
HOUSING UPDATE



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Who Are We?



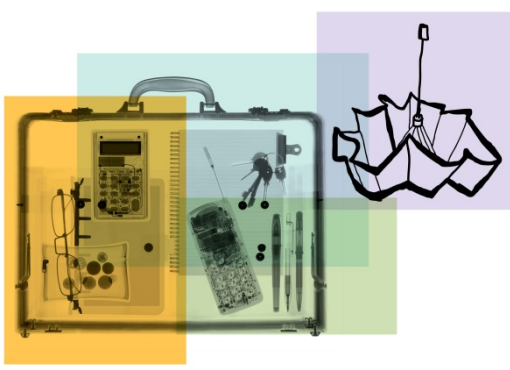
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- **Daniel**
 - *“He is a social housing powerhouse - he knows the sector inside out and clients love him”*
 - *“encyclopaedic knowledge of housing and property law”*
 - Board Member for a RP
 - Lives in Kent
 - Chair of Parish Council and its Planning Committee

Who Are We?



- **Helen**
- Associate Solicitor
- Has also worked in house for local authority
- Specialist in Housing management and Fraud
- *“a tried and tested legal adviser, with strong sector knowledge and a quiet efficiency”*
- Does all the hard work while Daniel swans around





ASB

So What are the Options?



Is there a non-legal way of dealing with it?

- Mediation
- Warning e.g. Acceptable Behaviour Agreement
- Simple acknowledgement of complaints
- Voluntary termination of the tenancy
- Safeguarding
- Is there mental health or support needs and tenant needs your help?

So What are the Legal Options?



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- 1) ASB Injunction (**Local Authority & Registered Providers**)
 - 2) Possession
 - Mandatory Ground 7A
 - Discretionary Grounds 1 & 2/12 & 14
 - 3) Closure Orders (**Police & Local Authority**)
 - 4) Criminal Behaviour Order (**Police**)
 - 5) Community Protection Notice (**Police & Local Authority**)
 - 6) Public Spaces Protection Order (**Local Authority**)

Injunctions



- 1) Doesn't have to be a tenant
- 2) Adult or youth
- 3) Prohibitions and positive terms
- 4) Power of Arrest and Exclusion (if over 18) available if:
 - *The ASB in which the respondent has engaged or threatens to engage consists of or includes the **use or threatened use of violence** against other persons, **or there is a significant risk of harm** to other persons from the respondent*
- 5) Without notice available
- 6) No injunction if Defendant lacks capacity
 - Specific test
 - Presumption

Injunctions for Youths



- Over 10 years old
- Heard in youth court
- 12 months maximum duration
- Power of Arrest but no Exclusion from home
- Must consult YOT
- Breach heard in youth court (not contempt)
- Evidence from last 6 months



Possession



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- Don't forget Pre Action Protocol...
 - Generally not as easy, quick or as cheap as obtaining an Injunction

Spilt into 2 types:

- **Mandatory**
Court **MUST** make a possession order if the Ground satisfied
- **Discretionary**
1) Ground must be satisfied and 2) court finds it reasonable to make a possession order

Possession - Ground 7A & s84A



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- Don't have to prove "reasonableness"
 - Just have to show the Ground is satisfied and that the NOSP and proceedings are valid
 - Therefore should be quicker and easier (and cheaper) to obtain a possession order
 - Still subject to Equality Act & Proportionality Defences

Possession - Ground 7A or s.84A



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- One of the 5 conditions
 - 1) Serious Offence - Conviction
 - 2) Breach of Civil Injunction
 - 3) Breach of Criminal Behaviour Order
 - 4) Closure Order
 - 5) Breach of Noise Abatement Notice or Order

 - Local authorities have to offer a review under s85ZA
 - RPs - Don't forget Pre Action Protocol - offer a review
 - Time limits for serving NOSP - 12 months of the conviction or breach
 - 3 months from Closure Order

Possession - Ground 14 (or G 2)



- The tenant or a person residing in or visiting the dwelling-house:
 - a) has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting or otherwise engaging in a lawful activity in the locality, or
 - (aa) has been guilty of conduct causing or likely to cause a nuisance or annoyance to the landlord or a person employed in connection with the exercise of the landlord's housing management functions,
 - b) has been convicted of:
 - Using the dwelling-house or allowing it to be used for immoral or illegal purposes, or
 - An indictable offence committed in, or in the locality of, the dwelling-house

What if Tenant Not Personally at Fault?



