



Housing Law for
Housing Professionals

Newsletter Summer 2005 Issue No.6

Introduction

Welcome to issue 6 of Emsleys' regular housing law newsletter for Registered Social Landlords.

This month the focus is once again on anti social behaviour and possession. Several of the cases in our last newsletter gave positive messages to RSLs trying to deal with nuisance behaviour; the recent Court of Appeal case involving Moat Housing Group show that there are limits to what is available even though the Courts are often sympathetic to landlords, and that evidence must be as clear and direct as possible.

We have recently updated our website, and have incorporated a number of Housing Law Fact Sheets that you may find useful. Pay it a visit at www.emsleys.co.uk

John Murray
June 2005

CASE LAW

Anti Social Behaviour Injunctions Under 1996 Housing Act (As amended) & Multiple Remedies

➤ **Moat Housing Group South Ltd v Harris & Heartless (2005) Court of Appeal**

- The landlords obtained freestanding ASB injunctions against Ms H requiring her and her 4 children to vacate their home by 6pm that day, and thereafter not to enter the village where they lived. She was not given notice of the applications. A power of arrest was attached to the injunction.
- Within a few weeks the landlords had also obtained ASBOs against her and her partner Mr H, and outright possession of the property.

- Ms H appealed to the Court of Appeal, which held that it was neither necessary nor proportionate to make the injunctions that had been made.
- It was inconceivable that a Court would make an ASB injunction without the defendant being notified in advance unless there had been actual violence or a threat of violence in the past, and there is also a risk of significant harm to someone if the defendant were to be given notice of the Court application and the chance to attend
- An ASBO was not appropriate to the facts of the case as the worst of the behaviour complained of related to one night, and indeed the judge did not identify what behaviour on the part of Mr H warranted an ASBO. There was not the evidence of persistent and serious ASB which made an ASBO necessary.

- The possession order was varied to a suspended order given the nature of the allegations against Ms H in the past and the lack of any further allegations by the time the case was before the Court of Appeal.
- The Court also expressed concern about the amount of hearsay evidence relied on in this case and the way it was handled by the trial court.

Anti Social Behaviour Orders (ASBOs)

- **Ashley Lonergan v Lewes Crown Court & Brighton & Hove Council (2005) High Court**
- An ASBO was made against a 19 year old with a long history of offending and anti social behaviour; it was specified to run for 2 years.
- One of the terms of the ASBO imposed a curfew on Mr L, prohibiting him from being anywhere other than at specified addresses from 11.30 pm – 6.00 am.
- He challenged the lawfulness of that part of the order. The Court ruled that such a curfew in an ASBO was lawful, even if it ran for longer than a curfew order made by the criminal courts as part of the sentence for a criminal offence. On the other hand a curfew provision in an ASBO should not necessarily run for the duration of the ASBO
- On the facts of this case, 2 years was a very long time and the Court approved an offer by the Council to vary the ASBO so as to remove the curfew given the considerable improvement in Mr L's behaviour since the ASBO had been made.

Interim ASBOs Without Notice

- **R (Manchester City Council) v Manchester City Magistrates' Court (2005) High Court**
- The Court has the power to grant an interim ASBO without the defendant being notified of the application or being present in Court.
- In this case the defendant had threatened to burn the victim's house down and to kill her, and also made other serious threats against her; he lived in the immediate vicinity of the victim.
- The Magistrates' Court refused an interim ASBO without notice on the grounds that there had been no actual violence.
- The High Court gave permission and held that the mere fact there had been no actual violence so far was not the issue. The High Court set out the factors that were relevant to an application for such an interim order.

Tenancy Obtained by Deception

- **Merton LBC v Richards (2005) Court of Appeal**
- The tenancy had been granted by the Council because of false statements made by the tenant's mother, who worked for the housing department.
- At the trial of the possession claim based on tenancy by deception, the trial judge found that the mother was an unwanted meddler in her daughter's affairs, and that she had not known what her mother was doing and had not instigated it. The possession claim was dismissed as the judge held that Council could not prove that the tenancy was granted as a result of a false statement made by or at the instigation of the tenant.

- The Court of Appeal upheld the trial judge's decision as there was evidence on which he could have reached that conclusion.

Tolerated Trespass

➤ **Newham LBC v Hawkins (2005) Court of Appeal**

- The Council obtained a suspended possession order against Mrs H in 1991 for rent arrears. She breached the order, and therefore became a tolerated trespasser with no tenancy. She eventually cleared the arrears in March 1992.
- The possession order was unusual in that it made no mention of what would happen to the order once the arrears were paid off.
- Rent increase letters from the Council were sent to her every year, but they contained a standard form of words that applied to tolerated trespassers,

making it clear that increases in charges for the property were not rent.

- Mrs H then got into slight arrears again and in 1997 made a repayment agreement which referred to "rent"; she died in 1998 and her family tried to establish a right to succeed to her tenancy of the property. To do so they had to prove that she had been given a new tenancy by virtue of Newham's conduct after the arrears had been paid off.
- The Court held that there was no new tenancy. The reference to "rent" in the 1997 document had to be read alongside the wording of the letters increasing the charges for use and occupation of the property. Because of the wording of the original possession order Mrs H could have applied to the Court to revive her tenancy even after the arrears had been paid off, so Newham's conduct could not solely be explained by there being a new relationship of landlord and tenant.

POLICY AND GUIDANCE

Possession As A Last Resort (1)

The Government has indicated that it is likely to issue good practice guidance to social landlords later in the year, setting out the steps that landlords will be expected to take in order to avoid possession proceedings wherever possible. (-House of Commons written answer 21 February 2005, Keith Hill MP)

Possession As A Last Resort (2)

In the same written answer the Government has also indicated it is developing a pre action protocol for housing possession cases, which parties will be expected to have complied with before issuing proceedings, probably with costs penalties for landlords who breach the letter or spirit of the protocol.

The DCA is currently consulting on the Protocol which is available in draft format. Interested parties can contact Emsleys for a copy.

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Frequently Asked Questions

Email your questions to us for a response
Questions and Responses will be contained in subsequent issues of the Bulletin

Suggestion Box Please email suggestions/comments for future editions to john.murray@emsleys.co.uk