



BRIEFING PAPER

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Tackling anti-social behaviour in social housing (England)

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2. Social landlords' policies and procedures
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Summary

This briefing paper provides an overview of the remedies available to social landlords (councils and housing associations) to deal with tenants who exhibit anti-social behaviour; a term which covers a disparate range of conduct from tensions between neighbours to violent and intimidatory behaviour.

Tackling anti-social behaviour is a significant area of work for social landlords. Benchmarking work carried out by HouseMark (2012) estimated that social landlords in England and Wales dealt with around 300,000 reported cases of anti-social behaviour in 2011/12 at a cost of £300m.

Powers to tackle anti-social behaviour

Social landlords have a range of powers at their disposal to deal with tenants who exhibit anti-social behaviour (ASB). These powers, in particular those of local authorities, were extended and strengthened by the *Housing Act 1996*; the *Anti-social Behaviour Act 2003*; and the *Housing Act 2004*. Most recently, the [Anti-social Behaviour, Crime and Policing Act 2014](#), which gained Royal Assent on 13 March 2014, amended existing powers and extended landlords' powers to secure the eviction of anti-social tenants in certain circumstances. The Home Office published guidance on the new powers: [Statutory guidance for frontline professionals](#) (July 2014). The Government has established an anti-social behaviour advisory group with frontline agencies to monitor how the new powers are being used. It is expected that refreshed guidance will be issued in spring 2017.

Landlords will generally seek to resolve complaints of anti-social behaviour without resorting to legal action. Eviction is generally viewed as a last resort. Where eviction is considered, the requirement for evidence to present to the court can often mean affected tenants having to keep detailed records of the ASB experienced. Where victims of ASB feel unable to give evidence in court, the landlord has the option of taking legal action using hearsay and professional witness evidence.

There is also a Library briefing paper: [Constituency Casework: Anti-Social Behaviour \(7270\)](#) which provides general advice on tackling non-housing related ASB.

Wales, Scotland and Northern Ireland

This paper focuses on England but most of the existing landlord powers in the Housing Acts of 1985 and 1988 apply in Wales and England. Welsh Ministers have the power to commence certain specified provisions of the *Anti-social Behaviour, Crime and Policing Act 2014* in relation to Wales and this power has been exercised. [Independent research on the subject of how Welsh social landlords tackle ASB](#) was published in February 2014. There is also a [Wales Housing Management Standard for Tackling Anti-Social Behaviour](#) which is a voluntary standard aimed at local authority housing departments and Registered Social Landlords (housing associations) in Wales.

Scottish landlords operate under a different legislative regime. In 2014 the Chartered Institute of Housing in Scotland published a [practice briefing on tackling ASB in Scotland](#) which provides an overview of available remedies.

Social landlords in Northern Ireland also operate under a different legislative regime. The [Northern Ireland Housing Executive's website](#) explains how the NIHE approaches ASB. The website also provides a link to the NIHE's [Policy & procedure statement on anti-social behaviour](#).

1. Are landlords liable for nuisance tenants?

Some victims of anti-social behaviour have tried to take legal action against landlords where they have failed to tackle their anti-social tenants, having been notified of a problem. Victims have sought redress under four potential causes of action with little success. The sections below provide some examples of case-law in this area.

Section 2 of this paper explains that social landlords must publish policies on how they will tackle anti-social behaviour, and the action tenants can take where landlords fail to act in line with their published policies.

1.1 Nuisance

As a general rule, landlords, including public sector landlords, are not responsible for the actions of their tenants except where they have expressly 'authorised' the anti-social behaviour, or it is certain to result from the purposes for which the property has been let.¹ Despite having the power to seek a court order when tenants exhibit anti-social behaviour, landlords are free to decide whether or not to take action against their tenants. The question of whether a landlord can be held liable for the behaviour of its tenants has been considered in a number of cases.

*Smith v Scott and Others*² concerned a council that housed a large and unruly family (the Scotts) in a property adjoining the Smiths (owner occupiers) in 1971. It was known to the council that the Scotts were likely not to be good tenants. The Smiths sought an injunction against the council to restrain them from allowing any person to be permitted to occupy the adjoining property to create a nuisance. One of the arguments used by the Smiths was that the council, in placing the Scotts next door with the knowledge that they were likely to cause a nuisance, committed the wrongful act of nuisance. The case established that the authority concerned was not liable for the nuisance caused by its tenants because it had neither expressly nor impliedly authorised the nuisance. Pennycuik V.C held:

...the authorisation of nuisance has been rigidly confined to circumstances in which the nuisance has either been expressly authorised or is certain to result from the purposes for which the property is let...The exception is squarely based in the reported cases on express or implied authority. In the present case the corporation [council] let no.25 to the Scotts as a dwelling house on conditions of tenancy which expressly prohibited the committing of a nuisance and notwithstanding that the corporation [council] know the Scotts were likely to cause a nuisance, I do not think it is legitimate to say that the corporation [council] impliedly authorised the nuisance.

¹ *Hilton & Another v James Smith & Sons (Norwood) Ltd* (1979) 251 EG 1063

² [1973] Ch 314

The Court of Appeal upheld this judgement in *Hussein and Livingstone v Lancaster City Council*³ but the issue of third party liability arose again in *Lippiatt v South Gloucestershire DC*.⁴ In this case the defendant council owned a strip of land which was occupied for three years by travellers. The council tolerated what it regarded as an “unauthorised encampment” and provided toilets, water and other facilities. Tenant farmers on the adjoining land complained about nuisance behaviour from the travellers on their land and issued proceedings against the council.

