UNISON

Open College

BLOCK HL.103

KEY LEGISLATION: PROVISION AND APPLICATIONS

UNISON Open College, 1 Mabledon Place, London WC1H 9AJ

Contents

Preface

When you started your studies of the Housing and Law Unit, you had little or no understanding of the law. Now you have completed two Blocks of the Unit, you will be feeling more comfortable with knowledge gained of:

- the structure and operation of the legal system, including how statute law and common law principles are applied to housing issues;
- the substantive laws of contract and tort as they apply to social landlords as both employers and landlords; and
- how the law of landlord and tenant applied to different forms of tenancy

You will have found that your studies of Block HL.101 'Structure of the Legal System' provided an essential foundation for your studies of Block HL.102 'Tenancies and Social Landlords' Responsibilities'. In turn, your studies of both of those Blocks will have prepared you to examine the provisions and applications of key housing issues contained in this final Block. The issues you will be studying are key areas of law and practice encountered daily by social housing landlords and their staff, and include:

- issues of homelessness and allocations;
- housing benefits;
- rent arrears and possessions;
- nuisance and anti-social behaviour law;
- the law and disrepair; and
- anti-discrimination law.

Completion of this third Block will help you to develop the confidence that comes from the study of the essential framework of law and an understanding of the detailed application of housing law. Hopefully, your studies will encourage you to sustain an interest in the law, for it will enhance your work and that of your housing organisation.

Learning Outcomes

By the time you have completed this Block, you will be able to:

- describe the duties of a local housing authority to homelessness applicants;
- explain the role, application and relevance of housing benefit in helping to meet affordable housing needs;
- identify the legal mechanisms for dealing with rent arrears, as well as the procedures for seeking possession of tenancies;
- distinguish between the different civil and criminal remedies available to deal with anti-social behaviour;
- describe the statutory and common law powers, duties, and remedies available to landlords and tenants for dealing with rent arrears and disrepair; and
- have an appreciation of the duties imposed by anti-discrimination legislation and their significance for social housing organisations as employers and landlords.

A. Overview of the Housing Act 1996 and Subsequent Housing Legislation

1. Context

1.1 Background to the Housing Act 1996

(a) Introduction

You will find that the duties of your Housing Department are defined by a multitude of housing legislation and, frequently, you will see that a Act of Parliament has been subject to amendments by a later Act. Although there are significant Housing Acts, there is no single Housing Act that embraces all aspects of housing, as it would be impractical and unwieldy. This is because housing legislation is continually developing in response to the changing needs of society. This section describes how such changes are incorporated into an existing Act.

The **Housing Act 1996**, which is still a significant piece of housing legislation, has been amended on a number of occasions by subsequent legislation over the past nine years to reflect subsequent policy developments. In this respect, it is no different from many other key housing Acts. You will know from your studies that the consolidated **Housing Act 1985** and the **Housing Association Act 1985** remain central to social housing decisions. The reason that they remain relevant is that they have regularly been amended. We have discussed, too, other significant housing legislation that continues to determine the actions and rights of social housing organisations and their tenants. One such Act is the **Housing Act 1988**, which introduced assured tenancies.

An example of the inter-relationship between housing legislation is the **Homelessness Act 2002**, which amended the homelessness and housing allocation provisions contained in the **Housing Act 1996** *(see HL103 B.1&2).* Other legislation which amended provisions contained in the **Housing Act 1996** and other key housing Acts includes:

i. The **Anti-social Behaviour Act 2003** *(see HL103 E.1.3 (h))*, which:

   - enhanced the management responsibilities in the **Housing Act 1996**;
   - both amended and inserted new sections in the **Housing Act 1988** to create a new form of 'demoted' tenancy, as well as allowing the courts to take into account the

likely influence of a person's previous anti-social behaviour when considering whether it is reasonable to make an order for possession; and

- repealed existing provisions and introduced new provisions in the **Housing Act 1996** to provide three types of injunction for use in response to tenants' anti-social behaviour.

ii. The **Housing Act 2004**, which repealed existing provisions and inserted new provisions into the **Housing Act 1985** to introduce a new system for assessing housing conditions and enforcing housing standards *(see HL103 F.3)*. It also amended Part II of the **Housing Act 1996** to introduce a licensing scheme for houses in multiple occupation.

The **Housing Act 1996**, as well as introducing new legislation, also introduced amendments to previous legislation. It is also an enabling Act, which means that Ministers have significant powers to regulate through secondary legislation in the form of Regulations, Guidance, Orders or Directions. In this section we will examine the background to the Act and, as an example, its aims. This, in turn, will provide the framework for other sections included in the Block.

(b) Emerging policy

The **Housing Act 1996** implemented many of the Government's housing proposals that were contained in the 1995 White Paper *'Our Future Homes: Opportunity, Choice and Responsibility', Command 2901.* The White Paper was published following 16 years of a Conservative government. During that period, radical changes in housing and related policies had been implemented. Central to housing policy over that period was the objective of expanding home ownership, through Right-to-Buy sales of council houses, mortgage interest tax relief for home owners, and a range of incentives such as the Rent-to-Mortgage Scheme. Other policy initiatives introduced included:

- local authorities ceasing to provide houses and enabling others to do so;
- large scale transfer of council housing to other landlords;
- housing associations becoming the main provider of rented social housing;
- housing subsidies switched from dwellings to people, e.g. Housing Benefit;
- move to market rents;
- compulsory competitive tendering of local authority services, including housing management; and

- introduction of market rent assured tenancies and assured shorthold tenancies to encourage private sector investment in rented housing.

The 1995 White Paper built on the housing policies introduced since 1979 and set out the Government's future plans for housing. These plans included a continuing commitment to extending home ownership, despite mounting problems with negative equity, mortgage arrears and repossessions. The plans also included such measures as:

- extending the Right-to-Buy to housing associations;
- introduction of local housing companies and housing investment trusts to take over local authority housing stock;
- pre-tenancy housing benefits determinations;
- reducing local authorities' duties to the homeless;
- providing local authorities with powers to speed up the repossession of properties and to introduce (probationary) introductory tenancies;

Concern was expressed over many of the White Paper's proposals, especially regarding continuing to promote home ownership to those at the margins of being able to afford house purchase. Such a policy was thought likely to lead to further residualisation of social housing areas, leading to a concentration of poor, unemployed, and elderly tenants. Instead, some argued, housing policy should be encouraging the establishment of balanced communities, and encouraging a broader range of people to become tenants.

The above concerns were to influence the development of housing policy and bring about changes to those contained within the 1995 White Paper. Eight years later, in February 2003, the Government issued a responsive policy statement and action programme that embraces a more comprehensive approach to achieving balanced communities – *Sustainable Communities: Building for the Future'* a publication issued by the Office of the Deputy Prime Minister. The statement promises a 'step-change' in the Government's approach to delivering 'decent homes and a good local environment', as well as identifying key requirements for sustainable communities, including;

- a flourishing local economy to provide jobs and wealth;
- strong leadership to respond positively to change;

- effective engagement and participation by local people, groups and businesses, especially in planning, design and long-term stewardship of their community, and an active voluntary and community sector;
- a safe and healthy local environment with well-designed public and green space;
- sufficient size, scale and density, and the right layout to support basic amenities in the neighbourhood and minimise use of resources (including land);
- good public transport and other transport infrastructure both within the community and linking it to urban, rural and regional centres;
- buildings, both individually and collectively, that can meet different needs over time, and which minimise the use of resources;
- a well-integrated mix of decent homes of different types and tenures to support a range of household sizes, ages and incomes;
- good quality public services, including education and training opportunities, health care and community facilities, especially for leisure;
- a diverse, vibrant and creative local culture, encouraging pride in the community and cohesion within it;
- a sense of place; and
- the right links with the wider regional, national and international community.

You will recognise from the above that a key feature of the proposals is the emphasis placed on devising housing policies that reflect the diverse, and often contradictory, housing needs of England's regions.

1.2 The Housing Act 1996

(a) Provisions and policy objectives

The **Housing Act 1996** contains eight parts and introduced a wide range of measures that were to affect the public, voluntary and private housing sectors. Each of these sections is included below, together with an outline of contents and, for each Part, a related and brief commentary. You will also see that, where the Parts of the Act are relevant to your studies, a cross reference is made to the appropriate Block and section:

i. Part I - Social Landlords

This part of the Act introduced a new structure for Registered Social Landlords (housing associations who are registered with the Housing Corporation). As such, it changed familiar terminology. Housing Association Grants became 'Social Housing Grants'. Also, eligibility for registration was extended to registered companies who did not trade for profit and whose objectives included the provision of rented housing. Tenants of Registered Social Landlords were given the right to buy their property*(see Block HL.102 sub-section C6.2 (b))*. Provision was also made for the establishment of the Housing Ombudsman.

The policy aims were to extend home ownership, to widen the type of body eligible for registration as a social landlord, and to enhance the further transfer of council housing to local housing companies who become social landlords eligible for receipt of Social Housing Grants. The establishment of the Housing Ombudsman was to help to counter the criticism that the housing association sector is not sufficiently independent.

ii. Part II - Houses in Multiple Occupation

This part of the Act introduced voluntary registration schemes for houses in multiple occupation.

The policy aim was to improve fire safety provisions, means of escape, repairs, and conditions generally in houses in multiple occupation (*this was later amended by the* ***Housing Act 2004****, which introduced a licensing system for houses in multiple occupation*).

iii. Part III - Landlord and Tenant

This Part made a number of changes to landlord and tenant law relating to tenants' rights, assured tenancies *(see Block HL.102 section C6 and sub-section C6.6 (a))*, and leasehold reform *(see Block HL.102 sub-section C2.7 (a), (b) & (c))*. Apart from enabling leaseholders to collectively become freeholders or extend their leases, all new tenancies will now be assured shorthold unless agreed otherwise. This reversed the previous provision under the **Housing Act 1988**, under which it was found that many landlords had not been meeting the formal requirements of assured shorthold and had, unintentionally, created assured tenancies.

Policy aims were to improve management of leaseholders' dwellings and, arguably, to encourage owner occupation. The policy aims relating to assured tenancies are to make the tenancy criteria more landlord-friendly so as to further encourage the provision of private rented accommodation.

iv. Part IV - Housing Benefit and Related Matters

This Part made changes to the administration of housing benefit, and introduced the provision enabling applications for a pre-determination of rent *(see section C and sub-section C3.2 (d)).*

Policy aims were the pre-determination of likely support for rent was introduced to help potential applicants to make decisions over available accommodation. Apart from this, it is difficult to see why primary legislation has been used in an attempt to tackle some of the administrative difficulties relating to Housing Benefit.

v. Part V - Conduct of Tenants

This Part introduced new measures for helping social landlords to deal with the anti-social behaviour of some tenants. The measures include introductory tenancies*(see Block HL.102 section C5),* extended grounds for repossession (*see Block HL.102 sub-sections C4.4 and C6.5),* and injunctions against anti-social behaviour, which are backed by the power of arrest *(see section E of this Block) (These measures have been further enhanced by provisions contained in the* ***Anti-social Behaviour Act 2003****).*

Policy aims were to provide local authorities and other landlords with measures that will help deal with problem tenants and also act as a disincentive for other tenants to behave in an anti-social manner. The common criticism that the Act does nothing to combat abuses by private tenants and owner-occupiers is somewhat unfair, e.g. *all landlords now have additional grounds for possession, and, although the injunctions can only be applied for by a local authority, they can apply to anybody.*

vi. Part VI - Allocation of Housing Accommodation

This Part implemented the proposals to introduce new local authority duties to maintain waiting lists and the criteria relating to the allocation of tenancies. There is also provision for a single route to social housing through a common register for the local authority and Registered Social Landlords *(see section G5 of this Block). (These measures have been amended by the provisions contained in the* ***Homelessness Act 2002****.)*

Policy aims were to address socio-economic characteristics of potential tenants rather than the previous consideration of physical property needs. There was also concern that homelessness people might be seen as 'jumping the housing queue', and a need to ensure that all local authorities maintained a housing register and an accountable system of allocating housing according to need *(previously some local authorities allocated on less than equitable grounds).*

vii. Part VII - Homelessness

This Part has reduced local authorities' duties to the homeless. Now a qualifying homeless person will be entitled to temporary accommodation for two years *(see section B) (this provision was included in the* ***Homelessness Act 2002****).*

Policy aims were the overriding policy aim is to allocate housing through one register and, in the case of homelessness, to avoid applicants being able to go to the top of the housing register.

viii. Part VIII - Miscellaneous and General Provisions

This Part contains miscellaneous and general provisions relating to housing management and housing finance, e.g.*the repeal of 'Pick a landlord' provision introduced by Part IV of the* ***Housing Act 1988****.*

(b) Future policy initiatives

You will see from the references provided against each of the seven parts of the **Housing Act 1996** that a number of the provisions are to be considered in this Block. You have already studied other identified sections in Block HL.102. However, housing policies are not static and, already, policy changes that you should be aware are beginning to emerge.

Four years after the **Housing Act 1996**, introduced by a Conservative Government, a Housing Green Paper *'Quality and Choice: A Decent Home for All'* was published by the Labour Government. Essentially, it set out proposals for future housing policies in England and Wales, as well as proposals for future Housing Benefit policies in Britain. (A separate Housing Green Paper for Scotland *'Investing in Modernisation - An Agenda for Scotland's Housing'* was published in February 1999). The Paper was published in April 2000 as the first comprehensive review of housing policy for 23 years. Nevertheless, some of the policies have been carried over from the previous government. It identified a list of priorities for action. Some of these have been included below so that you can bear them in mind both during your studies and during your working activities. We suggest that you remain alert to policy developments. In this way, you will be able to see whether the government succeeds in bringing forward legislation to implement the proposals:

- **homelessness**: the replacement of the two year period of accommodation for qualifying homelessness persons with an infinite duty to provide accommodation *(this provision was included in the Homelessness Act 2002);*

- **homelessness**: extension of priority need to include homelessness people who are vulnerable because they have an institutional or care background, or because they are fleeing harassment or domestic violence *(this provision was included in the **Homelessness Act 2002**)*;
- **homelessness**: power for local authorities to provide accommodation for homeless people who are not within the priority group, including 16 and 17 year-olds *(this provision was included in the **Homelessness Act 2002**)*;
- **allocations**: removal of 'blanket' exclusions from the housing register *(this has been amended by the **Homelessness Act 2002** to include a more precise exclusion permitting local authorities to treat as ineligible those persons who have been guilty of unacceptable behaviour serious enough to make them unsuitable tenants of the authority)*;
- **allocations**: an intention to move towards a banding system of allocations, which in future will be known as lettings e.g. urgent need, non-urgent need, and no particular need;
- **tenure**: explore the possibility of establishing a single form of tenancy (at present there is the local authority secure tenancy and assured tenancy for housing associations and the private sector)*(see HL102 7.2 A single social housing tenancy)*;
- **affordable rents**: development of a more equitable rent-setting system to take account of size, quality and location (this will help ease the problems associated with stock transfers);
- **housing benefits**: proposals to simplify the housing benefit system, as well as penalties for anti-social tenants or ineffective landlords.

The Green Paper also contained other policy measures, including a more strategic role for local housing authorities, simplifications of rules to enable leaseholders to purchase their freehold, and low-cost home ownership.

The two most significant policy proposals are the changes to lettings and homelessness, for they will have a considerable impact on the duties of social housing organisations and on their staff. With this in mind, we will now examine the law and practice of homelessness and allocations.

Self Test 1

1. *Which policy document formed the basis of the policy influence on the* ***Housing Act 1996****?*

2. *What is meant when the* ***Housing Act 1996*** *is described as an enabling Act?*

3. *What, briefly, do the eight Parts of the* ***Housing Act 1996*** *cover?*

4. *Since the* ***Housing Act 1996*** *was passed by Parliament, there has been a change of government. Has the present government published its intentions regarding housing policy? If so, in what form, and when?*

Now turn to the Answers at the end of the Block.

Summary

1. **The Housing Act 1996 implemented many of the housing proposals that were contained in the 1995 White *Paper 'Our Future Homes: Opportunity, Choice and Responsibility'*, command 2901.**
2. **The Housing Act 1996 amended existing housing legislation in a number of important policy areas, including homelessness, assured and assured shorthold tenancies, Housing Benefit, and tenancy allocations.**
3. **The Housing Act 1996 is an enabling Act, which means that Housing Ministers have delegated powers to regulate housing matters by Regulations, Orders, Guidance or directions.**
4. **In April 2000, the government published a Housing Green Paper *'Quality and Choice: A Decent Home for All'*, which set out a list of priority areas for action. These proposals formed the basis of future housing policy in England and Wales, and future Housing Benefit policy in Britain. (A separate Housing Green Paper for Scotland *'Investing in Modernisation - An Agenda for Scotland's Housing'* was published in February 1999.)**

B. Homelessness And Allocations

1. Local Authorities' Duties to the Homeless

1.1 Introduction

Local authorities have duties to the homeless which are set out in Part III of the **Housing Act 1985**, with major changes made by Part VII of the **Housing Act 1996**, as amended by the **Homelessness Act 2002**. Also, as housing the homeless influenced the allocation of housing stock, Part VI of the **Housing Act 1996** introduced a new regime relating to the allocation of housing. In addition to the legislation, the Office of the Deputy Prime Minister issued a *Code of Guidance on Allocation of Accommodation and Homelessness* that came into force on 31 July 2002. The **Housing Act 1996** requires local authorities to have regard to this guidance in exercising their duties under Parts VI and VII. The Guide provides a helpful explanation of the legislation and of the effect of the leading cases on homelessness. In addition, it provides practical guidance to local authorities on how these should be translated into practice. It should be noted that the Guide is not a substitute for legislation. Also, local authorities need to keep up-to-date with developing case law.

Homelessness Act 2002

You can see from paragraph one that the **Homelessness Act 2002** had an amending effect on the homelessness provisions contained in the **Housing Act 1996**. The amendments were introduced to strengthen the safety net for homeless people. In particular, the 2002 Act repeals the minimum period for which authorities must secure accommodation for those who are eligible for assistance, unintentionally homeless and in priority need. The **Homelessness (Priority Need for Accommodation) (England) Order 2002**, made under s.189 of the 1996 Act, extended the categories of applicant who have priority need for accommodation. The new Act:

- required local housing authorities to take a more strategic, multi-agency approach to the prevention of homelessness and the re-housing of homeless households. The Act also imposed a duty on local authorities to publish their strategies. *(You will find it helpful to see the Department of Transport, Local Government and the Regions' Housing Research Summary 158 'Housing Strategies'. It*

continued...

presents the findings of a research project which considered how local housing authorities can adopt a strategic approach to tackling and preventing homelessness. A more detailed good practice handbook 'Housing Strategies: a good practice handbook', which was published in February 2002, is available from ODPM.) The key stages in creating a strategy are:

a. consultation;

b. undertaking a needs asessment;

c. undertaking an audit of services, including an assessment of resources; and

d. preparing a programme for planning and implementing the strategy)

- ensure that everyone accepted by housing authorities as unintentionally homeless and in priority need is provide with suitable accommodation until they obtain settled housing accommodation; and
- facilitate lettings policies which offer more choice to homeless people and others in housing need.

The local authority strategies that were submitted in 2003 were evaluated for the Office of the Deputy Prime Minister in a report *Local Authorities' homelessness strategies: evaluation and good practice.* This report is summarised in the *Homelessness research summary No.1 2004*, and the lessons to be learned from the exercise are set out in *Homelessness strategies: moving forward policy briefing 9, November 2004.* Both documents are available on www.odpm.go.uk.

Homelessness etc (Scotland) Act 2003

Students working in Scotland should be aware that the homelessness provisions previously contained in Part 1 of **Housing (Scotland) Act 2001** are now contained in the comprehensive **Homelessness etc (Scotland) Act 2003.** The provisions reflect progressive homelessness policies. However, you will find that, generally, there is a similarity between the provisions in England and Wales and those in Scotland.

The government considers that the homelessness duties are a minimal response and that they should be seen as one component in a broader, more strategic, response. As such, there is scope for prevention and in minimising the circumstances in which people lose their homes. You will see that there is a duty for local authorities to assist people who do not qualify for homelessness accommodation *(Chapter 2 of the Code)*.

The original homelessness duties were contained in the provisions of the **Housing (Homeless Persons) Act 1977**. However, the provisions were then embodied into Part III of the Housing Act 1985 and remained unchanged until the **Housing Act 1996**. Where an applicant may be homeless, eligible for assistance, and in priority need, local authorities are under a duty to secure accommodation (s.188). A person is defined in s.175 as being homeless if he or she:

> *'... has no accommodation available for his occupation in the United Kingdom or elsewhere ... '*

This much wider definition replaced that in the **Housing Act 1985** which stated that a person was homeless if they did not have accommodation in England, Wales or Scotland.

Essentially, this definition of homelessness is sought to provide a balance between available council housing and persons in priority need of accommodation. Prior to the 1996 Act, homelessness persons had a priority right to local authority accommodation. This was withdrawn and the legislation restricted successful applicants to two years' accommodation. However, this restriction was repealed by the **Homelessness Act 2002**.

The legislative provisions for homelessness are sometime considered to be complex. This is because of the changes that have taken place since the initial legislation was introduced in 1977, and because of case law. To help simplify your studies, the homelessness duties are summarised below, then consideration is given to the courts' key homelessness definitions.

1.2 Summary of duties

A summary of local authority duties under Part VII of the **Housing Act 1996** as amended by the **Homelessness Act 2002** is included below.

i. **S.179 Advisory services**: duty to secure that *free advice and information* about homelessness and its prevention is available in their district

ii. **S.184 Inquiries regarding cases of homelessness**: If the local authority has reason to believe that an applicant may be:

- homeless, or
- threatened with homelessness

then it shall make such *inquiries* as are necessary to satisfy themselves whether the applicant is eligible for assistance, and the extent of any duties owed to the applicant.

iii. **S.188 Interim duty to provide accommodation in cases of apparent priority need**: if the local authority has reason to believe that an applicant may be

- homeless
- eligible for assistance, and
- have a priority need

then it should ensure that *accommodation is available pending a decision* on what duty is owed to the applicant (but only to the date of the decision, not pending a review of the decision).

iv. **S.190 duties to persons intentionally homeless**: if the local authority is satisfied that the applicant is

- homeless, and
- eligible for assistance, but
- became homeless intentionally

then, if also satisfied that the applicant has a priority need, it should ensure that *accommodation is available for a reasonable period,* and *provide appropriate advice and assistance* in obtaining alternative accommodation.

However, if *not* also satisfied that the applicant has a priority need, the authority should provide *appropriate advice and assistance* in obtaining alternative accommodation.

v. **S.192 duties to persons not in priority need who are not intentionally homeless**: if the local authority is satisfied that the applicant is

- homeless, and
- eligible for assistance, and
- not satisfied that the applicant became homeless intentionally, but satisfied that the applicant has a priority need

then it *provides appropriate advice and assistance* to the applicant in their attempts to secure accommodation.

vi. **S.193 duty to person with priority need who is not homeless intentionally**: if the local authority is satisfied that the applicant is

- homeless
- eligible for assistance
- has a priority need, and
- not satisfied that the applicant became homeless

it shall *secure that accommodation is available for occupation* by the applicant;

vii. **Duties in case of threatened homelessness**: if the authority is satisfied that the applicant is threatened with homelessness, it shall take reasonable steps to *ensure that accommodation does not cease to be available* for the applicant to occupy.

viii. **Homelessness strategy duty:** the **Homelessness Act 2002** introduced a new strategic duty requiring authorities to formulate a homelessness strategy.

ix. **Allocation scheme for those in need:** Although local authorities no longer need to maintain a housing register governing the allocation of housing they are required to maintain a scheme that provides for housing to be preferentially allocated to those defined by statute as being most in need of it.

There are also the following other duties which shall be dealt with later:

- availability of other suitable accommodation in the district
- local connection with another authority.

(a) Inquiries relating to duties

The inquiries that a local authority must make into the circumstances of an applicant for rehousing give rise to a **two stage process**:

(i) duties which arise when the local authority has *'reason to believe'* that the applicant is eligible for assistance, is homeless or is threatened with homelessness within 28 days then homeless and in priority need; and

(ii) duties which arise when the local authority is *'satisfied that'* the applicant is homeless or threatened with homelessness within 28 days then is in priority need, and then not intentionally homeless.

The **Housing Act 1996** specifically excludes from assistance people who are 'not eligible'. This includes certain people from abroad who are subject to immigration control, and eligible asylum seekers and their dependants who have any accommodation available in the UK, however temporary, available for their occupation. Otherwise, much of the wording of the Act remains identical to the wording in the **Housing Act 1985**. As a result, the previously existing body of case law remains relevant.

Self Test 2

1. *What legislation currently sets out the homelessness duties of local housing authorities?*

2. *Which Act originally set out the homelessness duties?*

3. *Section 175 of the current legislation defines a person as being homeless if they have no accommodation. Where must homelessness applicants have no accommodation?*

4. *For what period of time must accommodation be provided for an eligible homelessness applicant?*

Now turn to the Answers at the end of the Block.

1.3 Legal interpretations of key definitions

You will recall from your studies of Block HL.101 that Parliament legislates and passes Bills that become Acts. In complying with the duties imposed by the homelessness *(or any other)* legislation, local authorities have to interpret the provisions in the Act. However, from time to time their views and decisions are challenged through the courts. As a result, a considerable body of homelessness case law has developed. This is why it is important for local authorities to consider both statute and case law.

Since the initial homelessness legislation in 1977, and particularly since the **1985 Act** and the **1996 Act**, most areas of homelessness legislation has been interpreted and defined by the courts. However, the major areas of homelessness litigation relate to key concepts of 'intentional homelessness' and the 'standard of provided accommodation'. The remainder of this section will look briefly at the way the courts have interpreted such concepts.

It is important to remember that case law is constantly expanding and being added to almost weekly by the courts. Consequently, the main cases are indicated, but local authorities need to keep up to date with the case law, and adapt their own procedures accordingly.

1.4 Key homelessness definitions in the Housing Act 1996

(a) Homelessness

> *s.175(1) A person is homeless if he has no accommodation available for his occupation, in the United Kingdom or elsewhere ... .*

This section of the Act continues that a person is homeless only if they are not entitled to occupy property:

- by virtue of an interest in it, e.g. *ownership or tenancy;*
- by virtue of an order of a court, e.g. *occupation of marital home following separation or divorce;*
- by an express or implied licence; or
- by an rule of law granting occupation.

Or that a person owns property but cannot gain entry to it. Furthermore, available accommodation has to be reasonable for occupation. Importantly, s.175(4**)** states that *'A person is threatened with homelessness if it is likely that he will become homeless within 28 days'.*

Remember that a person is not homeless if they have accommodation anywhere in the world.

It is clear that a person is homeless if they have no accommodation, unless it is accommodation which '*... it would be reasonable for him to occupy.'* As there is no test of reasonableness, local authorities need to take into account the circumstances of the applicant, including:

- financial resources;
- cost of accommodation;
- maintenance payments;
- whether there is a threat of violence to the applicant or other person associated with him or her (s.177); or
- other relevant considerations.

i. Accommodation

You will see that the definition of 'homelessness' does not cover the standard of accommodation available. Consequently, the suitability of accommodation was for a long time held principally to be a matter for the local housing authority. As a result, it was interpreted as giving housing authorities a duty to provide long-term accommodation, often ahead of potential tenants on the waiting list. However, the courts began to consider that it was a relevant consideration. As a result, their interpretation of the meaning of the word *'accommodation'* has gradually narrowed its meaning.

In the important House of Lords case of *R v Brent LBC, ex p. Awua* (1995) 27 HLR 453, Lord Hoffman said that living in temporary accommodation, unless the applicant was within 28 days of losing it, would not by itself mean that it was not reasonable to continue to occupy the accommodation. But he went on to say that:

> *"... the extent to which the accommodation is physically suitable, so that it would be reasonable for a person to continue to occupy it, must be related to the time for which he has been there and is expected to stay. A housing authority could take the view that a family.... put into a cramped and squalid bedroom, can be expected to make do for a temporary period. On the other hand, there will come a time at which it is no longer reasonable to expect them to continue to occupy such accommodation. At this point they come back within the definition of homelessness."*

> *Section 176 accommodation shall be regarded as available for a person's occupation only if it is available for occupation by him ... .*

The section continues to include family or other persons who might normally be expected to live with the occupant. This wording has caused some difficulties. For example, what if a couple, married or unmarried, have never lived together but would be doing so if they had suitable accommodation? Local authorities have different interpretations on the rights of such 'split families' under the homelessness legislation. Unfortunately, the *Code of Guidance* does not provide any help, so it is up to local authorities to establish their own policies.

(b) Priority Need

The main homelessness duties apply only to a person in priority need. Under the provisions of s.189 **Housing Act 1996**, an applicant in priority need if he or she:

- is pregnant or resides with a pregnant woman. Evidence of the pregnancy can be requested. However, the need arises as soon as a woman is pregnant.
- has dependent children who might reasonably live with the applicant, as held in *R v Hillingdon LBC, ex.p. Islam* [1981] 3 All ER 901. Dependent children are usually those in full-time education or training up the age of 16
- is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason, or resides with someone who is vulnerable. It was held in *R v Waveney District Council, ex.p. Bowers* [1982] 3 WLR 661 that 'vulnerable' means people who are less able to fend for themselves
- is homeless or threatened with homelessness as a result of an emergency such as flood, fire or other disaster. In *R v Bristol CC, ex. p. Bradic* [1995] 27 HLR 584 the Court of Appeal held that it does not have to be a natural disaster, but must involve physical damage to the applicant's accommodation. In this case, the illegal eviction of a fit single man by his private landlord did not bring him within the priority need category.

