# Solutions for tricky housing management issues

Richard Paris – 2024

# Solutions for tricky housing management issues - topics

- Messing up – what do we learn?
- Challenging conversations and behaviour
- Low level nuisance and annoyance, especially noise
- Keeping communal areas clear – removing fire risks
- Parking issues
- Communal TV aerials
- Immigration Acts, 'Right to Rent' and enforcement
- Running a business from home
- Suspected abandonment
- Tenancy fraud, sub-letting
- Unauthorised occupants
- Gaining access
- Rechargeable repairs

# Solutions for tricky housing management issues - programme

9.30 : Making sure everyone is connected

10.00: Introductions and format of the course

10.15: Covid context. What does tenancy agreement/contract say about the topics listed?

10.45: Low level nuisance and annoyance. Noise.

11.15: Break

11.30: Items left in communal areas, communal TV aerials. Parking issues

12.00: Short break.

12.05: Immigration Act 'Right to Rent' and enforcement

13.00: Lunch

13.30: Suspected abandonment Running a business from home. Sub-letting

14.25: Short break

14.30: Unauthorised occupants or sub-letting whole. Tenancy fraud.

15.00: Break

15.10: Access. Rechargeable repairs.

16.00: Close

# Solutions for tricky housing management issues - programme

9.15 : Arrivals, registration, coffee

9.30 : Introductions & format of the course

9.45 : What does tenancy agreement/contract say about the topics listed? Are they clear, unambiguous, understood & enforceable? Difficult conversations & tenants

10.30 : Low level nuisance & annoyance. Noise. What tools work?

11.15 : Break

11.30 : Items left in communal areas, communal TV aerials. Parking issues. What tools work?

12.15 : Immigration Act 'Right to Rent' & enforcement

12.45 : Lunch.

13.30 : Running a business from home. Sub-letting rooms. What tools work?

14.30 : Abandonment. Unauthorised occupants or sub-letting whole. Tenancy fraud. What tools work?

15.00 : Break

15.15 : Access. to inspect, repair, gas safety checks etc. Rechargeable repairs. What tools work?

16.30 : Close

# Sheila Seleoane – Peabody Trust
# Lord's Court, Peckham



# Sheila Seleoane – Peabody Trust – Altair report 22/7/2022 – what do we learn?

- https://altairltd.co.uk/wp-content/uploads/2022/08/Altair-The-Sheila-Seleoane-Report-Lessons-learned-2022.pdf
- Tenancy commenced February 2014 – **always paid her rent on time**
- Temporary medical receptionist through agency – **no-one checked** why didn't turn up for work after August 2019?
- **Died August 2019** – eventually rent payments stopped – June 2020 Peabody got **Alternative Payment Agreement** from DWP!
- **June 2020 no access for** gas service – gas engineers threatened to force entry **(illegal)** but instead capped gas supply
- Mail spilling out her letterbox in communal entrance / bike left blocking door / cleaners moved her mat / painted her door but not frame
- **Inadequate response** to complaints from neighbours about smells & maggots?
- **89 attempts** to contact all **remote** – emails / phone / texts / letters

# Sheila Seleoane – Peabody Trust – Altair report 22/7/2022 – what do we learn?

- Many customer touch points / **silo working / not joined up**
- **Transactional contact not whole customer**
- **Failure** to interrogate data, **no professional 'curiosity'**, lack of insight
- Neighbours contact police early 2020 – **didn't use** s.17 PACE 1984 powers
- Manager (1200 patch) Oct. 2020 – police told Peabody **'safe & well'**
- **Storm Eunice** – balcony door banging open – then police force entry
- Skeleton discovered **February 2022**
- **Could this happen at your organisation?**

## Errol Graham – Nottingham City Safeguarding Adult Board

- https://www.nottinghamcity.gov.uk/media/etbdjxmz/billy-final-sar-for-publication-11th-may-2023.pdf
- 2010 applied & gets new tenancy by - vulnerability assessment, self assessed & follow-up visit assessed – zero
- 2013 / 2014 / 2015 to GP low mood / anxiety / bloods – medication
- 2015 mental health worsens – not caring for self / eating / hydrating, behaviour odd, cutting wires, no light bulbs – detained s.2 MHA1983
- Mental health improved with medication – home with AMHS support
- 2 weeks later – declined further involvement / stopped some medication
- Discharged mental health to GP – letters & make appointment – didn't
- June 2017 DWP ask GP to fill form ESA113 – fit to work not whole person
- August –October 2017 multiple attempts to contact by letter, visits etc
- Stopped ESA resulting in stopped HB – no rent paid from then

## Errol Graham – Nottingham City Safeguarding Adult Board

- https://www.nottinghamcity.gov.uk/media/etbdjxmz/billy-final-sar-for-publication-11th-may-2023.pdf
- October 2017 NCH gas team tried to access / letters / visits / phone / cards
- 3 failed attempts – capped supply – means no hot water or heating
- November 2017 rents – letters / phone / visits – Notice Seeking Possession
- February 2018 rents – letters / phone / visits / cards
- March 2018 arrears £1000+ – letters / phone / visits / cards
- April 2018 enforcement letter NCH seek outright possession
- May 2018 letter informing of court decision & intent seek warrant
- June 2018 bailiffs at eviction find body – 28.5 kilos – died starvation
- Coroner said: 'The safety net that should surround vulnerable people like Errol in our society had holes within it'

# Sylvia Pollitt – coroner's report

- Senior Coroner Alison Mutch : Greater Manchester South : 19/7/2023
- Coroner's report to prevent future deaths Coroners (Investigation) Regulations 2013 to **L&Q**
- Narrative conclusion elderly resident **died from hypothermia** when her request for engineer visit to check boiler **didn't happen**
- Contractor **Liberty unable to contact, shut case did not inform L&Q**
- Sylvia discovered dead **1/12/2022**

**Matters of concern**

- Service Level Agreement (SLA) said if **no contact with tenant referred back** to L&Q for welfare check to ensure vulnerable tenants safe & well
- **No audit** system in place to ensure SLA worked – one-off or systematic?
- **No system to capture outcome** each referral
- L&Q to respond by 13/9/2023

# Mohammed Khan-v-NHG : 17/11/2023 : Central London CC

- 2010 Khan - starter tenancy 1 bedroom flat in Westminster
- 2016 - 2nd wife Oleta – moved in matrimonial home, visits from daughter from previous marriage, new child born 2017
- 2 days before birth, Khan arrested, charged serious drug crimes
- September 2017 found guilty - 22 years prison
- Rent account always in credit but eventually money ran out
- What to do? Advice sought from NHG
- (Can spouse claim HB / UC even if tenancy not in their name?)
- 2018 Khan write to NHG asking can Oleta be added to tenancy
- 2018 / 2019 / 2020 multiple emails / phone calls from Khan to NHG but staff turnover & mass confusion about what to do
- NHG solicitors advice – sole to joint by assignment or assignment to potential successor - staff didn't understand

# Mohammed Khan-v-NHG : 17/11/2023 : Central London CC

- February 2020 arrears £3764 - serve NSP to Khan's home address
- June 2020 Oleta becomes sole tenant arrears HB /UC paying
- September 2020 Khan & Oleta divorced, she gets surrenders & transfer
- Khan complains to NHG / Ombudsman / unlawful eviction
- NHG defence Khan surrendered tenancy by operation of law
- 'a picture of hopeless muddle & seeming administrative & managerial incompetence at NHG… a scenario of lack of clarity & confusion about what should be done & what was being done & why'
- Damages start at £205,000 – abated by 40% (£82,000) because offending & likely long absence + £3764 arrears = £119,235
- But uplift as beaten Part 36 offer + interest on damages - **£145,800**

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# Prevention is the ‘name of the game’

- **How are voids let?**
- Are they **‘advertised’** on Choice Based Lettings (CBL)?
- Are such ‘adverts’ **crystal clear** about the ‘offer’?
- Do potential residents get to see **T&C in advance?**
- **How much do we ‘need to know’** about residents?
- From very beginning – **clarity** about who is responsible for what?
- **Who does sign-up & how long does it take?**
- **Face-to-face or virtual?**
- **Mutual respect** between landlord and tenants
- Understanding about landlord’s **key functions**
- Understanding which agencies have **responsibility** for what?
- Consistent message from all departments/staff

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# Contracts / tenancies /  leases / handbooks

- Are we sure **everyone** understands contents?
- What size font? What use of pictorial?
- Do we **‘customise’** for particular groups?
- **Literacy** issues, signing, makaton, Easyread
- English **not first** language
- Consumer Rights Act 2015 (unfair terms)
- Settling in **visits** and pro-active reviews?
- Does digital reach out to or suit **everyone**?
- What about those who don’t have access / are not ‘keyboard warriors’?

