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Resolving housing issues

the latest news and advice on social housing

WHAT CAN WE DO FOR YOU?

Housing professionals know that Marsons' Social Housing Team specialises in housing management litigation – that we deal with anti-social behaviour, unauthorised occupiers, sub-letting, disrepair, squatters and just about any other type of advice and litigation that may be needed. But what does that mean in practice – what happens when we deal with cases, what is our input and do we get results?

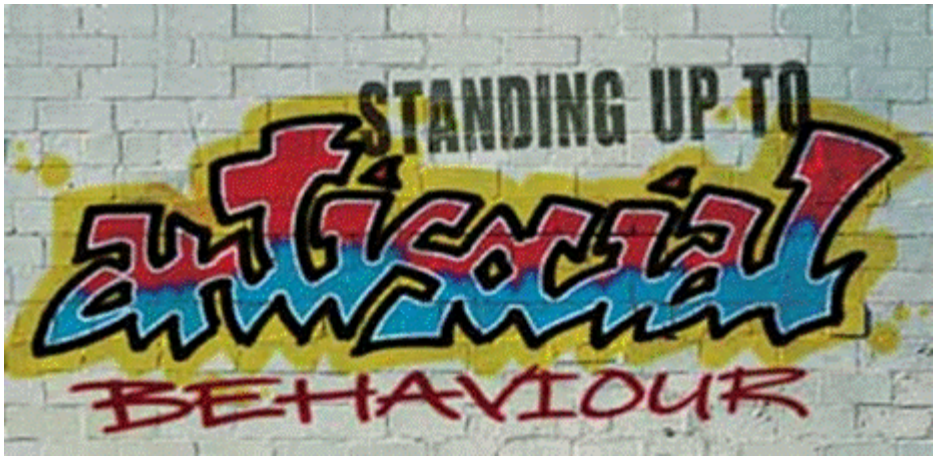
This newsletter is all about who we are and the day-to-day work that we do for our clients. By giving a snapshot of just a handful of the real cases we have dealt with in recent months, we aim to show what we can do for you.

Anti-Social Behaviour

Injunctions

Anti-social behaviour injunctions (ASBIs) are a flexible tool that can be put in place quickly when a situation turns nasty. In the most serious cases, a power of arrest can be attached to the ASBI and/or the ASBI can exclude a person from a property or area.

ASBI's are, however, a remedy that will only be granted if the court deems it reasonable and proportionate. Care is needed in the preparation of the papers and full details must be given, to show that the statutory requirements are met and to persuade the judge that it is right to grant an injunction order.



Ms A

It is a love/hate relationship – we both look forward to and dread that Friday afternoon call telling us that some violent incident has erupted and someone needs an injunction quickly. This time, the call came on a Thursday!

Ms A, a young woman in a supported housing scheme, assaulted another resident overnight resulting in her needing medical treatment and being taken to hospital by ambulance. On the Thursday morning, staff found the victim with a black eye and four stitches in the back of her head.

We immediately took detailed instructions, prepared witness statements and an injunction application. On the Friday, we obtained a without notice injunction in the County Court forbidding Ms A from harassing, assaulting or attempting to assault residents or staff at the scheme and from re-entering the scheme and a defined area around it. A power of arrest was attached, meaning that Ms A could be arrested and detained by police in the event of her breaching the injunction.

The injunction papers were then served upon Ms A and the final hearing took place a few days later when the injunction was confirmed for the period of one year. Ms S never returned to the scheme.

Anti-Social Behaviour

Possession

To obtain an outright possession order against an assured or secure tenant on grounds of anti-social behaviour, we have to prove to a Judge that serious anti-social behaviour has taken place. We also have to convince the Judge that it is reasonable to make a possession order in all the circumstances of that particular case and that the impact on the victims has been such that it would be wrong to give the defendant another chance by suspending or postponing the order.

