

REPORT TO: Safer Halton Policy and Performance Board
DATE: 16th November 2010
REPORTING OFFICER: Strategic Director, Adults and Community
SUBJECT: Private Landlord powers to tackle anti-social behaviour
WARDS: Borough Wide

1.0 PURPOSE OF THE REPORT

1.1 To provide an update to the Board on responsibilities that private landlords have to tackle anti-social behaviour in their properties.

2.0 RECOMMENDATION: That

The Policy and Performance Board note and comment on the report's content.

3.0 SUPPORTING INFORMATION

Key points to update are as follows:

3.1 Landlords' responsibilities

As a general rule landlords are not responsible for the actions of their tenants as long as they have not 'authorised' the anti-social behaviour. Despite having the power to seek a court order when tenants exhibit anti-social behaviour, private landlords are free to decide whether or not to take action against their tenants. The question of whether a landlord can be held liable for the nuisance of its tenants has been considered in a number of cases.

It is established that no claim can be sustained in nuisance where the nuisance is caused by an extraordinary use of the premises concerned, for example by the tenants being noisy or using drugs on the premises. The rationale behind this approach is that it is up to the victim of the nuisance to take action against the perpetrator. To found an action in negligence against a landlord the victim must show that there has been a breach of a duty of care owed by the alleged perpetrator.

In *O'leary v London Borough of Islington* it was held that a term to enforce nuisance clauses could not be implied into a tenancy agreement. This indicates that landlords cannot be sued for breach of contract unless there is an express term in the tenancy agreement that

obliges him or her to “take all reasonable steps to prevent any nuisance”. Even where such a clause exists, the courts have been reluctant to find the landlord in breach.

In the case of *Mowan v Wandsworth LBC* a leaseholder of Wandsworth Council brought an action against her neighbour, a council tenant, and against the council, her freeholder. The claim against the council was for a failure to take effective steps to address the nuisance caused by her neighbour after being informed of it. The Court of Appeal held that the landlord could only be liable in the tort of nuisance if it had ‘authorised’ the nuisance by the tenant. Such authorisation is not sufficiently established by showing that the landlord knew of the nuisance, had the power to stop it, but failed to act. The claimant could not succeed in negligence as the landlord owed no duty of care to one tenant to prevent another tenant from causing or continuing a nuisance. Although this case concerned the duties of a local authority landlord, it is equally applicable to private landlords.

A more recent case raised the question of whether a council landlord owes a duty of care to tenants who are the victims of anti-social behaviour by other tenants. The imposition of a duty of care on social landlords in these circumstances would also have implications for private sector landlords who fail to tackle problem tenants. James Mitchell had been a tenant of Glasgow City Council since 1986. The tenant next door, James Drummond, had been a tenant of the council since May 1985. Mr Drummond had displayed violent and aggressive behaviour towards Mr Mitchell over a period of years – this behaviour had been reported to the council. In July 2001 an assault by Mr Drummond on Mr Mitchell led to his death. Mr Drummond is currently serving a jail sentence. The majority of private tenants are now assured or assured shorthold tenants but a similar ground for eviction exists under the 1977 *Rent Act* in the case of regulated tenants.

“The widow of Mr. Mitchell sued Glasgow Council for breach of its duty of care by failing to a) instigate eviction proceedings against Mr Drummond at an earlier stage; and b) warn Mr. Mitchell about a meeting arranged with Mr. Drummond on 31 July 2001 during which the council threatened Mr. Drummond with eviction. The Scottish Court of Session dismissed the original claim on the basis that a duty of care did not extend to these circumstances but this decision was overturned on appeal where the Court ruled that the Council may owe a duty of care to Mr. Mitchell and his family and that the case should be referred to a trial court to hear all the evidence and decide whether a duty of care actually existed in this case. This decision was appealed and judgment was handed down by the House of Lords on 18 February 2009. The House of Lords was unanimous in deciding that it would not be fair, just or reasonable to impose a duty of care on a social landlord in these circumstance “

3.2 Management controls

The main way in which private landlords can control the behaviour of their tenants is through the terms and conditions of the tenancy agreement. Terms can be inserted into tenancy agreements to impose standards of behaviour for tenants and to prohibit unacceptable behaviour. In the event of a breach the landlord will be entitled to seek possession of the property or seek an injunction to prevent any further breach.

Most landlords include in their tenancy agreements a general clause to prohibit nuisance behaviour; others include specific terms covering pets, violence and offensive language. However, landlords may not impose unfair terms on tenants as the *Unfair Terms in Consumer Contracts Regulations* (SI 1999/2083) apply to tenancy agreements which have not been individually negotiated.