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# Tenants' responsibilities

## General

Little in statute / common Law refer to tenancy / lease first. Maybe more generous than law, may contain unique terms.

## Common ones include

- To pay rent and other charges
- To occupy as 'only or principal home'
- To give access to landlord/agent to inspect and/or carry out repairs
- To carry out minor repairs ('use the property in a tenant-like manner')
- To seek consent for certain rights (i.e. mutual exchange)
- To comply with terms & conditions

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# Tenants' responsibilities ...(cont'd)

- Not to misuse or cause waste
- Not to cause nuisance or annoyance
- Not to harass for any reason
- Pets & animals
- Running a business from home
- Gardens
- Parking
- Illegal activities
- Domestic abuse
- **What else?**

## Enforcing the tenancy

### Established that landlord no legal duty to enforce tenancy

- O'Leary-v-Islington LBC: Court of Appeal 1983
- Established common-law that landlord not liable in negligence
- Hussein-v-Lancaster CC: Court of Appeal 1999
- Mitchell-v-Glasgow CC: House of Lords 18/2/2009
- X and Y-v-Hounslow LBC: Court of Appeal 2/4/2009
- **For each landlord to decide itself how best to proceed**
- Individual could always take own action against perpetrator
- So why do people believe there is a **legal 'duty of care'**?

# Tenants' responsibilities ...(cont'd)

- **Specific clauses** or terms (covenants) about what occupiers **can or cannot d**o
- **Unless statute** says otherwise, if contract is 'silent' on any particular responsibility
- **Silence = acquiescence** (they can do it)
- Need for strong terms against harassment, nuisance, annoyance
- **Danger** if tenancy lists too many 'don't dos' – ball games, playing ball games close to someone else's home, shouting, arguing & door slamming – **how to enforce**?
- What responsibilities are **most important?**

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# Unfair Contract Terms ...(cont'd)

**OFT abolished 1/4/2014 replaced by Competition & Markets Authority**

**Consumer Rights Act 2015 from 1/10/2015**

- Replaces Unfair Contract Terms Act 1977 & Unfair Terms in Consumer Contracts Regulations 1994 & 1999.
- Incorporates same principles but adds and extends to so-called **'grey list'** - not black list but 'indicative and non-exhaustive list of terms' likely to be found to be unfair.
- Includes **disproportionate cancellation charges** requiring consumer to pay for services which have not been supplied if consumer ends contract.
- **Plain and intelligible language (transparent) and prominent**
- https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/450440/Unfair_Terms_Main_Guidance.pdf
- See enforcement against Barratt, Countryside, Persimmon & Taylor Wimpey re: multiplying ground rents 2021

# Liability for others

- Landlord **privity of contract** with tenant(s)
- Tenant(s) **strict liability for other household members & visitors**
- RB Kensington and Chelsea-v-Simmonds:1997 – child
- Camden LBC-v-Gilsenan: 1998 – visitor
- West Kent HA-v-Davies: 1998 – child
- Portsmouth CC-v-Bryant: 2000 – child
- Knowsley Housing Trust-v-McMullen 2006 – adult
- RB Greenwich-v-Tuitt 2014 – 18 year old son

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# Initial report – how is it ‘captured’? Phone, email, on a form, in person

- What is/are the problem(s)?
- Who does it affect?
- When does it happen?
- Where does it happen?
- Why does it happen?
- How could it be tackled?
- Is it a housing issue or another agency’s principal responsibility?

# Enforcement by others

- Some problems should be **primarily** another agencies responsibility
- Not to say housing shouldn't work in **partnership with other agencies**
- Crime belongs to?
- Health belongs to?
- Safe-guarding belongs to?
- **Service level agreements/information sharing protocols**
- **Which local agencies do you work with/turn to?**
- **Is the housing provision embedded in locality?**

## Awaab Ishak – Rochdale Boroughwide Housing (RBH) + health services across the board ...(cont'd)

- Senior coroner Joanne Kearsley Tuesday 15/11/2022 narrative conclusion
- Awaab died Wednesday 21/12/2020 aged 2 'chronic exposure to mould'
- Coroner - **'evident gap' information sharing health visitors, midwives, GP, Royal Oldham hospital (A&E Monday 19/12/2020!) + RBH?**
- Lawyers accuse RBH doing nothing **over 3 years** to treat mould growth
- Accuse RBH discrimination, racism, unfair treatment, housing people in homes 'unfit for human habitation'
- Parents "we were left feeling worthless at hands of RBH"
- Coroner 'Tragic death of Awaab will & should be a **defining moment** for the housing sector in terms of increased knowledge..awareness & a deepening of understanding surrounding the issue of damp & mould'.
- 2020 father Falsal Abdullah instruct CMC to sue – RBH policy **not to tackle housing conditions until agreement between solicitors!**
- **This is a legal nonsense!!**
- **What is your policy if threatened with residents CMC / lawyers?**

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# Awaab Ishak – Rochdale Boroughwide Housing (RBH)

- 29/11/2022 **Housing Ombudsman letter to CEOs** about Spotlight Report on Damp & Mould (October 2021)
- 28/3/2023 **Housing Ombudsman Special Report on Rochdale Boroughwide Housing**
- https://www.housing-ombudsman.org.uk/wp-content/uploads/2023/03/P49-RBH-FINAL-200323.pdf
- Housing Ombudsman was witness at Awaab Ishak inquest
- RBH 1st review wrong consultant, 1 block, telephone, no visits
- 2nd review **80%** homes on Freehold Estate - **damp & mould!**
- s.40-41 Social Housing (Regulation) Act 2023 enables Housing Ombudsman to **instruct** landlords to measure service against guidance on issues
- Safety & Quality Standard Regulator of Social Housing April 2024

# Damp & mould – Awaab's law

- **s.42 Social Housing (Regulation) Act 2023** adds s.10A to Landlord & Tenant Act 1985 – implied covenant into force **20/9/2023 but**
- **Requires the 'lessor' to take particular action to reach a 'particular outcome' in relation to a 'prescribed hazard'**
- Consultation 9 January – 8 March 2023 - what should it **actually mean?**
- https://www.gov.uk/government/consultations/awaabs-law-consultation-on-timescales-for-repairs-in-the-social-rented-sector
- 61 page document – leaving it **very late** to implement on 1/4/2024!
- Basics – complaint of HHSRS hazard, inspect within **14 days, written summary to resident 48 hours**
- **'significant' risk** begin works within **7 days**, complete reasonable period
- **'emergency' works within 24 hours**
- 3 attempts at access, record everything

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# HHSRS - Hazards who is responsible?

- https://www.electricalsafetyfirst.org.uk/guidance/safety-around-the-home/kitchen-safety/ BS7671



# Housing Ombudsman – common themes? ...(cont'd)

- Poor record keeping & communication - systemic failures
- Heating, hot water & energy failures - thematic report
- Decanting & for how long & where - no ownership
- Inadequate compensation - it's 'small change'
- Vulnerable residents & not following policy or too rigid
- Managing agents & confusion about who is responsible
- Poor complaint handling - systemic failures
- Damp & mould – stop blaming occupiers
- Why can't a director take responsibility – visit, assess, order works immediately?
- We call residents 'customers' but do we treat them as such?