The following additional groups considered to be in priority need were defined by the Homelessness (Priority Need for Accommodation)(England) Order 2002 S.I. 2002/2051:

- all 16 and 17 year olds, provided they are not a relevant child (as defined by the **Children Act 1989** s.23A) or owed a duty under s.20 of the Act).
- Any person who is aged 18 to 20 who at the time while 16 or 17 was, but is no longer, looked after, accommodated or fostered but not a relevant student (as defined by the **Children Act 1989** s.24B(3).
- Those aged 21 or over who are vulnerable because they have previously been looked after, accommodated or fostered.
- Those who are vulnerable:
  - as a result of service in the armed forces
  - as a result of having served a custodial sentence
  - because they have ceased to occupy accommodation because of violence or threats of violence which are likely to be carried out.

Homelessness in Scotland

In Scotland the **Homelessness (Scotland) Act 2003**, which received Royal Assent on 9 April 2003, also enabled the enlargement of categories of 'priority need'.

(c) Intentional Homelessness

The intentional homelessness provision was introduced to help overcome concerns that people may make themselves homeless so as to avoid joining the waiting list for accommodation.

You will remember that the question of whether or not an applicant is intentionally homeless comes into the second stage of the enquiries. It is a key concept because a finding that the applicant is not intentionally homeless can result in the provision of accommodation. This is the most contentious part of the homelessness legislation, and has led to the majority of the case law. The result of the case law is that local authorities now have to approach the question of intentional homelessness with great care, and ensure that they have covered each aspect of the definition before coming to a decision.

The wording of s.196* which defines *'threatened with homelessness intentionally'* follows identically s.191 which defines *'intentional homelessness':*

Section 191

(1) A person becomes homeless intentionally* if he deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy.

(2) For the purposes of subsection (1) an act or omission in good faith on the part of a person who was unaware of any relevant fact shall not be treated as deliberate.

(3) A person shall be treated as becoming homeless intentionally if:

(a) he enters into an arrangement under which he is required to cease to occupy accommodation which it would have been reasonable for him to continue to occupy, and
(b) the purpose of the arrangement is to enable him to become entitled to assistance under this Part,

and there is no other good reason why he is homeless.

(4) A person who is given advice or assistance under s.197 (duty where other suitable alternative accommodation available), but fails to secure suitable accommodation in circumstances in which it was reasonably to be expected that he would do so, shall, if he makes a further application under this Part, be treated as having become homeless intentionally.

(Note: *s.196 states 'A person becomes threatened with homelessness intentionally ...")

The first two subsections of both ss.191 and 196 are identical to **s.60** of the **Housing Act 1985**, which they replace. The new aspects of intentional homelessness introduced by the **Housing Act 1996** are in subsections (3) and (4) of ss.191 and 196, dealing with:

- contrived evictions to take advantage of the homelessness legislation; and
- failing to take advantage of advice and assistance to obtain or housing.

i. Relevant case law

We will now look at some case law relating to the definition of *'intentional homelessness'*. It should be noted that case law prior to the **Housing Act 1996** still applies because, apart from the new subsections (3) and (4), the wording is the same as for the **Housing Act 1985**.

In examining the relevant law, the questions of what causes the intentional homelessness and who is responsible frequently pose difficulties. The loss of accommodation may occur some considerable time after an action that eventually leads to the loss. An example might be the person who raises funds through a mortgage to finance a business venture. Initially the business may be successful, but eventually fails, bringing about the loss of the house because the mortgage repayments are not made. Consequently, a local authority will need to verify the facts carefully before making a decision on whether or not a person is intentionally homeless. This should include whether or not the applicant received soundly-based advice, or acted unwisely when making the investment.

Another example to illustrate that even where there is intentional homelessness accommodation may still be provided is illustrated by the case of *Lewis v North Devon DC* [1981] 1 All ER 27. The facts were that the tenant gave notice and was intentionally homeless. However, as his wife was not a party to the decision she was not regarded as being intentionally homeless.

You should bear such considerations in mind when you read through the following case law.

The *Homelessness Code of Guidance for Local Authorities* was issued on 8 July 2002 by the Office of the Deputy Prime Minister. Chapter 7 deals with intentional homeless and provides the following examples where intentional homelessness may be regarded as deliberate:

> **Where someone chooses to sell his or her home in circumstances where he or she is under no risk of losing it, or has lost it because of a wilful and persistent refusal to pay rent or mortgage payments.**
>
> In the case of *Robinson v Torbay BC* [1982] 1 All ER 726 it was held that the deliberate failure to pay rent or mortgage payments which results in eviction is likely to lead to a justifiable finding of intentional homelessness.

The Court of Appeal in *R v Wandsworth LBC, ex.p. Hawthorne* [1995] 2 All ER 331 stated that where an authority has to decide whether a failure to pay rent is 'deliberate', it should consider whether the failure was caused by an inadequacy of resources to meet both rent and the needs of the applicant's children.

In the case*of R v East Northamptonshire DC, ex.p. Spruce* (1988) 20 HLR 508, Mr and Mrs Spruce were joint council tenants evicted for rent arrears, and found to be intentionally homeless. However, the local authority had not made proper inquiries because Mrs Spruce had genuinely believed that the arrears had been cleared by her husband.

Contrast the previous case with that of *R v London Borough of Barnet, ex.p. O'Connor* [1990] 22 HLR 486 where the facts were similar. However, Mrs O'Connor knew of the financial situation because she had signed a large mortgage application with her husband.

In the case of *R v Wyre BC, ex.p. Joyce* [1983] 11 HLR 73, the local authority's intentional homelessness decision was overturned because they did not ask why the mortgage arrears arose. The court held that the local authority did not take into account a relevant matter.

Where someone could be said to have significantly neglected his or her affairs having disregarded sound advice from qualified persons.

It was held in the case of *R v Westminster CC, ex.p. Obeid* [1996] that a person who takes trouble to find out relevant facts before reaching a decision may be vulnerable to a finding of intentionality. However, someone who did not do so may not.

A decision of intentional homelessness was upheld in *R v LB Wandsworth, ex.p. Onwudiwe* [1994] 26 HLR 302, where the applicant took on large mortgage commitments whilst unemployed to finance business and, as a result, put the home at risk.

Intentional homelessness was held in *R v LB Barnett, ex.p. Rughooputh* [1993] 25 HLR 607. The facts were that a person obtained a mortgage by fraudulent representation of annual income to finance a business which was thought to be a sound investment. The business failed and the owner lost possession of his house.

Voluntary surrender of adequate accommodation in this country or abroad which would have been reasonable for the applicant to continue to occupy.

In the case of an applicant who has given up accommodation abroad, local authorities in making a decision should consider the customs, lifestyles and needs of an applicant's community, as held in *R v Tower Hamlets LBC, ex.p. Monaf* [1988] 20 HLR 520. Authorities may also consider employment conditions in the place the applicant came from, as held in *R v Royal Borough of Kensington and Chelsea, ex.p. Dunha* [1988] 21 HLR 16.

It was held in de *Falco v Crawley BC* [1980] OB 460 that local authorities may look beyond the immediate cause of homelessness. This crucial question is whether, since any act of intentional homelessness, the applicant has lived in settled accommodation. If so, they would be considered homeless and eligible for accommodation. However, if they have merely occupied temporary accommodation since the act of intentional homelessness, then they would not be eligible *(R v Brent LBC, ex.p. Awua* [1996] AC 55.

Where someone is evicted because of anti-social behaviour or threats of violence by them towards an associated person.

In the case of *R v Wandsworth LBC, ex.p. Nimako-Boateng* [1984] 11 HLR 95, it was suggested that, in some circumstances, failure to use remedies such as an injunction to prevent a partner's domestic violence, which could have kept the applicant in residence in their own home, could amount to intentional homelessness. However, the observation in the previous case would not be reasonable where an applicant has little chance of obtaining an injunction as held in *Warwick v Warwick* [1982] 1 HLR 139.

No intentional homelessness was held in *Charles v Charles* [1984] *Legal Action* (July) p.81. Here, a woman was forced from her home by violence and her partner was then excluded by a court order. It was considered that to require her to return to her home would put her at risk of further violence.

In the case of *R v Salford CC, ex.p. Devonport* [1983] 8 HLR 54, the applicants were held to have acquiesced to their children's behaviour. This caused nuisance to the neighbours and led to their eviction. As a result, they were considered intentionally homeless.

In the case *of R v Tynedale DC ex.p. McCabe* [1991] 21 HLR, the applicant left a secure tenancy which had been allocated to her following her separation from her violent husband, as a result of his continued threats. The local authority's decision that she became homeless intentionally was quashed.

Where someone leaves a job with tied accommodation and the circumstances indicate that it would have been reasonable for him or her to continue in the employment and reasonable to continue to occupy the accommodation.

Intentional homelessness was held in *R v North Devon DC, ex.p. Lewis* [1981] 1 WLR 328, where a person voluntarily resigned his job and, as a consequence, lost his tied cottage

In contrast, there was no intentional homelessness in *R. v Thurrock BC, ex.p. Williams* [1982] 1 HLR 128, because the loss of housing was due to an enforced resignation which was viewed as constructive dismissal.

You will see from the above that the homelessness itself does not need to have been intentional, but the applicant must have deliberately done something, or failed to do something. An objective test is then applied.

1.4 Other suitable accommodation and local connection referrals

If an applicant has successfully managed to get over the following four hurdles -

- homeless or threatened with homelessness,
- eligible for assistance,
- has a priority need, and
- not intentionally homeless,

the local authority has a duty to *'secure that accommodation is available for occupation by the applicant'*. However, this duty is subject to **s.197**, which states that if the local authority *is 'satisfied that other suitable accommodation is available for his occupation',* the duty is reduced to providing advice and assistance to secure such accommodation.

Alternatively, or in addition, the local authority may consider referring the applicant to another local housing authority, although there is no duty to do this. Such a referral can be made if the applicant (or any person reasonably expected to reside with her or him) -

- has no local connection with the authority investigating the application,
- has a local connection with the district of another authority, and
- will not run the risk of domestic violence in that other district (s.198).

Section 199 specifies that local connection includes 'normal residence, employment, family associations or special circumstances'. In *Eastleigh BC v Betts* [1983] 2 All ER 1111, the House of Lords held that a local connection (whether established by way of family association, employment, etc.) must be sufficiently substantial in real terms. This means that it should not be just 'normal residence', which could be established within a few days of moving to an area.

Contrast that ruling with the House of Lords later ruling in the case below, which many consider to be quite remarkable because it will have a significant impact on British social housing. In effect, local housing authorities who provide temporary accommodation for the homeless could be committing themselves to provide permanent housing to such applicants.

Mohammad v Hammersmith and Fulham LBC [2001] UKHL 57 & [2001] Times 2 November 2001.

The facts of the case are that in April 1998 the applicant was placed in interim accommodation in accordance with s.188, Housing Act 1996. In July 1998 the local authority accepted that it had a s.193 duty (in priority need and not intentionally homeless) and notified a decision to refer it to another borough under local connection provisions. The applicant requested a review, which concluded that the applicant had no local connection with the council's area because the interim accommodation could not count as 'normal residence' and there were no other ' essential compassionate, social or support need connections'. This review decision was quashed by the Court of Appeal and the council appealed to the House of Lords.

The House of Lords dismissed the council's appeal and held: 1. the correct date for determining 'local connection' is the date of council's decision, or, in the case of a review, the date of the review; 2. the ordinary meaning of 'normal residence' in the Housing Act 1996 s.199(1)(a) was simply 'a place where at the relevant time the person in fact resides; 3. there was no statutory justification for ignoring residence in interim accommodation; and 4. requiring the applicant to show an essential compassionate, social or support need to live in the district was putting the test for local connection too high and amounted to a misdirection in law.

If an applicant has no local connection anywhere in this country, the authority must investigate the application and secure permanent accommodation if the qualifying criteria are fulfilled. (*R v Hillingdon EC, ex p. Streeting* [1980] 1 WLR 1430). Local authorities, as held in *Patterson v LB Greenwich* [1993] 26 HLR 159, are required to enquire from the referring authority whether there is a likelihood of violence if an applicant returns to the area. However, the applicant is under no duty to volunteer such information.

Activity 1

What statutory provisions, and which case law, should local authorities be aware of when receiving a homelessness application from someone who has left property abroad?

Time allocation: 15 minutes

Activity 1 – Response

Your answer to the activity should consider:

- *The local authority should ensure that the applicant is eligible for housing assistance, i.e. not subject to immigration control* ***(s.185-187.***

- *The authority receiving the application must investigate it, even if the applicant has no local connection anywhere in this country. (*R v Hillingdon, ex p. Streeting *[1980] 1 WLR 1430).*

- *It is irrelevant that the applicant arrived in this country without making proper arrangements for accommodation here. What must be investigated are the circumstances in which the applicant left the previous accommodation abroad. (****s.191*** *and* de Falco v Crawley BC *[1980] OB 460).*

- *If the applicant says that she or he ceased to occupy the accommodation abroad because it was not reasonable to remain there, then the local authority is entitled to make a comparison between that accommodation and the other accommodation available in that area* ***(s.177 (2)****.)*

- *If one of the applicant's household or family (people who could reasonably be expected to live with the applicant) was in this country already, was the accommodation she or he occupied available for the whole household or family? If not, it would not make the applicant intentionally homeless to leave this accommodation. (****s.176****, and* R v Hillingdon LBC, ex.p. Islam *[1981] 3 All ER 901).*

1.5 Local authority duties to homeless applicants (excluding duties to secure accommodation)

Apart from the main duties discussed, you need to be aware of the detailed duties that are also imposed on local authorities in relation to:

- applications;
- appropriate enquiries;
- notification of decisions;
- advice and assistance; and
- local connection referrals.

(a) Applications

As regards homelessness applications, statute and case law provide that:

- Local authorities must make adequate provisions to receive applications (s.184, **Housing Act 1996** and *R v LB Camden, ex.p. Gillan* [1988] 6 HLR 15).
- **The form the application can take** may be the council's application form *(R v Northavon DC, ex.p. Palmer* [1994] *Times,* 16 March (reported in *Legal Action*, June 1994, page 13), or a solicitor's letter *(R v Chiltern, DC, ex.p. Roberts* [1991] 23 HLR 387).
- In the case of a previous applicant, the council has discharged its duties if the applicant had been accepted, but turned down the offer of rehousing. There is no further duty to investigate or rehouse, unless the applicant's circumstances have changed in the meantime *(R v LB Ealing, ex.p. McBain* [1985] 1 WLR 135: 18 HLR 59).
- If an application is made to another local authority, the second authority must make its own inquiries and cannot just rubber stamp the first decision. However, this will be relevant information.
- If the second local authority finds that the applicant is homeless, in priority need, and not intentionally homeless, it can refer the homeless applicant back to the first authority, which previously rejected him or her, for rehousing under the local connection provisions.

(b) Appropriate enquiries

Local authorities are required to make enquiries.

- If the authority has reason to believe that an applicant may be homeless or threatened with homelessness, they are under a duty to make appropriate enquiries. (s.184) This has been held not to be a private law duty giving rise to damages, as the proper remedy is to apply for *Judicial Review* (*R v Northavon DC, ex p. Palmer* [1995] *Legal Action*, September 1995).
- If information is discovered that goes against the applicant, the applicant should be given a chance to respond (*R v Dacorum BC, ex p. Brown* [1989] 21 HLR 415). Also, when the applicant raises an issue that clearly needs further investigation, the authority cannot come to a valid decision without investigating it. (*R v Westminster* CC, *ex.p. Iqbal* [1988] 22 HLR 2l5.)
- **Finally, if enquiries lead to doubt or uncertainty, the issue must be resolved in the applicant's favour.** (*R v Thurrock BC, ex.p. Williams* [1981] 1 HLR 128.)

(c) Notification of decisions

The decision on a homelessness application and notification of it are important because the applicant has a right to request a review. As a result, decisions relating to the outcome of enquiries must be:

- given in writing, together with reasons if the decision goes against the applicant. In *R v LB Tower Hamlets, ex p. Monaf* [1988] 20 HLR 529, Tower Hamlets failed to give adequate reasons, and the decision was quashed by the court.
- The local authority must give reasons that are intelligible; if the court cannot consider the lawfulness of the decisions because the reasons are inadequate, then the decision itself will be quashed. (*R v LB Croydon, ex p. Jarvis* [1993] 26 HLR 286).
- It must be the authority's own decision, not merely confirmation of a decision made by someone else. In *R v LB, ex.p. Carroll* [1987] 20 HLR 142, the local authority was criticised for adopting a medical opinion as its own.

Right to an internal review

Homelessness applicants have a statutory right to request and internal housing department review of decisions relating to:

- a duty owed;
- eligibility for assistance;
- referral to another authority under the local connection provision; and
- suitability of accommodation.

A request for a review must be made within 21 days of notification of the decision, and the officer undertaking the review should be of appropriate seniority and not have been involved in the original decision.

Although, since 1997, homeless applicants for accommodation under the **Housing Act 1996** have been able to appeal to the County Court against certain decisions made against them by local authorities, they could not have, as held in *Ali v Westminster CC v Camden LBC (1998),* challenged the decision not to house pending the outcome of the appeal. However, the situation has changed, due to the provisions of the **Homelessness Act 2002** inserting a new s.204A in the **Housing Act 1996**. Now, since 30

September 2002, an applicant who brings a County Court homelessness appeal may also appeal against the local authority's decision not to house him or her pending determination of the main appeal.

(d) Advice and assistance

The objective of the advice and assistance required by s.179 is to secure accommodation for applicants for a minimum period of two years, or to prevent them from losing their existing accommodation. Under s.194(1), authorities have the power to continue to secure accommodation for further periods of two years after the minimum period has ended.

The Code of Guidance (para.15.59) states that merely assisting an applicant may not be sufficient. The advice and assistance must result in accommodation being secured.

(e) Local connection referrals

You will recall that 'local connection' is defined in **s.199** of the **Housing Act 1996**. It includes past residence in an area, employment, family connections, and special circumstances, such as need to be near particular medical services that are not available elsewhere *(The Code of Practice confirms that residence due to being in the armed forces or to being a prisoner is a local connection. Also, a referral cannot be made where there is the likelihood of transferring associated violence.)* If such local connection is established elsewhere, an authority can make a referral to the appropriate authority.

The authority to whom the application is first made must, if the necessary qualifying criteria are established, secure that the applicant has temporary accommodation while further inquiries are completed. Authorities must decide between themselves whether the conditions are satisfied for a local connection referral. Occasionally, there is a dispute over a proposed transfer. In such cases, the two authorities must resolve the matter in accordance with arrangements directed by the Secretary of State. The **Homeless (Decisions of Referrals) Order 1998** (SI 1998 No. 1578) directs that arrangements to be followed are those agreed by the local authority associations (i.e. Local Government Association, Convention of Scottish Local Authorities, the Welsh Local Government Association, and the Association of London Government). Broadly, these procedures involve the appointment of a third person to make the decision.

The applicant must be notified in writing, together with reasons, of a decision to transfer the application to another authority because of a local connection. Once notified of the decision to transfer, the right to temporary accommodation ceases. However, the applicant does have a right to review of the transfer decision.

(f) Securing accommodation

This is an appropriate point to summarise local housing authorities' duties to provide accommodation.

i. Securing temporary accommodation

Local authorities have a duty (s.188) to provide temporary accommodation:

- during their enquiries, for applicants they believe to be homeless and in priority need,
- for a reasonable period following the decision, for applicants found to be intentionally homeless.

Applicants have a right to request a review of a decision that no further duty is owed. However, the authority does not have to continue to provide accommodation during any review or appeal period, as held in *R v LB Camden, ex.p. Mohammed* [1997] 30 HLR 315.

The Code of Guidance recognises that local authorities may find temporary accommodation in:

- private bed and breakfast establishments;
- leased flats from private landlords;
- arrangements with housing associations which manage temporary accommodation schemes;
- their own hostels;
- their own empty properties on temporary tenancies.

ii. Securing permanent accommodation

You will recall that, under **s.193**, a local authority must secure accommodation for occupation by an applicant who has fulfilled all the criteria of the homelessness legislation, subject to:

- the local authority's opinion on suitable accommodation being available locally. (**s.197**), and
- local connection referrals (**s.198**).

If neither of these apply, **s.206** of the **Housing Act 1996** goes on to say that this duty can be discharged by:

- securing that suitable accommodation is provided by the local authority itself;
- securing that suitable accommodation is obtained from some other person; or
- giving advice and assistance which will secure that suitable accommodation is available from some other person.

One of the key features of the **Housing Act 1996** was that it imposed new limits on the type and duration of the accommodation secured for homelessness applicants by a local authority: *a minimum period of duty of two years,* whichever way the authority decides to discharge its functions. However, the provisions of the **Homelessness Act 2002** replaced the two-year time-limit by an infinite duty to provide accommodation. Now, duties towards the homelessness depend on the findings of the authority as to priority need and intentionality.

Self Test 3

1. *Does the local authority have to look at all aspects of a homeless applicant's circumstances at once?*

2. *Once a local authority has made a decision on a housing application, it has to notify the applicant. In the case of a decision not to accept the applicant as homeless, what must it tell the applicant, and why?*

3. *How can local authorities keep up to date with this rapidly changing field of law ?*

Now turn to the Answers at the end of the Block.

2. Working With Other Agencies

It is recognised that the needs of some homeless applicants are wider than only the provision of accommodation. As a result, they may need the resources of a number of other agencies, such as:

- social services departments;
- health authorities;
- education authorities;
- environmental health departments;
- voluntary sector organisations;
- prison and probation services;
- other referral agencies.

The objective is to co-ordinate support by assessing and meeting an applicant's needs. In this way, vulnerable people can be sustained, and people are enabled to comply with their tenancy agreements. This has been incorporated into the provisions of the **Homelessness Act 2002** which imposes a duty on housing authorities to formulate a homelessness strategy that is based on consultations and close-working with other relevant organisations. Chapter 1 of the Code states that, for a homelessness strategy to be effective, housing authorities need to ensure that it is consistent with other local plans, strategies and programmes. In particular, it is considered necessary for housing authorities to seek assistance from the social services authority.

Under s.3(3) of the **Homelessness Act 2002** a homelessness strategy can include specific action which the housing authority expects to be taken by other agencies, including public authorities, voluntary organisations, and other persons whose activities could contribute to the strategy's objectives. Also, housing authorities are expected to enter into constructive partnerships with registered social landlords. The aim is to identify areas for joint working on specific issues, including assessing homelessness applications from vulnerable people. As a result, many local authorities have established arrangements with housing associations to provide temporary accommodation for homelessness households. Previously, the **Housing Act 1985** placed the homelessness decision-making duty on the local authority, even if it transferred its stock. Now authorities may contract out certain functions under Parts VI and VII of the **Housing Act 1996**. This is possible because of the *Local Authorities (Contracting Out of Allocations of Housing and Homelessness Functions) Order (SI 1996 No. 3025).* This Order is

made under**s.70 of the Deregulation and Contracting Out Act 1994.** In essence, the Order allows contracting out of executive functions while leaving the responsibility for making strategic decisions with the housing authority. Schedule 2 to the Order lists the following functions in Part Vii which may *not* be contracted out:

- Giving various forms of assistance to people providing advice and information about homelessness and the prevention of homelessness in the district (s.179 **Housing Act 1996**).
- Giving assistance to voluntary organisations concerned with homelessness (s.180).
- Co-operating with another local housing authority by rendering assistance in the discharge of their homelessness functions (s.213).

Those functions which may be contracted out are:

- Making arrangements to secure that advice and information about homelessness, and the prevention of homelessness, is available free of charge within the authority's district.
- Making inquiries about and deciding a person's eligibility for assistance.
- Making inquiries about and deciding whether any duty, and, if so, what duty is owed to a person under Part VII.
- Handling referrals to another local housing authority (s.198).
- Carrying out review of decisions (**s.202**).

Summary

1. **Most of the legislative controls, except for the anti-discrimination statutes, relate only to local authorities.**
2. **Local authorities have to maintain a general housing allocation 'scheme' governing reasonable preference priority categories and procedures. However, it is important that homeless people with priority need have reasonable access to long-term social housing. As such, they have a right to appear on the housing register. In many cases applicants to whom a duty is owed will, if they are in need of long-term housing, fall within the reasonable preference priority categories for housing allocation.**
3. **The homelessness legislation imposes duties on local authorities to conduct inquiries into applications, and further duties flow from the results of these inquiries.**
4. **The homelessness legislation is centred around key definitions, and is interpreted and developed by case law.**

C. Housing Benefits and the Law

1. Introduction

The purpose of Housing Benefit is to help people on low incomes to pay for rented accommodation. It is available for both unemployed and employed people, is non-contributory, income-related, and tax free. Currently, over three million households in England and Wales rely on Housing Benefit to enable them to pay their rent in full. It should be noted that receipt of Housing Benefit is usually accompanied by Council Tax Benefit. It is a means-tested benefit which will pay qualifying low-income applicants up to 100% of the annual Council Tax.

1.1 The problem

One of the problems that all governments face is the cost of providing housing, whether in the public, private or voluntary sectors. Unfortunately, not everybody has the means to pay for housing. This is particularly the case in countries like the UK where there is a considerable difference between the income of the wealthiest and that of the poorest. In addition, there are some groups of people in society whose housing costs are unavoidably higher than average, for example, some groups of people with disabilities. Also, this problem tends to increase over time as general expectations about standards of housing rise.

1.2 Solutions

(a) Introduction

Britain, like other European Union and other industrialised countries, is facing rising social security costs. This is because of changing social structures, ageing populations and increasing unemployment. Consequently, most countries, including Britain, are reviewing the costs of their social security expenditure. However, the approach to supporting households and individuals with inadequate incomes varies from country to country. Governments can choose to solve this problem in, essentially, three ways. They can:

- accept very much poorer standards of housing for lowest income households than for the rest of the population;
- use public subsidies to reduce the cost of providing housing, i.e. Housing Revenue Account subsidy, capital grants, or Social Housing Grant;
- use public subsidies to reduce the cost of housing to the individual or to the household, i.e. Mortgage Interest Tax Relief (prior to April 2000), Housing Benefit.

The final choice is influenced by:

- consideration of past patterns of spending;
- political choice, for example to support subsidies of one type of tenure rather than another;
- the cost of each option.

2. The Role of Housing Benefit

(a) Introduction

Chapter 11 of the Housing Green Paper *'Quality and Choice: A Decent Home for All'*, which was issued in April 2000, states that:

> "Housing Benefit helps to ensure that some 4.5 million households in Great Britain are able to pay the rent for their houses ... Nearly 60% of Housing Benefit claimants in Great Britain live in council housing *(75% in Scotland)*, 19% in registered social landlord properties, and 22% in the private rented sector *(11% in Scotland & 23% in Wales)*."

Housing benefit is a social security direct payment benefit scheme to help low income households afford the rent of their dwellings. Prior to 1988, the assistance with housing costs was given through the National Assistance and Supplementary Benefit scheme. However, fundamental welfare and housing policy changes introduced in the 1980s resulted in housing subsidies being switched from building costs to individuals to help them meet increased rent levels. As a result, there was a greater reliance on housing benefit, which increased markedly during the 1980s and 1990s. This was due to a combination of rising unemployment and the deregulation of rents following the **Housing Act 1998.** As a consequence, housing benefit increased from £2.3 billion in 1978-79 to £4.3 billion in 1989-90, then to £7.9 billion in 1992-93 and £11.1 billion in 1998-99, with estimated expenditure of £12.4 billion for 2001-02.

The reasoning for moving to a reliance on Housing Benefit was because:

- The government preferred housing benefit as a subsidy because it is means-tested. This means that the amount of housing benefit actually awarded is based on the level of income and capital within the household. Therefore, it does not subsidise households who do not need financial help. (Previously the subsidised dwellings resulted in artificially low rents that benefited households, irrespective of their levels of income.)

- Government policy was for rents to rise to market levels to reflect the value of providing the house. The intention was that this would encourage the private rented sector by making letting a more attractive proposition to landlords. Housing benefit was intended to bridge the gap between the new higher rents and what a low-income household could afford to pay.
- The government could then reduce direct subsidies to local authorities and housing associations or, alternatively, expect the same level of subsidy to produce more housing.

Unfortunately, a number of concerns have arisen in relation to housing benefit:

- As it is means-tested, when income increases above eligible income levels households lose housing benefit. A 'poverty trap' can occur where additional income from employment goes to compensate for the resultant decrease in housing benefit *(*benefit is reduced by 65p for each additional pound over income support levels). In turn, this can be a disincentive to work which is inconsistent with the government's objective of getting people back into employment.
- It no longer meets the full cost of market rents, due to limits introduced on eligible rent levels.
- It can be exploited by landlords (i.e. charging high rents for poor quality property) and is subject to fraudulent claims by tenants and landlords.
- The benefit rules are complex.
- Delays in processing claims have led to financial hardship.

As fraudulent housing benefit claims had reached over £700 million, the government introduced a criminal investigation structure and stronger processing measures that were intended to reduce fraud and over-payment error by 25% by 2006. This involved a verification framework which set out for local authorities the information that must be collected and verified before benefit is paid. This, in the year ending April 2004, was accompanied by a 45% increase in the number of benefit fraud sanctions and prosecutions carried out by local authorities. Also, the new risk-based system was proving twice as effective as the previous annual renewal system in detecting fraud and error. As a result, from a baseline of 2002/2004, figures published on 24 February 2005 revealed that fraud and error had been reduced by £60 million.

Note: The figures were obtained from the National Statistics publication 'Fraud and Error in Housing Benefit April 2002 to March 2004', which can be found at : www.dwp.gov.uk/asd/asd2/fraud_hb.asp.

(b) Summary of progressive exclusion from entitlement to housing benefit

The history of housing benefit since 1988 has introduced a number of exclusions from entitlement, including:

1988: Housing benefit replaced assistance with housing costs obtained through National Assistance and Supplementary Benefit.

1990: Most full-time students.

