HOUSE OF COMMONS LIBRARY

BRIEFING PAPER

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Anti-social neighbours living in private housing (England)

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Inside:

Contents

Summary

This briefing paper provides summary of the key remedies available to victims of anti-social behaviour (ASB) who live next door to anti-social residents living in private rented or owner-occupied housing.

It can sometimes be difficult for people in this position to resolve the problem; for example, private landlords may prefer not to tackle their anti-social tenants. Victims of ASB should report their circumstances to the local Community Safety Partnership and seek professional legal advice on any remedies that might be applicable in their individual circumstances.

What amounts to an appropriate remedy will depend on the precise circumstances involved. The victims of ASB often need to keep detailed records of their experiences, particularly if legal action is envisaged.

Local authorities and the police have extensive powers under the *Anti-Social Behaviour, Crime and Policing Act 2014*, together with other legislation, to tackle different types of ASB. These powers range from abatement orders to deal with noise nuisance, to injunctions excluding tenants/owner-occupiers from their homes in cases involving violence or a significant risk of harm. The Home Office published statutory guidance for local authorities on powers introduced by the 2014 Act in July 2014, this guidance was updated in August 2019.

In regard to private landlords, the Ministry of Housing, Communities and Local Government (MHCLG) published Rogue landlord enforcement: guidance for local authorities in April 2109.

Although this paper covers England, the remedies available for tackling housing related ASB in private properties are largely the same in England and Wales. Welsh Ministers have the power to commence certain specified provisions of the 2014 Act in relation to Wales.

1. Private rented housing

The Home Affairs Select Committee's 2004-05 inquiry into anti-social behaviour (ASB) noted that although the response to ASB was originally located in the context of social housing, "many nuisance neighbours are not social tenants but private tenants or owner-occupiers."[1] The Northern Housing Consortium told the Committee that a "significant number of problems arise in the private sector that are ignored due to absentee landlords or landlords that do not have the skills or capacity to tackle the problems."

1.1 Landlords' responsibilities

As a rule, landlords are not responsible for the actions of their tenants if they have not authorised the anti-social behaviour. Despite having the power to seek a court order for eviction when tenants exhibit anti-social behaviour, private landlords are free to decide whether to take action against their tenants. The question of whether landlords can be held liable for the behaviour of their tenants has been considered in several cases.

It is established that no claim can be sustained in nuisance where the nuisance is caused by an extraordinary use of the premises concerned; for example, by the tenants being noisy or using drugs on the premises. The rationale behind this approach is that it is up to the victim of the nuisance to take action against the perpetrator.[2] To found an action in negligence against a landlord the victim must show that there has been a breach of a duty of care owed by the alleged perpetrator.

In *O'leary v London Borough of Islington*[3] it was held that a term to enforce nuisance clauses could not be implied into a tenancy agreement. This indicates that landlords cannot be sued for breach of contract unless there is an express term in the tenancy agreement that obliges him or her to "take all reasonable steps to prevent any nuisance". Even where such a clause exists, the courts have been reluctant to find the landlord in breach.[4]

In the case of *Mowan v Wandsworth LBC*[5] a leaseholder of Wandsworth Council brought an action against her neighbour (a council tenant) and the council (her freeholder). The claim against the council was for a failure to take effective steps to address the nuisance caused by her neighbour after being informed of it. The Court of Appeal held that the landlord could only be liable in the tort of nuisance if it had authorised the nuisance by the tenant. Such authorisation is not sufficiently established by showing that the landlord knew of the nuisance, had the power to stop it, but failed to act. The claimant could

1 HC 80-I, Fifth Report of 2004/05 para 270
2 *Smith v Scott and Others* [1973] (this case is also authority for the proposition that a landowner does not owe a duty of care to his or her neighbours when selecting tenants)
3 [1983]
4 *Helsdon v Camden London Borough Council* [1997]
5 21 December 2000, CA

not succeed in negligence as the landlord owed no duty of care to one tenant to prevent another tenant from causing or continuing a nuisance. Although this case concerned the duties of a local authority landlord, it is also relevant to private landlords.

A case in 2009 raised the question of whether a council landlord owes a duty of care to tenants who are the victims of anti-social behaviour by other tenants. The imposition of a duty of care on social landlords in these circumstances would also have implications for private sector landlords who fail to tackle problem 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.[6] The Scottish Court of Session dismissed the original claim on the basis that a duty of care did not extend to these circumstances[7] but 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.[8] 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.

