

## RECYCLING ASB?

Since taking on the ASB brief for the National Residents Group, I have attended local panel meetings with my own housing association, training events by MHP and seminars organised by the police at New Scotland Yard on ASB. More are planned in the near future. You may recall me always seeming to ask the same questions centring on what happens to ex-residents after eviction in ASB cases. “Will they be moved back in somewhere nearby and be able to cause problems all over again?” is one of my favourites as a lead into my main question. “Are the original complainants likely to suffer repercussions from those who were evicted?” I do this with the sole intention to judge and compare the responses from local, regional, national, training and special interest groups in order to give balance and accuracy on what has gone before. My thinking is that this could happen and has in the past as there are court judgements do prove this, but is not a common occurrence. A recent magazine article sponsored by Whiteheads Solicitors who specialise in this field answers a number of questions and will be of interest.

### **Allocation of homes when there has been a previous history of ASB.**

In the near future, there is every possibility of being a judicial review on the granting, management and termination of tenancies which has far reaching implications for RSL's. At the moment there is only 'regulatory guidance' published on how properties should be allocated on eligibility, priority need and suitability. The Housing Act of 1996, Part 6 (as amended) is applicable and states reasonable preference groups require priority in allocation. Also that Section 170 of the Act requires co-operation between RSL's to meet housing needs. *It would seem to me that following an eviction by a landlord, it becomes another landlord's responsibility to re-house as a priority. All one could do would be to hope that it would not be too nearby.*

Recent research has indicated that where there has been a history of ASB, breaches of tenancy issues or unacceptable conduct for half of the decisions of other RSL's to decline Local Authority nominations. *This must go some way to protect the interest of existing residents.* Other reasons given were: employment status, unmet support need, criminal record and applicant unsuitable for vacancy nominated. The provisions in the Act are not specific for unacceptable behaviour and only give a general comment, not giving much detail as to the unsuitability of the proposed tenant. The definition in the Act for unacceptable behaviour and ASB is 'that which would entitle the authority to a possession order under The Housing Act 1985, (a previous Act) Schedule 2, 1 – 7 on any grounds. This does include anyone who is living with the tenant also. Also considering, test the suitability of a prospective tenant, taking into account any past misbehaviour, including ASB, tenancy rule breaches and the circumstances to be a tenant of the

landlord. Any enforcements should be considered if it was under two years ago. If there has been a tenancy terminated this can provide evidence of unsuitability, but the period of time since this must be taken into account and so too any changes in their circumstances may permit the prospective tenants now able to sustain a tenancy. An ineligible tenant has the right to be treated as eligible and re-apply. The decision on re-housing is a judgement call on the part on the RSL concerned.

The article specifies that 'many nominations for housing come from Local Authorities' and places a duty on RSL's to co-operate with Local Authorities which we all know. *But is this a generalisation? Should it in fact say 'Most' or perhaps do we really mean, 'All'?* Also, it means entering into a 'Nomination Agreement' which means that the needs of 'reasonable preference groups encompassing the suitability and exclusion aspects. *Clearly this needs clarification if discrimination, be it either positive or negative is to be avoided?* RSL's are still able to reject unsuitable applicants. Comprehensive policies are needed to assess tenancy applications and a judgement made on its own merits. Good record keeping is essential. When considering a nomination from a Local Authority four points must be taken into account. First, the applicant is offered free advice and assistance. Second, reasonable preference groups must be considered. Third, an element of choice is offered to applicants. Finally, decisions based on the specific type of applicant could bring on an appeal.

RSL's in the past did not have to concern themselves about appeals that challenged the manner in why they refused an application for housing. A recent test case, *Weaver v London & Quadrant Housing Trust* has ruled that RSL's can now be subjected to judicial review. Any applicant who now feels that the decision making process used by an RSL was flawed and now appeal to the High Court to review the process used in most cases, but not the actual decision. The process of allocating tenancies is an important area where the decision making process has to be spot on to avoid the risk of a successful judicial review.

## **ASB: Evicted tenant returns to cause trouble for complainants**

On 11<sup>th</sup> September 2009 the judgement of a Court of Appeal case brought by a Michael Redpath against Swindon Borough Council which was dismissed. The case centred on the Housing Act 1996 where a former tenant returned to the area from which they were evicted and caused further trouble. The case also highlighted that a landlord can take action against former tenants and owner occupiers subject to the merits of the case. Section 153A(1) of the Act was used to the council's continuing pursuit of a further anti-social behaviour injunction (ASBI) against its

former tenant. The appellant had claimed that as he was no longer a tenant the matter of housing related issues were no longer applicable to him.