# Housing Ombudsman 2024

- Spotlight on : **Attitudes, respect & rights:** Relationship of Equals 23/1/2024
- https://www.housing-ombudsman.org.uk/wp-content/uploads/2024/01/ARRRoE-22012024-FINAL.pdf
- Call for Royal Commission
- Statutory definition of 'vulnerability' & general needs
- **Vulnerability** strategy, defined, who assesses, review process
- Recognise Equality Act, Human Rights Act, Care Act not optional
- **'Human centric'** service provision
- Recognition 'vulnerability' can be short-term, grief, distress, human-centric provision of services – **recognise, respond, record**
- Specific **'reasonable adjustments'** policy
- 'Resident of the Future' demographic, planning for next 10 years
- Statutory **duty to co-operate** with agencies such as health
- Minimum **staff training** customer care, mental health, disability, dementia

# Hoarding

- **'Hoarding is excessive collection & retention of any material to point that living space is not able to be used for intended purpose'**
- It's **not new** but maybe we are more aware of it post Covid?
- Recognised mental health / medical disorder since DSM 2013
- Could be standalone or symptom other issues - **vulnerability**
- No quick fix – requires **collaborative multi-agency working**
- **'person centred solution'** support those hoarding behaviours
- Recognise risk of abuse & neglect but respect adults personal dignity, well-being & control they wish to exert over own life
- Persistent difficulty if discarding or parting with possessions
- Experience distress at thought of getting rid of items or unable through health related issues to acknowledge changes need to be made
- Not class / age / ethnicity / gender / education / employment / tenure

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# Hoarding

## Clinical compulsive / generalist hoarding

- Most common, one type or collection types of objects
- Old clothes, newspapers, food, containers, human waste
- Emotional attachment to inanimate objects no financial value

## Bibliomania

- Books & written information – newspapers, magazines, articles, leaflets, DVDs, videos, games, data collection etc

## Animal hoarding

- Often unable to provide minimal standards of care
- Doesn't recognise animals at risk - they feel saving them
- Homes often destroyed by accumulation faeces / infestation

# Hoarding

- **Instrumental saving –** 'What if I or someone else needs it?'
- **Sentimental saving –** 'It means so much'
- **Aesthetic saving –** 'I love it'
- **Fear & anxiety** may start as learned behaviour, then significant event
- **Comfort in buying or saving** things relieve fear & anxiety
- Attempt to discard can trigger more **anxiety / panic attacks**
- Excessive **emotional attachment** to possessions
- **Indecisiveness** over decision to discard items
- **Unrelenting standards** – find fault with others - must perform excellently
- **Socially isolated** – alienate family & friends, embarrassed to have visitors
- Hence **refuse visits** from professionals
- **Churning** – move items around home / change rooms
- **Self care neglected,** unkempt, dishevelled, smelly or use public facilities
- Often see **nothing wrong** in behaviour, little insight into impact on others

# Hoarding

**Collaborative multi-agency working**

- National Health Service Act 2006 – GP, other health professionals
- Care Act 2014 – assessments, safeguarding
- Mental Health Act 1983
- Mental Capacity Act 2005 – if doubt about 'capacity'
- Public Health Act 1936 & Environment Protection Act 1990
- Town & Country Planning Act 1990 s.215
- Fire Service Act 2004 & Fire Safety Order 2005 as amended
- Police s.17 Police & Criminal Evidence Act 1984
- Animal Welfare Act 2006 – RSPCA, animal welfare

# Hoarding

## Resources

- Multi-agency Hoarding Guidance Southampton / Hampshire / Isle of Wight safe-guarding boards 2022
- https://southamptonlsab.org.uk/wp-content/uploads/4LSAB-Multi-agency-hoarding-Guidance-2022-with-pictures-final.pdf
- Note especially their **clutter image rating in Appendix E**
- **Hoarding Risk Assessment Tool in Appendix F from Hoarding UK**
- Chartered Institute of Environmental Health Officers Professional Practice Note Hoarding & how to approach it. June 2015
- https://www.cieh.org/media/1248/hoarding-and-how-to-approach-it-guidance-for-environmental-health-officers-and-others.pdf
- Local Government Lawyer. Hoarding when clutter becomes anti-social. David Low and Lewis Brown – 18/2/2022
- https://www.localgovernmentlawyer.co.uk/housing-law/315-housing-features/49677-hoarding-when-clutter-becomes-anti-social

# Challenging conversations & managing expectations

- Emotions are running high
- Importance invested in subject / outcome / process
- Emotional connection to issue – may become aggressive
- Feeling passionate & dedicated to cause

- Stay factual
- Stay respectful & honest
- Action focused
- Positive outcome for all
- Collaborative

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# Challenging conversations & managing expectations



# Challenging conversations & managing expectations ...(cont'd)

- Capture facts & record precisely
- Ascertain history
- Try to focus on facts
- Acknowledge the emotion & reflect
- Soft & hard intelligence
- Holistic picture of situation
- Be realistic about what can & cannot be done
- Share options – private action / other agencies
- Can we transfer everyone who asks?
- Emphasise that possession is 'last thing we can do'
- Litigation is the last resort, 'proportionality' HRA1998, EA2010, CA2014

# Other agencies – service level agreements?

- Advice centres
- Animal welfare
- ASBRAC
- Citizens Advice
- Children' Services
- Churches/faith groups
- Community relations/ethnic minority groups
- Drug/alcohol agencies
- Education service
- Environmental health
- Health services
- Law centres/solicitors
- MAPPA

# Other agencies – service level agreements? ...(cont'd)

- MARAC
- Police
- Probation
- Mental health
- Social services
- Support services
- Tenant's associations
- Victim support
- Voluntary agencies
- Youth services

# Why categorisation is not enough – it's not about a box!

- Steven Hoskin - 2006 - Cornwall
- Fiona Pilkington - 2007 - Leicestershire
- David Askew - 2010 - Manchester
- Suzanne Dow - 2011 - Nottinghamshire
- All known to be vulnerable, multiple agency awareness lacking
- No joined-up thinking, no real partnerships
- No 'flagging' of incidents
- No high level strategic steer

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## Fiona Pilkington ...(cont'd)

- Barwell, Leicestershire 2007
- Ms Pilkington + daughter Francecca learning disabilities + son Anthony severe dyslexia
- 33 calls to police over 10 years – not linked, not prioritised, not strategic
- Family under siege – police response "over-reacting"
- Coroner criticised fact incidents logged as ASB when actually criminal
- Constabulary not implemented Home Office guidelines about hate crime
- Impression of organisational haphazardness/chaos

# Risk Assessment Matrix (RAM)

- Name, address, incident number
- Designed to ‘flag-up’ vulnerability
- Aide to picking up particular needs
- Does not reduce need to make judgements
- Discussed with person to ensure meets their needs
- Does not mean taking on every case
- Have RAMs made a difference?
- Example of Risk Assessment Matrix template https://www.richmond.gov.uk/media/3373/asb_working_protocol.pdf

# Equality Act 2010 (EA2010)

## Metropolitan Housing Trust-v-TM

## Court of Appeal : 20/12/2021

- TM schizoaffective disorder / treatment-resistant **paranoid schizophrenia** – lives in **specialist mental health support unit**
- Series of incidents – assault, indecent exposure, none since 2018
- MHT sought possession at county court when MHT's failure to comply with Public Sector Equality Duty **corrected by evidence** of ASB officer **at trial**
- **Court of Appeal overturn** – at county court ASB officer admitted that MHT in **breach of s.149 Equality Act 2010 (PSED)**
- Would have considered alternatives to possession after evidence from Dr Koch - TM's psychiatrist, also confirmed TM **lacked capacity**
- Still pursued possession for next 12 months
- 'I fail to understand why, when Dr Koch's report was received there was no internal review of the decision to continue with possession proceedings…the failure to have such a system in place has led in this case to the squandering of scare resources far better deployed elsewhere.'

# Data Protection Act (GDPR) 2018 - principles

1. Processed **lawfully, fairly and in a transparent** manner in relation to individuals.
2. Collected for **specified, explicit and legitimate purposes** and not further processed in a manner that is incompatible with those purposes.
3. **Adequate, relevant and limited to what is necessary** in relation to the purposes for which they are processed.
4. **Accurate** and, where necessary, kept up to date.
5. Kept in a form which permits identification of data subjects for **no longer than is necessary.**
6. Processed using appropriate technical or organisational measures in a manner that ensures appropriate **security of the personal data.**

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# Data Protection Act (GDPR) 2018

## Schedule 2 Exemptions from GDPR

- s.2(1): The listed GDPR provisions and Articles 34(1) and (4) of the GDPR (communication of personal data breach to the data subject) do not apply to personal data processed for any of the following purposes:
- (a) prevention or detection of crime,
- (b) the apprehension or prosecution of offenders, or
- (c) the assessment of collection of tax or duty or an imposition of a similar nature

# Data Protection Act (GDPR) 2018 ...(cont'd)

- s.5 (1): The listed GDPR provisions **do not apply** to personal data where the disclosure...is **obliged** by an enactment, a rule of law or an order of a court or tribunal...
- s.5 (3): The GDPR provisions do not apply to personal data where disclosure of the data –
- (a) is necessary for the purpose of, or in connection with **any legal proceedings** (including prospective legal proceedings)
- (b) is necessary for the purpose of obtaining legal advice, or
- (c) Is otherwise necessary for the purpose of establishing, exercising or defending legal rights.

