

# Better homes for all – Protecting tenants from rogue landlords and unlawful eviction in Wolverhampton

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## Introductions

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## Summary

- Numerous issues in the Private Rented Sector
- Tenants often the most vulnerable, in unsecure situations
- Susceptible to harassment, coercion and abuse
- Protection from Eviction Act 1977 found insufficient
- A new approach was needed
- ASB Injunctions and Enterprise Act Enforcement Orders
- Swift and effective action in days or weeks, as opposed to months
- Injunctions - single tenant/family
- Enforcement Orders – portfolio landlord landlords

## Integrated approach to enforcement

- Traditionally, each regulatory department stayed within its area, with little overlap
- Trading Standards dealt with rogue traders, and PSH dealt with landlords
- However, the consolidation of regulatory services opened up more cross team discussion on tackling issues such as rogue landlords
- The Landlord and tenant relationship is a business relationship, between a trader (the landlord) and the consumer (the tenant)
- Therefore, it is a commercial practice under Consumer Protection from Unfair Trading Regulations 2008

## Integrated approach to enforcement

- Consumer Practice means:  
*“any **act, omission, course of conduct, representation or commercial communication** (including advertising and marketing) by a trader, which is directly connected with the promotion, **sale or supply of a product to or from consumers**, whether occurring before, during or after a commercial transaction (if any) in relation to a **product**”*
- Product means **“any goods or service and includes immovable property, rights and obligations.”**
- Therefore, the letting of premises is enforceable under the Enterprise Act
- A change of perspective led to change of culture, which lead to a change of strategy, resulting in new methods to tackle issues in our area

## Anti-social Behaviour Injunctions

- Traditional method is Protection from Eviction Act 1977
- However, only allows for prosecution after the fact
- An immediate solution was required to protect the tenant

### Part 1 Anti-Social Behaviour, Crime and Policing Act 2014

- **Section 1** - the court may grant an injunction where:
  - on the **balance of probabilities**, a person has engaged or threatens to engage in **anti-social behaviour (“ASB”)**; and
  - an injunction **is just and convenient** to prevent the ASB
- An injunction can prevent someone from doing something, or require them to do something

# Anti-social Behaviour Injunctions

## *Section 2 – meaning of anti-social behaviour*

- (a) conduct that has caused, or is likely to cause, **harassment, alarm or distress** to any person,
- (b) conduct capable of causing **nuisance or annoyance** to a person in relation to that person's **occupation of residential premises**, or
- (c) conduct capable of causing **housing-related nuisance or annoyance** to any person.

# Anti-social Behaviour Injunctions

## Section 4 – Power of Arrest

- A Power of Arrest can be attached to an injunction where:
  - (a) the ASB includes the **use or threatened use of violence** against other persons, or
  - (b) there is a **significant risk of harm** to other persons from the respondent.
  
- Section 20(1) - “harm includes **serious ill-treatment** or abuse, **whether physical or not.**”



# Anti-social Behaviour Injunctions

## Section 6 – Without notice applications

- No specific rules for when a without notice application can be made,
- Generally, should only be used in the most serious cases where violence is used or threatened, or where there is an imminent risk of someone being evicted despite prior warning

## Section 7 – Interim Injunction

- The court can grant an “interim order” where a matter is adjourned following the first hearing. This normally occurs where the defendant wishes to defend the application.
- The interim order can last for a set period, or until further order.
- A Power of Arrest can also be granted on an interim basis

# Anti-social Behaviour Injunctions

## Summary:

- Fast and easy to use
- Balance of probabilities
- The threat of an injunction is often enough
- Allows for an immediate and strong deterrent to misbehaviours by landlords.
- If a final order is made, as these are civil proceedings, costs usually follow the event.
- Therefore, the landlord will often suffer a financial penalty, as well as having an order made against them.

## Enterprise Act 2002

- Extremely beneficial when seeking enforcement against a repeated pattern of illegal behaviour exhibited by landlords.
- Can apply across the entirety of a landlord's property portfolio, as opposed to just an individual property
- Part 8 of the Enterprise Act 2002
- Trading Standards, as a weights and measures authority, is an Enforcer for this piece of legislation (s.213(1)(b) and (5A)(h))
- This allows the Council to seek an **Enforcement Order** against landlords who breach certain consumer protection laws (known as **Domestic and Schedule 13 (previously “Community”) Infringements**) and who actions harm, or could harm, the **collective interests of consumers**.
- Punishable as an injunction, contempt of court – two years imprisonment, an unlimited fine or seizure of assets

# Enterprise Act 2002 - Consumers

## ***Section 210 – consumers***

- Domestic infringement – where goods or **services** are supplied to a person in the **course of a business**
- Schedule 13 infringement – as defined in the **particular legislation**, for example the Consumer Protection from Unfair Trading Regulations 2008

e.g. “a *consumer* means an individual acting for purposes that are wholly or mainly outside that individual’s business (Reg 2).”