The Court of Appeal held that the occupier of the land could be held liable in the tort of nuisance for the activities of licensees even though those activities took place on the plaintiff’s land. Thus the court was not precluded from holding a defendant occupier liable for nuisance consisting of repeated acts on the plaintiff’s land which, to the defendant’s knowledge, were committed by persons based on his land. The Court of Appeal in *Lippiatt* distinguished *Hussein* on the facts. In *Hussein* the scope of the nuisance had been confined to acts involving the defendant’s use of his own land, the disturbance complained about was a public nuisance for which the individual perpetrators could be held liable and they were identified as individuals who lived in council property. Their conduct, however, was not in any sense linked to, nor did it emanate from, the homes where they lived. The Court of Appeal held that it was arguable that where the travellers were allowed to congregate on the council’s land and used it as a base for their unlawful activities, this could give rise to liability.⁵

Clarification of the somewhat inconsistent case-law was provided by *Mowan v Wandsworth LBC* (2001). Mrs Mowan was a long leaseholder of a flat bought from Wandsworth LBC under the Right to Buy. She complained about the upstairs tenant’s behaviour on numerous occasions and issued proceedings against Wandsworth and the tenant. She claimed damages for the council’s failure to abate the nuisance. Her claim was based on the argument that a landlord could authorise a nuisance simply by failing to take action to prevent it. In the county court the case was struck out as disclosing no cause of action following the decision in *Hussain v Lancaster BC*. Mrs Mowan appealed, citing Article 8 of the European Convention on Human Rights (ECHR). Article 8 provides;

Article 8: Right to respect for private and family life

1. *Everyone has the right to his private and family life, his home and his correspondence.*
2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of*

³ *Hussein and Livingstone v Lancaster City Council* [2000] 1 QB 1; 31 HLR 164

⁴ [2000] Q.B. 2001

⁵ Scott Collins and Rebecca Cattermole, *Anti-social Behaviour – Powers and Remedies*, Sweet & Maxwell, 2004

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health or morals, or for the protection of the rights and freedoms of others.

The Court of Appeal held that the principle that a landlord is only liable in nuisance if he has authorised the nuisance was well established and could not be altered by reference to the claimant's right to respect for her home under Article 8 of the ECHR.

1.2 Negligence

The issue here is whether a landlord owes a duty of care to tenants to protect them from nuisance created by other tenants. In *Mowan v Wandsworth LBC*⁶ Sir Christopher Staughton considered that "the argument of negligence is simply nuisance by another name."⁷ A similar claim in negligence was also dismissed in *Smith v Scott and Others* (see section 1.1). *Smith v Scott and Others* is also authority for the proposition that a landowner does not owe a duty of care to his or her neighbours when selecting tenants. This view was upheld by the Court of Appeal in *Hussein and Livingstone v Lancaster City Council*.

Another case raised the question of whether a council owes a duty of care to tenants who are the victims of anti-social behaviour by other tenants. James Mitchell had been a tenant of Glasgow City Council since 1986. The tenant next door, James Drummond, had been a tenant of the council since May 1985. Mr Drummond had displayed violent and aggressive behaviour towards Mr Mitchell over a period of years – this behaviour had been reported to the council. In July 2001 an assault by Mr Drummond on Mr Mitchell led to his death.

The widow of Mr Mitchell sued Glasgow Council for breach of its duty of care by failing to

- a. instigate eviction proceedings against Mr Drummond at an earlier stage; and
- b. warn Mr Mitchell about a meeting arranged with Mr Drummond on 31 July 2001 during which the council threatened Mr Drummond with eviction.⁸

The Scottish Court of Session dismissed the original claim on the basis that a duty of care did not extend to these circumstances. This decision was overturned on appeal where the Court ruled that the Council *may* owe a duty of care to Mr Mitchell and his family and that the case should be referred to a trial court to hear all the evidence and decide whether a duty of care actually existed in this case. This decision was appealed and judgment was handed down by the House of Lords on 18 February 2009.⁹ The House of Lords was unanimous in deciding that it would not be fair, just or reasonable to impose a duty of care on a social landlord in these circumstances.

⁶ (2001) 33 HLR 56

⁷ Mowan para. 20

⁸ Ann Mitchell & Karin Mitchell v Glasgow City Council (2005) CSOH 84

⁹ Mitchell v Glasgow City Council [2009] UKHL 11; [2009] WLR (D) 65

Furthermore, in the 2008 case of *X and another v Hounslow London Borough Council*¹⁰ the High Court held that a council could be found to have a duty of care to protect vulnerable adults from abuse by third parties. Hounslow Council was given permission to appeal against this decision and on 2 April 2009 the Court of Appeal held that, although departments of a local authority should communicate with one another, the duty to communicate is not a duty of care owed to members of the public.¹¹ Thus an authority does not owe a duty of care to a person to protect him from the criminal acts of others, unless the authority has assumed a specific responsibility for doing so. The Court of Appeal applied the reasoning in *Mitchell v Glasgow CC* [2009] UKHL 11 and found that Hounslow Council had not assumed such a responsibility in this case.

1.3 Breach of contract

It is common for social landlords to include a clause in their tenancy agreements stating that the landlord “will take all reasonable steps to prevent any nuisance.” The courts have been reluctant to hold a landlord in breach of that term.¹² The courts have also not implied a term that the landlord will seek to enforce a nuisance clause in a tenancy of another.¹³ The reason for this is that there is no need to imply such a term when the tenant has a course of action in nuisance against the other tenant without the intervention of the landlord. Policy reasons have also been cited for this approach:

...the effect of such a term in the agreement would be far reaching and would mean, in some cases, the court requiring the council to take possession proceedings against the anti-social tenant. This would lead to an absurd situation where a court would be interfering with the council’s discretion as to whether to take action and the council would have to make submissions regarding reasonableness of the making of a possession order when they do not believe this to be the case.¹⁴

1.4 Breach of statutory duty

In *O’Leary v London Borough of Islington* an attempt was made to argue that the council’s statutory duty in relation to the general management, regulation and control of its stock gave rise to a general duty in tort to take particular care in relation to their tenants. In turn, it was argued that this duty would oblige the council to bring proceedings against a tenant that did not behave properly. The Court of Appeal did not support this argument. The question was revisited in *Hussein v Lancaster BC*¹⁵. This case referred to an earlier decision of the House of

¹⁰ [2008] EWHC 1168 (QB); [2008] WLR (D) 180

¹¹ [2009] EWCA 286

¹² *Helsdon v Camden London Borough Council* [1997] Legal Action, December, p12

¹³ *O’leary v London Borough of Islington* [1983] 9 HLR 81

¹⁴ Scott Collins and Rebecca Cattermole, *Anti-social Behaviour – Powers and Remedies*, Sweet & Maxwell, 2004, pp325-6

¹⁵ [1999] 4 All ER 125

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Lords in *X (Minors) v Bedfordshire CC*¹⁶ where Lord Browne-Wilkinson stated:

To found a cause of action flowing from the careless exercise of statutory duties the plaintiff has to show that the circumstances are such as to raise a duty of care at common law...The local authority cannot be liable for doing that which Parliament has authorised [unless] the decision complained of is so unreasonable that it falls outside the ambit of such statutory discretion.