1.2 Management controls

The main way in which private landlords can control the behaviour of their tenants is by enforcing the terms and conditions of the tenancy agreement. Terms can be inserted into tenancy agreements to impose standards of behaviour on tenants and to prohibit unacceptable behaviour. In the event of a breach the landlord will be entitled to seek possession of the property or seek an injunction to prevent any further breach.

Most landlords include in their tenancy agreements a general clause to prohibit nuisance behaviour; others include specific terms covering pets, violence and offensive language. However, landlords may not impose unfair terms on tenants.

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6 *Ann Mitchell & Karin Mitchell v Glasgow City Council* (2005) CSOH 84
7 The full reasoning can be accessed online here.
8 *Mitchell v Glasgow City Council* [2009] UKHL 11; [2009] WLR (D) 65

1.3 Remedies available to private landlords

Injunctions

After issuing initial warnings asking a tenant to desist from the anti-social behaviour in question, private landlords could seek an injunction against a tenant. As noted in the previous section, landlords can seek injunctions against their tenants to prevent breaches of the tenancy agreement and may, in certain circumstances, seek to exclude the tenant from the property. It is possible to obtain an interim injunction if the court accepts that the conduct is so serious that the landlord should not have to wait until trial. There is little, if any, evidence of private landlords using injunctions to tackle anti-social tenants.

Section **2.4** of this note explains how local authorities and the police may seek injunctions to tackle anti-social behaviour amongst private tenants and owner-occupiers.

Eviction

As a last resort, landlords may seek a court order to evict tenants who exhibit anti-social behaviour. It is not possible for force a private landlord to evict an anti-social tenant.

Most private sector tenants are assured shorthold tenants. These tenants have very limited security of tenure. In order to obtain possession using the "shorthold Ground" under section 21 of the *Housing Act 1988,* the landlord must serve a notice of intention to seek possession (giving at least two months' notice) – there is no need to give reasons for seeking possession and the court has no discretion but to order possession if the correct procedures have been followed. However, there are some limits on the court's ability to grant an order under section 21, e.g. if the fixed term of the tenancy has not expired.

Where it is necessary to remove a problem tenant quickly (within the fixed-term of the tenancy) landlords can seek possession using one of the Grounds for eviction set out in Schedule 2 to the *Housing Act 1988.*

Schedule 2 to the 1988 Act sets out the Grounds on which a landlord may seek to evict an assured or an assured shorthold tenant.[9]
Ground 12 offers a remedy where a tenant is in breach of the tenancy agreement - it is necessary to consider the wording of the terms of the agreement to ascertain whether there has been a breach. Ground 12 can be particularly useful where the agreement specifies conduct which is considered to be anti-social.

Ground 14 covers the situation where a tenant or a person residing in the dwelling house is guilty of conduct that has caused, or is likely to cause, a nuisance or annoyance to a person residing, visiting or otherwise engaging in a lawful activity in the locality. This Ground was extended by the *Housing Act 1996* and enables a landlord to seek a court order for eviction where the tenant, or a person residing in the property, has been convicted of using the dwelling house or allowing it

[9] The majority of private tenants are now assured or assured shorthold tenants but a similar ground for eviction exists under the *Rent Act 1977* in the case of regulated tenants.

to be used for immoral or illegal purposes, or an arrestable offence has been committed in, or in the locality of, the dwelling house. Ground 14 was further amended by section 98(2) of the *Anti-social Behaviour, Crime and Policing Act 2014* to enable a possession order to be granted where the tenant or a person residing in the dwelling-house is guilty of conduct that is likely to cause a nuisance or annoyance to the landlord or a person employed in connection with the exercise of the landlord's housing management functions.[10]

Under both Grounds 12 and 14, the court must consider whether it is reasonable to grant an order for possession (i.e. the court has a level of discretion). Prior to applying for a court order on either of these Grounds the landlord must serve a notice of intention to seek possession in the prescribed form; the benefit of using Ground 14 is that proceedings can be commenced **immediately** on service of the notice.

