refuses access, as in paragraph 1 of the Order, the Claimant will be permitted to use reasonable force to obtain immediate access if necessary and to carryout maintenance works and any necessary emergency repairs.*

Emergency access to rented property

- Refer to tenancy for circumstances of emergency access
- Massive water or gas leak, building burning down, landlord has a reasonable belief that someone needs urgent help in the property? These are the types of circumstances in which landlords could say there is an emergency and are permitted by law to use their keys to gain access/force access without the agreement of the tenant.
- Booked an expensive contractor in to undertake work and the tenants are not home or refusing entry, noise or disturbance coming from the property or the tenants have not paid rent for several months? These events do **not** constitute an emergency
- If there is a genuine emergency you should knock loudly several times on the front door and if possible, check the windows to see if someone is home. Email and call the tenant if possible and leave several text messages and voicemails**. DOCUMENT EVERYTHING**
- **TIP – Make sure there is more than one person attending the property to gain access in case the tenant later claims that your action was a breach of the tenancy**

Sample clause for emergency access

In an emergency, any damage caused when entering the Property will be repaired and will be made secure against unauthorised entry.

There may be some circumstances where we need to comply with a statutory obligation in respect of the Property, such as to carry out an annual gas inspection. If you fail to provide access, the situation may be classed as an emergency.

You must also allow us access during the last 4 weeks of the tenancy to undertake an end of tenancy inspection and to enable prospective tenants to view the Property accompanied by one of our representatives. We will give at least 24 hours' notice that access is required for such purpose.

Housing ombudsman complaints recent example

- unsafe boilers or heaters disconnected with no clear explanation or timescale for repair
- poor communication when arranging the annual gas safety check and missed appointments
- poor record-keeping, including inaccurate or unclear safety certificates It is vital that landlords retain copies of safety certificates and an audit trail of any gas repairs.
- They should also retain any relevant correspondence with tenants,
- Missed appointments and poor communication were also drivers for complaints. It is important that contractors keep appointments once they are scheduled. In one case a contractor missed at least three appointments and yet the landlord applied for a court injunction to gain access. Although the landlord later offered compensation, this was not proportionate to the distress and inconvenience caused to the resident.

- Ms M, an assured tenant, complained about the handling of the annual gas safety inspection.
- Ms M made herself available for the inspection on five separate days within a month.
- The landlord's contractor admitted that it missed three appointments and was not able to prove that its engineer visited on another occasion. A breakdown in communication with its contractor then led the landlord to apply for an injunction to gain access. It told Ms M she would have to attend court.
- The landlord later apologised and withdrew its injunction application. The contractor acknowledged its poor service and offered Ms M £45 as compensation.
- HO considered that £45 was not proportionate compensation for the stress and inconvenience caused to Ms M, who was subject to an injunction application, despite trying to provide access to the property.
- HO also found maladministration for poor complaint handling. The landlord did not follow its own procedure. It failed to escalate the complaint and then opened new complaints rather than explaining that Ms M could request a review. HO ordered the landlord to pay £255 compensation for its poor handling of the gas safety inspections (in addition to the £45 previously offered) and £250 for the stress and inconvenience caused by its poor complaint handling

Better communication

encourage gas safety by the following actions;

- Provide a copy of the LGSR
- Periodically inform residents of the importance of gas safety and emergency procedures in the event of gas escape/suspected carbon monoxide, through the provision of information via website, newsletters, leaflets, and information at sign-up.
- Maintain a clear approach to gaining access to carry out works and be clear that enforcement action may be taken when it is necessary to do so.
- Maintain a clear complaints process and monitor and record complaints that indicate a risk to safety.
- Periodically communicate with Leaseholders and Shared Owners to remind them of the importance of undertaking periodic gas checks.
- Landlords should closely monitor contractors' performance, including any missed appointments. It is vital that appointments are kept or rescheduled as early as possible
- Landlords should ensure that their **record-keeping is robust**

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What about capping gas?

