

23

National Investigations Conference

Powered by

OXFORDinvestigation

FB|INTEC

Training

#NICONF23

THURSDAY 25TH MAY

Enforcement

Welcome



Brought to you by...

OXFORDinvestigation service

Training

FB|INTEC FOR BUSINESS

Supported by:



And this year also supported by:

TFE Tenancy Fraud Forum

23 National Investigations Conference

Exhibitors

TRUST ID

FB|INTEC FOR BUSINESS

OXFORDinvestigation service

Ascendant Solutions

Training

Third Line Analytics

GBG

TFE Tenancy Fraud Forum

23 National Investigations Conference

Enforcement Stream - Day 2

10:20 - Obtaining ASB Orders - Andy Lane (Cornerstone)

10:55 - Fly Tipping Investigations - D. Khan (LB Barnet)

11:25 - Refreshments & Exhibition

12:00 - Planning Crime - J. Stalley (Wealdon DC)

12:35 - Education Act Enforcement - M. Neumann (ITS)

13:05 - Lunch & Exhibition

14:10 - A Joined up Approach to Enforcement - D. Khan (LB Barnet)

14:45 - Effective Recovery of Debt Through the Civil Courts - Andy Lane (Cornerstone)

15:15 - Refreshments & Exhibition

15:50 - Housing Act Enforcement - M. Neumann (ITS)

23 National Investigations Conference

23

National Investigations Conference

Powered by

OXFORDinvestigation

FB|INTEC

Training

Obtaining ASB Orders



Andrew Lane
CORNERSTONE

Joint Head of the Public Law Team,
Cornerstone Barristers

Andy's practice focuses on social housing, local government and public law, and he works primarily for local authorities and housing associations. Before coming to the Bar, Andy spent over 10 years working in the statutory and voluntary sector in the field of housing, debt and benefits advice. He also had a spell as a local authority councillor, and held a number of portfolios during that time, including Chair of the Housing Committee. The legal directories have consistently recognised Andy as one of the leading practitioners at the Bar in the Social Housing field by placing him in the top-ranking category. He is the author of *Cornerstone on Social Housing Fraud* and has set up a blog to encourage the free flow of information on this topic.



Main Types of ASB Orders

1. Anti-social Behaviour Injunctions

2. Possession Claims

3. Demoted Tenancy claims

4. Closure Orders

5. Criminal Behaviour Orders

6. Dispersal Orders

7. Public Spaces Protection Orders

8. Community Protection Notices

9. Gang Injunctions

Effectiveness of remedy

Quick	Slow
Injunctions – ASBCPA 2014	Possession claims
Closure Orders	Demoted tenancy
Dispersal Orders	Criminal Behaviour Orders
Public Spaces Protection Orders	
Community Protection Notices	
Gang Injunction orders	
See “Anti-social Behaviour, Crime and Policing Act 2014: Anti-social behaviour powers – Statutory guidance for frontline professionals” (Revised March 2023)	

Main Evidential Issues

- Burden of Proof: balance of probabilities
- Disclosure
- Data Protection
- Hearsay
- Transcript evidence
- Video/CCTV evidence
- Expert Evidence

8. In my judgment, the fact that there is another possible explanation for the state of affairs found by the housing officer does not mean that there was no evidence or insufficient evidence for the inferences made by the district judge as to subletting of the whole. The absence of direct evidence is not fatal. Judges are entitled, when finding facts, to make inferences as a matter of probability from the primary facts which are established.

