



Welcome to our Latest Quarterly Newsletter

Surprisingly, no in fact shockingly, Peter has actually been taking some time off so it has come to me to give you an update on what's new at Whiteheads.

We are pleased to announce that following a successful tender, Harvest Group have included us as panel Solicitors. This brings to 4 the number of large social landlords in the North West who have appointed us to their panels in the last 12 months.

Our Disrepair practice is also enjoying growth with clients from around the country taking advantage of our services and the free seminars we have been running (more on that later).

The DDA and Mental Health Training that we are running with SLCNG continues to be popular and we hope to run other training sessions with them in due course.

Occasionally we have a break from work and we have recently been doing some fundraising. We were recently invited to attend a charity lunch (ladies only!) and we held a Charity Day at our office. Both of these were to support our charity of the year – Derian House Children's Hospice.

I hope you all have a great summer and get the chance to have a break.

All the best

Paul

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Housing & Regeneration Act

Tolerated Trespassers

We reported on this issue back in April when it was a Bill and although many of the provisions are still valid, there are a few key points that landlords need to be aware of. (A full bulletin on the changes can be found on our website).

The key points are:

- Tenants who are currently Tolerated Trespassers by virtue of a possession order being made will get their original tenancy back if they have continued to reside in the property
- This tenancy is referred to as a Replacement Tenancy
- All tenancies will revert to the previous type of tenancy (i.e. Secure to Secure, Assured to Assured, Demoted to Demoted etc)
 - The rights / obligations are as they were in the original tenancy
 - Court orders remain in place
 - If TTs were not included in consultations will have no negative impact
 - Rights including RTB and claiming for Disrepair are revived
 - Although omitted in earlier versions, the Act now covers Successor Landlords following stock transfer
- No tenancy can be ended until a warrant is executed and the tenant has vacated the property

“There are a number of issues to consider if you plan to offer a FIT”

Family Intervention Tenancies

These are new tenancies that can be granted to someone when:

- *A possession order has been made against their property*
- *A possession order could be made against their tenancy*
- *They could be subject to a possession order if they had such a tenancy*

AND

- *The purpose of granting the FIT is to improve the tenant's (and others who live with them) behaviour through the provision of behaviour support services.*

There are a number of issues to consider if you plan to offer a FIT and a Notice must be served on the tenant indicating your intentions, the reasons for your decision, the location of the property to which the FIT relates. It should also be borne in mind that FITs are voluntary and there is no obligation on the tenant to accept a FIT given the fact that they will lose their security of tenure.

One of the key aspects of a FIT is the inclusion of support for the tenant and those that live with them. The support package is included in a Behaviour Support Agreement – a formal document that details the behaviour that is expected of the tenant and the support that will be provided. For RSLs this agreement is between them, the tenant and the local housing authority; for Local Authorities the agreement is between them and the tenant.

Terminating a FIT

The process of terminating a fit is easier for RSLs than Local Authorities as there is no provision for tenants to request a review.

The termination of a FIT requires the service of a NTQ, however before this, a Local Authority tenant must be given 14 days to request a review of the decision. If, during this period, a notice about the review decision has been served OR the tenant has not requested a review OR the request has been withdrawn, a NTQ can be served. At present there is no guidance on how the review process should be carried out.

Again this Notice must contain several types of information including confirmation that the authority has decided to serve the NTQ, the effect this will have, the reasons for serving the NTQ etc.

Neil Whitehead

Practice Development Manager

Lewisham & Malcolm – Update in Brief

This long awaited judgement from the House of Lords was published earlier in July and, to the relief of many social landlords, the Law Lords found in favour of the local authority. The key points of the judgement are:

1. It must be shown that the landlord had awareness (or should have had awareness) of the tenant's disability
2. It must be shown that the reason for the decision by a landlord to evict a disabled person was linked (albeit remotely) to their disability

Despite the Court of Appeal's strict interpretation of previous case law, the House of Lords found that when considering whether treatment is "less fa-

vourable", a comparison should only be made with the sort of treatment that a non-disabled person would have received if they had done the same thing. If these are the same, there is no discrimination

Get in touch on 01257 266008 if you want some general advice or if you have any concerns about cases where there are disability or mental health issues.

