

housing update

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Fast track approach to evicting 'neighbours from hell'

The Government has now completed its public consultation on plans for speeding up the process of evicting "neighbours from hell" who persistently engage in anti-social behaviour.

Housing Minister Grant Shapps, pictured right, recently proposed a new mandatory power for possession which would allow previous convictions to be taken into account.

This would remove the need for landlords to prove again the anti-social behaviour of offending tenants.

A Government statement lists some of the offences which could trigger the new power:

- a conviction for a serious housing related offence - including violence

against neighbours, drug dealing and criminal damage

- breach of an injunction for anti-social behaviour - where the social landlord has obtained, or is party to, the injunction

- closure of a premises under a closure order - for example, where a property has been used for drug dealing.

Mr Shapps said that eviction should only be used as a last resort but added that on too many occasions, the rights of the victims have come second to those of the people who are making their lives a misery. He said: "All too often, efforts to tackle



neighbours from hell take far too long, and it seems the needs and rights of the victims play second fiddle to those of the perpetrators.

"That's why I'm looking to speed up the process, so where a social housing tenant already has a

conviction for anti-social behaviour and the situation has not improved, this can be taken into account and landlords can act swiftly to bring an end to the day-to-day misery that is inflicted for too long on those simply seeking to quietly enjoy their homes.

"Of course eviction is a drastic step and should be the last resort that landlords take to tackle this menace - but when all other options have failed to stop this yobbish behaviour, victims should not have to wait months or even years to see justice done."

Government figures show that there are 3,000 eviction orders for anti-social behaviour against tenants each year. Most other cases are resolved through alternative procedures such as mediation, acceptable behaviour agreements, family intervention projects or injunctions.

In cases where landlords do have to resort to eviction, it takes an average of seven months for an order to be granted. This time scale is often much longer because defendants fail to turn up for hearings and the case can be adjourned several times.

The cost to landlords of evicting difficult tenants in complex cases can be well over £20,000.

The Government will now study the responses to the public consultation before outlining its plans and publishing a timetable for introducing the new powers.

Ministers are determined to avoid the 'possession order from hell'

The Government gave the following example of the kind of long and drawn out case it is trying to tackle with its new fast track approach.

Two tenants of Poplar Housing and Regeneration Community Association carried out an extensive campaign of anti-social behaviour targeting their neighbour's family for many years.

This included excessive noise, which was witnessed by relevant officers and the police.

As a result of the seriousness of the anti-social behaviour and the impact on the neighbour's young family, a Premises Closure Order was granted on their property in September 2009 - one of the first where drugs were not an issue.

The order was later extended but the tenant decided to appeal. The appeal was finally dismissed by the Court of Appeal in October 2010. In the meantime, the landlord

had filed for a possession order in the court on 27 October 2009. A directions hearing was held in January 2010 and a trial date was set for 19 November 2010.

Pending the determination of the appeal against the closure order and the outcome of the possession case, the landlord took out an injunction excluding the tenants from the property in March 2010.

A possession order was granted on 7 April 2011, 18 months after the process began. Despite the evidence being proven to a criminal standard through to the High Court for the closure order, the landlord had to prove the case all over again for the possession order, putting the witnesses through another trial.

Now the tenants have appealed against the possession granted.

The total cost of the whole process so far to the landlord has been in excess of £38,000.

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Freeholder demand for service charge payment ruled to be invalid

A local authority's demand for payment of service charges was not valid because it failed to meet the requirements both of the lease and the Landlord and Tenant Act 1985 (the Act).

That was the decision of the High Court in the case of *Brent London Borough Council v Shulem B Association Ltd (2011)*. The case involved five blocks of flats owned by the authority. The leaseholder had 15 flats which were spread throughout the five blocks. Cl.2 of the lease contained a covenant that the leaseholder would pay a proportion of the expenses incurred in maintaining the flats.

The flats required extensive repairs which were "qualifying works" for service charge payments within the Act. In March 2004, the authority notified the leaseholder about the intended works and the estimated costs. It then sent out an invoice in February 2006 based on those estimates for works carried out in 2003/04.

The leaseholder did not pay. In December 2006, the authority sent out an invoice for the actual amount due, which was less than the estimate. The leaseholder still did not pay and so the authority began proceedings to recover the sums due under Cl.2 of the lease.

The leaseholder submitted that the relevant costs were incurred more than 18 months before December 2006 and so the authority was therefore barred from recovering costs under s.20B(1) of the Act. The judge held that the February 2006 letter was not a valid demand for the purposes of Cl.2 or s.20B(1) of the Act, but it had constituted a relevant notification for the purposes of s.20B(2).

The leaseholder appealed against the judge's refusal to strike out the authority's claim for service charge costs.

The High Court held that the authority's February 2006 letter did not satisfy the requirements of Cl.2 with regard to the form and content of a valid demand. Cl.2 allowed the authority to demand a proportion of actual expenditure, but it didn't allow the authority to require payment of a figure which it stated was not based on actual expenditure.