Mummary LJ – Lambeth LBC v Vandra [2006] H.L.R. 19

Data Protection Act 2018

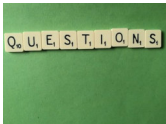
- Nothing to stop you asking for information!
- See ICO Guide to the GDPR
- Article 5(1) UK GDPR - information can only be disclosed if to do so would be lawful, fair and transparent.
- There are some important exemptions from data protection in the 2018 Act. E.G.:
 - ☐ necessary for administration of justice: Sch 1, para. 7
 - ☐ preventing fraud: Sch 1, par. 14
 - ☐ In connection with legal proceedings (actual or prospective)
- Article 6(1)(f) UK GDPR – legitimate interest, necessity and balancing tests

Newcastle Upon Tyne City Council v Morrison

(2000) 32 H.L.R. 891 – Alternative Remedies

- Possession claim
- “Thirdly, I think that the recorder was wrong to see the question of reasonableness as turning on the notion that there was an alternative and, as he thought, more appropriate remedy available.” **May LJ**
- *Sheffield C.C. v. Jepson* (1993) 25 H.L.R. 299 - an authority are not required to apply for an injunction to restrain anti-social behaviour before resorting to possession proceedings.

Over to you...



Contact details:



Andy Lane
Cornerstone Barristers
2-3 Grays Inn Square
London
WC1R 5JH

Tel: 020 7242 4986
Fax: 020 3292 1966
Email: alane@cornerstonebarristers.com

23National Investigations Conference

FBINTEC

Fly-tipping is a crime.

We may fine or prosecute anyone caught.

Fly Tipping Investigations

Declan Khan is the Assistant Director for Counter fraud, Community Safety & Protection at Barnet council. Declan has 20 years of experience in the field of criminal investigations and currently leads five teams of investigation and enforcement officers which includes Housing Tenancy Fraud, Concessionary Travel Fraud, Corporate Fraud and Financial Investigations as well as Community Safety Enforcement Officers dealing with Anti-Social Behaviour and Environmental Protection Act offences. In addition to this he currently leads an Enforcement strategy for the council including Trading Standards, Licensing and Environmental Health officers. Having progressed through investigation techniques in Local Government over the years, he is focused on upskilling officers to enable them to utilise the new digital age of evidence gathering to identify offences in order to enhance prevention via detection and to maximise appropriate outcomes through joint working and collaboration.

Declan Khan

LB BARNET

Assistant Director
Counter fraud, community
Safety and Protection

BARNET

LONDON BOROUGH

What is Fly-tipping?

Fly-tipping is 'the illegal deposit of any waste onto land - i.e. waste dumped or tipped on a site with no license accept waste'.
Fly-tipped waste generally consists of large items of rubbish that are dumped illegally on land instead of being disposed of properly at a landfill site tip, often referred to as 'dumping'.

Fly-tipping is illegal
UK waste comes under controls that impose a duty to ensure that waste is disposed of properly. Only holders of a Waste Management License can recover, transport, deposit or dispose of waste. Waste can be deposited only at officially authorised sites. Anyone fly-tipping waste is committing a serious offence.

BARNET

LONDON BOROUGH

23National Investigations Conference

FBINTEC

What is the legal Power?

Section 33 of the Environmental Protection Act 1990 (EPA 1990)
"It is an offence to treat, keep or dispose of controlled waste without a waste management licence, or in a manner likely to cause pollution of the environment or harm to human health."

Whilst there is no specific legal definition of what constitutes a fly-tip, case law advises that they can vary in size and type from a **black bag of household waste**, all the way through to a **lorry load of commercial waste** and more.

Other legislations:

- Environmental Protection Act 1990; Sections 34 and 87/88
- Anti-Social Behaviour, Crime and Policing Act 2014; Part 4, Chapter, The Community Protection Notice
- London Local Authorities Act 2007 (LLAA 07); Sections 46/47

BARNET

LONDON BOROUGH

23National Investigations Conference

FBINTEC

Who can deal with Fly-tipping?