If a landlord is willing to evict an anti-social tenant it may be necessary for the person who has experienced the nuisance behaviour to submit evidence of the nuisance (e.g. a diary of events) and to appear as a witness in court.

The Labour Government's 2001 consultation paper, *Selective Licensing of Private Landlords,*[11] recognised that private landlords may not always be willing or able to act against problem tenants:

> As a last resort the Housing Act 1988 allows them to seek possession immediately against anti-social tenants. But many landlords lack the time and expertise to take action. Even responsible and well-intentioned landlords may lack the incentive to do so in areas of low housing demand where finding better tenants may be difficult. In such areas it may be difficult to find a professional managing agents to manage properties at a reasonable cost, given the low rents. Many unscrupulous landlords in these areas may take no interest in their tenants or the neighbourhood. Some may even encourage anti-social behaviour in order to intimidate owner-occupiers into accepting low offers for their properties.[12]

In August 2011, the Coalition Government published a consultation paper in which it set out proposals to introduce a new mandatory power of possession[13] that landlords would be able to use "where serious housing related anti-social behaviour has already been proven." The paper proposed that this remedy would be available to all landlords (private and social) but stated:

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

11 Department of Transport, Local Government and the Regions, October 2001 (the contents of which are discussed later in the paper)

12 Ibid., para 15

13 Courts have to order possession provided the correct procedure has been used and subject to an assessment of the proportionality of the decision to seek eviction.

> ...in practice we would expect it to be used only very rarely by the former, given the availability of 'no fault' possession under section 21 of the Housing Act 1988.[14]

The consultation exercise was subsequently broadened to seek views on whether the existing discretionary Ground for possession should be extended to include convictions for riot-related offences committed by the tenant or members of their household, wherever they took place within the United Kingdom.

The Department for Communities and Local Government published Strengthening Powers of Possession for Anti-Social Behaviour - Summary of responses to consultation and next steps in May 2012. This paper confirmed the intention to introduce a new mandatory ground for possession for use by private landlords.

Section 97 of the *Anti-social Behaviour Crime and Policing Act 2014*, (with effect from 20 October 2014[15]) introduced this new mandatory ground for possession (7A) and associated notice requirements in respect of assured and assured shorthold tenants by amending the *Housing Act 1988*. Where a landlord decides to use this Ground, the court must grant an order for eviction if the notice requirements have been fulfilled 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; 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 Act; 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; or
- 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 noise in relation to the tenants' property under the *Environmental Protection Act 1990.*

In addition, section 99(2) of the 2014 Act added a new discretionary ground for possession to the *Housing Act 1988* (Ground 14ZA) which enables a landlord to seek possession of an 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.[16] This Ground can only be used where the relevant offence is committed after 13 May 2014.

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14 DCLG, A new mandatory power of possession for anti-social behaviour, August 2011

15 *Anti-Social Behaviour, Crime and Policing Act 2014 (Commencement No.7, Saving and Transitional Provisions) Order 2014* (SI 2014/2590).

16 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

1.4 Remedies available to neighbours

As a first step, neighbours should advise the landlord or managing agent of the property concerned that the tenant(s) are causing a nuisance. Neighbours do not have a legal right to find out who owns a particular property, but they may be able to trace ownership through the Land Registry (subject to a fee).

The remedies open to a neighbour of a private tenant who exhibits anti-social behaviour will depend upon the nature of the nuisance. For example, if the nuisance is mainly to do with noise, the environmental health department of the local authority may be able to assist. Alternatively, if the nuisance amounts to physical assault/harassment the matter should be dealt with by the police.

Once again, depending on the nature of the nuisance, the residents involved may be able to seek an injunction requiring the anti-social neighbours to stop interfering with their property/person. Victims of anti-social behaviour should seek professional legal advice on any remedies that might be applicable in their individual circumstances.

2. Local authorities' powers

The Ministry of Housing, Communities and Local Government (MHCLG) published Rogue landlord enforcement: guidance for local authorities in April 2109. The Home Office's statutory guidance on local authorities' anti-social behaviour powers was updated in August 2019.

The sections below outline the powers of local authorities and include, where relevant, reference to provisions contained in the *Anti-social Behaviour, Crime and Policing Act 2014*.