Nor did it allow the authority to claim a sum which was stated



to be in excess of its entitlement with an offer to refund any overpayment at a later date. As for the requirements of the Act, s.20B(1) presupposed there had been a valid demand for payment of the service charge under the relevant contractual provisions. As the February 2006 letter was not a valid demand under Cl.2 of the lease, it followed that it was not a "demand for payment of the service charge" under the Act.

As for the requirements of s.20B(2) of the Act, the written notification had to state a figure for the costs incurred by the local authority.

The notice also had to inform the leaseholder that he would subsequently be required under the terms of the lease to contribute to those costs through service charges. It wasn't necessary for the notice to state what proportion of the costs would be passed on, nor what the resulting service charge demand would be.

With these points in mind, it became clear that the February 2006 letter did not satisfy the requirement under s.20B(2) that it should contain a statement "that those costs had been incurred". The letter did not say what the actual costs were and even mentioned that the actual costs might be greater than estimated.

The February 2006 letter, therefore, was not a demand for the purposes of Cl.2 of the lease, nor was it a demand for payment of the service charge or a notification in writing for the purposes of the Act.

LVT exceeded its jurisdiction over administration charges

A Leasehold Valuation Tribunal (LVT) exceeded its jurisdiction when it considered issues beyond those transferred to it by the County Court.

That was the decision of the Upper Tribunal in the case of *John Lennon v Ground Rents (Regisport) Ltd 2011*. The case involved a dispute between a landlord and tenant over service charges.

The landlord had begun proceedings in the County Court after the tenant had refused to pay various charges. The main sum involved related to insurance. The County Court transferred the case to the LVT "for determination of the reasonableness of the sum charged for insurance".

The LVT determined the issue but then went on to also determine the

reasonableness of the administration charges. In doing so, it dismissed the landlord's claim that he was entitled to a credit for money already paid to the tenant.

The landlord appealed and the Upper Tribunal was required to determine whether the LVT had exceeded its jurisdiction by determining issues beyond those transferred to it by the County Court.

The tenant submitted that when a question was transferred to the LVT under the Commonhold and Leasehold Reform Act 2002 (the Act), all of the issues that fell within the LVT's jurisdiction were also transferred as the County Court was not entitled to divide them.

The Upper Tribunal rejected this

argument. It held that it was quite possible that a County Court could be asked to determine several questions, some of which fell within the jurisdiction of the LVT.

In such circumstances, the Act allowed the court the discretion to transfer one or more of the questions to the LVT and determine the remaining issues itself. If the Act had required an "all or nothing" transfer then the statutory provisions would have made that clear.

In this case, therefore, the LVT did not have the jurisdiction to determine any issue beyond the reasonableness of the amount charged for insurance as that was the question referred to it by the County Court.

Its decision relating to administration charges was therefore quashed.

Decision on care arrangements was not unlawful - but open to challenge

The High Court has ruled that a local authority's decision about a sheltered housing scheme was not unlawful just because it failed to mention the authority's duties to tenants under the Disability Discrimination Act 1995 (the Act).

However, failure to mention those duties had left the decision open to challenge.

The case of *Tiller v Secretary of State for the Home Department (2011)* arose out of a local authority's decision to alter the kind of care offered to tenants in the sheltered housing scheme which provided a 24-hour warden service.

One of the main issues was cost. During consultations with carers, tenants and managers, the authority stated that maintaining the status quo was not an option.

Meetings were held with tenants and their views were obtained by questionnaires and surveys. The authority then decided that the existing provision should be replaced with an on-site service during week-day office hours and an on-call remote service at other times.

The more vulnerable tenants were offered accommodation at nearby facilities that offered a greater level of care.

One of the tenants then applied for a judicial review of the decision on the grounds that the authority had failed to give any conscious thought to its duty under the Act to have due regard to the need to achieve certain goals in meeting the needs of the disabled. This failure was shown by the fact that the authority had not mentioned its duties under the Act in any

of the documents relating to its decision.

The tenant also argued that ruling out the status quo demonstrated that the consultation was not as open as it should have been.

The court rejected the tenant's arguments. It held that the process had not been flawed because the authority ruled out the status quo - one of the options considered was actually a more generous provision than the existing arrangements.

The judge also said that although the authority had not mentioned its duties under the Act, it was plain that it had discharged those duties at the level of officer and decision maker.

Failure to mention the Act by way of mantra when making its decisions did not make the process unlawful, although it did leave the decision open to challenge, as evidenced by this case.

The application for a judicial review was refused.



Bankruptcy and debt relief orders don't rule out orders for possession

The fact that a tenant has become bankrupt or obtained a debt relief order does not mean that they cannot have a possession order made against them on the grounds of rent arrears.

That was the ruling of the Court of Appeal in the conjoined cases of *Christina Sharples v Places for People Homes Ltd* : *Stephen Godfrey v A2 Dominion Homes Ltd (2011)*.