Ms B

We were asked to advise after a tenant presented at our client's offices with injuries to her face and body. She reported that she had been attacked by her neighbour, Ms B, and her neighbour's 12-year old daughter, after going to Ms B's door to remonstrate with her about a series of acts of harassment that had been carried out over several months. The assault was reported to the police but, with no independent witnesses, the Crown Prosecution Service declined to pursue charges.

Our enquiries revealed that there was a long history of anti-social behaviour on the part of Ms B; that over the years there had been reports of her abusing, threatening and even assaulting various neighbours and that she was in the habit of playing music loudly and at unsociable hours. It appeared that her behaviour had been such that neighbours were too afraid to speak out.

Although there were no diary sheets and other neighbours were not prepared to give evidence, we advised that our client's records of the complaints received and steps taken over the years, when added to the evidence of the current victim, was sufficient to mount a claim for possession.

We prepared detailed particulars of claim setting out the anti-social behaviour that our client intended to prove and why it was reasonable for a possession order to be made. We liaised with the victim and prepared a statement from her explaining the history of her relationship with Ms B, how this had culminated in her being assaulted and the effect on her health and wellbeing.

It transpired that the victim's sister had witnessed past incidents of noise nuisance and harassment and had taken photographs of the injuries sustained in the assault, so we also took a statement from her. We collated the records from our client's files and prepared witness statements from the housing officers setting out the reports received, details of racist comments Ms B had made to one of the officers, the steps which had been taken to resolve the anti-social behaviour and why it was necessary to resort to court proceedings.

The claim was defended by Ms B, who obtained public funding and who denied all allegations. Moreover, she took advantage of the lack of witnesses to the assault and of the CPS's decision not to bring charges, by counter-alleging that it was her neighbour who had attacked her with a golf club and that she had merely defended herself.

The trial took place over 3 days, some 9 months after the claim was issued. The Judge granted an Order for Possession forthwith and an Injunction forbidding Ms B from going to her former neighbour's home or harassing her in the future.

Anti-Social Behaviour

Disability Discrimination

Even when anti-social behaviour is unintentional and is associated with disability, an outright possession order can be obtained in appropriate cases.

Mr C

Mr C was a resident in a sheltered scheme. He was 65 years old and suffered from disabilities in the form of long-term health problems – angina, diabetes and depression. At least in part due to his depression, Mr C developed a habit of extreme binge-drinking. He would withdraw from the life of the scheme, cease engaging with support services and binge-drink over days and weeks to the point of physical collapse. Scheme Managers would find him in his flat immobile on the sofa or bed lying in his own excretia, having repeatedly lost control of his bodily functions around the flat. A GP would be called and he would be admitted to hospital.

This pattern repeated itself again and again. Scheme Managers soldiered on over and above the call of duty – washing bed clothes, arranging environmental clean-ups of the flat, organising replacement furniture, liaising with the GP, Social Services and other agencies. Other residents were also affected – there was a stench emanating from the flat and Mr C occasionally lost control of his bodily functions in the common parts.

We advised our client to make a final formal request to Social Services to intervene by providing Mr C with a suitable placement – they failed to respond. We assisted our client in making and recording a decision as to whether legal action was justified, under the Disability Discrimination Act, in view of the danger that Mr C's conduct posed to the health and safety of everyone at the Scheme.

We then prepared a Notice of Seeking Possession, Particulars of Claim and a Witness Statement from the Older Persons' Officer, making the whole situation crystal clear to the Court, including exhibiting photographs of the flat taken immediately prior to an environmental clean-up.

A hearing took place 6 weeks after the claim was issued. Mr C did not attend as he was in hospital. Nevertheless, the Judge made an outright order for possession – the papers before the Court demonstrated that the situation was untenable and should not be allowed to continue.

