

Anti-social behaviour essay sample



**ASSIGN
BUSTER**

You could not fail to miss the articles in the press and the programmes on television, such as, ‘ Neighbours from Hell’. Ideas about what ‘ anti-social behaviour’ is vary widely from children playing games on unauthorised areas to burglary, muggings and racial harassment. Noise is a constant source of complaints in many areas. The definition, which seems to cover all aspects of anti-social behaviour is that provided in the Crime and Disorder Act 1998:

Anti-social behaviour is any behaviour that causes or is likely cause harassment, alarm or distress to one or more persons not of the same household as the perpetrator.

Anti-social behaviour not only affects individual’s lives but whole communities can suffer, becoming no go areas and undesirable places to live. It is a problem, which crosses all types of tenure, and therefore social and private rented tenants as well as owner-occupiers are all vulnerable. In recent years, the government has recognised the problems caused by the anti-social behaviour of an unreasonable few. The reduction of anti-social behaviour is one of the Home Office’s main targets and is also being considered as a future Public Service Agreement target.

The Social Exclusion Unit’s Policy Action Team 8 (PAT8) were responsible for the first inter-departmental strategy to tackle anti-social behaviour, it included a timetabled set of objectives, which have implications for the work of local authorities and other agencies.

In this assignment I intend to identify the remedies available to Landlords in order to deal with anti-social behaviour.

Legal Remedies

The first government proposals addressing the issue of anti-social behaviour were contained in the 1995 Department of Environment consultation paper entitled *Anti-Social Behaviour on Council Estates: Consultation Paper on Probationary Tenancies* (DoE, 1995).

The Conservative Party proposals were translated into legislation in the *Housing Act 1996* and contained three main elements to tackle the issue of neighbour nuisance in the social rented sector.

1. Probationary Tenancies

These allow Local authorities to grant introductory tenancies rather than a secure tenancy.

This type of tenancy is designed to ensure that new tenants do not cause nuisance or annoyance to neighbours or anyone in the locality. There is no requirement to prove any ground for possession, nor is there any discretion on the part of the judge. Certain procedural requirements, including offering an internal review of the decision, must be completed before possession can be sought in the Court. The introductory tenancy lasts twelve months and providing possession proceedings have not been commenced, converts automatically to a secure tenancy after this time.

This type of tenancy is not available to Registered Social Landlords (RSL's). The Housing Corporation has, however, developed guidelines for the use of Assured Shorthold Tenancies, known generally as “ Starter Tenancies” (Housing Corporation, 1999).

2. Extended grounds for possession

Tenants of social landlords are generally either secure or assured and as a result are subject to the provisions of either the Housing Act 1985 or the Housing Act 1988.

Both Acts contain two relevant grounds and landlords can make use of the Courts in order to take action against any tenant for a breach of the tenancy and a specific ground relating to nuisance and illegal behaviour. The grounds (2 in the 1985 Act and 14 in the 1988 Act) were extended by the Housing Act 1996. The amendments made four main changes:

- * Including visitors to the dwelling amongst those whose conduct was to be considered
- * Including conduct “ likely to be a nuisance”, so that it was not necessary to prove that anyone had actually suffered a nuisance or annoyance and accordingly intended to make it easier to use “ professional” witnesses;
- * Extending those who were suffering from the nuisance from “ neighbours” to any persons “ residing, visiting or otherwise engaging in a lawful activity in the locality”;
- * Adding to relevant convictions those of an arrestable offence committed in, or in the locality of, the dwelling house.

It would seem from research available that for serious cases of anti-social behaviour most landlords use the traditional remedy of seeking possession for breach of tenancy conditions.

3. New forms of Injunctions

Injunctions are another tool available to landlords. Section 152 of the Housing Act, 1996, provides for application for an injunction against any persons (not just tenants) to prohibit that person from committing or threatening to commit violence. A power of arrest may be attached and the police may arrest immediately, without reference to the Court.

Section 153 of the Housing Act, 1996, allows the Court to grant an injunction and attach a power of arrest to one or more provisions of the injunction, in relation to an injunction concerning the breach or anticipated breach of a tenancy condition, again in cases of violence or threatened violence.

The disadvantages of injunctions are:

- * If complied with in the short term, the Court may conclude that immediate possession is not necessary;
- * Injunctions tend to be short term remedies;
- * They need to be sought swiftly – injunctions will not be granted in relation to stale incidents;
- * In all cases other than serious incidents, a course of conduct is required (i.e. likelihood of repetition required);
- * Breaches may be difficult to prove or apprehend.

