

# Association of Tenancy Relations Officers

## Legislative update

### Immigration Act 2014

The pilot scheme for landlords to check the immigration status of potential tenants in the West Midlands, commenced on 1 December. At the end of the pilot the results will be analysed and if the scheme is found to be successful, will be implemented nationwide.

The outcome of the general election will possibly determine if the scheme will be fully implemented. The Lib Dems were critical of the fundamental basis of the scheme but it seems likely they will have fewer MPs next year. If a handful of UKIP MPs are elected it would be likely that they would be in favour of implementation as it concerns immigration, however they are also critical of the amount of legislation that they believe is an obstacle to small businesses.

Various Orders and Codes of Practice have been issued in connection with the new obligations. They have been issued by the Home Office, not the DCLG.

### Retaliatory Eviction

Sarah Teather's proposed legislation, known as the Tenancies (Reform) Bill second reading was held on 28 November. Despite the fact that the sponsors had managed to get government support 'in principle' who wanted the Bill to proceed to

Committee Stage for a detailed assessment and consideration, two conservative MPs 'talked out' the Bill that means it cannot proceed.

The Bill did not fail on its merits. It failed on the basis that two MPs, Philip Davies and Christopher Chope both spoke for around 1 hour with friendly interruptions of each other (they were seated adjacently) that then allowed each to diverge from their speech to respond to the point raised before returning to their own speech.

Their interruptions frequently involved one asking the other a question that could not be answered that enabled them to give their opinion and also say why they could not provide a definitive opinion or to suggest that the government might answer. The Deputy Speaker warned Davies twice that he must not repeat the same point in several different ways. He also read verbatim, S21 in its original 1988 form, and then each amendment since; and then went on to S11 LTA, followed by various clauses of HA 2004 and then said that was what the Bill is about. That raised an objection from another MP who, to paraphrase, said we know what the Bill is about, but what is your speech about.

When Davies made a caustic comment about the Deputy Speaker, implying that her chairing of the debate might be biased, she told him to sit down and that his speech was over.

When it was getting near the deadline for the end of the timed debate, a procedural vote was called, (in parliamentary procedure it is a vote on whether the vote on the bill should be taken) but those opposing the Bill did not go through the voting lobby that meant the necessary quorum for a vote on closure could not proceed. That allowed the “debate” to continue. I emphasise the word because one MP interjected in exasperation, that it was not a real debate because of the tactics used by Chope and his colleague to use up all the time allocated whilst preventing a vote being held.

Chope was speaking at the deadline, and that meant under the rules of debate, that the Bill failed automatically – but not on the merits. Those who opposed the Bill were seemingly afraid they would lose.

The two MPs were even subject to a criticism by another Tory MP who said her constituents might be affected by the failure of the Bill to progress.

It was an appalling spectacle to watch, but it should be added that had there been a higher attendance of MP who supported it, it might have been possible to avoid Chope and Davies’s tactics. For those who are interested the debate may be viewed (it may be on You Tube) or in Hansard.

### **Police & Anti-social Behaviour Act 2014**

The last of the new provisions or amended grounds for possession, came into force on 20 October. The general ambit of the grounds were covered in Issue 3 of the Newsletter.

Included in the final provisions is the Absolute Ground that is more likely to be used by social, rather than private landlords. A 68 page Home Office guidance booklet has been issued,

### **Reform of anti-social behaviour powers. Statutory Guidance for professionals.**

The guidance states that the new ground should only be used selectively for the most serious of cases.

### **Case Law**

Peterborough CC 2011  
[2011] EWCA Crim 1584

This is an old case that I thought would be useful to review as a reminder of the care that is needed in drafting and issue of summonses under the Protection from Eviction Act. The circumstances of the case are not uncommon where a landlord or landlady does not or does not want to be directly involved in an eviction and either organizes others to harass or illegally evict or incites them to do so.