# Private nuisance

**“Any condition or activity which unduly interferes with a person's use or enjoyment of their land or property, or with their health, comfort or convenience"**

**Criteria**

- Standard of comfort and convenience, assessed objectively
- The character of neighbourhood
- Whether planning permission granted or not
- Whether or not the activities complained of are 'normal'
- The duration of interference
- Whether the behaviour was deliberate

**Persistent, ongoing and preventable**

- **Is there any reason why anyone (regardless of tenure) could not take their own action under the tort of private nuisance?**

# Private nuisance ...(cont'd)

**Coventry & others-v-Lawrence & another :**

**Supreme Court : 26 February 2014**

- Coventry (RDC) & Motoland operated a motorsports complex in Suffolk – first granted permission 1975
- Landlords - Terence Waters and Anthony Morley
- Lawrence & Shields bought bungalow in 2006 but it was built in 1950s - 560 metres from complex
- Lawrence complained about noise nuisance 2006
- Council served noise abatement notice 2007 requiring mitigation works – carried out
- Lawrence started private nuisance claim 2008
- Bungalow mysteriously burnt down!

# Private nuisance ...(cont'd)

**Coventry & others-v-Lawrence & another**

**: Supreme Court : 26 February 2014**

- Can a right to commit a nuisance by acquired by 'prescription' = uninterrupted for 20 years? **Yes -** but here noise nuisance for **16 years**
- Relevant that nuisance began before they bought bungalow - if claimant **'come to the nuisance**' might mitigate? **Yes -** but here built before complex
- Will nuisance case fail if activities part of **established use in neighbourhood? Yes possibly** – depend on facts
- Is **planning permission** a defence – not as such but initially planning permission temporary and since council served abatement notice
- Lawrence won 5:0 in Supreme Court overturning Court of Appeal
- **Upheld injunction against Coventry et al. not against landlords**

# Statutory nuisance

**Environmental Protection Act 1990 s.79(1)**

**a) Any premises in such a state as to be prejudicial to health or a nuisance (PHN)**

b) Smoke emitted from premises so as to be PHN

**c) Fumes or gases** emitted from premises so as to be PHN (only applies to private dwellings)

d) Any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being PHN

e) Any **accumulation or deposit** which is PHN

f) Any **animal** kept in such a place or a manner as to be PHN

fa) Any insects emanating from relevant industrial, trade or business premises and being PHN

fb) artificial light emitted from premises so as to be PHN

**g) Noise** emitted from premises so as to be PHN

ga) noise that is PHN and is emitted from or caused by a vehicle, machinery or equipment in a street

h) Any other matter declared by any enactment to be a statutory nuisance

# Statutory nuisance – EPA1990

- It shall be the **duty** of every local authority…where a complaint of a statutory nuisance is made to it by any person living within its area, to take such steps as are **reasonably practicable to investigate the complaint**
- If environmental health are **satisfied** the nuisance is a statutory nuisance they **must** serve an **abatement notice** on the person by whose act, default or sufferance the nuisance arose in the first place
- Notice to comply (i.e. 14 days to arrange access)
- If perpetrator not desist, normally prosecute, could seek 'restraining' order from magistrates court.
- Housing have to standing / right of audience at magistrates so
- Do you have a **service level agreement** with council environmental health? **If not why, not?**

# Community protection notice – CPN

- Stop a person (over 16), business or organisation committing ASB which **spoils the community's quality of life**
- Can be issued by council, police, PCSOs and **social landlords (if designated by council)**
- ASB must have a **detrimental effect** on quality of life, be **persistent or continuing and be unreasonable**
- Written warning prior to notice stating remedy
- CPN in writing stating behaviour, remedy, consequences
- Council can do works in default – recharge
- Have housing associations got such designated powers?
- Is there a **service level agreement** with police / council? **If not why not?**
- **Have you used CPNs?**

# Good neighbour agreements ...(cont'd)

- www.york.ac.uk/inst/chp/publications/PDF/GNAreport.pdf
- Aim to promote positive behaviour in communities
- Need to address **local** concerns and engage with residents
- Responsive to **local** issues, ie, parking, football, rubbish dumping,
- Action by **other agencies** not just housing
- What is unacceptable, how to report, to which agency, what are enforcement options
- What individual can do to help, contact numbers
- **Does your organisation use these?**

# Good neighbour agreements ...(cont'd)

**Social or positive behaviours**

- Be a good **neighbour**
- Take **pride** in my home
- Respect **other people's property**
- Look out for **neighbours**
- Take care of **environment**
- Be part of the **community**

# Neighbourhood management ...(cont'd)

- Operate at **neighbourhood** level
- Dedicated management
- Improve delivery and provision services
- Engage **local** people in setting priorities
- Neighbourhood Management National Network
- www.neighbourhood.gov.uk/publications.asp?did=379
- **Is housing delivered locally or via central contact centre / internet?**
- Neighbourhood & Community Standard from Regulator of Social Housing April 2024

## Neighbourhood policing ...(cont'd)

'My vision for the future of NHP is that it exists within a wider context of **collaboration & joint working, with all local partners & staff dedicated to identifying and resolving the problems that face communities.** Flanagan 2008

'Local authorities & police forces should consider establishing structures that **ensure closer local working of NHP**, wider neighbourhood management & council services & other criminal justice services' Casey review 2008

**Has neighbourhood policing survived?**

Do you know **your local neighbourhood policing team?**

What happens if police **'withdraw'** from **community policing?**

# Estate walkabouts ...(cont'd)

- 69% of social landlords say 'most of time'
- **Do they happen and how often?**
- Who attends from housing, agencies, politicians & residents?
- Which services are prioritised? Which agency is responsible?
- Are we re-visiting same issues, i.e. cleaning, lighting, fly-tipping?
- What input do residents have into service provider?
- Are service providers local or big national / international contractors?
- **Is this proactive & regular or reactive?**

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# Community justice/victim support ...(cont'd)

- www.restorativejustice.org.uk/?p=resources&search
- Community Justice Panels
- Restorative justice
- Trained voluntary local residents meet with perpetrators & victims
- Understanding actions & impacts
- ASB/Victims Champions
- Recognition Events
- Support Groups
- Buddying Schemes
- **Are you involved in anything like this?**

# Pets and animals

- Contract / tenancy needs to be reasonable / maybe consent?
- Don't be prescriptive about which animals, size, how many, different rules for flats or houses
- Recognise the positive – therapeutic, family, well-being
- Network with animal welfare / access to training / vets
- www.petadvisory.org.uk
- Guidance for landlords about good practice, solving problems, animal law Animal Welfare Act 2006
- Sample pet policy

# More dog stories ...(cont'd)

## Plymouth Community Homes Ltd-v-Palmer : Plym.CC 25-26/2/2021

- Palmer – 64 years old, lived with parents until 56
- **Serious mental health, chronic anxiety, PTSD, recurrent depression**
- 2012 – assured tenancy **one bedroom flat 13th floor high rise**
- Mental health deteriorated, not go out, **not coping**
- **GP advice** in 2018 get a small dog (Tammy) – Jack Russell/Beagle cross
- February 2019 PCH wrote said **re-home dog or transfer home with garden**
- Palmer needed to stay in high rise – friends & support
- PCH seek possession & injunction but breach **s.15 & 35 Equality Act 2010**
- Expert & medical evidence & before judge - Tammy considerably improved Palmer's mental health
- PCH's actions **'not a proportionate means of achieving a legitimate end'**
- PCH not applied it's own pets policy & adopted blanket 'no dogs in tower blocks
- **Damages £2500 to Palmer**

# Designing out ASB ...(cont'd)

- www.rudi.net/news/7753
- Property & estate design and security
- Access and exit routes
- Separation of vehicles from pedestrians
- Parking and territoriality
- De-cluttering and signposting
- Designated and defensible space
- Private and public space
- Hard or soft changes
- CCTV – why & does it work?
- **Is this stuff being tried?**

## Family intervention projects – troubled families programmes

- Aims to stop ASB and prevent homelessness
- Outreach support
- Dispersed units in community
- Core residential units
- For most problematic households
- Not low level nuisance/neighbour disputes
- Out-of-silo – ID needs whole family – link to support
- Designated key worker to grip family and agencies
- Support + threat if not engage
- 'Tough-love'

## Estate management agreements

- To gain a consensus within a **defined area**
- Drawn up in **consultation** with the residents
- **Standards of service** residents can expect with **realistic time-scales**
- How residents can be **involved?**
- What the lines of **accountability** are?
- How services are **monitored?**
- Who to contact for **different services?**
- What to do if they feel the agreement is **not being kept to**?