As a result, in *Hussein v Lancaster BC* the Court of Appeal said that it would not be fair, just and reasonable to hold the council liable in negligence.

2. Social landlords' policies and procedures

Section 12 of the *Anti-social Behaviour Act 2003* amended the *Housing Act 1996* to place a duty on social landlords (including local housing authorities and housing action trusts) to publish anti-social behaviour policies and procedures. The aim of this is to inform tenants and members of the public about the measures that these landlords will use to address anti-social behaviour issues in relation to their stock.

The duty to publish these policies and procedures came into force on 30 December 2004. Section 218A(7)(a) of the 1996 Act requires every local housing authority to have regard to guidance issued by the Secretary of State in formulating these policies and procedures. The Labour Government issued a Code of Guidance, [Anti-social behaviour: policy & procedure](#), in August 2004 (now archived).

Parallel provisions in section 218(7)(b) require housing associations to take account of statutory guidance issued by the Housing Corporation. The Corporation's guidance was also published in August 2004.¹⁷ The current regulatory framework for housing associations states:

Registered providers shall work in partnership with other agencies to prevent and tackle anti-social behaviour in the neighbourhoods where they own homes.

Registered providers shall publish a policy on how they work with relevant partners to prevent and tackle anti-social behaviour (ASB) in areas where they own properties.¹⁸

The starting point for a tenant of a social landlord who is suffering from anti-social behaviour is, therefore, to obtain a copy of the landlord's policy on anti-social behaviour. If a landlord is failing to implement their policy this may form the basis of a complaint. Social landlords have internal complaints procedures – once these are exhausted a complaint involving maladministration may form the basis of a complaint to the

¹⁶ [1995] 2 A.C. 633; 3 All ER 353

¹⁷ The Corporation was abolished and the regulation of associations is now carried out by the Regulation Committee within the Homes and Communities Agency (HCA).

¹⁸ HCA, [Regulatory Framework for Social Housing in England](#), 2012

[Housing Ombudsman](#).¹⁹ Andrew Percy, Under-Secretary of State at the Department for Communities and Local Government, has also referred to the possibility of housing association tenants taking ASB complaints to the regulator:

The regulator also deals with the complaints of tenants who feel that matters cannot be resolved directly with their housing associations. The regulator has enforcement powers.²⁰

3. Remedies and preventative measures

Social landlords have a number of powers at their disposal to tackle anti-social tenants. The ultimate sanction is the eviction of the tenant but most landlords will seek to remedy the situation before it reaches that stage.

A number of new powers were introduced by the [Anti-social Behaviour, Crime and Policing Act 2014](#), which gained Royal Assent on 13 March 2014. The Act amended existing powers and extended landlords' powers to secure the eviction of anti-social tenants in certain circumstances. The Home Office published guidance on the new powers: [Statutory guidance for frontline professionals](#) (July 2014).

The Government has established an anti-social behaviour advisory group with frontline agencies to monitor how the new powers are being used. It is expected that refreshed guidance will be issued in spring 2017.²¹

The following sections describe the remedies and powers that social landlords have at their disposal to tackle ASB.

3.1 Dispute resolution and mediation

As a matter of good practice social landlords will wish to consider a range of options to address neighbour disputes and anti-social behaviour before embarking upon action to terminate a tenancy.

A number of local authorities and housing associations have developed their own in-house mediation services while others use the services of independent organisations such as UK Mediation. Several reasons are advanced in favour of using mediation to resolve neighbour disputes:

- it can reduce the amount of officers' time that is spent on neighbour disputes;
- legal remedies are not appropriate for all cases, they are expensive and can often make disputes worse before they get better;
- officers of an independent organisation are seen as impartial and without conflicting interests;

¹⁹ From April 2013 responsibility for landlord/tenant complaints in social housing moved to the Housing Ombudsman.

²⁰ [HC Deb 22 February 2017 c1124](#)

²¹ [HC Deb 22 February 2017 c1123](#)

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- it can prevent a dispute from escalating into a more serious disturbance that may require court action; and
- residents feel that their complaints are being taken more seriously as the dispute handler can devote more time to the problem.

3.2 Acceptable behaviour contracts (ABCs)

ABCs were pioneered by Islington LBC in association with the police and Islington Community Safety Partnership; they provide an alternative to legal action. ABCs were described in the Home Office's early Guide to Anti-social Behaviour Orders and Acceptable Behaviour Contracts as:

...voluntary agreements made between people involved in anti-social behaviour and the local police, the housing department, the registered social landlord, or the perpetrator's school. They are flexible in terms of content and format. Initially introduced in the London Borough of Islington to deal with problems on estates being caused by young people aged between 10 and 17, they are now used with adults as well as young people, and in a wide variety of circumstances. They have proved effective as a means of encouraging young adults, children, and importantly, parents to take responsibility for unacceptable behaviour. They are being used to improve the quality of life for local people by tackling behaviour such as harassment, graffiti, criminal damage and verbal abuse.

Although the term 'contract' is used, an ABC is not a legally binding agreement.

Once a substantiated complaint of anti-social behaviour is received, and investigation determines that it is reasonable and proportionate to conclude that a tenant (or member of their family or someone visiting) has been conducting anti-social behaviour, an ABC might be considered. Councils have used breaches of ABCs as a basis for further action, e.g. eviction, and have found eviction a more effective threat than an ASBO, particularly when parents realise that their children's behaviour can result in them losing their homes.²²

The Home Office published a report in 2004 which evaluated the impact of the Islington ABC scheme. This concluded that young people were less likely to come to the attention of the police and housing officers once they had been given a contract; that even those young people who continued with ASB and criminal offending were doing so at a reduced rate when under contract; and; overall, 57% of contracts were not breached and 19% breached only once in a six month period. However, police and housing officers were not always aware if contracts had been breached and there were some concerns that contracts were not enforced.²³

3.3 Parenting Orders

With effect from February 2004, the *Anti-Social Behaviour Act 2003* gave certain agencies the power to enter into Parenting Contracts,

²² "No homes to go to?", *Housing Today*, 23 August 2001

²³ Bullock and Jones, *Acceptable Behaviour Contracts addressing antisocial behaviour in the London Borough of Islington*, Home Office Report 02/04, 2004

which have much in common with non-statutory Acceptable Behaviour Contracts. Under section 19, schools and local education authorities can enter into Parenting Contracts with the parents of a child who has truanted or been excluded from school. The contract contains a statement by the parents agreeing to comply with the requirements for the period specified, and a statement by the agency concerned agreeing to provide the necessary support to the parent to comply with the requirements.