Neil Whitehead
Practice Development Manager



NEWS!!!!!!

**Keep an eye out for
our new look website
coming soon**

For Charity

On 17th July 2008 we all took part in another charity fund raising day. This was comprised of paying for cakes, taking part in a raffle to win a HUGE hamper of goodies which everyone contributed to, a tombola with several prizes (of which I myself won two) and also having a dress down day.

The day was a great success, Glyn was happy with the hamper he won, and in total the staff raised £120.50 for Charity. Whiteheads will **double** this amount so cheques will be forwarded once again to a couple of our local charities!!!

Gareth Birkett
Administrator

"The day was a great success"

Police, neighbourhoods,

Culminating in the publication of the Policing Green Paper it has been a very busy, and potentially significant summer so far on the national ASB policy front. The pace is likely to accelerate further as the year progresses as proposals are developed, some implemented and implications for social landlords clarified.

Already though, there are key themes emerging that will impact directly on social landlords:

- the focus on neighbourhoods
- the importance of Neighbourhood policing and the police being the 'face' of community engagement
- the pre-eminence of the public's perception in managing and assessing the performance of partnerships and agencies

- a dependency on effective partnership working performance management via Local Area Agreements and Public Service Agreements.

There is much to welcome in these developments, but there are concerns too, especially for non local authority social landlords. One risk is that the expectations of social landlords will not be matched by their inclusion – developmentally, strategically and operationally – across government and locally.

It is questionable whether there is an accurate understanding of the social housing sector and Registered Social Landlords in particular. Ensuring that there is no unintended disconnect between social housing and the statutory framework will be critical to achieving the overall ob-

jective of making communities safer.

Social landlords pioneered partnership working with the police and continue to demonstrate their sustained commitment to tackling ASB. SLCNG and its members are engaging locally, regionally and across government to ensure that the expertise of social landlords is harnessed most effectively.

The Social Landlords Crime and Nuisance Group (SLCNG) is the UK's leading housing based organisation specialising in delivering effective solutions to anti-social behaviour. It represents over 300 housing organisations managing more than 3 million tenancies throughout the UK.

Contact: nick@slcng.org.uk

Contacting SLCNG

nick@slcng.org.uk

Visit the SLCNG website at

www.slcng.org.uk

Myth and Reality - SLCNG Annual Conference

One of the most significant issues emerging from the major ASB related policy documents coming out of government in recent months is the gap between the public's perception of crime and the reality – i.e. crime is down but the public don't believe it!

Separating myth and reality is the theme of the SLCNG's Annual Conference to be held at the International Conference Centre, Telford on 7th and 8th October 2008

In addition to keynote addresses from leading figures such as Vernon Coaker, Parliamentary Under Secretary of State (Crime Reduction) and Matt Baggott, Chief Constable Leicestershire and ACPO lead for Neighbourhood Management, Peter Whitehead will lead a Master Class on Anti – Social Behaviour and the Law.

Throughout the summer the Whiteheads team and the SLCNG are delivering a further round of training programmes to ASB practitioners on the subject of the Disability Discrimination Act.

A key facet of that training is to peel away the mystery and mystique that often surrounds the Act and to equip practitioners with a practical understanding of its reality. Peter's Master Class at the SLCNG Conference will further equip practitioners at all levels to successfully negotiate the practical steps and barriers to taking ASB cases through the courts.

Full Conference details are available at www.slcngconf.co.uk.

Using Ground 8 for Rent Arrears Actions?

Ground 8, is a mandatory ground under Schedule 2 of the Housing Act 1988, which can be used to obtain outright possession, when an assured tenant is in arrears of at least eight weeks rent.

Is your organisation still using mandatory **Ground 8** to pursue rent action?

