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

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hqn TRAINING

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More info;

Injunction against persons unknown

Historically, landlords have issued claims for injunctions against "persons unknown" so as to enable the police to arrest anyone caught committing ASB against anyone within an area defined by the injunction, or perhaps even for entering that area at all. This approach is frequently adopted when the alleged perpetrators are travellers, or when a transient group of perpetrators frequents a particular property. However, a recent High Court case has highlighted limits on the landlord's access to such a remedy.

The obvious problem with proceedings against unnamed Defendants is that someone may end up incurring civil liability without their knowledge, much less the ability to respond to the allegations. In particular, injunctions against persons unknown, especially those to which a power of arrest is attached, carry a risk of the wrong people being arrested and/or committed to prison or fined for a breach. For example, if an injunction prohibits "persons unknown" from entering a particular area, then someone who had no prior knowledge of the injunction or the proceedings may inadvertently enter into the area only to find themselves arrested and sent to prison. However, if the name of a perpetrator of ASB is not known, then this can potentially leave a landlord without a remedy, particularly if the perpetrators are deliberately being uncooperative. The law attempts to strike a balance between these competing considerations.

Procedure

1. The claim form and every other statement of case must be headed with the title of the proceedings, which should include, inter alia, the full name of each party. The "full name" means, in each case where it is known, in the case of an individual, his full unabbreviated name and title by which he is known.

2. The court may authorise service by a method or at a place not otherwise permitted if there is a good reason
3. Such an application must be supported by evidence and specify, the date on which the claim form is deemed served.
4. The supporting evidence must state:

- The reason why an order is sought;
- What alternative method or place is proposed or was used;
- If applying retrospectively, when it was used; and
- Why the applicant believes that the document is likely to reach the person to be served by the method or at the place proposed.

London Borough of Barking and Dagenham and others v Persons Unknown

The Claimant Local Authorities brought some 38 claims for injunctions against persons unknown. The issues in the case involved service of the Claim Forms, the descriptions of "persons unknown" and the bases of civil claims against persons unknown. The following findings were made:

In many of the cohort cases, the Claimants had, in the court's view, been somewhat blasé in their approach to service of the claim form. Many had not applied for substituted service at all, many had obtained defective orders purporting to grant it (for example, by failing to specify a deemed date of service), and many orders granting it had been made despite a lack of an application notice or evidence in support. Overall, there had been "a lack of consideration of the fundamental question whether the proposed method of alternative service of the Claim Form on "Persons Unknown" could reasonably be expected to bring the proceedings to the attention of those who it was sought to make Defendants to the civil claim."

The method of service utilised by the London Borough of Barking and Dagenham – namely, by displaying prominently the claim form on or around the various sites in respect of which an injunction was to be sought – could usually be expected to bring the proceedings to the attention of unknown Defendants, but not to those described in Canada Goose as "newcomers".

Going forward, courts would need to adopt a "vigilant and more rigorous" process when considering applications for substituted service of the Claim Form on "Persons Unknown". Advocates would henceforth be expected to make the court aware of all relevant authorities and any arguments that could be raised by the absent party, as well as demonstrate (with reference to evidence) how the proposed method of alternative service on persons unknown could reasonably be expected to bring the proceedings to the attention of all of those who were sought to be made Defendants. If it could not reasonably be expected to bring the proceedings to the attention of all of the Defendants as per Cameron then an order for substituted service should not be granted.

Wolverhampton City Council and others v London Gypsies and Travellers and others 2023 Wolverhampton City Council and others (Respondents) v London Gypsies and Travellers and others (Appellants) (supremecourt.uk)

practical recommendations for landlords are as follows:

- Landlords seeking substituted service should ensure they make fully CPR-compliant applications supported by evidence, including cogent explanations of why they are seeking such an order and why they believe the proposed method of service would bring (or would have brought) the Claim Form to the attention of the Defendants.
- landlords should identify anonymous Defendants as much as possible, firstly with reference to the conduct they are alleged to be committing and secondly with reference to other qualities known about them; for example, even a nickname is better than nothing.
- landlords should work in partnership with the police and residents in order to gather more specifics as to precisely who is committing (or threatening to commit) what form of ASB. Such efforts should be documented and explained in witness statements in support of injunctions and substituted service applications.
- In cases where an injunction would have been sought against "persons unknown" to prevent them from entering premises, would-be Claimants should instead consider applying for a closure order under Section 80 of the 2014 Act. This has the advantage of reversing the problem with using injunctions to achieve the same goal – rather than needing to identify those who are not allowed in, the closure order applies to everyone unless it specifies that they are not allowed in. As an aside, it also has the advantage of automatically triggering the mandatory ground for possession. hA's cannot apply for closure orders, but they may wish to engage in further partnership work in order to procure them.
- In other cases, local authorities may wish to make greater use of public spaces protection orders under Section 59 of the 2014 Act.

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

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

Capacity and deliberate acts of ASB

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

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

Paragraph 11.7 of the Homelessness Code of Guidance for Local Authorities 2006 provides: Generally, an act or omission should not be considered deliberate where: ...(*ii) the housing authority has reason to believe the applicant is incapable of managing his or her affairs, for*

example, by reason of age, mental illness or disability; (iii) the act or omission was the result of limited mental capacity; or a temporary aberration or aberrations caused by mental illness, frailty, or an assessed substance abuse problem".

Possession during the fixed term flexible council tenant eg 5 year

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

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

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

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

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

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

Possession at the end of the fixed term

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

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

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

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

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

thanks again all

Aisha

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