

# TANFIELD

## ASPECTS OF CRIMINAL LAW THAT MAY ARISE IN THE CONTEXT OF RESIDENTIAL PROPERTY

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**Amanda Gourlay's** expertise in landlord and tenant law covers the right to manage, appointment of a manager, breaches of covenant, forfeiture and associated insolvency.

She is the voice behind Law and Lease, the blog which she created in 2012 to record and comment – with dry humour and occasional irreverence – on service charge decisions.

Notable cases in which Amanda has appeared include: *Church Commissioners v Koyale Enterprises* [2012] 2 EGLR 42 and *Chowdhury v Bramerton Management Company Ltd* [2014] UKUT 260 (LC).

Amanda appears regularly in the FTT and has a growing Upper Tribunal practice.

She is an honorary consultant to the Federation of Private Residents' Associations, a contributor to "Service Charges and Management" by Tanfield Chambers (3rd edn, 2013), and a member of the Property and Chancery Bar Associations.

# Crime and Punishment: with apologies to Sir Arthur Conan Doyle

## Protection from Eviction Act 1977

The Act applies to demised property which includes a non-residential element:  
*Patel v Pirabakaran* [2006] EWCA Civ 685

### Section 1: depriving a residential occupier of his occupation

Three offences:

- 1) Unlawfully depriving or attempting to deprive a residential occupier of his occupation.

The defence: belief or reasonable cause to believe that the residential occupier had ceased to reside.

- 2) Acts likely to interfere with the peace or comfort of the residential occupier or withdrawal of services reasonably required for the occupation of the premises as a residence. There must be an intention to cause the residential occupier:

- a) To give up the occupation of the premises or any part thereof; or

- b) To refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof

- 3) The landlord or an agent of the landlord shall be guilty of an offence if:

- a) He does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or

- b) He persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,

and (in either case) he knows, or has reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.

The defence: reasonable grounds for doing the acts or withdrawing or withholding the services in question.

## Sanction

The offences are triable either way.

On summary conviction: the maximum fine is a prescribed sum and/or imprisonment for a term not exceeding six months.

On conviction on indictment: a fine and/or up to two years' imprisonment.

A company may be prosecuted, and with the company, any director, manager and/or secretary of that company if an offence is committed with their consent or connivance or is attributable to neglect on their part.

## Criminal Law Act 1977

### Section 6: using violence to secure entry

- (1) Subject to the following provisions of this section, any person who, without lawful authority, uses or threatens violence for the purpose of securing entry into any premises for himself or for any other person is guilty of an offence, provided that—
- a) There is someone present on those premises at the time who is opposed to the entry which the violence is intended to secure; and
  - b) The person using or threatening the violence knows that that is the case.

## Sanction

A summary offence, for which the sanction is a maximum of six months in prison or a fine not exceeding level 5 on the standard scale.

## Section 7: adverse occupation of property

Any person who is on any premises as a trespasser after having entered as such is guilty of an offence if he fails to leave those premises on being required to do so by or on behalf of—

- (a) A displaced residential occupier of the premises; or
- (b) An individual who is a protected intending occupier of the premises.

There are three specific defences:

- 1) Belief that the person requiring him to leave the premises was not a displaced residential occupier or protected intending occupier of the premises or a person acting on behalf of a displaced residential occupier or protected intending occupier;
- 2) Proof that the premises are or form part of premises used mainly for non-residential purposes; and
- 3) Proof that the defendant he was not on any part of the premises used wholly or mainly for residential purposes.

## Sanction

This is a summary offence: punishment is imprisonment for a term not exceeding six months and/or a fine not exceeding level 5.

## Section 10: obstructing an enforcement officer

There are two offences:

- 1) Resisting or intentionally obstructing any person who –
  - a) Is an enforcement officer, or is acting under the authority of an enforcement officer; and
  - b) Is engaged in executing a writ issued from the High Court.
- 2) Resisting or intentionally obstructing any person who is in fact an officer of a court engaged in executing any process issued by the High Court or the county court for the purpose of enforcing any judgment or order for the recovery of any premises or for the delivery of possession of any premises.

