

Why Injunctions are More Important than Ever

The Problem

As most landlords will now be aware it is, at the moment, impossible to evict tenants. For many residential landlords, there will be serious tenancy management issues that still require resolution or remedy and simply can't wait until the crisis is over.

There are two new obstacles to evicting tenants. First, the statutory notice periods required in relation to most residential tenancies have been extended to a minimum of three months (as per s.81, and Sch.29, Coronavirus Act 2020). Second, and perhaps more importantly, the new Practice Direction 51Z has stayed **ALL** Part 55 Claims for a period of 90 days.

As the world has been forced into lockdown rates of domestic violence in the home have soared. Similarly, with the closure of schools and parents trying to juggle full-time childcare and remote working, it is no surprise that the rates of housing-relating anti-social behaviour have sky-rocketed in the last few weeks as well. On the repairs front the situation for landlords is, largely, business as usual – urgent repairs and remedial works must continue to ensure that people are safe in their homes.

So, what can you do?

Seeking possession might have been the answer to many serious tenancy management issues only three weeks ago. But, whilst the eviction moratorium is in place, the remedy, in many cases, will have to be - apply for an injunction instead. The ability to apply for an injunction is unaffected by the new practice direction.

Injunctions

Injunctions are an equitable remedy that prohibit or require persons to do things. The breach of an injunction may be enforced by committal proceedings (i.e. the defendant could end up in prison for failure to comply). Injunctions can be used in lots of different scenarios: it might simply require a tenant to provide access to the property to allow an inspection or remedial works to be carried out; it might prohibit a tenant from engaging in anti-social behaviour; or perhaps it will prohibit a trespasser from accessing land over which he has no right or permission to enter.

Injunction claims can be issued under Part 7 or Part 8. But, in some cases where there is an immediate problem it may be necessary to apply for an interim injunction to enforce tenancy obligations, perhaps before a claim form has even been issued. If the issue is sufficiently urgent and the circumstances justify it, then you may be entitled to apply for an injunction outside the usual court hours and without giving notice to the other side.

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Interim injunctions are an important remedy for landlords and landowners seeking to enforce their rights and to regulate the behaviour of others on an urgent basis. The court will apply the test set out in *American Cyanamid Co v Ethicom Ltd* [1975] AC 396 when deciding whether to grant interim relief, which involves answering the following questions:

1. Is there a serious question to be tried?
2. Would damages be an adequate remedy? and
3. Where does the balance of convenience lie?

Statutory Powers

In addition to the rights of landlords and landowners to enforce their contractual and proprietary rights under the common law, there are other statutory regimes that entitle certain bodies to obtain injunctions if statutory criteria are satisfied. One of these regimes can be found in Part 1 of the Anti Social Behaviour Crime and Policing Act 2014. A power of arrest may be attached to these injunctions and an order may even exclude a person from a geographical area or from associating with other specified people. These orders may be applied for on an interim basis and in some instances without notice being given to the respondent beforehand.

Applications for ASB injunctions may be made by bodies including local authorities, housing providers, the chief officer of police for a police area, the chief constable of the British Transport Police Force, Transport for London, Transport for Manchester and the Environment Agency (not an exhaustive list).

The respondent to an ASB injunction does not need to be a tenant, or a person who has a contractual relationship with the applicant. As such, these injunctions are a crucial tool to prohibit behaviour that it is not possible to restrain under a tenancy agreement or pursuant to any other proprietary rights. At the moment these powers (in addition to those introduced under the Coronavirus Act 2020) will be very important to enforce social distancing measures and to ensure that the public continues to comply with public health advice. Indeed, just over a week ago it was reported that an injunction was granted in Manchester to prevent house parties that were taking place with more than 20 guests in attendance despite the current acute need for social distancing.

In simple terms, to grant an ASB injunction the court must be satisfied on the balance of probabilities that:

- a person has engaged, or threatens to engage, in antisocial behaviour, and

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- it is just and convenient to grant the injunction for the purpose of preventing that person from engaging in antisocial behaviour.

An interim injunction may be granted where the court considers that it is “just” to do so.

Practicalities

At the moment the courts are urgently adjusting to the public health crisis by moving to using remote technology wherever possible. This means that hearings are being adjourned regularly or conducted by telephone or video conferencing. In-person hearings are only taking place when it is really necessary.

Injunction hearings (including ASB injunctions) are to be treated as a “Priority 1” matter when it comes to civil listing policy. As such, if you need an urgent injunction then it should be possible to get a hearing even if it is to be conducted by all parties in the safety of their own homes.

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