Environment Agency

Community Safety Team Investigation and Enforcement Officers

Environmental Health Officers

Planning Enforcement Officers

Departments and officers - where delegated powers are bestowed

BARNET

LONDON BOROUGH

23National Investigations Conference

FBINTEC

What Fly-tipping looks like





BARNET

LONDON BOROUGH

23National Investigations Conference

FBINTEC

What Fly-tipping looks like





BARNET

LONDON BOROUGH

23National Investigations Conference

FBINTEC

(c) NICONF and speakers

3

What does Fly-tipping looks like





Fly-tipping Investigations

- **If the fly-tip is on Highway/Council land:**
 - Investigation & Enforcement Officer will attend the site and search through the fly-tip to secure evidence relating to the person who deposited the waste or on whose behalf the waste was deposited
 - This is a key part of the criminal investigation
- **The evidence will be:**
 - Collected in compliance with Criminal Procedures and Investigations Act 1996 (CPIA)
 - Recorded by Body worn video - the site and the actions of evidence being gathered
 - Placed into evidence bags with all relevant details recorded, including the date/time/location where seized, description of the evidence, and details of the officer seizing



Fly-tipping Investigations Process map





The results: Before and After







Questions?

Declan Khan
Assistant Director
Counter fraud, community Safety and Protection
London Borough of Barnet





Powered by   

REFRESHMENTS

Back in 30 Minutes!



23

National Investigations Conference

Powered by

Investigation Skills Partnership

EB INTEC

Training

John Stalley

WEALDEN DC

Investigations Manager
Wealden DC

Chair
NIOG Advisory Panel



John has been with Wealden District Council Investigations team for the past 13 years and for the last 2 years as their Investigations Manager. The team form part of Audit and Investigations within the Wealden organisation. Prior to joining Wealden District Council in 2010 John had served 31 years with Sussex Police, 18 years within CID with investigations and intelligence teams as a senior investigator and supervisor at district, county and national levels. John has over 40 years' experience in investigations, fraud and corruption across the many sides of the industry and public life. He is keen to develop and promote investigations throughout local government and the public sector.

23

National Investigations Conference

Powered by

Investigation Skills Partnership

EB INTEC

Training

Planning Enforcement

Legislation
The main primary planning legislation is contained in the following Acts :

- Town and Country Planning Act 1990
- Planning and Compulsory Purchase Act 2004
- Listed Buildings Act 1990

There are a further (about) 20 Acts and over one hundred statutory instruments which deal with planning matters.
Almost all planning enforcement is done by the issue of notices requiring that things be done, not done, rebuilt or removed, or that require the provision of information.



23

National Investigations Conference

Powered by

Investigation Skills Partnership

EB INTEC

Training

Planning Crime

The Town and Country Planning Act 1990

- 171G Temporary stop notice offences
- 179 Offence where enforcement notice not complied with
- 187A Failure to comply with Breach of Conditions notice

Listed Building Offences by Owner &c.
If a person executing or causing to be executed any works in relation to a listed building under a listed building consent fails to comply with any condition attached to the consent, he shall be guilty of an offence.

If, with the intention of causing damage to a listed building, any relevant person does or permits the doing of any act which causes or is likely to result in damage to the building, he shall be guilty of an offence. (There is also an offence of damaging a building by 'other persons'.)

Fraud
Deliberate lies in connection with planning may be fraud.



23

National Investigations Conference

Powered by

Investigation Skills Partnership

EB INTEC

Training

Planning Investigations

- Must follow HRA – hence PLAN
- Must comply with CPIA rules about :
 - statutory roles
 - following all lines of enquiry
 - 4Rs
 - disclosure
- Interviews must be PACE compliant
- Should follow normal case preparation and management protocols



23

National Investigations Conference

Powered by

Investigation Skills Partnership

EB INTEC

Training

Listed Buildings Act 1990

- Section 7:
 - no person shall execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised
- Section 9:
 - (1) If a person contravenes section 7 he shall be guilty of an offence.
 - (2) Without prejudice to subsection (1), if a person executing or causing to be executed any works in relation to a listed building under a listed building consent fails to comply with any condition attached to the consent, he shall be guilty of an offence.



23

National Investigations Conference

Powered by

Investigation Skills Partnership

EB INTEC

Training

A former council planning boss has been fined £75,000 for making illegal and irreversible changes to her Grade II-listed home.

- Had earlier admitted six counts of breaching planning law while Proulx pleaded guilty to four charges of breaching planning regulations.
- told the court the pair "strongly believed at the time" the works did "not require authorisation."
- Michael Sanders, of the Hailsham Historical and Natural History Society described the changes as "historic vandalism. We can't have people going around changing things whenever they like. It is very alarming."
- District judge Teresa Szagun said she "intentionally disregarded the requirement for consent - focussing on [her] own needs".





