

# Best practice in anti-social behavior cases

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# Agenda

- Anti-social behaviour injunctions
- Committal applications
- Mandatory ground for possession

# Anti-social behaviour injunctions

- ❁ Part 1 of Anti-social Behaviour, Crime and Policing Act (ASBCPA) 2014
- ❁ First condition: Be satisfied on **balance of probabilities** that respondent has engaged or **threatens to engage** in ASB
- ❁ Second condition: **just and convenient** to grant injunction for purpose of preventing R from engaging in ASB
- ❁ Must specify period for which has effect or state has effect until further order (unless u-18 in which case period of not more than 12 months must be specified)

# Meaning of anti-social behaviour

- Conduct that has caused, or is likely to cause, harassment, alarm or distress to any person,
- Conduct capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises, or
- Conduct capable of causing housing-related nuisance or annoyance to any person
  - “housing-related” means directly or indirectly relating to the housing management functions of (a) a housing provider, or (b) a local authority

# Meaning of nuisance and annoyance

- Construe in a common sense, natural way
- ‘Annoyance’ has been held to cover anything likely to disturb the ‘reasonable peace of mind’ of ordinary sensible persons even though not involving physical interference with their comfort (Tod-Heatly v Benham (1888) 40 ChD 80 at 98, per Bowen LJ.
- Check guidance from council, housing association – often gives examples of what is or isn’t nuisance
- Normal neighbour or ‘living’ noise – children playing in the afternoon, talking, closing doors (vs excessively loud music late at night)

# Procedure: Part 65

- ❁ Part 65 – Rules 65.42 – 65.49 and Practice Direction (PD) 65
- ❁ Part 8 procedure as modified by CPR 65.43 and PD 65
- ❁ Application must be supported by a witness statement filed with the claim form and the claim form must state the terms of injunction applied for. On notice applications must be served personally.
- ❁ PD65 encourages issue at county court hearing centre serving defendant's address to avoid delay
- ❁ Respondents are very often unrepresented at the first hearing or application may be made without notice – this can lead to unsuitable interim injunctions being made and the terms or even existence of these should be scrutinized at the next hearing

# Terms of injunction

- Injunctions may prohibit the respondent from doing or or require the respondent to do anything prescribed in the injunction
- Should be precise – mention specific behaviour, person
- Should be linked to the complaints made
- Should be workable – section 1(5) specifically mentions terms should as far as practicable avoid conflict with work, education or the terms of any other court order
- Check exclusion zones carefully – does it affect client's GP, access to shops, cover a main road that will affect ability to access public transport, affect ability to see children/grandchildren. Is it the minimum possible area? Is there a map?

# Power of arrest

## Section 4 ASBPCA 2014

- If ASB in which engaged/threatens to engaged consists of or includes the use or threatened **use of violence** against other persons OR
- There is a **significant risk of harm** to the person from the respondent
- Ensure this is not attached to inappropriate terms – unlikely to be appropriate for a general prohibition on nuisance behaviour like drunkenness, singing/shouting, playing loud music. Civil Justice Council (CJC) criticized a case where a power of arrest was attached to an injunction prohibiting a man defecating in public in a city centre (July 2020 report on anti-social behaviour and the civil courts)

# Power of arrest

- Allows arrest without warrant where there is reasonable cause to suspect that the respondent is in breach of the provision to which the power of arrest attaches (section 9 ASBPCA 2014).
- The person may be remanded in custody or on bail if the matter is not disposed of straight away.
- No more than 8 clear days unless remand is on bail and parties consent, or remand is for a medical report in which case remand can be in custody for 3 weeks or on bail for 4 weeks (see schedule 1)
- The court can impose requirements when remanding a person on bail e.g. to live at a particular address

Applications for bail may be made orally (65PD.3.1)

# Capacity

- Raise this as soon as possible
- Allegations themselves often point to this issue – e.g. very unusual, bizarre behaviour
- If mental impairment means the person cannot comply with the conditions, then the injunction is not effective and cannot be said to be just and convenient
- Ask judge for direction for capacity assessment/psychiatric report
- Are there relatives who could help with information?