The *Police and Justice Act 2006* extended the range of agencies that can issue Parenting Contracts and Parenting Orders to include local authority and officers of housing associations. [Statutory guidance](#) on the use of Parenting Orders and Contracts was published in 2004 and revised in 2007.

3.4 Noise nuisance powers/duties

Severe cases of noise nuisance can provide grounds on which an injunction could be sought or eviction action taken against a tenant. Local authority environmental health departments have power under the *Environmental Protection Act 1990* to act against residents who cause a nuisance to neighbours. They also have power to take action over "excessive" noise between the hours of 11pm and 7am in domestic premises if they have adopted the *Noise Act 1996*.

Significantly, in the cases of *Southwark LBC v Mills* and *Baxter v London Borough of Camden*,²⁴ the House of Lords confirmed that a covenant for quiet enjoyment²⁵ did not oblige landlords to improve sound insulation in their properties. The cases also established that noise from ordinary occupation of residential premises will, as a general rule, not constitute a nuisance.²⁶

Furthermore, in the case of [Mark Vella v Lambeth LBC London & Quadrant Housing Trust](#) [2005]²⁷ the High Court considered whether poor sound insulation between dwellings could amount to a statutory nuisance on the basis that it is "prejudicial to health". It was held that Lambeth LBC had been right to conclude that lack of adequate sound insulation could not cause premises to be in such a state as to be prejudicial to health for the purposes of s.79(1)(a) of the *Environmental Protection Act 1990*. Consequently, Lambeth's decision not to serve an abatement notice on the landlord (London & Quadrant) was found to be lawful.

The issue of poor sound insulation between dwellings is discussed in section 19 of the DEFRA publication, [Neighbourhood noise policies and practice for local authorities – a management guide](#) (2006).

²⁴ See *The Times Law Report*, 'Tenants have no legal remedy for noise', 22 October 1999

²⁵ A standard provision in a tenancy agreement will state that the tenant is entitled to quiet enjoyment of the premises.

²⁶ The full judgement can be accessed [online](#).

²⁷ [2005] EWHC 2473 (Admin)

Community Protection Notices

Chapter 1 of Part 4 (sections 43-58) of the *Anti-social Behaviour, Crime and Policing Act 2014* introduced Community Protection Notices (CPN) with effect from 20 October 2014. A CPN may be issued (following a written warning) to an individual, or responsible person within a business or other organisation, to deal with any problem negatively affecting a community such as noise, graffiti, littering and dog fouling. CPNs are available to the police, local authorities and other authorised persons.

This remedy does not replace Noise Abatement Notices issued under the statutory nuisance regime but may be used as an alternative where the noise is caused by an individual and believed to be deliberately anti-social. The remedy could be used where other measures have proved ineffective and in a variety of situations, including “relatively low level but persistent neighbourhood noise.” The police can issue these Notices:

Noise is currently the preserve of local authorities, yet many members of the public call the police when they are a victim of noise nuisance (for example, the police were called out to deal with noise 88,317 times in 2008/09). Our proposals would enable the police to issue a notice to stop the behaviour, with criminal sanctions if the individual failed to comply, rather than simply attending or taking a call and referring on, as is currently the case. This would extend the powers the police have to deal with noise problems (as they currently only have some limited powers to control noise from road vehicles).²⁸

Breach of the notice is a criminal offence. The [Explanatory Notes to the 2014 Act](#) provide an overview of the purpose and operation of CPNs.

Registered providers of social housing (housing associations) may also be able to apply for CPNs:

...although we anticipate that most will be issued by local authorities. It would be for the local authority to work with private registered providers of social housing to agree which (if any) of them should be given the power to issue notices in their area and for all the relevant competent authorities to ensure the necessary liaison arrangements are in place to avoid duplication of effort or complaints falling between the gaps.²⁹

There has been a delay to the introduction of the power to allow local authorities to designate social landlords as holding powers to issue CPNs and fixed penalty notices for ASB. This delay is, the Home Office said, to allow time for the new powers to bed in and for councils to make an informed choice on whether to designate certain landlords.

3.5 Introductory tenancies

The *Housing Act 1996* gave local authorities discretion to operate a scheme of introductory tenancies for all new tenants.³⁰ Where

²⁸ Home Office, [Putting Victims First – More Effective Responses to Anti-social Behaviour](#), May 2012, para 3.18

²⁹ *Ibid.*, para 3.22

³⁰ Sections 124-143

introductory tenancies are used it is easier for councils to evict these occupiers if they exhibit anti-social behaviour within the first 12 months of entering into their tenancy agreements.³¹

Only local authorities have the legal right to introduce a scheme of introductory tenancies but housing associations may offer assured shorthold tenancies (with limited security of tenure) to new tenants. These are generally referred to as 'starter tenancies.'

Tenants are offered full assured (housing association tenants) or secure (local authority tenants) status at the end of 12 months if no problems arise during the term of the introductory tenancy. Since 6 June 2005 measures in the *Housing Act 2004* (section 179) have enabled local housing authorities to extend the initial 12 month period of an introductory tenancy by a further 6 months where there are continuing concerns about a tenant's behaviour.

Human rights implications

There was initial concern that introductory tenancies would fall foul of the *Human Rights Act 1998*.³² The Court of Appeal heard two cases in July 2001 on the question of whether introductory tenancies were compatible with Articles 6,³³ 8,³⁴ and 14³⁵ of the European Convention of Human Rights (ECHR).³⁶ Lord Justice Waller, Lord Justice Latham and Lord Justice Kay unanimously ruled in October 2001 that the introductory tenancy regime was not incompatible with the ECHR. The then Housing Minister, Lord Falconer, said that the judgement vindicated the use and operation of introductory tenancies.³⁷

Subsequently several cases have considered the question of whether, when a landlord seeks possession of a tenancy on a mandatory ground (as will always be the case against an introductory/starter/demoted tenant) Article 8 is engaged (right to respect for private life and family). This right is qualified by the need to protect the rights of others but this can be overcome in accordance with the law and where it is *proportionate* that, for example, the tenant should be evicted. When considering the eviction of an introductory/demoted/starter tenant no independent court or tribunal considers the *proportionality* of the eviction. The Court of Appeal considered four appeals concerning this question in March 2010 - all the appeals were dismissed; additional information can be found online.³⁸

However, a case concerning a demoted tenant (Mr Pinnock) was considered by the Supreme Court in July 2010; judgment was handed

³¹ Under this procedure local authorities do not have to prove a "ground for possession" to the court.