Responding to a debate on ASB concerning anti-social housing association tenants living next door to an owner-occupier in February 2017, the then Minister, Andrew Percy said:

> When two tenants living next door to each other are involved in a dispute, it tends to be much easier for the social landlord to mediate actively. Of course, the individuals concerned are responsible for their behaviour, and we must not let them off the hook, but social landlords have a responsibility for everyone in the communities in which they have properties, especially when one of their tenants is a source of antisocial behaviour. It should not really matter whether the neighbour affected is a private owner-occupier, a private renter, or another social tenant.[17]

2.1 ASB 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, housing action trusts, and registered social landlords) 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.

The Minister, Andrew Percy, said that social landlords "must demonstrate to tenants and residents how easily they can report anti-social behaviour, and they must also provide active support to victims and witnesses."[18]

2.2 Community Safety Partnerships & the 'community trigger'

Section 6 of the *Crime and Disorder Act 1998* placed a duty on local authorities, in partnership with the police, probation, health authorities and others, to produce and implement a local strategy for the reduction of crime and disorder. The importance of strategies produced by what were initially called local Crime Reduction Partnerships, was made explicit by the Social Exclusion Unit (SEU) in its report, *A New Commitment to Neighbourhood Renewal: National Strategy Action Plan.*[19] The section 6 duty is supplemented by section 17 which places a

17 HC Deb 22 February 2017 c1124
18 HC Deb 22 February 2017 c1122
19 January 2001, para 4.31

duty on authorities to consider the crime and disorder implications of their core activities. Taken together these two sections "embed the reduction of crime and disorder into the core activities of local authorities."[20]

The members of Community Safety Partnerships work together to protect their local communities from crime. They work out how to deal with local issues like anti-social behaviour, drug or alcohol misuse and reoffending. They annually assess local crime priorities and consult partners and the local community about how to deal with them.

Section 104 of the *Anti-social Behaviour, Crime and Policing Act 2014* provides a mechanism through which victims of persistent anti-social behaviour can request that relevant bodies undertake a review of their actions.[21]

More effective responses to anti-social behaviour described the purpose the community trigger:

> ...for persistent anti-social behaviour which has not been addressed by community safety partners. This would impose a duty on the statutory partners in a Community Safety Partnership (CSP) to take action in cases where victims or communities have raised the same issue over and over again and where local agencies have failed to respond. We intend that the new measure would be a timely and non-bureaucratic way for the public to assert their right to a proper response. The new Police and Crime Commissioners would hold agencies to account for their response, using their power to 'call in' a CSP if the action taken was inadequate.[22]

For more information see section 1.1 of the statutory guidance published by the Home Office (August 2019).

2.3 Noise nuisance

If the nuisance mainly concerns noise the matter should be reported to the local authority's environmental health department. Local authorities have power under the *Environmental Protection Act 1990* to act against private tenants and others who cause a nuisance to neighbours.

Where the noise amounts to a statutory nuisance, the authority must serve an Abatement Notice. Breach of an abatement notice can amount to a criminal offence. Authorities also have powers to seize noise-making equipment in certain circumstances.

Chapter 1 of Part 4 (sections 43-58) of the *Anti-social Behaviour Crime and Policing Act 2014* introduced Community Protection Notices (CPN). 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,

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20 Legal Action, December 2001 pp25-7

21 Certain subsections of section 104 came into force on 13 May 2014 requiring relevant bodies to make arrangements for the carrying out of reviews – these arrangements must be published. The remaining subsections were brought into force on 20 October 2014 (SI 2014/2590).

22 Home Office, More effective responses to anti-social behaviour, February 2011

littering and dog fouling. CPNs are available to the police, local authorities and other authorised persons.

This remedy has not replaced 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 is believed to be deliberately anti-social. The remedy can 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).[23]

Breach of the notice is a criminal offence. For more information see the Home Office statutory guidance (section 2.4, August 2019).

2.4 Injunctions

An injunction is a court order which prohibits a particular activity or requires someone to take action, e.g. to avoid causing a nuisance.