The defence: belief that the person resisted or obstructed was not an enforcement officer, a person acting under the authority of an enforcement officer or an officer of a court

The two offences are only committed where the occupants of the property entered or remained on the land without the consent or licence of the person claiming possession – or any of his/her predecessors in title. In other words, they only apply in CPR Part 55 trespass actions.

The enforcement officer him/herself is empowered to arrest the individual who s/he has reasonable cause to believe is committing the offence.

### Sanction

This is a summary offence for which the maximum penalty is six months in prison and/or a fine not exceeding level 5 on the standard scale.

## The Landlord and Tenant Act 1985

### Section 1: disclosure of landlord's identity.

The tenant is entitled to know the identity of his landlord.

The request for the identity of the landlord may be made to any person who has demanded rent, or any agent acting for the landlord.

That person must give the name and address in writing within 21 days of receipt of the request.

### Sanction

A fine not exceeding 4 on the standard scale.

## Section 2: disclosure of directors, &c. of corporate landlord.

If the landlord is a body corporate, the tenant is entitled, by serving a written request, to know the name and address of every director and of the secretary of the company.

The request must be answered within 21 days of receipt of the request.

The request for the identity of the landlord may be made to any person who has demanded rent, or any agent acting for the landlord.

The individual who receives it must then forward it on to the landlord.

The landlord must then provide the information or commit a summary offence.

There is a defence of “reasonable excuse”.

## Section 3: change of landlord

An outgoing landlord must inform the lessee of the change of landlord no later than the next rent day or, if that is less than two months’ distant, within two months of the change.

Failure to comply with that duty is a criminal offence.

There is also a civil liability: the outgoing landlord remains liable to the tenant for any breach of any obligation under the tenancy (even if it takes place after the change of landlord) until the tenant is notified of the change of landlord.

## Section 21: the written summary

Section 21 entitles a tenant to require his landlord to supply him with a written summary of costs which will form part of a service charge. If so required the landlord must comply with the request within one month.

## Section 22: inspection of documents

Section 22 entitles a tenant who has received such a summary to require the landlord to afford him reasonable facilities for inspecting the documents supporting the summary. The landlord must comply with that request within two months.

*Morshead Mansions v Di Marco* [2014] EWCA Civ 96

## Sanction for both sections 21 and 22

Failure to comply with these obligations without reasonable excuse is a summary offence punishable with a fine.

## Section 30A and the Schedule to 1985 Act: insurance

Section 30A gives effect to the Schedule to the 1985 Act. The Schedule confers a number of rights on the tenant in connection with the insurance of the premises.

The Schedule entitles the lessee to a written summary of the insurance in place for the dwelling.

Again service of the request can be on the landlord's agent or on the person who receives the rent.

The landlord must comply within 21 days of receiving the written request.

## Inspection of the policy

The lessee is entitled to inspect the policy, and the landlord must:

- a) Afford him reasonable facilities for inspecting any relevant policy or associated documents and for taking copies of or extracts from them, or
- b) Allow him to take copies of or extracts from any such policy or documents and either send them to him or afford him reasonable facilities for collecting them (as he specifies).

Again service of the request can be on the landlord's agent or on the person who receives the rent.

The landlord must comply within 21 days of receiving the written request.

The landlord must provide facilities for inspecting the insurance policy for free – although s/he is entitled to include any cost incurred as part of the management cost of the block.

The landlord is however entitled to charge for any other service – eg photocopies.

## Superior Landlords

Where there is a superior landlord, the time limits are not fixed – they are such time frame as is reasonable.

For inspection of the policy, the immediate landlord must inform the lessee of the name and address of that landlord, and the superior landlord is then caught by the requirements relating to inspection in the same way as an immediate landlord would be.