## Noise – we live in an ever noisy world

- What kind of noise?
- Who does it affect?
- When does it happen?
- Where does it happen?
- Why does it happen?
- How could it be tackled?
- Is there anything housing can do?

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# Noise - evidence

- Noise affects **different people in different ways**
- Can be very **subjective**
- **Hearing sensitivity** depends on individual / age / damage
- Noise can be **both structure-borne & airborne**
- Noise App or Decibel X and other apps
- **Free versions are poor quality**
- Without evidence – the case is going nowhere!
- Logs / diary sheets / CCTV / video / video-bells
- Who has **professional decibel readers?**
- What is **'reasonable'?**

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# Housing Ombudsman – Spotlight on Noise Complaints : Time to be Heard – 24/10/2022

- https://www.housing-ombudsman.org.uk/wp-content/uploads/2022/10/Spotlight-Noise-complaints-final-report-October-2022.pdf
- 800 noise cases over 3 years, 374 evidence responses + interviews
- **Fundamental unfairness** as most see noise as ASB!
- **Maladministration** rate for non-statutory noise - **62%**
- Strategy for **non-statutory** noise seriously, sensitively& proportionately
- Noise transference might be **everyday & structure related**
- Noise nuisance can **escalate, entrench & expand** into other issues
- Perception of bias – complained before – tone of communications

# Housing Ombudsman – Spotlight on Noise Complaints : Time to be Heard – 24/10/2022 ...(cont'd)

## Recommendations

- Decent Homes Standard revised to reflect modern living
- Updating void standards – **leave good carpets / remove hard flooring** / adequate insulation from transference noise / **anti-vibration mats** under washing machines (how much do these cost?)
- Adopting proactive **good neighbourhood management** policy – mediation / information sharing / presence of staff on estates
- Adopting **triage methodology** for noise report – to ASB or neighbourhood management policy?
- ASB **policies realistic & practicable**
- Ensure residents who make noise reports told about right to make complaint if dissatisfied with landlord's proposals
- **85% landlords use mediation but only 29% had it offered?**

# Noise nuisance – reasonableness

**Curo Place Ltd-v-Walker: High Court: 25/9/2018**

- Possession for noise nuisance on grounds 12 & 14 Housing Act 1988
- 150 allegations of noise – banging on floors, slamming doors, shouting and swearing in flat, being abusive and using racist language towards Azami
- Particulars include conviction for harassment but not guilty racially aggravated
- Defence – some allegations admitted, some not – **poor sound insulation**
- Walker two small children active in morning – others also banging on floors
- Walker – mental health – impatience, low levels of tolerance of stress, shouting, swearing and crying + referred to behaviour management programme
- Azami believed targeted by Walker & noise part of abuse on racial grounds
- Evidence included sound recording but may have been Walker talking to others / herself /on the phone / poor sound insulation hence audible outside of flat

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# Noise nuisance – reasonableness ...(cont'd)

**Curo Place Ltd-v-Walker: High Court: 25/9/2018**

- Circuit Judge at County found much of noise caused by normal life
- Walker not aware sound could be heard outside flat
- Circuit Judge held not bound by conviction
- Incidents were diminishing – not reasonable to make possession order
- Equality Act 2010 defence **would have been made out** 'eviction was not a proportionate means of achieving a legitimate aim when other possible measures'
- Behaviour management, screeching pipes, sound insulation, moving one or either of parties, stop doors banging
- High Court upheld decision
- 'Circuit Judge clearly understood the law...required to apply & having found the grounds made out, went on to carry out a **detailed assessment of reasonableness** ...& made no error in doing so...'

# Communal areas / common parts

- Always in landlord's possession - hence landlord has a **duty of care**
- Maintenance / repair / condition of common parts
- Liverpool CC-v-Irwin: House of Lords: 1977, Defective Premises Act 1972
- **Unless expressly allowed, no-one has a legal right to leave stuff in communal areas**
- Fire risk (Grenfell Tower), health and safety risk
- What **kind of stuff is** left in communal areas?
- Is there **safe & secure storage**? We all cherish the spare room!
- What is policy about stuff left in communal areas – zero tolerance?

# Communal areas / common parts – risk?



# ASB committed in common parts - landlord's responsibility

## Brumby-v-Octavia Hill Housing Trust : High Court 2010

- Brumby – ground floor flat in block
- Tenant on 4th floor - large number visitors seeking to buy drugs - nuisance in **common parts,** external entrance area & directly outside her living room
- Loitering, banging on windows, intimidation, interception of mail, littering common parts.
- Tenant on 4th floor eventually evicted after 4 years of ASB
- **Sedleigh-Denfield-v-O'Callaghan** 1940 House of Lords - if a person in possession of land becomes aware that their land is a source of nuisance to person in possession neighbouring land, then first owner **liable for nuisance** if could have taken but failed to take such steps as reasonable in all the circumstances to end or reduce the nuisance
- Brumby asserted Octavia could have blocked entrance to area outside her living room, installed entry-phone system & lockable mailbox more quickly than did, to have begun trespass proceedings against visitors & to have secured tenant's eviction more quickly.
- Won at High Court on appeal – permission to appeal again refused

# Belongings left behind

## Local Government (Miscellaneous Provisions) Act 1982 s.41 – lost & uncollected property

- Allows for **immediate disposal** of perishables or property it would be **unreasonably expensive** to store or it would be **inconvenient** to do so
- If LA gives notice to owner to collect within 1 month
- If fail to do so property vests in LA
- If LA cannot serve notice vests in LA after 1 month
- If LA has made enquiries after taken into storage & cannot find owner, vests after 6 months

# Other people's belongings

**Tort (Interference with Goods) Act 1977 – tort notice**

- "On behalf of landlord/ agent) whose registered office is.....we hereby give you notice pursuant to the Tort(Interference with Goods) Act 1977 that the goods, details of which are set out in the Schedule attached, are being held at.....
- These goods are available for your collection upon reasonable notice and payment of the reasonable fee for removal and storage for a period of ? days from the date of this notice. If you fail to collect the goods within ? days of the date of this notice landlord/agent reserves the right to sell or otherwise dispose of the goods and use any money raised to set off the debts due to it by.....

# Building safety especially fire - what should landlord do?

- **Pro-active information** about building safety
- **Signage** / lighting / equipment / practices
- **Detailed** safety information
- Resident engagement strategy how share information about safety
- Differential responsibilities
- **Escape routes &** common areas of premises should be kept clear of combustible materials & obstructions
- What happens if report concerns & nothing happens?
- Show me the bodies : How we let Grenfell Happen – Peter Apps : Oneworld 2022 – mandatory reading
- **Stay-put policy or get out of the building – what is your advice?**

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# Parking – a problem for everyone!

- Ownership of any vehicle - who is **registered keeper?**
- Will DVLA tell you – **if not, why not?**
- **Unless specifically designated**, i.e. disabled only/reserved spaces
- No-one has any right to park any kind of vehicle anywhere
- Beware **obstruction** of emergency vehicles
- Sub-contract to a specialist company – they have access to DVLA
- Scrutinize how your contractors / sub-contractors behave!
- **National Anti-Fraud Network** - https://www.nafn.gov.uk/
- Does your organisation belong?
- They have access to DVLA & other agencies

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# Gardens

- **‘Tidy’ – define?**
- **What test?**
- Photographs & graded ‘messiness’
- Find out **why garden is ‘unloved’?**
- Link to others who ‘know’ gardens / classes
- Allotments / ‘grow your own’ / links to food banks
- Tool banks
- Make use of derelict & unused land
- ‘Green everything’ – inter-generational schemes

# Aerials / cameras / CCTV / video door bells

- **Strictly probably need permission** if on landlord's land / structure
- But **easily accessible**, cheap, feelings of insecurity & fear of crime
- Video door bells / security cameras / drones
- **Overt or covert surveillance** but by individuals / private companies
- https://ico.org.uk/your-data-matters/domestic-cctv-systems-guidance-for-people-using-cctv/
- Justifiable, proportionate, signage, secure storage, DPA / GDPR 2018
- **Is it really a serious issue?**
- As long as not causing structural damage or health & safety risk?
- Don't landlords / councils / others **install such devices?**
- Public-v-private land
- Territoriality & boundaries