³² Which came into force in October 2000.

³³ The right to a fair trial.

³⁴ The right to respect for private life and family.

³⁵ Prohibition from discrimination.

³⁶ *Mclellan v Bracknell Forest BC; Reigate & Banstead BC v Benfield* [2001] EWCA Civ 1510

³⁷ Department of Transport, Local Government and the Regions (then responsible for housing matters), Press Release 456/2001, 24 October 2001

³⁸ [Mullen v Salford City Council](#); [Powell v LB Hounslow](#); [Manchester CC v Mushin](#); [Frisby v Birmingham CC](#); [Hall v Leeds CC](#) [2010] EWCA Civ 336

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down on 3 November 2010.³⁹ The Supreme Court determined (in the context of demoted tenancies under the *Housing Act 1996*, see section 3.6 below) that, where a possession claim is brought by a public authority, such a defence includes an entitlement to have the proportionality of the eviction assessed by a court. This judgment was described as having potential to impact on the introductory and demoted tenancy regime, as well as having implications for other possession cases.⁴⁰

3.6 Demoted tenancies

Sections 14 and 15 of the *Anti-social Behaviour Act 2003* inserted new sections into the *Housing Acts of 1985 and 1988* to give social landlords a power to apply for a 'demotion order' where tenants or other residents of a dwelling, or visitors to a tenant's home, have behaved in a way which is capable of causing nuisance or annoyance, or where such a person has used the premises for illegal or immoral purposes.

A demotion order has the effect of ending the existing tenancy and replacing it with a less secure 'demoted' tenancy. This removes the tenant's Right to Buy (where it applies) and their security of tenure for at least a year. At the end of a year, if the landlord is satisfied with the tenant's conduct, it will revert back to either an assured tenancy (if the landlord is a housing association) or a secure tenancy (if the landlord is a local authority or Housing Action Trust). The period of demotion can be extended in certain circumstances.

3.7 Injunctions

An injunction is a court order that prohibits a particular activity or requires someone to take action, e.g. to avoid causing a nuisance. Social landlords have successfully sought injunctions against tenants in an attempt to tackle vandalism, violence, noise, harassment, threatening and unneighbourly behaviour on their estates.

Normally the ability to seek an injunction would be limited to the person(s) who have actually suffered the nuisance; however, landlords may apply for an injunction where it can be shown that the tenant in question is in breach of a tenancy condition not to indulge in particular sorts of behaviour, provided tenancy agreements are clearly and unambiguously drafted. Under the *Housing Act 1996* local authorities were given the power to apply for such orders against anyone who had used or threatened violence against someone else going about their lawful business in the locality of the local authority's housing stock.

An injunction may be perpetual, i.e. a final order, or interlocutory, which is an interim order pending the final outcome of the matter. An interlocutory order can, in an emergency, be obtained without the defendant being given notice of the proceedings (*ex parte*). This has the effect of 'freezing' the situation for a few days until an application

³⁹ Manchester City Council v Pinnock & Ors [2010] UKSC 45

⁴⁰ See Trowers & Hamilns, [Pinnock – what does it mean for public authority landlords?](#) November 2010

for a further interlocutory injunction is made. With an interlocutory order, if the nuisance ceases no further action is taken, if it continues a perpetual injunction must be sought. Failure to comply with an injunction amounts to contempt of court which is punishable by fine and/or imprisonment.

Part 1 of the *Anti-social Behaviour, Crime and Policing Act 2014* replaced authorities' powers to apply for Anti-social Behaviour Injunctions (ASBIs) in England and Wales, with injunctions to prevent ASB (defined in [section 2](#) of the Act) from 23 March 2015.⁴¹

Local authorities and housing providers⁴² can apply for these injunctions where conduct is capable of causing a nuisance or annoyance to a person in relation to that person's occupation of residential premises, or where the conduct is capable of causing a housing related nuisance or annoyance to any person. In addition to prohibiting certain behaviour, the injunctions may impose positive requirements.

Section 13 of the 2014 Act enables a local authority, chief officer of police, or housing provider (as defined in section 13(2)) to obtain an injunction under section 1 in order to exclude an occupier from their usual home in ASB cases involving violence or significant risk of harm.

The implementation of Part I of the 2014 Act was delayed to allow for amendments to be made to the *Legal Aid, Sentencing and Punishment of Offenders Act 2012*.⁴³ *The Civil and Criminal Legal Aid (Remuneration) (Amendment) Regulations 2015* (SI 2015/325) came into force on 23 March 2015. These regulations amended existing provisions to ensure that legal aid would be available for injunctions sought under section 1 of the 2014 Act.

It is not unusual for neighbours affected by ASB, or other witnesses, to be reluctant to give evidence in court when an injunction or eviction order is sought. Andrew Percy, Under-Secretary of State at the Department for Communities and Government has commented on this saying:

...it is the case that hearsay and professional witness evidence can allow the identities of those who are not able to give evidence owing to fear or intimidation to be protected in the pursuit of an injunction. Hearsay evidence could be provided by a police officer, a healthcare official, or any other professional who has interviewed the witness directly.⁴⁴

Local authorities may also rely on their general power to institute proceedings leading to an injunction under section 222 of the *Local Government Act 1972*. This enables an authority, where it considers it expedient to promote or protect the interests of inhabitants of its area, to prosecute, defend or appear in legal proceedings. Coventry City

⁴¹ *Anti-social Behaviour, Crime and Policing Act 2014 (Commencement No.8, Saving and Transitional Provisions) Order 2015* (SI 2015/373).

⁴² Where the ASB directly or indirectly relates to or affects its housing management functions (section 5(3)).

