

Nuisance & Anti-Social Behaviour

OVERVIEW

1. Nuisance and anti-social behaviour can take a myriad of forms but there is also a large array of remedies available to the victims of nuisance or anti-social behaviour. In this paper I shall consider the some of these available remedies from 3 perspectives:

- Those immediately effected
- The landlords of those responsible for anti-social behaviour
- Local authorities

2. In each case I will consider the key points of the potential remedies and (where applicable) the most recent developments in each area. Particular attention will be paid to the provisions of Part 2 of the Anti-social Behaviour Act 2004 (which is expected to come into force on 30 June 2004) and the Disability Discrimination Act 1995.

THOSE IMMEDIATELY EFFECTED

3. The range of potential remedies available to the those most effected by nuisance and anti-social behaviour is perhaps widest of all. Too often, however, the remedy may be inadequate or unavailable.

3.1. Nuisance – Key Points

3.1.1. Nuisance can be either “private” or “public”.

3.1.2. A public nuisance is one which endangers the life, health, property, morals or comfort of the public or obstructs the exercise or enjoyments of rights common to the public.

3.1.3. An individual can only bring a claim for public nuisance on his own if he has suffered some particular damage above that suffered by the general public

3.1.4. A private nuisance is a condition or activity that unduly interferes with the enjoyment of land.

3.1.5. To sue in private law nuisance the claimant requires a proprietary interest in the land

3.1.6. Nuisance will normally only be committed if it can be shown that the person causing or permitting the nuisance could reasonably in his individual circumstances have done more to prevent the nuisance

3.2. Nuisance – Recent developments

3.2.1. *Marcic v Thames Water Utilities Ltd* [2003] 3 WLR 1603 - where the person causing the nuisance is operating under a statutory scheme that scheme can not be displaced by common law nuisance or even a claim under the Human Rights Act 1998

3.2.2. *Transco plc v Stockport MBC* [2003] 3 WLR 1467 - piping a water supply to the defendant's land was an ordinary use of its land within the principles in *Rylands v Fletcher* (1868) LR 3 HL 330 so that it was not liable for damage caused by a leak without proof of negligence

3.2.3. *Abbahall v Smee* [2003] 1 WLR 1472 – the existence of a nuisance may be abated by the party suffering from the nuisance. The costs of abating the nuisance are to be borne by the parties in proportions that are “fair, just and reasonable”. Where a defective roof, which served the properties of both parties, was the cause of a nuisance “reasonableness between neighbours” dictated that the costs should be borne equally by both the owners.

3.3. Claims against a landlord - Key Points

3.3.1. A landlord will be responsible for nuisance arising out of the condition of premises he has let if he ought to have known of the potentially harmful condition of the property before letting it

3.3.2. The landlord will also be liable for nuisance arising out of the condition of his property if he has retained a measure of control over the condition of the premises e.g. where he is under a duty to repair or has retained a right to enter and execute repairs. The liability arises whether or not the landlord knew or ought to have known of the disrepair unless it is caused by the act of a trespasser or a latent defect

3.3.3. a landlord will not be liable for nuisance or for breaching a covenant for quiet enjoyment if his tenant's activities which disturb the claimant arise out of the ordinary use of the premises

3.3.4. a landlord is not responsible for nuisance caused by his tenants unless he has adopted the nuisance

3.3.5. casting a claim in negligence or under the Human Rights Act 1998 will not assist a claimant who contends that a landlord should have brought possession proceedings or applied for an injunction against one of his tenants

3.3.6. An owner of land may, however, be liable in nuisance if he permits persons to congregate on his land as a base for unlawful activities which affect those occupying neighbouring land

3.4. Claims against landlords – Recent developments

3.4.1. *Donnelly v Northern Ireland Housing Executive* LAG February 2004 p32 – The tenant successfully applied for judicial review of NIHE's decision not to evict a neighbour who had been responsible for numerous acts of anti-social behaviour. The

tenant argued that the NIHE's refusal to act infringed his article 8 and article 1 protocol 1 rights and the NIHE could not show that its decision had been reached after a careful consideration of the relevant factors.