# Privacy & CCTV

**Fairhurst-v-Woodward : Oxford CC : 12/10/2021**

- Dispute between neighbours – Woodward had installed cameras (video & sound + Ring doorbell) for security purposes
- Woodward claimed some were 'dummy' cameras, no breach DPA2018 as s.1(3)(a) justified
- Fairhurst claimed he had boasted about 'reach' of vision & could see / hear beyond boundary of his home
- Fairhurst claimed he had failed to be honest, had invaded her privacy without justification, amounted to harassment PHA1997 & breach DPA2018 + private nuisance
- Fairhurst won on harassment, breach of DPA2018, but not nuisance – following Fearn & Others-v-Tate Gallery : Court of Appeal : 12/2/2020 (but heard at Supreme Court 7-8/12/2021)
- Remedy reserved

# Private nuisance

**Fearn & others-v-Board of Trustees of Tate Gallery : Supreme Court : 1/2/2023**

- Tate Modern = public art gallery - new extension 2016 Blavatnik building - 10 stories + viewing gallery
- Claimants own flats in neighbouring block, same height, walls of glass - from viewing gallery can see into flats
- Viewing platform open every day, 500,000 visitors per year
- Many visitors look, peer, wave, photograph, post online
- Claimants seek injunction and/or damages nuisance
- Lost at High Court : 12 February 2019
- Lost at Court of Appeal : 12/2/2020

# Private nuisance ...(cont'd)

**Fearn & others-v-Board of Trustees of Tate Gallery : Supreme Court : 1/2/2023**

- **Supreme Court overturn 3:2** – 97 page judgement
- Tort of private nuisance – interference must be **substantial**, defendant not liable if making **common & ordinary use** of land, **character of locality**
- **No answer** to say defendant using it's land **reasonably**, may effect remedy
- Spectators from viewing gallery **substantive intrusion**
- **Inviting public to admire view** from platform not common & ordinary use of Tate's land – therefore **Tate liable in nuisance**
- Constant visual intrusion of this kind = nuisance

# Right to Rent – 25 January 2024 (this maybe out-of-date!)

- https://www.gov.uk/government/publications/right-to-rent-document-checks-a-user-guide/right-to-rent-checks-a-guide-to-immigration-documents-for-tenants-and-landlords-accessible#updates-to-this-user-guide



# Immigration Act, 'Right to Rent' – Documentation & verification

1. Invalid expiry date.
2. Personal details tampered / amended.
3. Incorrect number of pages for issue date.
4. Photograph not digitally printed.
5. No hologram or perforations.
6. No passport chip.
7. Words, signatures or pictures in wrong place.



# Immigration Act 2014 – Right to Rent

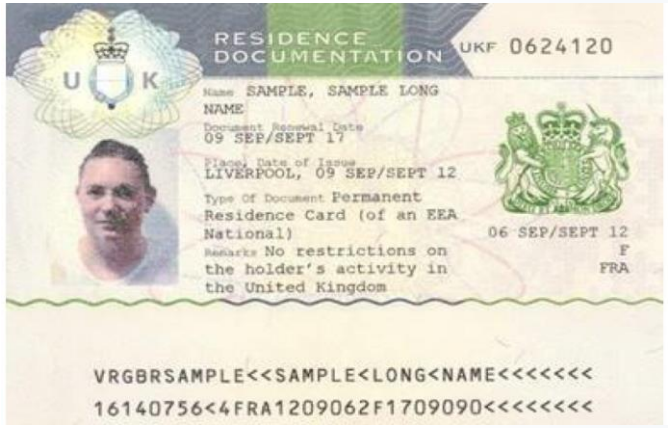
- S.22 **private** landlords or agents to establish a tenant's **Right to Rent**
- Tenancies / leases less than seven years, sub-lets, **lodgers**
- 1/12/14 pilot Birmingham, Walsall, Sandwell, Dudley & Wolverhampton
- **National 1/2/2016**
- Basic check passport or biometric residents permit
- Home Office check online - **checking service reply within 2 days**
- Penalty CPN £80.00 + up to £3000.00 fine - lots of 'statutory excuses'
- **Exempt** – **councils** because already doing **'eligibility'**
- **Exempt - housing associations** if common waiting list/nominations **'eligibility'**
- **Exempt** - **hostels & refuges** managed by social landlords, voluntary or charities or not operating on commercial basis/costs wholly or partly from public purse
- **Have you informed your tenants of how this affects them re 'lodgers'?**

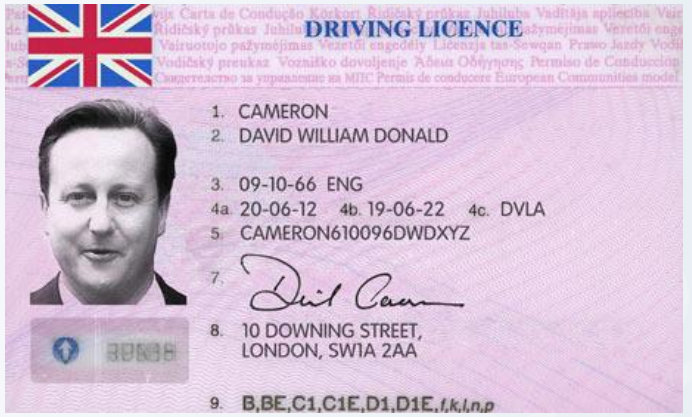
**Immigration Act 2016**

- S.33A-E raises penalty for renting to someone with no 'right to rent' to maximum **five years prison or fine or both**

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# Identity and verification









# Right to Rent / Eligibility

- Post Brexit & grace period – **EU Settlement Status (EUSS) & Pre-settled status – eligible** for social housing
- VPRS (Syrian refugees 2014-2020) - eligible
- ARAP (Afghan Relocation & Assistance Policy) - eligible
- ACRS (Afghan Citizen's Resettlement Scheme) - eligible
- BN(O) British National Overseas visa – Hong Kong - **maybe** eligible
- Ukranians fleeing the war - from 22 March 2022 – **maybe** eligible
- Living in Sudan before 15/4/2023 – **maybe** eligible
- Living in Gaza before 7/10/2023 – **maybe** eligible
- Illegal Migration Act 2023 – Royal Assent 20/7/2023
- If enter UK illegally cannot remain - detained & promptly removed to home country or safe country (Rwanda?) where any asylum claim will be considered
- Cannot frustrate removal with late or spurious legal challenges or appeals, once removed, no right to re-entry, settlement or citizenship

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# Running a business / working from home

- What does it say in **tenancy or contract**?
- Does occupier need **permission?**
- What **kind** of business?
- Landlord **insurance** implications (insurance of residential use)?
- HMRC, council tax & planning implications?
- Might cause **nuisance or annoyance** depending on business?
- Might need **permission from others** - i.e. **child minding**
- How many of us worked from home during Covid19?
- How many people run a business from home?

# Fraud – definitions

- 'Wrongful or criminal deception intended to result in financial or personal gain'
- Criminal intent – means beyond reasonable doubt (Fraud Act 2006)
- Difference between 'tax evasion' and 'tax avoidance'
- Difference between 'benefit error' and 'benefit fraud'
- Fraud may involve both criminal & civil law
- Which remedy and which burden of proof?

**Tenancy or Social Housing Fraud**

- False information to housing options and/or in housing application
- Sub-letting property for profit
- Key sales / airbnb
- Wrongful tenancy assignment & succession
- Failing to use property as 'only or principal' home
- Right to Buy when not entitled and/or money laundering

# Airbnb fraud ...(cont'd)

- From 2013, Toby Harman advertised council flat on Vauxhall Bridge Road on Air bnb under a different name (Lara)
- 300 reviews thanking him in person for advice & recommendations for restaurants (found by anti-fraud software link first name to reviews)
- Bank statements shows payments
- Possession ordered summer 2018
- UPO of £100,974 made July 2019
- Airbnb - 'We regularly remind hosts to check and follow local rules - including on subsidised housing - and we take action on issues brought to our attention'

# Sub-letting or lodgers?

- What does it say in tenancy or contract?
- Is it sub-letting part or taking in a lodger?
- Sub-let involves creating a tenancy (exclusive possession / period / rent)
- Is it actually possible to **sub-let part** of a dwelling?
- Right to Rent implications? Who checks?
- Implications for HB or UC?