Disability Discrimination Law Update

- The decision handed down in June 2008 by the House of Lords in *Lewisham LBC -v- Malcolm* was concerned with Section 22 of the Disability Discrimination Act 1995 (the DDA) which prevents landlords discriminating against disabled people when seeking possession.
- The Lords held that the statutory provision simply requires landlords not to treat disabled people any less favourably than non-disabled people i.e. that it prohibits direct discrimination only.
- Under Section 49A, which was introduced into the DDA after *Malcolm* first came before the courts, however, public authorities have a general duty to "have due regard to…the need to take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons". Following the Court of Appeal's decision in the *Weaver* case last year, housing associations must regard themselves as public authorities when carrying out their housing management functions.
- The Equality Bill is currently making its way through the parliamentary process. When enacted it will prohibit indirect disability discrimination and will place enhanced disability equality duties on public authorities.

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Unauthorised Occupiers

Family Members

When some tenants move on from social housing, they go to extreme lengths to retain the property as a 'family home' rather than acknowledging that it is a unit of housing that has to be returned to the landlord for allocation.

Mr D

Mr D had moved to South America two years prior to our proceedings being issued following service of a Notice to Quit, but he still defended the claim and tried to preserve the 'family home' for his daughter.

The property was a wheelchair accessible 5 bedroom house which had been allocated to Mr D over 15 years previously. He had a daughter who required a wheelchair but she had since died, his remaining children had grown up and all but one daughter had left home permanently.

When Mr D's absence was discovered, the daughter originally claimed that he had travelled to South America at short notice to care for a relative and that his absence was only temporary. Rent arrears accrued and, acting in person, our client issued proceedings based on the arrears. Mr D or his daughter cleared the substantial rent arrears and his daughter produced a statement from him stating that his absence abroad was 'enforced', that it would break his heart to lose the 'family home' and that he would definitely be returning although he could not say precisely when. In the circumstances, our client decided to withdraw the proceedings.

When this 'temporary', 'enforced' absence stretched on and on, however, and more arrears accrued, our client decided to serve a Notice Seeking Possession and subsequently instructed us to issue proceedings. We duly did so on the basis that, as Mr D was not living at the property and showed no sign of returning, he had lost his security of tenure and the Notice to Quit had brought the tenancy to an end, alternatively, if his tenancy remained in place, that he was in breach of its terms and conditions by failing to use the property as his only or principal home. We also claimed for the arrears.

Mr D did not attend the initial hearing. His daughter attended court along with a family friend and produced a defence from Mr D stating that he had been detained in South America by his own ill health, needing treatment for prostate cancer, but had every intention of returning to the property which he viewed as his family home. They also advised the court that the rent arrears on the account would be cleared imminently. The arrears element of the claim was adjourned on this basis with directions being given for trial.

Mr D did not comply with the directions made for trial. He sent various emails from South America – he was still undergoing treatment, his treatment had now finished but he was still too ill to fly, he would be willing to accept alternative accommodation – but he still failed to materialize.

By the trial date Mr D and his daughter had tacitly acknowledged that it was the end of the line - she did not attend the hearing to put forward any more excuses and an outright order for possession was made.

Unauthorised Occupiers

Sub-letting

Sub-letting is notoriously difficult to prove. Tenants often concoct plausible excuses for their absence. In the absence of strong evidence a landlord is faced with the danger that the court will not make an order for possession and it will be forced to pay the tenant's costs of the proceedings. Evidence does, however, 'add up' over time and can be extremely persuasive.

Mr E

Mr E had been the tenant of a property, in a desirable area of London, for many years. In 1996 reports were received that he was sub-letting. A Notice to Quit was served. Upon receipt of the notice Mr E instructed Solicitors who wrote to our client denying sub-letting and advising that Mr E was staying away from the property to care for his wife who was ill, had every intention of returning in the future but, due to the nature of his wife's illness, could not say when this would be. In light of this information our client agreed to take no action.

