

Government guidelines aim to stop evictions going through the roof

SOCIAL landlords and local authorities should find alternatives to eviction and treat it as a last resort, says new guidance from the Office of the Deputy Prime Minister (ODPM).

RSLs will be expected to be pro-active and draw up a policy to help tenants with their money or other problems as soon as possible, rather than sticking to a hands-off approach.

Backed by a variety of organisations including the charity Shelter, the Departments for Work and Pensions and Constitutional Affairs, and the Citizen's Advice Bureau, the ODPM guidance sets out what it would expect RSLs to provide as part of a rent arrears strategy.

Research by Heriot-Watt and Glasgow Universities found that evictions doubled between 1993 and 2003, and more than 26,000 tenants lose their homes every year.

Vulnerable tenants, especially those with mental health problems, are more likely to be evicted as they can find managing money difficult and

build up rent arrears.

The National Institute for Mental Health in England will raise awareness of mental health issues by training housing professionals and will inform mental health organisations about the ODPM guidance.

The guidance will apply to social landlords and all stages of the rent arrears management service from RSL board members down to housing officers and tenants.

They will need to tackle the tenants directly, give them face-to-face advice, and set up rent incentive schemes, debt counselling and benefits advice.

The Department for Constitutional Affairs is looking into setting up a pre-action protocol for possessions cases

next year. They will consult with the legal profession and other interested parties in the meantime.

The Key Points

- * Draw up a policy to tackle rent arrears
- * Support tenants with mental health problems
- * Get appropriate training for staff
- * Act early to contain problems

Firm foundations for a housing expert



Glazer Delmar's leading housing lawyer has a wealth of experience to draw on when helping clients

SENIOR housing lawyer Mark Martynski has specialised in housing since early in his career, and is an expert in the law governing disrepair, housing associations and their co-operative equivalents, homelessness, and anti-social behaviour.

He has a wide and varied experience in all aspects of housing law, and since joining Glazer Delmar 12 years ago, he has managed many cases reflecting the changes in the way public housing is run.

He is an invaluable member of the team because he has worked on so many important cases, including: *Alamo Housing Co-op v O'Daly* and others - in the Court of Appeal.

"This case highlighted the policy change between London boroughs now and 20 years ago, regarding the use of 'short-life' properties. This was a valuable case because it clarified the law for social landlords," said Mark.



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Tough action on ASB can backfire if RSLs don't take care

Courts need evidence of special circumstances to show that 'without notice' injunctions are necessary

'WITHOUT notice' injunctions against tenants accused of anti social behaviour (ASB) need to be used with care – and landlords who do not follow proper procedures may find they are out of pocket.

That's the message from a landmark case, **Moat Housing Group South Ltd v Harris and Hartless**, where a tenant was ordered to leave her home with her four children at 9pm at night. Landlords need to make sure any legal remedy is appropriate.

'Without notice' injunctions, especially exclusion orders without notice or with a power of arrest attached, should only be pursued in exceptional circumstances, the Court of Appeal ruled. There

'without notice' injunction.

Susan Hartless was ordered to leave her home immediately on the evening in October 2004, and to control her four children.

Moat had not warned Hartless or complained about her behaviour in the three years she had lived on the estate. She and the children had nowhere to go and contacted a solicitor on the advice of the police.

At the same time, Moat was drawing up an ASB policy which claimed that they would intervene early, and use a system of warnings and mediation to deal with ASB, with legal sanctions as a last resort.

Hartless's partner Carl Harris, who did not live with the family, was also excluded from the Midhurst Road area and was forbidden to cause nuisance, or contact a list of named people.

The tenant's solicitor got an order from a High Court judge who delayed the eviction and exclusion until the hearing of an Appeal. A few weeks later, a circuit judge found that the children were out of control, made an outright possession order and granted the ASBOs lasting for four years.

The district judge who granted the exclusion order had confused Harris and Hartless with another family whose violent behaviour was much more serious, the Court of Appeal heard. They left the estate in response to orders served on them.

Neighbourhood watch: Tackling anti-social behaviour can be tricky – you need to know what legal measures are available and when to use them

The Key Points

- * The use of 'without notice' injunctions is exceptional
- * Usually the other side is entitled to notice
- * Look at S.45 of the Family Law Act 1996 for guidance
- * Keep proper records of all ASB incidents
- * Get signed witness statements as early as possible
- * Review and update your ASB policy
- * Get legal advice at every stage
- * If doing DIY, get good legal training

Contact Gerard O'Toole for further information



must be evidence of a significant threat of violence and previous serious misbehaviour.

RSLs should also make sure they do not breach their own tenancy agreements or their written policies, and follow Housing Corporation guidance on using graduated sanctions to respond to ASB.

Following complaints about the behaviour of two families on a housing estate in Liphook, Hampshire, the registered social landlord (RSL) Moat, who manages 13,000 houses in south east England, applied for possession and obtained a

Moat happy with existing policy

REFERRING to the without notice action as a test case, a spokeswoman for Moat Housing Group said: "There was a well-developed anti-social behaviour policy and strategy in place and it does not require any amendments." The group would not be making any changes in the wake of the case, she said.

RSLs should make sure they do not breach their own tenancy agreements



Moat used a housing management consultant to investigate the case, who was supposed to provide alternatives to legal action. He and seven witnesses claimed Hartless and Harris had been violent or threatened violence, and the legal action was taken to protect witnesses.

Most of the evidence was seriously deficient, being mainly hearsay and not specific enough, failing to distinguish between the two families the Court of Appeal ruled.