3.5. Statutory Nuisance – Key Points

3.5.1. a “statutory nuisance” is defined widely by section 79 of the Environmental Protection Act 1990

3.5.2. section 82 permits a person aggrieved by a statutory nuisance to bring a complaint in the magistrates' court

3.5.3. before bringing a complaint a notice must be given to the person against whom the complaint will be made

3.5.4. on hearing the complaint the court can make an order that the nuisance be abated or that it must not recur

3.5.5. a person who, without reasonable excuse, contravenes any requirement or prohibition imposed by the court is guilty of an offence

3.6. Protection From Harassment Act 1997 – Key points

3.6.1. the Act creates a criminal offence and a civil remedy for harassment

3.6.2. a person must not pursue a course of conduct which amounts to harassment of another and which he knows or ought to know amounts to harassment

3.6.3. “Harassment” includes alarming or causing distress to a person .

3.6.4. A “course of conduct” must involve conduct on at least two occasions

3.7. Protection From Harassment Act 1997 – Recent developments

3.7.1. *Daiichi UK Ltd v Stop Huntingdon Animal Cruelty (SHAC)*, The Times, 22 October 2003 – a corporate entity is not a “person” protected by the Act.

3.7.2. *Huntingdon Life Sciences v Stop Huntingdon Animal Cruelty (SHAC)* (unreported, 20 June 2003, Gibbs J.) – a managing director may bring a claim in a representative capacity on behalf of the employees of a company under CPR 19.6

3.8. Enforcement of restrictive covenants

3.8.1. an owner of land may be entitled to the benefit of restrictive covenants that benefit the land. Such covenants may directly or indirectly preclude the owner of the subject land from causing or permitting nuisances or annoyance on the subject land

3.8.2. the most likely case where a restrictive covenant might be available is where a scheme of reciprocal obligations was created within a defined area when the properties were first conveyed into separate ownership

3.9. Requiring the landlord to enforce covenants

3.9.1. in some leases the landlord will agree to enforce the covenants in the leases of other tenants

3.9.2. very often the tenant wishing to require the landlord to enforce the covenants in another tenant's lease must agree to contribute to or indemnify the landlord in respect of his costs

LANDLORDS

4. A landlord will usually be able to prevent anti-social behaviour caused by his tenants by applying for an injunction or by seeking possession. The Anti-social Behaviour Act 2003 expands the range and effectiveness of these remedies.

4.1. Enforcing covenants regarding conduct – Key Points

4.1.1. most tenancies will contain express covenants relating to nuisance or anti-social behaviour by the tenant

4.1.2. in the absence of an express term the court is likely to accept that the tenancy contains an implied term preventing the tenant from causing or permitting anything done on the premises to cause a nuisance or annoyance to his neighbours and other persons in the locality

4.1.3. the landlord will be able to enforce the covenant by obtaining an injunction

4.1.4. where the applicant is a social landlord there is provision in section 153 of the Housing Act 1996 for a power of arrest to be attached to an injunction to restrain anti-social behaviour in breach of the terms of a tenancy if the respondent has used or threatened violence and there is a significant risk of harm if the power of arrest is not attached

4.2. Enforcing covenants regarding conduct – Recent developments

4.2.1. Medina Housing Association v Case [2003] 1 All ER 1084 – A landlord may not obtain an injunction to restrain a breach of a tenancy agreement for any period after the tenancy has come to an end. The claimant could not therefore obtain an injunction that lasted beyond the date for possession.

4.2.2. Anti Social Behaviour Act 2003

(a) the problem that arose in Medina Housing Association will be reduced because the

category of “relevant landlords” that can apply for an anti-social behaviour injunction under the new section 153A of the Housing Act 1996 will include housing action trusts and registered social landlords as well as local authorities (see the new section 153E(7))

(b) a new section 153D of the Housing Act 1996 will enable “relevant landlords” and charitable housing trusts a statutory right to apply for injunctions to restrain breaches of tenancy agreements which relate to anti-social behaviour. Where the court is satisfied that the conduct includes the use or threatened use of violence or that there is a significant risk of harm the court may also exercise further powers under sub-sections 153D(3) and (4). Section 153D(3) permits the court to include in the injunction a provision that the person against whom the injunction is granted may not enter or be in any premises or any area specified in the injunction. Section 153D(4) permits the court to attach a power of arrest to the injunction.

