Dealing with Vexatious Complaints

Taking action against unreasonable tenants

Working in partnership with
Today’s speakers

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Complaints on the rise

“Research shows the average social landlord received 33 complaints per 1000 homes in 2015/16. An increase from 31 complaints per 1000 homes in 2014/15 and from 27.6 in 2013/14”

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Management strategies and legal options

Kirsty Varley, Associate Solicitor, Croftons Solicitors
Vexatious complainants...

• Take up a vast amount of time and resources
• Can lead to a reduction in staff morale
• Can lead to bad publicity
Management strategies

• Many strategies for dealing with serial complainants
  – Interventions can be tried before legal action
  – Assists when persuading court any resulting action is legal/proportionate
  – Might work, and save time and money
**Strategy 1**

**Serial telephoners.** Tenant that makes large number of calls and ties up phone lines.

- Consider limiting contact to one call a day/two calls a week except emergencies
- Consider calling them instead at agreed times?
- Frees up staff time and reduces costs
Strategy 2

Serial emailer. Tenant who sends large number of emails requiring responses

– Consider limiting email contact to two a week and to a designated email address to allow this to be monitored
– More manageable contact
Strategy 3

Scattergun complainer. Tenant who emails, telephones, contacts multiple people and creates confusion by doing so.

– Consider single, named point of contact.
– Define how they should be contacted by either telephone or email.
Strategy 4

**Continual visitor.** Tenant who continues to frequent housing office and/or head office.

– Drain on staff time/resources
– Tenants have implied licence to visit housing office
– Consider removing this to ensure tenant stops continual visits
When strategies don’t work...

- Consider legal remedies in ASBCPA 2014
- Dealing with tenants who cause nuisance tend to consider injunction and/or possession - look at both
Injunction – S1 ASBCPA 2014

• Can be sought if behaviour is causing nuisance and annoyance, *and*
• Behaviour affects housing management functions
• Could consider as first option, *but*...
Injunction – is it appropriate?

• There are considerations before an injunction is applied for

• **Capacity!** Is the behaviour a result of any mental health/disability/protected characteristic?
Mental health

• Leading case of Wookey v Wookey
• Defendant must have capacity to understand:
  – terms of an injunction,
  – consequences of breach
• Capacity presumed prima facie, but
• If no capacity and order obtained - likely to face costs arguments
Mental health

If tenant doesn't have capacity to understand injunction, an injunction isn't appropriate or have evidence that they may not and don't want to risk costs...

– Try engaging with local mental health?
– Make mental health referrals?
– Problems with information sharing?
Is possession the answer?

ASBCPA 2014: new ground for dealing with tenants who cause "nuisance to landlord"

– **Ground 14(aa):** ground where the Defendant is guilty of conduct causing or likely to cause nuisance or annoyance to the landlord or a person employed in connection with the landlord’s housing management function.
Nuisance to landlord

• An addition to existing ground 14 – general nuisance and annoyance ground
• Discretionary = 3 stage test for the court
  1. Ground made out?
  2. Reasonable to make order?
  3. Order suspended or outright?
Mental health & possession

• Ensure Defendant has capacity to conduct proceedings and instruct solicitor
• If not, Official Solicitor must be involved
• Assuming capacity to instruct and before issue of proceedings consider:
  – What is known about Defendant's mental health?
Equality Act

• Any suggestion Defendant has mental health issues or physical disabilities then an Equality Act risk assessment should be undertaken.

• Consider:
  – reasons for legal action
  – what is known about Defendant
  – impact of taking action on Defendant
  – impact of not taking any action on those involved
Equality Act

- There are a number of duties that should be considered under Equality Act
  - General duty not to discriminate
  - Duty to make reasonable adjustments for those with disabilities
  - Public Sector Equality Duty to have due regard not to discriminate
Discrimination

• If legal action is found to be discriminatory court has power to dismiss claim
  – Declare that action is discriminatory
  – Order costs
  – Order damages
  – Reputational damage
Reasonable adjustments

• Key way to avoid finding of discrimination
• No exhaustive list - adjustment will depend upon Defendant’s disability
• Adjustment must also be reasonable, taking into account:
  – size of organisation
  – nature of disability
  – how readily adjustment can be facilitated
Case law

• Akerman-Livingstone v Aster
• Judgment provides guidance for RPs when considering taking action against those with disabilities
• Supreme Court case from 2015
Akerman-Livingstone

• Three limbs to consider when Equality Act Defence raised
• Good practice to consider this even before proceedings are taken
• Should factor into decision-making and reasonable adjustments
The Akerman test

1. Is the behaviour linked in any way to the Defendant’s disability?
   – If so, go on to consider other factors.
   – If not, then the discrimination defence must fail and can be dismissed at an early stage.
The Akerman test

2. If disability is linked, is there a lesser action than possession that could have been taken?
   – If there is, then a finding that the action is discriminatory is likely.
   – If there is no lesser action that could be taken then ask...
The Akerman test

3. Is the harm to the Defendant of making a possession order outweighed by the benefit to the RP, staff and any other affected people of being able to obtain possession of the property?
Human Rights

• Often forms part of defence
• Quick refresher...
  – Absolute rights
  – Limited rights
  – Qualified rights
Absolute rights

• Absolute rights cannot be interfered with under any circumstances.
• Rare, and include things like the right not to be subjected to torture and inhuman and degrading treatment
• **No justification for interfering with these rights**
Limited rights