# Equality Act issues

- Are their known disabilities? Were those taken into account?
- Especially in cases with children with disabilities, is an injunction a proportionate response to behaviour linked directly to the disability?
- What assistance has been provided to the defendant? Have they been referred to support services?
- Medical evidence may be required – ask for time to obtain medical records and if necessary an expert report.
- What link is there between the disability and the anti-social behaviour?
- What is the prognosis? Would the behaviour change if they were able to access appropriate treatment?

# Evidence & case management

- ❁ In complex cases e.g. where many alleged tenancy breaches, complainants and/or multiple members of family involved, a numbered chronological schedule cross-referencing to evidence is essential for defendant to be able to respond in a proportionate way
- ❁ Can the schedule be reduced? Especially where evidence in support is weak e.g. anonymous hearsay, not naming the individual involved or they are a long time ago.
- ❁ Is further disclosure needed? E.g. police reports, recordings mentioned by witnesses
- ❁ Is there a realistic trial timetable? Are special measures required?

Standard of proof = civil standard

# Countering evidence

- Is this the first complaint against a long-term tenant?
- Did any professionals witness the event?
- Evidence from other neighbours, in particular if they are known to be relatively neutral
- Does your client have any recordings of their own?
- Is there anything to indicate the Claimant's witness is unreliable?
- Is most of the evidence anonymous?
- What is the quality of the investigation? Have procedures been followed?

Are reports vague, inconsistent with other reports?

# Change in situation

- Prolonged period without problems, improvement in state of property
- Sustained engagement with therapeutic and/or support services – direct evidence from them can be extremely useful, reach out early if possible
- Prolonged abstinence from drugs and/or alcohol
- Departure of problematic family member
- Change of circumstances e.g. back in work or education,
- Remorse
- Reconciliation with neighbours. Is mediation an option?

# Committal applications

- Part 81 – new version in effect from 1 October 2020 – applies to proceedings extant at that time but only to steps from 1 October 2020
- Change of party names from applicant & respondent to claimant & defendant – unrepresented parties more likely to understand defendant
- Made by Part 23 application – Rule 81.3(1)
- Rule 81.3(2) – in county court shall be determined by a Circuit Judge unless under a rule or practice direction it may be determined by a District Judge
- Requirements – see Rule 81.4
- Unless and to the extent that the court directs otherwise, must be supported by written evidence given by **affidavit** or affirmation

# Committal applications

A contempt application must include statement of all the following unless (in the case of b – g) wholly inapplicable:

- ❁ (a) the nature of the alleged contempt (for example, breach of an order or undertaking or contempt in the face of the court);
- ❁ (b) the **date and terms of any order allegedly breached** or disobeyed;
- ❁ (c) confirmation that any such order was **personally served**, and the date it was served, unless the court or the parties dispensed with personal service;
- ❁ (d) if the court dispensed with personal service, the terms and date of the court's order dispensing with personal service;

# Committal applications

- (e) confirmation that any order allegedly breached or disobeyed included a **penal notice**;
- (f) the **date and terms** of any undertaking allegedly breached;
- (g) confirmation of the claimant's belief that the person who gave any undertaking **understood its terms and the consequences of failure** to comply with it;
- (h) a brief summary of the facts alleged to constitute the contempt, **set out numerically in chronological order**
- (i) that the defendant has the right to be legally represented in the contempt proceedings;

# Committal applications

- ❁ (j) that the defendant is **entitled to a reasonable opportunity to obtain legal representation** and to apply for legal aid which may be available without any means test;
- ❁ (k) that the defendant may be entitled to the services of an interpreter;
- ❁ (l) that the defendant is **entitled to a reasonable time to prepare for the hearing**;
- ❁ (m) that the defendant is **entitled but not obliged to give written and oral evidence in their defence**;
- ❁ (n) that the defendant has the right to remain silent and to decline to answer any question the answer to which may incriminate the defendant;