If you are still using Ground 8, then you will need to be aware of the recommendations being put forward to the Housing Corporation to produce guidance that discourages (preferably discontinues) using this ground, in order to reflect the Government's agenda on homelessness prevention. The Citizen's Advice Bureau in their Report, "Unfinished Business", produced in May 2008 refers to the impact that this ground potentially has on vulnerable tenants and consequent homelessness.

It is important to check your position, when using this ground and consider the following points:-

Consider if approval to use Ground 8 has been agreed at Management and Board Level

Check your tenancy agreement to ensure that you are able to use Ground 8, as some tenancy agreements forbid the use of this ground.

Check your rent policy/procedure and any relevant sections of the Tenant's Handbook to ensure compliance with your policy/procedure and the pre-action protocol.

Ensure that any legal action can be justified and reasonable alternatives considered and therefore only being taken as a last resort, in accordance with the Housing Corporation's Regulatory Code

and associated Circular. The use of Ground 8 does cause some controversy, and this Report raises concerns that the use of this ground circumvents the pre-action protocol and doesn't correlate with other Government Policies. In response, many Registered Social Landlords either don't use Ground 8 at all or at least not routinely, preferring to have a policy that shows the circumstances in which this ground would be used.

If you would like to read the full report, "Unfinished Business", then please visit the website www.citizensadvice.org.uk

Elaine Davies, Trainee Solicitor

Disrepair seminars

After a number of requests from clients, we are running a series of Disrepair seminars across the country. So far we have held sessions in Leeds and Derby and have others in Gainsborough, London and Cardiff coming up. The aim of these free sessions is to look at how to successfully defend disrepair claims and also how liability can be limited.

Each session includes a presentation on key legislation and includes an update on the Housing & Regeneration Act (which got Royal Assent on 22nd July) and the potential effect that this could have. We also offer delegates the opportunity to discuss current cases in our open forum.

If you would like to attend any of these sessions or would like some advice on Disrepair, please contact me on 01257 266008 or drop me an email to glyn.jones@whiteheadsols.co.uk.

Glyn Jones
Senior Solicitor

Whiteheads Services:

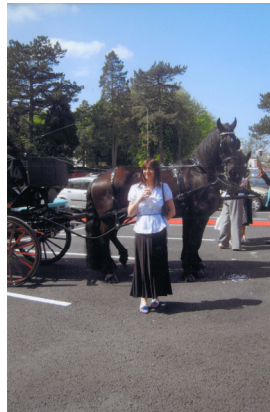
- **ASB Prevention & Enforcement**
- **Asset Management**
- **Consultancy Services**
- **Income maximisation**
- **Governance & Compliance**
- **Leasehold management**
- **Early interventions**
- **Tenancy management**

Whiteheads Ladies “Wot” Lunch



Congratulations to the men of Whiteheads who successfully held the fort while we were the ‘ladies wot lunched’. On 15th May I graced with my presence The Pines Hotel in Chorley to take part in a charity event to help raise some much needed funds for Derian House Children’s Hospice. Other colleagues who joined in the gracing of presence were Donna McNally, Hilary Donlan, Yolanda Dann and Dianne Farina and we were treated to a champagne reception, lunch but sadly we had to leave before the fashion show (leaving the Whiteheads men on their own all day might have been a bit too much for them!!!). I hope that the ‘powers that be’ will let us attend the next event – all in the name of charity of course and nothing to do with the Champsers!!!

Linda Campbell



About Derian House

Derian House is a local hospice caring for children in the UK with life-limiting conditions. The hospice opened its doors 13 years ago and provides palliative and respite care for over 300 families in the North West. On average the hospice only receives 5% of their funds from the Government, the rest comes from fund raising and charitable donations.

www.derianhouse.co.uk/index.html

What happens when Shared Owners get into Rent Arrears?