1994: Persons from abroad (excluded through the application of a 'Habitual Residence Test').

1996: Most asylum seekers excluded.

1997: Private sector housing benefit restricted to average rents for area.

1988: Family premium for lone parent abolished for new cases.

(c) Administration of housing benefit

Housing benefit is administered by local authorities, and the present scheme dates from 1988, when the means tests for the main means-tested benefits (Housing Benefit, Income Support and Family Credit) were rationalised.

Housing Benefit departments vary, both in their efficiency and in their sensitivity in applying rules. Many continue to find it difficult to cope with the large volumes of claims and the constant changes in legislation. As a result, there are many common complaints from claimants, advisers, and housing associations, including:

- delays in processing claims;
- forms and letters being mislaid;
- difficulties in getting through to the office by telephone;
- confusion about how the benefit is calculated;
- notification letters being difficult to understand;
- lengthy delays in pursuing the appeals procedure;
- overpayments being recovered incorrectly with no notification.

A recent report by the Audit Commission concluded that of the 409 local authorities that administer the national Housing Benefit scheme, only 56% administer it efficiently. As a result, related complaints to the local government ombudsman increased from 837 in 1995/1996 to 4,028 in 2000/2001. Significantly, the Ombudsman's Report concluded that most of the complaints were justified, and two-thirds of complaints related to just three London Boroughs. There has since been a marked improvement, with the 4,028 Housing Benefit complaints in 2000/2001 reducing to 2,053 in 2002/2003. This improvement has continued with only 1,261 Housing Benefit complaints in 2003/2004. Housing Benefit complaints during the period were 10.9% of the 11,600 total complaints made to the Ombudsman.

Housing benefit claimants need an efficient service, otherwise there are delays in paying their rent. This causes unnecessary worry for tenants who, if they fall into arrears, may find themselves facing eviction. Delays in paying rent also have implications for social and private landlords in terms of cash flow difficulties and concern about renting to Housing Benefit claimants. In particular, housing associations are reliant on rent receipts from tenants in order to operate effectively. The Housing Corporation reported in January 2002 that delays with the determination and payment of Housing Benefit were responsible for almost a third of housing association rent arrears.

Self Test 4

1. *What is the role of Housing Benefit?*

2. *Identify two other options to housing benefits for responding to the inability of households on low-incomes to meet housing costs.*

   (a)

   (b)

3. *How can administrative failures in delivering Housing Benefit affect social and private landlords?*

4. *How can administrative failures in delivering Housing Benefit affect individual private sector tenants?*

5. *What action can the local government ombudsman take if a finding of maladministration is made against a local authority in relation to Housing Benefit?*

Now turn to the Answers at the end of the Block.

3 The Legal Framework of Housing Benefit

3.1 Key primary and secondary legislation

The primary legislation is contained in the **Social Security Administration Act 1992** (**SSA**), and the **Social Security Contributions and Benefits Act 1992** (**SSCBA),** as amended by the **Government Finance Act 1992,** and the **Housing Act 1996** (**HA).** However, the legal detail is mainly contained in two statutory instruments, namely the *Housing Benefit (General) Regulations 1987* (*HB Reg.*), SI No.1971, as amended by subsequent legislation, and the *Rent Officers (Housing Benefit Functions) Order 1997* (*HBF Reg.*), SI No.1984.

Note: *The references contained in brackets after the respective legislation are those used in the text.*

The legal framework for Housing Benefit is somewhat complex, inasmuch as amendments are being introduced regularly. Often such amendments are quite limited and contained in other legislation (e.g. **s.79** the **Welfare Reform and Pensions Act 1999** empowers the Secretary of State to introduce a scheme requiring housing benefit claimants who under-occupy property to move to smaller accommodation). Consequently, it is important that housing organisations constantly check that they are using up-to-date provisions. A useful source of information is the 'Housing benefit law update' section contained in the monthly publication *Legal Action*. You may also read the full text of the Social Security Commissioners' decisions on the website www.osscsc.org.uk. (Para.11.16 of the April 2000 Housing Green Paper stated that the government intend to consolidate the Housing Benefit regulations by replacing the many different amending regulations with a single set of regulations.)

3.2 Eligibility for Housing Benefit

(a) Qualifying criteria

i. Liability to pay rent

In general, local authority tenants, tenants of private landlords, and tenants of housing associations and voluntary sector landlords can apply for Housing Benefit. However, claimants must demonstrate that they have a liability to pay rent (*HB Reg. 6*). Such liability includes:

- a claimant or partner who has an enforceable liability to pay rent;
- a claimant's former partner or other person who has the liability but who is not making the payments and the claimant has to pay the rent to remain housed.

ii. Savings or capital less than £16,000.

There are limits on the amount of cash or savings a claimant may have. A person with over £16,000 of capital will not be eligible for Housing Benefit. However, someone with over £3,000 and less than £16,000 will be eligible, but payment will be reduced by £1 for every £250 over £3,000 (*HB Regs.34(1) & 45*). Any capital held by a partner is treated as the claimants for purposes of Housing Benefit (*HB Reg.38*).

iii. Ineligible groups of people

Some groups of people are not entitled to claim Housing Benefit, including (*HB Reg.7*):

- a person living with a landlord who is a close relative (a close relative' is a parent, step-parent, father or mother-in-law, child, step-child, son or daughter-in-law, brother or sister, brother or sister-in-law, or partner of any of these categories);
- residents in residential care (who get assistance with housing costs through Income Support);
- people maintained by religious orders;
- most students;
- 'people from abroad' - (there is a legal definition of who is a 'person from abroad' - it does not just mean everyone from 'abroad');
- sponsored immigrants and certain asylum seekers; and
- people who have contrived tenancies.

iv. Ineligibility of certain types of accommodation

As mentioned earlier, council, housing association and private landlord tenants are eligible for housing benefit. It is also payable towards mooring fees for houseboats and site fees for mobile homes (*HB Reg.10(1)*). However, people living in certain accommodation are ineligible for Housing Benefit (*HB Reg.10(2)*), namely:

- Crown tenants who rent from a government department.
- owner-occupiers;
- long leaseholders (over 21 years remaining on lease);
- those in co-ownership schemes.

(b) Eligible, appropriate and maximum rent

Eligible rent is what a claimant pays for occupying a dwelling and does not include fuel meals, water costs, and some service costs (*HB Reg.10*). Since 1996, the local authority has to be sure that the

dwelling is the right size for a claimant's household. It is the rent officer who compares the **eligible rent** with the **appropriate rent** and the **average rent** for similar dwellings in the area (*HB Reg.11*). If, after such comparisons, the eligible rent is considered too high, the local authority will only consider a portion of it, called the **maximum rent**.

How the rent rules work

1. Where a claimant's rent is less than the local reference rent and the appropriate rent, the maximum rent will be the same as the rent.
2. Where the claimant's rent is less than the local reference rent, but more than the appropriate rent, the maximum rent will be the appropriate rent, e.g.

Local reference rent	£55
Eligible rent	£50
Appropriate rent	£45
Maximum rent	£45

3. Where the claimant's rent is less than the appropriate rent, but more than the local reference rent, the maximum rent will be the local reference rent, e.g.

Appropriate rent	£55
Eligible rent	£50
Local reference rent	£40
Maximum rent	£40

4. Where the claimant's rent is more than both the appropriate rent and the local reference rent, the maximum rent will be the local reference rent, e.g.

Eligible rent	£50
Appropriate rent	£45
Local reference rent	£35
Maximum rent	£35

Because Housing Benefit no longer guarantees payment of the full rent to private sector tenants, increasing numbers of landlords are refusing to offer tenancies to housing benefit claimants.

The situation is particularly harsh for most people aged under 25. Their eligible rent for housing benefit purposes is restricted to the average rent in the locality for a one-roomed letting with shared toilet and kitchen. This is known as the **single room rent**, and was introduced from 7 October 1996 by the *Housing Benefit (General) Amendment Regulations 1996* SI 1996 No.965. The

difficulty associated with the single room rent was highlighted in a report by the Social Security Advisory Committee. In the quoted example, the single room rent was set at £39 for the whole of Manchester. Yet in one area of Manchester the average rent for single rooms was £55, giving an average shortfall of £16 a week (*para.14 1997*).

(c) Deductions for non-dependants

People who share an applicant's accommodation, but who are not dependent on the applicant for financial support, are non-dependants (*HB Regs.2 & 63*), e.g. grown-up sons and daughters and elderly relatives. However, shared accommodation does not include:

- a shared bathroom or lavatory;
- a shared corridor or entrance;
- communal areas in sheltered accommodation.

Deductions that take account of non-dependants' income are made from housing benefit entitlement for non-dependants aged over 18 years.

(d) Pre-tenancy determination

An intending applicant can, before moving into a tenancy, request a pre-tenancy determination of the maximum rent a local authority will consider. This is undertaken by an independent Rent Officer, is free, and helps people to decide whether or not they can afford to move into intended dwellings.

(e) Central government subsidy: implications

At various stages throughout this Law Unit, we have seen that the provision of funds is usually accompanied by some form of conditions or constraints, e.g. the Housing Corporation provides grants, but only on condition that housing associations comply with design, management, accounting and other standards. Housing Benefit payment is no different. Local authorities receive a subsidy from central government towards housing benefit payment. Currently, the level of subsidy is 95%, and it is paid into each authority's general account, and the cost of housing benefit payments falls on the Housing Revenue Account. However, to encourage more efficiency, the level of subsidy is reduced considerably where an authority makes:

- back-dated payments;
- rents higher than recommended by the rent officer; and
- errors of overpayment.

Progressively, regulations have introduced greater control on benefit payments so as to minimise abuses. Prior to the present Housing Benefit scheme, local 'reference rents' and 'single room rents' did not apply, and local authorities had wider discretion to pay higher benefit levels than the recommended 'reasonable rent'. Now, regulations require that no benefit be paid where there is evidence of arrangements being made to take advantage of the Housing Benefit system (*HB Reg.7*). Naturally, local authorities wish to avoid any loss of subsidy, as evidenced by action in the courts (see *R v South Gloucestershire Housing Benefit Review Board, ex.p. Dadds* [1997] 29 HLR 700 - a case relating to family arrangements for purposes of claiming benefit). Furthermore, it is possible that in some circumstances full-rent paying tenants might have to contribute towards any loss of subsidy. In practice, the rent officer's determination of rent level, rather than being a guide, is normally accepted as the basis for paying benefit. Also, local authorities normally operate strictly in accordance with the detail of the regulations.

Self Test 5

1. *Which categories of people living in particular types of accommodation are ineligible for housing benefit?*

2. *Define the following:*

   (a) eligible rent;

   (b) appropriate rent;

   (c) average rent; and

   (d) maximum rent.

3. *What is the basis of eligible rent for housing benefit for people under 25 years of age?*

4. *What guidance can be given to help an intending applicant for housing benefit to assist them in deciding whether they can afford to move into an intended dwelling?*

Now turn to the Answers at the end of the Block

4. Administering Housing Benefit

4.1 Making a claim

(a) People claiming Income Support or Jobseeker's Allowance

Income Support is a means-tested benefit for people with no income or low income. For example, it can be paid to pensioners, lone parents, people who are long term sick or disabled. It is claimed from the local Department of Social Security office (*HB Reg.7294*). (*Note*: following the General Election in 2001, the Department of Social Security merged with part of the Department of Education and Employment to form the Department of Work and Benefits.)

Jobseeker's Allowance is a benefit paid to people who are unemployed or working part-time, and looking for work. The income-based variety is means-tested, and paid to people with no income or low income. The contribution-based variety is paid if someone has paid sufficient National Insurance contributions, and this is not means-tested. In both cases, the Jobseeker's Allowance is claimed from the local Job Centre (*HB Reg.7294*).

When tenants claim Income Support or Jobseeker's Allowance, there is a small Housing Benefit claim form included within that claim pack. When they submit their Income Support or Jobseeker's Allowance claim form, they also return the Housing Benefit claim form. If their claim for Income Support or Jobseeker's Allowance is successful, the department of Social Security sends confirmation of this, and send the Housing Benefit claim form to the local authority. The local authority usually then sends one of their more detailed Housing Benefit claim forms to the tenant for completion. This is because the initial small Housing Benefit claim form does not contain all the information that the Housing Benefit section needs to determine the claim.

You can see that if there is a delay in processing Income Support or Jobseeker's Allowance claims, or in forwarding Housing Benefit claim forms, tenants can face delays with their Housing Benefit claim. Such delays, as well as delays arising from lost claims, can cause problems for claimants. However, a new form introduced in 2003 will ask applicants for all information that the Housing Benefit Section require to process a claim.

(b) People applying directly to the local authority

People who apply directly to the local authority must complete the local authority's own claim form. Some councils have gone to a great deal of trouble to make sure their forms are written in clear language, are in big print, and are suitable for the different groups who will apply, including linguistic minority groups. Others have

not. (The Department of Work and Pensions, previously the Department of Social Security, have produced a 'model' form which is 26 pages long) (*HB Reg.7294*).)

(c) Determining a claim

Local authorities are expected to determine a claim within 14 days and, if not, payment on account will be made (*HB Reg.72(5)*). However, before determining a claim, the authority will need to know:

- Who is living in the claimant's dwelling. Is it just the claimant, or are there other qualifying persons, such as a partner and children?
- Only heterosexual couples can be part of the same claim unit. Note that Housing Benefit legislation does not accept same sex couples.
- Who else lives in the household?
- What are the income and capital details of the claimant and other household members?
- Working members of the household are expected to contribute towards the rent.
- Has the claimant come to live in the United Kingdom within the last five years? This question is asked to determine whether the claimant will be subject to the 'habitual residence' test. People who are not habitually resident here cannot receive Housing Benefit.
- How much is the rent, and does it include the cost of any amenities or services, such as heating or meals?

(d) Calculating Housing Benefit

Housing Benefit calculations are complex and are usually carried out by the local authority using tailor-made computer software packages. There is some research evidence that the calculations are frequently wrong. This probably has to do with the accuracy of the information input to the computer by housing benefit assessment staff.

Housing benefit is calculated differently for claimants receiving income-based Income Support from those receiving Jobseeker's Allowance. As a result, the local authority does not need any further information about the claimant's income or capital. This is because the Department of Work and Pensions will have already carried out a means test when establishing entitlement to that benefit. However, as discussed earlier, the Council does need to establish how much the rent is and what it includes, as well as who else is living in the household.

i. How Housing Benefit is calculated

The following steps provide a basic outline of how Housing Benefit is calculated assuming a claimant is eligible:

- Take into account any **capital** between £3,000 and £16,000.
- Work out the **eligible rent** for Housing Benefit.
- Work out the **'applicable amount'**, which is the amount that is needed to live on each week and is made up of personal allowances (differing amounts for single, lone parents, heterosexual couples, and dependant children)(*HB Reg.16 & 17. HB sch.2.1 & 2*) and premiums (for disability, children, over 60 years, or being a carer)(*HB Sch.2(14)*).
- Work out the weekly income of the members of the claim unit. This includes assumed income from capital, benefits, pensions, wages or income from self-employment. (Some income is taken into account in full, some is partially disregarded, and some is not taken into account at all).
- The Housing Benefit figure is then calculated by comparing the applicable amount and the weekly income, i.e.
  - If the weekly income is less than or equal to the applicable amount, the claimant is entitled to 100% of their eligible rent, less any non-dependant deductions.
  - If the weekly income is more than the applicable amount, then the eligible rent will be reduced by an amount equal to 65% of the income above the applicable amount. Non-dependant deductions will then be made. The balance will be paid as housing benefit.

You can see that the method of calculating housing benefit is complicated and, therefore, there is considerable scope for getting the calculation wrong. Also, the 65% taper, which reduces housing benefit for people with income above their applicable amount, is very steep. This means that people who start work may not be any better off than when they received Income Support or Jobseeker's Allowance.

5. Problems in Administration and for the Government

5.1 Problems in administration

Activity 2

From what you have learned so far, try to make a list of the ***main*** *problems which arise for local authorities from this system.*

Time allocation: 10 minutes

Activity 2 - Response

We have summarised what we think are the likely main problems as follows:

1. *The system is expensive to administer, and even more expensive to do so accurately.*

2. *Because the calculations are so complicated, local authorities need to have specially designed computer software packages to do them. These are expensive.*

3. *The government makes frequent changes to the rules. As a result, local authorities have had some difficulties in keeping up with them by retraining staff and buying more software.*

4. *If changes in the law mean that tenants get less benefit than before, they invariably blame the local authority.*

5. *Local authorities generally find housing benefit for council tenants easier to administer than benefit for private rented and housing association tenants. This is because they already have information about their own tenants.*

6. *The government is concerned particularly about poor service given to private rented tenants, as it may deter people from taking up tenancies or, in extreme circumstances, cause them to be evicted.*

5.2 Policy problems for the government

Since the current Housing Benefit scheme was introduced in 1988, there have been numerous changes intended to reduce total costs. In 1978-79, support granted through the National Assistance and Supplementary Benefit scheme amounted to £2.3 billion. Since 1988, the real cost of housing benefit has continue to increase, from £4.3 billion in 1989-90 to £11.1 billion in 1998-99 (*Housing Green Paper* April 2000). This was due partly to increasing unemployment and partly to the de-regulation and increase of social and private sector rents to market levels *(see sub-section C2 (a))*. However, it should be noted that "Although the cost of housing benefit has grown considerably in real terms since 1988/9, this has been offset by a reduction in spending on other housing subsidies, mainly new construction. In other words, there has been a shift of expenditure within a stable overall total." *(Housing Benefit: Time for Reform* by Professor Peter Kemp, published by Joseph Rowntree Foundation 1998).

Another consideration is that housing benefit fraud is estimated by the Department of Work and Pensions to amount to some £840 million.

Government policy has been for Registered Social Landlords and the private sector to take responsibility for social housing. However, evidence suggests that some 40% of private landlords do not wish to rent to households in receipt of housing benefit, whereas some 50% of private sector tenants need it. Arguably, housing benefit provides a subsidy to landlords and not to low-income households. However, current policy pressures are to reduce housing benefit, which, in turn, will reduce landlords' profit levels. As a result, without an adequate profit, many private sector landlords will withdraw from the provision of social housing.

The Housing Green Paper reflects the government's awareness of the problems and includes, in Chapter 11, both long term aims and ideas for reform of the Housing Benefit system. Cost effective welfare support to tenants on low incomes is stated to be the overriding aim. How this might be achieved is under review. Experience from other countries suggests that requiring a minimum contribution from tenants in receipt of benefit would provide tenants with a 'shopping incentive'. In this way, it is thought that tenants would make better decisions about their housing requirements. An initiative introduced in October 1999 is that of the Working Family Tax Credit. This has reduced the high marginal penal rates of tax, and reductions in Housing Benefit, that resulted from increase in income.

The Green Paper indicated that reform of Housing Benefit would be aimed at:

- providing help with paying the rent through a broader income package than a single housing needs system alone;
- giving claimants more opportunity to spend their money for housing support in the way they choose;
- recognising that options for change will be shaped by the very real practical realities such as how housing markets in Great Britain work (including the financing assumptions made by social housing providers - and the importance of not undermining lenders' confidence), and how Housing Benefit intersects with other benefits and welfare support.

As a result of comments on the Green Paper, the Government issued in December 2000 a policy statement on its intention to raise housing benefit administration standards, simplifying the claims process, the promotion of work incentives, reforming

'single room' rent restrictions, and setting up expert teams to help struggling local authorities and improve the situation of registered social landlords. Although some of the measures have been implemented, an Audit Commission report *'Housing Benefit – The National Perspective'* issued in June 2002 recommended the following areas for improvement:

Simplify the regulations

Improve the funding regime

Improve local liaison and partnerships

An example of the government's response to the need to simplify the regulations was its initiative to introduce a new flat-rate 'local housing allowance' for tenants in the deregulated private sector in nine pilot local authority areas from 17 November 2003. The allowances are based on the local market rent and size of household, with the tenants being allowed to keep the difference in cases where the allowance is higher than the rent. The details of this initiative are contained in the government's October 2002 paper *'Building choice and responsibility: a radical agenda for housing benefit*', which is available at:
www.dwp.gov.uk/housing benefit/publications/2002/building_choice/summary.pdf.

New streamlined Housing Benefit and Council Tax Performance Standards were launched by the Government on 9 March 2005 and implemented in April 2005. The original 641 standards have been replaced by 19 performance measures and 65 key enablers *(strategies and activities that should be in place by every local authority).* The new performance standards replace the previous seven functional areas with four themes covering claims administration, security, user focus and resource management. Now local authorities are required to report quarterly to the Department for Work and Pensions against the measures and carry out an annual self-assessment against the enablers. The focus is now on key outputs and a smaller number of components, and it will be interesting to see whether in practice the changes reduce the burden on local authorities when they undertake their self assessments. It is also intended that the new Performance Standards are implemented by the Benefit Fraud Inspectorate when undertaking their Comprehensive Performance Assessments.

The debate relating to needed improvements continues and it is recommended that you remain alert to ongoing comment and changes to the Housing Benefit System.

Summary

1. **The legal framework for housing benefit is somewhat complex. This is because amendments are regularly introduced, are often limited, and are contained in other legislation, e.g. the Welfare Reform and Pensions Act 1999.**
2. **Housing benefit is available to qualifying tenants of local housing authorities, housing associations, and the private sector.**
3. **Housing benefit is means-tested. As a result, a person with over £16,000 of capital will not be eligible for housing benefit and someone with over £3,000 but less than £16,000 will have their housing benefit reduced by £1 for every £250 over £3,000.**
4. **Rent rules apply to the determination of housing benefit and take into account the appropriate and average rents of similar properties in the same area. It is possible to obtain a pre-determination of a maximum rent that would be considered for housing benefit so as to decide whether or not a particular property can be afforded.**
5. **The housing benefit system is expensive to administer and housing benefit fraud is estimated to amount to £840 million a year.**
6. **The Housing Green Paper contains proposals for reforming housing benefit so as to link it with other income considerations and enable claimants to spend their money for housing support in the way they choose.**
7. **The Government has already implemented some of the Housing Green Paper proposals and continues to introduce related policy changes intended to improve the Housing Benefit System.**

D. Rent Arrears And Possession

1 Rent Arrears: Introduction

1.1 The scale of the problem

We have previously considered the policy decisions which have resulted in increased levels of rents. As discussed in the previous section, housing benefit is available to help eligible low-income households to pay their rent. Nevertheless, tenants still fall into rent arrears because of unemployment, illness, poverty, domestic problems, or inability to manage their financial affairs. Increased rents do lead to more rent arrears, but the link is not as obvious as might be first thought. One quarter of all local authority and one third of all housing association tenants have their rent met in full by housing benefit. Over 60% of all tenants are currently receiving some housing benefit. Once housing benefit entitlement is taken into account, there seems to be no connection between how much net rent a tenant has to pay and whether they are in arrears. However, the scale of the rent arrears problem is vast. A 1994 survey commissioned by the Department of the Environment found that:

- almost half of local authority and housing association tenants are behind with their rent (Research in 1995 by Ford et al, *'Reducing Mortgage Arrears and Possessions: An Evaluation of Initiatives'* confirmed that one in 16 borrowers were in arrears with their mortgage repayments);
- one in six housing association tenants and one in seven local authority tenants owe more than four weeks' rent;
- households with dependent children and single adults are most likely to be in rent arrears;
- between 25-40% of generic housing officers' time is spent in dealing with rent arrears;
- tenants give the following reasons for their arrears:
  - housing benefit problems;
  - in employment leading to reduced income;
  - changes in domestic circumstances;
  - insufficient income to meet other debts and expenses.

  (Source: *Rent arrears in local authorities and housing associations in England*, DoE, HMSO, 1994.)

The financial consequences of rent arrears are very serious for social landlords. A 1995 survey revealed that in 1995 local authorities would fail to recover £96.6 million in rent arrears. At that time, arrears for current tenants totalled £223 million (of which local authorities were expected to recover 71.1%) and arrears for former tenants amount to £72.3 million (of which 55.8% was expected to be recovered). (Source: *Survey of local authority debt*, Revenues Management Services, 1995.)

Reducing rent arrears is also one of the Office of the Deputy Prime Minister (ODPM, previously Department of Transport, Local Government and Regions) policy aims. These are reflected in imposed local authority performance measures that form part of the annual Housing Investment Programme statistical and strategy returns. As such, they are one of the many performance factors taken into account when assessing the efficiency and effectiveness of local authorities' housing management (see ODPM's annual *'The Housing Investment Programme Guidance Note for Local Authorities'*). Similar performance measures are imposed by the Housing Corporation on grant-aided housing associations.

2. Dealing With Rent Arrears: Management

2.1 Good housing management practices

There have been a number of Audit Commission reports (1986, 1989 and 1994) that have examined the problem of rent arrears and made recommendations for dealing with problem. Guidance has also been given by the Office of the Deputy Prime Minister to social landlords on the best practice for dealing with arrears. The 1994 DoE research referred to earlier suggested:

- pre-tenancy counselling;
- maximising tenants' income through benefits and appropriate advice;
- creating a 'payment culture' *(tenants need to be aware of policies relating to rent collection, including the possibility of eviction for continuing non-payment)*;
- giving tenants regular and accurate information about their rent account; and
- clear policy objectives and procedures on dealing with rent arrears.

2.2 Management deterrents

Rent arrears are a legitimate reason for a landlord refusing a tenant permission to exchange or assign their tenancy. Many social landlords also have their own policies that a tenant with rent arrears cannot transfer to a different dwelling. However, this policy must be operated according to the principles of administrative law. In the judicial review case of *R v Islington LBC, ex p. Aldabbagh* [1994] 27 HLR 271, an order of *certiorari* (meaning to declare void a decision – on 2 October 2000, an *order of certiorari* was renamed a 'quashing order') was granted against the local authority. Islington had a policy that existing tenants with rent arrears would only be allowed to transfer if the arrears had been cleared, or if there was an agreement that they would be cleared. The court found that the policy was being applied so that rent arrears only were considered, without regard for any other need for rehousing. In this case, the tenant had a medical need for rehousing, but the local authority ignored this because of rent arrears. This amounted to an unlawful restriction on the local authority's discretion.

We should like you to give some thought to the following activity before continuing with the topic of rent arrears and possession.

Activity 3

What do you think is the most common legal remedy for rent arrears, and what might the drawbacks be?

Time allocation: 15 minutes

Activity 3 - Response

In considering the activity, deciding on the legal remedy of possession might have been relatively straightforward. However, you may have found the listing of possible drawbacks a little more difficult. Possession is the most common legal remedy used by the majority of social landlords if less formal approaches to the tenant fail to secure an agreement to pay off the arrears. There are two stages to seeking possession: the first stage requires a notice to be served on the tenant; and the second stage is possession proceedings in the County Court. We will look at these stages in more detail shortly.

As regards the drawbacks, consider the following possible drawbacks:

- *Will court proceedings achieve the landlord's aim, which should be to obtain regular payments from the tenant, not necessarily their eviction?*
- *Housing benefit payment problems are often linked to rent arrears, making court proceedings more complex.*
- *The need to prove 'reasonableness' at court.*
- *Potential disrepair counterclaims can wipe out rent arrears.*
- *Homelessness applications might result if a tenant is evicted.*

We will now look more closely at each of these points in turn.

3. Dealing With Rent Arrears: Possession

Since April 2002, the Court Service has been collecting statistics showing the grounds on which possession orders are granted against tenants in claims brought by public and social landlords. The returns for the period April-August 2002 show that non-suspended orders were granted solely for rent arrears in 6,000 cases. They also reveal dramatic regional variations in the grant of outright orders for anti-social behaviour (or for both anti-social behaviour and rent arrears), for example, as between the Merseyside region (13 orders) and the neighbouring North West Region (143). Other recent figures show that while there was a 40% rise in possession actions brought by social landlords between 1996 and 2001 in England, the figure in Wales was 60%.

3.1 Court proceedings

You will recall from your studies of Block HL.102 that a landlord who seeks possession of a property has to proceed through the County Court. The basic procedure is similar for tenants of local authority and housing association landlords.

(a) Notice seeking possession

Whereas a tenant need only serve four weeks notice of wishing terminate a tenancy, a local authority or housing association must first serve a notice seeking possession, i.e.

- **Local authority tenancy:** under **s.83** of the **Housing Act 1985**, the courts cannot entertain possession proceedings unless a local authority has served a Notice of Possession Proceedings *(see HL.102 section 4.4.a for details*). The notice will need to state that possession is sought on the basis of discretionary Ground 1 of Schedule 2 of the Act, which applies when rent has not been paid by the tenant.
- **Housing association tenancy:** under **s.8** of the **Housing Act 1988**, a housing association must serve a Notice of Proceedings for Possession on the basis of discretionary Ground 10 *(rent lawfully due)* or discretionary Ground 11 *(persistent delay in paying rent)* of Schedule 2 of the Act.

The courts look closely at the detail of the notices of possession. In *Mountain v Hastings* [1993] 25 HLR 427, the Court of Appeal held that the notice was inadequate. This was because the landlord had given the reason for possession as being'*... at least three months rent unpaid'* instead of giving the required full text of the Ground relied on.

(b) Court order for possession

You will remember from Block HL.102 Sections C4.4 *(Local authority tenants)* and C6.5 *(Housing association tenants)* that a summons to appear in court is issued to the tenant. The case for possession on the grounds of arrears of rent is then heard before a District Judge. You will also recall that the grounds for possession for rent arrears are discretionary. As a result, the court may:

- dismiss the landlord's case, if it is not proved;

or make one of a number of orders, namely:

- a possession order;
- a suspended possession order (occurs in the majority of cases);
- postpone the date of possession, i.e. to take effect at some date in the future.