Points to Prove.

- Listed Buildings Act 1990, Section 9:
 - Is the premises a listed building?
 - If so, were the works conducted for its alteration?
 - If so, did the defendant cause the works to be done?
 - If so, were such works done in a manner that affected the character of the building or its architectural and/or historic interest?
 - If so, were such works authorised?

23National Investigations Conference#NICONF23

FBINTEC

Training

Questions

23National Investigations Conference#NICONF23

FBINTEC

Training

Contact

Post a question on the advice forum on :
www.NIOG.org.uk

Email :
john.stalley@wealden.gov.uk

23National Investigations Conference#NICONF23

FBINTEC

Training

23National Investigations Conference

Powered by

FBINTEC

Training

Education Act Enforcement

Mike Neumann
ITS TRAINING
UK LTD

Managing Director

ITS TRAINING
UK LTD

Chief Executive

Mike started his career working in the field of fraud prevention and detection. He has investigated a large variety of crimes at both local and national level. His experience includes organised crime, complex and high value investigations, surveillance and case management systems (including HOLMES).

In 1999 he set up ITS Training. The company provides a complete training and consultancy service (including an extensive list of qualifications) and remains the company of choice for high quality investigative training. In addition to designing and delivering training, Mike is an executive coach and mentor, and speaks on such subjects as law, psychology and communication. Outside of ITS, Mike is a founder, and Chief Executive, of NIOG.

23National Investigations Conference

Powered by

FBINTEC

Training

School Absence

- Parents are legally expected to provide their children with a suitable and efficient education either by attendance at school or "otherwise" (normally 'Elective Home Education') under Section 7 of the Education Act 1996.
- Parents and other relevant responsible adults who do not ensure full attendance may be prosecuted for offences under ss.444(1) and 444(1A) of the Act.
- Local councils and schools (and, in some circumstances, the police) have an assortment of powers that may be used against persons who fail to ensure a child's regular attendance at school.

23National Investigations Conference#NICONF23

FBINTEC

Training

Meaning of 'Regular'

Isle of Wight Council v Platt [2017] UKSC28

On 6 April 2017 the Supreme Court (hearing an appeal in the case of Platt v Isle of Wight) handed down a judgment that ruled that the term 'regular' means 'in accordance with the rules prescribed by the school'. This makes it clear that a child fails to attend school regularly if they fail to attend on any day when the school is open. Any non-attendance must be in line with legislation and the rules set down by the school.

The judgment maybe read or watched on the Supreme Court's website
www.supremecourt.uk/cases/uksc-2016-0155.html

23National Investigations Conference

Powered by

FBINTEC

Training

(Un)Authorised Absence

The only legal reasons for absence are :

- That the absences are with leave (of the head teacher).
- That the absences are caused by sickness or other unavoidable cause.
- That the absences fall on days of religious observance for the religion to which parents belong.
- That the child is entitled to free transport to school and the Authority has not provided this.

Any absence not notified as being in one of these categories (or not notified at all) is marked as unauthorised.



The Options

A council may use one or more of these options but is not obliged to use one of the alternatives before prosecuting a person, if the council believes that prosecution at the first instance is the most appropriate course of action.

- prosecution
- a Parenting Order
- an Education Supervision Order
- a School Attendance Order
- a 'penalty notice' or statutory fine



Education Supervision Orders (ESO)

- Every time a LA considers instituting legal proceedings for offences relating to school attendance orders and poor attendance, they must consider whether it would be wise, instead, to apply for an ESO.
- The courts can also direct the LA to consider applying for an ESO.
- The legal framework for ESOs are covered in Section 36 of the Children Act 1989.
- **If you are not able to demonstrate that you have considered this course of action before deciding to prosecute, your case may be struck out as an abuse of process.**



Child Employment Rules

- The rules which cover the employment of children under the school leaving age are mainly found in the Children and Young Persons Act 1933.
- There are other important rules, such as the Management of Health and Safety at Work Regulations 1999.
- There will almost certainly be further rules in local authority byelaws made under the CYPA 1933.
- Unless relaxed by bylaws, 14 is the minimum working age.
- A child may not be employed before 7am or after 7pm (and not normally before school).
- Hours of work are limited, by age and the day of the week.
- Work may not give rise to school absence.
- Further rules exist re health and safety, sale of alcohol &c.