Section 1 of the *Anti-social Behaviour Crime and Policing Act 2014* created, with effect from 23 March 2015, a civil injunction which replaced various pre-existing tools, including the anti-social behaviour injunction (ASBI). Local authorities, housing providers and the police can apply for an injunction to tackle:

- conduct that has caused, or is likely to cause, harassment, alarm or distress to any person;[24]
- conduct capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises;[25] or
- conduct capable of causing housing-related nuisance or annoyance to any person.[26]

It was envisaged that these injunctions would assist authorities in tackling reported cases of anti-social behaviour by private tenants and owner-occupiers:

> **Q27 Steve McCabe:** I want to ask about this point that has been made about owner-occupiers who are the source of the

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23 Home Office, Putting Victims First – More Effective Responses to Anti-social Behaviour, May 2012, para 3.18

24 This test will applies to behaviour away from a residential setting (HL Deb 27 January 2014 c981).

25 Note that injunctions to tackle this ASB are only be available on application by a local authority, a chief officer of police or a housing provider as defined in section 20 of the 2014 Act.

26 Housing related nuisance is defined as nuisance directly or indirectly relating to the housing management functions of a housing provider or local authority as defined section 2(4) of the 2014 Act.

> behaviour. You said that has been a major problem in Manchester, and I think in other parts of the country. Which power in the legislation that has been drafted would enable you to tackle that more quickly and more efficiently than you can at present?
>
> **Rebecca Bryant**: Having access to the injunction that is being proposed would allow us to take action against both owner-occupiers and also those who are tenants in the private sector.[27]

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 cases involving violence or significant risk of harm. This section was initially drafted so that local authorities would only be able to seek an exclusion order where they owned or managed the property concerned. As the Bill progressed through Parliament, the Government amended the section to extend authorities' powers to exclude owner-occupiers and private tenants from their homes:

> Amendments 10 to 15 to clause 12 relate to the power to exclude the subject of an injunction from their home. As I have said, the Bill provides for prohibitions to be attached to an injunction. In extreme cases where the antisocial behaviour has involved actual violence or the threat of violence against another person, or where there is a significant risk of harm, someone can be excluded from their home, but only if they live in social housing.
>
> During the Committee's consideration of that provision, the hon. Member for Ashfield (Gloria De Piero) and others questioned the distinction between tenants in social housing and those who rent in the private sector or own their homes. The hon. Lady rightly pointed out that, from the victim's point of view, which housing sector the perpetrator lives in is irrelevant, and there was broad support from the Committee for that view.
>
> Having sought the views of professionals over the summer recess, we agree. If allowing someone access to their home puts the victim at risk of violence or significant harm, powers must be available to stop that. Amendments 10 to 15 therefore extend the power to exclude a person from their home beyond the social housing sector. Of course, that power should be used only exceptionally, which is why it is subject to a high judicial threshold and, in the case of renters in the private sector and owner-occupiers, applications are restricted to state agencies, meaning the police and the local council. I hope that hon. Members will welcome our response on those matters. The Government has listened carefully to the Committee and the experts.[28]

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.

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27 Home Affairs Committee, The draft Anti-Social Behaviour Bill: pre-legislative scrutiny, 19 February 2013, HC 836-II 2012-13, Ev 3

28 HC Deb 14 October 2013 c537

2.5 Criminal Behaviour Orders (CBOs)

Part 2 of the *Anti-social Behaviour Crime and Policing Act 2014* (in force on 20 October 2014) introduced Criminal Behaviour Orders (CBOs) which a court can make following conviction for any criminal offence. These orders have replaced the ASBO on conviction (CRASBO) and the drink banning order on conviction. A significant change involved authorities being able to 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 statutory guidance published by the Home Office (section 2.2, August 2019).

Social landlords (i.e. other than local authorities), who could apply for a CRASBO, cannot apply for a CBO – they can request that a CBO is applied for.

2.6 Anti-social behaviour Premises Closure Orders

Local authorities and the police gained powers under Part 1A of the *Anti-Social Behaviour Act 2003*[29] to seek a closure order in respect of premises that are associated with persistent disorder or nuisance. These orders were aimed at tackling excessive noise and rowdy behaviour related to frequent drunken parties or high numbers of people entering and leaving a property at all times of the day or night. The orders could be used where anti-social residents were intimidating and threatening their neighbours and criminal families were running illegal business from their properties. They were a last resort to be used when all other options had been tried and failed. Significantly, the orders were tenure neutral so could be used to close privately owned homes.

Once a closure notice had been issued an application for an order had to be made to a magistrate's court within 48 hours. If the magistrate's court made a closure order the premises concerned were closed completely or partially for a maximum of three months. This prevented access by any persons, even those with rights of abode or ownership.