When exercising its powers, the court may **impose conditions** relating to the payment of rent and arrears, details of which appear on the order for possession. However, it will not do this if it will

cause exceptional hardship to the tenant or be unreasonable. Usually, the conditions imposed will be that the current rent is paid, together with a specified amount each week off the arrears. The order will also advise that '*If you do not pay the money owed and costs by the dates given and the current rent, the plaintiff can ask the court bailiff to evict you and remove your goods to obtain payment'*. This is called 'enforcing the order and money judgement' .

- **Local authority tenancies:** Under **s.82(3) Housing Act 1985**, secure tenancies end on the date for possession contained in the court order. In the case of a suspended possession order, the order will not come into force unless the tenant fails to pay the rent and arrears. If that occurs, then the court conditions are broken and the tenancy comes to an end.

Even when a tenant breaches conditions, the local authority may disregard the suspended possession order. As a result, the secure tenancy continues (as held in *LB Greenwich v Regan* [1996] 28 HLR 469 and *Burrow v LB Brent* [1996] 29 HLR 167).

The 1994 Department of the Environment Research referred to earlier found that:

- 80% of tenants taken to court get a suspended possession order;
- a quarter of local authority, and a third of housing association tenants, fail to keep to the terms of the suspended possession order;
- despite this high failure rate, there are few evictions, with the average being less than 2 tenants per 1,000.

It would seem that the notices seeking possession are not overly effective in persuading all tenants to make payments off arrears. Also, if a tenant is evicted, the arrears remain as a civil court debt, which have to be recovered through a different court process, or written off. Landlords also find that a proportion of former tenants 'disappear', which makes the recovery of the debt unlikely.

(c) Warrant of execution

Landlords sometimes experience problems when tenants do not leave by the date on the possession order. If so, the landlord can apply for the eviction to be carried out by the court bailiffs. All that is required is the completion of the Request for Warrant Execution form which includes the statement:

I certify that the whole or part of the instalments due under the judgement or order have not been paid and the balance is due as shown.

The court bailiffs send a warning note to the tenant's address, allowing a short period before the date they will be calling. The warning note ends with the words to the effect *If you have not then given voluntary possession and you are not at home, entry will be forced and the locks changed without any further warning.* Even at this point it is still possible that the tenant can remain in the dwelling. To do so, the tenant would have to be successful with an application to the court to either:

- **set aside the possession order:** if applicable, the court would consider the reason why a tenant did not appear when the case was heard, and whether the tenant had any defence to the possession action. However, as held in the leading case of *Grimshaw v Dunbar* [1953] 1 All ER 350, there must be some possibility that, if the tenant had attended the original hearing, the possession order would not have been made.

Setting aside a possession order

Paddington Churches HA v Nazli Aydin, Barnet County Court.
On 19 June 2003, after obtaining a possession order, the landlord told the tenant that if she paid the outstanding rent arrears it would not enforce the possession order. As a result, the tenant borrowed the money and paid the arrears at a post office the day before the warrant was due to be executed, and arranged for the receipt to be sent by facsimile to the landlord. However, at the eviction the housing officer did not accept the arrears payment had been made. Consequently, the bailiff could not wait ten minutes for the arrival of the original receipt and the possession warrant was executed. The tenant applied to set aside the warrant. The court found that there was a clear case of oppression and stated that a brief enquiry would have established that the arrears had been settled. The warrant for possession was set aside and the tenant reinstated.

- **suspend the warrant:** unless a bailiff's order was obtained by fraud, it cannot be set aside without the possession order on which it is based being set aside.

(d) Housing benefit problems

Occasionally rent arrears can arise due to:

- delayed payment of housing benefit;
- wrongly calculated housing benefit; or
- reclaim of an overpayment of housing benefit (which cannot actually count as rent arrears).

The difficulties caused by poor administration of housing benefits, or the lack of liaison between the landlord and the housing benefit administrators, can lead to:

- ombudsman complaints;
- failure to obtain a possession order from the court;
- applications to set aside possession orders and bailiffs' warrants.

These are particularly embarrassing when the landlord is a local authority, which is also responsible for the administration of housing benefits.

The following notes of court cases, which illustrate mistakes that can occur, are from *Legal Action.* The case involving the London Borough of Greenwich concerns direct deduction of £2.30 per week from a tenant's Income Support. The London Borough of Lambeth features in the second case, showing that housing benefit problems can continue after a suspended possession order has been obtained.

December 1994

• **LB Greenwich v Minnican (1994) 8 November, Woolwich County Court** On 21 April 1994 the council obtained an order for possession on rent arrears of £2,200. The order was suspended on terms that the tenant pay current rent plus £2.30 per week, which was to be recouped from his income support by direct deduction. The council did not apply to the DSS for direct deductions until 8 July 1994 and then applied *for a* warrant, since the tenant had not himself paid the £2.30 weekly in the meantime. Direct deductions started on 27 July 1994, but at the end of August the council executed the warrant and took possession.

The defendant successfully applied to set aside execution of the warrant. HI-U Cox held: (1) that, although not expressed on the face of the order, it was plain that the £2.30 would be collected by direct deductions and the tenant could not be said to be in breach by awaiting the implementation of that arrangement, and (2) it had been unreasonable to execute the warrant once the arrangement was in place and the current rent was covered by housing benefit.

March 1995

• **Lambeth LBC v Jabir Abdullah (1994) 8 December, Lambeth County Court** In October 1992 the council had sought and obtained a possession order against the defendant, suspended on terms. The defendant failed to comply with the terms and the council enforced a warrant for possession In November 1994. The defendant then applied to set aside the possession order, relying upon his non-attendance when the original order had been made (CCR Order 37 r2).

HHJ Cox allowed the application and set aside the original possession order. He exercised *his* discretion in favour of the applicant, relying on the facts that:
(1) the two-year delay before making the application had not caused prejudice, since a payment of backdated housing benefit after eviction had reduced the arrears to below the amount existing when the original order had been made; and
(2) the council had incorrectly treated £292 as rent arrears when the sum was In fact *an* overpayment of housing benefit (see *Housing Benefit Guidance Manual* para A7.38).

In each case, the tenant was able to regain their tenancy after being evicted.

Activity 4

Included below is an example of the Facts Summary in the Housing Law Reports Volume 28, page 798 of the 1995 Court of Appeal case of London Borough of Haringey v Powell.

Read through the extract, and then prepare a brief chronology of what exactly happened in court and on what dates. Then try to decide what the Court of Appeal decided.

Time allocation: 10 minutes

Facts
In February 1991, the plaintiffs granted the defendant a secure tenancy. The rent was approximately £50 per week. During the tenancy, the defendant was often unemployed and in receipt of income support and housing benefit. Even during periods of employment her earnings were often so low that she was entitled to some housing benefit. The defendant fell into arrears of rent. On November 10, 1992, the plaintiffs obtained a possession order, which was suspended for so long as the defendant punctually paid to the plaintiffs the current rent and £50 per month off the rent arrears. At the date of the order, the arrears stood at £3,545.

By November 1994, the rent arrears had increased by approximately £1,000. The plaintiffs applied for a warrant to execute the possession order. The defendant applied to have the warrant suspended. Her application came before the circuit judge on November 30, 1994. The judge ordered that the defendant's application should be adjourned so that the position with regard to the defendant's housing benefit entitlement could be clarified. He further ordered that the defendant should pay the current rent plus £10 off the rent arrears pending the adjourned hearing.

The application came before the court again on January 30, 1995. At this time, the rent arrears were between £4,472 and approximately £4,600. An officer from the plaintiff's housing department gave evidence on the defendant's rent account. The evidence was derived from the computer records kept by the housing department, which reflected the payments of housing benefit that had been made. However, the officer did not have personal knowledge of the decisions made by the plaintiffs' housing benefit department. The defendant's case was that she was entitled to a further £1,000 by way of housing benefit. In particular, there was a period of 19 weeks between October 10, 1993 and April 14, 1994, during which she was employed but claimed that her earnings

continued...

were sufficiently low to entitle her to housing benefit. In fact, the defendant's account had been credited with housing benefit during this time but the benefit had subsequently been recovered as an overpayment. The officer explained that the claim was unsuccessful because: it had been made out of time; the necessary evidence had not been produced in support of the application; and, because the evidence which had finally been produced did not demonstrate that the defendant was entitled to housing benefit.

The judge dismissed the defendant's application on the grounds that the arrears had increased significantly since the grant of the suspended possession order and the defendant had not been making the payments required by the circuit judge during the adjournment.

The defendant appealed to the Court of Appeal on the basis that the plaintiffs had failed to clarify the position as to her housing benefit entitlement as they had been required to do on the adjournment of her application.

Activity 4 - Response

In relation to the activity, your chronology of court hearings and outcomes should look like this:

- *10.11.92 Possession Order granted, suspended so long as the tenant paid the current rent £50 per month off the rent arrears of £3,545.*
- *30.11.94 Tenant's application for warrant to be suspended, was adjourned on terms that the tenant paid current rent plus £10 off the rent arrears.*
- *30.1.95 Tenant's application for the warrant to be suspended, was dismissed.*

Tenant appealed to Court of Appeal.

What do you think was the result? This is the Housing Law Report's summary of why the tenant won her appeal - but note that the case was not yet over. It was sent back to the County Court for a decision to be made about whether the warrant should be suspended, after hearing further evidence about the Housing Benefit dispute.

A very expensive exercise for Haringey.

> ***Held (allowing the appeal):***
> *The explanations, which had been provided to the judge as to why the defendant was not entitled to housing benefit, were inconsistent and confused. If the defendant was correct then the level of arrears would have been similar to that at the date of the possession order; whilst the defendant would still not have complied with the terms of the order, the difference in the level of the arrears would clearly have a substantial effect on the court's exercise of its discretion under* ***Housing Act 1985, 5.85(2)****; the matter would be remitted to the County Court for further consideration so that the disputes about housing benefit and what payments had been made by the defendant could be resolved before the decision as to the suspension of the warrant was taken.*

(e) Need to prove 'reasonableness'

As you know, the grounds for possession on rent arrears are discretionary (apart from ground 8 of the **Housing Act 1988** which housing associations would not normally use against their assured tenants). So as well as proving the ground, the landlord must convince the court that it would be *reasonable to grant a possession order*. If the rent arrears were due to housing benefit problems, which were not the tenant's fault, it would be hard to convince a court that it would be reasonable to make a possession order.

Tenants who can show that their rent arrears were uncharacteristic, for example, that they have always been good payers until made redundant, will stand a better chance at court.

(f) Disrepair counterclaims

The topic of disrepair is dealt with in section F of this Block. However, you should be aware that a tenant can make a counter-claim against the landlord if:

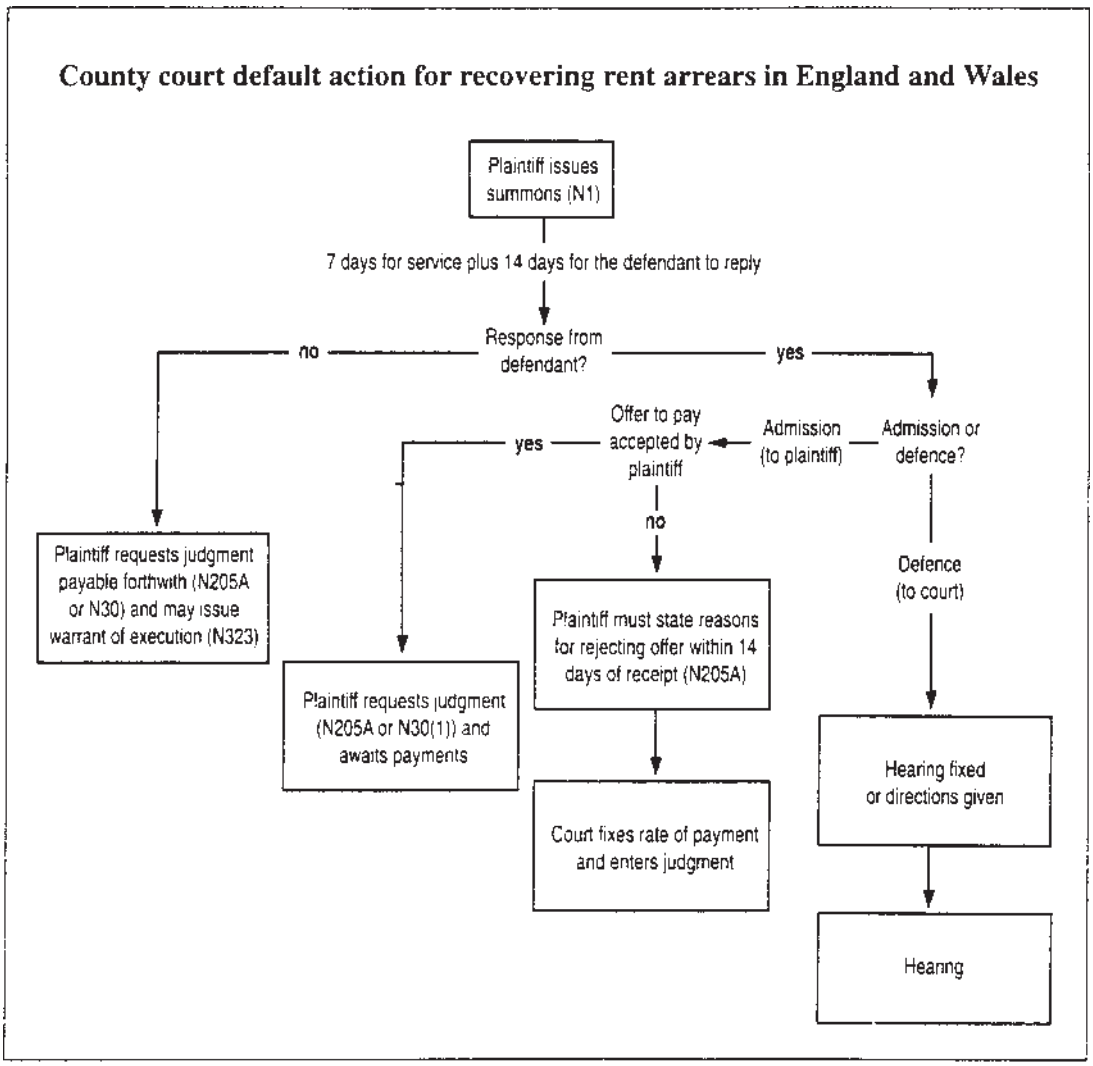
- the landlord is in breach of their repairing obligations;
- or has been negligent;
- or allowed a nuisance to reduce the tenant's enjoyment of their property.

These disrepair counterclaims often do not come to light until possession proceedings are started by the landlord. One of the first things that a legal adviser asks a tenant faced with possession proceedings is "*Have you had any problems with the condition of your flat?"* This is an important consideration because the tenant may be eligible for a high level of damages from their landlord. If so, the damages may well exceed the rent arrears which have accrued.

(g) Homelessness resulting from evictions

Landlords should be aware that following through the Notice Seeking Possession or the possession proceedings route of dealing with rent arrears may result in homelessness. As we saw in section B of this Block, it is not always inevitable that a household evicted for rent arrears will be found intentionally homeless. If so, it would mean that a local authority could evict tenants for rent arrears only to have to rehouse them because they are homeless.

Apart from repossession, there are other legal remedies for the recovery of rent arrears. While the tenant continues to live in their property, a landlord can bring an ordinary claim for debt in the County Court. This type of action is based on the tenant's contractual obligation to pay rent, and must be started within six years of the arrears becoming due (**Limitation Act 1980**). The court procedure is much simpler than a possession action, as the following diagram from the Chartered Institute of Housing's *Housing Management Standards Manual* shows:



(h) Enforcing court judgements for debt

Any court judgement for debt can be enforced through an **Attachment of Earnings Order**, if the tenant is working. This also applies to a court judgement obtained in possession proceedings. The County Court has powers to enforce its judgements, but will not do so unless the creditor makes an application. The landlord has to complete a form, serve it on the tenant, and then attend a hearing. In response, the tenant has the opportunity to give details of their income, employment and outgoings. If appropriate, the court will make an order requiring the tenant's employer to deduct rent payments before the tenant receives their wage or salary. These deductions will then be paid to the court office from which the landlord can collect them.

There is one further option for a landlord to reclaim rent arrears. It is a procedure called **distress for rent.** This is a common law action allowing the landlord to seize property found in the tenant's premises and to sell it to satisfy arrears of rent. Some social

landlords make use of it, although the National Federation of Housing Associations and the Chartered Institute of Housing disapprove of its use.

Distress can be used as a self-help remedy against secure tenants, without going to court. However, housing associations would have to apply to the County Court for permission to use this remedy against assured tenants (**s.19** of the **Housing Act 1988**). Bailiffs carrying out distress for rent arrears must be certificated by the County Court under the *Distress for Rent Rules 1988, S.l. 1988 No.2050.*

Distress can only be used for arrears of rent while the tenancy continues, or up to six months after:

- provided the tenant is still in possession of the premises in question; and
- there is no court judgement for the arrears.

Bailiffs are not allowed to take:

- the property of lawful subtenants, lodgers, or anyone else not the tenant;
- goods related to the tenant's employment;
- clothes, beds and bedding - value of £100 exempt;
- tools of trade - value of £150 exempt;
- perishable goods;
- fixtures;
- anything in actual use.

Bailiffs must have with them a distress warrant from the landlord, and, if they enter premises unlawfully, the distress will be invalid. It would be unlawful to enter between sunset and sunrise, or if they had to break into the premises.

Notice must be given stating the cause for the distress if it is intended to sell the goods. **Seizure** usually takes place by the bailiff 'laying hand' on the property and stating that it is seized until the rent is satisfied. Impounding can be done by leaving the goods at the premises. The bailiffs enter into walking possession of the tenant's goods until:

- they are sold;
- the tenant redeems them by paying the arrears; or
- the bailiff abandons them.

If property is actually taken away from the premises, it must be kept safe. The landlord has the right to sell the goods five days following service of the notice of intention to sell. The tenant can gain 15 days further time under the **Law of Distress (Amendment) Act 1888.** As a result, the debt is suspended between distress and sale, so no court action for the debt can be started during this time.

A tenant has certain rights if property is wrongly taken, or not returned after the tenant has offered to pay the arrears. The tenant can start a County Court action to secure the return of their property, and also to claim damages for:

- illegal distress *(wrong from the outset);*
- irregular distress *(procedural irregularity);*
- excessive distress *(more property taken than a reasonable person would consider necessary to pay off the arrears).*

i. Procedural reform

In July 1996, Lord Woolf submitted his final report on *'Access to Justice'* which proposed reforms to civil justice. These reforms recommended providing judges with a duty to actively manage and shorten the time taken by court cases. In particular, Lord Woolf recommended a need to speed up possession proceedings. It is the rent arrears grounds which are the most common form of possession claims. However, the possession claim is frequently a device to obtain payment of the rent arrears rather than seeking eviction. The government is at present reviewing housing possession procedures as part of the second phase of changes to civil justice. What seems likely is a two stage procedure where:

Stage one: a written representations procedure, where the landlord submits details of the rent arrears and a notice seeking possession. The tenant is also invited to make a submission, including the amount of arrears and rate of repayment. Unless the tenant submits a defence or makes a counter-claim, the district judge would make an interim repayment order without a formal hearing.

Stage two: court hearing, where the landlord requests a full hearing of a possession claim immediately. However, the landlord would have to satisfy the court that such a claim is reasonable and, if not, the landlord could be penalised on costs.

As a result of the Woolf Report recommendations reforms, new Civil Procedure Rules were brought into force on 26 April 1999. The measures are designed with the intention of introducing a speedy, cost-sensitive system in which judges and not lawyers set the pace of litigation. Also, people are encouraged with financial incentives to settle disputes before trial. Judges are now trial managers, setting the timetables for cases and imposing cost penalties for delay. They may also summarily dismiss weak claims and order the parties to try mediation (see HL.101 C.3.2(e)).

The new court procedures seem to be working well. Statistics published by the Centre for Dispute Resolution confirm that the number of cases referred to mediation by the courts has doubled. A further study by the Lord Chancellor's Department, published in April 2001, confirmed a reduction in the number of claims issued in both the County Court and High Court, from some 220,000 cases a year to 175,000 cases. However, the cases presently affected by the new Civil Procedure Rules concern aspects of tort and contract. In contrast, other fields of law, including landlord and tenant claims have risen. However, the previously referred to Civil Procedure Rules for housing and land law, which came into effect on 15 October 2001, have made the civil justice system less confusing, cheaper, and quicker for the settlement of housing disputes.

Self Test 6

1. *List some of the reasons why rent arrears arise.*

2. *List some of the recommended good practices for helping to reduce rent arrears.*

3. *What must a landlord first do before seeking a court order for possession?*

4. *What are the different orders a court might impose in relation to rent arrears and what are the differences?*

5. *In what circumstance might the court not impose a possession order?*

Now turn to the Answers at the end of the Block.

Summary

1. **The scale of rent arrears in the social rented level is enormous. Local authorities and housing associations, like any other landlord, can use the law to recover rent arrears.**
2. **The Housing Acts 1985 and 1988 both make rent arrears a ground for possession, so a 'Notice Seeking Possession' can be served, and be followed by possession proceedings if the problem does not improve.**
3. **Ordinary civil claims for debt arising from breach of contract can also be used by landlords.**
4. **Both these types of court judgement can be enforced under the Attachment of Earnings Act 1971.**
5. **A further *(disapproved)* option is the ancient remedy of distress for rent, which does not involve court proceedings.**

E. Nuisance, Anti-Social Behaviour and the Law

1 Context

1.1 Introduction

Although people frequently speak of nuisance, very often neighbour nuisance, it is just one form of anti-social behaviour. During the 1990s, the increase in anti-social behaviour by a minority of tenants was particularly noticeable. This is not the place to debate the social, economic, housing policy or other reasons why this may have occurred, but it poses a challenge to housing organisations. Unfortunately, well-behaved and law-abiding tenants experience considerable distress and disturbance from unacceptable and increasing levels of anti-social behaviour. Home Office statistics, ombudsman cases, local authority records, and parliamentary reports all serve to record mounting levels of racial harassment, noise nuisance, neighbour nuisance, vandalism and crime. This you will readily recognise in the following selection of reports from the 1990s:

- A survey in Camden showed that nearly half of their tenants had been **robbed, harassed or suffered neighbour nuisance** in the past year, with 34% of tenants affected by noise nuisance. (*Inside Housing*, 19 April 1996);
- There were 11,000 **racially motivated crimes** recorded by the police between April 1999 and September 1999. (Home Office Statistics 2000).
- Complaints about **domestic noise** rose from 42,000 in 1985 to 131,000 in 1995. However, up to 70% of victims do not complain, for fear of reprisals. (*Hansard* 4/6/96 col. 411).
- Problems caused by **difficult tenants** for their neighbours take up to 20% of housing management time. Also, 25% of tenants' grievances stem from problems with neighbours, and three-quarters of them will approach their landlord first before any other social agency. (Aldbourne Associates, *Managing Neighbour Complaints in Social Housing* (1994).

Activity 5

In the preceding extracts, you can see identified are some forms of anti-social behaviour. With this in mind think about other sorts of activities that you consider would be anti-social behaviour and list them below?

Time allocation: 5 minutes

Activity 5 - Response

Apart from wider observations, one approach to considering anti-social behaviour might be to think of what activities you personally would find disturbing or disruptive. Now check your list against the list contained in the first paragraph quotation in sub-section 1.2 below.

1.2 What is anti-social behaviour?

The problem of anti-social behaviour has been the focus of publicity, including being the subject of a television documentary series entitled *'Neighbours from Hell'*. However, what do we understand by the term anti-social behaviour? A helpful description was included in a Department of the Environment publication in 1995 *'Anti-social Behaviour of Council Estates: A Consultation Paper on Probationary Tenancies'*. It stated that anti-social behaviour:

> *"... manifests itself in many different ways and at varying levels of intensity. This can include vandalism, noise, verbal and physical abuse, threats of violence, racial harassment, damage to property, trespass, nuisance from dogs, car repairs on the street, joyriding, domestic violence, drugs and other criminal activities, such as burglary."*

Furthermore, the **Crime and Disorder Act 1998** defines ant-social behaviour as:

> *"... behaviour which caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as the perpetrator."*

It is important to realise, as identified by a government Social Exclusion Unit report that crime and anti-social behaviour are not experienced solely in social housing areas, but occur across all sectors *('Bringing Britain Together: A National Strategy for Neighbourhood Renewal' Command 4045. 1998)*. However, as identified in the Social Exclusion Unit's Anti-social Behaviour Policy Action Team Report (April 2000*)*, it is known that anti-social behaviour:

- is perceived to be twice as high in deprived areas than nationally ... around 250,000 neighbour disputes were reported each to local authority and environmental health service departments (*'Survey of English Housing 1997-1998'*, DETR 1999);

- is considered to be a medium-to-large problem by three-quarters of social landlords, with some landlords recording figures of up to 255 complaints a year per 1,000 tenancies (*Nixon, J., Hunter, C., Shayer, S.* [1999] 'The *use of legal remedies by social landlords to deal with neighbour nuisance'* Centre for Regional Economic and Social Research, Sheffield Hallam University); and
- appears to be increasing, with reports of disorder offences increasing by 19% from 1995-96 to 1997-98 and complaints to environmental health officers about neighbours rising by 56% from 1993 to 1997 *('Safety in Numbers'*, Audit Commission, 1999).

1.3 Recent changes to the law

The increase in anti-social behaviour has posed problems for landlords. Unfortunately, for a long time there was dissatisfaction with the main civil legal remedies available, namely:

- **eviction**;
- **injunctions** *(a court order compelling someone not to do something or requiring someone to do something)*;
- **action on breaches of tenancy agreements***(Block HL.102 deals with landlords and tenants' tenancy obligations and rights including right to a quiet enjoyment of the property.)*;
- **covenants** *(landlords may insert in a 'right to buy' contract a covenant that requires the purchaser not to commit any anti-social behaviour)*; and
- **nuisance control powers**.

However, as a result of the increasing problem, the government was persuaded that further legal powers were necessary. At first, legislative responses were somewhat piecemeal, however, with the provisions of the **Crime and Disorder Act 1998** and the **Anti-social Behaviour Act 2003**, a more comprehensive approach has emerged. Various changes to the law resulted, including:

(a) S. 154 of the Criminal Justice and Public Order Act 1994

This inserted a new **S.4A** into the **Public Order Act 1986.** The amended **Public Order Act 1986** includes a new criminal offence of causing *'intentional harassment, alarm or distress.*

(b) Housing Act 1996

The **Housing Act 1996** introduced provisions in a number of areas:

Ss.124 to 143 of the Act contains provisions that permit local authorities to adopt **introductory tenancies** *(see Block HL.102 C5)*;

Ss. 144 to 151 introduced new **grounds for possession for anti-social behaviour**; and

Ss.152 to 158 introduced the power to **grant injunctions against anti-social behaviour**, as well as attached **powers of arrest**.

Injunction under s.152

In *Enfield LBC v. B (2001),* the Court of Appeal held that for a court to grant an injunction under s.152 of the Housing Act 1996, there must be a sufficient nexus (connection) between the relevant residential premises (or their locality) and the person whom the authority sought to protect.

In *Manchester CC v Ali, 17 June 2002*, a secure tenant of one of the flats in the same block as the defendant complained that the defendant had intimidated him and his partner on a regular basis, and had head-butted his partner, although this took place some 1,166 yards from the block. The Magistrates Court (relying on the *Enfield* case) refused to grant an injunction under s.152 as the head-butting incident had not taken place within the immediate locality of the flats so there was no geographical nexus. However, on appeal, the High Court allowed the authority's appeal on the grounds that it was not necessary for the nexus to be purely geographical, or defined in terms of metres or post code: it could be a logical or practical one. It was quite conceivable a person, as part of a dispute between neighbours in residential premises, might seek to cause annoyance to his victim outside the immediate locality of those premises. The court stated that there was nothing in the wording of s.152 to preclude the granting of an injunction under such circumstances.

(c) Environmental Protection Act 1990 (as amended by the Noise and Statutory Nuisance Act 1993)

The amended **Environmental Protection Act 1990** requires local authorities to investigate and diminish statutory nuisances. It also provides powers to take action against persons who drop litter.

(d) Noise Act 1996

The **Noise Act 1996** gives local authorities the option to introduce new powers for dealing with night-time noise. A 1999 survey carried out for the National Society Clean Air and Environmental Protection found that only 10 local authorities had adopted the night-time provisions. However, 65% of authorities considered their existing provisions were adequate, and others did not have available resources. The Act creates a new offence of excessive noise *(over 35 decibels: a decibel is a unit which measures noise) from domestic dwellings between 11 p.m. and 7 a.m.* Local authorities choosing to implement the Act will have to investigate complaints, and can impose on-the-spot fines, as well as confiscate noise-making equipment. If not, a complaint, as outlined below, could be made to the local government ombudsman *(see Block HL.101 sub-section d1.2 (f)).*

Ombudsman housing report summary 27 April 1999

London Borough of Hackney: Neighbour nuisance (Reference: 98/B/0680)

'Mr Robert' (not his real name) complained that the Council had not taken action to deal with noise and other nuisance caused by his neighbour. He said that the problems he had experienced had affected his health because he keeps being woken up at night and in the early morning. The Ombudsman found that there had been multiple faults in the way the Council had dealt with the situation and that this had caused Mr Robert acute frustration and avoidable trouble. The Ombudsman recommended that the Council should:

- pay Mr Robert £350 compensation;
- act decisively on any further complaints it receives from Mr Robert and keep him informed of what is happening; and
- draw on the lessons revealed by this investigation when developing its policies and staff training.