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- Is it harsh to evict?
 - Most cases had held T responsible for behaviour of their children
 - What if tenant is unable to control the behaviour of his or her children?
 - What if other orders (in the following case an ASBO) are in place?

Knowsley Housing Trust v McMullen (2006)



D lived with her son. Possession sought on Ground 14. The judge found that the tenant's own acts of nuisance were relatively slight and historic. Evidence was put before the judge of the son's criminal convictions and an ASBO made against him which was to stay in force until 2007 and electronic tagging. Evidence showed that the tenant had an IQ of 63 and was unable discipline or control the actions of her son and that she was not in a position to exclude him from the house.

Knowsley Housing Trust v McMullen (2)



The judge made an SPO on terms that there were no further acts of nuisance on the part of the tenant or her son.

The tenant appealed. She submitted that the judge should not have made an order for possession at all because of her inability to control her son and the fact that the son's behaviour was already being effectively controlled.

The appeal was dismissed.

Birmingham City Council V Harun Mansoor Sharif (2019)



Just because there is an alternative remedy with less severe sanctions doesn't mean a court should only grant an injunction to a local authority in 'exceptional circumstances'

- Injunctions obtained against persons unknown designed to tackle street cruising in Birmingham
- For 3 years with Power of Arrest
- Argued that the court should not have granted the injunction because Parliament had provided a specific remedy (a Public Spaces Protection Order) to combat the behaviour complained of, so an injunction would only have been appropriate in very exceptional circumstances

Eales v Havering LBC (2018)

A district judge had been entitled to make a possession order where a tenant, although suffering from a psychological disability, had engaged in anti-social behaviour primarily due to her drug and alcohol misuse.

The possession order was a proportionate means of achieving the legitimate aims of protecting the rights of other tenants and allowing the local authority to manage its own housing stock.

Ahern v Southern Housing Group Ltd (2017)



A provider of social housing had not acted in breach of its own policies when deciding to take possession proceedings against an alcoholic tenant who had been guilty of repeated anti-social behaviour.



Teign Housing v Lane (2018)



A possession order was sought on allegations of loud music, aggressive behaviour and dog fouling.

The judge had incorrectly introduced a concept of "*relevant breach*" when considering whether a tenant's alleged breaches of a tenancy agreement amounted to grounds for a possession order.

Reigate & Banstead Council v. Peter Walsh (2017)



Court granted an injunction restricting the Defendant from contacting the Council by email or telephone or otherwise save for a named point of contact who could only be contacted at a specific address and only in writing

Harris v Hounslow LBC (2017)



A secure tenant was not entitled to a statutory review of the local authority's decision to apply for a possession order because he had applied outside the 7 day period in the Housing Act 1985.

The landlord had no obligation or power to conduct one.

The local authority had received frequent complaints about noise, complaints about excessive numbers of visitors loitering in the stairwells, smoking, drinking and using drugs.

Worthington v Metropolitan Housing Trust Ltd (2018)

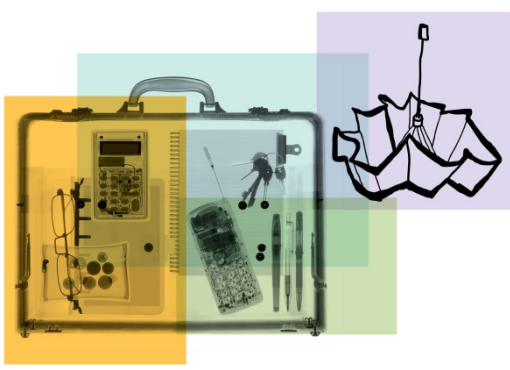


A housing association lost an appeal against a decision that it had unlawfully harassed two tenants who, due to concerns about anti-social behaviour in the neighbourhood, had installed CCTV at their homes.

The housing association had sent letters to tenants threatening legal action, which were inaccurate and unjustified and amounted to harassment.

Worthington v Metropolitan (2)

The tenants were “*threatened with possession proceedings and accused of anti-social behaviour and taking inappropriate images of children. Such proceedings, if successful, would have meant they would have to seek accommodation with a different housing association. Yet the Association issued these threats without taking the most basic steps to ensure that they had a proper foundation. They were in fact totally unjustified. I am satisfied the judge had ample material before him upon which to find that the conduct complained of crossed the boundary and was oppressive and unacceptable, and that it amounted to harassment*”



Rent Changes

Rent Changes in 2016



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- 2013 Budget promised ten years of increase from 2015
 - CPI plus 1%

 - They changed their mind
 - Rent reductions of 1% for 4 years from 2016
 - Supported housing exempt for one year

