



Anti-Social Behaviour – The New Reforms

Andrew Lane

● ● ●
● ● ● cornerstone
● ● ● barristers

considered. strong.



*In this first of two articles **Andrew Lane** looks forward to the introduction of a number of new ASB “tools” introduced by the Anti-social Behaviour, Crime & Policing Act 2014*

In a passing nod to that 1980s classic “The Final Countdown”, the Housing Team at Cornerstone Barristers has been publishing on its LinkedIn¹ and Twitter² accounts since 1 October 2014 a daily reference to the ASB reforms to be found at Parts 1 to 6 of the Anti-social Behaviour, Crime & Policing Act 2014 (“the Act”), and due in large part to be introduced with effect from Monday, 20 October 2014.

The “mood music” preceding any anti-social behaviour reform is of at least passing interest, whether it be a desire of those in power to be seen as tough on both such behaviour and its causes at the end of the last century, hugging hoodies (which seemed such a good idea in Opposition) or, as the Government have very much trumpeted in the latest reforms, streamlining the myriad of tools presently available to ensure a more effective and consistent victim-centred approach. If my maths was a bit rusty I’d go back to dubious music analogies, this time from the 1990s which is about as modern as I get, and say it’s all a case of “2 Become 1”³. Nineteen powers to be replaced by just six, and as the Home Secretary Theresa May said in the May 2012 White Paper⁴:

“We will introduce faster and more effective powers to stop the dangerous and yobbish behaviour of those who make victims’ lives a misery.”

Whilst it is by definition too early to assess the true merit and worth of the reforms, given that most of them are, as said, only to be introduced with effect from 20

¹ Cornerstone Housing Network

² @CstoneHousing

³ And yes I can name all the Spice Girls

⁴ ‘Putting victims first: more effective responses to anti-social behaviour’



October 2014, it is important to acknowledge that some of the provisions in the first 7 Parts of the Act⁵ have in fact been in force from 13 May 2014:

Section 98 - amendment to ground 2/ground 14: conduct causing nuisance to landlord, etc.

Section 99 - new riot discretionary possession ground⁶.

Section 100(1) - suspension of RTB where new possession proceedings in progress.

Section 101 - community remedies document.

Sections 104 (part) & 105 & Schedule 4 (part) - community trigger.

Sections 106 & 107 - re dangerous dogs.

The Government also recently disappointed those anticipating the introduction of the new section 1 civil injunction – replacing amongst other existing powers anti-social behaviour injunctions and anti-social behaviour orders – by delaying its commencement (it is thought to January 2015) in order to allow changes to be made to the civil legal aid system to ensure that applications for advocacy assistance can be assessed for those involved in civil injunction hearings⁷.

Criminal Behaviour Orders (Part 2), Dispersal Powers (Part 3) Community Protection Notices, Closure Orders and Public Spaces Protection Orders (Part 4) are important powers available to the CPS, Police, PCSOs (if designated), Local Authorities and/or Private Registered Providers (again, if designated) but the “headline” in the latest raft of reforms is really the absolute ground for possession that is going to be available for landlords of secure and assured tenants (Part 5).

⁵ Part 7 dealing with Dangerous Dogs

⁶ In relation to the coming into force of section 99 (offences connected with riot), the court may only make an order for possession of a dwelling-house on Ground 2ZA of Part 1 of Schedule 2 to the Housing Act 1985 or Ground 14ZA of Part 2 of Schedule 2 to the Housing Act 1988 where the indictable offence mentioned in that Ground was committed on or after 13th May 2014.

⁷ This will require amendments to the Legal Aid, Sentencing and Punishment of Offenders Act 2012



As a brief overview, and the legislation is set out in the appendix following this article, what is important about this ground is:

- (1) It highlights more than ever the need for social landlords to review and refine their Anti-social Behaviour Policy & Procedure Statements as required in any event by section 218A of the Housing Act 1996. In short, will their policy “allow” the landlord to use an absolute ground, which of the 5 conditions and, if they can go down to the absolute ground route, in what circumstances?
- (2) Though there are only statutory review requirements vis a vis secure tenancies where the landlord is a local housing authority or housing action trust – section 85ZA of the Housing Act 1985⁸ – as with starter tenancies it is anticipated by the Government that private registered providers will follow suit on a “voluntary” basis.
- (3) A defence based on a tenant’s Convention Rights remains expressly⁹ available to any secure tenant faced with an absolute ground though the reality I suspect is that in most cases it will be the decision-making that will be highlighted and examined in a pure public law sense rather than, say, particular reliance on Article 8 (though this may make the actions of the landlord not “in accordance with the law” such that the Convention Rights is not only, of course, engaged but breached) – *Barber v Croydon* rather than *Manchester City Council v Pinnock*.
- (4) There are 5 alternative conditions provided for at section 84A of the Housing Act 1985/Ground 7A of Schedule 2 to the Housing Act 1988 and allowing use of the absolute ground - relating to a serious offence¹⁰ conviction, breach of section 1 injunction proven at committal proceedings, conviction for breach of criminal behaviour order, closure order with access to the premises prohibited for more than 48 hours under the closure

⁸ Section 96 of the Act

⁹ For secure tenancies - section 84A(1) Housing Act 1985

¹⁰ Defined at Schedule 2A to the Housing Act 1985



notice/order or conviction for breach of an statutory nuisance abatement notice or order to abate a statutory nuisance - and 4 of them (i.e. all but the closure order condition) can be expressly invoked not only by the behaviour of the tenant but also by that of someone living in the demised premises or even a visitor.

- (5) There are locality requirements in 3 of the conditions – serious offence, proven breach of section 1 injunction and conviction for breach of a criminal behaviour order (with the abatement notice condition relating to the premises in any event and by definition).
- (6) New notices are required – section 83ZA of the Housing Act 1985/section 8(3A)-(4F) of the Housing Act 1988 - and there are limits as to when they can be served (e.g. with 12 months of relevant conviction/appeal or within 3 months of closure order/appeal).
- (7) The Statutory Guidance for frontline professionals (July 2014) makes it clear that the purpose of the reform is to “*speed up the possession process in cases where anti-social behaviour or criminality has already been proven by another court*” [p.59] and is intended “*for the most serious cases of anti-social behaviour and landlords should ensure that the ground is used selectively*” [p.59].

Whatever approach a landlord chooses to take it is important not only that their policy, as noted, reflects their stance but also that this is properly and sufficiently publicised (not a problem re sign-ups to new tenancies but more thought is required on how to communicate the changes to existing tenants).

The next article will focus on the new civil injunction but any questions arising from this one should be sent to andrewl@cornerstonebarristers.com.