

# Anti-social behaviour law update

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## 1. Recent case law

### The standard of proof

*R (N) Mental Health Review Tribunal* [2006] 2 WLR 850

Clarifies [?] the question of the “sliding scale” of standards of proof

On an application for discharge from hospital order, the civil standard of proof applied

Save in limited contexts, English law recognises only 2 standards of proof: criminal and civil. The civil standard is flexible, in that the more serious the allegation and the more serious the consequences, the stronger and more cogent the evidence that is in practice required.

The reference in *R (McCann) v Manchester Crown Court* to the “heightened civil standard” was criticised but the use of the criminal standard for “pragmatic” reasons was approved.

### The terms of a possession order

- *Harlow BC v Hall* [2006] EWCA Civ 154
- *Bristol CC v Hassan* [2006] EWCA Civ 656
- *Richmond v Kensington & Chelsea* [2006] EWCA Civ 68
- *Knowsley HT v McMullen* [2006] EWCA Civ 539
- *Amendments to Practice Directions to Part 55*

A tenancy comes to an end on the date specified in the order. The Court of Appeal in *Hassan* suggested terms which can be applied to rent arrears cases and the new PD seems to apply to any kind of SPO. On the other hand, the COA in *McMullen* resisted the suggested order. How should SPOs now be drafted?

### Possession claims and Disability Discrimination Act

- *Knowsley HT v McMullen* [2006] EWCA Civ 539
- *Manchester CC v Higgins* [2005] EWCA Civ 1423

*KHT v McMullen*: Defendant had IQ of 63 and problems with assertiveness. Court found she would have had problem controlling her thug of a son disabled or no. Her DDA defence was therefore dismissed. On appeal, the Court of Appeal made a superb summary of the principles to be applied to possession claims generally; to nuisance caused by others than the tenant in particular; and as to the balance to be struck between the rights of the neighbours and the rights of the tenant.

*Manchester CC v Higgins*

Defendant had three children including one with hole in the heart. MCC obtained ASBO against one of the children, to no avail. CCJ made SPO. Both sides appealed.

COA held

- 1) the discretion of the County Court is unfettered
- 2) if the misconduct of a member of the household was bad enough to warrant an ASBO this is strong evidence that the tenant will have forfeited the right to remain in the property
- 3) the question of suspension is a question of the future. There must always be a sound basis for the hope that the anti-social behaviour will cease.
- 4) Comments on article 8 may be overstated in light of *Price v Leeds CC*

Enforcement of an ASBO

*CPS v T* [2006] EWHC 728 (Admin)

Court dealing with breach of ASBO has no jurisdiction to rule on the validity of the ASBO itself  
ASBO restraining “anti-social behaviour” without further explanation was invalid

## 2. Statutory changes

### Disability Discrimination Act

New provisions

Section 24A –

24A Let premises: discrimination in failing to comply with duty

(1) It is unlawful for a controller of let premises to discriminate against a disabled person-

(a) who is a person to whom the premises are let; or

(b) who, although not a person to whom the premises are let, is lawfully under the letting an occupier of the premises.

(2) For the purposes of subsection (1), a controller of let premises discriminates against a disabled person if-

(a) he fails to comply with a duty under section 24C or 24D imposed on him by reference to the disabled person; and

(b) he cannot show that failure to comply with the duty is justified (see section 24K).

section 24C: duty to provide auxiliary aid

section 24D: duty to change the terms of letting if they discriminate

Definition of disability widened – no longer needs to be “clinically well recognised”

### Housing Act 2004

- section 179 – inserts new sections 125A and 125B in HA 1996 – gives landlords power to extend trial period in introductory tenancies by a further 6 months. Came into force on 6/6/05 and applies to intro tenancies granted after that date. Landlord serves notice of extension; tenant has right to request review
- section 191: adds new ground on which local authority landlords may refuse mutual exchange ie if a “relevant order” is in force (ASBI/SPO/demotion order/pending application)
- section 192: confers power on Court to make an order suspending RTB where the tenant or a visitor has been guilty of anti-social behaviour. Local authority must show that tenant or resident or visitor has been guilty of anti-social behaviour and it is reasonable to make the order. RTB cannot be exercised during currency of SPO.

Local Government Act 1972 section 222 gives local authority to seek an injunction to restrain anti-social behaviour. A power of arrest can be added if one could have been sought under section 153A and the Police & Justice Bill 2006 clause 20 will add a power of remand

Drugs Act 2005 – section 20 inserts new section 1G into Crime & Disorder Act 1998 creating *intervention orders* – where an ASBO is made against an adult and the relevant authority has an expert report as to the effect of drugs on the person’s anti-social behaviour, Court can make an order similar to Individual Support Order

Clean Neighbourhoods and Environment Act 2005 creates various new powers for local authorities such as gating orders

Serious Organised Crime and Police Act 2005

- inserts new section 1(1A) into the Protection from Harassment Act 1997 preventing aggressive campaigning
- inserts new section 42A into the Criminal Justice & Police Act 2001 creating offence of harassment of a person in his home
- inserts new subsection 2 into section 1A of Crime & Disorder Act 1998 so that other new “relevant authorities” can be added
- amends procedures in relation to CrASBOs
  - proceedings relating to the order on conviction can be adjourned until after sentencing
  - section 49 of the Children & Young Persons Act 1933 is disapplied, but section 45 of the Youth Justice & Criminal Evidence Act 1999 is applied (although this is not yet in force and until it is, section 49 applies back)
  - special measures for witnesses in Magistrates ASBO proceedings
- creates Parental Compensation Orders (sections 13A-D of the Crime & Disorder Act 1998) – if a child under 10 has caused damage to property in the course of anti-social behaviour and the court considers it desirable to prevent repetition, the Court may on the application of a local authority, make an order requiring the parent or guardian of the child to pay up to £5,000

### 3. Future developments:

Law Commission report

Mental Capacity Act 2005 – due to come into force in 2007. The Code of Practice is out for consultation: <http://www.dca.gov.uk/consult/codepractise/codeofpractice.htm>

- Failure to comply with the Code of Practice can be used as evidence in any Court.
- Will create Independent Mental Capacity Advisory Service
- There is an assumption that a person has full mental capacity until the contrary is proved. There is a duty to respect the capacity of an individual to make “eccentric” decisions. However, the Act is said to be consolidating existing principles rather than creating new ones.
- Sections 38-9 impose duties on a local authority considering whether to place a person in sheltered or other accommodation