## Sanction

A summary offence punishable by a fine.

## Powers to prosecute under the 1985 Act

### Section 33: corporate defendants

If the landlord is a company, its directors or managers may be prosecuted.

### Section 34: local authority prosecutions

A local authority can bring a prosecution.

## Prosecution for Offences Act 1985

### Section 6: tenant's right to prosecute

A tenant may bring a private prosecution (*R (Gujra) v Crown Prosecution Service* [2012] UKSC 52).

# **Final points on offences under the Landlord and Tenant Act 1985**

Level 4 on the standard scale: maximum fine of £2,500.

Section 127(1) Magistrates Courts Act 1980: The standard limitation period for bringing the prosecution is six months.

The burden of proof is to the criminal standard: beyond reasonable doubt.

## **Company Directors Disqualification Act 1986**

### **Section 13: offences**

A person commits an offence if s/he:

- 1) Acts in contravention of a disqualification order;
- 2) Acts in contravention of a disqualification undertaking;
- 3) Acts in contravention of section 12(2) of the 1986 Act. In summary this means that where the county court has revoked an administration order because an individual has not made a payment which s/he is required to make by virtue of that order (which is made under Part VI of the County Courts Act 1984) that individual may not, except with the leave of the court which made the order, act as director or liquidator of, or directly or indirectly take part or be concerned in the promotion, formation or management of, a company, or
- 4) Is guilty of an offence under section 11. Section 11 provides that it is an offence for a person to act as director of a company or directly or indirectly to take part in or be concerned in the promotion, formation or management of a company, without the leave of the court, at any time when:
  - a) S/he is an undischarged bankrupt,
  - b) A moratorium period under a debt relief order applies to him/her, or
  - c) A bankruptcy restrictions order or a debt relief restrictions order is in force in respect of him/her.

## Sanction

An offence triable either way.

On summary conviction, the penalty is imprisonment for not more than 6 months and/or a fine not exceeding the statutory maximum.

On conviction on indictment, to imprisonment for not more than 2 years and/or a fine.

## Section 14: corporate defendants

A company may be prosecuted, and with the company, any director, manager and/or secretary of that company if an offence is committed with their consent or connivance or is attributable to neglect on their part.

# Landlord and Tenant Act 1987

## Section 10A: Rights of first refusal

A landlord commits an offence if s/he/it:

- a) Does not serve a notice on qualifying tenants before disposing of a relevant interest or
- b) Broadly - disposes of a relevant interest without complying with the restrictions and prohibitions set out in sections 6-10 of the 1987 Act, which govern the procedure for the acquisition of the landlord's interest by the qualifying tenants.

The most common disposal is that of the freehold.

The defence: reasonable excuse for making the disposal without serving a notice.

## Sanction

A summary offence, punishable by a fine not exceeding level 5 on the standard scale.

A company may be prosecuted, and with the company, any director, manager and/or secretary of that company if an offence is committed with their consent or connivance or is attributable to neglect on their part.

## **Housing Act 1996**

Sections 153 *et seq* empower a local authority and social housing providers to apply for a range of civil sanctions which can be supported by a power of arrest.

### **Section 153A: the anti-social behaviour injunction.**

The person against whom the injunction is sought is engaging, has engaged or threatens to engage in housing-related conduct capable of causing a nuisance or annoyance to—

- a) A person with a right to reside in or occupy housing accommodation owned or managed by a relevant landlord;
- b) A person with a right to reside in or occupy other housing accommodation in the neighbourhood of that housing accommodation;
- c) A person engaged in lawful activity in, or in the neighbourhood of, housing accommodation mentioned in paragraph (a), or
- d) A person employed in connection with the exercise of a relevant landlord's housing management functions.

### **Section 153B**

Empowers the court to grant an injunction against unlawful use of premises.

### **Section 153C**

Exclusion orders and powers of arrest where there is a risk of violence or a significant risk of harm to any person.