⁴³ "[Delay to civil injunctions for anti-social behaviour until legal aid changes made,](#)" *Local Government Lawyer*, 2 October 2014

⁴⁴ HC Deb 22 February 2017 cc1123-4

Council reportedly used section 222 to obtain an order excluding two brothers from their mother's home following a string of burglaries on their estate.⁴⁵ Nottingham Council used its powers under the 1972 Act to seek an injunction to ban a teenage drug dealer from one of its estates. The request was initially declared invalid but the Court of Appeal, in what was described as a "landmark ruling", held that authorities can use their powers under this Act to seek injunctions "in the interests of people living in the community."⁴⁶ Section 222 of the 1972 Act was amended by section 91 of the *Anti-social Behaviour Act 2003* to allow a local authority to request a power of arrest to be attached to any provision of an injunction obtained under section 222 where the injunction is to prohibit behaviour which is capable of causing nuisance or annoyance to any person. The [Explanatory Notes](#) to the Act state:

The court may attach the power of arrest if there is the use or threat of violence, or a significant risk of harm to any person. Consequently a power of arrest will be available in cases where there is a significant risk of harm even if there has been no actual or threatened violence. Significant risk of harm is defined in new section 43(4). It could include emotional or psychological harm. This could apply, for example, in cases of racial or sexual harassment.⁴⁷

3.8 Eviction

Eviction is the ultimate sanction against tenants who exhibit anti-social behaviour.

Discretionary grounds for eviction

Schedule 2 to the *Housing Act 1985* sets out the 'Grounds' upon which a court may grant an order for possession against a secure council or housing association tenant. Ground 2 (as amended by section 144 of the *Housing Act 1996*) provides for the eviction of a tenant or any person residing in the dwelling-house or visiting the dwelling-house who has:

- (a) been guilty of conduct which is, or is likely to cause, a nuisance or annoyance to a person residing, visiting or otherwise engaged in lawful activity in the locality, or
- (b) who has been convicted of:
 - (i) using the dwelling-house or allowing it to be used for immoral or illegal purposes, or
 - (ii) an arrestable offence committed in, or in the locality of, the dwelling house.

Section 83 of the 1985 Act (inserted by section 147 of the 1996 Act) enables possession proceedings against secure tenants under Ground 2 to be commenced immediately upon service of the notice of

⁴⁵ 'Anti-social antidotes', *Roof*, July/ August 1995

⁴⁶ 'Landmark ruling strengthens the fight against street crime', *Inside Housing*, 10 August 2001

⁴⁷ para 188

proceedings; other grounds for possession require a minimum of four weeks' notice.

Ground 1 of schedule 2 to the 1985 Act provides for the granting of a court order where rent due from the tenant is unpaid or where an obligation of the tenancy has been broken or not performed. Councils may insert additional terms into tenancy agreements which, if breached, can give rise to eviction proceedings. The need for clearly worded tenancy agreements has been emphasised:

Social housing tenancy agreements should contain a clause making it clear to tenants that anti-social behaviour or illegal activity (whether by the tenant, people who live with the tenant or visitors) is not acceptable and may lead to the loss of their home. Landlords must ensure that any such clauses are fair and reasonable and tenants should be fully consulted in preparing, introducing or amending any such provisions.⁴⁸

Before granting a possession order under Grounds 1 or 2, the courts previously had to be satisfied not only that the alleged breach had occurred, but also that it was reasonable to grant the order. This requirement of 'reasonableness' provided a judicial restraint on arbitrary eviction by social landlords. In the context of secure tenancies, reasonableness meant having regard to both the interest of the parties and the public.⁴⁹

With effect from 30 June 2004 measures in the *Anti-social Behaviour Act 2003* introduced 'structured discretion' for courts dealing with applications for possession orders against anti-social tenants. Section 16 obliges a court, when considering whether it is reasonable to grant an order under one of the nuisance grounds, to give particular consideration to the actual or likely effect which the anti-social behaviour has had or could have on others.⁵⁰ It was hoped that this 'structured discretion' would increase the certainty of outcome in anti-social behaviour cases.

Similar grounds for eviction against assured tenants of housing associations are contained in Ground 14 of Schedule 2 to the *Housing Act 1988*.

Revised guidance for authorities and housing associations on the mechanics of seeking possession was issued by the Department of Transport, Local Government and the Regions (then responsible for housing matters) in October 2001.⁵¹ This guidance took account of changes to the Civil Procedure Rules introduced on 15 October 2001.⁵² Landlords seeking possession can now get a court hearing no more than eight weeks after a claim is issued. Social landlords can use powers in the 1996 Act to dispense with a notice of intention to seek possession in cases involving nuisance and anti-social behaviour where the court

⁴⁸ Anti-social behaviour fact-sheet 4: *Possession Proceedings* (now archived)

⁴⁹ *Battlespring v Gates* [1983] 11 HLR 6

⁵⁰ For more information see Library Research Paper 03/34.

⁵¹ *Getting the best out of the court system in possession cases*

⁵² SI 2001/256 The Lord Chancellor's Department published a Practice Direction to accompany the new court rules. This encourages judges to expedite the court process in cases involving violence and intimidation, including threats of violence.

considers it "just and equitable" to do so. This means that a court can entertain possession proceedings as soon as a notice has been served – potentially speeding up the eviction process by up to 28 days.

Measures to help protect witnesses who are likely to suffer from intimidation were considered by the interdepartmental review of vulnerable or intimidated witnesses which was announced on 13 June 1997. The interdepartmental working group's report, *Speaking up for Justice*, was published in June 1998.⁵³ One of the measures recommended by the group was:

Consideration should be given by local housing authorities to offer the witness a transfer to alternative accommodation either permanent or temporary for the duration of the trial.⁵⁴

The police are responsible for identifying those witnesses that are likely to be subject to intimidation.

As explained above, the *Housing Act 1996* amended Ground 2 of Schedule 2 to the *Housing Act 1985*, which enables councils to evict tenants for behaviour which is "likely to cause" nuisance or annoyance. During the Commons Committee stage of the 1996 Act, the then Minister for Housing explained that the amendment under consideration would enable a third party, rather than the victim of the behaviour, to give evidence against the perpetrator:

The victim can make a complaint in anonymity and rely on evidence from third parties to secure the desired outcome and prevent the behaviour from taking place.⁵⁵

This provision has enabled authorities to make more use of professional witnesses in anti-social behaviour cases where neighbours are reluctant to give evidence for fear of reprisals. Section 3.7 makes the point that, where people affected by ASB and feel unable to give evidence, there are other options available in terms of hearsay evidence and use of professional witnesses by landlords.