4.3. Possession Proceedings – Key Points

4.3.1. the Rent Act 1977, Housing Act 1985, Housing Act 1988 all provide a ground for possession where the tenant or any person residing or lodging with him or any sub-tenant of his

(a) has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers, or

(b) has been convicted of using the dwelling-house or allowing the dwelling-house to be used for immoral or illegal purposes

4.3.2. under each of these grounds the court can only make an order for possession if it considers that it is reasonable to do so

4.3.3. where the tenancy does not fall within one of the residential statutory schemes the landlord will probably be able to obtain possession by serving a notice to quit or forfeiting the lease

4.4. Possession Proceedings – Recent Developments

4.4.1. *New Charter Housing (North) Ltd v Ashcroft* LAG May 2004 p23 – The Court of Appeal held that the judge had been wrong to make a suspended possession order in order to give the tenant an opportunity to demonstrate that she could control the behaviour of her son. There was no evidence of remorse for her son’s behaviour and she had uttered threats to her neighbours.

4.4.2. Anti-Social Behaviour Act 2003

(a) Section 14 creates “demotion orders” which reduce the security of tenure of tenants who have engaged or threatened to engage in anti-social behaviour. New sections 82A and 6A are inserted into the Housing Act 1985 and the Housing Act 1988 respectively for this purpose. Under both provisions the landlord must first serve a notice on the tenant that it will seek a demotion order. The court may then make a demotion order if it considers it is reasonable to do so. The effect of the demotion order will be that the existing secure or assured tenancy will come to an end and be replaced by a new tenancy (although the rent account will be carried over to

the new tenancy). Where the demoted tenancy was a secure tenancy the new tenancy will be subject to a regime similar to the introductory tenancy scheme in the Housing Act 1996 i.e. for the period of 1 year the landlord is able to terminate the tenancy for any reason subject only to a review to be carried out by the landlord. If the demoted tenancy was an assured tenancy the new tenancy will be an assured shorthold tenancy, vulnerable to termination following the service of a section 21 notice, for 1 year.

(b) section 16 of the Act inserts new provisions into the Housing Act 1985 (section 85A) and Housing Act 1988 (section 9A) which will require the court, when it is considering whether it is reasonable to make an order for possession under ground 2 of Schedule 2 to the HA 1985 or ground 14 of Schedule 2 to the HA 1988 to consider “in particular” the effect on other persons that the nuisance or annoyance has had and will have if repeated in the future.

4.5. Possession Proceedings and the Discrimination Act 1995

4.5.1. By section 22(3)(c) of the Disability Discrimination Act 1995 it is unlawful to discriminate against a disabled person “by evicting the disabled person or subjecting him to any other detriment.”

4.5.2. a person has a disability for the purposes of this Act if he has a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities . In addition where an impairment would be likely to have a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities, but for the fact that measures are being taken to treat or correct it, the impairment is nevertheless to be regarded as having a substantial adverse effect on the person’s ability to carry out day-to-day activities

4.5.3. In the context of the Disability Discrimination Act 1995 there is no need for the applicant to show that a non-disabled person but who was otherwise in the same situation as the disabled person would have been treated differently. It is sufficient that the disability is the cause of the reason for the treatment

4.5.4. Where a disabled person is being evicted because of their disability the person evicting them can may be able to justify this treatment under section 24. Treatment is only justified where the person who is seeking to justify conduct is of the opinion that one of the conditions set out in section 24(3) is satisfied and it is reasonable of him to hold that opinion.

4.5.5. Where the alleged discriminatory conduct is the eviction of the disabled person the 2 conditions in section 24(3) that may be relevant are that:

- (a) the treatment is necessary in order not to endanger the health or safety of any person (including the disabled person) or
- (b) the disabled person is incapable of entering into an enforceable agreement or giving informed consent and for that reason the treatment is reasonable.

4.6. Possession Proceedings and the Discrimination Act 1995 – Recent Developments

4.6.1. *North Devon Homes Ltd v Brazier* [2003] HLR 59 - the tenant whose anti-social conduct was caused by his paranoid psychosis was able to invoke the protection of the Disability Discrimination Act 1995 when the landlord brought possession proceedings on the grounds of his anti-social behaviour as his conduct was caused by his disability.

4.6.2. *Servite Homes v Perry* (unreported, 1 March 2004 Recorder Foskett QC) – the tenant, who suffered temporal lobe epilepsy and depression, had been abusive and aggressive to other tenants and employees of the landlord. The judge was satisfied that the tenant suffered from a “disability” but found that the tenant’s “paranoid personality”, which was a cause of her behaviour, was not attributable to her epilepsy or the medication used to control it as she had been able to control her behaviour during periods that she had been bound by an undertaking given to the court.

