

Housing Management Brief

July 2009



“Management and allocation decisions of registered providers including decisions to terminate tenancies will be susceptible to judicial review and will be subject to the Human Rights Act.”

Welcome

Once again we have some great news stories to bring you in this edition of HM Brief. As always, ASB abounds but we also have some useful briefings for you on housing minors and debt relief orders. Of course, the case of the minute is the Weaver case in which Devonshires acts for London & Quadrant. Judgment was handed down in the Court of Appeal on 18 June upholding the Divisional Court's finding that L&Q were susceptible to judicial review and the Human Rights Act. The Court of Appeal took a slightly different tack from the lower Court, emphasising the need to focus on the act complained of rather than the function, but the end result is pretty

much the same, namely, that management and allocation decisions of registered providers including decisions to terminate tenancies will be susceptible to judicial review and will be subject to the Human Rights Act. We are running a number of breakfast briefings this month on the Weaver decision to discuss and explain the repercussions of the Court of Appeal decision. If you miss the sessions this time around, never fear, we will be organising more for September by which time we may have news on L&Q's application to the House of Lords for leave to appeal. Watch this space!

Nick Billingham, Partner, Head of Housing Management

Two Tearaway Teenagers Receive ASBOS in the St Albans Magistrate's Court

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The applications were made with the support of the local police and the local authority, who had received complaints from residents for at least a year prior to the applications being made. During the summer of 2008 the police were getting called out to the area several times a week by residents who wished to complain about the girls' anti-social behaviour.

Following a hearing in the St Albans Magistrates Court on 12 March 2009, two interim orders were made against the girls.

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Emma Bingley of Devonshires' Housing Management Team was recently successful in obtaining two Anti-Social Behaviour Orders for the Springboard Housing Association.

The recipients of the ASBOs were two 15 year old girls, who had engaged in serious anti-social behaviour in Hatfield and Welwyn Garden City. The applications followed twelve months of nuisance, including causing criminal damage to play areas, verbally abusing local residents and being drunk and disorderly in the local parks. In particular, one of the girls had on two occasions acted in a threatening manner with a knife towards young children.

Terms of the ASBOs included not being seen in public together, and not being drunk in public. One of the girls was prohibited from being in possession of a knife in public unless she was in a restaurant and the knife was being used to consume food. The making of the interim ASBO's were reported in the local newspaper.

The trial was due to take place on 14 and 15 March 2009. However, less than a week before, one of the girls breached her interim ASBO by causing criminal damage to a bench near her home. The charge for criminal damage was heard on the same day as the ASBO trial and the defendant pleaded guilty to the charge.

At the trial, the making of the final Anti-Social Behaviour Orders was not contested by the defendants, but there was discussion as to the terms of the final Orders. As the girls had previously admitted to causing criminal damage to the play areas near where they lived, the claimant sought a further term that they be prohibited from accessing the play areas near their homes. This was to ensure that local children in the area could start to use the play equipment again without being victimised

provided comprehensive witness statements and attended the final trial in May, prepared to give evidence to ensure that final ASBOs were secured.

The reason that the making of the final ASBOs was not contested was due to the overwhelming evidence provided by neighbours, who were willing to stand up and give evidence to ensure that the behaviour caused by the girls was brought to an end. With the support of Springboard Housing

by the girls and the gang of youths with whom they congregated. Submissions were made to the Court by both parties and the Magistrates agreed that the term should be included to protect the local residents and their children.

Many residents in the area were in fear of reprisals and had previously asked that the Springboard Housing Association and the police did not attend their properties as they did not want the girls or their families to know they had made complaints. This meant that when the applications were first made, all witness evidence had to be anonymous to ensure the complainants were not targeted. However despite this, several residents

Association, the local police and Devonshires, the witnesses felt confident to provide named witness statements and attend court.

This case demonstrates the importance of working with residents and witnesses to secure ASBOs as their evidence is valuable when securing final orders. It also illustrates the importance of working alongside local authorities and the police to secure Anti-Social Behaviour Order against youths who cause trouble so that local residents are better protected.

Housing Minors – What does the Court of Appeal say?

In the case of [Alexander David v London Borough of Hammersmith & Fulham \[2009\] CWCA C iv 249](#) the Court of Appeal has provided helpful guidance for landlords who provide housing for people under the age of eighteen years.