Child Employment Offences

- In general if a child is employed in contravention of the rules, the employer commits an offence. The case would be heard in a Magistrate's Court and the maximum fine is usually £1,000.
- Any person other than the child, whose act or default contributed to the contravention, also commits the offence.
- The maximum penalty for employing a child in any of the types of work posing a 'health and safety' risk is a fine of £20,000 (Mags) or unlimited (Crown).
- If a child engages in street trading in contravention of any rule described in section 6, the child commits an offence as well, for which the maximum fine is £200 which would normally have to be paid by the child's parent.



Investigation Issues

- All investigations are covered by the *Criminal Procedure and Investigation Act 1996 (CPIA)*, meaning that there are roles and duties on those investigating cases.
- In particular, there is a duty to disclose any *unused material* that might undermine the prosecution case.
- PACE applies to all interviews with suspects.
- Court file preparation should be in accordance with the *National File Standard*.



'Crossover' Considerations

Absence might indicate...

- Illegal working
- Abuse / Neglect
- Grooming
- Housing offences (non-residence)
- Bullying &c. At school

Working could mean...

- Vulnerable adults at risk (Why is the child working?)
- Feeding a habit
- Risk of exploitation by unsuitable employer (DBS)



Questions?



(...or come and speak to us on the IT S stand!)



Contact Us

Email mike@its-training-uk.com

Post a question on www.niog.org.uk

Call us on 0330 022 8262





Powered by   

LUNCH

Back in 60 Minutes!







Declan Khan
LB BARNET

Assistant Director
Counter Fraud Community
Safety & Protection

Declan Khan is the Assistant Director for Counter fraud, Community Safety & Protection at Barnet council. Declan has 20 years of experience in the field of criminal investigations and currently Leads five teams of investigation and Enforcement officers which includes Housing Tenancy Fraud, Concessionary Travel Fraud, Corporate Fraud and financial investigations as well as Community Safety Enforcement Officers dealing with Anti-Social Behaviour and Environmental Protection Act offences. In addition to this currently leads an Enforcement strategy for the council including Trading Standards, Licensing and Environmental Health officers.

Having progressed through investigation techniques in Local government over the years, he is focused on upskilling officers to enable them to utilise the now digital age of evidence gathering to identify offences in order to enhance prevention via detection and to maximise appropriate outcomes through joint working and collaboration.



A Joined up Approach to Enforcement

Declan Khan
Assistant Director
Counter fraud, community Safety and Protection
London Borough of Barnet

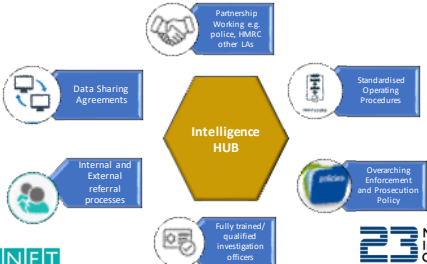


What do we have at our disposal?