# Luton Community Housing Ltd-v-Durdana : Court of Appeal : 25/3/2020

- Tenant & husband **former** employees of Luton BC, 2 children one Of whom has cerebral palsy, mother suffered from PTSD
- Applied as homeless to Luton in 2009, claimed to be living at an address in Luton, only £1000.00 in current account & living with parents & asked to leave as overcrowded
- Actually husband had another bank account for second income, joint income £70,000+, living elsewhere in Luton not with parents
- Nominated to Luton Community Housing (LCH) in March 2013, completed an update form – repeated false address & income details
- March 2017 she accepted a caution in relation to 3 offences providing false information
- Mr Dudana pleaded guilty at Crown Court for offence of providing false information to obtain housing
- Both dismissed from their employment

# Luton Community Housing Ltd-v-Durdana : Court of Appeal : 25/3/2020 ...(cont'd)

- LCH sought possession Ground 17, Schedule 2 Housing Act 1988
- Defendant accepted she had made a false statement but because LCH had failed to carry out s.149 Equality Act 2010, PSED assessment as to 'proportionality' and effect of eviction on her & her disabled child
- It was not be reasonable to grant possession
- Circuit Judge at County court dismissed LCH for this failure
- Court of Appeal **overturned** - the **'ultimate decision'** would have been the same even if LCH had carried out a proper & thorough s.149 PSED assessment
- **Permission** to appeal to Supreme Court **refused 15/12/2021**
- https://www.bailii.org/ew/cases/EWCA/Civ/2020/445.html

# Prevention of Social Housing Fraud Act 2013

- Assured same as secure
- If part with possession / sublet whole, lose security of tenure **permanently**
- **Prevention of Social Housing Fraud (Power to Require Information) (England) Regulations 2014 – SI 899 from 4 April 2014**
- **Local authority** fraud investigators wide information seeking powers re: **housing fraud investigation**
- Banks, credit facilities, utilities, telecommunications
- Criminal offence if they do not comply
- **Do you have a SLA with every local authority fraud team?**
- **Does your organisation belong to National Anti-Fraud Network (NFHA)?**

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# Prevention of Social Housing Fraud Act 2013 ...(cont'd)

**Poplar Housing and Regeneration Community HA-v-Begum and Rohim: QBD High Court: 4 August 2017**

- Begum and Rohim assured tenants – rent £637 per month – HB of £602 per month – anonymous complaint + credit check
- Joint inspection with council fraud team + BBC found another couple (friends) – been there three months paying £400.00 per month rent
- Exclusive possession but 1 padlocked bedroom with toys & cot (Potemkin Village)
- Respondents living with Begum's mother – attempted to return and unlawfully evict other couple
- Poplar serve NSP grounds 10, 12, 14 + NTQ = possession and UPO s.5 PSHFA 2013
- Before trial police raid found cannabis + scales, bags, SIM cards and cash – arrested intent to supply class B drug but at court pleaded guilty to possession

# Prevention of Social Housing Fraud Act 2013

## Poplar Housing and Regeneration Community HA-v-Begum and Rohim: QBD High Court: 4 August 2017

- County court found not sublet or parted with possession of whole flat
- They had retained security of tenure & NTQ ineffective
- But had sub-let part in breach of tenancy, SPO but no UPO
- High Court over-turned – decision to SPO fundamentally flawed
- They had profited from sub-letting, had been in receipt of HB throughout, their motives for living elsewhere were irrelevant
- Scale and persistence of deceit, drug dealing, no cogent evidence would mend ways in future
- UPO should have been granted – £1550.00
- "It is not compassionate to allow profiteering fraudsters indefinitely to continue to occupy premises & thereby exclude from such accommodation more needy & deserving families."

# Suspected abandonment

- What makes landlord believe tenant(s) has/have gone?
- Where does initial intelligence come from
- Neigbours / family say – hearsay
- HB / UC suspended why?
- Cannot gain access for repairs / gas safety
- Another agency says – police / social services / health
- Returned mail / no answer from mobile / no communication
- No signs of occupation
- Tenancy audit / customer profiling

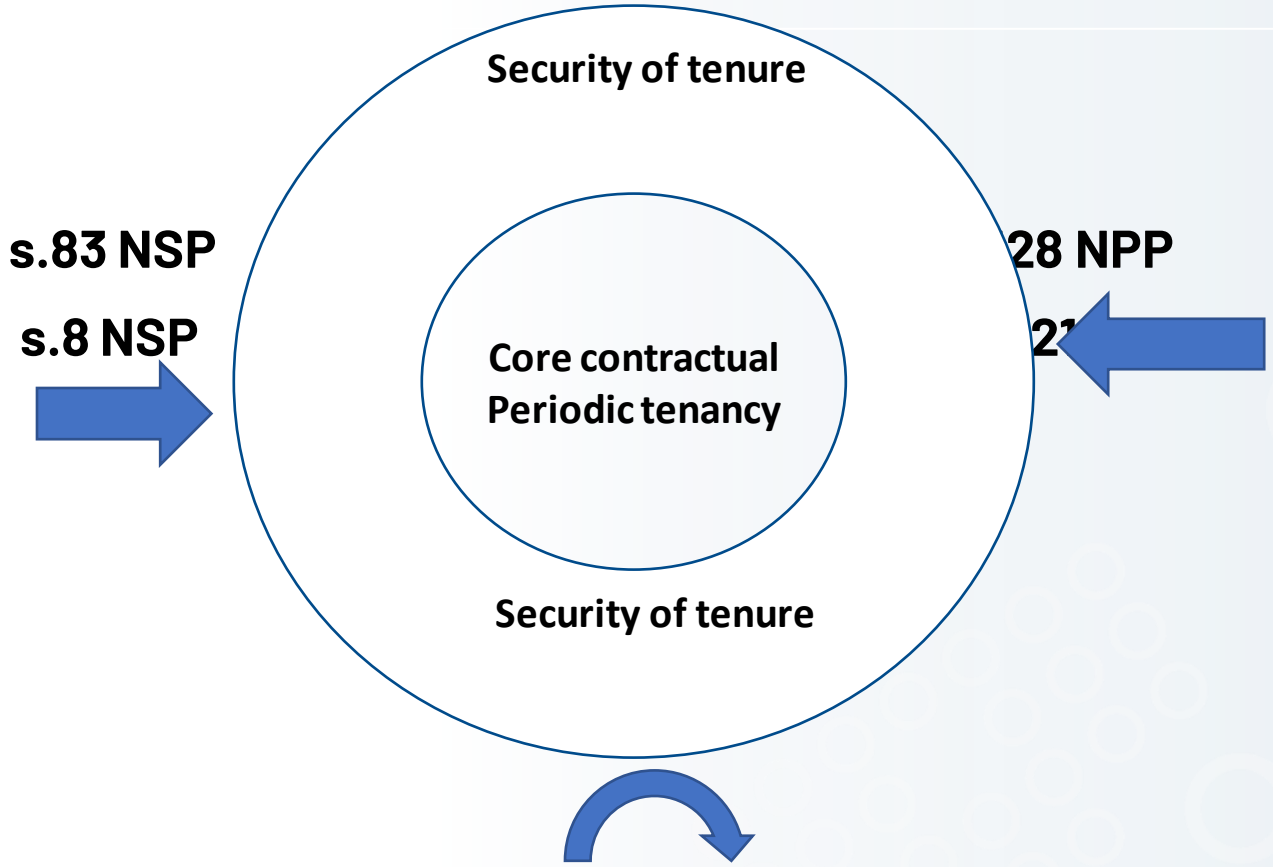
# Abandonment – only or principal

- Secure, introductory and assured tenants must occupy dwelling-house as their **only or principal home – 'tenant condition'**
- s.81 HA1985 secure, s.125 HA1996 introductory, s.1(1)(b) HA1988 assured
- (Only one of the joint tenants has to occupy)
- The difficulty for landlords if the tenant(s) is/are absent is proving same
- Extensive case law says:
- At all times the tenant(s) must have a definite **intention to return**
- **(How do you know if you cannot find them? & subjective)**
- Some **manifestation** of that intention like furniture or a 'caretaker'
- **(More objective & provable)**
- Longer tenant(s) is/are absent, more burden of proof showing intention to return shifts to them **matter of fact and degree**
- There is a huge amount of case law – every case turns on the facts