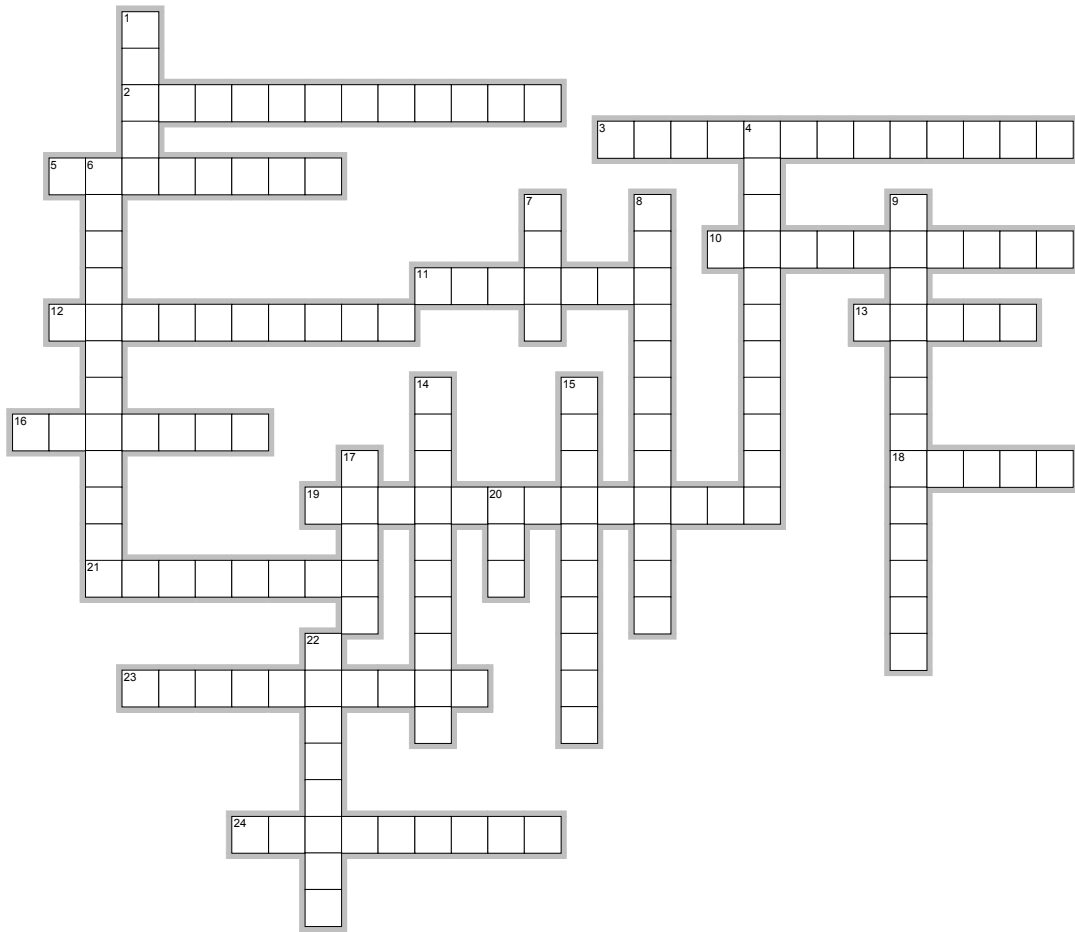
When dealing with rent action for Shared Owners, you will need to consider additional points and the consequences of any action you take. Generally, Registered Social Landlords (RSL) will, as a matter of course write to the Shared Owner’s Mortgage Lender, who may send a payment to cover the outstanding arrears. The Mortgage Lender in turn will add this debt to the mortgage and add interest for the Shared Owner.

If the Mortgage Lender is not willing to clear the debt, action can be taken by using Grounds 8, 10 and 11 pursuant to Schedule 2 of the Housing Act 1988, as Shared Owners are classed as Fixed Term Assured Tenants. In order to pursue this legal action, firstly, you will need to check that there is a forfeiture clause in the lease, then serve the usual Notice Seeking Possession, detail the particulars and issue possession proceedings.