LOCAL AUTHORITIES

5. Local authorities have a number of powers to deal with nuisance and anti-social behaviour. When Part 2 of the Anti-social Behaviour Act 2003 comes into force this armoury should be sufficiently flexible to provide a “legal solution” in most cases of anti-social behaviour. Some of the powers referred to in this section are available to social landlords other than local authorities.

5.1. Statutory Nuisance – Key Points

5.1.1. where a local authority is satisfied that a statutory nuisance exists then it must serve an abatement notice

5.1.2. the person served with the abatement notice may appeal against the notice to the magistrates’ court within 21 days of service of the notice

5.1.3. if a person on whom an abatement notice is served, without reasonable excuse, contravenes or fails to comply with any requirement or prohibition imposed by the notice, he shall be guilty of an offence

5.1.4. in most cases it is a defence to prove that the best practicable means were used to prevent, or to counteract the effects of, the nuisance .

5.2. Statutory Nuisance – Recent Developments

5.2.1. *Westminster City Council v MacDonald* (unreported, 27 October 2003, DC) – there was no requirement to give evidence that a busker was interfering with the enjoyment of land by any particular occupier nor was it necessary to give evidence by way of scientific measurements to establish a statutory nuisance

5.3. Anti-Social Behaviour Orders – Key Points

5.3.1. section 1 of the Crime and Disorder Act 1998 permits local authorities to apply for anti-social behaviour orders (ASBO) in respect of persons aged 10 or over if:

- (a) that the person has acted in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself; and
- (b) such an order is necessary to protect other persons from further anti-social behaviour

5.3.2. the local authority must consult with the relevant chief officer of police before applying for an ASBO although the chief officer may delegate this duty to another officer

5.3.3. the application is made to magistrates' court acting in its civil capacity

5.3.4. the breach of an ASBO is an offence triable both ways

5.4. Anti-Social Behaviour Orders – Recent Developments

5.4.1. Police Reform Act 2002 – the provisions effecting ASBOs came into force on 2 December 2002 so that:

- (a) social landlords other than local authorities can apply for ASBOs
- (b) under section 1B of the CDA 1998 an ASBO can be made by the county court as an ancillary claim in principal proceedings if it would be reasonable for an application for an ASBO to be made against another party. If the applicant authority is not already a party to the principal proceedings it may apply to be joined for this purpose
- (c) under section 1C of the CDA 1998 magistrates can make an ASBO when an offender is convicted of an offence if they consider that the offender has acted in a manner that caused or was likely to cause harassment, alarm or distress
- (d) under section 1D of the CDA 1998 the magistrates' court has power to grant an interim ASBO

5.4.2. Anti-Social Behaviour Act 2003 –

- (a) Part 9 of this Act extends the range of persons who can apply for ASBOs to include county councils
- (b) the Act also permits a non-party to be joined to county court proceedings in order that he be made subject of an ASBO provided his anti-social acts are material to the principal proceedings.

5.4.3. Chief Constable of Lancashire v Potter (Times, 10 November 2003, Admin Ct) – conduct is “likely” to cause harassment, alarm or distress within the meaning of s.1(1)(a) if it is more probable than not that it will have this effect. This must be proven to the criminal standard of proof.

5.4.4. C v Sunderland Youth Court [2003] EWHC 2385 (Admin) – guidance given on the procedure to be adopted where a magistrates' court is considering making an order under section 1(C) of its own motion. The court should indicate the basis on which

considers an order might be appropriate and the material on which it proposed to rely so that the relevant person can make submissions as to why the order should not be made at all or should not be made in the form proposed by the court

5.4.5. *R (on the application of Kenny) v Leeds Magistrates' Court* [2004] 1 All ER 1333 - where a defendant is under 18 years old the court has to have regard to the principle that the defendant's best interests are a primary consideration when addressing the question of whether it is just to make an order

5.4.6. *R (on the application of M) v SoS for Constitutional Affairs* (Times, 31 March 31 2004, Court of Appeal) – section 1D and the ability to grant an interim ASBO was held not to breach article 6 of the ECHR.