(e) Protection from Harassment Act 1997

This Act was passed largely in response to the problem of stalking, persistent abusive telephone calls and threats of violence. However, it can be used beneficially for any offence of harassment. The Act created criminal offences of both *harassment and putting another person in fear of violence.* During 1997, 243 people were prosecuted for the offence of putting people in fear of violence, and 507 for harassment. Also, there were 30 prosecutions for breach of either restraining orders or injunctions *(Home Office statistics 1999).* The courts can also issue a *restraining order* to prevent further harassment, and breach of such an order will result in imprisonment as held in the Court of Appeal cases of *R v Liddle* and *R v Hayes*, *The Times*, 26 May 1999.

Breach of a restraining order

In *R v Liddle*, Mr Liddle had twice been in court for harassing his wife and was the subject of a restraining order. Regardless of this and following release from prison, he sent two letters to his wife and spoke with her in the street. As a result of these breaches of his restraining order, he was sent to prison for 15 months.

In *R v Hayes*, Mr Hayes had been turned down by a woman to whom he had made advances, but persisted in harassing her. He was then made subject to a restraining order prohibiting him from approaching within 300 yards of her place of work or from contacting her. He approached her home address. As a result of his breaches, he was sentenced to prison for 11 months.

The Act has also created a new tort *(see Block HL.102 B1.3 for law of tort)* of harassment. Here, the civil courts may grant remedies of damages or an injunction ordering the defendant to stop harassing. There is an accompanying power of arrest from any breach of an injunction, as well as up to five years imprisonment.

'Inside Housing' and *'Legal Action'* frequently report court cases showing how social landlords are making use of available remedies. There are also ombudsman reports of compensation awarded to tenants who have been victims of nuisance and harassment. Such reports occur where the local authority, as landlord, may not have acted effectively to protect them, as instanced in the earlier London Borough of Hackney case. Local authorities also have a responsibility to private house owners, as will be seen in the case outlined below.

Ombudsman housing report summary 23 September 1999

Northampton Borough Council: Neighbour nuisance and harassment (Reference 98/B/0680)

'Mrs Alpha' (not her real name) is Irish and suffered racial harassment form her neighbours. She considered that they were running an unlawful business from the property and had incited racial hatred among their customers. She complained to the Council, who told her they would help her. However, they did not explain to her the limits on their powers in dealing with racial harassment between private house owners. Nor did they explain that it would not take action against the neighbours' business. As result, Mrs Alpha sold her property and left town. The Council then failed to respond to her complaint about the way it had dealt with the matter.

The Ombudsman found maladministration causing injustice and recommended that the Council should:

- pay £350 for the distress caused to Mrs Alpha by the Council's actions and for not making its position clear; and
- pay a further £120 as a contribution towards Mrs Alpha's legal costs in pursuing the complaint with the Council and with the Ombudsman.

(f) Crime and Disorder Act 1998

The **Crime and Disorder Act 1998** requires local authorities and the police to work together with other public and voluntary bodies in tackling anti-social behaviour. To achieve this, they are required to formulate and implement a strategy for the reduction of crime and disorder. The Act also imposes a requirement to reconsider the role of housing management, both in terms of managing property and influencing social control.

In addition, the Act provides a wide range of other measures designed to address anti-social behaviour, including:

- **anti-social behaviour orders:** the police or a local authority can obtain an order from a magistrate. Such order can apply to any person over 10 years of age who has been behaving in an anti-social manner.

Boy of 12 banned from town centre (report in *The Times*, 18 February 2000)

In February 2000, an anti-social behaviour order was used to ban a boy of 12 and his 15-year-old brother from the centre of Weston-super-Mare. The brothers were alleged to have broken a boy's nose, shone a laser beam into a bus driver's eyes causing him to crash, used a stolen cash card, threatened to attack supermarket staff and spat at cinemagoers. In addition, both boys have been excluded from school permanently.

Person banned from taking animals outdoors except when on a lead and properly controlled (report in *Local Government News, March 2005)*

A 54 year-old London Borough of Camden resident became the first person to be banned by an anti-social behaviour order from all council parks in the borough after terrifying park users by failing to control his aggressive Rottweiler dog. In addition to the park ban, the resident is prohibited from taking any animal outside his home unless he exercises proper control and, in the case of the dog, keeps it on a lead. The court, in order to prevent the problem being displaced to other areas, also banned the man from acting in a way that causes or is likely to cause harassment, alarm and distress anywhere in England and Wales.

The anti-social behaviour order, which last for two years, was applied for jointly by the local authority and the police.

Note: A consultation document '*Tackling Anti-social Tenants*' was launched jointly by the Home Office and the Department of Transport, Local Government and the Regions on 2 April 2002. As well as restating existing powers that are available to social landlords, the consultation paper proposed increasing landlords' powers to end tenancies for anti-social behaviour and enforcing transfer to alternative accommodation. Other proposals included permitting registered social landlords to apply for anti-social behaviour orders. Furthermore, the Law Commission's Consultation Paper '*Renting Homes 1: Status and Security*' published in April proposed a legal duty be imposed on local authorities and registered social landlords to combat anti-social behaviour. It also favoured social landlords being able to obtain a summary order for possession just by showing the relevant notices have been served on tenants. This all reflects a punitive approach to tackling anti-social behaviour. However, there is, inevitably, a balance to be achieved between enforcement mechanisms and good housing management and investment in measures that discourage anti-social behaviour.

- **measures to tackle youth offending** (including youth offending teams, child curfew schemes which apply to children under 10, truanting where police can return children to school, parenting orders requiring parents to control their children, child safety orders to protect against involvement in crime, and reparation orders requiring compensation to the victim or the community);
- **sex offenders orders** (can be applied for if the public could be at risk from a sex offender);
- **new powers to strengthen powers against racism** (there are new offences, including racially aggravated assault, criminal damage, public order offences and harassment. Home Office Statistics for 2000 confirm that there were 11,000 of these offences recorded by the police between April 1999 and September 1999); and
- **drug treatment and testing orders** (orders for treatment can be imposed on an offender aged 16 or over).

(g) Police Reform Act 2002

The **Police Reform Act 2002** extended the anti-social behaviour orders introduced by the **Crime and Disorder Act 1998**, to:

- enable the courts to make orders irrespective of the local government area in which the initial acts of anti-social behaviour were carried out;
- include registered social landlords and the British Transport Police on the list of relevant authorities able to apply for orders;
- enabled relevant authorities to apply to the county court in certain circumstances for anti-social behaviour orders;
- enable criminal courts to make an order prohibiting a defendant from doing anything described in the order where the defendant has been convicted of an offence committed after the coming into force of the section; and
- add the power for courts to make interim orders before the full application process is complete, if the court considers it just to do so.

(h) Anti-Social Behaviour Act 2003

Continuing the recurring theme of the Government's proposals since 1997 to tackle anti-social behaviour, the Government published a White Paper *'Respect and Responsibility – taking a stand against anti-social behaviour'* (Command 5778) on 12 March 2003. It reviewed the Government's actions to date and set out its next steps for dealing with the problem.

The provisions of the **Anti-social Behaviour Act 2003**, which came into force on 30 June 2004, have the potential to make a major impact on the quality of communities and the legal status of social tenants. The housing-related provisions are contained in Part 2 of the Act. However, other relevant provisions are contained in:

Part 1 Provide for the closure of 'crack' houses.

Part 6 Include extensive powers for responding to environmental nuisance.

Part 9 Extends the policing powers of social landlords and local authorities by the provision of an enhanced Anti-social Behaviour Order regime and by the provision of powers of arrest that can be attached to injunctions under s.222 of the **Local Government Act 1972.**

It will be seen that the Act is a continuation of the strategic approach to anti-social behaviour that was established by the **Housing Act 1996**. In particular, it provides for:

- the imposition of duties to enhance the management responsibilities of social landlords relating to anti-social behaviour.
- the reduction of security of tenure for anti-social tenants.
- structuring the court's exercise of discretion.
- a robust and flexible injunction regime that is available to local authorities and social landlords.

Each of these provisions is summarised below.

i. **Enhanced management responsibilities** - Section 12 of the **Anti-social Behaviour Act 2003** (ASBA) inserts a new s.219A in the **Housing Act 1996** (HA96), which imposes a new statutory duty on social landlords (local authorities, housing action trusts and social landlords) to prepare, review and publish policies and procedures for dealing with anti-social behaviour. Guidance on the content of such policies will be issued by the Secretary of State and the Housing Corporation.

ii. **Reduction of security of tenure** - Sections 14 & 15 of the ASBA amends s.82 HA96 and inserts ss.6A & 20B in the **Housing Act 1988** and s.82A in the **Housing Act 1985** to create a new form of tenancy called a demoted tenancy. The *Demoted Tenancies (Review of Decisions)(England) Regulations 2004 SI No. 1679* came into force on 30 July 2004. The regulations govern the procedure to be followed when reviewing a decision to seek a demotion order and are similar to that under the introductory tenancy regime. As a

result, local authority and social landlord tenants, following anti-social behaviour, can be demoted from a secure tenancy to a 'demoted' tenancy or from an assured tenancy to a 'demoted assured shorthold tenancy. This means that the principle behind introductory tenancies is available during the life of a tenancy. As such, it is less severe than eviction. Also, through the removal of the right to buy and other rights., provides added incentives for tenants to improve their behaviour.

Landlords must serve notice before applying for a demotion order (s.6A(7), s.83(4A) & s.83(5) HA96, as inserted by the ASBA). However, the court can only grant the order if the tenant or tenant's visitor has used the premises for illegal purposes or has behaved in a way which is capable of causing nuisance or annoyance to any other person. Also, the court must be satisfied that it is reasonable to make the order (s.82A(4)(b) & s.6A(4)(b), as inserted by the ASBA). The demotion tenancy for local authority or Housing Action Trust landlords is, in effect, an introductory tenancy with detailed possession terms. An assured shorthold tenancy is the demotion tenancy if the landlord is a housing association.

It will be interesting to see just how much the demotion order power is used, especially by housing associations, and whether it is used in favour of taking possession proceedings or holding a suspended possession order.

iii. **Structuring the court's exercise of discretion** - A procedural refinement to the court's decision on the reasonableness of granting a possession order has been introduced by s.16 ASBA, which inserts a new s.85A into the **Housing Act 1985** and a new s.9A into the **Housing Act 1988**. The sections require the court to consider the past impact of anti-social behaviour on other people, the likely continuing effect of the nuisance, and the likely future effect of any repetition of the conduct when considering whether it is reasonable to make an order for possession. However, the court's structured discretion does not apply to decisions about the reasonableness of demotion orders.

Predicting the extent of the meaning 'effect' is difficult, but, as well as including the psychological impact of conduct, it could extend to economic and social behaviour.

iv. **Injunction regime** - Section 13 of the ASBA repeals ss.152 & 153 of the HA96 and provides the follow three types of injunction to use in responding to tenants' anti-social behaviour.

- *Anti-social behaviour injunction (s.153A HA96)* - the injunction is similar to the injunction originally provided by s.152 HA96, but is enhanced to cover a wider range of conduct, cover a wider range of landlords (local authorities, housing action trusts and social landlords), and to cover a wider range of victims.
- *Injunction against the unlawful use of premises* - the original injunction introduced by s.152 HA96 could only be applied if the premises used for immoral or illegal purposes involved violence and a significant risk of harm to relevant persons. Now, under s.153B HA96, an injunction is available against unlawful use of premises. Powers of arrest and exclusion orders are also available where the conduct involves violence, threats of violence, or a significant risk of harm to the range of victims provided in the anti-social behaviour injunction.
- *Injunction against breach of tenancy agreement* - this injunction, introduced by s.153D HA96 can be used to restrain anti-social behaviour conduct where the tenant or someone else that the tenant is 'allowing, inciting or encouraging' is behaving in such a way to cause nuisance or annoyance to anyone. Such behaviour would be a breach or anticipated breach of his or her tenancy agreement. This means that the injunction can be obtained prior to the breach on the basis of conduct of causing the same. Again, powers of arrest and exclusion orders are available.

There is little doubt that the provisions of the **Anti-social Behaviour Act 2003** have provided landlords with enhanced means of responding to tenants' anti-social behaviour.

1.4 Essential guidance relating to anti-social behaviour

Section 218A(7)(a) of the **Housing Act 1996** requires every local housing authority and housing action trust (HAT) to have regard to guidance, issued by the Secretary of State, in formulating policies and procedures to tackle anti-social behaviour. In August 2004, the Secretary of State's code of guidance, *Anti-social behaviour: policy and procedure,* was published by the Office of the Deputy Prime Minister (ODPM) and is available at www.odpm.gov.uk.

A parallel provision, contained in s.218A(7)(b)**Housing Act 1996**, requires registered social landlords (RSLs) to take account of statutory guidance from the Housing Corporation when drawing

up their policies and procedures. The Housing Coporation's guidance *Statutory housing management guidance on policy and procedures on tackling anti-social behaviour,* set out as an attachment to HC Circular 08/04, was also published in August 2004 and is available at www.housingcorplibrary.org.uk.

Additional guidance, in the form of factsheets, to help housing authorities and others in using the provisions of the **Anti-social Behaviour Act 2003** was published by the Office of the Deputy Prime Minister in October 2004,m namely:

- The **Anti-social Behaviour Act 2003** - Part 2;
- Housing injunctions available under the **Housing Act 1996**;
- Demotion orders; and
- Possession proceedings.

2. Remedies

As you will now appreciate, there are a number of legal remedies available to social landlords to help overcome anti-social behaviour. They come from a variety of sources and are best used in a co-ordinated way within an overall strategy for dealing with incidents of anti-social behaviour. The individual measures can be grouped under:

- Remedies available to the landlord.
- Powers of local authorities.
- Powers of the police.
- Individuals' legal remedies.

We will now consider each of these groups of remedial measures.

2.1 Legal remedies available to the landlord

(a) Injunctions

Injunctions may be used as effective emergency remedies to stop the worst forms of harassment and neighbour dispute. You will remember that in Block HL.101 sub-section 1.2.(a) we considered legal and equitable remedies. To recap:

- An injunction is a discretionary equitable order issued by the court.
- Injunctions are equitable remedies, and the law is based on case law rather than statute law.

- Injunctions require one of the involved parties to do or not to do something, e.g. the landlord must carry out repairs, or the tenant must not play loud music during the night.
- If the injunction is breached, it is a contempt of court and is punishable by a fine or imprisonment.

The various forms of injunctions available are summarised below:

- **ex parte injunction:** used in an emergency and granted for a limited time until a hearing date is fixed by the court (it is granted on the evidence of one party without the other party being present);
- **interlocutory (interim) injunction:** can be obtained within two days and is particularly useful in cases of racial harassment or neighbour disputes (obtained before the hearing of a case and last until the final hearing);
- **substantive (perpetual) injunction:** granted following the final hearing in court.

As well as there being different *forms* of injunctions, there are different *types* of injunction, namely:

- **prohibitory injunction:** requires someone to refrain from doing something.

  In *Tower Hamlets LBC v Long* [1998] 12 June (unreported), the council obtained an injunction restraining the defendant from causing nuisance or annoyance to, or threatening or otherwise intimidating, other residents in his close. He complied for nine months, but then began a personal vendetta against a neighbour he thought was a paedophile. It involved shouted abuse, threats of violence and spreading of rumours. He was committed to prison.

- **mandatory injunction:** requires someone to perform a specific act, e.g. in the case of *Sutton Housing Trust v Lawrence* [1987] it was to prevent a tenant from keeping a dog, which was forbidden by the tenancy agreement.
- **undertakings** can be given by the defendant instead of an injunction being granted. This takes the form of a promise to the court to comply with the order asked for, and has the same effect as an injunction.

Note: An injunction can occasionally be obtained before any nuisance or trespass has occurred. In the case of *Patel v W.H. Smith* [1987], *Times*, 16 February, the Court of Appeal held that the landowner was entitled to an injunction preventing trespass, even where acts complained of caused no harm.

As detailed in 1.3(h) 'Anti-social Behaviour Act 2003', the **Housing Act 1996**, as amended by the **Anti-social Behaviour Act 2003**, made significant changes in widening the granting of injunctions, as well as associated powers of arrest and exclusion, to deal with anti-social behaviour. These powers, as well as being available to local authority landlords, are now available to housing action trust and social landlords to use where anti-social behaviour affect people living and working within their communities.

As the main provisions of Part 2 of the **Anti-social Behaviour Act 2003** only came into effect on 30 June 2004, related case law has yet to develop. However, there has been a considerable amount of case law relating to the seeking of injunctions under the original provisions of the **Housing Act 1996**. This case law often served to highlight the limited powers then available. You should also be aware that care must be taken to ensure that there are the correct legal grounds for applying for injunctions, or any other course of action. The following two cases illustrate how such errors can occur.

Power of arrest attached to an injunction

In *Braintree DC v Clark* [1998] 6 CL 4, CA, the council obtained an injunction to restrain the defendant's anti-social behaviour and the court attached a power of arrest. The police later arrested the defendant under that power of arrest and the defendant was committed for contempt of court.

(Note: The committal was wrongly based because the Housing Act 1996 had not then come into force. Nevertheless, the Court of Appeal held the contempt must stand and the defendant had to serve seven days imprisonment*)*.

Injunction disallowed because of possession order

In *Medina HA v Case* 13 December 2002, the court made an outright possession order on the grounds of breaches of the terms of Ms Case's tenancy. The judge also concluded that she would carry on behaving anti-socially and granted the landlord an injunction restraining the tenant from entering the vicinity of the street, where the property was situated, for five years. ms Case appealed against the injunction on the grounds that the judge had no power to make such an order after the tenancy had been terminated by the possession order.

The Court of Appeal allowed the appeal. The basis for the landlord's application for the injunction was the contract for the tenancy agreement. The granted injunction was to prevent future breaches of the agreement. once the contract had ended, as a result of the possession order, the landlord had no right to be protected. The Court of Appeal set aside the injunction.

Self Test 7

1. *Injunctions are legal remedies.*

   TRUE? or FALSE?

2. *Injunctions can never be granted unless some harm has already been done.*

   TRUE? or FALSE?

3. *An undertaking given by the defendant in court proceedings has the same effect as an injunction, and the defendant can be jailed for contempt of court if the undertaking is breached.*

   TRUE? or FALSE?

4. *Injunctions can be used as a quick emergency remedy.*

   TRUE? or FALSE?

Now turn to the Answers at the end of the Block.

(b) Breach of tenancy conditions

You will recall that in Block HL.102 *(sub-sections C4 'secure tenancies' and C6 'assured tenancies'*), we considered grounds for possession for breach of tenancy agreements. Ground 1, *'rent arrears, or other breach of the condition of the tenancy'* of Schedule 2 of the **Housing Act 1985** and Ground 12, *'tenant has breached (broken) an obligation other than paying rent'*, of Schedule 2 of the **Housing Act 1988** apply to, respectively, secure and assured tenancies. However, clauses specifically prohibiting racial harassment are often included in tenancy agreements by social landlords. This is partly to make it clear that such behaviour will not be tolerated, and partly to avoid the constraints of using Ground 2, **Housing Act 1985** or Ground 12 of the **Housing Act 1988**. Many social landlords include clauses in their tenancy agreements prohibiting various aspects of anti-social behaviour.

Significantly, cases involving a breach of tenancy agreements rarely get into the law reports. This is because County Court possession proceedings do not make new law, except on appeal to a higher court. The following County Court case, reported in *Legal Action*, March 1993, illustrates how neighbour disputes and racial harassment cases involving breach of a specific clause in the Tenancy Agreement, are dealt with.

> ***Birmingham CC v X*[1992] 26 October, Birmingham County Court**
>
> A council tenant who was subject to racist insults, was spat at and her children were assaulted for over two years. The perpetrator was the teenage son of next door neighbours. It was held that (a) the teenager was beyond the control of his parents, (b) the parents were, accordingly, in breach of the terms of the council's tenancy agreement on racial harassment, (c) ground 1 (breach of term of tenancy) was accordingly satisfied and (d) it was reasonable to order possession. The parents were ordered to give up possession on 30 November 1992.

You will also remember from Block HL.102 C4 and C6 that the grounds for possession defined in the Schedules to the **Housing Act 1985** and **Housing Act 1988** cover a wide range of measures, including nuisance and anti-social behaviour. However, when considering possession proceedings, it must remembered that the courts apply a test of reasonableness. As a result, in reaching a decision, they will consider:

- the seriousness of the nuisance;
- tenant's personal circumstances, e.g. including age, children, health;
- interests of other tenants;

- whether tenant will provide assurances about future conduct;
- balance of interests between tenant, landlord and other tenants;
- any other relevant circumstances

An illustration of these considerations can be seen in the following relatively simple case. What is remarkable is that the problem had to be resolved in the courts. However, this is not unusual, especially as people can, at times, become fixed in their views of rights, regardless of tenancy agreements.

Possession proceedings: Ground 2 'Nuisance'

In *Harlow DC v Sewell* [1999] 5 November, CA (reported in *Legal Action*), the Council brought proceedings under Housing Act 1985, Schedule 2, Ground 2 (nuisance and annoyance). The long-standing secure tenant had allowed a large number of cats (38 at the date of the trial) to live in her house. Neighbours complained that the cats defecated in their gardens and elsewhere in the locality. A suspension order was granted on condition that the number of cats be reduced to six or less within six weeks. This was upheld by the Court of Appeal.

(c) Trespass and Nuisance

These common law torts are sometimes used to bring perpetrators of racial harassment and neighbourhood disturbances to court.

Trespass has already been mentioned in connection with injunctions - it is a useful basis for an injunction application, but it is unlikely that it could be used by a landlord against one of their own tenants, unless the act complained of involved trespass on property belonging to the landlord on which the tenant had no right to go.

- Public nuisance is both a common law crime and a tort. It can be defined as *'an unlawful act or omission which materially affects the reasonable comfort and convenience of a class of people who come within the sphere or neighbourhood of its operation'.* An example would be an action based on public nuisance could be taken in the civil courts to deal with a gang of youths causing noise and abuse. This would apply even if they did not live on the estate where the nuisance was caused.
- Private nuisance is a tort and can be defined as *'unlawful interference with the use and enjoyment of a neighbouring property.'* A landlord's ability to take action on a private nuisance is limited by the need to prove:

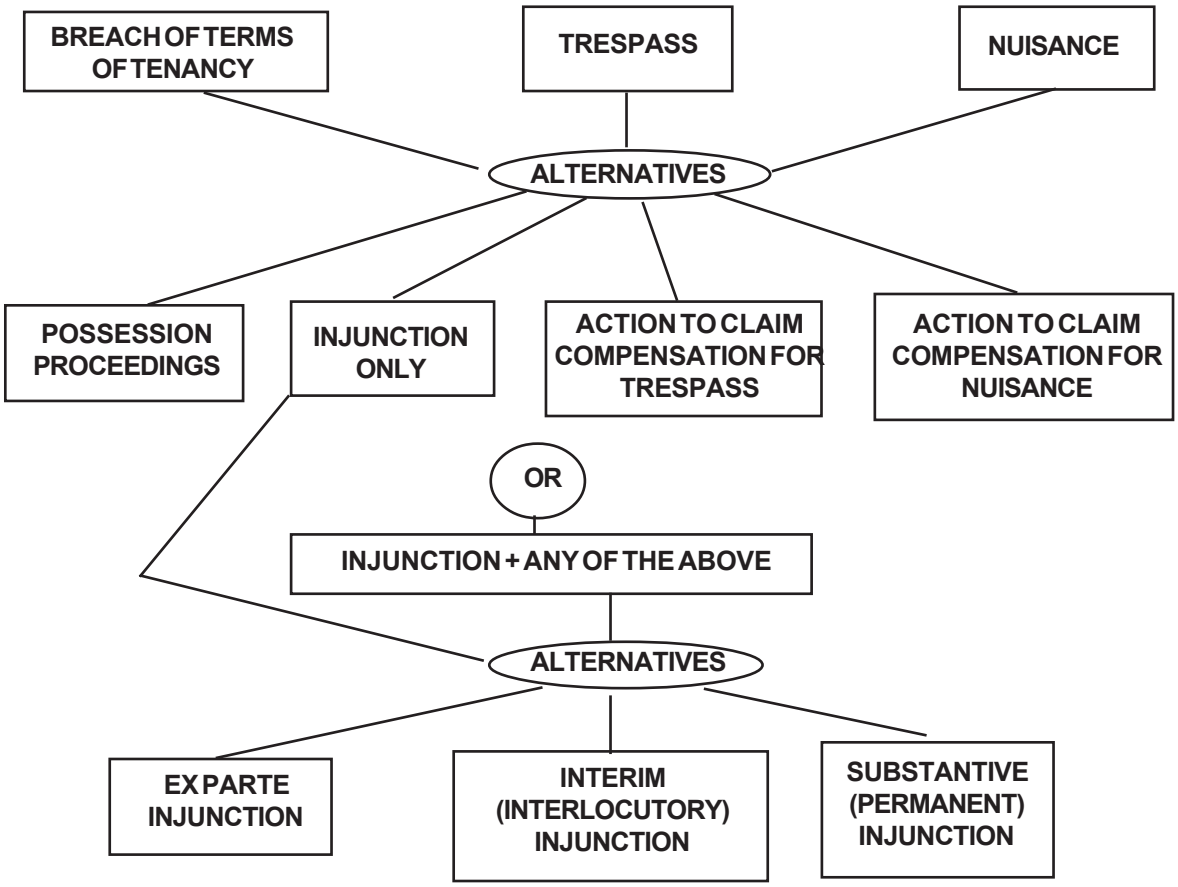
i. a contractual relationship with the person committing the nuisance (any tenant will, of course, have a contractual relationship with their landlord); and that

ii. the landlord and its property are directly affected by the nuisance.

The outcome of an action for nuisance can be: damages (compensation) or an injunction. However, most trespass and nuisance actions are started in order to obtain an injunction, so the substantive case is often not proceeded with once the injunction has been granted.

(d) Which legal option to take?

It can be seen that social landlords have a range of options to choose from in seeking to eliminate anti-social behaviour. The decision is one which should be made in relation to the facts and after discussion with legal advisers. The following diagram illustrates the available options.



2.2 Powers of the local authority (but not as a landlord)

As well as the legal remedies described in 2.1, local authorities have a number of other powers for dealing with nuisance and harassment aspects of anti-social behaviour. These are outlined below:

(a) Local Government Act 1972

The **Local Government Act 1972** includes several useful powers:

s.111 empowers a local authority to do *'anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions'.* In deciding whether to exercise this general power, the general principles of administrative law will apply, so actions taken under this section will be subject to Judicial Review.

s.222 states that *'where a local authority considers it expedient for the promotion or protection of the interests of the inhabitants of their areas, they may prosecute or defend or appear in any legal proceedings and, in the case of civil proceedings, may institute them in their own name.'* This would cover a local authority applying for an injunction to prevent nuisance.

s.235 empowers local authorities to make by-laws *'for the good rule and government of the whole or any part of the district ... and for the prevention and supervision of nuisances therein'.* Housing authorities have power, under **s.23(1)** of the **Housing Act 1985** to *'make by-laws for the management, use and regulation of their houses';* and **s.23(2)** allows them to make by-laws in respect of land held as recreation grounds and in connection with housing. These by-laws must be approved by the Office of the Deputy Prime Minister, but could be effective in preventing open spaces from being used for car repairs, excessive noise, etc.) Breach of by-laws is a criminal offence.

(b) Town and Country Planning Act 1990

Planning authorities can use their powers under the **Town and Country Planning Act 1990** to enforce planning controls. This can be useful where domestic premises are being used for business purposes, or for the commercial repair of vehicles, which are a common cause of nuisance to neighbours.

(c) Other legislation

As well as their general powers, local authorities are expressly empowered by the following statutes to prosecute for certain offences *(where not indicated below, the legislative provisions are outlined in sub-section 1.3 above)*:

i. Protection from Eviction Act 1977

This is commonly used to prosecute private landlords for illegally evicting or harassing their tenants, but the wording of **s.1** does not restrict its use in this way:

> *'... a person commits an offence if she or he, with intent to cause the residential occupier of any premises*
>
> *(a) to give up the occupation of the premises* or *any part thereof or*
>
> *(b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;*
>
> *does acts likely to interfere with the peace or comfort of the residential occupier or members of his household.'*

The Act could clearly be used against anyone who was trying to make life uncomfortable for another tenant.

ii. Environmental Protection Act 1990

Local authorities (and individuals) can take action in circumstances which are *'prejudicial to health or a nuisance'*, defined in **s.79**. It covers nuisance caused by smoke, fumes, gases, accumulations and deposits of any material, animals, and noise. This Act could be particularly useful in dealing with tenants whose behaviour in their dwelling, perhaps because of mental health problems, causes nuisance to their neighbours. It does not result in eviction, but Abatement Notices provide a method of enforcing reasonable behaviour.

iii. Control of Pollution Act 1974

This can be a useful weapon in some situations of nuisance and harassment, as the Act makes it a criminal offence to dump household waste on any land.

iv. Noise Act 1996

This gives local authorities the option to introduce new powers for dealing with night-time noise *(see sub-section 1.3)*.

2.3 Powers of the police

Some local authorities have developed very effective links with the police to ensure that prompt and appropriate action is taken against the perpetrators of racial harassment and nuisance to neighbours. There is a very wide range of prosecutable offences:

- **Common law criminal offences**, for example assault, nuisance, and breach of the peace.
- **Statutory criminal offences**: there is a huge range of these which can be used to punish individuals for nuisance, harassment, etc., including:
  - **Criminal Damage Act 1977**
  - **Refuse Disposal (Amenity) Act 1978**
  - **Malicious Communications Act 1984**
  - **Public Order Act 1986**
  - **Road Traffic Act 1988**
  - **Motor Vehicle Act 1986**
  - **Road Traffic Act 1988**
  - **Dangerous Dogs Act 1991**
  - **Protection from Harassment Act 1997**

2.4 Commentary

It will be seen from this sub-section that the legislative provisions for tackling anti-social behaviour often overlap. There is now a statutory duty on social landlords (local authorities, social landlords and housing action trust landlords) to prepare, review and publish anti-social behaviour policies (see 1.3(h) **Anti-social Behaviour Act 2003**). Also, there is requirement that local authority housing and other departments should liaise closely with the police and other agencies to develop crime control strategies. What is important is not to just penalise individual tenants, but to solve the broader problem. This requires the incorporation of preventative measures into mainstream management strategies by local authorities and housing associations. In turn, there is a need for a range of supportive measures relating to education, drugs, alcohol and social issues.