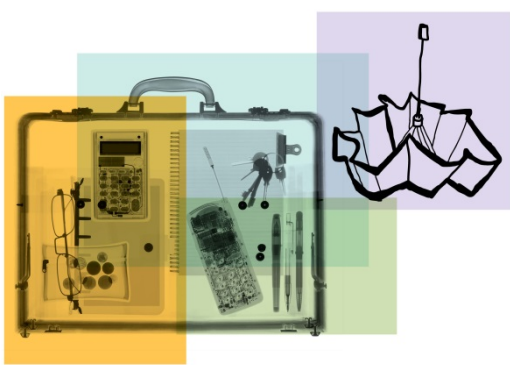
 - Specialised Supported Housing exceptions (and a few others)

Rent Changes from 2020



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- Promised 5 years of CPI plus 1%
 - Consultation response from 2019





Other Changes

What's Been Happening?



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- Consultation on a New Housing Court
 - Home Loss Payments Went Up – to £6.1K
 - Regulator of Social Housing
 - Influence of Local Authority Regs.

 - Secure Tenancies (Victims of Domestic Abuse) Act
 - New “How to Rent” Booklet



What's Been Happening (2)



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- Voluntary RTB trial in Midlands
 - Changes to s21 Notice for all assured shorthold tenancies (from 1 October 2018 and a new version June 2019)
 - Social Housing Green Paper (Aug – Nov consultation)
 - A “new deal” for social housing
 - Tackling stigma
 - Expanding supply – strategic partnerships
 - Effective resolution of complaints
 - Empowering residents and strengthening the Regulator – ~~Serious Detriment~~
 - Ensuring homes safe and decent

What's Started – and getting bigger



-
- Homes (Fitness for Human Habitation) Act
 - What impact will this have on Landlords?

The Homes (Fitness for Human Habitation Act) 2018



What does fitness for human habitation mean?

- Is the property free from damp? Is there a water supply?
- Are there adequate drainage and sanitary conveniences?
- Is there adequate natural light and ventilation?
- Infestation?

- Does the property contain any hazard by reference to the Housing, Health and Safety Rating System?

The Homes (Fitness for Human Habitation Act) 2018



- Do a quick Inspection of the property.
- You will have a reasonable amount of time, once notified, to put right the defects, failing which damages could follow.
- You are not responsible for tenant's failure to behave in a tenant- like manner.



What Else is Happening?



- Grenfell Report
 - The Building (Amendment) Regulations 2018 (S.I. 2018/ 1230)
 - 21 December 2018
 - Buildings over 18m
 - With one or more dwellings...
 - Completely banning combustible materials
 - E.g. ensuring that materials comply with European Class A2-s1
- Government Advice Note 14 – possible regulations later

Main Class Subclass Smoke visibility Subclass Burning droplets

Non-combustible materials:

No contribution to fire at any stage of the fire

A1 Not applicable Not applicable

Non-combustible materials:

No significant contribution to fire at any stage of the fire

A2 s1, s2 or s3 d0, d1 or d2

Combustible materials: very limited contribution to fire:

Very limited heat release and flame spread during the growth stage of a fire

B s1, s2 or s3 d0, d1 or d2

Combustible materials: limited contribution to a fire:

Limited heat release and flame spread during the growth stage of a fire.

C s1, s2 or s3 d0, d1 or d2

Combustible materials: medium contribution to a fire:

Will resist a small flame attack for longer at the beginning of the fire and will exhibit sufficiently delayed and limited heat release during the growth stage of the fire.

D

s1, s2 or s3

d0, d1 or d2

**Combustible materials: highly contribution to a fire:
Will resist only a small flame attack in the beginning of the fire**

E

Not applicable

d2

**Combustible materials: easily flammable:
Unacceptable fire behaviour**

F

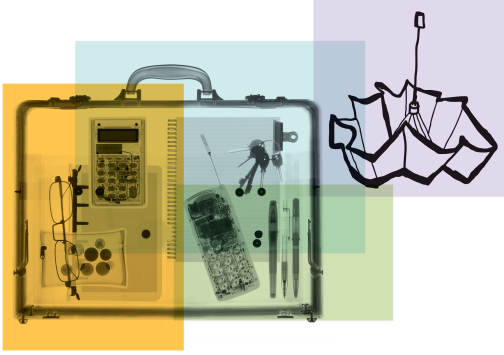
Not applicable

Not applicable

What's on Way? (2)



- Regulator's Focus
 - Sales of stock
 - Impact of Brexit
 - Value for Money Standard – Code of Practice
 - Effectiveness of Governance
 - “For Profit” Providers
 - Concern about leasehold models



Equality Act



The Legal Problem

- Where someone suffers from an illness the law may require them to have greater protection than a person who does not suffer from that illness

Equality Act – s15(1)



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- A person (**A**) discriminates against a disabled person(**B**) if –
 - (a) **A** treats (**B**) unfavourably because of something arising in consequence of (**B**)’s disability, and
 - (b) **A** cannot show that the treatment is a proportionate means of achieving a legitimate aim.