Some of the Hartless children were blameless, and the consequences of intentional homelessness, such as being taken into care, or living in substandard accommodation, were so serious that RSLs should make sure they intervened earlier to avoid them, the Court of

Appeal said, ruling that the possession order should have been suspended.

The Court of Appeal ruled that an ASB injunction could be used as an alternative to an exclusion order to control Harris and Hartless's behaviour and protect witnesses. The court also said that it would be best if judges in the county court, when deciding whether to exercise their discretion to make an injunction 'without notice', followed the guidance on this issue given in section 45(2) Family Law Act 1996.

The Court of Appeal also found Moat had breached the terms of their own tenancy agreement which said they would write and give reasons if a tenancy was being ended, although Moat claimed that in extreme circumstances they could go straight to legal action.

Proper advice and training are vital

"GET legal advice before you launch an action, especially if going without notice or for exclusion, unless you want to risk an expensive and embarrassing court case, with costs being awarded against you," said Gerard O'Toole, head of our social housing department.

"RSLs are under increasing pressure to reduce legal expenses and many associations have set up DIY teams of officers to handle ASB and other tenancy litigation themselves.

"Good training is important for these officers and so is the provision of

legal support when they need it from experienced lawyers.

"Glazer Delmar has provided this training and acts as consultant to a DIY team at Notting Hill Housing Trust. This is an arrangement that is, from the number of enquiries we receive, proving increasingly attractive to RSLs.

"The Moat case illustrates the pitfalls facing RSLs, but the Court of Appeal has now provided welcome guidance on the use of different remedies for dealing with ASB and the detailed judgement is essential reading for housing professionals working in this field."

LAs can help neighbours turn over a new leaf

High hedges could be for the chop if they limit enjoyment at home

IN AN attempt to cool tempers between neighbours over the height of Leylandii and other high hedges, the Anti-Social Behaviour Act 2003 has given powers to local authorities to settle disputes.

Two people have died in rows over hedges and a pressure group, Hedgeline, has been set up to deal with the growing number of conflicts between neighbours over hedges.

If a hedge is evergreen and over two metres high, and interferes with access or reasonable enjoyment of home and garden, you can complain to the local authority, as long as you have tried to settle the problem with your neighbour directly first.

It will cost people complaining about hedges a locally determined fee, set by the council.

The LA will have to inspect the hedge and issue a remedial notice if they think it is putting a damper on the gardeners' enjoyment.

They can order the hedge to be cut, or the council can cut the hedge if the property owner does not take action. The hedge-owner can be fined up to £1,000 for not complying.

Either side can appeal to the Secretary of State on grounds set out in the Act if they are not satisfied with the council's decision.

These include:

- * a challenge to the complaint that the high hedge is affecting the homeowners' enjoyment;
- * that the LA's solution will not solve the problem;
- * the LA's solution is over the top
- * there is not enough time to take action.

Any owner of land in the area where the high hedge is situated must be sent appeal documents by the Secretary of State who must publish the decision and the reasons for it.



Ask Gerard

Gerard O'Toole answers your housing law questions

Can we use Ground 8 to evict?

Q My Association has an assured tenant against whom we obtained a suspended possession order a couple of years ago on Grounds 10 & 11. The terms of the SPO were breached and we have been forced to issue two warrants, both of which have been suspended. Although the tenant has breached the strict terms of the latest suspension, the arrears are falling, but not as quickly as we would like.

We are thinking about fresh proceedings based on Ground 8 in order to obtain a mandatory outright order. Can we do this?

A Gerard says: Probably not, although the law is far from clear, as it has not been tested in the higher courts. As you know the assured tenancy ended on the first breach of the SPO and since then the former tenant is a tolerated trespasser. So there is no tenancy to attack using Ground 8. Also, to rely on Ground 8, service of a Notice Seeking Possession is mandatory, but serving one would be a unilateral recognition that an assured tenancy exists. If the occupier obtained good legal advice, the service of the notice and reliance upon Ground 8 could be challenged. The landlord can't start fresh proceedings using Ground

8 because there is no tenancy and the occupier can stay because he/she is complying with the suspended warrant. Confused? You may feel that, with hindsight, you should have relied upon Ground 8 in the first place. If you had obtained an outright order, you could have allowed the tenant to stay after the date for giving up possession so long as he paid rent and a contribution towards the arrears. If the tenant breaches this arrangement and you issued a warrant, the court has no power to suspend.

If you would like Gerard to tackle another thorny question, e mail him gotoole@glazerdelmar.com

brief encounters

HELPING TENANTS BUY THEIR HOMES

TENANTS on low incomes can get a foot on the housing ladder using the Government's shared equity housing scheme Social Homebuy.

Council and Housing Association tenants earning less than £15,000 in the north of England and £20,000 in the south-east will be eligible to buy a share of at least 50 per cent in their homes.

The council or HA will hold the rest of the share, and the Government wants landlords to use the proceeds to build new social housing.

Social Homebuy is to become available from April 2006. The scheme aims to get nearly half a million people onto the property ladder by 2010.

WE CAN TRAIN RSLs

Glazer Delmar now does training, to help RSLs help themselves and carry out DIY work. The firm is aiming to run a series of seminars for social landlords starting later this year.

ON SHOW IN BRUM

Glazer Delmar will taking a stand at the National Housing Federation Conference on the 14-16 September – stand A206, to be precise.

Legal experts will be available to explain to social landlords how they can manage their tenanted and leasehold property. Gerard O'Toole, Mark Martynski and other members of Glazer Delmar's social housing team will be on hand to meet existing clients and seek out new contacts.

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of social housing, as well as on high-profile immigration and asylum cases.

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