Housing Corporation's Response

The Housing Corporation has issued various guidance documents to Registered Social Landlords on their responsibility to manage anti-social behaviour. In 1999 it published the *'Fourth addendum to the Social Housing Standards for General and Supported Housing'*, in which landlords are advised to:

- record the reported number of anti-social behaviour incidents;

- establish a lettings policy which meets priority housing needs and ensure that all new lettings contribute towards achieving stable communities and sustainable tenancies;
- work with local authorities to obtain adequate information on applicants who have been nominated from the statutory register so that they will be able to meet regulatory requirements;
- have a policy and procedures that will allow them to take reasonable action to recover homes where residents, their families or visitors have been involved in anti-social behaviour;
- co-operate and communicate with the police service, youth offending teams, social services and other local agencies, and enlist their support in taking preventive and remedial action to deal with anti-social behaviour; and
- consult on, and seek the co-operation of their residents in implementing their policies for dealing with anti-social behaviour, and involve residents in resolving local problems.

Subsequently, the Housing Corporation has periodically issued other guidance including *'Not Afraid Now: housing associations making safer neighbourhoods' (2000),* which describes a series of housing association initiatives for preventing and reducing crime, and *'Landlords' Guide to Costing Neighbourhood Warden Schemes' (2003).* These and other good practice briefings and reports can be accessed on the Housing Corporation's website www.housingcorp.library.org.uk.

Further guidanceto help registered social landlords was, as mentioned earlier in E.1.4, issued by the Housing Corporation as a result of the **Anti-social Behaviour Act 2003.** The guidance *Statutory housing management guidance on policy and procedures on tackling anti-social behaviour,* was set out as an attachment to HC Circular 08/04 was published in August 2004 and is available at www.housingcorplibrary.org.uk.

CIVIL LEGAL REMEDIES FOR ANTI-SOCIAL BEHAVIOUR IN SCOTLAND

The legal framework on civil remedies for anti-social behaviour in Scotland is very similar to that in England and Wales. There are occasional differences, for example the power granted to local authorities by the Housing (Scotland) Act 1996 to seek injunctions against anti-social behaviour is more limited than that in England and Wales. This is because the definition of anti-social behaviour is narrower and the injunction may not be granted until a person has used or threatened violence or there is a significant risk of harm. However, in England and Wales an injunction may, in addition, be granted if a person is '*... likely to cause a nuisance or annoyance to a person residing in, visiting or otherwise engaged in a lawful activity in residential premises ...'*.

On 26 June 2003 the Scottish Executive published a consultation document *'Putting Our Communities First: A Strategy for Tackling Anti-social Behaviour'*. The document outlined the Executive's broad strategy and made a range of policy proposals for legislation and other action for responding to anti-social behaviour. This led to the **Anti-social Behaviour etc (Scotland) Act,** which variously came into force during late 2004 and early 2005:

- Part 1 Anti-social behaviour strategies
- Part 2 Antisocial behaviour orders
- Part 6 The environment (re aspects of waste, litter, graffiti)
- Part 7 Antisocial behaviour notices
- Part 8 Housing - registration of certain landlords
- Part 10 Further criminal measures (re community reparation orders, offence of selling spray paint to children, powers of entry, insurance of vehicles)

Local authorities are now able to serve anti-social behaviour notices on landlords where a tenant or visitor has been involved in anti-social behaviour at or in the vicinity of the house. It is intended that the notices will specify the action the landlord must take in countering the offending anti-social behaviour. There is also provision for designating registration areas that have a persistent anti-social behaviour problem. You will recognise a similarity of approach with that adopted in England and Wales by the provisions of the **Anti-social Behaviour Act 2003**. The consistent aim is to:

- Protect and empower communities;
- Prevent anti-social behaviour by working with children and families;
- Build safe, secure and attractive communities; and
- Effective enforcement.

Scotland's first closure order made under the provisions of the Antisocial Behaviour etc (Scotland) Act 2004

In January 2005 Scotland's first closure order was granted by a Scottish Sheriff Court. Part 4 of the **Antisocial Behaviour etc (Scotland) Act 2004** allows the police to issue a closure notice where a senior officer has reasonable grounds for believing a person has engaged in anti-social behaviour on the premises and the use of the premises is associated with what the Act describes as 'the occurrence of relevant harm'. Relevant harm is defined as 'significant and persistent disorder or significant persistent and serious nuisance to members of the public. Closure orders means that premises can be closed for a period not exceeding three months, but this can be extended to a maximum of six months.

The case related to a teenage tenant whose behaviour involved all-night parties and the flooding of the downstairs flat occupied by a 98-year-old war veteran. The police and the local council received numerous complaints and a public meeting was attended by 60 people. Subsequently, a closure order was granted on 26 January 2005 and the teenager was prevented from occupying his house for three months.

F. Law and Disrepair

1. Contextual Introduction

Local authorities have a number of responsibilities regarding both the condition of housing and the health and welfare of occupants. This is a historical role that has developed from remedial measures traceable back to the appalling sanitary, health and overcrowding conditions experienced in the 19th century.

The recent Law Commission Report, *'Landlord and Tenant: Responsibility for State and Condition of Property'* highlighted the high percentage of properties which are unfit for human habitation. The latest published findings are from the English House Condition Survey carried out in 2001 (*the first results from the 2001 survey, which were expected to be published by the Office of the Deputy Prime Minister at the end of 2004, are still awaited*), which showed that 885,000 (compared with 1.5 million in 1996) dwellings, representing 4.2% (compared with 7.5% in 1996) of the housing stock, as being unfit. The most common reason for unfitness is disrepair (46%). Older dwellings are more likely to be unfit, with 10% of the pre-1919 stock being unfit, compared to 1% of the post-1964 stock. The dwelling types with the highest rates of unfitness are terraced dwellings (7%) and converted flats (11%), largely reflecting their age. Detached houses are the least likely to be unfit (1%). Over half of all unfit homes are owner-occupied (54% compared with 58% in 1996), with privately rented homes being proportionately the most likely to be unfit (10%).

The average cost of making dwellings fit is £7,200 (compared with £5,230 in 1996). The survey also indicated that the proportion of dwellings unfit for more than one reason had increased from 1996 (from 38% to 45% of all unfit dwellings). This suggests that the overall improvement has been focused on the 'better' unfits, leaving the behind a harder core of those in the worse condition.

As regards disrepair, over two thirds of dwellings (69% compared with 78% in 1996) have at least some fault in the interior or exterior fabric. However, many of the faults are minor and will cost little to rectify. The exterior features most likely to have faults are the roof and rainwater goods (34%), exterior wall finish (26%) and windows (25%). The highest levels of disrepair are found in the private rented sector and local authority dwellings, and the lowest levels are in the social landlord dwellings.

Note: The English House Condition Survey has been carried out every five years up to 2001. However, it is now being carried out on a continuous basis.

The average cost of making dwellings fit is £5,230. However, 8% of the dwellings were unfit only on one or two items, and could be made fit for only £500 or less. Nevertheless, any deficiency is likely to cause inconvenience and dissatisfaction to owners and tenants alike. The proportion of households in each sector living in unfit dwellings is:

- local authority 6.8%
- owner occupied 5.4%
- registered social landlords 3.8%
- private rented 17.9%

The Housing Green Paper *'Quality and choice: a decent home for all',* which was published in April 2000, committed the Government to securing substantial improvements of housing standards in the public and private sectors. Relevant funds were identified and pledged in the July 2000 Spending Review. The Government's objective is to ensure that every public and social sector home is a 'decent' home by 2010. Furthermore, its publication *'A decent home – the definition and guidance for measurement'*, which was published in July 2001, identified four criteria to be met if a home is to meet the decency standard, namely it must:

- meet current statutory minimum standards for housing;
- be in a reasonable state of repair;
- have reasonable modern facilities and services; and
- provide a reasonable degree of thermal comfort.

The guidance paper can be downloaded from:
www. housing. dtlr.gov.uk/information/dhg/guidance.htm.

You can see how the strategy, which was published in November 2001, is to be achieved by downloading the Department of Transport, Local Government and the Regions' *Neighbourhood Renewal Implementation Strategy'* from:
www.neighbourhood.dtlr.gov.uk/whitehall/impstrat/index.htm.

Registered social landlords are also expected to achieve the same improvements in the quality of their housing stock. This is included as a key objective in the Housing Corporation's corporate strategy for 2001-2004. The expectations of registered social landlords are set out in the Housing Corporation's Circular R3-26/01 *'Decent Home Guidance'*.

Efficient and well-organised local authorities and housing associations carry out repairs promptly. They have procedures for reporting repairs and prioritising them. They also carry out programmes of regular inspection and maintenance of their property. As a result, expenditure on repairs-related tasks usually represents a high proportion of their annual expenditure.

Tenants of local authorities and housing associations have the same legal rights in civil law as tenants of private landlords. In addition, there are remedies available which can result in criminal prosecutions. The alternative and overlapping remedies are somewhat difficult to summarise, but an overview of both types of remedy is necessary before you will be fully aware of the legal duties in terms of:

- maintenance;
- repair; and
- fitness for habitation.

Failure to appreciate the extent of these duties can be expensive for landlords. Part of the reason for failure to meet repairing obligations is lack of money to carry out repairs and planned maintenance. Also, there is a degree of unawareness of the law on disrepair among housing managers, including the fact that tenants may be entitled to compensation for continuing disrepair. As with other housing issues, there are frequent news reports in *Inside Housing* of relevant court cases. There are also regular reports in *Legal Action* of courts ordering social landlords to carry out repairs and maintenance, and to pay compensation to tenants.

In 2002/2003, housing complaints at 37.5% formed the largest number of cases investigated by the Local Government Ombudsman. However, in the period 2003/2004 housing complaints, accounting for 3,550 out of a total of 11,600, reduced to 30.6%. A sizeable proportion of housing complaints relate to inefficiency in getting repairs done. Sometimes the complaints about repairs may be associated with other considerations, such as transfer, as illustrated in the case below.

Westminster City Council (Case 97/A/2389) 7 July 1999

Council housing repairs and transfers

Between August 1995 and March 1998, 'Ms Jay' *(not her real name)* lived in a hostel owned and managed by the City Council. She complained that the repairs to the hostel were not carried out promptly, that the fire alarm was not in working order for a long time, and that security was inadequate. She also complained that the Council delayed in transferring her from the hostel to more suitable accommodation.

The Ombudsman found that the hostel was not suitable for Ms Jay's long-term housing needs and that there had been excessive delays in completing repairs. The Ombudsman found that the Council's maladministration caused Ms Jay a prolonged and serious injustice. He recommended the Council to pay her £2,250 compensation.

There have been several instances where the Ombudsman has severely criticised local authorities for consistently failing to carry out repairs to tenants' homes. Various deficiencies have regularly been identified, including:

- poor recording systems;
- inadequate monitoring to ensure that works ordered were actually carried out;
- long delays;
- misleading explanations given to tenants; and
- no consideration of compensation claims made by tenants.

Tenants are becoming better informed of their housing rights. In part, this is because landlords are keeping tenants informed. Also, private solicitors or law centres are actively advising tenants of their housing rights, which is influencing landlords' attitudes to tackling repairs. One firm of solicitors in the West Midlands has several qualified Environmental Health Officers on its staff. It leaflets estates, alerting tenants to rights on repair, and advertising their services to help enforce them. As a result, many more tenants' complaints are pursued through the courts, which is costly to social landlords, e.g.

> In 1994 a report in *Inside Housing*, 18.11.94 stated that Liverpool MDC's legal expenses for defending repairs cases was estimated to be over £1 million pounds. To this must be added the payments in compensation awarded by the courts.

Court cases are expensive. However, most cases never reach the courts because a settlement is reached, but this still involves compensation. Obviously, the incurred expenditure on legal fees and compensation would be better spent on repairs. To overcome this problem the government, Audit Commission, Institute of Housing, National Federation of Housing Associations, and the Housing Corporation have advised and required social landlords to improve their repairs practices.

This brings us on to the question of enforcement of the law. Unfortunately, the rules that make up the law of repairs are not particularly coherent. There is, too, a question of the division between repair and improvement, upon which some court cases are decided. This is not surprising because repairs will often result in some improvement. Lord Justice Buckley in *Lurcott v Wakely* [1911] 1 KB 905 distinguished between the two by stating:

> *'Repair is the restoration by renewal or replacement of subsidiary parts of a whole. Renewal, as distinguished from repair, is the reconstruction of the entirety, meaning by entirety not necessarily the whole, but substantially the whole subject matter under discussion'.*

We will now examine the common law remedies provided to tenants by the law of contract and the law of tort. Then we will look at the statute law remedies.

2. Civil Remedies in Contract and Tort for Disrepair

Contractual remedies will help when there is an express or implied agreement between the landlord and tenant. However, you will recall from Block HL.102 B1.3 that the usefulness of the law of tort is that it concerns relationships where no agreement exists. It also is applicable where a contractual relationship does not cover the claimed harm suffered by someone. In this Block, we are primarily concerned with landlords and tenants. Nevertheless, the remedies in tort will also benefit an owner-occupier.

2.1 Remedies in contract

(a) Common law rules

Over time, common law rules have developed and become the basis of the civil law remedies for disrepair.

i. When does the landlord's liability to do repairs start?

Under common law, the duty of the landlord to carry out repairs arises when, as held in *O'Brien v Robinson* [1973] AC 912, the landlord comes to know of the disrepair. This knowledge could

be as a result of an inspection, or the tenant may have reported the defect. Alternatively, the landlord may have received the information from another source, for example, a valuation report on a Right to Buy application.

ii. When must the disrepair be put right?

Once the landlord knows of the disrepair, it must be put right within a *'reasonable time'*. What is a reasonable time will vary according to the type of disrepair, and the tenant has to prove that a reasonable time has passed. Under the 1994 Right to Repair Regulations (*Secure Tenants of Local Authorities (Right to Repair) Regulations 1994 S.I. No.133*), there are prescribed periods for the completion of specified types of repair. These will be persuasive precedents for the court in considering what is a 'reasonable time.'

A landlord's duty to repair carries with it an implied licence to enter the premises and do the works involved, but there is a common law requirement that the landlord should give notice of his intention to come in and carry out the repairs. So if a tenant refuses the landlord access to their premises, that tenant cannot later claim that the landlord is in breach of the duty to repair.

iii. When does the tenant have a claim for compensation?

Once the point of 'reasonable time' has passed, the tenant can claim compensation for the disrepair.

iv. How much compensation can be claimed?

The case of *Calabar Properties v Stitcher* [1984] 1 WLR 287 provides guidance on what damages *(compensation)* can be claimed, under three main headings:

- **general damages** to reflect inconvenience, discomfort, distress, and the reduction in value of the tenancy because of the disrepair, which result from the breach of contract;
- **special damages** covering all direct losses resulting from the breach, for example, for extra heating bills, replacing ruined carpets, medical conditions, etc.;
- **aggravated damages** to punish for a particularly serious breach of contract.

The case of *McGreal v Wake* [1984] 13 HLR 107 established that tenants can claim for the cost of redecoration following work, which had been made necessary by breach of the covenant to repair.

v. Payment of rent and accumulated rent arrears?

Tenants can sue their landlords for damages for disrepair. This means that the onus is on the tenant to start the proceedings in the County Court. The tenant will be the Plaintiff in the proceedings, and the landlord the Defendant.

If the landlord starts possession proceedings because of rent arrears, tenants can make a counterclaim *(claim by the defendant)* for damages for disrepair. The counterclaim is heard in court at the same time as the landlord's claim for possession on the grounds of rent arrears. In this situation, the landlord is the Plaintiff, and the tenant is the Defendant. If the tenant's counterclaim is successful, the damages for disrepair will be set-off against the rent due. However, if the court decides that the damages are the same or more than the rent arrears, the effect is that the arrears are written off and the grounds for possession disappear. The case of *Televantos v McCullough* [1990] 23 HLR 412 is a good example of how this works in practice, and sets out the legal arguments in support of the doctrine of set-off.

Under common law rules, the tenant can spend the rent money on doing the repairs herself or himself. However, the landlord would first have to be in breach of any express or implied covenant in the tenancy agreement. The case of *Lee-Parker v Izzett* [1971] 1 WLR 1688 established the following rules:

- the tenant must notify the landlord of the disrepair and give the landlord an opportunity to do the repairs;
- the tenant should then inform the landlord of what they intend to do if the repairs are not carried out, and provide at least two estimates for the work. The tenant should also warn the landlord that the cost of repairs will be deducted from future rent;
- to be completely safe, it would be advisable to obtain a court declaration authorising the repairs; and
- the cost of the repairs can then be deducted legally from the rent due.

Many tenants are tempted to refuse to pay rent when repairs are not carried out by their landlord, but without any attempt to carry out the repairs themselves. This leaves the tenant open to an action for repossession on the grounds of rent arrears. The court might not find it reasonable to grant a possession order if the tenant had been withholding rent because of disrepair. However, as held in *LB Haringey v Stewart* [1991] 23 HLR 557, an outright possession order might still be made if the tenant does not have sufficient money saved to pay off the arrears.

Importantly, tenants are entitled to claim or counterclaim for damages in cases of disrepair. In both cases, the tenant must show that:

- the landlord is in breach of their repairing obligations; and that
- as a result, damage or loss or both has been caused to the tenant; and, if it is a counterclaim, that
- the amount of damages will fully set-off the rent arrears.

The following case from 1995 and noted in *Legal Action* shows how damages for disrepair are calculated in the civil courts, and how these can easily mount up to extinguish arrears of rent.

Brent LBC v Murphy [1995] 10 March, CA

The council claimed possession and a money judgement for arrears of rent of over £13,000. The tenant counterclaimed for damages for disrepair and pleaded a set-off. At trial the council abandoned its claim for possession and £3,858 of the rent claim *(which was a charge for heating which had not in fact been provided).* HHJ Charles QC had found that the tenant had first complained of dampness and a defective central heating system in 1981. The condition of her *home 'became progressively worse and from 1986 onwards was appalling and intolerable'.* The home was so cold and damp that the tenant and her two children had to sleep in outdoor clothes. For part of that time they had had to share one bedroom. He awarded her: (1) damages for discomfort and inconvenience of £1,000 per annum for 1981 to 1986 and £1,500 per annum from 1987 to 1993 (£14,000 in all); (2) damages for loss of value of the premises assessed at 30% of the rent for 1986/87 and 50% from 1988 to 1993 *(leaving the council's rent claim worth only £1,570);* (3) special damages of £19,320 with interest at 13.5% from 1986 to trial. After setting off and extinguishing the rent claim, the tenant had judgement on the counterclaim for £50,004.

The Court of Appeal dismissed the council's appeal. The court could not describe the award as manifestly excessive or wrong in principle.

(b) Breach of contract to repair

A tenancy agreement is a contract between the landlord and tenant. You will remember that in Block HL.102 the activity at the end of sub-section C4.4 included a tenancy agreement for the London Borough of Islington. The agreement, like other tenancy agreements, included covenants or clauses *(terms)* that provided rights and obligations to both landlord and tenants. Under Section 3 of the Islington agreement, the Council has a duty to repair and maintain the property. If the council fails to repair or maintain the property, it is in breach *(broken)* of the covenant and the tenant

can take action through the courts. As well as the express terms included in the tenancy agreement, other terms are implied into the agreement by the common law of statute. We shall now consider what a breach of such terms means.

i. Breach of an express term in the tenancy agreement

Any terms in the tenancy agreement which go beyond common law duties, or duties implied by statute, are enforceable through the civil law courts, e.g. in *Johnson v Sheffield CC* [1994] *Current Law Week*, 18 February, a tenant took the landlord to court over a clause in the tenancy agreement. The clause stated that the home provided by the council would be 'fit to live in'. The court found that it was not fit to live in and awarded the tenant £3,800 damages for a breach of the clause.

ii. Breach of a term implied into the tenancy agreement by common law

It is questionable whether there are any common law covenants which are relevant to disrepair. One, the tenant must behave in a *'tenant-like manner',* includes the tenant doing minor repair jobs like changing washers on leaky taps, or unblocking sinks. This, as held in *Warren v Keen* [1954] 1 OB 15, means that the tenant cannot just expect the landlord to do *"the little jobs around the place which a reasonable tenant would do"*.

The landlord must give the tenant *'quiet enjoyment'*. This provides the right to enjoy his or her home without disturbance by the landlord. Certain types of disrepair, for example, a leaking roof, can count as a breach of this term by the landlord.

iii. Breach of a term implied into the tenancy agreement by the courts

In Block HL.101 sub-section B4.1, we saw from the case of *Liverpool City Council v Irwin* [1976] AC 239 that the courts will imply terms to give 'business efficacy' to the agreement. This was achieved through the use of contract law. As a result, from 1976 onwards, in any situation where the landlord retains control of the 'common parts' of a high rise block, the duty to maintain stairs, lifts, lighting, and communal rubbish chutes in reasonable repair has been implied into tenancy agreements.

(c) Breach of s.11 Landlord and Tenant Act 1985

Section 11 is important for it provides tenants with a remedy for disrepair. It implies in every lease of less than seven years an obligation to:

- to keep in repair the structure and exterior of the dwelling house;

- to keep in repair and proper working order the installations in the dwelling house for the supply of gas, water, electricity, and also those for sanitation and for space and water heating; and
- in determining the standard of repair required, regard should be had to the age, character and prospective life of the dwelling house and the locality in which it is located.

Note: the implied term applies to periodic tenancies, even though such tenancies may last for more than seven years. You will remember from Block HL.101 sub-section C3.2(a) that periodic tenancies run from period to period, whether they be weekly or monthly.

Significantly, the implied term cannot be excluded without the court's permission. It can be used to counterclaim where there is a rent arrears action. Also, as held in *Joyce v Liverpool City Council* [1995] 3 WLR 439, specific performance can result. This is particularly helpful to council tenants who cannot rely on the **Housing Act 1985** unfitness procedures. However, the landlord only has an obligation to carry out a repair when he has notice of the disrepair, as held by the House of Lords in *O'Brian v Robinson* [1973] AC 912. We will now look first at the wording of this statutory provision, and then how the rights given by it can be enforced.

i. What does 'keep in repair' mean?

Again, there is the question of whether what is required is a repair or improvement. It is 'a matter of fact and degree' whether works amount to repair or improvement. The cost of the works relative to the value of the property is particularly relevant in deciding this. In the case of *McDougall v Easington DC* [1989] 21 HLR 310, the tenants argued that a recent major rehabilitation programme on their estate was repair rather than improvement, so they could claim damages for the cost of redecoration. In the case the court identified three separate tests for whether works constitute repair:

1. Do any alterations affect the whole of the structure, or only a subsidiary part?
2. Have the works produced a building of a wholly different character than the original one?
3. What was the cost of the works in relation to the building's previous value, and what is the effect on its value and life expectancy?

If there is no actual disrepair, the tenant cannot rely on s.11. For tenants, this can, at times, be a problem. For example, in the case of *Quick v Taff Ely BC* [1986] QB 809, severe condensation and resultant mould caused damage to decorations and bedding. However, the problem stemmed from the defectively-designed metal windows in the house. The remedy would be to replace the window frames, but this could not be ordered under s.11 as they were not in need of repair.

ii. What is included in the term 'structure and exterior'?

These words have often been argued over in court cases. However, the line seems to be drawn between an element of the building which is a material or significant element in the overall construction*(Pearlman v Keepers and Governors of Harrow School* [1978] QB 56); as opposed to decoration and fittings.

iii. How does s.11(3) work in practice?

You will recall that the standard required by the repairing covenant has to be interpreted by taking into account the age of the dwelling-house, its character, prospective life, and locality. Case law has established that these criteria should be assessed *at the time the tenancy commenced,* not when the claim was made. In the case of *LB Newham v Patel* [1978] 13 HLR 77, the house was in such bad condition that it was unfit for human habitation and scheduled for demolition. The Court of Appeal held that there was no breach of s.11 because the prospective life of the building was very short.

iv. Landlord's need to gain access to carry out repairs

The landlord has a common law right of access to the tenant's premises, but is required to give reasonable notice. However, it is a defence to a tenant's claim if the landlord can show that all reasonable attempts to gain access were made.

2.2 Enforcement of Section 11 Covenant

Tenants need to be aware of their rights in order to seek advice and then enforce them. Primarily, a tenant's main objective will be to ensure that necessary repairs are carried out, but, undoubtedly, any compensation will be welcome. In respect of the repairs, **s.17** of the **Landlord and Tenant Act 1985** provides that the repairing duties under **s.11** can be enforced through a County Court order for specific performance. As discussed on previous occasions, specific performance is an equitable remedy granted at the discretion of the courts. It involves the court issuing an order compelling the landlord to carry out necessary repairs. Under **s.38**, **County Courts Act 1984**, it is also possible to seek an injunction compelling the landlord to carry out necessary repairs. In reality, there is no practical difference between the

outcome of the two remedies. The advantage of applying for an injunction is that it can be listed quickly by the court if a serious disrepair would affect the health of the tenant's household. In contrast, a claim for damages for disrepair will wait weeks for a hearing date.

A breach of a court order for specific performance or an injunction is contempt of court and punishable by a fine or imprisonment. As regards imprisonment for contempt of court, there needs to be someone named on the notice to carry out the repairs. However, in the case of a local authority or housing association, it would be appropriate to include an officer's name. However, if this is not done then a committal to prison for contempt of court cannot be made. In such cases, there would seem to be little alternative than to impose a fine, as can be seen from the following case report.

Penalty for failure to comply with an injunction to carry out repairs

Bloombury v Lambeth LBC [1995] 21 April, Lambeth County Court (*Legal Action* report)
Following contempt of a mandatory injunction to complete remedial works, there was no application to commit because the penal notice was addressed to the 'Mayor and Burgesses' of the council rather than any individual officer or councillor.

HHJ James decided that the appropriate remedy for the admitted breach was a fine. Having heard counsel for the council and witnesses, including the acting Director of Housing, and having been persuaded that a 'new wind' was beginning to blow through the housing department, the judge imposed a fine of £500. He said that were it not for the persuasion of counsel and the calibre of witnesses called, *'that fine might have been ten times larger'.* The council was ordered to pay the costs.

2.3 Remedies in the torts of negligence and nuisance

(a) Introduction

Here we shall look at remedies that are available for disrepair arising as a result of negligence and nuisance, which are both torts. They can both form the basis of a claim for repairs to be carried out. Also, an injunction can be granted by the court to prevent further nuisance or negligence.

Legal terminology

Tort is a civil wrong, legally quite different from breach of contract.

Nuisance is a cause of action which can be used by anyone 'in possession of land', including a tenant, to prevent and claim compensation for any continuing act, omission or state of affairs in one set of premises, which interferes with the claimant's reasonable use and enjoyment of their own property. The scope of the common law duty in nuisance involves doing 'all that is reasonable to prevent risk of damage and injury to a neighbour's property'. (*Leakey v The National Trust* [1981] 1 All ER 35).

Negligence is a cause of action which can be used by anyone who has suffered loss or damage as a result of a breach of the legal duty to take care.

To help appreciate how actions arising from nuisance and negligence apply, we would like you to read the following *Legal Action* (December) report of a housing case that was considered by the County Court in 1994. When you have done this, write down your answers to Activity 6. Then we will jointly work through the likely basis of the tenant's claim.

Dadd v Christian Action (Enfield) HA **[1994] 28 September, Central London County Court.**

A single parent with two children *(aged four and two in 1993)* had rented a two-bedroomed ground floor flat in a converted house from November 1990 to May 1993. Throughout the tenancy, the house was infested with rats which, although they did not enter the flat, could be heard squeaking and gnawing at night. Whenever the infestation was treated with rat poison, carcasses would attract swarms of flies and the rats would return a few weeks later. In addition, there was dampness in the kitchen and the heating and hot water supply was defective.

Judgement was entered in default on a claim for breach of covenant, nuisance and negligence. District Judge Langley awarded general damages of £3,250 (£1,300 pa), damages for diminution in value at £790 pa (40% of the rent), and special damages of £1,950. Total award: £7,476.

Activity 6: Part One

In the case of Dadd v Christian Action (Enfield) HA, what do you think might be the basis of the tenant's' claim under each of the following headings?

1. *Breach of contract:*

2. *Nuisance:*

3. *Negligence:*

Time allocation: 10 minutes

Activity 6: Part One - Response

In considering ***breach of contract,*** *you will remember from your earlier studies in this sub-section that a tenancy agreement may contain express or implied terms. The facts of the case are that the dwelling was infested with rats, the kitchen was damp, and the heating and hot water supply were defective. Clearly, the problems with the kitchen, heating, and hot water arise from disrepair. It is also possible that it was disrepair of the building's structure which enabled the rats to enter. If so, an action for breach of an express term in the Tenancy Agreement, or one implied by common law, or the disrepair covenant implied by* ***s11 Landlord and Tenant Act 1985*** *could be brought in the courts. The action could refer to disrepair of the building which enabled and encouraged the rats to enter, and/or to the dampness in the kitchen and the defective heating and hot water supply.*

Nuisance *is an unlawful interference with people's use of their property, or with their health, comfort and convenience. Here, we are sure you will agree that the presence of rats and related swarms of flies clearly have an affect on the use of the dwelling, as well as being detrimental to the occupants' health, comfort and convenience. This would be the basis of a tort of nuisance claim to the court.*

Negligence*: As indicated earlier, negligence occurs when someone breaches a duty and another person suffers harm or loss. In the illustrated case, the landlord would seem to have a duty to keep the dwelling in good repair. The provided facts would indicate that he has not fulfilled this duty, As a result, the tenants have suffered as a result of the breach that resulted in rat infection and swarms of flies, as well as a damp kitchen, defective heating and defective hot water supply. This then would be the basis of the tenant's claim. In considering the reasonableness of any claim, the courts will take into account the degree of inconvenience and interference, as well as the duration and time of any nuisance.*

Activity 6: Part Two

Think of some more examples of how the common law torts of nuisance and negligence might apply to the housing situation.