In this case, the local authority had housed a homeless 16 year old in accordance with the provisions of Part 7 of the Housing Act 1996. The local authority signed up the minor on its standard non-secure tenancy agreement and

authority was in the difficult position of being both the landlord and trustee, and for as long as the local authority was the trustee it could not lawfully destroy the subject matter of the Trust by serving a Notice to Quit. As a result the Court of Appeal quashed the order for possession of the tenant's property.

In recent years there have been conflicting opinions about how to grant occupation rights to minors without inadvertently creating a trust. The Court of Appeal have, in this case, given

after receiving complaints from other residents served a Notice to Quit.

The District Judge granted possession and the tenant lodged an appeal. The Court of Appeal allowed the tenant's appeal on the basis that the local authority in entering into one of its standard form tenancy agreements had purported to grant a legal estate in the property. As it is not possible to grant a legal estate to a minor an equitable tenancy had arisen and in accordance with the Trust of Land and Appointment of Trustees Act 1996 the land would be held in trust for the minor.

As no trustee had been appointed the local

some potential solutions to this difficult issue. These are:

1. Appointment of an Alternative Trustee

Whilst a landlord can explicitly create a trust with an alternative trustee, we would advise against this and would recommend the course of action set out in point 3 below. However, this may be helpful in the event that a landlord has inadvertently created an equitable tenancy and wants to serve a Notice to Quit. An application to the County Court could then be made for the appointment of an alternative trustee so as to enable the landlord to serve the Notice.

2. Non-Exclusive Possession Licence

This was suggested with particular reference to local authority housing on the basis that many housing projects for under 18s provided by the local authority may already provide support and assistance which would extend beyond the provision of accommodation and would therefore satisfy the requirements for a genuine licence.

3. An agreement to grant a lease until the occupier is 18 years old

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This is the procedure recommended by Devonshires. The provision of a specific agreement for lease with the express recognition of the inability of the minor to hold a legal estate should avoid the accidental creation of a trust in land.

Whilst this guidance is to be welcomed, the practicalities of ensuring that both the drafting of the agreement and, if needed, its termination are conducted properly mean that it will often be prudent to seek advice in these cases.



Swift Action taken by Devonshires to tackle anti-social behaviour

Devonshires Housing Management Team recently obtained two satisfactory results on behalf of London & Quadrant Housing Trust ("L&Q") in two cases involving severe nuisance.

In the first case, L&Q instructed Devonshires the day after an incident where the tenant's brother had physically grabbed a housing officer by the arm and threatened her. The housing officer had knocked on the door of the property to ask about banging noises that could be heard from the upstairs room of the

The second case involved serious ongoing nuisance perpetrated by a tenant who persistently denied causing any nuisance. The tenant and his girlfriend were believed by neighbours to be using class A drugs, and his girlfriend was a known prostitute.

Complaints were made of arguments and noise nuisance late at night and into the early hours, fights between visitors and the tenant, threats made against neighbours, obscene and racist verbal abuse and so on. L&Q made every

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property. The tenant's brother had grabbed her by the arm and threatened the housing officer that he would "shut her up". Later that night he made threats to kill a neighbour.

The witness statements and paperwork were drafted up on the morning that instructions were received and that afternoon an ex-parte injunction was obtained against the tenant's brother, which was served on him that afternoon. The return date on the injunction was listed for the following week, after which the tenant's brother was excluded from the premises and surrounding area. A power of arrest was attached to that Order.

effort to support the tenant in order to preserve his tenancy but eventually felt it had no other option but to instruct Devonshires to take action following an unsuccessful attempt by the police to obtain a Closure Order over the property. The attempt had been unsuccessful because the neighbours were unable to say they had actually seen money being exchanged for drugs.

A possession claim was issued against the tenant whose solicitors conducted a vigorous defence, concentrating on bare denials and also particularly nasty counter-allegations made against the upstairs neighbour's 23 year old son, including accusations that the son



was noticeable by their absence." He also stated that the tenant's "unfounded (as I find them to be) attacks on (the son's) integrity and truthfulness seriously aggravate the wrongs which he has done as a tenant."

The judge found for L&Q and ordered an outright possession order in 14 days; the extra days being granted to provide the tenant, who had a physical disability, time to arrange alternative accommodation.

smoked drugs, had friends round who caused nuisance and that the son had used one of the tenant's friends as a prostitute himself.