3.3 Remedies available to private landlords

After issuing initial warnings to tenants requesting that they desist from the anti-social behaviour in question, private landlords may, as a last resort, seek a court order to evict tenants who exhibit anti-social behaviour.

The vast majority of private sector tenants are assured shorthold tenants. These tenants have very limited security of tenure. In order to obtain possession the landlord must serve a notice requiring possession (giving at least two months notice) – there is no need to give reasons for seeking possession and the court has no discretion but to order possession if the notice requirements have been met. However, the court cannot order possession until after the first six months of the tenancy has expired. Where it is necessary to remove a problem tenant quickly (within the first six months) landlords can seek possession using one of the Grounds for eviction set out in Schedule 2 to the *1988 Housing Act*.

“Schedule 2 to the 1988 Act sets out the Grounds on which a landlord may seek to evict an assured or an assured shorthold tenant. Ground 12 offers a remedy where a tenant is in breach of the tenancy agreement. Ground 12 can be particularly useful where the agreement specifies conduct which is considered to be anti-social.

Ground 14 covers the situation where a tenant or a person residing in the dwelling house is guilty of conduct that has caused, or is likely to cause, a nuisance or annoyance to a person residing, visiting or otherwise engaging in a lawful activity in the locality. This Ground was extended by the *1996 Housing Act* and now enables a landlord to seek a court order for eviction where the tenant, or a person residing in the property, has been convicted of using the dwelling house or allowing it to be used for immoral or illegal purposes, or an arrestable offence committed in, or in the locality of, the dwelling house.

Under both Grounds 12 and 14 the court must consider whether it is reasonable to grant an order for possession. Prior to applying for a court order on either of these Grounds the landlord must serve a notice of intention to seek possession in the prescribed form; the benefit of using Ground 14 is that proceedings can be commenced immediately on service of the notice.

If a landlord is willing to take action to evict an anti-social tenant it may be necessary for the person who has experienced the nuisance behaviour to submit evidence of the nuisance (e.g. a diary of events) and to appear as a witness in court.

Private landlords may also seek an injunction against a tenant in order to prevent a breach of the tenancy agreement. It is possible to obtain an interim injunction if the court accepts that the conduct is so serious that the landlord should not have to wait until trial.

The Government's consultation paper, *Selective Licensing of Private Landlords*, recognised that private landlords may not always be willing or able to act against problem tenants:

“As a last resort the Housing Act 1988 allows them to seek possession immediately against anti-social tenants. But many landlords lack the time and expertise to take action. Even responsible and well-intentioned landlords may lack the incentive to do so in areas of low housing demand where finding better tenants may be difficult. In such areas it may be difficult to find a professional managing agents to manage properties at a reasonable cost, given the low rents. Many unscrupulous landlords in these areas may take no interest in their tenants or the neighbourhood. Some may even encourage anti-social behaviour in order to intimidate owner-occupiers into accepting low offers for their properties.”

3.4 Remedies available to neighbours

As a first step neighbours should advise the landlord or managing agent of the property concerned that the tenant(s) are causing a nuisance. Neighbours do not have a legal right to find out who owns a particular property but they may be able to trace ownership through the Land Registry (subject to a fee).

The remedies open to a neighbour of a private tenant who exhibits anti-social behaviour will depend upon the nature of the nuisance. For example, if the nuisance is mainly to do with noise, the environmental health department of the local authority may be able to assist. Alternatively, if the nuisance amounts to physical assault/harassment the matter should be dealt with by the police.

“Once again, depending on the nature of the nuisance, the residents involved may be able to seek an injunction requiring the anti-social

neighbours to stop interfering with their property/person. Victims of anti-social behaviour should seek professional legal advice on any remedies that might be applicable in their individual circumstances.”

3.5 Local authorities' powers

3.5.1 Noise nuisance

If the nuisance mainly concerns noise the matter should be reported to the local authority's environmental health department.¹³ Local authorities have power under the *1990 Environmental Protection Act* to act against private tenants and others who cause a nuisance to neighbours.

3.5.2 ASB policies and procedures

Section 12 of the *2003 Anti-social Behaviour Act* amended the *1996 Housing Act* to place a duty on social landlords (including local housing authorities, housing action trusts, and registered social landlords) to publish anti-social behaviour policies and procedures. The aim of this is to inform tenants and members of the public about the measures that these landlords will use to address anti-social behaviour issues.