Injunctions may be obtained against children in exceptional circumstances. The problem is that there is a lack of suitable means of punishment for breach.

Injunctions are most likely to be granted where the child is 17 and/or where the child has funds or some source of income. The leading case is *Wookey v Wookey; Re: S (a minor)* [1991] 3 WLR 135 [1991] 3 ALL ER 365.

The Crime and Disorder Act 1998

The Crime and Disorder Act (CDA) 1998 established the Local Crime and Disorder Reduction Partnerships. The principle partners are police and the local authority. The Act also introduced a number of measures, which can be used by social landlords to contain anti-social behaviour.

The most significant provisions are:

- i. Anti-social behaviour orders, often referred to as ASBO's.
- ii. Parenting Orders
- iii. Child curfew schemes
- iv. Child safety orders
- v. Duty on police and local authorities to liaise
- vi. Duty on local authorities to establish youth offending teams
- vii. Detention and training orders
- viii. Racially aggravated offences

ix. Abolition of doli incapax (age of criminal responsibility between 10 and 14 years of age)

x. Removal of trust

xi. Power to disclose information

The most commonly used out of the above is the Anti-social behaviour order, which the police or local authority can apply for s1(1) but they must consult first s1(2). The latest information available shows that 518 ASBO's had been issued between 1st April 1999 to 31st December 2001 (House of Commons Report, Parliamentary Debates [Hansard], 2nd July 2002, Volume 388). The problems associated with obtaining injunctions against non-tenants and children in particular seems to be one of the main reasons why the government introduced ASBO's in the Crime and Disorder Act 1998. ASBO's are available against anyone aged 10 or over s1(1) CDA 1998.

Conditions for making an order

A Court may make an order only if 3 conditions are satisfied s1(1):

- * The person has acted in an anti-social manner, as defined in the CDA 1998
- * The alarm or distress must be caused to one or more persons who are not members of the same household as the person against whom the order is made
- * The order is necessary to protect persons in the authority's area from further anti-social acts or conduct.

Applications are made to the Magistrates' Court. The Court will have the power to proceed in the defendant's absence and proof will be on a civil standard (balance of probabilities). In deciding whether a defendant has acted in an anti-social manner, the Court must disregard behaviour that is shown to be reasonable in the circumstances s1(5).

If the necessary conditions are proved then the Court may make an ASBO, which prohibits the defendant from doing anything that the Court considered necessary for the purpose of protecting persons in the area from further anti-social acts by the defendant. This could include banning defendants from a particular area for some or all of the time, e. g. between 6pm and midnight. The order will have a minimum duration of 2 years, unless varied or discharged s1(7) 7 (8). It cannot be discharged in less than two years without the consent of both parties s1(9).

The penalty for breaching an ASBO, without reasonable excuse, is a criminal offence and carries a sentence of up to 5 years imprisonment and/or fine. If the person who is subject to the order is under 21 these powers are limited and affected by provisions in the Crime and Disorder Act. However, the power of the Court to conditionally discharge those convicted is explicitly excluded by section 1(11).

Daniel Collins in an article, which appeared in the New Law Journal on 15th June 2001, reported that the Courts had made the task of the local authority in obtaining an ASBO simpler by following three earlier decisions.

Firstly, in Regina v Manchester Crown Court, ex parte McCann and Others, the Court of Appeal confirmed that proceedings to obtain such an order were

<https://assignbuster.com/anti-social-behaviour-essay-sample/>

civil and, as such, not subject to the stricter criminal rules of evidence; a balance of probabilities test would be applied upon application.

The rationale is clear – the overriding purpose of this Act would be defeated if strict criminal rules were applicable. Whereas intimidation of victims might previously have been an obstacle to witness testimony, this should no longer be the case.

Further clarification has more recently been provided by *Clingham v Kensington and Chelsea London Borough Council*. Here it was held that hearsay evidence comprising statements made by persons not available for cross-examination could also be included as evidence in any application.

In essence, therefore, we have a civil piece of legislation providing criminal sanctions upon breach.

The Disadvantages of ASBO's are:

- * They were intended to be a powerful new tool with which local authorities could tackle the growing problem of teen crime, but it is felt by many housing officials that they are complex, time consuming and expensive.
- * The uncertain nature of legal action makes costs hard to predict and there is no guarantee that the judge will agree with the action.