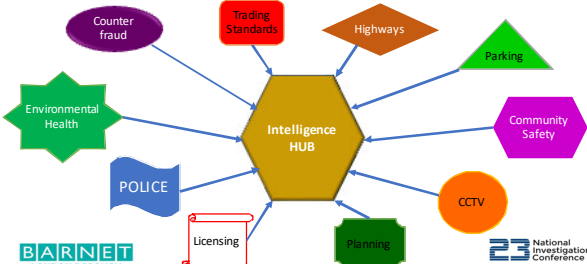
- Counter Fraud Team Investigations
 - Internal and External fraud investigation
- CCTV
 - 24/7 surveillance & monitoring of activities across the borough
- Trading Standards & Licensing
 - Rogue trading, scams, fair trading, product safety, animal welfare, process applications, carry out inspection to ensure compliance, investigate complaints
- Environmental Health
 - Noise, Scientific Services, Pest control, Food Safety, Private Sector Housing
- Planning
 - Planning applications, Planning Enforcement
- Community Safety Team
 - Investigation and Enforcement - for Fly tipping/littering, Trade waste, Anti-Social Behaviour (incl. drug/alcohol and noise related ASB), neighbour disputes
- Parking
 - Issuing CPNs - parking appeals, road traffic contraventions
- Highways
 - Graffiti, unlicensed skips, offences under the Highways act
- Local Police
 - Crime investigations



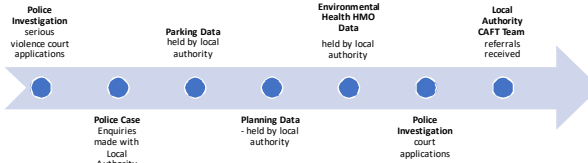
Foundations to build Joint working



How can we interact



Case Study



What do officers need?

Uniforms

Worn when required e.g. high visibility patrols





What do Officers need?

Personal Protect Equipment

Worn when required for operations





What do Officers need?

Body Worn Video

Essential when in uniform or on operations









Questions?

Declan Khan

Assistant Director

Counter fraud, community Safety and Protection

London Borough of Barnet







Effective Recovery of Debt Through the Civil Courts

Andy's practice focuses on social housing, local government and public law, and he works primarily for local authorities and housing associations. Before coming to the Bar, Andy spent over 10 years working in the statutory and voluntary sector in the field of housing, debt and benefits advice. He also had a spell as a local authority councillor, and held a number of portfolios during that time, including Chair of the Housing Committee. The legal directories have consistently recognised Andy as one of the leading practitioners at the Bar in the Social Housing field by placing him in the top-ranking category. He is the author of *Cornerstone on Social Housing Fraud* and has set up a [blog](#) to encourage the free flow of information on this topic.



Andrew Lane

CORNERSTONE

Joint Head of the Public Law Team, Cornerstone Barristers

Main Types of Recovery

Money Claims – CPR r. 70

1. Money Judgment – CPR r. 40

2. Attachment of Earnings – CPR r. 89

3. Warrant of Execution – CPR r. 83

4. Bankruptcy/IVA/Debt Relief Order - £5000+ for bankruptcy

5. Oral Examination – CPR r. 71

6. Charging Order – CPR r. 73

7. Third Party Debt Order – CPR r. 72

8. ~~European Payment Order/Small Claims Procedure~~

Main Evidential Issues

Finding Out the Debtor's circumstances

• Throwing good money after bad?

• N316 - apply to the court for an order that a judgment debtor attends court to give information under oath about their financial situation

• Questioning will be by a court officer unless a judge agrees there are compelling reasons for questioning to take place before a judge.

• Questions on EX140 – creditor can ask more questions on the N316 and/or ask for additional documents to be produced

• Questioning is under oath – non attendance/compliance may = contempt – CPR r. 71.8

Bailiff or Sheriff?

• No enforcement unless action by the creditor

• CPR r. 70

• Can transfer £600+ judgment debt to High Court for enforcement by the Sheriff's Office

• Still a County Court judgment

Third Party Debt Order

CPR r. 72

- Provides for 3rd Party owing debtor money, to pay to creditor
- Often begins as a without notice application
- Interim order first part of process – without a hearing
- That order provides for the 3rd party retaining the sum sufficient to cover the outstanding debt

Money Claim On-line

PD7C

- Fixed sums less than £100,000

Debt Respite Scheme (Breathing Space)

- The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020
- The Debt Respite Scheme (Breathing Space) will give someone in problem debt the right to legal protections from their creditors.
- This API allows money advisers to manage their clients through a breathing space, whilst also allowing creditors to digitally interact with the service.