# Losing Security of Tenure

- Not occupying as only **or** principal home
- Death – no successor / already happened
- Assigning tenancy – no consent
- Sub-letting whole or no consent
- NTQ & NSP + "without prejudice"
- Watch for minimum 28 day/periodicity rule
- End of period – evidence & proof
- This only works for **periodic** tenancies

# NSP / NPP / s.21 and NTQ 'without prejudice'




**Prescribed form – NTQ – minimum 28 days, expires first/last day**

# Protection from Eviction Act 1977

## s.1(2) Illegal eviction

- "If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, **he shall be guilty of an offence unless he proves that he believed and had reasonable cause to believe that the residential occupier had ceased to reside in the premises."**
- Maximum penalty at Magistrates Court = unlimited fine and/or 6 months in prison
- Maximum penalty at Crown Court = unlimited fine and/or 2 years in prison

# Damages for unlawful eviction

**Loveridge-v-Lambeth LBC : Supreme Court : 3/12/14**

- Loveridge secure tenant 1 bedroom
- Term of tenancy notify authority if absent from the property for more than 8 weeks
- July 2009 to Ghana - not return until Dec. 2009 - did not inform Lambeth of his absence but **rent still paid**
- Sept. 2009 Lambeth concerned may have died in property / forced entry & cleared his possessions
- Loveridge proceedings for unlawful eviction & wrongful disposal of his possessions - agreed £9000 damages for possessions + common-law damages of £7400 for eviction

# Damages for unlawful eviction ...(cont'd)

**Loveridge-v-Lambeth LBC : Supreme Court : 3/12/2014**

- Loveridge argued entitled to statutory damages under s.28 Housing Act 1998 of **£90,500**
- His valuer assumed notional purchaser would buy a sitting **secure** tenant
- Lambeth's valuer assumed notional purchaser would have a sitting **assured** shorthold tenant and no impact on price
- County court found in favour of Mr Loveridge, the Court of Appeal overturned that in 2013.
- Supreme Court found in Loveridge's favour - the statutory damages were to be calculated on the basis the notional purchaser would buy the flat with the sitting tenant of the status at the time.

# Death – sole tenant, no succession

- If sole, not end of tenancy
- May have left tenancy in will to a beneficiary - executors and probate
- If no will - die intestate
- S.18 Law of Property Act 1994
- NTQ ' to The Personal Representatives of…..', sent to last known residence + copy to public trustee, NL1 and fee
- https://www.gov.uk/tenancy-agreements-a-guide-for-landlords/if-your-tenant-dies-without-an-executor-or-a-will
- **Gateway Housing Association Ltd-v-Ali & Begum : Court of Appeal : 22/10/2020**
- Notice to personal representatives = original
- Copy to Public Trustee (as long as they receive before expiry date on NTQ to representatives)
- **Supreme Court refused leave to appeal : 4/5/2022**

# Refusal for access – question is why?

- Inconvenient - for who?
- Attitude of landlord / contractor / operative?
- Previous experience or communication and/or works?
- Trust or lack of?
- Only certain people allowed in?
- No-one allowed in?
- Others (family / friends) refusing on behalf of tenant?
- Something to hide?
- Away temporarily or permanently?
- Who else might know why access cannot be obtained?
- **Can your organisation answer these questions?**
- **If not, why not?**

## Emergency Access

- S.115 Mental Health Act 1983 – approved mental health professional : if still refused
- s.135 Mental Health Act 1983 magistrates for warrant
- S.17 Police & Criminal Evidence Act 1984 – police power to enter and search premises without a warrant in order to arrest persons or to save life, limb or property
- In a housing **emergency** reserve the right in tenancy / lease
- **What is an emergency?**
- **Do you exercise this power & if so, when?**

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# Common law right of access

- Common law right of access for repair Saner-v-Bilton: 1878
- Reasonable notice, exercised reasonably
- Periodic tenancies right to enter to prevent significant risk of injury: McAuley-v-Bristol 1992
- Implied for business efficacy
- What does it say in tenancy or contract?
- Express in tenancy/lease/contract
- 24 hours notice in writing
- In an '**emergency'** reserve the right for immediate access

# Statutory right for s.11 repairs

- s.11 Landlord and Tenant Act 1985
- Overriding landlords obligations
- **Shall** keep in repair the structure and exterior
- **Shall** keep in repair and proper working order installations in the dwelling-house for space heating and heating water
- **S.11(6) Implied…reasonable times of the day…24 hours' notice in writing to the occupier, enter the premises for the purpose of viewing their condition and state of repair**

# Housing Health & Safety Rating System

**Housing Act 2004 from 1/4/2006**

- Dwelling should be designed, constructed &maintained with non-hazardous materials & should be free from unnecessary and avoidable hazards; & where hazards are necessary or unavoidable, they should be made as safe as reasonably practicable.
- Severity of hazards & effect on **most vulnerable occupier** not actual
- 29 different hazards
- Category 1 – local authority must issue – improvement, hazard awareness notices, prohibition order
- Category 2 – local authority may issue - improvement, hazard awareness notices, prohibition order, demolition
- **S.239 Housing Act 2004 provides a council with powers of entry where they consider that inspection of any premises is necessary in order to carry out its functions under parts 1 to 4 of the Act.**

# Repair or improvement or?

**Network Homes Ltd-v-Harlow: High Court: 16 November 2018**

- Injunctive access required to fit new fire door in sheltered
- Did tenancy agreement allow landlord to compel access?
- Tenancy very poorly drafted and criticised
- County Court (HHJ Luba) held new door = improvement and could not insist on access
- High Court allowed appeal read clause 3.19
- "...reasonable access to the Property to inspect or carry out essential maintenance, inspection and repair to the Property or to the building or estate in which the Property is situated. This includes treatment programs for pest eradication, **improvement work** and access to repossess your home if it is to be redeveloped or disposed of."

## Gaining access with warrant

- 18th century onwards public health & statutory nuisance
- s.79(1)(a) Environmental Protection Act 1990 **any premises in such a state as to be prejudicial to health or a nuisance**
- s.79(1)© fumes or gases emitted from premises so as to be prejudicial to health or a nuisance
- s.79(1)(h) any other matter declared by any enactment to be a statutory nuisance
- Prejudicial to health = injurious or likely to cause injury to health

# Gaining access with warrant ...(cont'd)

- It shall be the **duty** of every local authority...where a complaint of a statutory nuisance is made to it by any person living within its area, to take such steps as are reasonably practicable to investigate the complaint
- If environmental health are **satisfied** the nuisance is a statutory nuisance they **must** serve an **abatement notice** on the person by whose act, default or sufferance the nuisance arose in the first place
- Notice to comply (i.e. 14 days to arrange access)
- **Magistrates court warrant** under s.**80 to enter the premises if need be by force – paragraph 2(3) Schedule 3 EPA90**
- Warrant fee £22.00, injunction fee £332.00

# Repairs

- What does it say in tenancy or contract?
- Who is responsible for what?
- No landlord can avoid statutory duties
- s.11 Landlord & Tenant Act 1985
- Homes (Fitness for Human Habitation) Act 2018
- But someone must inform landlord of need for repair (knowledge requirement / put landlord on notice)
- **Occupier must grant access**

# Repairs - tenants' responsibilities

- **'Use the premises in a tenant-like manner'** Warren-v-Keen 1954
- **'little jobs about the place'** – like what?
- Sweeping chimneys – Churchill-v-Nottingham CC 1999
- Tap washers – Islington LBC-v-Keane 2005
- Windows - Boswell-v-Crucible Steel Co of America 1925, Holiday Fellowship-v-Hereford 1959, Ball-v-Plummer 1879
- **Crime / incident numbers before repair – why?**
- **Burden of proof?**
- Plasterwork – Grand-v-Gill : Court of Appeal : 19 May 2011 – part of structure
- Bannisters - Hannon-v-Hillingdon Homes Ltd : High Court 2012 – part of structure, who removed them, 'constructive knowledge'

# Recharging

- Is there a **policy & procedure** for re-charging – **who owns it?**
- If the repair was caused by tenant (or member of household / visitor), then calculate **realistic & reasonable quote**
- Be careful about cost of extra **administration cost.**
- Benchmark with other quotes / providers
- Charge **before or after** works?
- Be careful about **'vulnerability'** and/or **reputational damage**
- Make it **easy to pay** – reasonable time to pay or instalments
- If less than £10K - small claims
- https://www.moneysavingexpert.com/reclaim/small-claims-court/

# Solutions for tricky housing management issues

Richard Paris – 2024