3.5.3 Crime reduction partnerships

Section 6 of the *1998 Crime and Disorder Act* imposes a duty on local authorities, in partnership with the police, probation, health authorities and others, to produce and implement a local strategy for the reduction of crime and disorder. The importance of strategies produced by local Crime Reduction Partnerships was made explicit by the Social Exclusion Unit (SEU) in its report, *A New Commitment to Neighbourhood Renewal: National Strategy Action Plan*.¹⁵ The section 6 duty is supplemented by section 17 which places a duty on authorities to consider the crime and disorder implications of their core activities. Taken together these two sections “embed the reduction of crime and disorder into the core activities of local authorities.”

3.5.4 Anti Social Behaviour Orders

The 1998 Act also contains provisions that enable the police or a local authority (working with the police) to apply for an Anti-Social Behaviour Order (ASBO) prohibiting an individual from behaving in a way that “causes innocent people distress or fear;” ASBOs are similar to restraining orders. Breach of an ASBO is a criminal offence;¹⁸ the Anti-Social Behaviour Order provisions came into effect on 1 April 1999.

An order can be sought against any individual, including private tenants, who have acted in an anti-social manner, as long as they are over 10 years old. The local authority seeking the order must satisfy

the court that the order is necessary to protect a person or persons against anti-social acts or conduct.

The *2006 Police and Justice Act* introduced measures aimed at ensuring that ASBOs can be used to protect whole communities and also to protect witnesses from being named in applications. There are also measures in the Act to prevent delays occurring prior to a court hearing in the event of a breach of an injunction granted under the *Local Government Act 1972*

3.5.5 Injunctions

An injunction is a court order that prohibits a particular activity or requires someone to take action, e.g. to avoid causing a nuisance. The *1996 Housing Act* significantly strengthened the powers of local housing authorities to obtain injunctions against the perpetrators of anti-social behaviour, including allowing a power of arrest to be attached to injunctions where there is actual or threatened violence.

Section 13 of the *2003 Anti-social Behaviour Act* repealed sections 152 and 153 of the *1996 Act* and created three types of injunction:

The **anti-social behaviour injunction** which relates to conduct which is capable of causing nuisance or annoyance to any person, and which directly or indirectly relates to or affects the housing management functions of a relevant landlord. Registered Social Landlords (RSLs) and Housing Action Trusts can apply for these injunctions in addition to local authorities.

Injunctions against unlawful use of premises which is available where the conduct consists of or involves the using or threatening to use housing accommodation owned by or managed by a relevant landlord for an unlawful purpose.

Exclusion order and power of arrest – if a court grants one of the injunctions described above the court may prohibit the defendant from entering or being in any premises or any area specified in the injunction. Additionally, a power of arrest can be attached to any provision of the injunction where the court is satisfied that either conduct consists of or includes the use or threatened use of violence or there is a significant risk of harm.

As a result of these changes the issue of *where* incidents of anti-social behaviour take place is now largely irrelevant; what matters is whether the conduct affects the landlord's housing management functions and who the victims are.

Local authorities may also rely on their general power to institute proceedings leading to an injunction under section 222 of the *1972 Local Government Act*. This enables an authority, where it considers it expedient to promote or protect the interests of inhabitants of its area,

to prosecute, defend or appear in legal proceedings. Coventry City Council reportedly used section 222 to obtain an order excluding two brothers from their mother's home following a string of burglaries on her estate.

3.5.6 Anti-social behaviour Closure Orders

Local authorities and the police gained powers under Part 1A of the *2003 Anti-Social Behaviour Act* to seek a closure order in respect of premises that are associated with persistent disorder or nuisance. They are aimed at tackling excessive noise and rowdy behaviour related to frequent drunken parties or high numbers of people entering and leaving a property at all times of the day or night. These orders can also be used where anti-social residents are intimidating and threatening their neighbours and criminal families are running illegal business from their properties. They should be used as a last resort only when all other options have been tried and failed. Significantly, the orders are tenure neutral so can be used to close homes that are privately owned.

Once a closure notice has been issued an application for an order must be made to a magistrate's court within 48 hours. If the magistrate's court makes a closure order the premises concerned will be closed completely or partially for a maximum of three months. This prevents access by any persons, even those with rights of abode or ownership. Full information on these orders can be found on the Respect website [here](#).

4.0 POLICY , LEGAL AND FINANCIAL IMPLICATIONS

None

5.0 RISK ANALYSIS

5.1 None associated with this report

6.0 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES

6.1 Children and Young People in Halton

None

6.2 Employment, Learning and Skills in Halton

None

6.3 A Healthy Halton

None

6.4 A Safer Halton

This new set of measures will help to improve the way local partners deal with anti social behaviour in Halton

6.5 Urban Renewal

None

7.0 EQUALITY AND DIVERSITY

None

8.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

8.1 None under the meaning of the act