- Where reasonable access has not been given, LL should investigate other options available to ensure residents' homes remain safe. These options include the use of a capping off (switching off) the gas supply.
- Capping (switching off) of the gas supply process requires a risk assessment to be completed and approved by someone senior. The contractor will then be instructed to attend the property and cap off (switching off) the gas leaving a notice on the meter and visit card through the letterbox; offering the resident to call them to attend within 24 hours to uncap (switch back on) and test the appliances.
- This request for approval should be **supported by a full chronology** of all access attempts and a declaration of any **known resident vulnerabilities.**
- ensure details are left to explain to the tenant the action to be taken to get the meter uncapped and will also make every effort to leave an electric fan heater.

Vulnerable tenants

- No credit on meter? Is gas capped?
- Where tenants are identified as being vulnerable additional measures will be considered depending on the circumstances, this may include offering the use of temporary heaters for a reasonable period after the gas supply is capped to allow the safety check to be carried out.
- proportionate and risk-based approach
- Is there a care worker? Mental health worker?
- Is there a family member you can liaise with?

Possession proceedings action for repeat no access

- **Housing Association; assured tenancy; Ground 12**
- *Any obligation of the tenancy (other than one related to the payment of rent) has been broken or not performed.*

- **Secure council; Ground 1**
- *Rent lawfully due from the tenant has not been paid or an obligation of the tenancy has been broken or not performed.*

- Not quick
- Last resort
- Much be proportionate
- Must be justified

Access for repair works

- Tenants must grant their landlord access to carry out any repairs that they have a legal duty to carry out.
- The landlord must give the tenant reasonable notice before entering the property. This includes access for repairs under section 11 landlord and tenant act 1985
- A tenant who refuses to grant access for repairs is in breach of their tenancy agreement

Access for improvements

- The landlord does not normally have a right to enter the property to make **improvements** other than those required to ensure the property is fit for habitation.
- The tenancy agreement might state that the tenant must allow access to allow the landlord to carry out other improvements. For example, decoration or upgrading fittings. The tenant is in breach of their contract if they do not allow access in line with the tenancy agreement.
- The landlord might need the tenant to move out in order to redevelop the property or make substantial improvements. There is a ground for possession the landlord can use to evict assured tenants and secure tenants where vacant possession is needed for redevelopment.

Temp decant.....

- A social landlord might decide to move the tenant from the property temporarily while repair works are completed. For example, where major works will affect multiple properties in the same building. This is often called decant accommodation. Social landlords should have a policy on when decants are used and the terms under which alternative accommodation is provided.

- The tenant usually only has to pay rent on one property during that time. They should check with the landlord what they are expected to pay.

Property required for redevelopment
Assured tenancy; Ground 6

- The court must order possession **under ground 6** if the landlord both:
- *intends to demolish, reconstruct or carry out substantial works to the whole or a considerable part of the property, and*
- *cannot reasonably carry out the work while the tenant remains in residence*
- The landlord must show their intention to demolish or reconstruct will be fulfilled shortly after the date of the hearing They do not have to provide alternative accommodation but are liable to pay reasonable removal costs
- 2 month notice period ; LL cant use if it purchased the property during the tenancy
- Landlord must show;
- the tenant does not agree to a variation in the terms of the tenancy to grant access, or
- the tenant does not agree to accept a tenancy for a reduced part of the house, or
- the nature of the work is such that variations to the tenancy are not practical

Secure tenancy Ground 10

- Mandatory grounds on which a possession order can be made against a secure tenant when suitable alternative accommodation is available.
- Where the landlord intends either to demolish or reconstruct or do works to the property and needs possession in order to do so.
- The landlord must prove that it intends carrying out works and such work cannot reasonably be carried out without obtaining possession.If the tenant agrees to vacate the premises temporarily while the works are carried out then there may be no need for possession.

- The displaced tenant is normally entitled to compensation when this ground is used.