Tracked Claims

CPR r. 26.6

- **Small Claims** – CPR r. 27 – up to £10,000
 - £5000 PIRTA (some exceptions) and £1500 PInon-RTA
 - Disrepair and repair work and damages claim not more than £1,000
 - Not harassment/unlawful eviction
- **Fast-track** – CPR r. 28 – up to £25,000 + up to 1-day trial
- **Multi-track** – CPR r. 29 – not small/fast track

Set-Offs

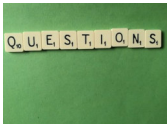
- **County Courts Act 1984, section 72**

Where one person has obtained a judgment or order in the county court against another person, and that other person has obtained a judgment or order against the first-mentioned person in the county court or in the High Court, either such person may, in accordance with rules of court, give notice in writing to the court or the several courts as the case may be, and may apply to the court or any of the said courts in accordance with rules of court for leave to set off any sums, including costs, payable under the several judgments or orders.

- **Shine v English Churches Housing Group** [2004] H.L.R. 42, Wall LJ

136. The final matter relates to the judge's refusal to allow the landlord to set off against the award of damages the sum of £1,500.00 awarded by Hart J. on Mr. Shine's appeal to the Chancery Division. The judge refused to deal with this on the basis that it was not his order, and that there was nothing he could do about it. We disagree. We were referred to s.72 of the County Courts Act 1984 and CPR 44.3(9)(a). We are, however, of the view that since the order for costs made by Hart J. was, in effect, an order made in the proceedings (albeit on appeal) there is absolutely no reason why those costs should not be offset against the award of damages to Mr. Shine, particularly in circumstances where Mr. Shine is patently impecunious, and if a set off is not directed, there is no way in which the order of Hart J. would be enforced.

Over to you...



Contact details:

Andy Lane
Cornerstone Barristers
2-3 Grays Inn Square
London
WC1R 5JH
Tel: 020 7242 4986
Fax: 020 3292 1966
Email: alane@cornerstonebarristers.com



23

National Investigations Conference

Powered by

oxfordinvestigation

FB INTEC

Training

REFRESHMENTS

Back in 30 Minutes!





23

National Investigations Conference

Powered by

oxfordinvestigation

FB INTEC

Training

Housing Act Enforcement



Mike Neumann
ITS TRAINING
UK LTD

Managing Director



Chief Executive

Mike started his career working in the field of fraud prevention and detection. He has investigated a large variety of crimes at both local and national level. His experience includes organised crime, complex and high value investigations, surveillance and case management systems (including HOLMES). In 1999 he set up ITS Training. The company provides a complete training and consultancy service (including an extensive list of qualifications) and remains the company of choice for high quality investigative training. In addition to designing and delivering training, Mike is an executive coach and mentor, and speaks on such subjects as law, psychology and communication. Outside of ITS, Mike is a founder, and Chief Executive, of NIOG.

What is the scheme?



- The Housing and Planning Act 2016 provides powers that permit local authorities to impose a civil penalty as an alternative to prosecution.
- Covers offences under the Housing Act 2004, and where a landlord or property agent has breached a banning order under the Housing and Planning Act 2016.
- There is **statutory** guidance on the .gov.uk network.
- There must be a realistic prospect of conviction, when considered in line with the Crown Prosecution Service *Code for Crown Prosecutors*.
- The maximum penalty is £30,000 ; the actual amount should be determined with regard to the statutory guidance and the Authority's own policy and procedure.

23

National Investigations Conference

#NICONF23

oxfordinvestigation

FB INTEC

Training

When can a penalty be imposed?