What is '*unfavourable treatment*'?

- Eviction
- An injunction
- Serving a Notice
- ABC?

‘Something arising in consequence of B’s disability’

- Is the behaviour complained of related to their disability?

‘a proportionate means of achieving a legitimate aim’

- If can show proportionality and
- Reason why taking action

Treatment = **justified** and will be allowed

How do we show it?

- Show that alternatives have been considered
- & reasons why not suitable

Equality Act Note or Justification Note

- Record to show consideration made and the decision

Equality Act - Note



When to do an Equality Act note

- Before serving a notice
- Before issuing proceedings
- When a Defence is received
- When statements received
- Or any time you get new information about
T

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- ***Birmingham City Council v. Stephenson* [2016] EWCA Civ 1029: a practical lesson**
 - Stephenson was paranoid schizophrenic
 - Possession order made at first hearing set aside
 - BCC did not explore options short of possession
 - Difficult to obtain summary disposal of Equality Act 2010 issues

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- ***Lomax v Gosport Borough Council (2018)***
EWCA Civ 1846
 - Homelessness appeal allowed;
 - Must have due regard to the aims in each specific case;
 - Must undertake comparison between the needs of a person with a disability and the needs of a person without that disability

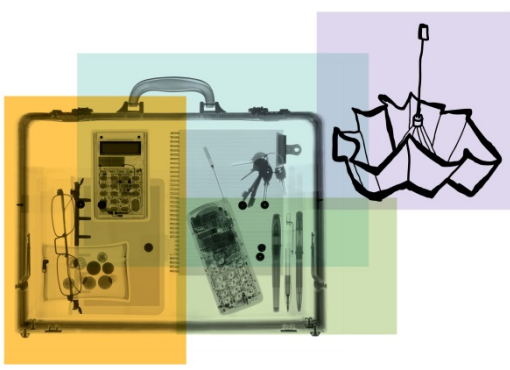
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- No Equality Act Assessment undertaken prior to issue, it was however undertaken prior to trial.
 - D failed to provide sufficient evidence to support his contention that vulnerability caused by physical and mental impairment has been exploited by others to deal drugs from the property.
 - Assessment prior to trial was found to be inadequate.
 - Despite the above, the court was entitled to find that the PO was a proportionate means of achieving a legitimate aim.

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- ASB Case
 - S149 defence and Medical evidence raised at last minute
 - Judge said even if there had been a breach of s149 it was not serious or material and made a possession order
 - Tenant lost their appeal
 - L must have due regard to certain matters and court must also consider the impact of the behaviour on others

Equality Act and Evictions



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- ***Paragon Asra Housing Limited v James Neville EWCA Civ 1712- July 2018***
 - Once there has been a determination of merits and any Equality Act issues, in making the SPO/PO, there would need to be substantial change in circumstances for the issues to be considered again at warrant stage.
 - Further acts in breach of an SPO, without more or something different, would not warrant re-examination of a disability defence at warrant stage.
 - **Followed in the CofA case of *Dacorum Borough Council v Powell* 24.01.2019– s149 PSE Duty**



Homelessness

Homelessness

Ombudsman Complaint against Maidstone BC



-
- Disabled wheelchair user said current accommodation unsuitable - He needed to show medical need
 - Medical adviser did not meet him or visit property but application rejected
 - Told £75 charge to review the decision & 14 day period
 - Ombudsman recommended:-
 - £250 compensation
 - A review of policy and its lawfulness
 - Check records for others previously affected
 - Pay refunds
 - Review decisions where applicants did not proceed
 - Carry out staff training

Homelessness (2)

Samuels v Birmingham CC



-
- Intentionally homeless?
 - Was it reasonable for them to occupy previous accommodation – weekly shortfall of £37 between income and rent and living expenses
 - Evicted following rent arrears
 - Council said she had “sufficient flexibility in her overall household income”
 - Their decision upheld on review, in county court and Court of Appeal
 - Supreme Court overturned decision – need to consider her “reasonable living expenses
 - Suggested government give clear guidance