# Committal applications

- ❁ (o) that the court may proceed in the defendant's absence if they do not attend but (whether or not they attend) will only find the defendant in contempt if satisfied beyond reasonable doubt of the facts constituting contempt and that they do constitute contempt;
- ❁ (p) that if the court is satisfied that the defendant has committed a contempt, the court may punish the defendant by a fine, **imprisonment**, confiscation of assets or other punishment under the law;
- ❁ (q) that if the defendant **admits** the contempt and wishes to **apologise** to the court, that is **likely to reduce the seriousness of any punishment** by the court;

# Committal applications

- ❁ (r) that the court's findings will be provided in writing as soon as practicable after the hearing; and
- ❁ (s) that the court will sit in public, unless and to the extent that the court orders otherwise, and that its findings will be made public.
- ❁ All these safeguards reflect the seriousness of the possible consequences of the application – imprisonment
- ❁ Also reflected in requirement to robe (CPR 81.8(2))
- ❁ If contempt is proven, judge will fill in N79 or possibly PG81 form recording the disposal (not clear from CPR). However, CJC found that many hearing centres do not seem routinely to be publishing judgments in accordance with CPR 81.8(8)

# Burden and standard of proof

- **Burden** is on the Claimant
- To prove the breach
- **Standard** is beyond reasonable doubt
- As the defence, many ways to sow doubt about alleged breaches
  - Did not happen while injunction in force
  - Not sufficient to constitute a breach (e.g. is not nuisance)
  - Unclear recordings
  - Lack of corroborating evidence
  - Complainant motivated to lie
  - Complainants are inconsistent

# Sentencing

- ❁ Custody is the most serious sanction that can be imposed by a civil court and sentences must be for the minimum appropriate period (see *Willoughby v Solihull MBC* [2013] EWCA Civ 699).
- ❁ *Amicus Horizon Ltd v Thorley* [2012] EWCA Civ 817 indicates that the court should apply the relevant Sentencing Council Guideline – this is the Breach Offences: Definitive Guideline. The most relevant part, breach of a criminal behaviour order, relates to an offence which attracts a maximum of 5 years custody and a range of fine – 4 years custody. The civil court cannot impose more than 2 years or a community order. However, the guideline can be used to highlight a stepped approach: step 1 – culpability and harm, step 2 – category range and it contains a list of aggravating or mitigating factors

# Sentencing

- Key aggravating factors: further breach after earlier breach proceedings, breach shortly after order made, V particularly vulnerable
- Key mitigating factors: genuine misunderstanding of terms of order, breach after long period of compliance, prompt admission, mental disorder or learning disability, sole or primary carer
- Sentences are often suspended
- Criminal Justice Act 2003, s 258 says that a person committed to prison for contempt of court must be released unconditionally as soon as they have served on-half of the term for which they were committed, also note s 258(4): unconditional release at any time in exceptional circumstances

# Compromising

- ❁ May have very significant evidence against the defendant – clear recordings, independent professional witnesses
- ❁ Admissions saving a trial will be taken account of in sentencing, especially if at an early stage
- ❁ If injunction proceedings ongoing, could offer to give undertaking or accept final injunction if committal application not pursued
- ❁ Surrender of tenancy in return for discontinuance of committal application can be an option where neighbour relationship irretrievably broken down and/or no real change in behaviour and/or alternative housing option available



**Vital** that client is aware of the risks of above approaches i.e. homelessness, prison



# Mandatory ground for possession

- Introduced by ASBCPA 2014: section 84A Housing Act 1985 and ground 7A under Housing Act 1988 (schedule 2)
- Relies on proven breach of an ASBI
- Specific notice required
- Section 85ZA of HA 1985 gives tenants of local housing authorities and housing action trusts a statutory right to request a review before the end of 7 days after notice served. Not set form but regulations provide for the information that must be included. May request an oral hearing



Home Office guidance expects housing associations to follow a non-statutory review procedure