As the years passed, further allegations of sub-letting were received on an intermittent basis. On each occasion, the same assurances were received from Mr E; his wife was still ill and was taking far longer to recover than anticipated, he was not sub-letting but had allowed a friend to stay in the property temporarily, he intended to return to the property.

Eventually, our client had had enough and asked us to take action. We instructed an enquiry agent who discovered that Mr E had purchased a property with his wife some years previously and was registered as a company director at that property. We then immediately drafted a Notice to Quit and Notice Seeking Possession which were served both at the property and at Mr E's new address.

Mr E established contact claiming he had not been in touch as his situation had not changed. He alleged that our client had previously agreed not to pursue legal proceedings and said that he did not understand why it was doing so now. We informed Mr E that matters had gone on for far too long. We invited him to relinquish his tenancy in order to avoid legal costs. Mr E agreed to do so but failed to take any further steps.

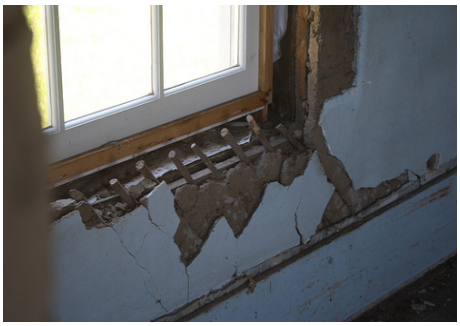
In the circumstances we drafted and issued a claim for possession and submitted supporting evidence. A possession hearing took place 7 weeks later. Mr E attended court and stated that he wished to defend the proceedings. Directions for trial were made but were immediately breached by Mr E. To avoid the legal costs of continuing with directions we invited the court to relist the matter for hearing.

Mr E then had a further change of heart and sought to terminate the tenancy, returning the keys to our client. He also wrote to the court alleging that proceedings had only been taken against him as he was about to sue our client and that, accordingly, no order for costs should be made against him.

Upon receipt of the keys our client inspected the property and discovered that it remained occupied. Mr E's response was to allege that the occupants must be squatters who had broken in after he had relinquished his tenancy.

A final hearing of the matter took place. Whilst Mr E attended this hearing, he clearly knew that 'the game was up'. The Judge made an order for possession forthwith. Money judgments, totalling several thousand pounds, in respect of arrears of rent, use and occupation charges and our legal costs, were secured against Mr E.

Disrepair



When a tenant brings a disrepair claim, the landlord is inevitably on the back foot. If there is a real basis for the claim i.e. if there has been disrepair at the tenant's property and it has not been properly remedied within a reasonable time, the landlord will be liable to pay the tenant compensation and legal costs. If the tenant is asking for far more than the claim is worth, the landlord can try to establish that and can seek to negotiate a lower figure but, during that process, legal costs will inevitably increase.

With good use of the provisions for making formal offers of settlement under Part 36 of the Civil Procedure Rules, a landlord can sometimes redress the balance.

Mr F

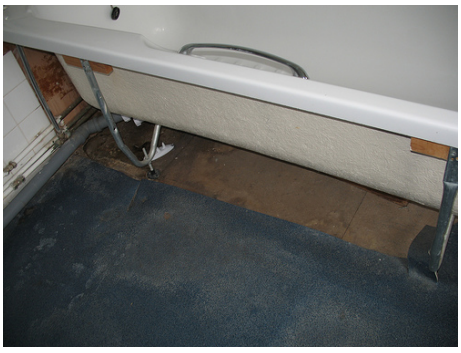
Mr F, acting in person, claimed the sum of £35,000 for disrepair and related personal injuries. His allegations revolved around the positioning of the flue to his gas boiler, defects in the electrical installation, draughty windows and a mouse infestation. He also alleged assault by an employee of a contractor who had attended to inspect the flue.

We were able to persuade the Court, at an early stage, that any claim for assault lay against the contractor and his employers, rather than against our client. As a result, the assault aspect of the claim, for which Mr F was claiming £15,000, was struck out.