Sections 76-93 of the *Anti-social Behaviour Crime and Policing Act 2014* (in force 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

[29] Added by Schedule 20 of the *Criminal Justice Act 2008* (in force since 1 December 2008)

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. Breaches amount to a criminal offence. Additional information on these notices and orders can be found in the in the statutory guidance published by the Home Office (section 2.6, August 2019).

2.7 Section 215 of the Town and Country Planning Act 1990

Section 215 of the *Town & Country Planning Act 1990* provides a local planning authority (LPA) with the power, in certain circumstances, to take steps requiring land to be cleaned up when its condition adversely affects the amenity of the area. If it appears that the amenity of part of their area is being adversely affected by the condition of neighbouring land and buildings, they may serve a notice on the owner requiring that the situation be remedied. These notices set out the steps that need to be taken, and the time within which the steps must be carried out. LPAs also have powers under section 219 to undertake the clean-up works themselves and to recover the costs from the landowner. Best practice guidance for local authorities in implementing section 215 was published in 2005.[30]

An attempt by Mole Valley District Council to use section 215 to force a homeowner to remove rubbish from his garden proved unsuccessful in 2010:

> A homeowner has won a legal victory overturning a council order demanding he tidy up piles of rubbish from his Surrey garden. Mr Wallace was served a notice under Section 215 of the Town and Country Planning Act by the council in May, Guildford Crown Court heard. He was ordered to remove the plastic bottles, tins, newspapers and other waste, cut back overgrown vegetation and leave the land clear and tidy at his Westcott homes. But he appealed against the decision, at first unsuccessfully at magistrates' court, and then at the higher court. In allowing the appeal, Recorder Christopher Purchas said the evidence 'does not go far enough to show Mr Wallace was interfering with the amenity of other people who live in the locality'.[31]

2.8 Licensing schemes

Mandatory licensing of HMOs

The *Housing Act 2004* introduced a mandatory licensing scheme for certain 'high risk' houses in multiple occupation (HMOs)[32] and gave local authorities additional discretionary licensing powers in respect of other HMOs. The mandatory licensing scheme came into force on 6 April 2006. One of the requirements of granting a licence is:

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30 ODPM, Town and Country Planning Act 1990 Section 215: Best Practice Guidance, 2005

31 *Get Surrey*, "Legal victory allows piles of rubbish to remain," 22 February 2010 (accessed on 30 May 2014)

32 HMOs comprising three storeys or more with five or more residents. Note that on 1 October 2018 HMO licensing was extended to HMOs with five or more residents irrespective of the number of storeys.

- that the proposed licence holder and any manager of the property is a fit and proper person;[33] and
- that proper management standards are being applied at the property.

Neighbours of HMOs that are subject to mandatory licensing can ask an authority to take enforcement action where the landlord fails to tackle anti-social tenants. More information on mandatory licensing can be found on the GOV.UK website.

Selective licensing

Part 3 of the 2004 Act also provided local authorities with powers to license other private sector landlords in their areas in certain circumstances. These 'selective licensing' powers are primarily intended to address the impact that poor quality private landlords and their anti-social tenants can have on the wider community. The powers were developed with the need to tackle problems in areas of low housing demand in mind. Where an authority designates an area as subject to selective licensing *all* the private landlords in that area must obtain a licence and, as with mandatory licensing, if they fail to achieve acceptable management standards the authority is able to take enforcement action.[34]

The 2004 Act also allows licensing by local authorities in non-low demand areas where problems exist in the private rented sector. More detailed information can be found in a separate Library briefing paper: Selective licensing of private landlords.

2.9 Special interim management orders

Local authorities have the power under the *Housing Act 2004* to take over the management of an individual privately rented property where there are significant ASB problems to which the landlord is refusing to respond, and which are causing problems for the local community. This power can be exercised without the need for a licensing scheme to be in place. Permission to grant an order must be sought from a First Tier Tribunal (Property Chamber). The Tribunal must be convinced that the order is necessary to protect the health, safety and welfare of occupiers, neighbours or visitors to the property.