Homelessness (3)



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- Mohamed v Barnet
 - Council took a monthly periodic lease
 - Used property to house Ms Mohamed and her daughter
 - She refused to leave and argued she had a secure tenancy so Notice to Quit ineffective
 - As owner could require possession at any time from the council they could not grant a secure tenancy

Homelessness (4)

LB Tower Hamlets v Ahmed



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- Applicant applied to Council
 - Decided he was not in priority need – upheld on review
 - 21 days allowed to appeal
 - He sought an extension of time a month later
 - He had real trouble finding solicitors and had medical problems
 - Did he have a “good reason” for the delay?
 - Being unrepresented and waiting for legal aid were not good reasons

Homelessness (5)_ Godson v Enfield BC

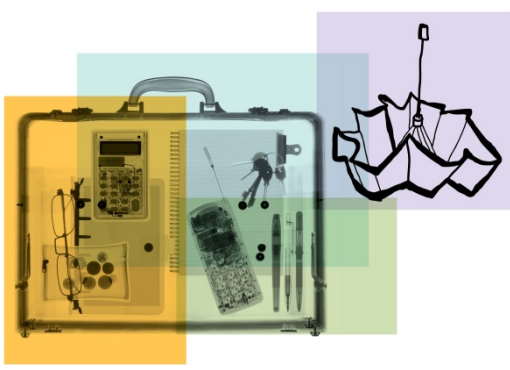


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- Applicant sought assistance – got emergency accommodation
 - August 2012 council accepted full housing duty
 - July 2013 he was offered alternative accommodation but refused
 - Council terminated duty and evicted him in 2014
 - B&B until 2016
 - Was found to be intentionally homeless
 - Court found too late to challenge the 2013 decision
 - As long as Council met its duty it was up to it how to perform it

Homelessness (6)



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- Torbay newspaper report
 - 20 year old man
 - Mental health
 - Council said he had broken his contract with them by not occupying his room every night
 - Discharged their duty
 - He was in hospital in an induced coma after suicide attempt and being sectioned



Case Law

- “Bedroom Tax”
- *Secretary of State for W & P v (1)Hockley & (2) Nuneaton & Bedworth*
- Two of the 3 bedrooms were “small and awkwardly shaped” and could only have 1 occupant
- Still bedrooms



-
- Justified Religious discrimination
 - *R (on the application of Z & Anor) v (1) Hackney LBC (2) Agudas Israel Housing Association Ltd*
 - Council and Housing Association were allowed allocate to only Orthodox Jewish families
 - Direct discrimination but justified because of high levels of poverty in that community

Case Law (3)



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- Service charges for new services
 - *Curo Places Ltd v Pimlett*
 - Tenancy allowed landlord to add extra services and charge for them
 - But they were already maintaining the grounds so not new
 - Query – would this have been an Unfair Term?

Case Law (4)



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- Duty of Care
 - *Poole BC v GN*
 - Vulnerable family placed next to known anti-social family
 - Council did not have a duty of care to warn
 - They had not assumed a specific duty of care
 - No general duty of care

Case Law (5)

- Property Guardians – HMOs
- Camelot pleaded guilty to 15 charges of not being licensed as an HMO
- Prosecution by Colchester Borough Council

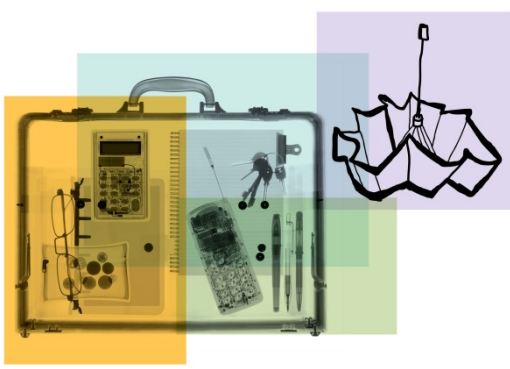


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- Fresh Possession Proceedings
 - Salford CC got a suspended order in April 2008
 - Stock transfer in 2015
 - May 2017 Salix issued possession proceedings – held they could not seek another possession order
 - Court of Appeal allowed a fresh possession order
 - *Salix v Mantato*
 - Different landlords and different arrears

Case Law (7)



- Injunction Against Travellers
- *Nuneaton BC v Corcoran & Others*
- Was appropriate to grant a borough wide injunction to prevent encampments in breach of planning control
- Facts specific - as ever (103 encampments between 2016 and 2018)
- Service was required
- Order made provision for the welfare of children



THE END