5.5. Injunctions under section 152 of the Housing Act 1996 – Key Points

5.5.1. Sections 152 and 153 of the Housing Act 1996 allow a local authority to apply for an injunction to prohibit persons from:

- (a) engaging or threatening to engage in conduct causing or likely to cause a nuisance or annoyance to persons residing in, visiting or otherwise engaging in a lawful activity in residential premises or in the locality of such residential premises
- (b) using or threatening to use residential premises for immoral or illegal purposes
- (c) entering residential premises or being found in the locality of such premises

5.5.2. There are a number of limitations on the usefulness of the present regime:

- (a) only local authorities can apply for these injunctions
- (b) there must be a connection between some “residential premises” and the victim of the anti-social behaviour so that those working in a housing office are not protected
- (c) The “residential premises” effected must be let on a secure or introductory tenancy or be provided by a local authority under its homelessness duties
- (d) an injunction may only be granted if the court is satisfied that violence has been used or threatened

5.6. Injunctions under section 152 of the Housing Act 1996 – Recent Developments

5.6.1. *Harrow LBC v G* [2004] EWHC 17 (QB) – an injunction under s.152 should not be granted against a minor if it can not be enforced. As the minor could not be sent to prison and had no earnings from which to pay a fine the injunction should not have been granted

5.6.2. *Manchester CC v Lee* [2004] HLR 11 – applying *Enfield LBC* and *Nottingham CC*, the Court of Appeal held that section 152 does not apply where the victim of anti-social behaviour is an owner-occupier.

5.6.3. *Manchester CC v Ali* [2003] 11 – there is no need for a geographical nexus between the anti-social behaviour and the locality of “residential premises” covered by section 152. Thus 3 head-butts delivered at a Tesco Metro store over 1km away from the relevant “residential premises” was conduct caught by section 152.

5.6.4. Barnett v Hurst [2003] HLR 19 – principles of whether committal proceedings should be adjourned if criminal proceedings are contemplated discussed by the Court of Appeal. In the event the criminal proceedings had resulted in an acquittal before the appeal was heard so a decision was academic but the court stressed the “overriding principle that orders of the court should be obeyed”

5.6.5. Stafford BC v Haynes [2003] HLR 46 – it was not appropriate to adjourn committal proceedings as the defendants admitted they had assaulted a housing officer when the orders were served on them and there was no certainty that criminal proceedings would be brought

5.6.6. Anti-social Behaviour Act 2004 - Section 13 of the ABA 2003 introduces a new regime for anti-social behaviour injunctions without the present limitations:

(a) the power to apply for an injunction is extended to housing action trusts and registered social landlords

(b) there no longer needs to be a link between the anti-social behaviour and “residential premises” as narrowly defined at present. It will be sufficient if nuisance or annoyance is caused to any person within section 153A(4) which includes persons employed in connection with a relevant landlord’s housing management functions as well as those with a right to occupy any “housing accommodation” owned or managed by a relevant landlord or in the locality of such accommodation. It is immaterial where the conduct actually occurs (section 153A(5))

(c) an injunction to restrain anti-social behaviour (under section 153A) or the unlawful use of premises (under section 153B) no longer depends on the use or threat of violence. If violence has been used or threatened or there is a significant risk of harm to any person specified in section 153A(4) then the court can additionally make an order excluding the defendant from specified premises or areas or can attach a power of arrest to the injunction.

5.7. Injunctions under section 222 of the Local Government Act 1972 – Key Points

5.7.1. where a local authority considers it expedient for the promotion or protection of the inhabitants in its area it may institute civil proceedings

5.7.2. the local authority may exercise this power to restrain a public nuisance or, where the local authority is charged by statute with enforcing a particular law, to enforce the criminal law

5.8. Injunctions under section 222 of the Local Government Act 1972 – Recent Developments

5.8.1. Nottingham CC v Zain [2003] HLR 16 – local authority was entitled to apply for injunction to prevent a suspected drugs dealer entering a housing estate. The fact that a criminal offence was being committed as well as a public nuisance did not prevent the local authority from applying for an injunction. Some doubt cast on whether section 222 could be relied upon to simply enforce the criminal law where the local authority was not charged with enforcing the law

5.8.2. Barking & Dagenham LBC v Markin (unreported, 23 February 2004, Patten J)
– injunction granted under section 222 to restrain individuals from operating a pirate radio station which was causing a public nuisance

5.8.3. Anti-social Behaviour Act 2003 – section 91 (not yet in force) will permit the court granting an injunction under section 222 in respect of anti-social behaviour to attach a power of arrest to the injunction

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