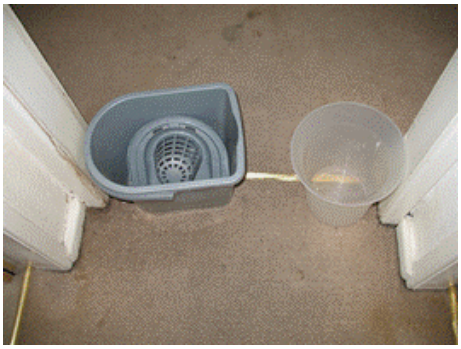
After gathering evidence in relation to the other aspects of the claim, we concluded that it was of nuisance value only. We then put forward an initial offer of £1,000 to Mr F using the Part 36 provisions. Mr F did not accept. The Part 36 offer was later increased to £1,500, but Mr F still refused.

Six months later, after substantial further costs had been incurred, the matter went to Trial.

Part 36 offers are not revealed to the Trial Judge until after Judgment is given. If the Judge had found our client liable for disrepair, but had assessed the sum due to Mr F as less than the £1,500 which we had offered, Mr F would have been ordered to pay the costs which our client had incurred since its offer was refused.



In the event, however, the Judge agreed with us entirely – he found that the statutory limitation period had expired on certain aspects of Mr F's claim, other elements did not amount to disrepair, and everything else had been attended to by our client within a reasonable time. Mr F's claim was dismissed and he was ordered to pay our client's costs assessed at £25,000.



Meet the Team

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Mary is a Solicitor with some 21 years post qualification experience who joined Marsons in 2003. She had previously worked for an RSL, and in local government (as Principal Lawyer at the London Borough of Southwark) as well as in private practice.

Mary has extensive experience of all aspects of housing litigation in the County Courts and Leasehold Valuation Tribunal, as well as public law cases in the High Court. She has dealt with a number of cases in the Court of Appeal. Mary also advises social landlords on housing policy and procedure, and drafts tenancy documentation. Mary provides regularly training to our clients and gives seminars on behalf of the Chartered Institute of Housing. She has also appeared on the Legal Television Education Network.

Mary is recognised as a leading housing lawyer by Chambers UK Legal Directory. She is a founder member and currently Vice-Chairperson of the Social Housing Law Association.

Steven Adabadze

Solicitor

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Steven qualified as a Solicitor in April 2004 and joined Marsons in May 2004. Prior to qualification Steven worked for some 12 years 'on the front line' of housing; serving as a Development Officer, Housing Officer, Estate Manager and Deputy Area Manager for Local Authorities, RSLs and a Housing Charity. This has given him a unique insight into the practicalities and pressures faced by our clients on a day to day basis and the ability to offer wholly pragmatic solutions to those issues.

Steven has comprehensive experience of all areas of housing litigation and has a particular interest in disrepair (where he is the firm's 'go to' man), unauthorised sub-letting and public law defences. Steven is a member of the Social Housing Law Association.

Amy Churchill

Legal Executive

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Amy joined Marsons in 1999, has specialised in social housing since 2001 and qualified as a Legal Executive in 2004. She has extensive experience of housing litigation in both the County Courts and the High Court. Amy has a particular interest in anti-social behaviour claims, particularly those involving vulnerable tenants and/or witnesses, and anti-social behaviour injunctions, including ASBIs with the power of arrest and exclusion provisions.

Amy is currently undertaking her LPC to qualify as a Solicitor, while continuing to work full time. She is a member of the Social Housing Law Association.

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Claire has been employed by Marsons since 1997 and has specialised in social housing litigation since 1999. Claire has handled literally thousands of rent arrears proceedings, claims under s. 21 Housing Act 1988 and gas safety injunctions. Additionally she undertakes trespasser proceedings, debt recovery work and regularly advises clients regarding enforcement procedures. Claire also has experience as a County Court advocate.