## Section 153D

Injunctions against breaches of tenancy agreements and powers of arrest where there is a risk of violence or a significant risk of harm to any person.

## Sanction

The sanction for breach of an order under these sections is as a rule an application to commit the defendant for breach of the order.

# The Housing Act 2004

## Section 72: HMOs

This section sets out three offences in relation to Houses in Multiple Occupation:

- 1) Control or management of a House in Multiple Occupation without a licence;
- 2) Knowingly permitting occupation beyond the authorisation of the licence, or
- 3) Failure to comply with any conditions on which a licence is issued.

Section 72 also contains the defences available:

- 1) Notification has been given under section 62(1) and is still effective;
- 2) An application for a licence has been made under section 63 and is still effective, or
- 3) The defendant has a reasonable excuse for committing one of the three offences above.

The meaning of “effective” is set out in subsections 9 and 10 of section 72.

## Sanction

The first two offences are summary offences and carry a penalty of a maximum fine of £20,000.

The third offence is also a summary offence, for which the penalty is a fine “not exceeding level 5 on the standard scale”.

*R. v Siaulys (Arunas), R. v Capital Mastercraft Ltd* [2013] EWCA Crim 2083

Followed the decision in *Sumal & Sons (Properties) Ltd v Newham LBC* [2012] EWCA Crim 1840, in which the Court of Appeal (Criminal Division) held that a landlord's receipt of rent for unlicensed property, insofar as rent was validly due, could not amount to benefit from criminal conduct for the purposes of a confiscation order. The confiscation orders made against two landlords where the benefit which they were alleged to have received had been calculated on the basis of estimated rental charges were accordingly quashed.

## Legal Aid, Sentencing and Punishment of Offenders Act 2012

### Section 144: squatting in residential property

This is the offence of squatting in a residential building

The offence is not committed by a person holding over after the end of a lease or licence, even if the person leaves and re-enters the building.

It is irrelevant whether the person entered the building as a trespasser before or after the section came into force.

*Best v Chief Land Registrar* [2014] EWHC (Admin) 1370

The chief land registrar was wrong to refuse a squatter's application for adverse possession under Schedule 6 to the Land Registration Act 2002 on the basis that his occupation of the property had constituted a criminal offence under the Legal Aid, Sentencing and Punishment of Offenders Act 2012. The mere fact that adverse possession was based on criminal trespass did not preclude a successful claim to adverse possession under Schedule 6.

## Sanction

A summary offence with a maximum prison term of 51 weeks and/or a fine not exceeding level 5 on the standard scale.

# Anti-social behaviour Crime and Policing Act

## 2014

### Section 80: closure orders

The magistrates' court may make a closure order if it is satisfied—

- a) That a person has engaged, or (if the order is not made) is likely to engage, in disorderly, offensive or criminal behaviour on the premises, or
- b) That the use of the premises has resulted, or (if the order is not made) is likely to result, in serious nuisance to members of the public, or
- c) That there has been, or (if the order is not made) is likely to be, disorder near those premises associated with the use of those premises,

and that the order is necessary to prevent the behaviour, nuisance or disorder from continuing, recurring or occurring.

## Statutory instruments

### Gas Safety (Installation and Use) Regulations 1998/2451

#### Regulation 36

This regulation imposes obligations on landlords – and licensors – of leases of 7 years or less (including periodic and statutory tenancies) in residential tenancies occupied in consideration of money or money's worth.

Relevant gas fittings (which are defined in the regulation) and flues serving those fittings must be maintained in a safe condition “so as to prevent the risk of injury to any person in lawful occupation”.

The landlord must ensure that the gas appliance and flue is checked within twelve months of installation – and at least every twelve months thereafter.

A record of the check must be made and retained for two years from the date of the check. The information to be provided on that check is listed in the regulation. It must be made available on request to the tenant/licensor.

