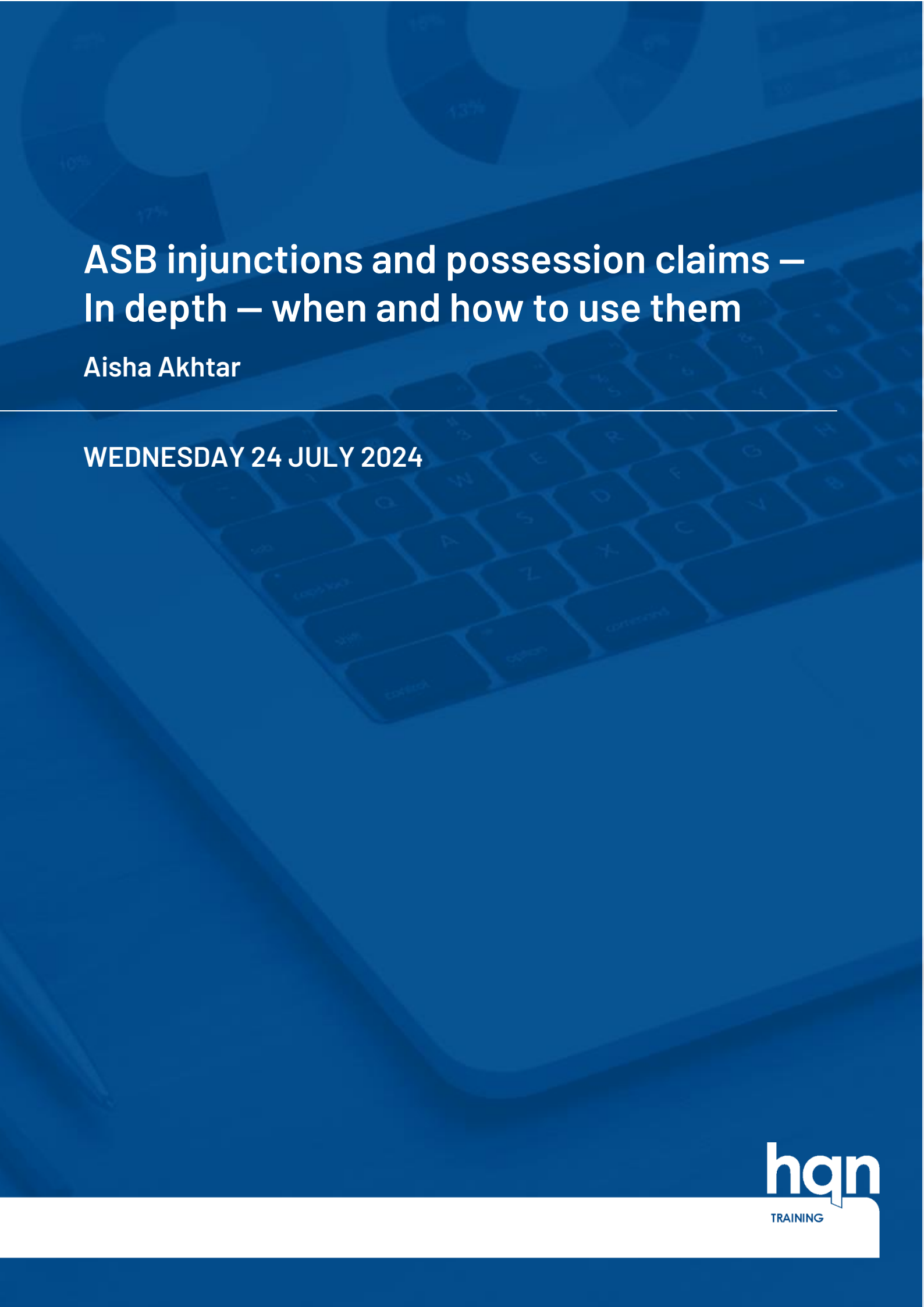




ASB injunctions and possession claims – In depth – when and how to use them

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WEDNESDAY 24 JULY 2024

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1 Message from Aisha

Hello

please find attached slides and email for delegates

- slides

-ASBI sentencing guidelines

-draft injunction Mock

-mock statement

- gang injunction info

Link to serious offences; [Housing Act 1985 \(legislation.gov.uk\)](https://legislation.gov.uk/HousingAct1985)

Heres a good article on Roseberry v Williams case; [Judge criticises housing association over anti-social behaviour injunction bid, awards £27,500 damages for anti-discrimination counterclaim \(localgovernmentlawyer.co.uk\)](https://www.localgovernmentlawyer.co.uk/judge-criticises-housing-association-over-anti-social-behaviour-injunction-bid-awards-27500-damages-for-anti-discrimination-counterclaim/)

More info;

contempt application for breach

A breach of an ASBI is treated as contempt of Court and CPR Part 81 applies;

In particular a Claimant must satisfy the requirements set out in CPR 81.4:-

(a) The application for committal must be supported by Affidavit evidence in support.

(b) The contempt application form N600 [N600 - Contempt application \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/600000/n600-contempt-application.pdf) must set out the nature of the alleged contempt, namely a breach of the final injunction order.

(c) The Form N600 must confirm the date of personal service of the injunction.

(d) The Form N600 should confirm that the injunction order included a penal notice complying with CPR 81.4(2)

e) The Form N600 must confirm that the Defendant has the right to be legally represented in the proceedings, that they are entitled to a reasonable opportunity to obtain legal representation and to apply for legal aid (which may be available without a means test), that

they may be entitled to an interpreter, that they are entitled to reasonable time to prepare for the hearing, that they are entitled, but not obliged, to give evidence in their defence, that they have the right to remain silent, that the court may proceed in their absence, and the potential punishments if they are found in contempt.

(f) The N600 should also state that if the Defendant admits the contempt and wishes to apologise that is likely to reduce the seriousness of any punishment, that the court's findings will be provided in writing and that the court will sit in public unless and to the extent the court orders otherwise and that the findings will be in public.

(g) The contempt application must also be personally served.

youths under 18 causing ASB at your scheme

I think this should be led by the police, maybe using a 'dispersal power' Requires a person committing or likely to commit anti-social behaviour, crime or disorder to leave an area for up to 48 hours.

maybe a CBO where a criminal offence has taken place ie criminal damage

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”.

Thanks again all

Aisha

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