Local Authorities Gas access

- Prepare the papers necessary to apply for a warrant of entry under schedule 3 of the Environmental Protection Act 1990 (EPA) in the Magistrates Court.
- prepare a statement in support of the application for the granting of a Warrant of Entry to Premises with details of the premises requiring entry, supported by full details/evidence relating to the attempts already made to gain access including details of Contractor's personal visits, associated correspondence and telephone calls.
- Final Warning Letter" should be sent to the tenant confirming the intention to seek a Warrant to Enter Premises, the date of hearing and the intention to undertake a forced entry
- Liaise with neighbourhood team before forcing access
- Risk assess

Hoarding



- A ***hoarding disorder*** is where someone acquires an excessive number of items and stores them in a chaotic manner, usually resulting in unmanageable amounts of clutter. The items can be of little or no monetary value. Associated with OCD
- Hoarding is considered a significant problem if:
- the amount of clutter interferes with everyday living – for example, the person is unable to use their kitchen or bathroom and cannot access rooms
- the clutter is causing significant distress or negatively affecting the quality of life of the person or their family – for example, they become upset if someone tries to clear the clutter and their relationship suffers; can be outside the home
- **Why do people not get help?**
- They don't see it as a problem
- little awareness of how it's affecting their life or the lives of others.
- extremely ashamed, humiliated or guilty about it.

People have very different ideas about what it means to have a cluttered home



Case study; Ms H

- lived alone in first floor maisonette
- discovered fire in lounge
- called Brigade
- made way to the ground floor, door locked and unable to escape
- remained there talking to control until overcome by effects of the fire
- crews forced entry they encountered difficulty entering due to an accumulation of goods behind the door.
- they attempt to remove some of the articles from behind the door, during this process, they discovered the body of Ms H

- worked for a Learning Disability Partnership
- phone (used for the FSG) was found near the front door, however the keys to the lock were not.
- electrical appliance the source of ignition.
- fire involved 75% of the first floor, the stairway and the ground floor entrance / hallway within the flat
- Level 6 on the Clutter Index Rating

Hallway inside doorway (some hoarded material removed)



View from hallway to rear of property



Hallway leading to rear of property.



- **MENTAL CAPACITY**
- Does the resident have mental capacity?
- example, if clearing the property is appropriate, does the tenant have capacity to consent to the removal of the items?
- Mental Capacity Act 2005;
- Q's for assessment; EG
- does the tenant understand they have a problem with hoarding?; are they able to weigh up the alternative options? e.g. being able to move around their accommodation unhindered, being able to sleep in their bed, take a bath, cook in their kitchen, sit down on a chair/sofa?
- Can they communicate their decision ;Capacity can come and go
- SAFEGUARDING! Care Act 2014 ; abuse/neglect
- balance the needs and wishes of the tenant versus the health and safety of the tenant, neighbours
- May need court of protection involved if no capacity

- **TENANCY SUPPORT**
- Risk assess; take photos at regular intervals
- Can the tenant use bathroom/kitchen
- Vermin issues
- Is the bedroom available for sleeping
- Safety of the building
- consider regular visits
- Support plan
- Refer to counselling, access to day centres to reduce isolation/ adult social services.
- Court will be more likely to grant a possession order if support and assistance has been offered and it is no longer working or the tenant has ceased to engage.

Multi agency approach; joint working

- floating support services
- adult services
- Local Authority support
- local mental health community team
- counselling services ; GP
- fire and safety check (especially for high risk hoarders) they will do checklist
- Environmental health
- **IS THE CURRENT PROPERTY SUITABLE?**
- example sheltered or supported accommodation
- If you find yourself in court for possession proceedings, the court will want to know why it has not been offered.
- **RECORD ALL DECISIONS**
- Make clear if tenant is vulnerable
- Efforts you have made to help them before Court
- Effect on neighbours and landlord eg serious risk

Court action is a last Resort! Must be PROPORTIONATE

- RECORD; contact with the resident, including: any repair call outs and dates when access was refused, fire safety checks and logs etc
- evidence of no improvement in or of deterioration in the condition of the property at each visit, supported by photographic evidence
- the effect on neighbours
- contact with other agencies such as social services, community mental health teams and other housing providers to address the problem
- Legal action is sometimes seen as controversial.
- However, there may be circumstances where hoarding is a breach of tenancy and poses a risk to others.
- Consider Equality Act ; Proportionality assessments
- **Option 1; Injunction** ; compel tenant to remove the items or allow access or comply with landlords support
- discretionary remedy, judge will have to determine if it is fair and reasonable.