Amendments to the discretionary grounds for eviction

Section 98 of the *Anti-social Behaviour, Crime and Policing Act 2014*, which came into force in England on 13 May 2014, inserted new provisions into the 1985 and 1988 Acts to enable a landlord to seek possession where a tenant (or a person living in or visiting the tenant's home) is guilty of conduct likely to cause nuisance or annoyance to the landlord, or someone employed in connection with the landlord's housing management functions, where the conduct relates to or affects those housing management functions. There is no requirement for this conduct to have taken place within the locality of the tenant's home.

⁵³ Deposited Paper 98/541

⁵⁴ para 4.37

⁵⁵ SC (G) 5 March 1996 c463

A new discretionary ground for eviction (riot related offences)

Section 99 of the *Anti-social Behaviour, Crime and Policing Act 2014*, which came into force in England and Wales on 13 May 2014,⁵⁶ added a new discretionary ground for possession to the 1985 and 1988 Acts to enable a landlord to seek possession of a secure or assured tenant's property where the tenant, or an adult living with them, has been convicted of an offence committed at the scene of a riot anywhere in the UK. This ground can only be used where the relevant offence was committed after 13 May 2014.

Landlords can refuse a Right to Buy application where proceedings are underway using this discretionary ground for possession.

As the Act progressed through Parliament the Government emphasised the expectation that this Ground would be used 'exceptionally' by landlords.⁵⁷

A new mandatory ground for eviction

Section 94 of the *Anti-social Behaviour, Crime and Policing Act 2014* inserted new section 84A into the *Housing Act 1985*, which provides a new "absolute" ground for possession for use against secure tenants in social housing.⁵⁸ Where a landlord decides to use this ground the court will have to grant an order for eviction if the notice requirements have been fulfilled and, where relevant, review procedures have been followed⁵⁹, and any one of the following five conditions is met:

- the tenant, a member of the tenant's household or a person visiting the property has been convicted of a serious offence (defined in new Schedule 2A to the 1985 Act as inserted by subsection (2) of section 94 and Schedule 3 to the Act). The subsection contains reference to where the offence is committed; or
- the tenant, a member of the tenant's household or a person visiting the property has been found by a court to have breached an injunction to prevent nuisance and annoyance obtained under section 1 of the 2014 Act (there is reference to where the breach occurred); or
- the tenant, a member of the tenant's household or a person visiting the property has been convicted for breach of a criminal behaviour order obtained under section 30 of the 2014 Act (there is reference to where the breach occurred); or

⁵⁶ In force in England and Wales on 13 May 2014: *Anti-social Behaviour, Crime and Policing Act 2014 (Commencement No.2, Transitional and Transitory Provisions) Order 2014* SI 2014/949 and *Anti-social Behaviour, Crime and Policing Act 2014 (Commencement No. 1 and Transitory Provisions) (Wales) Order 2014* SI 2014/1241

⁵⁷ HL Deb 2 December 2013 cc63-4

⁵⁸ Most council tenants are secure tenants but some housing associations may have secure tenants if they entered into their tenancy on or before 15 January 1989 (the date on which Part 1 of the *Housing Act 1988* came into force).

⁵⁹ See section 85ZA of the *Housing Act 1985*

- the tenant's property has been closed under a closure order obtained under section 80 of the 2014 Act and the total period of closure was more than 48 hours; or
- the tenant, a member of the tenant's household or a person visiting the property has been convicted of a breach of a notice or order to abate a statutory nuisance arising from noise in relation to the tenant's property under the *Environmental Protection Act 1990*.

Section 97 introduced a corresponding mandatory ground for possession and associated notice requirements in respect of assured tenants of housing associations (Registered Social Landlords in Wales) by amending the *Housing Act 1988*.

Landlords can refuse a Right to Buy application where proceedings are underway using the new mandatory ground for possession.

The relevant sections were brought into force on 20 October 2014 by the *Anti-social Behaviour, Crime and Policing Act 2014 (Commencement No. 7, Saving and Transitional Provisions) Order 2014* (SI 2014/2590). Regulations prescribing the review procedure to be followed in respect of secure council tenants also came into force on 20 October 2014: *Absolute Ground for Possession for Anti-social Behaviour (Review Procedure) (England) Regulations 2014* (SI 2014/2554).

3.9 Public Space Protection Orders

Under Chapter 2 of Part 4 of the *Anti-social Behaviour, Crime and Policing Act 2014*, with effect from 20 October 2014, a local authority can issue a Public Space Protection Order (after consulting with the police) to impose conditions on the use of an area in order to deal with a particular problem or nuisance. The orders can apply to everyone using the space, or just to certain groups. They last for up to 3 years (unless extended).

These orders replaced Dog Control Orders, Gating Orders and the Designated Public Place Order.

3.10 Closure of Premises associated with nuisance or disorder

Sections 76-93 of the *Anti-social Behaviour, Crime and Policing Act 2014*, from 20 October 2014, merged four existing powers (section 161 Closure Notices; local authority temporary closures for noise nuisance; Crack House Closure Orders; and ASB Premises Closure Orders) into a single system under which local authorities or the police can apply for a Closure of Premises Associated with Nuisance or Disorder Order. It is possible to issue a short-term notice for up to 48 hours which, with the approval of a magistrates' court, may be extended for up to three months. Orders can apply to any premises, business or residential. Breach of an Order amounts to a criminal offence. Additional information can be found in the [Explanatory Notes to the 2014 Act](#).

3.11 Criminal Behaviour Orders

Part 2 of the *Anti-social Behaviour, Crime and Policing Act 2014*, from 20 October 2014, introduced Criminal Behaviour Orders (CBOs) which a court can make following conviction for any criminal offence. These Orders replaced the Anti-social Behaviour Order on conviction (CRASBO) and also the Drink Banning Order on conviction. Local authorities can apply directly for the prosecution without requesting permission from the police. A court can make an order against a person over the age of 10 if satisfied that the offender has engaged in behaviour that has caused, or was likely to cause, harassment, alarm or distress to any person, and the court considers that making the order will assist in preventing the offender from engaging in such behaviour. The standard of proof is the criminal standard (beyond reasonable doubt). Additional information on CBOs can be found in the [Explanatory Notes to the 2014 Act](#).

Social landlords other than local authorities who could apply for a CRASBO may not apply for a CBO – they can request that a CBO is applied for. Success will therefore depend on the police and landlords sharing information and working together.