1. Failure to comply with an Improvement Notice (s.30 HA 2004)
2. Offences in relation to licensing of Houses in Multiple Occupation (s.72 HA 2004)
3. Offences in relation to licensing of houses under Part 3 of the Act (s.95 HA 2004)
4. Offences of contravention of an overcrowding notice (s.139 HA 2004)
5. Failure to comply with management regulations in respect of Houses in Multiple Occupation (s.234 HA 2004)
6. Breach of a banning order (s.21 H&PA 2016)

23

National Investigations Conference

#NICONF23

oxfordinvestigation

FB INTEC

Training

Source of the Powers, & Guidance



- The power to impose the penalty comes from ss.23 & 126, and Schedule 9 of the H&PA 2016.
- A penalty may only be imposed for offences committed on or after 6th April 2017 (offences 1 to 5) or 6th April 2018 (offence 6).
- Guidance is at : https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697644/Civil_penalty_guidance.pdf

23

National Investigations Conference

#NICONF23

oxfordinvestigation

FB INTEC

Training

Amount of the Penalty



Local housing authorities should consider the following factors to help ensure that the civil penalty is set at an appropriate level :

- Severity of the offence
- Culpability and track record of the offender
- The harm caused to the tenant
- Punishment of the offender
- Deter the offender from repeating the offence
- Deter others from committing similar offences
- Remove any financial benefit the offender may have obtained as a result of committing the offence

23

National Investigations Conference

#NICONF23

oxfordinvestigation

FB INTEC

Training

Intent to Impose a Penalty

The local housing authority must serve a 'notice of intent' to impose a financial penalty, setting out :

- the amount of the proposed financial penalty;
- the reasons for proposing to impose the penalty; and
- information about the right of the landlord to make representations.

The notice of intent must be given no later than 6 months after the authority has sufficient evidence of the conduct to which the penalty relates, or at any time when the conduct is continuing.

(Sch.13A HA2004 & Sch.1 H&PA 2016)



The Penalty Notice

If the authority decides that it will impose a financial penalty, it must confirm this by serving the 'final notice', which must set out :

- the amount of the penalty;
- the reasons for imposing the penalty ;
- information about how to pay the penalty ;
- the period for payment of the penalty, which is 28 days ;
- the appeal rights ; and
- the consequences of failure to pay.

The Authority may, if it sees fit, withdraw a notice of intent or final notice, or reduce the amount of the penalty.



Appeals and Enforcement

- A person who is given a notice of intent has 28 days to make written representations to the local housing authority about the intention to impose a financial penalty.
- A landlord can appeal (within 28 days of the final notice) to the First-tier Tribunal against a decision to impose a penalty, the amount of the penalty or both.
- If a liable person fails to pay the civil penalty, the Authority should enforce through the County Court in the normal manner.



Using the Penalty Income

Income received from a civil penalty can be retained by the local housing authority only if it is used to further the local housing authority's statutory functions in relation to their enforcement activities covering the private rented sector, as specified in Regulations.



VAR – Is it a penalty?

J has three properties that she rents out privately. She bought them ten months ago in a state of considerable disrepair and has substantially modernised them all but all have issues with the glazing – cracked panes and leaky frames are allowing water ingress. She rented them out six months ago, at £1,000 per calendar month, and within a month all the tenants had complained. You served an enforcement notice two months ago but the work has not been completed. When challenged, she's replied that she will carry out the work as soon as she can but that she can't afford to do it in one lump. She provides emails showing that each property is scheduled for repair next month, the following month and in three months respectively. Each repair will cost her £2,000. She has no previous sanctions recorded against her.



VAR – How about these?

K has been letting all ten rooms in a multi-occupied property for the last three months, at a rate of £100 per room per week. He has none of the relevant HMO permissions and the property is damp and has only one toilet and shower, neither of which function properly. Four months ago, you closed down a seven room HMO that K was letting out unlawfully, and served a penalty notice of £5,000 in respect of those offences.

L was banned from operating as a landlord a year ago. You have now gathered evidence that proves beyond reasonable doubt that she has been acting as a landlord for the last ten months, letting out multiple flats in a converted office block. You are able to prove 20 leases for the last ten months in this 22 'flat' block, each earning her £1,000 pcm.



Questions?



(...or come and speak to us on the ITS stand!)



Contact Us

Email mike@its-training-uk.com

Post a question on www.niog.org.uk

Call us on 0330 022 8262







Powered by   

CLOSE OF CONFERENCE