- **Option 2; seek possession; breach of tenancy**
- Explore all other options first

- could take action using ground 1, 2 or 3 for secure tenancies
- **Ground 3; secure tenancy**
- *The condition of the dwelling-house or of any of the common parts has deteriorated owing to acts of waste by, or the neglect or default of, the tenant or a person residing in the dwelling-house and, in the case of an act of waste by, or the neglect or default of, a person lodging with the tenant or a sub-tenant of his, the tenant has not taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant.*

- **Or grounds 12 or**
- **Ground 13 assured tenancy**
- *The condition of the dwelling-house or any of the common parts has deteriorated owing to acts of waste by, or the neglect or default of, the tenant or any other person residing in the dwelling-house and, in the case of an act of waste by, or the neglect or default of, a person lodging with the tenant or a sub-tenant of his, the tenant has not taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant.*
- .

Hoarding; top tips

- 1. Look at each case on an individual basis and assess what can be done from a practical and legal perspective.
- 2. Set clear, realistic and achievable goals with the tenant.
- 3. Help the tenant make decisions rather than make decisions for them.
- 4. Don't be argumentative, be understanding.
- 5. Don't touch or move things without the tenant's permission.
- 6. Don't refer to the belongings as **rubbish**, they will usually mean something to the tenant.
- 6. Do not make any assumptions or judgments about the cause of the hoarding. A full medical assessment would be needed for a diagnosis.
- 6. Gather as much information as possible from friends, family and neighbours, and try to engage them to offer support to the tenant.
- 7. Be aware of any groups, charities or support services, local and online who may be able to offer support.
- 8. Make referrals to external agencies. It may be appropriate to refer for a Care Act Assessment.
- 9. If your tenant is hoarding unopened mail there is little point in posting warning letters to them; alternative comms

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Animal Hoarding

- Animal hoarding is more uncommon than Hoarding of collectables and other items. It
- is considered a problem if the owner:
- *- is not able to provide basic needs for the animals, such as food, shelter and*
- *veterinary care*
- *- is allowing their animals to live in poor conditions – for example, overcrowding or*
- *severe lack of hygiene*
- *- is not aware that the animals are having a negative effect on their personal health or the health of family members*
- The person hoarding will often not understand they are neglecting the animals and putting their own health and that of others at risk. They often have an emotional attachment to their pets, making it extremely difficult to give up any animals during treatment.
- Where cases of animal hoarding have been identified, the Housing Service will involve the RSPCA and other agencies, as appropriate

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Local Authority other powers

- Have statutory powers, including for example:
- issuing an Abatement Notice under the Environmental Protection 1990 if a Statutory nuisance is caused.
- and/or an Action under the Public Health Act 1936.
- These are actionable through the Magistrates Court and can be adduced as evidence in the Civil Court if so necessary.

What are the 9 protected characteristics?

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- Race
- religion or belief
- Sex
- sexual orientation

What is the public sector equality duty (PSED)?

- **What is the background?** Stephen Lawrence murder
- **S149 of the Equality Act 2010**
- PSED is often raised as a defence to possession based on no access
- **Top tips!**

1. Record keeping!!
2. Make enquires.
3. Good evidence.
4. check your policies on repairs!
5. Consult with specialist agencies (doctors, social services, mental health teams, tenancy support)

access 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*

access and capacity....questions to consider...

- Does the tenant understand they have a Tenancy agreement?
- Do they understand if they continue to refuse access 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?
- Would they be able to understand the terms of an injunction?
- 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

Questions