2.10 Powers where the local authority is the freeholder

Where a council tenant exercises the right to buy in a block of flats and then rents the property out to private tenants the council retains a

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33 In deciding whether a landlord is a fit and proper person local authorities must have regard to any offence of fraud or dishonesty committed by the landlord; convictions for violence or drugs or section 3 of the *Sex Offences Act 2003*; unlawful discrimination in the carrying out of any business; contraventions of landlord and tenant law (e.g. illegal eviction); and where they have acted other than in accordance with any code of practice for the management of HMOs.

34 The enforcement provisions came into force in July 2006.

freehold interest[35] and a contractual agreement, in the form of the lease agreement, exists between the two parties to the lease.

Councils may not evict the tenants of long leaseholders who exhibit anti-social behaviour; however, several local authorities 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 (and their tenants) as for council tenants.

Typical clauses which authorities include 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;
- keeping animals without permission.

Local authorities can act 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 and repossession.

Manchester and District reportedly became the first housing association to obtain an ASBO against a leaseholder family in one of their shared ownership properties in September 1999.[36]

[35] A council may also be a head lessee where it only holds a long lease over the land itself.

[36] "Leaseholder anti-social precedent", *Inside Housing,* 24 September 1999

3. Owner occupiers

The situation is rather more complicated if the nuisance neighbour is an owner-occupier; owner-occupiers cannot be evicted for anti-social behaviour although it may be possible to obtain an injunction to exclude them from their home for a period of time (see below).

The 2003 Home Office White Paper, *Respect and Responsibility – Taking a Stand against Anti-social Behaviour,* acknowledged the need to tackle anti-social behaviour amongst owner-occupiers:

> It is important that anti-social behaviour is tackled no matter where people live. This includes owner-occupiers. The enforcement mechanisms, such as injunctions and ASBOs will be used in any area. It is important that in any area where anti-social behaviour is identified as a major problem local authorities should consider establishing specialist anti-social behaviour units. There are excellent examples across the country where this has happened to the benefit of the whole community.
>
> As outlined in Chapter Two, it is vitally important to ensure that help is offered to families or individuals that are behaving anti-socially. All the interventions such as parenting or family support, special schemes to help families who are behaving antisocially as well as warnings, acceptable behaviour contracts, injunctions are absolutely vital to the above processes and need to be in place. But we must also ensure that clear and swift enforcement action is taken when necessary.
>
> Later this month the Office of the Deputy Prime Minister will be publishing a study on tackling anti-social behaviour in mixed tenure areas. The study looked at 'what works' and how barriers to implementing effective anti-social behaviour strategies can be overcome.[37]

The study referred to, Tackling anti-social behaviour in mixed tenure areas, is accessible online (now archived).

Also useful is the publication (now archived), Innovative practice in tackling anti-social behaviour. The aim of this guide was "to provide agencies working with Crime and Disorder Reduction Partnerships with a summary of the key issues involved in developing effective interventions to tackle anti-social behaviour."

The Home Affairs Select Committee's 2004-05 inquiry into ASB took evidence from several organisations which argued that the raft of powers introduced to deal with ASB had neglected anti-social owner occupiers. For instance, the Tenant Participation Advisory Service argued that there is a "clear and urgent need to address the seeming vacuum of measures for dealing with anti-social owner occupiers."[38] At that time, the Home Affairs Committee concluded that "no new powers are needed in relation to anti-social owner-occupiers: ASBOs and other powers are already available and ought to be sufficient."[39]

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37 Home Office White Paper, March 2003, paras 4.50 to 4.52
38 HC 80-I, Fifth Report of 2004-05, para 278
39 Ibid., para 280

3.1 Remedies available

In the case of noise nuisance, the neighbour can seek the assistance of the environmental health department of the local authority.

Cases of physical assault or harassment should be referred to the police. Neighbours may be able to seek an injunction against the perpetrator of the nuisance depending on the nature of the problem. Victims of anti-social behaviour should seek professional legal advice on any remedies that might be applicable in their individual circumstances.

