

**WHITEHEADS**  
Experts in housing law



# Newsletter Summer 2006

## Welcome



May I welcome you to this Summer Edition of Whiteheads Quarterly. It is an exciting time for the firm as we are currently being joined by a number of new staff members. The Team is growing and our commitment to our clients continues as we develop new services.

I hope you find this edition interesting and welcome any feedback or comments.

Wishing you a great summer

**Peter J Whitehead, Principal**

# Tenants' Putting their Families at Risk



By Joan Hobday

**Gas servicing** and inspection are legal requirements placed upon all social landlords but according to the Audit Commission's Housing Inspectorate;

*“Every year at least 30 people die from carbon monoxide poisoning caused by gas fires, central heating boilers, cookers and flues that have not been properly installed or maintained. In many cases these deaths could have been prevented if a maintenance regime was followed and an annual safety check performed”*

Despite the risks highlighted above, many Social Landlords are having a tough time gaining access to their Premises to carry out gas servicing and inspections. Time and money are lost with officers and contractors having to return to Premises time and time again.

Many Social Landlords, including Local Authorities, follow up these failed visits with numerous letters, personal visits, telephone calls, in many cases to no avail, which again loses valuable time and money.

One issue that appears to explain the reason for Tenants' failure to allow access, is that they appear not to understand that they are putting their own lives and those of their children and neighbours at risk.

# Gas Servicing - What the law says ...



## Civil Law View

Registered Social Landlords and Local Authorities are governed by contract and statute. Under Section 11(1)(b) of the Landlord and Tenant Act 1985 the landlord is obliged to:

*“Keep in repair and proper working order the installations for the supply of, inter-alia, gas”*

Section 11(1) (c) also states that landlords have to:

*“Keep in repair and proper working order the installations in the dwelling-house for space heating and heating water”*

But what of the problem of tenants refusing to provide access? Well, in effect, Section 11(6) states that a Landlord has the right to enter the property at a reasonable time of day as long as 24 hours notice is given in writing. If access is denied, however, this can not be achieved by force.

## Criminal Law View

In addition to the express terms of any Tenancy Agreement, the landlord is under a duty to inspect and service all gas appliances within the Premises.

Where there is a breach of the Gas Safety (Installation and Use) Regulations 1998, the Health and Safety Executive is the prosecuting Authority and provides guidance to RSLs and LAs about the checking and servicing of appliances.

A landlord could face prosecution if an accident occurs as a result of an Inspection not being carried out and it is found not to have taken all reasonable steps to gain access to the Premises.

Over a period of six months, Whiteheads' have obtained 55 Injunctions of varying lengths against Tenants who have persistently failed to allow their Landlords access for the purpose of gas service and inspection. In approximately 80% of those cases, costs were awarded against the Tenants.

## Advice on.... Preparing for Court

In order to speed up the process of preparing cases for issuing into Court it is essential that Whiteheads' has all the necessary documentation needed for the Court. This includes:

1. Tenancy Agreement.
2. Last gas service certificate.
3. Copies of letters/calling cards, left by the Contractors.
4. Copies of all letters sent by the RSL/LA.
5. Copies of file notes in respect of visits made, telephone calls made or received. These need to include the date, time, name of person recording the information and what was said.
6. The ages of the tenants (and their children).
7. Whether the Tenants are in receipt of housing benefit or are working.

The last two are needed so the Judge can decide the terms of the order if one is to be made.



# Can Lawyers Add Value?



**Neil Whitehead**

**Few would disagree** that the Gershon Review has changed the way public bodies manage their budgets and has forced all publicly funded organisations to tighten their belts. This has led to a step change in the way organisations view 'value'.

Clearly the review and the new drive on efficiency influence every part of any housing organisation and as many professional services come from outside, the way these are procured is likely to change. The old buying culture of contracts going to the lowest bidder has gone and suppliers now need to demonstrate "added value".

## **So what is 'added value'?**

This remains a mystery as it is hard to define what it actually means, which in turn makes it difficult for suppliers to know how to "add" whatever needs adding. Many 'old school' suppliers believe it is their right to supply the public sector without putting in any significant effort to understand their customer but in the new reality, they must understand the context in which a purchase takes place so they can identify how they can add value.