• Limited rights can only be interfered with in limited circumstances

• e.g. ‘right to liberty’

• Obviously limited if a person is sent to prison (subject to) other rights such as right to fair trial
Qualified rights

• Qualified rights can be interfered with
• Interference with a qualified right must be:
  – in accordance with law;
  – necessary and proportionate; and
  – for one or more of the following legitimate aims...
Qualified rights

- the interests of national security
- the interests of public safety or the economic well-being of the country
- the prevention of disorder or crime
- the protection of health or morals, or
- the protection of the rights and freedoms of others
Article 8 Defence

- If RP taking action against vexatious tenant to protect health and safety of staff or to protect the rights of staff, likely to be justifiable reason to interfere with Defendant's right to family and private life
- Could be justified to protect health of staff and prevent disorder
- Legal arguments
Recap

• What do you know about the complainant?
• Do they have mental health/disabilities that contribute to behaviour?
• Try management strategies - might not only work, but could potentially be reasonable adjustment
Recap

• If strategies don’t work, consider legal action
• Injunction or possession?
• Consider capacity and mental health
• Conduct risk assessment if disability exists
• If possession, consider Akerman and if disability linked to behaviour
Recap

• If disability linked, is their lesser action that could be taken to deal with behaviour?
• If not, weigh up impact of eviction on tenants vs. impact on wider community if possession order not made
• Remember, ground is discretionary so a suspended order could be the outcome
Advice

• Ensure staff dealing with tenants with disabilities are aware and trained
• Keep risk assessments under review and update with new information
• Include in evidence to demonstrate compliance with Equality Act duties
Do you need a vexatious complainants policy?

- Identify unreasonable, persistent or vexatious complaints
- Ensure complaints are dealt with quickly, courteously, fairly and consistently
- Distinguish between genuine complaints and customers who are simply difficult
- Protect staff from exposure to unnecessary stress
- Ensure effective/efficient use of time & resources
- Give staff confidence to tackle behaviour
- Provide a clear process on how to deal with the issue – consider management strategies discussed earlier

All front of house staff and staff with regular customer contact should be aware of the policy and its scope.
What should your policy include?

• **Introduction:** the aim of the procedure.
• **Definition:** see Local Government Ombudsman guidance notes.
• **Procedure:** for dealing with unreasonable complainant behaviour/unreasonable persistent complaints.
• **Review Process:** decision to consider a customer vexatious/unreasonable/persistent, and any sanctions or restrictions should be reviewed.
• **Record Keeping**
Salix Homes Case Study

Claire Taylor, Community Safety Manager, Salix Homes
Our recent experience

Behaviour went on for years, including
- Refusal to accept certain issues weren’t within scope of complaints procedure
- Unjustified complaints about staff & seeking to have them replaced
- ‘Scattergun’ approach
- Excessive demands on staff resources: lengthy calls, emails to partner agencies, regular detailed letters.
- Expecting immediate responses
- Refusal to accept decisions, exhausting complaints process, Housing Ombudsman
- Malicious reports to police
Examples of behaviour

• Email to Maria Lester saying “Thanks for your most fabulous, evasive and totally incomprehensible reply” and said if anything was put into words it should be accurate and fit for purpose of answering a Stage 1 complaint.

• Stated he did not give permission for Salix and/or its legal team to change, summarise or rewrite complaint.

• Asked Maria to stick to original complaint and asked for his acknowledgement letter to be re-written to correspond with his complaint, and not her limited summary. If she failed to do so, he would report her to the ICO.

• Tenant sent email responding to Mrs Lester’s previous e-mail and said “PS, I will be phoning Salix Homes, which is my right as a tenant, and if you or your company are not happy with this arrangement please feel free to take me to court.”
Examples of behaviour

• Email to Jeanette Green saying it was her intention to cause distress and that his Solicitor had read the email and was offended by it.

• Said if we continued to discriminate he (deemed a vulnerable adult), would be forced to gain Legal Aid under Discrimination by an Organisation

• Reminded Salix as previously stated, he may not be able to get Legal Aid for housing, but could get Legal Aid if he is being discriminated against.
Reasonable adjustments considered

- Communication in writing via one named point of contact
- Staff training to raise awareness of tenant’s vulnerabilities
- Considered serving Injunction Order – but decided not to proceed
- Equality Act Risk Assessment carried out due to multiple disabilities
Proceeding with legal action

• Refusal to comply with single point of contact, asked us to take him to court
• Vexatious behaviour escalated
  – demanding staff were dismissed
  – serious allegation to police regarding staff
• Unmanageable drain on staff resources
• 110-page statement just a snapshot of 6 months’ evidence
Legal proceedings

• No contact for 12 months after possession proceedings issued
• 2 Year Undertaking entered into by tenant
• Possession proceedings adjourned with liberty to restore within two years
• Extremely positive: Salix want to sustain tenancies, and behaviour stopped for a time
• Court Order in place to protect Salix. Allows behaviour to be dealt with. Will be enforced.
Another recent case...

- Secured 3 year Postponed Possession Order using the Nuisance to Landlord Ground.
- Tenant has not contacted Salix since
- Case agreed prior to proceeding to trial
Lessons learned

- Don’t wait years before legal action
- Ensure a single point of contact isn’t just a ‘message facilitator’ but is fully aware of customers’ disability, needs, medical reports
- If Equality Act issues raised an Equality Act Judge will hear the case - firm but fair
- Ensure regular training sessions are carried out with all employees
Any questions?
Contact us

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