Time allocation: 5 minutes

Activity 6: Part Two - Response

When we considered the statutory definition contained in ***s.11 Landlord and Tenant Act 1985****, we saw that, at times, work could be excluded from repair. It is here where an action in negligence or nuisance can ensure that necessary remedial work is carried out. Examples of* ***nuisance*** *might be:*

- *a succession of floods caused by a blocked pipe which does not service the tenant's home; and*
- *infestation of cockroaches from the airducts of a tower block (which is within the common parts for which a landlord is responsible).*

Examples of ***negligence*** *might be:*

- *repair or building work carried out in a careless or negligent manner, causing more damage;*
- *failing to remedy disrepair;*
- *inadequate initial design and construction of the building; and*
- *infestations of rats, cockroaches, or other vermin not being removed in a reasonable time by the landlord.*

Now we will consider statutory remedies for disrepair.

2.4 Statutory remedies for disrepair

So far, we have considered landlords' repairing obligations as a contractual obligation, and as giving rise to claims in tort, based on negligence and nuisance. Importantly, there are also statutory remedies for disrepair where a breach of the imposed duty can be a basis for either damages or an injunction to remedy the situation.

(a) Defective Premises Act 1972

Civil liability may arise under the **Defective Premises Act 1972,** which applies to construction, repair, maintenance, demolition or other work to premises carried out after 1 January 1974 **(s.3)**. It imposes liability on local authorities, housing associations and other organisations, and their architects, builders or other agents. The liability applies if the dwelling is not built in a professional manner with proper materials, or if they do not ensure that such dwellings are fit for human habitation **(s.1)**. This means that the liability applies to both work that has been done and to work that should have been done to make the property fit. For example, in *Andrews v Schooling* [1991] 3 All E 723, the conversion of a school into flats did not have work done to prevent the progress of damp

from the cellar into the bottom flat.

Liability for an omission arises under **s.4(1)** where:

> *'... premises are let under a tenancy which puts on a landlord an obligation to the tenant for the maintenance or repair of the premises, the* ***landlord owes to all people who might reasonably expect to be affected by defects in the state of the premises a duty to take such care as is reasonable*** *in all the circumstances to see that they are reasonably safe from personal injury and damage to their property caused by a relevant defect.'*

You will see from the above quotation that the Act applies only where damage and injury occurs, not to unfitness unless it causes injury. You will also see that the duty also applies to all people who might reasonably be affected by defects, so this, as held in *Clarke v Taff-Ely BC* [1980] 10 HLR 44, can apply to visitors. In the case, the plaintiff was helping the tenant to redecorate and was injured when a defective floorboard collapsed: the local authority was held liable.

Under **s.4(2)**, the landlord's duty arises if he knew or ought in the circumstances to have known of the relevant defect. This is an objective test so, unlike **s.11 Landlord and Tenant Act 1985**, notice from the tenant is not a necessary requirement.

Self Test 8

Answer the following questions for a breach of an express or implied term in the tenancy agreement for disrepair which you have just been reading through.

1. *What notice must the tenant give of the defect or disrepair?*

2. *What part (or all) of the premises does the repairing obligation of the landlord cover?*

3. *Who is covered by these obligations? (In other words, if the obligations are broken, who can sue?)*

Now turn to the Answers at the end of the Block.

Activity 7

Having completed Self Test 7, now answer the same questions in respect of nuisance and negligence.

1. *What notice must the tenant give of the defect or disrepair?*

2. *What part (or all) of the premises does the repairing obligation of the landlord cover?*

3. *Who is covered by these obligations? (In other words, if the obligations are broken, who can sue?)*

Time allocation: 10 minutes

Activity 7 - Response

You probably found this activity a little more difficult than the related Self Test 7. If you did, it was probably because you were still thinking in terms of there being a breach of an agreement. Instead, you need to remember that nuisance and negligence are not breaches of a tenancy agreement, but are some form of action or omissions.

1. *No notice is required.*
2. *Nuisance and negligence applies to all of the housing premises.*
3. *Anyone on the premises who has suffered injury or harm as a result of any defect may sue.*

2.5 Practical issues

In this short concluding subsection on the civil remedies for disrepair, we would like to remind you of some points relevant to potential court actions.

(a) Time limitation for bringing an action in court

You will recall that when considering the law of contract *(see Block HL.102 Section B)*, you were advised that any action arising from a breach of a simple contract had to be brought within 6 years *(a contract made by deed has a period of 12 years)*. This requirement arises because of the provisions of the **Limitation Act 1980**, which also applies the 6 year period to civil tort cases. However, if the claim is for personal injuries, the time limit is three years, which runs from when the person injured:

- knew of the injury;
- knew that it was serious enough to take action;
- knew that it was attributable to the landlord's default; and
- knew who the landlord was.

One question that can arise is whether an action on a tenancy disrepair breach is time-limited by the **Limitation Act**. The test is when the breach took place. If the breach has not been rectified, the tenant will not run into any problems with the Limitation Act. Another important consideration concerns building defects that lie undiscovered for long periods. In the situation of a court action brought in tort, the complainant is given a longer period - up to 15 years - to bring their claim.

(b) Can compensation be gained from each available remedy?

We have seen that sometimes there are a number of civil remedies available to tenants, who have to choose which one to use. Again, another reminder from Block HL.102 is that compensation for a loss can only be awarded once, so it is not possible to succeed in claims based on both contract and tort, for example.

In the next subsection, we will be dealing with criminal cases, and compensation can be awarded in these proceedings as well. There is nothing to stop a tenant from bringing civil and criminal proceedings against their landlord. However, once again, the tenant cannot be compensated twice for the same loss, so compensation ordered by the criminal court would be taken into account when the civil court decides on how much damages to award.

(c) Changes to procedures in the courts

There are two developments in the court process itself which you should be aware of. Firstly, as mentioned earlier in Block HL.101, on 26 April 1999 the financial limit for Small Claims in the County Court was increased to £5,000 from the previous limit of £3,000. Any claim for less than £5,000 is now treated as a Small Claim, which is different from an ordinary County Court action in the following ways:

- there are private hearings for Small Claims in the district Judge's chambers, rather than in open court *(exceptionally, complicated disputes may be heard in open court)*;
- Small Claims follow a more informal process, known as arbitration;
- Community Legal Service Fund *(see Block HL.102 sub-section 4.2)* support is not normally available for Small Claims;
- the costs of most cases will not be paid by the losing party.

It may be that, as a large proportion of disrepair claims will be less than £5,000, fewer Small Claims Court cases will be brought by tenants against social landlords. This is because Community Legal Service Fund support, like the previous Legal Aid, is not available and full costs are not paid by the losing party. However, as we saw earlier, many disrepair claims come to court as a response to possession proceedings, and will not be affected by the Small Claims changes.

The second change relates to Lord Woolf's proposed civil justice reforms included in his report *'Access to Justice'*. This included proposals to speed up possession proceedings. You will remember that we discussed this earlier in sub-section E2.4, and that it is the rent arrears grounds which are most common in possession claims. You will also recall that the possession claim is frequently a device to obtain payment of the rent arrears rather than seeking eviction. However, the government has been undertaking a review of the housing possession procedures as part of the second phase of changes to civil justice. As a result, the new Civil Procedure Rules for housing and land law which came into effect on 15 October 2001 should result in an improved civil justice system that is less confusing, cheaper and quicker for the settlement of housing disputes.

We have seen how complex the civil law can be in relation to disrepair disputes, which means that good legal advice is essential. The court documents will be technical and must be precisely drafted - not normally a task for housing managers. Nevertheless, housing managers are the professionals who have to deal with complaints of disrepair so, consequently, they are best placed to manage the process of repairs so as to minimise the need for court action.

Activity 8

We would like you to reflect on this section, especially the legal basis for landlords' obligations to carry out repairs. Then list below points you would recommend to be included in a procedure for dealing with disrepair.

In approaching this question, it might help to imagine that you are a landlord who owns a house which is let out. Then think about the points you would want to know so as to minimise complaints and disputes. Then think about your social housing organisation and what legal advice might be available.

Time allocation: 15 minutes

Activity 8 - Response

Points you may have included are:

- *the importance of keeping good records of tenants' complaints;*
- *awareness that a 'notice of disrepair' can come from other sources, not just a tenant's complaint;*
- *if nuisance is alleged, make certain whether the state of affairs causing interference to the tenant's premises is coming from common parts or another property belonging to the landlord;*
- *consider whether the tenant's complaint comes within the 'structure and exterior' definition;*
- *is the tenant's claim being made within the Limitation Act time limits?*
- *always remember that it is cheaper to settle a dispute rather than to incur the costs of a court settlement. However, there are times when winning a case can be used to ensure that other tenants are aware that frivolous disrepair claims will not be accepted; and*
- *establish and maintain good liaison links with your legal department, or with the firm of solicitors which your organisation uses.*

3. Powers and Duties for Dealing With Sub-Standard Housing

3.1 Housing conditions and public health

(a) Introduction

To conclude your study of the law and disrepair, you need to know that Parliament has imposed public law duties on local authorities to deal with sub-standard properties generally. This is because the contractual arrangements between landlords and tenants are not adequate to deal with bad housing conditions. Such statutory arrangements have their origins in the poor health and housing conditions of the 19th century, which led to the 'great' **Public Health Act 1875**. The present statutory provisions are contained within Part VI of the **Housing Act 1985** as amended by Part 1 of the **Housing Act 2004**, and the **Environmental Act 1990**. However, it is important to appreciate that the objective of the 1990 Act is to protect public health. As such, the definition of a statutory nuisance contained within the 1990 Act goes much wider than just housing conditions. To some extent, the separate housing and health legislation has led to some confusion. This is because the relationship between the two Acts is often viewed in uncertain terms. In part, this may arise because, unlike the **Housing Act 1985,** the **Environmental Act 1990** can be used against local authorities. Nevertheless, case law has held:

in *Salford City Council v McNally* [1976] AC 379, that the provisions of the **Housing Act** and the **Environmental Act** are cumulative and not mutually exclusive; and

in *R v Kerrier DC, ex.p. Guppy's (Bridport) Ltd* [1975] LGR 55, that action under one Act is not a substitute for action under the other Act.

So you can see that the requirements of the two Acts are separate and equal.

What exactly are the duties which local authorities have under these statutes? The **Housing Act 1985,** as you know from earlier studies *(see Block HL.102 sub-section C1.2)*, puts an obligation on the local authority to *'consider housing conditions in their district'*. In addition, local authorities can respond to requests from individual tenants that their homes are in disrepair. Also, **s.79** of the **Environmental Protection Act 1990** states that every local authority has a duty to cause its area to be inspected from time to time to detect statutory nuisances. Consequently, if a specific complaint is made, they must take *such steps as are reasonably practicable to investigate the complaint.* To assist local authorities with this duty **Schedule 3** of the **Environmental Protection Act** provides powers of entry into premises to investigate.

Part of any confusion over the two Acts arises because of a lack of understanding of their provisions and whether they apply to local housing authorities. For example, what if a local authority officer, in relation to unfitness, is asked to inspect a dwelling which is owned by the local authority? It was held in *R v Cardiff CC, ex.p. Cross* [1982] 6 HLR 1 that the unfitness provisions are not applicable to local authority housing stock. However, if there is a statutory nuisance, the provisions of the **Environmental Protection Act** will apply.

However, there is no reason why a local authority may not inspect a housing association dwelling. Possibly, though, this might cause some embarrassment because of the close relationship that often exists between the two housing organisations.

Local authorities may be challenged by Judicial Review if they fail to take action in respect of unfit premises, or a statutory nuisance. Whether or not the High Court would consider such a decision was contrary to administrative law principles would depend on other possible courses of action open to the local authority.

3.2 Existing provisions under the Housing Act 1985 and intended provisions contained in the Housing Bill 2004

(a) Changes to local authority measures to combat unfitness

The provisions of the **Housing Act 2004**, which received Royal assent on 18 November 2004, has introduced a new system of assessing the fitness of housing. It has replaced the housing fitness regime that was set out in the **Housing Act 1985** and later modified by the **Local Government and Housing Act 1989**, which inserted a new s.604 in the **Housing Act 1985**. The provisions of the replaced system stated that a dwelling was unfit if, in the opinion of the local authority, it fails one or more of the 10 criteria set out in s.604(1) and by reason of that failure is not suitable for occupation. The unfitness criteria contained in s.604 assessed whether a property was:

- *structurally stable;*
- *free from serious disrepair;*
- *free from dampness prejudicial to health of the occupants;*
- *provided with adequate lighting, heating and ventilation;*
- *supplied with a piped supply of wholesome water;*
- *equipped with satisfactory facilities for the preparation and cooking of food, including a sink with a satisfactory supply of hot and cold water;*
- *provided with a suitably located water-closet for the exclusive use of the occupants;*
- *provided, for the exclusive use of occupants, with a suitably located fixed bath or shower and wash-hand basin, each of which was provided with a satisfactory supply of hot and cold water; and*
- *provided with an effective system for the draining of foul, waste and surface water.*

If a local authority identified a property as being unfit, it had a duty to take the most satisfactory course of action by either a repair notice, or a deferred action notice, or a closing order, or a demolition order, or a clearance order. The local authority could also commence criminal proceedings against anyone who failed to comply with any Notice or Order served on them.

A new Housing Health and Safety Rating System

The above test of fitness standard has been replaced by an evidence-based risk assessment process to be carried out using the Housing Health and Safety Rating System with reference to the existence of category 1 or category 2 hazards, which is a new approach to the assessment of risks to health and safety in residential premises. As the new system is a radical departure to the long-established previous approach to maintaining housing standards, as well as appearing more complex, it needs to be explained in a little detail.

Under **s.3 Housing Act 2004**, local housing authorities are required to keep housing conditions in their area under review with a view to identifying any action that may need to be taken *(this provision replaces, with modifications,* ***s.605 Housing Act 1985****)*. Also, under **s.4** of the Act, local authorities are required to use the Housing Health and Safety Rating System in inspecting residential properties if, as a result of their duties or a complaint to an officer, they consider that it is appropriate that the dwellings be inspected to determine whether hazards exist on the premises.

The Housing Health and Safety Rating System does not set a standard, but aims to generate objective information in order to determine and inform enforcement decisions. This is achieved by assessing 29 categories of housing hazard, including factors that were not covered or covered inadequately by the previous housing fitness standards. It provides a single rating for each hazard, but does not provide a single rating for the dwelling as a whole or, in the case of multiple occupied dwellings, for the building as a whole. A hazard rating is expressed through a numerical score within one of 10 bands. Scores in bands A to C are classified as Category 1 hazards, and scores in Bands D to J are Category 2 hazards. The hazards that can be assessed are those associated with or arising from:

Damp/mould growth	Radiation	Noise	Fire
Excess heat/cold	Uncombusted fuel gas	Hygiene	Hot surfaces
Asbestos	Sanitation and drainage	Food safety	Gas entrapment
Biocides	Crowding and space	Water supply	Explosions
Carbon Monoxide etc	Intruders	Falls	Ergonomics
Lead	Lighting	Electrical	Structural

The Housing Health and Safety Rating System assessment is based on the risk to the potential occupant who is most vulnerable to that hazard. For example, stairs constitute a greater risk to the elderly, so, for assessing hazards relating to stairs, they are

considered the most vulnerable group. The very young, as well as the elderly, are susceptible to low temperatures. Consequently, a dwelling that is safe to the most vulnerable to a hazard is considered to be safe for all occupants.

In future, local authorities will base their enforcement decisions in respect of all residential premises on their Housing Health and Safety Rating System Assessments. What this means is that action by local authorities will be determined by a three-stage consideration, namely:

i. the hazard rating determined under HHRS;

ii. whether the authority has a duty or power to act, determined by the presence of a hazard or below a threshold prescribed by Regulations *(Category 1 and Category 2 hazards)*; and

iii. the authority's judgement as to the most appropriate course of action to deal with the hazard.

The enforcement framework

The courses of action available to local authorities where they have either a duty or power to act are similar to what previously existed, namely:

For Category 1 hazards to:

- serve a **s.11 Improvement Notice** requiring remedial works;
- make a **s.20 Prohibition Order**, which closes the whole or part of a dwelling or restricts the number of permitted occupants;
- serve a **s.28 Hazard Awareness Notice**;
- take emergency remedial action under **s.40**;
- make a **s.43 Emergency Prohibition Order**;
- make a **Demolition Order** under subsection (1) or (2) of **s.265 Housing Act 1985**; or
- declare a **Clearance Order** under **s.289 Housing Act 1985**;
- suspend these types of notice.

For Category 2 hazards to:

- serve a **s.12 Improvement Notice** requiring remedial works;
- make a **s.21 Prohibition Order**, which closes the whole or part of a dwelling or restricts the number of permitted occupants;
- serve a **s.29 Hazard Awareness Notice**;
- make a **Demolition Order** under **s.265 Housing Act 1985**; or
- make a **Slum Clearance Order** under **s.289 Housing Act 1985.**

The **Housing Act 2004** retains the existing powers available to local authorities to act in default by an owner or occupant and prosecute any lack of compliance with notices or orders. It also enables local authorities to charge and recover charges for any enforcement action.

(b) Action by an individual

Section 4 Housing Act 2004 retains the complaints procedure contained in s.606 of the Housing Act 1985 so that an occupier can complain to a magistrate that a dwelling house or area may be affected by a category 1 or 2 hazard. If the magistrate is satisfied that this is the case *(usually after a visit),* a complaint may be made to the local authority's appropriate officer. In turn, the officer must then inspect the house or area, and report giving the facts and stating his or her opinion to the appropriate local authority committee.

There is no means of forcing the local authority to take further action other than inspection and the committee report. However, once premises have been found to be affected by either a category 1 or 2 hazard, the local authority must take *'that course of action which is most satisfactory'.*

Comment

You may find it instructive to monitor any comment in the housing press, for the new system appears more complex than the previous fitness standard and may raise a number of concerns over longer-term standards. One concern might be that the provisions will not provide for necessary long-term intervention requirements on a property if enforcement is limited to works that pose an immediate threat to health and safety. Arguably, improvement notices need to be able to deal with aspects of a building, such as disrepair, that may not cause an immediate hazard but will lead to hazards in the

future. Also, it would appear that, as the new system does not aim to calculate actual risk but rather to rank relative risk, then there will opportunities for legal challenge over decisions. It will be interesting to see how the application of the Housing Health and Safety Rating System evolves and, importantly, how case law will develop, especially in relation to the definition of what comprises a hazard and a risk.

3.3 Remedies under the Environmental Protection Act 1990

Another remedy available to tenants is provided by the **Environmental Protection Act 1990** legislation. As the Act replaced Part III of the **Public Health Act 1936** it will not come as a surprise to learn that its objective is to protect public health of individuals. The Act enables action to be taken where there is a statutory nuisance, as defined in **s.79**. The statutory nuisances include premises, vehicles, animals, accumulations, deposits and noise from premises. It will be appreciated that most of these situations are not applicable to housing disrepair. However, most housing disrepair cases rely on one of the two following definitions:

- *any premises in such a state as to be prejudicial to health* or *a nuisance;* or
- *any noise which is prejudicial to health* or *a nuisance.*

It is easier to prove that housing conditions are 'prejudicial to health' than that they are a 'nuisance'. This is because of the way that these terms have been defined by the courts, mainly through cases brought under the old Public Health Act, namely:

> **'Nuisance'** in *National Coal Board v Thorne and Neath BC* [1976] 2 All ER 478, has been held to have the same meaning as public or private nuisance at common law. As a result, the nuisance must affect one property in such a way that the neighbouring property is affected *(this is a private nuisance).* Alternatively, it can be so bad that a whole class *(group)* of people are affected by the state of the nuisance of that one property *(public nuisance).*
>
> **'Prejudicial to health'** is defined in s.79 (7) as *"injurious,* or *likely to cause injury to health".* In the case of *Birmingham DC v Kelly* [1985] 17 HLR 572, it was accepted that mould growth in a flat is prejudicial to health. However, in *Jacovides v Camden LBC [1994] (unreported),* it was held that the tenant had not been able to show beyond reasonable doubt that the noise from the above flat was 'injurious or likely to be injurious' to her health *(The proof of 'beyond reasonable doubt' reflects the fact that breach of the statute is a criminal offence).*

(a) Action by the local authority

Section 80 of the **Environmental Protection Act 1990** provides that if the local authority is satisfied that a statutory nuisance exists, it must serve an Abatement Notice on the person responsible. This person will usually be the landlord. Some landlords have tried to argue that, in these cases, it is the tenant who is the 'person responsible' for the nuisance because, for example, the tenant has failed to use the heating system provided. This argument was successful in D*over DC v Farrar* [1980] 2 HLR 32.

In the case of *GLC v Tower Hamlets* [1983] 2 HLR 54, it was held that a landlord must consider the necessity for ventilation, insulation, and heating, and provide a combination of these factors to make the house habitable for the tenant. However, if the tenant does not use the facilities and the premises continue to suffer from condensation, then the landlord cannot be held responsible.

An **Abatement Notice** requires the person on whom it is served to:

- abate the nuisance; and
- to execute such works and take such steps as may be necessary to abate the nuisance.

A specific timetable for compliance must be given, and failure to comply with an Abatement Notice without reasonable excuse is a criminal offence. An example of the problems that can arise from an unclear notice occurred in the following case.

Noise nuisance case

Network Housing Association v Westminster CC [1994] 27 HLR 189. The local authority had served an Abatement Notice on the housing association, requiring sound insulation work to be done to reduce the amount of noise between two flats in a converted house. The housing association exercised their right to appeal to the magistrates' court, and won the case. The local authority appealed to the Queens Bench division of the High Court, against the magistrates' court decision. At that hearing, Buckley J considered the wording of the Abatement Notice served by the local authority, which was clear in what it expected the housing association to achieve *("airborne sound insulation of not less than 42 decibels"),* but not clear as to exactly what work should be done to achieve this. He said:

"Bearing in mind the risk of exposure to penal sanctions for non-compliance, it is essential that the appellant should be told clearly what works are to be carried out", although *"...a builder's specification, or anything like it, should not be required."*

The case was sent back to the magistrates' court for a decision on whether the Abatement Notice could be amended or quashed.

(b) Action by individual tenants

It will be appreciated that local authorities deal with the majority of statutory nuisances. However, individuals may take action under **s.82** of the **Environmental Protection Act**. The section provides that a magistrate may act on a complaint from a 'person aggrieved by the nuisance'. This has been particularly used by tenants of local authorities against their landlords. The procedure used by an individual against the person responsible for the nuisance is different from that required by a local authority, i.e.

- a warning **notice of intention** to commence proceedings must be sent. In the case of alleged noise nuisances, three days notice is required, but in other cases it is three weeks **(s.86(6) & (7))** *(unlike an Abatement Notice, this notice does not have to specify the works required)*; and
- if still dissatisfied, the tenant can complain to the local magistrates' court that a statutory nuisance exists and has not been abated.

Normally, on evidence of the existence of a statutory order, a summons to attend a court hearing is issued. Once the magistrates' court is satisfied that a nuisance exists, it must make a **Nuisance Order**. The terms of the order will depend on circumstances, including the gravity of danger to the health of residents. In addition, the court may:

- impose a fine not exceeding £2,000;
- prohibit the use of premises not fit for human habitation; and
- in the case of the responsible person not being found, direct the local authority to do anything which the court would have ordered the person to do.

Where a Nuisance Order is not complied with *'without reasonable excuse',* further proceedings can be taken. The court can further fine the defendant, and the fine continues on a daily basis until the requirements of the Nuisance Order have been met.

In practice, Nuisance Orders are often agreed between the parties to the court case by negotiating the extent of the works to be required and the timescale for carrying them out. Magistrates are bound to look at agreed orders and decide if the works are necessary to abate the nuisance. Orders should go no further than is necessary . The case of *Birmingham DC v Kelly* [1985] 17 HLR 572 involved very serious condensation problems, and 'necessary' works were held to include installing double glazing and central heating.

It is also important to define the premises which it is alleged are a statutory nuisance. In the case of *Birmingham DC v McMahon* [1987] 19 HLR 452, a group of tenants brought proceedings against their local authority landlord. They claimed that the large block of flats in which they lived was prejudicial to health, as it suffered from excessive condensation. The magistrates' court issued a Nuisance Order requiring the local authority to carry out works to abate the nuisance in the whole block. However, on appeal, the High Court held that the evidence of nuisance only related to the individual flats, not the whole block, so the work required in the original Nuisance Order was too extensive and could not be justified. In the case, the judge commented:

> *'... the making of an order in relation to the entire block could heavily strain a local authority's finances and disrupt its housing department's programme for years to come. I do not say that such an order could never be made.'*

Activity 9

1. *What is the main advantage to a tenant of using the Environmental Protection Act 1990 to tackle disrepair, in comparison with the civil contract remedy?*

2. *What are the respective objectives of the Housing Act 1985 and the Environmental Protection Act 1990?*

Time allocation: 5 minutes

Activity 9 - Response

A tenant can bring an action under the provisions of the Environmental Protection Act without having to prove that a landlord is in breach of repairing obligations. As such, it is particularly useful in condensation cases. Section 79 refers to 'the premises' - no problems over definitions of 'structure and exterior'.

*The **Housing Act 1985** provisions are concerned with the condition of dwellings, whereas the objective of the Environmental Protection Act is to protect public health.*

(c) Commentary

We have considered a range of civil and criminal remedies for disrepair, including the different provisions under the **Housing Act 1985** and the **Environmental Protection Act**. However, it should be remembered that the requirements of the two Acts are separate. As a result, remedial action under one Act will not necessarily satisfy the requirements of the other Act.

You will also remember that one of the features of civil court remedies for disrepair is the award of damages. In this last section concerning the Environmental Protection Act, you will have noted that proceedings under **s.**82 are criminal proceedings. You need to be aware that under **s.35** of the **Powers of Criminal Courts Act 1973**, compensation may be awarded. This usually occurs where the power to make a civil order is not available. However, as held in *Davenport v Walsall MBC* [1995] 28 HLR 754, the absence of a civil remedy does not mean that compensation should be made. Compensation up to £5,000 can also be awarded in the magistrates' court under the provisions of the **Criminal Justice Act 1991.**

In conclusion, statutory nuisance proceedings have not been overly popular with local authorities because of their misuse by some lawyers and community workers. There was criticism that reports submitted by solicitors extended or exaggerated tenants' complaints. This view was reported by research entitled *'The use of Section 82 of the **Environmental Protection Act 1990** Against Local Authorities and Housing Associations',* which was completed in 1996 for the Department of the Environment. The research also recommended that social landlords should develop more effective response procedures to disrepair complaints, and that s.82 should be amended to:

Summary

1. **Tenants can take civil action against their landlord over the following:**
   - **breach of an express repairing covenant in the tenancy agreement itself;**
   - **failure to repair the structure or exterior of the premises or the common parts (s.11 Landlord and Tenant Act 1985);**
   - **failure to repair, or maintain in proper working order, installations for heating and the supply of water, gas, electricity and sanitation (s.11 again);**
   - **failure to take reasonable care of the tenant and their property to prevent injury or damage (s.4, defective Premises Act 1972);**
   - **negligence in construction of the dwelling, performance of repairing works, treatment of infestations, etc.;**
   - **nuisance, where the disrepair is caused by a problem emanating from property retained by the landlord, e.g. neighbouring flat, or common parts.**
2. **Tenants can set off rent due or rent arrears against the cost of repairs which are the landlord's responsibility, or against damages to compensate the tenant for the landlord's breach of repairing obligations.**
3. **The local authority is able to take action against other social landlords whose property is in disrepair under the Environmental Protection Act 1990 and the Housing Act 1985, but cannot serve notices on itself.**
4. **An individual tenant can use s.2 of the Environmental Protection Act to bring the matter to the magistrates' court, or s.606 of the Housing Act 1985 to get a magistrate to inspect the premises and force action by a local authority landlord.**

G. Anti-Discrimination Law

1. Discrimination

1.1 Introduction

You will be aware from the media of various well-publicised court actions relating to various forms of alleged discrimination, particularly in relation to employment, for example, people not being offered employment or promotion or housing accommodation because of their sex or race, or women being sacked because they are pregnant. Such cases are well-publicised from time to time. Unfortunately, discrimination takes many forms, and there is plenty of evidence to demonstrate that groups of people are disadvantaged because of unfounded prejudices. Unfair discrimination is mainly based on colour, race, sex or disability. However, discrimination also occurs on the basis of sexuality, age, religion, mental illness, criminal records, and, more recently, because of illness and infections.

The disadvantaged have only limited rights at common law. As a result, Parliament has introduced legislation to provide rights to certain disadvantaged groups and prohibit certain forms of discrimination. Apart from public pressure, the change has occurred because of international obligations arising from conventions and treaties, for example, the **Universal Declaration of Human Rights 1948**, and the **European Convention on Human Rights 1950**. Membership of the European Union has been particularly influential, especially in relation to the law relating to sex discrimination. This influence is illustrated below.

Sex discrimination

In *Marshall v Southampton & S.W. Hants Area Health Authority* [1986] QB 401, a female dietician challenged the Health Authority's policy that permitted men to retire at 65 years of age, but required women to retire at 60. Under British legislation this was acceptable. However, it was held by the European Court to be in breach of the European Union's Equal Treatment directive. This decision led to the **Sex Discrimination Act 1986** which equalised the retirement ages of men and women.