Simple things can add so much "value" to a relationship and the government's "Smaller Supplier, Better Value?" report supported the view that smaller suppliers tend to offer better value than their larger counterparts.

So why is this the case? For larger businesses, client relationships and delivering good service are less important than profit. (Consider the numerous blunders that have happened in central government IT contracts that have lost millions of pounds). On the opposite side of the fence, smaller companies provide better service and have more pride in what they offer. Using smaller firms is where real value lies as they are willing to accommodate clients' needs. In truth, keeping clients happy is more important to them as they have more to lose.

On the buyer's side, there have been recent changes in procurement legislation that work in favour of smaller businesses and these mean that buyers have to be clearer about what they need and are encouraged to work more closely with potential suppliers to make sure large and small businesses have an equal shot at winning business. But what of legal services I hear you whisper.....?

## Can Lawyers Add Value? cont...



Although the way professional services are bought in is likely to change, few social landlords have the capacity to manage large framework contracts and most do not have the budget to even consider this. In response, some RSLs are forming group structures or consortia in order to 'buy in bulk' and save money.

An example of coordinated procurement of legal services in which Whiteheads' has added value is SHAARP (Southern Housing Associations Anti-Social Behaviour Response Team), which is a collaboration between eleven housing associations that have stock in the Hampshire, Dorset and West Sussex area. It was decided that a combined effort was needed in order to combat anti-social behaviour in the region and Whiteheads' won the competitive tender to provide legal services to the consortium. Working in partnership with SHAARP, Whiteheads' has not only saved the participating RSLs money, but the single source of advice and legal services increases the efficiency and manageability of anti-social behaviour issues.

### **What else can law firms do?**

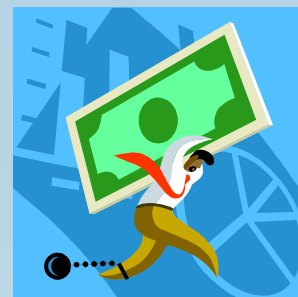
What more can the legal profession do to offer added value to RSLs? What is needed to make life easier for the officers and managers of these organisations? And what should housing managers and their teams rightfully expect from lawyers?

Put simply; Understanding, Expertise and Partnership

As mentioned earlier, a long-standing problem has been that suppliers do not understand the public sector, including social landlords, and in some cases have little interest, but for effective relationships to be built, the two sides need to get to know each other. Legal firms, along with other suppliers, need to ensure that they know what their clients' concerns are, make sure they have the skills and experience to deal with them and act as partners in resolving their issues.

Given the billions of pounds the public sector has to save in the next few years, government departments, local authorities, social housing providers et al are unsurprisingly no longer prepared to work with organisations that don't really want to understand them.

# Can Lawyers Add Value? cont...



## So what has Whiteheads' done and what is it planning?

As one of the leading firms in the Social Housing sector, it is important to the Firm that clients continue to be our main focus and we are currently in the process of reviewing the way services are delivered to clients. The firm is committed to ensuring that each client has access to information when they need it and is developing its website and online services to ensure this happens.

The firm has moved with the times and its partnership approach means that it works *with* never *for* a client. This approach to better bilateral client relationships means that clients get the very best out of the firm.

In "the olden days" the maxim "*trust me, I'm a doctor*" or "*trust me I'm a lawyer*" might have held water but nowadays, people expect the once secretive 'professions' to be less prescriptive and more transparent and collaborative.

The Firm recently commissioned research into the way legal services are provided to Social Landlords and we have taken a number of steps to ensure that we do not fall into the trap that many other firms have, when they have taken their eye off the ball.