Peterborough’s prosecution failed at Magistrates Court in a case that had caused significant and on-going distress to the tenants. The Council had had dealings with the landlord for several months before the final eviction. Having lost at the hearing the Council appealed unsuccessfully. The Court of Appeal held that a landlord cannot be held liable under S 1 (3A) if they are not directly involved in the wrongdoing themselves. The sequence of events included an incident two weeks before the final eviction involving a police officer, arguably assisting the landlord. According to the CA report, :-

“the respondent (Quereshi, the landlord) allowed the police officer to draw up an agreement requiring the tenants to leave within three days. The respondent signed the agreement. The tenants however did not”.

They had been advised that the landlord needed a court order. A landlord may therefore be able to avoid liability if there is no evidence of

them organising the eviction or harassment or taking part. It is worth also reporting an extract from the Crown Court summary, approved by the CA :-

"I do not think it right as a proposition that this defendant can be held responsible for things done or said by others.....without his orchestration.....or under his control. *(and then, importantly, my emphasis)*

even if done or said in his presence there has to be some degree of participation by him...mere presence at the scene alone would not be sufficient".

The CA said that 'does acts' (the defendant in a case) in S 1(3A)(a)

"suggests a requirement of actual participation by the defendant."

The CA did say that their judgment and that of the Recorder at Crown Court, did not imply that, with appropriate evidence an offender may not be convicted as a secondary party of joint enterprise or incitement, that was in that case **not part of the indictment**.

The CA report does not say if the actual participants, including the landlord's son were charged or convicted. The drafting of the indictment and supporting evidence is crucial. A landlord cannot be liable for the acts of others.

### **Salford Council's first harassment & eviction prosecution. September 2014**

Catherine Seale, a landlady, pleaded not guilty but was found guilty after a four-day trial and was fined £1,000 with £5,000 costs and ordered to pay £250 compensation to the victim. In addition she was given three months to pay or face 28 days in jail.

The landlady had let the property for two years but wanted it back and entered the house without permission

and, in front of the tenant, removed the electrical fuses and left, taking them with her. This left the tenant without heating, lighting and hot water.

Salford attempted to get the landlady to restore services but had to use emergency powers to restore the power supply.

The landlady claimed that she had not disconnected services because she was elsewhere in the course of her employment, at the time of the incident. She had forged a document from her employer to back up her story. The employer gave evidence for the Council. Presumably, the landlady also lost her job.

### **Waltham Forest Protection from Eviction Act May 2014**

This was a police prosecution but with much of the casework and evidence gathering having been undertaken by the Council's TRO, Beverley Holdsworth,

Elizabeth Eroghen, and her partner, George Ebong Akpan, were twice unlawfully evicted despite Ms Eroghen being heavily pregnant with twins, and subsequently went into labour two months before her due date. She ended up spending five days in hospital, tragically losing one of her babies.

The landlady Ogechi Anyanwu and her niece were found guilty at Stratford Magistrates' Court, and were each sentenced to 80 hours supervised community service and ordered to pay £250 costs and a £60 victim surcharge.

In a very unusual and heart-warming ending to a case, the couple named their surviving child after the TRO, Beverley.

It is appropriate to record the tribute given by the couple, who said :-

“Beverley was like an angel and went well beyond the call of duty in helping us with our situation”.

“It’s at times of trouble and stress that you realise what people are really like and the true meaning of good and bad. However, it was also a time when my beautiful daughter was born, so there was light too and it seemed appropriate to name her after Beverley given what she has done for us.”

Our congratulations to Beverley.

### **Opinions on Sarah Teather’s Bill**

In an editorial on the RLA Website it suggested that the Bill would benefit bad tenants

“Government support for evictions legislation will make it easier for nightmare tenants to cause problems for their communities and landlords alike”.

A poster on the site on 10 September, Rod Gwyther asked

“When will we have legislation that forces tenants to have a licence to rent, something that can be revoked or marked if they refuse to abide by tenancy agreements and social decency and respect for other peoples (sic) property?”