3.12 Use of covenants on Right to Buy properties

If a serious dispute arises between a council or housing association tenant and an occupier who has exercised their Right to Buy, the landlord has no powers to evict the owner-occupier. Social landlords can use covenants on Right to Buy sales as a means of demonstrating, both to buyers and their tenant neighbours, that expectations about behaviour are the same for owners as for tenants. Typical clauses included in covenants will prohibit:

- the use of properties for illegal or immoral purposes;
- creating a nuisance, annoyance or inconvenience to neighbours;
- failing to keep the garden tidy; and
- keeping animals without permission.

Social landlords can take action against long leaseholders for breach of covenant if they (or their tenants) fail to adhere to these requirements. Ultimately a breach of covenant could result in forfeiture of the lease.

4. Suspension of certain rights in connection with ASB

4.1 Mutual exchange

Tenants of social landlords are able to swap their homes by legally assigning their tenancies to each other. The permission of the landlords of both tenants is required before this process can be completed. Schedule 3 to the *Housing Act 1985* lists the grounds on which permission may be refused (secure tenants).

Section 191 of the *Housing Act 2004* added a new ground for refusal to Schedule 3. Since 6 June 2005, landlords have been able to refuse an application for a mutual exchange if a relevant injunction or possession order, granted on the grounds of nuisance behaviour, is in force, or if court action to obtain such an order or a demotion order is pending against the tenant, the proposed assignee, or a person who resides with either of them.

4.2 The Right to Buy

Previously, if a secure tenant reached the stage of the Right to Buy process where they could seek an injunction to force completion under section 138 of the *Housing Act 1985* then, even if court action was pending against the tenant for anti-social behaviour, the authority was obliged to complete the sale of the property.

Since 6 June 2005, section 193 of the *Housing Act 2004* has prevented tenants against whom an application is pending for a demotion or possession order sought on the basis of Ground 2 of Schedule 2 to the 1985 Act (anti-social behaviour) from compelling the completion of a sale until those proceedings have ended. Where a possession or demotion order is granted, the tenant loses their security of tenure and also, therefore, the Right to Buy.

The 2004 Act was amended during its passage through Parliament so that landlords of secure tenants can (since 6 June 2004) seek an order suspending the Right to Buy for a specified period in respect of the tenancy on the grounds of anti-social behaviour (section 192). The court is able to grant such an order only if it is satisfied that the tenant, or a person residing in or visiting the property, has engaged or threatened to engage in anti-social behaviour and it is reasonable to grant the order. A suspension order ends any existing applications to exercise the Right to Buy and prevents any new applications being made during the period specified by the court. The suspension of the Right to Buy does not impact upon the accumulation of discount entitlement or the qualifying period.

The aim of sections 192 and 193 is to stop anti-social tenants escaping the consequences of their actions by completing the purchase of their home before the landlord can take effective action against them. Section 194 of the 2004 Act enables local authorities to fully utilise the

powers given in the preceding sections by enabling disclosure of relevant information to them from other organisations when a tenant has made an application for mutual exchange or has sought to exercise the Right to Buy. Landlords need to be able to check information held by other relevant organisations to ascertain whether one of the relevant court orders is in force or if relevant court proceedings have been issued. The aim of this is to prevent landlords from being unable to take appropriate action due to the withholding of relevant information held by other bodies.

4.3 The allocation of social housing

The *Localism Act 2011* inserted new section 160ZA into the *Housing Act 1996* under which local authorities are free, subject to regulations made by the Secretary of State, and rules around eligibility and immigration status, to determine who does and who does not qualify for an allocation of social housing.⁶⁰

The [Allocation of accommodation: Guidance for local housing authorities in England](#) (June 2012) advises that authorities may refuse to house people with a history of anti-social behaviour:

3.21 Housing authorities should avoid setting criteria which disqualify groups of people whose members are likely to be accorded reasonable preference for social housing, for example on medical or welfare grounds. **However, authorities may wish to adopt criteria which would disqualify individuals who satisfy the reasonable preference requirements. This could be the case, for example, if applicants are disqualified on a ground of anti-social behaviour.**⁶¹

Anti-social behaviour can also be taken into account in deciding on the relative priority given to different housing applicants:

4.15 Authorities may frame their allocation scheme to take into account factors in determining relative priorities between applicants in the reasonable (or additional) preference categories (s.166A(5)). Examples of such factors are given in the legislation: financial resources, behaviour and local connection. However, these examples are not exclusive and authorities may take into account other factors instead or as well as these.⁶²

4.4 Homeless applications

If a person or household becomes homeless as a result of their anti-social behaviour, for example if they are evicted under Ground 2 of Schedule 2 to the *Housing Act 1985* and they apply for assistance under the homeless provisions of the *Housing Act 1996* (as amended) they could be deemed to be 'intentionally homeless.' Sections 191(1) and 196(1) of the 1996 Act provide that a person becomes homeless, or threatened with homelessness, intentionally if:

⁶⁰ In force on 18 June 2012.

⁶¹ DCLG, [Allocation of accommodation: Guidance for local housing authorities in England](#), June 2012, para 3.21

⁶² *Ibid.*, para 4.15

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1. he or she has ceased to occupy accommodation (or there is a likelihood of him or her being forced to leave accommodation) as a consequence of a deliberate action or inaction by him or her,
2. the accommodation is available for his or her occupation, and
3. it would have been reasonable for the him or her to continue to occupy the accommodation.

Local authorities have no duty to secure permanent accommodation for homeless households who are deemed to have made themselves homeless intentionally. The [Homelessness Code of Guidance for Local Authorities](#) gives examples of acts or omissions which result in homelessness and which may be regarded as 'deliberate.' This list includes:

...is evicted because of his or her anti-social behaviour, for example by nuisance to neighbours, harassment etc.⁶³

However, the Code makes it clear that housing authorities must not adopt general policies which seek to pre-define circumstances that do or do not amount to intentional homelessness or threatened homelessness. The Code states that intentional homelessness should not be assumed in cases where an application is made following a period in custody. An authority should also not consider an act or omission which leads to homelessness to be deliberate where:

- the housing authority has reason to believe the applicant is incapable of managing his or her affairs, for example, by reason of age, mental illness or disability; or where
- the act or omission was the result of limited mental capacity; or a temporary aberration or aberrations caused by mental illness, frailty, or an assessed substance abuse problem.⁶⁴

⁶³ July 2006, chapter 11

⁶⁴ Ibid.

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