To ensure that we offer true and long-lasting value to all our clients, the firm is committed to:

- Being open with clients and regularly reviewing our performance against our clients' expectations
- Offering clear advice and services that are in plain English
- Tailoring our training programmes around the needs of our clients not just what we think they want to know
- Offering on-going personal development programmes to our staff (our training has recently been accredited by both the Law Society and the Bar Council)
- Constantly monitoring the housing market and looking at the changes that are taking place in order to offer services that are relevant to RSLs

Whiteheads' aims to add value throughout our partnerships with our clients and it is important to get honest feedback from them. We know that simple changes in the way we work or the way we offer services to our partners can make life better for each of our clients.

If you have any suggestions about any ways we could add value to your organisation, we would like to hear from you. Email your ideas to [info@whiteheadsols.co.uk](mailto:info@whiteheadsols.co.uk)

# Raglan Housing Association v Moss



## Hilary Donlan

Raglan Housing Association has recently successfully obtained a Possession Order and Anti-social Behaviour Injunction Order against a tenant who had inflicted almost 4 years' of suffering and distress to those who lived around her.

During her tenancy, Pauline Moss had threatened neighbours with violence and had on two occasions appeared before Magistrates on criminal matters relating to violence and threatened violence. In 2002, she was found guilty of assault on a neighbour, and in 2004 she appeared before Magistrates again when she pleaded guilty to an offence under Section 5(1) of the Public order Act for screaming verbal abuse and wielding a 4ft pole at another neighbour.

Despite her convictions, Ms Moss repeatedly committed acts of anti-social behaviour against her neighbours. Incidents included shouting foul and abusive language, using discriminatory and racist remarks, verbally threatening neighbours, playing loud music, and banging on house walls. All attempts to resolve the situation without the use of legal remedies failed. It became clear to the Association that the tenant would not engage with them in their attempts to resolve matters, and that the only way forward was to instigate legal proceedings against her.

In 2004, despite obtaining an Undertaking against her, neighbours continued to suffer at the hands of the Defendant and therefore, Raglan HA made an application to have her committed to prison, as well as an application for possession of her property.

The trial of both applications took place in May of this year. 12 witnesses gave evidence in support of the Association, including 9 neighbours, a head teacher, a former employee of the Association and a member of the SHAARP team. The success of the case, is in part, a testament to the commitment of the neighbours who engaged with the Association by keeping detailed log sheets and attending Court to give evidence.

His Honour Judge Marston said that "all the neighbours of Ms Moss have been ground down and oppressed by her behaviour over many years". In his summing up, he said that the evidence against Ms Moss was "overwhelming", and furthermore, that, she "had shown no grasp of the consequences of her actions nor does she show any desire to change or amend her ways".

His Honour made an Order for Possession, and in addition, in order to give further protection to neighbours, the Judge granted an Anti-social Behaviour Injunction Order, with Exclusion and Power of Arrest.

This was an exceptionally complex case, and was the result of months of concentrated work and effort between the Association, the SHAARP Team and Whiteheads'.

# Whitehead's News

## Read all about it!!



### Incorporation

Since it was founded in 1992, Whiteheads' has operated as a 'sole trader' firm under the leadership of Peter Whitehead and during this period has seen strong growth and success. In order to ensure that we continue to maintain our high levels of service, the firm has decided that it will become a Limited Company. The principal reasons for this change is that it will provide a more structured internal environment and increase career opportunities for staff. This is very important in the context of staff development, improved case management and making sure our services offer value for money and are as effective as possible. What's more, incorporation will give clients further peace of mind as our liability cover will increase from £2 million to £3 million, although we are in the fortunate position of never having to use it. After this change has taken place, we will be writing to all our clients to inform them of any structural changes within the firm.

### Learning & Development

The Practice has, from its inception, offered high quality learning & development opportunities to its clients across a whole range of issues, which have included topics as diverse as Rent Arrears, Disability Discrimination, Housing Disrepair, Housing Management Law & Practice.

In recognition of the quality of the training provided, in addition to our accreditation by the Law Society, which governs the training and continuing Professional Development of Solicitors, we have now been awarded accreditation by the Bar Council. This means that our brothers and sisters in the law who are qualified as Barristers can also benefit from the training we provide.

Whether your preference in training style is for role-play, case studies, formal presentations or a mixture we strive to make what otherwise might be a "dry as dust" experience, as informative and entertaining as possible.