The trial was fast tracked and three of the neighbours who had complained, together with a police officer, attended to give evidence at the trial.

In summing up, the judge made it very clear that he preferred the evidence of the neighbours, who he found truthful and accurate, and that he was not impressed by the tenant's demeanour and defence, stating "His demeanour was that of aggression and defiance, and expressions of remorse and of resolve to prevent further nuisance

Introductory Tenants and your options

Since its creation by the Housing Act 1996, the Introductory Tenancy has enabled local authority landlords to obtain possession orders against problematic first-year tenants in a more swift and cost-effective manner.

The legislation allows public sector landlords to extend the initial twelve month period of the tenancy for a further six months, providing the tenant has been given at least eight weeks notice prior to the expiry of the one year period.

This can be a sensible step to take if the end of the twelve month period is in sight but

introductory tenant.

Therefore, when managing the tenancies of introductory tenants, or when commencing possession proceedings against them, consider the following:

- Maintain an awareness that the clock is ticking towards the establishment of a secure tenancy after an initial twelve month period - avoid being 'caught out' and discovering a troublesome tenant has acquired a secure tenancy and the rights that accompany it;
- Consider extending the life of the Introductory

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the landlord is hopeful that problems with the tenant can be resolved without having to commence possession proceedings. If no progress is made, however, and problems with the tenant persist, the landlord may feel possession proceedings are the only remaining option.

The key to obtaining a possession order in the county court is taking care to ensure the notice for proceedings for possession has been correctly served and also that it contains all the relevant information required by law. Providing the correct procedure is followed, the court must grant an order for possession against the

tenancy to eighteen months if contemplating taking possession proceedings; and

- Ensure your Notice requiring possession has been correctly drafted. Also ensure that it is served during the first twelve months or within eighteen months if you have extended the life of the Introductory Tenancy by a further six months.

Being fully aware of your rights as a local authority landlord will allow you to deal with problem tenants at an early stage and help effectively manage your housing stock.

For more information please contact: Sam Swann on 020 7880 4254 or sam.swann@devonshires.co.uk

Success in tackling anti-social behaviour in Hertfordshire

Jonathan Hulley, Emma Bingley and Saminah Saleem of the Devonshires' Housing Management Team successfully acted for the Circle Anglia Housing Association recently.

They were successful in obtaining an outright Possession Order against a family who had been causing serious and sustained anti-social behaviour in the area for a number of years. The family concerned lived in a property in the rural village of Benington in Hertfordshire, and were well-known to the small community as notorious trouble-makers.

Many local residents, including a parish councillor, who had been victims of the family's conduct, came forward and provided witness statements which detailed the years of abuse they had been subjected to by the family.

A three day trial took place in the Luton County Court.

At the hearing, the trial judge emphatically acknowledged the seriousness of the conduct the family had engaged in and granted an outright Possession Order.

The anti-social behaviour they engaged in included firing airguns at neighbours and keeping their property and garden in a filthy condition. Several members of the family had various criminal convictions and one member was made the subject of an Anti-Social Behaviour Order (ASBO), the terms of which he had repeatedly breached.

Possession proceedings were issued and in order to prepare for the trial it was necessary to compile as much evidence as possible against the family involved.

The Judge also emphasised the fact that the family kept their front garden in a filthy state and was of the view that this was unacceptable, particularly as their neighbours took pride in the general appearance of the street where they lived.

This case demonstrates what can be achieved when all the role-players in court proceedings agree to co-operate. The police also proved to be efficient in providing information and assistance and most importantly, the family's neighbours agreed to provide evidence at trial.

Debt Relief Orders – All you need to know

In April 2009 the Tribunal, Courts and Enforcement Act 2007 came into force and created a new form of insolvency to add to the existing Bankruptcy and Individual Voluntary Arrangement (IVA) processes.

The new type of insolvency is the Debt Relief Order (DRO) which has been available for debtors to apply for since the 6th April 2009. The DRO is a form of insolvency designed for those with a very low level of indebtedness and with little or no disposable income or assets.

end of the DRO all debts included in the order are written off entirely. Any debts not included in the DRO are entirely unaffected. The debtor's credit rating is affected for a period of 6 years, just like bankruptcy and County Court Judgements.