Mr Gwyther mixes up two issues, firstly tenants can be evicted for ASB and that may well show up in any reference check. These cases do tend to receive wide publicity, particularly evictions by social landlords. Secondly, a place to live is a basic human need and it seems unclear what he would suggest for a place of abode for a tenant whose licence had been revoked. Being a tenant is not a choice; however, being a landlord is, and carries with it those normal risks of business.

### **RLA Creative or wishful thinking**

The article also suggested that an eviction based upon the issue of a valid Section 21 Notice after a complaint of disrepair, is currently a criminal offence under the PfEA.

They claimed that the use of the express or implied term of an AST that a landlord can end a tenancy within the statutory provisions of the 1988 Act– would be an illegal act, by reference to the Unfair Terms in Consumer contracts regulations. They argued that a tenant could put forward an UTCCR defence at the County Court in response to a Section 21 application.

That suggests that secondary legislation (the consumer regulations) overrides the legitimate use of primary legislation (the Housing Act) and create the basis of a criminal offence of harassment under the Protection from Eviction Act.

In addition comment made in the 2013 Housing Select Committee Report, that no further legislation was required for the private rented sector, was cited in opposition to the Bill.as did Chope and Davies in the debate.

Will the RLA will now amend their landlord section of the website advising that a landlord risks committing a criminal offence if they issue a S21 after a report of a disrepair in the property?

### **National Landlords Association**

Meanwhile the NLA had focussed on damage caused to properties by tenants. This could possibly be used by them as an argument against the Retaliatory Eviction Bill. They say that 28 % have had their property damaged by tenants in the last 12 months.

Their findings indicated that 46 %of landlords experienced damage problems in the North East in the last

year. The lowest level at 21% was in the south east.

### **Proposed local licensing in Croydon**

Extract from NLA website  
17 September 2014

“Croydon Borough Council’s proposal will also make landlords responsible for controlling visitors to their properties as well as managing anti-social behaviour of tenants, which the NLA argues is unfair and unworkable”.

Landlords only have limited powers and are not one of the statutory enforcement agencies. The ability of a landlord to control the ASB of third parties, as opposed to promoting it, perhaps goes too far. The concept of reasonableness must come into play in this situation. The failure to evict a tenant due to the actions of visitors, would in the Council’s view be anti-social in itself.

<http://www.landlords.org.uk/news-campaigns/news/croydon-council-invited-justify-tenant->

### **New Publications**

RICS good practice guide

[http://www.rics.org/Global/Private\\_Rented\\_Sector\\_code.2014.pdf](http://www.rics.org/Global/Private_Rented_Sector_code.2014.pdf)

### **Ombudsman Services**

A new guide to student renting **Know your Rights** has been issued. Unfortunately it is very basic in what it covers and most student unions or schools would possibly produce more useful information. It does not mention Student Union advice services, not local Councils.

As an aside, it does not seem very professional because the proof reader was possibly not concentrating on their job. Amongst the errors are

- roadband providers
- dvice
- ontents
- efore
- eing

*and even*

- mbudsman

The omissions of the first letter of the words are repeated throughout the leaflet so I imagine that it must have been caused by an automated editing system. Apart from that it is visually very engaging.

*(My apologies for any typographical errors in the Newsletter!)*

### **Apps**

For those who like to have the latest App, there is a new one that can be used when dealing with a complaint against one of the 1500 bodies, including utilities and insurance companies and restaurants who have signed up to the agreement.

It is understood that Resolver will advertise widely in Universities during the year.

[Resolver.co.uk](http://Resolver.co.uk)

### **Salford Council calls for tougher sentences for housing offences.**

Salford Magistrates Court fined a landlord £150 for breach of a number of HHSRS notices involving gas safety issues, leaking plumbing and lack of any locks on back or front door. (costs, £1500 ). The landlord had entered an early guilty plea.

A Salford EHO has called for the publication of sentencing guidelines for housing offences.

The EHO is a magistrate who has served for 8 years on the bench.

Items are invited for the next issue to be published in **March 2015**. Reports of 150-200 words is standard. Any members who wish to contribute longer items should contact me at :-

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