If you would like an update on the courses we can currently offer or if you would like some designing for your own specific requirements please call or drop an email to [info@whiteheadsols.co.uk](mailto:info@whiteheadsols.co.uk).

# Whitehead's News

## Read all about it!!



### Recruitment

Whiteheads' is currently in the process of interviewing in order to appoint 3 Paralegals/ Legal Assistants who will proceed to commence their Training Contracts with us in the next 6 months.

As Legal Assistants and then Trainee Solicitors, they will provide support to our front line fee earners. They will also undertake a rigorous and comprehensive training programme, which will include specialised training in housing management issues.

Whiteheads' views these appointments as crucial to the development of the Firm's client led quality services. Our current Trainees are qualifying in the near future and will remain at the Firm as Qualified Solicitors. These new appointments mean that another generation of housing specialists will be established in the near future to further enhance our capacity.

## Other News in Brief



### **Planning Decisions to Move to RSLs**

“Failings in the way planning applications are dealt with by many Local Authorities may mean that responsibility for making decisions on such applications may be transferred to Housing Associations. Many applicants complain that they suffer long delays in actually getting their application dealt with and many feel the burden should be removed (at least in part) from councils”.

### **“Toughen up on Suppliers” Authorities Told**

“Local Authorities will be expected to start acting more strategically when engaging with contractors in order to get the best deal. Future inspections by the Audit Commission will place more emphasis on assessing whether authorities are really impacting on local housing and if they are in control of development projects.”

### **Efficiency Targets not being met in Housing**

“Despite the government’s push to increase the amount of money saved by the public sector, a recent study by Housing Quality Network has found that high cost housing associations are not making significantly more efficiency savings than those with low costs. This will come as a blow to the newly created Department for Communities and Local Government (DCLG), whose efficiency target is £1.6 billion by 2007/08. Of this, the housing sector is targeted to save over £400 million by 2008.”

### **L&Q Merger Proposed**

“London & Quadrant and Threshold Housing have announced that discussions have begun on a possible merger that will create one of the largest housing associations in England with around 50,000 properties in the South East. A key reason for the proposed merger is Threshold’s financial losses due to slow sales of shared ownership properties. It is expected that some staff will be made redundant in the move.”

### **Cash Warning over Right to Buy**

“Despite wanting more people to become home owners, the government is likely to face a severe decline in income from the Right to Buy scheme. The potential drop could be as high as 50% which may affect the funding available to help local authorities bring homes up to decent standards.”

# QUIZ

*To lease or not to lease that is the question...*



Do you know your social housing onions? Pick your wits against the first instalment of our quiz.

## **Question 1**

Is it necessary to have a written Agreement for a Tenancy to be created?

## **Question 2**

In what year did Assured Tenancies begin: 1959 or 1981 or 1988 or 1989

## **Question 3**

What 2 tests have to be satisfied before the Court can make a Possession Order against an Assured Tenant?

## **Question 4**

What right of Tenancy succession does the 1988 Housing Act give?

## **Question 5**

What kind of Tenancy would be given to a starter Tenant?

## **Question 6**

Can you issue Possession action against an Assured Tenant without first serving a Notice Seeking Possession?

## **Question 7**

There are Joint Tenants A and B. A dies, then B dies, leaving C in occupation. What legal step do you have to take before you can issue proceedings to recover Possession from C?

## **Question 8**

What sections of the Landlord & Tenant Act 1985 and the Defective Premises Act 1972 are particularly relevant in disrepair claims?

## **Question 9**

In which Court would proceedings under Section 82 of the Environmental Protection Act be taken?

## **Question 10**

Who is the Lessor under a Lease. Is it the Landlord or the Tenant?

(Answers overleaf)

# QUIZ

*To lease or not to lease that is the question...*



## **Answers:**

- 1) No
- 2) 1989
- 3) Ground for Possession reasonable to make an order
- 4) To spouse only
- 5) Assured shorthold
- 6) Yes
- 7) End the tenancy
- 8) Section 11 & Section 4
- 9) Magistrates' Court
- 10) The landlord