A DRO can be entered into only by those who cannot pay their debts, owe less than £15,000, have less than £300 gross assets and who have a disposable income of less than £50 per month. Like bankruptcy the

It is designed to be a quicker and a more cost effective solution for low level indebtedness, compared to the costly bankruptcy process.

DROs can be applied for by a debtor through an Approved Intermediary (a Money Advice expert approved by the Insolvency Service). A DRO will typically last for a 12 month period, although in some circumstances this can be extended (most notably when there is an improvement in the financial circumstances of the debtor).

During that period of time debtors cannot pay anything towards debts included in the DRO and those creditors cannot pursue them. At the

debtor must also have been living or working in England and Wales in the 3 years prior to the DRO. The debtor must not have been involved in a previous DRO, Bankruptcy or IVA within the 6 years prior to any application.

As in Bankruptcy some debts cannot be included in a DRO (those debts do not count towards the £15,000 limit for indebtedness). Debts which cannot form part of the DRO include court fines, some student loans, some family court orders (such as Child Support), benefit overpayment and secure debts (such as a mortgage).

Importantly from a landlords' point of view rent arrears at the time of the order can be included in DRO orders. This means that while under a DRO a tenant is not allowed to make any payments towards the rent arrears, and at the end of the DRO the rent arrears will be written off. Any arrears incurred after the date the DRO is granted are unaffected by the DRO. This should not mean that landlords lose their rights of possession against a tenant in arrears however.

Association's ability to bring possession under Grounds 8, 10 and 11 of the Housing Act 1988 are preserved.

Bankruptcy or a DRO will however prevent a landlord from being able to enforce a money judgement for the arrears.

“The DRO is a form of insolvency designed for those with a very low level of indebtedness and with little or no disposable income or assets.”

While the Tribunal, Courts and Enforcement Act 2007 does not deal with rent arrears specifically, the Act does bring the DRO within current insolvency legislation and a landlord's position should be the same as in bankruptcy.

The case of *Harlow District Council v Norman John Hall* ([2006] EWCA Civ 156) confirms that while the rent arrears themselves are written off by a DRO or Bankruptcy the landlord may still take possession proceedings on the basis of the arrears.

As such a local authority's ability to bring possession under Ground 1 of Schedule 2 of the Housing Act 1985 and a Housing

Diary Dates

The following seminars are being held over the coming months:

21 July - Data Protection and Freedom of Information Update for Social Housing Providers - Iod Hub, New Broad Street House, 25 New Broad Street, London EC2M 1NH

23 July - 'Weaver in the Court of Appeal' afternoon briefing - The Lowry Hotel, 50 Dearmans Place, Chapel Wharf, Salford, Manchester M3 5LH

Further information can be obtained from our Marketing Department on 020 7628 7576 or email info@devonshires.co.uk or from the events section of our website at www.devonshires.com.

Further Swift Action To Tackle Anti-Social Behaviour

Devonshires Housing Management Team was recently instructed by Moat Homes in a serious nuisance case involving violence, threats and intimidation of neighbours.

Moat instructed Devonshires the morning after an incident where the defendant tenant had grabbed another tenant's arm and throat and threatened him and his family outside the local primary school. Devonshires put together the paperwork that morning and obtained an ex-parte injunction that afternoon

At the return date the conditions remained in place for the interim injunction and Moat managed to obtain a 2 day Trial date, only 2 weeks after the return date. In the event the Trial was heard in a day and Moat obtained an outright possession order, effective forthwith, with the injunction to protect the neighbours remaining in place for a further year.

For more information please contact:

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with power of arrest, which was duly served at around 9.00pm that night. An exclusion order was obtained, but only on the basis that Moat managed to get the conditions of the defendant's bail changed as he was under curfew at the property.

The return date on the injunction was listed for four weeks later, and in the meantime a fully pleaded possession claim was issued, and witness statements were put together for a number of neighbours complaining of nuisance, threats, loud music and parties and drug-related nuisance dating back to shortly after the commencement of the tenancy.

Would you like to participate in a Devonshires' client surgery?

The Devonshires Housing Management Team regularly hold "surgeries", which have proven to be an efficient way of discussing cases with clients at their offices.

Housing Management Partner Jonathan Hulley says "surgeries are a good way for our clients to discuss cases with us and to ask general questions of us in an informal surrounding".

If you would like more information on how to set up a client surgery at your office, please contact Jonathan Hulley on 020 7880 4308.