Section **2.4** of this note explains the powers local authorities and the police have under the *Anti-social Behaviour, Crime and Policing Act 2014* to seek injunctions against owner-occupiers and, where the conduct involves violence or significant risk of harm, it is possible to seek an injunction to exclude an owner occupier from their home.[40]

3.2 Selling a property after complaining about anti-social behaviour

When selling a property, owner-occupiers are asked to complete a Seller's Property Information Form (SPIF) which requires the provision of information about any problems that have arisen with the neighbours. If an owner-occupier fails to disclose details of complaints when asked, and the new owner subsequently experiences the same problems and discovers that the ex-owner provided misleading information, the ex-owner could by sued by the new owner.[41]

In the case of *Doe v Skegg* [2006] the sellers' neighbour's son had been trespassing on their drive and harassing them. The sellers wrote to the neighbour threatening legal action in June 2001. The seller subsequently sold his house in November 2001. When completing the SPIF, although aware that the replies formed part of the contract with the buyers, the sellers stated that no letters had been received or sent affecting the property. The purchase was completed, the buyers moved in and became aware of the problem. The buyer issued proceedings for damages for fraudulent misrepresentation on the SPIF. The seller defended the action claiming that the difficulties with the neighbour's son had ended in March 2001.

The claim was allowed under section 2(1) of the *Misrepresentation Act 1967*. The High Court held that the sellers failed to disclose the existence of the dispute concerning the neighbour's son's behaviour, although they knew they should have done. The representation on the SPIF had been made fraudulently, as they could not have reasonably believed that what they had written was true. The responses on the property had induced the buyer to buy the property, thus he was entitled to damages.

The *Fraud Act 2006* replaced previous deception offences with a new general offence of fraud, which can be committed in three ways:

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40 See pages 12-13
41 'Bad neighbours can ruin sellers', *Sunday Times,* 17 March 1996

Fraud by false representation: Dishonestly making a false representation where the person intends, by making the representation, to make a gain for themselves or for another, or to cause loss to another or expose another to a risk of loss. A representation is false if it is untrue or misleading and the person making it knows that it is, or might be, untrue or misleading.

Fraud by failing to disclose information: Failing to disclose to another person information that a person is under a legal duty to disclose and intends, by failing to disclose the information, to make a gain for themselves or another, or to cause loss to another, or to expose another to a risk of loss.

Fraud by abuse of position: Dishonestly abusing a position in which a person is expected to safeguard, or not to act against, the financial interests of another person with the intention of making a gain for themselves, or another, or to cause a loss to another, or to expose another to risk of loss.

The first two offences are likely to be relevant to property sales. Had *Doe v Skegg* been decided after this Act came into force on 15 January 2007, it has been suggested that the sellers would have committed the offence of fraud by either dishonestly making a false representation or failing to disclose information:

> **Dishonestly making a false representation**
>
> With regard to the first offence, the sellers intended to make a 'gain' for themselves by completing the sale. The sellers were aware that if they advised of the difficulty with their neighbour's son then the prospective buyers would probably not have gone ahead. Section 5 of the Act provides that 'gain' or 'loss' extend only to gain or loss in money or other property ('property' means any property, real or personal). The sellers might also have been liable on the grounds of causing loss to another, or exposing another to a risk of loss, in the knowledge that the property would be worth less than the asking price with the ongoing dispute.
>
> Sellers should also beware that if the buyers had found out about the behaviour of the son and decided not to proceed then, although there would be no claim for damages from the buyer, the sellers could still be prosecuted for the fraud of making the false representation with the intention that the buyer would enter into the contract.
>
> **Failing to disclose information**
>
> For dishonest non-disclosure to constitute fraud, there must be a legal duty to disclose the information or, in the absence of that duty, a failure to disclose information when in a position of trust.
>
> Had the sellers a legal duty to disclose the information? At paragraphs 7.28 and 7.29 of its 1992 report, the Law Commission states that a 'legal duty' may arise from:
>
> - statute;
> - the fact that the transaction is one of utmost good faith (eg insurance contracts);

- the express or implied terms of a contract; or
- the existence of a fiduciary relationship between the parties.

Most contracts for sale provide that the buyer is entitled to rely upon the representations given in written replies to enquiries when considering whether to enter into the contract, but this does not mean that these representations form part of the contract. Any falsity in these representations could constitute fraud under the first offence.

However, a contract term that incorporates those replies into the contract, or requires the seller to keep the buyer updated as to any changes, may give rise to the second offence if the replies are not complete or not updated.[42]

[42] http://www.practicalconveyancing.co.uk/content/view/10246/1118/ (link no longer functional)

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