If you are granted a possession order at the Court Hearing, then the RSL will be entitled to possession of the **whole** of the property. This means that the Shared Owner will lose their interest (share) in the Property and will **not be entitled** to any payment in respect of the share they originally purchased. In the recent case of **Richardson v Midland Heart Ltd 2007**, the latter did voluntarily agree to pay back the initial capital, but not any increase in the value. In cases that we have dealt with at Whiteheads, some RSLs have repaid the initial capital at the current market value, even though they are not obliged to do this. In these circumstances, you may want to seek guidance from your Regulator, as to best practice.

However, it is a fact, that Shared Owners have a lot to lose if they default on the provisions within their lease. Not only could they lose their home but potentially any investment they had in it.

For further information or to discuss any specific cases, please contact us at Whiteheads.

Whiteheads (Film Themed) Crossword

EclipseCrossword.com

Across

2. He's an International Man of Mystery (6,6)
3. Potential Summer Blockbuster Sequel to Batman Begins (3,4,6)
5. Popular Sci-Fi series set to appear for its 11th film outing this Christmas (4,4)
10. Its the end of the world! Until Bruce Willis steps in that is... (10)
11. I'd be happy if I had a "golden" one of these (7)
12. You might write this at the bottom of a letter to a loved one (2,1,4,3)
13. Black and White animal that tries to learn Kung-Fu (5)
16. Cartoon about Penguins doing sport...(5,2)
18.Ledger, actor who sadly passed away earlier this year (5)
19. This film used the tag line "I see dead people" (3,5,5)
21. Danny Boyle film in which a crew sets out to re-ignite the sun (8)
23. Clive Barker horror about a puzzle box (10)
24. Rumours on the "web" are that this superhero is returning for a 4th film (9)

Down

1. Apparently the Devil Wears this (5)
4. There's now 6 slices of this comedy (8,3)
6. Robots in disguise (12)
7. Surname of Pirates of The Caribbean star who also played Sweeney Todd (4)
8. Popular horror computer game series which now has a film trilogy (8,4)
9. Popular series starring Sarah Jessica Parker makes its film debut (3,3,3,4)
14. Adam Sandler comedy where he has 50 of these (5,5)
15. Romantic Comedy about going away (3,7)
17. Green Ogre, usually accompanied by a Donkey (5)
20. Vin Diesel action film in which he plays an unlikely secret agent (3)
22. Cult sci-fi film starring Rufus Sewell who wakes to find himself accused of murder and the city changing every night (4,4)

Rights of Audience – A reminder.....

Whiteheads have received recent queries, with regard to what rights, Housing Officers have when representing cases in Court.

In accordance with Civil Procedure Rules (Part 39.6) and other associated Practice Directions, there are two conditions that need to be met in order that an employee can represent their company, as follows:-

- Employee has authorisation
- Court gives permission

The information you may need at any hearing is:-

- Your name and address
- Qualification or entitlement to represent
- Details of party (RSL) you are representing
- Name of your company (RSL) as detailed on the certificate of registration
- Registered number of the company
- Your position
- Date and manner in which authorisation was granted (Authority from Managing Director/or resolution at Board level)

The Court will generally give their permission for you to represent, but will expect sufficient experience and training in advocacy.

A cautionary note, you will be **unable to represent** a company that you are **not directly employed** by, as the embargo on agency representation is still in place, although it is under review. This can certainly happen in a Group structure, if you are the managing agent, you don't have any rights of audience and you would need to put the claim in the Landlord's name and they would need to attend court or seek legal representation.

For further information or to discuss any specific cases or if you would like to pursue our Advocacy Training, please contact us at Whiteheads.

Elaine Davies, Trainee Solicitor

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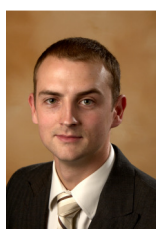
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Answers to last issue's crossword:

Across: 3.Defendant, 6.Claimant, 9.Rain, 13.Monkey, 14.Witness, 15.Skeletons

Down: 1.Sun, 2.Solicitor, 4.Tenant, 5.Whiteheads, 7.Ants, 8.Trespasser, 10.Judge, 11.Landlord, 12.Nothing