In any event, the check must be given to the lessee within 28 days of it being carried out, and the most recent check must be provided to any incoming tenant.

Contravention of the landlord's duty is an offence, punishable on indictment by imprisonment or an unlimited fine, or on summary conviction by a fine of up to £5,000 (standard scale, level 5) by virtue of the Health and Safety at Work etc Act 1974, section 33(1)(c), (3).

A landlord was reported to have been jailed for two years after fumes from a faulty gas boiler killed his tenant in *The Times*, December 9, 1997.

The landlord has a good defence if he can show that he took all reasonable steps to prevent the contravention of the regulations.

# **Civil Procedure Rules Part 81: applications and proceedings in relation to contempt of court**

## **81.4: failure to comply with a judgment or order**

- (1) If a person –
  - (a) Required by a judgment or order to do an act does not do it within the time fixed by the judgment or order; or
  - (b) Disobeys a judgment or order not to do an act,then, subject to the Debtors Acts 1869 and 1878 and to the provisions of these Rules, the judgment or order may be enforced by an order for committal.
- (2) If the time fixed by the judgment or order for doing an act has been varied by a subsequent order or agreement of the parties under rule 2.11, then references in paragraph (1)(a) to the time fixed are references to the time fixed by that subsequent order or agreement.
- (3) If the person referred to in paragraph (1) is a company or other corporation, the committal order may be made against any director or other officer of that company or corporation.

So far as applicable, and with the necessary modifications, this section applies to undertakings given by a party as it applies to judgments or orders.

### **81.9: requirement for a penal notice on judgments and orders**

- (1) Subject to paragraph (2), a judgment or order to do or not do an act may not be enforced under rule 81.4 unless there is prominently displayed, on the front of the copy of the judgment or order ..., a warning to the person required to do or not do the act in question that disobedience to the order would be a contempt of court punishable by imprisonment, a fine or sequestration of assets.
- (2) An undertaking to do or not do an act which is contained in a judgment or order may be enforced under rule 81.4 notwithstanding that the judgment or order does not contain the warning described in paragraph (1).

### **83.13: enforcement in the High Court of a judgment or order for possession of land**

- (1) A judgment or order for the giving of possession of land may be enforced in the High Court by one or more of the following means— ...
  - (b) in a case in which rule 81.4 applies, an order of committal.

## **Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013/1159**

### **Rule 8(5)**

The Tribunal may refer to the Upper Tribunal, and ask the Upper Tribunal to exercise its power under section 25 of the Tribunals Courts and Enforcement Act 2007 in relation to, any failure by a person to comply with a requirement imposed by the Tribunal—

- a) To attend at any place for the purpose of giving evidence;
- b) Otherwise to make themselves available to give evidence;
- c) To swear an oath in connection with the giving of evidence;

- d) To give evidence as a witness;
- e) To produce a document; or
- f) To facilitate inspection of a document or any other thing (including any premises).

The Upper Tribunal has power to commit an individual. In *MD v Secretary of State for Work & Pensions (Enforcement Reference)* [2010] UKUT 202 (AAC), the Administrative Appeals Chamber made the following observations about section 25:

“The inclusion in the 2007 Act of provisions conferring on the Upper Tribunal ... the same powers as the High Court to punish for disobedience to certain types of order was ... a necessary and integral part of the new tribunal structure, designed to create a self-contained and effective system of administrative justice...

“The power of referral to the Upper Tribunal which have now been conferred on tribunals in order to aid them in ensuring compliance with their orders may have very serious consequences, including the deprivation of a person’s liberty... In *Nicholls v Nicholls* [1997] 1 WLR 314 the Court of Appeal held that the power to rectify procedural defects under the Rules of the Supreme Court ... enabled the court to overlook a procedural breach if the irregularity had caused the contemnor no prejudice or injustice. However ... the court held that, as committal orders involve the liberty of the subject, it is particularly important that the relevant rules are complied with...”