The government appear to have gone some way in addressing this problem and in their consultation paper *Tackling Anti-Social Tenants* proposes giving landlords sweeping powers to evict unruly tenants.

The proposals coincide with changes in the Police Reform Bill, which received Royal Assent on 24th July 2002. Sections 61-66 are aimed at further enhancing the effectiveness of ASBO's and will allow RSL's to apply for them. At the moment only the police or local authority have this power.

Other legal remedies include:

The Homelessness Act 2002 – includes powers to enable local authorities to decide that an application for housing has been guilty of unacceptable behaviour serious enough to make him or her an unsuitable tenant.

The Noise Act 1996 – Intended to provide swift resolution to certain types of noise nuisance.

Protection from Harassment Act 1997 – Although this Act was brought in primarily to deal with the issue of stalking, its provisions can be used to deal with problems of harassment (including racial harassment) on housing estates.

Other remedies available:

Many landlords, following in the footsteps of the London Borough of Islington are introducing Acceptable Behaviour Contracts (ABC's). These are individual written agreements between a young person and his/her parent or guardian, the local housing office and the police whereby the young person agrees not to carry out certain identifiable acts, which could be construed as anti-social behaviour.

ABC's are an opportunity to involve the young person and his/her family in discussion about the meaning of the term 'anti-social behaviour' and the impact on others.

They are seen as a way in which local authorities can intervene at an early stage to stop the behaviour and to warn the family of possible repercussions should the behaviour continue. These types of contracts are aimed at 10-18 year olds, although it is flexible.

They are not legally binding but can be cited in Civil Court for an application for a Possession Order or at a Magistrates Court in support of an ASBO.

In addition to ABC's there are also Parental Control Agreements, which are very similar to ABC's but are aimed at children less than 10 years of age and the parent or guardian and not the child sign them, whereas the young person also signs an ABC.

Human Rights

When a landlord is intending to take action for anti-social behaviour they must take into account the provisions contained within the Human Rights Act 1998, in particular:

Article 6 Right to a fair trial

Article 8 Right to respect for private and family life and correspondence

Article 14 Right against discrimination

These rights may be enforced by “ victims” (widely defined) through the domestic courts against actions of public bodies (which include bodies such as local authorities and, for instance, RSL’s).

Social landlords must show, if challenged, that they have considered the options available to them that their aim is legitimate and the action is necessary and proportionate. It is recommended that for each case a human rights audit be completed. The impact of Article 8, and in particular the need for action by authorities to be proportional was considered in *Lambeth L. B. C. v Howard* [2001] 33 HLR 58, C. A.

In an article published in the *Legal Executive* in March 2002, Daniel Collins reported that in this case the Court had no hesitation in finding that an outright possession order was necessary in order to uphold the law and pursue the legitimate aim of protection of the rights and freedom of others. These “ others” were the individuals who had been subjected to a previous obsessive harassment. Whilst it is always important for the Court to be mindful of the need to act in a “ proportionate” way, the decision of the Court in this case had fully complied with that requirement and the outright possession order was an appropriate sanction to have employed.

Is Eviction the answer?

There is an argument that all efforts should be made to rehabilitate the offenders as evicting a family is only moving the problem somewhere else. However, not everyone guilty of anti-social behaviour can be or is willing to be rehabilitated, therefore, eviction must also be a remedy for landlords to ensure that their estates do not become no go areas and that the innocent

residents can have peace of mind and feel safe in their homes, without the fear of violence and intimidation.

Conclusion

As shown in this assignment there are legal remedies available to landlords in order for them to take action against anti-social tenants, however, they should not see legal remedies as their only way of solving the problem. As with anything, prevention is better than cure and this should be the basis of their housing management practice.

The actions of landlords have an impact on their tenants and the way in which they behave. If tenants are given an opportunity to become involved in the decisions that affect them they will have a greater sense of ownership.

Nevertheless, there will always be the minority who do not wish to take responsibility for the area in which they live or the wider community.

Therefore, landlords must have the policies and procedures in place to deal with reports of anti-social behaviour effectively and efficiently. They should also bear in mind liability for third party nuisance. A local authority may be found liable for nuisance if they fail to take any action. *Page Motors v Epsom & Ewell BC* 1981. In this case the authority failed to take any action for five years.