In relation to social housing organisations, their staff, and their tenants, Discrimination is likely to occur in relation to:

- employment, where, on the grounds of race, sex or disability, a person is discriminated against in respect of recruitment, training, promotion, working conditions, redundancy, or retirement; and
- housing, where, on the grounds of race, sex or disability, a person is discriminated against in respect of housing allocation, the type or standard of dwelling, or in relation to benefits, services or facilities.

These are the two areas that we will be examining shortly, but first there is a need to explain the relevant law within which social housing organisations and their staff must work.

1.2 Key anti-discrimination legislation

Section 1 of the **Disability Discrimination Act 1995** defines 'Disability' as someone having:

> *'...a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities.'*

This does not include addiction to alchol, drugs or other substances, which, for purposes of the Act, do not amount to impairment.

Note: A new Disability Discrimination Bill, which was introduced into the House of Lords, will, when enacted, amend the definition of 'disability' in s.1 ***Disability Discrimination Act 1995*** *to include those diagnosed with HIV, multiple sclerosis and certain forms of cancer.*

- the **Race Relations Act 1976**, which applies to Great Britain and makes direct or indirect discrimination against a person on the grounds of colour, racial, ethnic or national group unlawful. On 9 April 2001, the provisions of the **Race Relations (Amendment) Act 2001** introduced the statutory requirement that public institutions, such as the police, prisons, hospitals and the government, must monitor the ethnic make-up of its workforce. Also, such institutions are to have and apply policies and services on the grounds of racial equality.
- the **Religion & Belief Regulations and Sexual Orientation Regulations 2003**, which implemented the parts of the European General Framework Directive for Equal Treatment 2000/78/EC, which requires member states to introduce legislation to deal with discrimination on the grounds of religious and sexual orientation.

Note: ***Religion or belief*** *means any religion or similar philosophical belief. However, it does not include political and moral beliefs.*

Sexual orientation*, means an orientation towards persons of the same sex, persons of the opposite sex, or persons of the same sex and the opposite sex. However, it does not include paedophilia.*

- the **Disability Discrimination Act 1995,** which applies to Great Britain, introduced new measures and rights aimed at ending discrimination faced by many people with disabilities. These rights apply to those areas relating to:

  goods, facilities, and services;

  employment;

  land and property;

  education; and

  transport.

Proposed Commission for Equality and Human Rights

On 12 May 2004 the Government published a White Paper, *Fairness for all: a new Commission for Equality and Human Rights*, setting out proposals for a single equality body to replace the existing Commission for Racial Equalities (CRE), Equal Opportunities Commission (EOC) and Disability Rights Commission (DRC). It is proposed that the new Commission for Equality and Human Rights (CEHR), which will become fully operational by 2007, will take over the functions of the three existing bodies, as well as taking responsibility for new areas of equality including religion and sexual orientation. The CEHR will have responsibility for encouraging awareness of good practice in equality and diversity, and will work for the elimination of unlawful discrimination and promoting understanding.

Note: The government's support for a single equality commission is welcome, but falls short of calls for a Single Equality Act that would simplify and encourage a level of consistency in this complex area.

2. Extent of Anti-Discrimination Law

2.1. Sex and racial discrimination

(a) Context

The **Sex Discrimination Act 1975** and the **Race Discrimination Act 1976** make it unlawful to discriminate on sex, marital, or racial grounds, and define three forms of discrimination:

Direct discrimination arises where one person treats another person less favourably on sexual, marital or racial grounds than any other person, e.g. in *Johnson v Timber Tailors (Midlands)* [1978] IRLR 146, discrimination was held where a black Jamaican applied three times following three advertisements and was told each time that the job was filled;

Indirect discrimination is treatment that may be equal insomuch it applies to employees of different racial groups, but is discriminatory in its effect on one particular racial group, e.g. in *Price v Civil Service Commission* [1978] ICR 27, the plaintiff alleged indirect discrimination on the grounds that fewer women than men could comply with the qualifying age group of 17 to 28 for an executive officer grade. Indirect discrimination was held because many women between the required ages would be likely to be bringing up children; and

Victimisation is less favourable treatment on the grounds that the person has done a protected act, namely making a complaint under the Acts. The objective is to ensure that people are not discouraged from making complaints for fear of reprisals. In *Aziz v Trinity Street Taxis* [1988] 3 WLR 79, a taxi driver made secret tape recordings of conversations to help prove a claim of victimisation. As a result, he was expelled from the association of taxi drivers and claimed victimisation. The Court of Appeal held it was not victimisation, even though the recording was a protected act. He was dismissed for a breach of trust in making the recordings not because he had made them for judicial proceedings.

(b) Sexual and racial harassment

Sexual or racial harassment is not mentioned in the legislation. However, it amounts to the less favourable treatment of someone on the grounds of sex or race. Arguably, then, it amounts to direct discrimination. A 1991 European Commission recommendation stated that sexual harassment was a breach of the Equal Treatment directive. The Scottish Court of Sessions, in *Porcelli v Strathclyde Regional Council* [1984] ICR 564, considered such form of harassment as direct discrimination. (In the case a female school technician was driven from her job by a campaign of vindictiveness by two male colleagues).

Sex discrimination and victimisation case

The facts in ***St Helens MBC v Derbyshire and 38 others [2004] IRLR 851*** were that the claimants were dinner ladies who brought a claim seeking equal pay at a time when a large number of other claims brought by others had been settled. Shortly before the employment tribunal hearing, the employer sent a letter to the catering staff stating that the costs of litigation and any pay rise that was decided would mean that the resultant increase would make the price of school meals unviable. As a result, only a very small proportion of the existing workforce would be required. The claimants considered this to be victimisation and issued further proceedings. A first employment tribunal found against the claimants, but this was overturned on appeal and remitted to a further employment tribunal that found in their favour. The employer claimed that as there was not a direct threat in the letter it could not, in law, amount to victimisation. However, the employment tribunal did not accept this, as the letters were capable of amounting to victimisation, and there was no need for the claimants to prove a direct threat to show that their treatment was less favourable.

You should also be aware that under **s.41 Sex Discrimination Act 1975** and **s.32 Race Relations Act 1976**, employers are liable for the acts of their employees done during the course of employment. This applies whether or not the employers knew or approved of committed acts. In *Jones v Tower Boot Co.* [1997] IRLR 168 CA, a 16 year old apprentice of mixed race was subject to verbal and physical abuse by two fellow employees. The Court of Appeal held that the attackers were acting during the course of employment and so the employer was liable.

(c) Comment

On 9 March, the Government announced that, following consultation, it intended to update the **Sex Discrimination Act 1975** to include discrimination on the grounds of pregnancy and maternity leave and bring harassment in line with discrimination legislation on race, disability and sexual orientation. The proposed changes will implement the European Union's amended Equal Treatment Directive, which promotes the equal treatment of both men and women in employment and vocational training. The Directive is due to be implemented by October 2005.

Self Test 9

1. *What international obligations stimulated the introduction of anti-discrimination legislation in Britain?*

2. *What are the two main areas and related types of discrimination that social housing organisations have to safeguard against?*

   (a)

   (b)

3. *What are the three forms of discrimination defined by the anti-discrimination legislation?*

   (a)

   (b)

   (c)

Now turn to the Answers at the end of the Block.

2.2 Disability discrimination

(a) Scope of legislation

Section 1 of the **Disability Discrimination Act 1995** defines 'Disability' as someone having:

> *'...a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities.'*

This does not include addiction to alcohol, drugs or other substances, which, for purposes of the Act, do not amount to impairment.

Note: A new Disability Discrimination Bill, which was introduced into the House of Lords, will, when enacted, amend the definition of 'disability' in s.1 ***Disability Discrimination Act 1995*** *to include those diagnosed with HIV, multiple sclerosis and certain forms of cancer.*

Victimisation of a disabled person is unlawful (**s.55**), and there are two forms of unlawful discrimination which are defined in **s.5** of the Act, namely:

- **it is unlawful to treat a disabled person less favourably than someone without that disability.** This means that less favourable treatment of someone without a disability is not unlawful. As a result, it is possible to positively discriminate in favour of disabled people. However, local housing authorities will not be able to positively discriminate, because **s.7** of the **Local Government and Housing Act 1989** requires all appointments to be on merit; and
- **it is unlawful where the employer omits to make adjustments which means that a disabled person is disadvantaged when compared with non-disabled persons.** For example, provision of ramps, handrails, voice links lifts for the blind, aids for the deaf such as a modified telephone, flexible or part-time working, time off for treatment, special supervision, etc., as appropriate. Importantly, as provided by **s.6(6)**, an employer's duty to a disabled person only arises when he knows of the disability. It must be remembered that the degree of people's disability varies considerably. As regards cost of making adjustments for a disabled person, there are recommendations in the Code of Practice (issued by the Secretary of State for Education and Employment under **s.53(1) Disability Discrimination Act 1995.** The Code suggests that it would be reasonable for employers to spend up to the same amount as it would cost to recruit and train someone else for the job.

(b) Defence to discrimination

A defence for discriminating against a disabled person is permitted by the *Disability Discrimination (Employment) Regulations 1996*. The regulations provide that paying a disabled employee less as a result of a generally applicable performance-related pay system would be justified.

2.3 Age discrimination

In the United States, the **Age Discrimination in Employment Act 1967** makes it unlawful to discriminate against anyone between 40 and 70 years of age. In Britain it is not unlawful to discriminate against someone on age grounds. Arguably, age discrimination can, to a limited extent, amount to sex discrimination, as held in *Price v Civil Service Commission* [1978] ICR 27 (see sub-section 2.1.a), or even racial discrimination, as held in *Perera v Civil Service Commission* [1982], in which it was held that age could disadvantage immigrants who could be older when they gained necessary qualifications. However, in July 2003, the Department of Trade and Industry published a consultation document *'Towards Equality and Diversity: implementing the employment and race directives'*. The document contains the government's proposals for taking forward implementation of new European Union anti-discrimination law. In particular, it focuses on proposals for new anti-age discrimination law which Member States must implement by December 2006 at the latest. At present a number of the United Kingdom's current laws are incompatible with the European Union Council (EUC) of Ministers' Employment Directive on Equal Treatment (EUC Directive 2000/78/EC of 27 November 2000. For example, the Employment Rights Act 1996 prevents employees from complaining that they have been unfairly dismissed if they have reached the usual retirement age for the job (providing that age is the same for men and women).

As proposed all forms of age discrimination concerned with recruitment, selection, promotion and retirement will be unlawful except where employers are able to justify differences of treatment.

3. Discrimination and Social Landlords as Employers

(a) Practical application of legislation

You will now appreciate that social housing landlords need to establish good practice measures to ensure that they do not act unlawfully in terms of:

- **recruitment:** including arrangements for advertising vacancies, deciding who is or is not employed, or the terms of employment, e.g. discrimination on racial grounds was held in *Race Relations Board v Mecca* [1976]. The case

involved an employer who put the telephone down on a job applicant when he realised from the voice that the applicant was black;

- **terms and conditions:** applied during the period of employment;
- **opportunities:** relating to promotion, transfer, training, schemes, benefits, facilities, or services; and
- **termination of employment:** except on justifiable grounds, e.g. discrimination on grounds of sex was held in *Coleman v Skyrail Oceanic Ltd* [1981] *The Times*, 28 July. The case involved the dismissal of an employee after she had married the employee of a competitor business and her employer feared leaks of key information.

(b) Lawful discrimination

There are circumstances where racial and sexual discrimination is not illegal. It occurs when the conditions or requirements of employment can be shown to be a **genuine occupational qualification**.

On racial grounds, a genuine occupational qualification would arise in relation to:

- **physiological authenticity**, e.g. the employment of Chinese waiters in a Chinese restaurant; and
- **personal welfare and educational services**, e.g. the recruitment of an Afro-Caribbean community worker to provide services to a racial group within a predominantly Afro-Caribbean housing area. This applied in the case of *Tottenham Green Under Fives' Centre v Marshall* [1991] IRLR 162 where it was held that the employer could rely on the genuine occupational qualification. The need was that 84% of the children in the nursery were of Afro-Caribbean origin and needed someone to talk and read to them in West Indian dialect.

On sexual grounds, it would be a genuine occupational qualification:

- to recruit a female where the job is a nurse in a women's hospital or women's care home.

The **Sex Discrimination Act 1975** makes provision for discrimination in relation to certain occupations, including prison officers, police, ministers of religion, midwives, and miners.

(c) Positive discrimination and positive action

To a limited extent, legislation permits positive discrimination where preference may be given to one group of people, but only in relation to training. It means that an employer may provide training to a racial group (**s.37 RRA**) or to just males or females. However, this can only be done if no one or few in that group have been doing the work in the previous 12 months. Other forms of positive discrimination are unlawful.

Positive action is different to positive discrimination. The latter allows the appointment of a less well-qualified applicant from a minority group. However, positive action is aimed at encouraging under-represented groups to be candidates for consideration of appointment. You will have seen examples of this in job advertisements stating that applications from particular minority groups are especially welcome. There has also been an increase in the numbers of social housing and other organisations introducing incentives to encourage and improve work opportunities for disadvantaged groups, e.g. part-time working, flexible hours, child care facilities. Another good example of positive action is the P.A.T.H. (Positive Action Training in Housing) initiative.

Self Test 10

1. *In what circumstances would an employee be justified in paying a disabled person less than someone who was not disabled and doing the same job?*

2. *The anti-discrimination legislation makes it is unlawful to discriminate against someone on:*

   (a) the grounds of age

   TRUE? or FALSE?

   (b) the grounds of sexual preference

   TRUE? or FALSE?

3. *In what circumstances can an employer lawfully discriminate when recruiting staff?*

Now turn to the Answers at the end of the Block.

4. Discrimination and Social Landlords as Landlords

4.1 Forms of unlawful discrimination

(a) Legislation's similar objectives

Although the previously described anti-discrimination legislation is primarily concerned with the elimination of discrimination in employment, it also applies to education, housing, and goods and services. Specifically, the legislation applies to the selling, letting or management of property. As a result, it is illegal to discriminate in the way any of those activities are conducted, so the potential for discrimination by social landlords acting as landlords is considerable.

The objectives of the **Sex Discrimination Act 1975,** the **Race Relations Act 1976** and the **Disability Discrimination Act 1995** in relation to housing are broadly similar. In view of this, they will, for convenience of your studies, be dealt with collectively.

Essentially, it is unlawful for a person to discriminate on sex, marital, or racial grounds, or to unreasonably discriminate against disabled persons. In particular, it is unlawful:

1. for a person to discriminate against another in relation to premises of which he or she has power to dispose:
   - in terms in which the premises are offered;
   - by refusing an application; and
   - in the treatment of that person in relation to any waiting list for accommodation.
2. for a person in relation to premises managed to discriminate against any person occupying the premises:
   - in the way access to any benefits or facilities is considered or omitted; or
   - by eviction or subjecting the occupier to any other detriment.

Note:

1. The above is based on **s.21** of the **Race Relations Act 1976.** However, similar provisions are contained in **s.22** of the **Disability Discrimination Act 1995,** and the **Sex Discrimination Act.** There are some small variations, e.g. a landlord who rents six or fewer rooms in his home is not affected by the **Disability Discrimination Act.**
2. A Code of Practice for Rented Housing was published by the Commission for Racial Equality in January 1991.

(b) Discrimination against tenants

Discrimination, whether on the grounds of sex, racial or disability, by social landlords against tenants can take many forms**.** It may be **direct discrimination,** e.g.

- allocating poorer property to black applicants than to white applicants because of racial origin. (A number of reports over the years have indicated that black people are more likely to be housed in less acceptable accommodation than white people, e.g. *'Race and Council Housing in Hackney'*, Commission for Racial Equality 1984; *'Response to Racial Attacks and Harassment'*, HMSO 1989);

or **indirect discrimination,** e.g.

- a landlord may require a lengthy period of residence before an applicant can be considered for rehousing. (This could disadvantage some ethnic minorities who have not been in the country very long);
- other examples would be an assumption that applicants should be accommodated in a particular area because of their racial origin; or criteria that determines a lower priority to, say, one parent families;

or **victimisation,** e.g.

- tenants pressure a social landlord not to allocate accommodation to a household on the basis of race, sex or disability.

The following example of alleged discrimination and victimisation is typical of many complaints that are received by social housing landlords.

Alleged racial discrimination and victimisation

In the case of *Ahmend v Southwick LBC* [1998] 10 July CA (unreported), it was alleged by the council tenant that he had been discriminated against because of the local authority's failure to carry out repairs, delay in approving a transfer, differential treatment of his rent arrears compared to other tenants, and failure to deal with his complaints.

The court considered that, as the council's performance 'was bad in relation to very large numbers of people', the failure to repair the plaintiff's home could not be regarded as evidence of unfair discrimination or victimisation.

(c) Other potential areas of unlawful discrimination

Apart from issues relating to employment, allocation of tenancies, and repairs, social housing landlords face other potential areas of risk in relation to unlawful discrimination. Some of the areas are listed below:

- differential rent setting;
- conditions and requirements written into contracts of disposal;
- refusing applications for accommodation;
- eviction procedures;
- differential services to differing groups of tenants;
- sub-letting of a tenancy.

(d) Remedies

Tenants, employees and any other person who has suffered discrimination have a number of remedies available, including:

- bringing an action under the relevant racial, sex, or disability legislation;
- negotiating with the person or body who discriminated against the plaintiff;
- using an established grievance or complaints procedure;
- provide details to either the Equal Opportunities Commission *(regarding sex discrimination)* or the Commission for Racial Equality;
- taking legal action not related to the to the **Race Relations Act** or the **Sex Discrimination Act**; and
- publicising the case through the media.

Self Test 11

1. *What are the main anti-discrimination statutes?*

2. *To what areas do the rights introduced by the* ***Disability Discrimination Act 1995*** *apply?*

3. *Sexual or racial harassment is defined in the anti-discrimination legislation.*

   TRUE? or FALSE?

4. *Does the* ***Disability Discrimination Act 1995*** *apply to all employers?*

5. *The* ***Disability Discrimination Act 1995*** *definition of 'disability' includes persons who are disabled because of addiction to alcohol or drugs.*

   TRUE? or FALSE?

6. *In what circumstances can employers positively discriminate?*

Now turn to the Answers at the end of the Block

5. Developing Good Anti-Discrimination Strategies

(a) Introductory comment

As with so many other forms of dispute, planning to eliminate discrimination is far more effective than resolving actual cases of discrimination. Social housing landlords, whether as employers or landlords, must endeavour to avoid racial, sexual and disability forms of discrimination. For example, in was held in *R v Tower Hamlets LBC, ex.p. Commission for Racial Equality* [1991] *Legal Action*, June, that such discrimination must be avoided when making offers of accommodation. It was further held in *R v Tower Hamlets LBC, ex.p. Ali Mohib* [1993] 25 HLR 218 that monitoring applications and offers of accommodation in this context was clearly important.

(b) Good practice strategies and procedures

Government research carried out in 1996 revealed that less than half of local authority housing departments have written policies and procedures on racial discrimination and harassment. This compared with nine out of ten of the larger housing associations. Now most housing organisations have introduced appropriate policies and procedures. However, you know from your studies of this section that discrimination is wider than just racial considerations. Also, the benefits of taking precautions to avoid discrimination have also been discussed. However, if this is not achieved, then overcoming the related discrimination problems will be expensive in terms of time, staff and financial resources.

Social housing organisations need to ensure that they introduce policies and procedures aimed at eliminating all forms of discrimination. Such policies should embrace the organisation's activities both as an employer and as a landlord. Good record keeping and monitoring will help to determine whether housing and services are being provided on an equitable basis. This will help to inform the continuing refinement of an adopted equal opportunities policy. The objectives of this policy should be detailed in relation to recruitment, employment, working conditions, training, promotion, tenancy agreements, tenants' rights, maintenance, management, and other services.

To conclude this section, social housing organisations should continually examine their policies and procedures and adapt them, if necessary, in the light of changing legislation and related court decisions.

Summary

1. **Discrimination affects social housing organisations both as employers and as landlords. It can occur in relation to:**
   - ***employment*, where, on the grounds of race, sex or disability, a person is discriminated against in respect of recruitment, promotion, working conditions, redundancy, or retirement; and**
   - ***housing*, where, on the grounds of race, sex or disability, a person is discriminated against in respect of housing allocation, the type or standard of dwelling, or in relation to benefits, services or facilities.**
2. **The key legislation affecting social housing and other organisations is the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995, and the Religious & Belief Regulations and Sexual Orientation Regulations 2003.**
3. **Discrimination can take three forms:**
   - ***direct discrimination*, which arises where a person is treated less favourable on sexual, marital or racial grounds than any other person;**
   - ***Indirect discrimination*, where treatment may be equal insomuch it applies to all employees or tenants of different racial groups, but is discriminatory in its effects on one particular group; and**
   - ***Victimisation*, where a person is treated less favourably because of doing a protected act, namely a complaint under the legislation.**
4. **There are limited areas where it is not unlawful to discriminate. This occurs when there is a genuine occupation qualification on physiological, or personal welfare and educational grounds.**
5. **Social housing landlords must be mindful that there is a range of discrimination remedies available to employees and tenants, including bringing a court action under the anti-discrimination legislation, action through the Equal Opportunities Commission or the Commission for Racial Equality, grievance procedures, and negotiation. All have potential financial implications for housing organisations.**

6. **Social housing organisations should plan to eliminate discrimination in the employment and landlord areas of responsibility. This can be achieved through the adoption and application of equal opportunities and anti-discrimination policies and procedures. Also, good record keeping and monitoring will help to determine whether housing and services are being provided on an equitable basis.**

Answers

Self Test 1

1. The Government's White Paper *'Our Future Homes: Opportunity, Choice and Responsibility'*, Command 2901.
2. An enabling Act is one where ministers have delegated powers to regulate housing matters through secondary legislation by means of Regulations, Guidance, Orders or directions.
3. The eight Parts of the Act are:
   i. A new structure for Registered Social Landlords;
   ii. A registration scheme for houses in multiple occupation;
   iii. Changes to tenants' rights, and an amendment to the Housing Act 1988 so that all new tenancies are assured shorthold tenancies unless stated as being assured tenancies;
   iv. Changes to the administration and eligibility of Housing Benefit;
   v. Measures for dealing with anti-social behaviour;
   vi. Introduced new duties for local housing authorities to maintain a new allocation scheme for prospective tenants;
   vii. Reduced local housing authorities' duties to the homeless; and
   viii. Miscellaneous and general provisions relating to housing management and housing finance.
4. In April 2000 the Government published a Housing Green Paper *'Quality and Choice: A Decent House for All'*, which set out proposals for future housing policies in England and Wales and proposals for future Housing Benefit policies in Britain. A separate Housing Green Paper for Scotland 'Investing in Modernisation - An Agenda for Scotland's Housing' was published in February 1999.

Self Test 2

1. Part VII of the Housing Act 1996, as amended by the Homelessness Act 2002.
2. Housing (Homeless Persons) Act 1977.
3. They should have no accommodation in the United Kingdom or elsewhere.

4. There is no limit and the duty will continue until brought to an end.

Self Test 3

1. The local authority must make a two-stage enquiry into an application for rehousing as homeless:
   - firstly, to determine whether there is 'reason to believe' that the applicant is homeless or threatened with homelessness, and has a priority need; and
   - secondly, to determine whether the local authority is 'satisfied' on these points, and on whether the applicant became homeless (or threatened with homelessness) intentionally.
2. The local housing authority must give reasons for their decision to reject the application. This is because the applicant has a right of review of the decision.
3. Local authorities can keep up-to-date with the changing law on homelessness by noting the findings of case law and using it to inform its own practices and procedures. There are various sources of recent housing case law, including:
   - the *'Recent developments in housing law'* section of the monthly journal *Legal Action*, which summaries recently decided cases;
   - the Housing Law Reports, which are full law reports. However, quite some time can pass between the decision in the case and the publishing of the relevant law report;
   - the *Encyclopaedia of Housing Law and Practice*, which is updated twice a year and provides summaries of cases; and
   - various other professional legal, local government, and housing journals will, periodically, report on housing cases, as will the legal pages in the daily broadsheet newspapers.

Self Test 4

1. The purpose of housing benefit is to help people on low incomes to pay for rented accommodation.
2. Options include:
   (a) using public subsidies to reduce the cost of providing housing, e.g. Housing Revenue Account subsidy, capital grants, or Social Housing Grant; and
   (b) using public subsidies to reduce the cost of housing to the individual or to the household.
3. Administrative failures in delivering housing benefit can lead to cash flow difficulties. Housing associations are particularly reliant on rent receipts to operate properly.
4. Administrative failures in delivering housing benefit can result in tenants falling into rent arrears and finding themselves facing eviction?
5. The local government ombudsman (see HL.101, D1.2 (f)) on finding maladministration reports his findings and conclusions to the local authority. If the local authority fails to act, he has no powers to enforce his recommendations. However, he can require the local authority to publish a statement in two editions of the local newspaper. The statement has to contain the details of any of the ombudsman's recommendations not implemented, and may include the reasons why the authority did not act on the recommendations. Experience has shown that this prospect of publicity is usually sufficient to make the local authority act on the ombudsman's recommendations.

Self Test 5

1. Crown tenants renting from a government department, owner-occupiers, long leaseholders, and co-ownership schemes.
2. (a) Eligible rent: the amount payable for a dwelling, excluding fuel, meals, water costs, and some service costs;
   (b) Appropriate rent: the amount determined by the Rent Officer;
   (c) Average rent: the typical rent for similar dwellings in the same area; and
   (d) Maximum rent: the amount paid by the local housing authority in the form of Housing Benefit.

3. The average rent in the locality for a one-roomed letting with a shared toilet and kitchen.
4. Intending applicants can request a pre-tenancy determination of the maximum level of housing benefit the local housing authority will consider.

Self Test 6

(a) Unemployment;

(b) illness;

(c) domestic disputes;

(d) housing benefit problems, such as delayed payment or poor administration;

(e) inability to manage financial affairs.

2. Recommended good practices for helping reduce rent arrears include:
   - pre-tenancy counselling;
   - maximising tenants' income through benefits and appropriate advice;
   - creating a 'payment culture' (tenants need to be aware of policies relating to rent collection, including the possibility of eviction for continuing non-payment);
   - giving tenants regular and accurate information about their rent account;
   - clear policy objectives and procedures on dealing with rent arrears.
3. Before seeking a possession order a landlord must first:
   - Serve a Notice of Possession Proceedings (Local authority landlord); or
   - Notice of Proceedings for Possession (housing association).
4. A court may impose:
   - a possession order where it is considered reasonable and other options have not been successful in reducing the rent arrears; or
   - a suspended possession order. Here a court may impose conditions relating to the amount and frequency of repayment of rent arrears.

5. The court will not impose a possession order:
   - when there is an undertaking to pay off arrears. This usually means that a suspended possession order will be made;
   - where to do so would cause exceptional hardship to the tenant;
   - where it would otherwise be unreasonable to impose the order.

Self Test 7

1. FALSE, they are equitable remedies and therefore granted at the court's discretion.
2. FALSE, injunctions have been granted in trespass and nuisance cases to prevent a future tort being committed, even where no harm would result.
3. TRUE.
4. TRUE, and are therefore very useful as part of a range of remedies for racial harassment and neighbour disputes.

Self Test 8

1. Reasonable notice must be given to the landlord. However, the notice does not have to be given by the tenant.
2. The repairing obligation is likely to cover all of the residential premises, but could vary depending on the precise wording of the tenancy agreement.
3. A tenancy agreement is a contract between the landlord and the tenant, and., normally, only the tenant can sue, unless the tenancy agreement states otherwise.

Self Test 9

1. International obligations that have been particularly influential are those of the Universal declaration of Human Rights 1948 and the European Convention on Human Rights 1950.
2. (a) Employment: in respect of recruitment of staff, working conditions, training, promotion, redundancy, or retirement; and

   (b) housing: in respect of housing allocation, type and standard of dwelling, or in relation to benefits, services or facilities.

3. (a) Direct discrimination;
   (b) indirect discrimination; and
   (c) victimisation.

Self Test 10

1. The Disability Discrimination (Employment) Regulations 1996 permit employers to pay disabled persons less as a result of a generally applicable performance-related pay system.
2. (a) FALSE, but, arguably, age discrimination can to a limited extent amount to sex discrimination, as held in *Price v Civil Service Commission* [1978] ICR 27.
   (b) FALSE, but the European Court of Justice held in *P v S and Cornwall CC* [1996] All ER (EC) 397 that the dismissal of a person because of intended gender change surgery was discrimination on the grounds of sex.
3. Racial and sexual discrimination is not unlawful when an employer can show that the conditions or requirements of employment can be shown to be a 'genuine occupational qualification', e.g. for physiological authenticity or where welfare and educational services need to be provided by someone of the appropriate racial group.

Self Test 11

1. The main anti-discrimination statutes are the **Sex Discrimination Act 1975,** the **Race Relations Act 1976,** and the **Disability Discrimination Act 1995**.
2. The areas to which the rights aims at reducing discrimination apply are:
   - goods, facilities and services;
   - employment;
   - land and property;
   - education; and
   - transport.
3. FALSE. However, a European Commission recommendation stated that sexual discrimination was a breach of the Equal Treatment directive. Also, the Scottish Court of Sessions, in *Porcelli v Strathclyde Regional Council* [1984] ICR 564 considered such form of harassment as direct discrimination.

4. The Act only applies to employers who have 20 or more employees.

5. FALSE. 'Disability' is defined by s.1 of the **Disability Discrimination Act 1995** as someone having '... a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities. This does not include addiction to alcohol or drugs or other substances.

6. Employers may discriminate by giving preference to one group of people, but only in relation to training and if no one or few in the group were employed in the previous 12 months.