The background facts are as follows. The appellant Redpath used to be a secure tenant of Swindon Borough Council, where he had lived for 48 years, a tenant from 1985 until his eviction in July 2006. The eviction was due to his persistent drunkenness. Redpath had done a spell in prison on in May 2003 on his release, started a campaign of harassment on a couple who had reported him for the offence that he was convicted. Threats were made against them and there was damage to their property as well as having rent arrears. A suspended possession order was granted against him in July 2005. The bad behaviour did not stop there, it went on. In October 2005 at Swindon Magistrates Court there was a conviction for an assault on a pub landlord and again in May 2006 for criminal damage which led to the lifting of the suspension of the possession order in June 2006. The Judge granted Swindon Council its first ASBI which prohibited Redpath entering Warneage Green for one year. Eviction followed in July 2006.

As he did not comply with the first ASBI, it was varied on 9<sup>th</sup> October 2006 to prohibit Redpath from entering Warneage Green or any pub in the village of Warnborough, Wiltshire. He was also forbidden engaging in, or threatens to engage in conduct which was capable of causing nuisance or annoyance to any person residing in Warneage Green and or to any person engaged in lawful activity, or neighbourhood of Warneage Green with a power of arrest attached. Not put off by this, in March 2007 four acts of criminal damage were committed earning him eight weeks in prison by local magistrates. In April 2007, only days apart, in the County Court this time, Redpath was given a further eight months in prison for breach of the second ASBI consisting of the four acts of damage he was convicted for by the magistrates. On the same date a further ASBI was issued on similar terms of the first to remain valid until April 2008.

Redpath kept himself free of further offending until almost the end of the second ASBI when he returned to Warneage Green and six further incidents were the result and a third ASBI. The case come before Judge Wade on 23<sup>rd</sup> June 2008 Redpath was only given a fine of £100 for breaching the second injunction and an interim injunction was granted until 23<sup>rd</sup> July 2008 terms the same as before and valid for three years, expiring in July 2011.

Evidence was given at the hearing about the council's housing interest in Warneage Green. Some tenants had exercised their 'right to buy' but ten houses and four flats and a block of garages where criminal damage had occurred. Some more council properties had also been sold on long leases but the council was still the freeholder. Though Redpath was no longer a tenant, a question arose that 'there was a sufficient nexus for the council to say that there was jurisdiction within the scope of the Housing Acts, which required the conduct to be housing related. The Judge agreed that there was sufficient grounds and proceeded to grant the third injunction. ASBI

In the case findings, Lord Justice Rix examined how the 2003 ASBI legislation constituted a complete reworking of statutes and refinement of section 153A in 2006 remains current. Section 152 only applied to local authority residential premises and only empowered them to seek an injunction, the 2003 version not limited to premises of any kind but requires a victim who has one of the defined relationship with housing accommodation owned or managed by a relevant landlord or is a person employed in connection whether or not by a relevant landlord in connection with the exercise of a relevant landlords housing management functions (section 153A(3)). Moreover, a relevant landlord now extends beyond local authorities to include, housing associations and RSL's, any of whom can apply for an ASBI. He concluded that the broadening of ASBI legislation in 2003/6 is a clear indication that the proper interpretation of what is implied by 'housing related conduct', a quoted example being 'conduct which directly or indirectly affect the housing management functions of a relevant landlord is not to be regarded as a narrow but a broad field.

Lord Neuberger of Abbotsbury has added in reasonably plain language "It is plain from the legislation referred to by LJ Rix, indeed to anyone in this country who keeps up with the news, that the legislature is very concerned about anti-social behaviour, and is keen to take steps, to empower others to take steps, to discourage and prevent such behaviour. It would, of course, be wrong to interpret legislation such as section 153A of the 1996 Act in an artificially wide or impractical way or so as to be oppressive to those<sup>3</sup> who are alleged to be behaving offensively: even if they are behaving offensively, such persons have rights as well. However, it would be equally wrong to interpret such legislation in a way which is artificially restrictive or which discourages or disempowers responsible and considerate landlords from taking proportionate steps in appropriate cases to protect their tenants who will normally have very limited resources and limited access to legal advice, and indeed who will often be scared of taking action, from abusive behaviour".

For a full copy of the judgement, please see second attachment if hyperlink does not work.

[http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWCA/Civ/2009/943.html&query=title+\(+redpath+\)+and+title+\(+v+\)+and+title+\(+swindon+\)&method=boolean](http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWCA/Civ/2009/943.html&query=title+(+redpath+)+and+title+(+v+)+and+title+(+swindon+)&method=boolean)