Both tenants held assured tenancies and in both cases their landlords had applied for possession because of rent arrears.

Ms Sharples had been made bankrupt before the possession hearing. The judge said that the bankruptcy prevented him making an order for the payment of rent arrears.

However, he did grant a possession order after rejecting the tenant's argument that the court could not do so because the Insolvency Act 1986 (the Act) stated that no creditor should "have



any remedy against the property ... of the bankrupt in respect of that debt".

Mr Godfrey had obtained a debt relief order before the possession hearing. The judge took this into consideration and made a possession order suspended on payment of rent arrears.

Both tenants appealed and the main issue for the court to decide was whether a bankruptcy order or a debt relief order precluded the making of a possession order on the grounds of rent arrears relating to an assured tenancy.

In reaching its decision, the Court of Appeal said that failure to pay rent was a breach of a contractual obligation.

Events such as forfeiture, possession orders, recovery of possession by the landlord, or a bankruptcy order did not eliminate the personal indebtedness created by rent arrears.

A possession order was a remedy which restored to a landlord the full proprietary rights to his property. It was not a remedy that would lead to the rent arrears being paid and so was not prohibited by the Act.

It made no difference whether possession was ordered before or after bankruptcy. Either way, the Act did not preclude the making of a possession order and so Ms Sharples' appeal was dismissed.

The court then turned to Mr Godfrey and his debt relief order. It said that while rent arrears did not preclude the making of a suspended order, the existence of a debt relief order made it unreasonable to make the order conditional on payment of arrears. To do so would be contrary to the policy that the debtor was discharged from all qualifying debts.

This meant that where the arrears were provable in the tenant's bankruptcy or were subject to a debt relief order, no order for payment of rent arrears could be made.

Mr Godfrey's appeal was allowed to the extent that the order should be varied to exclude payment of arrears.



Camden appeals against revealing empty homes

Camden Council is appealing against a tribunal ruling that it must publish a list of all the empty properties in its area.

Judge Fiona Henderson held that publication was in the public interest and would help to bring empty homes back into use more quickly.

The case of *Voyias v IC & London Borough of Camden (Freedom of Information Act 2000)* arose after Yiannis Voyias of the Advisory Service for Squatters asked Camden to reveal details of empty properties under the Freedom of Information Act. The council refused on the grounds that publication would compromise "the prevention or detection of crime".

That decision was upheld by the Information Commissioner but has now been overturned by the First-Tier Tribunal.

Camden and the police submitted that disclosure would lead to more squatting and an increase in crimes including vandalism, drug use and threatening behaviour. The council also submitted that squatters should not be allowed to jump the queue for social housing and pointed out that the number of properties occupied by squatters in Lambeth nearly doubled after a list of long-term empty homes was made public.

However, in considering the issues, Judge Fiona Henderson, said: "The Tribunal reminds itself that squatting is not a crime and has been troubled by the lack of evidence as to the prevalence of e.g. anti-social behaviour in the renting population versus the squatting population.

"There can be no doubt that some squatters commit crime and are anti-



social, however the Appellant argues that this type of crime is not linked to squatting in that it appears in the general population.

"The Tribunal does not consider that any perceived social disadvantage of living next door to squatters, or the costs of the eviction of squatters are matters that the Tribunal is entitled to take into consideration since squatting is not illegal. However, public costs e.g. the costs of repair and extra security to Council buildings to prevent criminal damage, is a legitimate factor."

Judge Henderson then summarised the points put forward by Mr Voyias in favour of publication:

"Disclosure would promote openness, transparency and accountability in local government. Disclosure would rejuvenate the empty homes debate, raise awareness and bring more pressure on both central and local government to improve their policy and 'commitment'. It would assist academic and policy-orientated research.

"The Appellant argued that: English Heritage, the Empty Homes Agency, Urban Explorers, architects, photographers, public transparency campaigners, homelessness charities etc. would all benefit from disclosure."

In giving the decision, Judge Henderson

said: "The Tribunal is satisfied that there is already a lively and informed debate in this area, but, recognises that specific examples provide colour and are important in increasing public understanding and local involvement.

"It puts the specific empty properties into the limelight, may be an added tool to incentivise owners to re-use their properties and would enable the general public to walk up to a 'void', and see for themselves what is going on, whether it is being worked on, or has been left in limbo.

"Although the Tribunal recognises the various reasons why a property may be vacant including bereavement, the Tribunal is satisfied on the balance of probabilities that this remains a very strong public interest factor in favour of disclosure.

"The Tribunal is satisfied that publication of this list would bring a proportion of the void properties back into use earlier than would otherwise be the case and that consequently this is a strong public interest factor in favour of disclosure.

"The Tribunal has considered each category of disputed information separately and in balancing all the public interests set out above, the Tribunal is satisfied that the balance lies in favour of disclosure in relation to all the disputed information."



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