# Enterprise Act 2002 – Domestic Infringement

## Section 211 – domestic infringement

This is an **act or omission**:

- Done in the **course of a business**;
- Which is a **breach of a legal obligation** imposing a duty, prohibition or restriction which is enforceable by criminal or civil proceedings, a breach of **contractual duties** to supply goods and/or services to a consumer or a breach of a **civil duty of care** owed to a consumer under the law of tort; and
- **Harms the collective interests of consumers**
- See: *The Enterprise Act 2002 (Part 8 Domestic Infringements) Order 2003* and *The Enterprise Act 2002 (Part 8 Domestic Infringements Order) 2015*

# Enterprise Act 2002 – Schedule 13 Infringement

## Section 212 – Schedule 13 infringements

- Contains previous EU legislation.
- This includes the Consumer Protection from Unfair Trading Regulations 2008, under which landlords can be proactively prohibited from engaging in:
  - Misleading actions and/or omissions
  - Unfair commercial practices
  - Lack of professional diligence
  - Aggressive commercial practices
- Unlawful eviction invariably falls some or all of these actions

# Enterprise Act 2002 – Applications

## Section 215 – Applications

- Where an enforcer thinks that a person/business has:
  - a) Engaged or is engaging in a domestic or Schedule 13 infringement; or
  - b) Is likely to engage in a Schedule 13 infringement
- Can be made in the High Court or the County Court
- Uses a similar process to applying for an injunction.
- N16A Claim Form, Particulars of Claim, Draft Injunction (Form N16A) and supporting evidence
- The Consumer and Markets Authority must be notified of any application

# Enterprise Act 2002 – Enforcement Orders

## Section 217 – Enforcement Orders

- Can be granted by the court if it finds that a person/business has engaged in a domestic/Schedule 13 , or is likely to engage in a Schedule 13 infringement

## Section 218 – Interim Enforcement Orders

- The court may make an interim enforcement order if:
  - (a) A person is alleged to have engaged in a domestic or Schedule 13 infringement, or is likely to engage a Schedule 13 infringement;
  - (b) an enforcement order would likely to be granted;
  - (c) it is expedient that the conduct is prohibited/ prevented immediately;  
and
  - (d) if no notice of the application has been given, that it is appropriate to make the order.
- The application must also say why no notice has been given



## Section 219A Enterprise Act 2002 – Enhanced Consumer Measures

- Orders can now include positive requirements, not simply preventative measures.
- The three broad categories:
  - a) Redress measures – to compensate consumers e.g. by paying compensation, allowing someone to terminate a contract etc
  - b) Compliance measures – measures to prevent or reduce repetition of the unlawful conduct e.g. staff training; and
  - c) Choice of consumer information measures - compel traders to take steps in the collective interest of consumers, e.g. publish details of previous breaches.
- These measures must be ‘just, reasonable and proportionate

# Enterprise Act 2002 – Consultation

## Section 214 – Consultation

Before an application can be made, the trader must be consulted with, and the Consumer and Markets Authority (“CMA”) notified

Enforcement Order – 14 days

Interim Enforcement Order – 7 days

UNLESS

Section 214(3), the CMA thinks that an application should be made **without delay**

Note: if the landlord is represented or a member of a representative body, then consultation is extended to 28 days

# Enterprise Act 2002

## Summary:

- A good remedy to tackle portfolio landlords, or those causing issues to numerous tenants
- Can include measures such as compensation in any order
- Similar practical process to injunctions
- Balance of probabilities
- If a final order is made, as these are civil proceedings, costs usually follow the event.
- Therefore, the landlord will often suffer a financial penalty, as well as having an order made against them.

## Case Study 1 - Injunctions

- Landlord renting out the flat above their carpet shop.
- Access to water, gas and electric facilities were located within the shop.
- A dispute over rent payments led to the landlord depriving the tenant of access to water, gas and electric as leverage. During the time of the dispute, the tenant was pregnant and living alone.
- Bodycam footage showing a clear denial of these services was obtained by officers.
- A without-notice injunction was applied for and an interim injunction obtained.
- A Power of arrest was also obtained.
- The matter was adjourned for a return hearing which the landlord did not attend.
- The orders were made final, and the landlord ordered to pay around £900 in costs
- This was a positive outcome and for two years the landlord was required to refrain from continuing the reported behaviour. The tenant remained safely housed with full access to all the vital utilities she had previously been denied of.

## Case Study 2 - Injunctions

- In a similar incident, Private Sector Housing received reports that electricity was being denied to tenants living above a shop.
- The premises were made up of three freeholders and one leaseholder. The leaseholder, a newsagent, had inherited responsibility for the tenants.
- Officers found that the electricity supply to the tenants above was being cut off and issued an injunction on both the freeholders and leaseholder. The tenants above were a family that had young children.
- Due to aggravated circumstances, the council expedited the case. This resulted in our quickest turn around as the injunction was in place within three days of receiving the initial complaint!
- The landlord was required to arrange for a separate electrical supply to be fitted within the flat.

## Case Study 1 – Enterprise Act 2002

- Private Sector Housing received reports of numerous properties being kept in poor condition, all belonging to the same landlord, including fire safety issues.
- One flat was prohibited from occupation until problems had been rectified.
- Reports showed repeated patterns of coercive behaviour exhibited by the landlord, including tenants being pressured into paying for flat refurbishments and a tenant being pressured into signing a tenancy agreement on a flat they had not viewed.
- Private Sector Housing obtained an interim and then full enforcement order to immediately monitor the landlord's behaviour and business practices on a larger scale.
- All enforcement action taken by the Private Sector Housing team is uploaded onto the National Anti-Fraud Network (NAFN) database. This creates a digital record which can be accessed by all other authorities showing what enforcement action has been taken by the authority on a prospective landlord.
- It is believed that Private Sector Housing were the first authority to take this action or at least the first authority to upload this information to the public register.

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