



Welcome to the April edition of Fife Law News. This newsletter has been sent to you as a supporter of Fife Law Centre.

Better Protection Needed for At Risk Tenants



The Scottish Government is currently conducting a new Consultation which aims to strengthen the protection of tenants in the social housing sector.

Whilst the recent Home Owner and Debtor Protection Bill passed by Parliament focused on protection of home owners a report by the Repossessions Group in 2009 highlighted the need for parallel procedures and guidance for those living in rented accommodation.

Whilst the Consultation makes clear that to avoid evictions the primary responsibility lies with the tenant to keep his or her rent payments up to date there is also a need to ensure that landlords follow the proper procedures when taking steps to evict those who have fallen into rent arrears and that due consideration is given to the rights of tenants.

Tenants can fall into rent arrears for a variety of reasons and evictions can be an upsetting and traumatic experience for the tenant and their families as well as a costly exercise for the landlord involved in terms of court costs they are likely to incur and costs to find new tenants etc. Many landlords do try to provide advice and assistance to tenants who fall into arrears i.e. by assisting with Housing Benefit and other welfare applications or exploring other rent payment options. However it is apparent that the procedures followed by landlords are wide ranging hence the need to ensure a standard best practice in these types of cases. Furthermore, some landlords will go straight to court action before exploring alternative options and in 2008/2009 19,708 eviction actions by social landlords were brought in Scottish court, the majority of these being for rent arrears.

It is clear that in some cases tenants and landlords are equally unaware of their respective

rights and obligations in these types of situations and that this can lead to problems, legal difficulties and incur costs for both parties involved.

The Consultation process began on 30 March 2010 and is expected to run until 28 May. Alex Neil MSP, Minister for Housing and Communities states "This consultation asks whether more needs to be done to protect tenants; reduce the social and financial costs and what form this protection should take". For further details please see <http://www.scotland.gov.uk/Publications/2010/03/29163921/0>.

New Domestic Abuse Bill

The Civil Protection Orders and Access to Justice (Scotland) Bill has gathered sufficient support from MSPs and will now be introduced as a Bill before the Scottish Parliament. The Bill seeks to improve access to protection and justice for anyone who is subjected to abuse and to ensure that if a protection order is breached that this is treated as a criminal offense.

The proposed bill would:

- Remove the requirement to show a course of conduct before a non-harassment order could be granted by either the civil or criminal court, requiring only one incident of harassing behaviour.
- Make legal aid free to all for an application to a civil court for an interdict with a power of arrest, or a non-harassment order where domestic abuse is involved. This will allow all victims of domestic abuse, regardless of economic background, to access the protection afforded by these orders. Victims would no longer have to pay for their own protection.
- Make it a criminal offence to breach an interdict with a power of arrest.

Rhoda Grant, the MSP behind the Bill, has said:

"The Scottish Parliament has made huge strides into tackling domestic abuse, however, we have some way to go before women, children and others who suffer abuse will be able to sleep safely in their beds without the fear of attack or intimidation.

As a society we have a duty to protect people from harm and that is what I am seeking to do through this Bill."

Current protections such as interdicts and non-harassment orders are sometimes not available to people due to financial or evidential constraints. And even when they are in place the response is not always effective when they are breached.

Louise Johnston, Legal Issues Worker at Scottish Women's Aid, commented:

"As things stand, women currently have to pay in order to obtain an interdict against an abusive partner. It is the view of Scottish Women's Aid that no woman who has experienced domestic abuse should have to bear the cost of orders to protect them from abusive partners.

Scottish Women's Aid would urge all MSPs and anyone committed to the prevention of domestic abuse to support the proposals to allow women to access justice, without having to meet the cost themselves."

Proposed School Closures: The Duty for Full Disclosure



As of 5 April 2010 the last remaining provisions of the Schools (Consultation) (Scotland) Act 2010 will come into force.

These provisions update the consultation procedures that must be followed when a local authority proposes to close a school or take other measures such as relocate a school or change it from non-denominational to denominational i.e. religious school.

The requirements imposed on local authorities include the following:-

- that the authority prepare an 'educational benefits statement' to include an assessment of the likely effects the proposal will have on the affected school pupils
- that a 'proposal paper' is prepared for public consumption containing details of the plan, the implementation date and evidence in support of the proposal;
- that a public meeting is held to discuss the planned closure.

The Act also makes special provisions where an authority proposes to close a 'rural school' and provides that in these cases due consideration must be given to special factors including:- viable alternatives to the proposal, the likely effect on the sustainability of the community and the impact the proposal will have on travel arrangements for affected pupils and staff and the environment.

If at the end of the consultation procedure the decision is made to go ahead with the closure the local authority must then notify the Scottish Minister who can then decide to issue a 'call-

in notice' whereby proposal is placed under consideration by the Ministers. The Ministers may then refuse to consent to the proposal, impose certain conditions on the proposal or grant it unconditionally.

Given the controversy that proposed school closures raise in communities and in particular parents' concerns about the future of their children's education, it is hoped that these new provisions will facilitate more thorough consideration of such proposals before they are carried out and allow for clearer and more accessible information to be available to the public as to the reasons for such decisions being taken. Whether this proves to be the case in practice however remains to be put to the test.

Balancing Act: difficult decisions faced by courts in child relocation cases

Case Summary - BD and AID D (Children) CoA 02/02/2010

This recent English family law case highlights the difficult decision courts must face when making residence orders for children and the fine line between balancing the parties' interests and, above all, those of the child.



In this case the father of 2 boys appealed against a court order which gave the mother of his children permission to remove them from the UK to reside with her in Slovakia. There was a shared residence order in place between the two parents and the boys divided their time between them. Generally speaking where a residence order is in place the child cannot be removed from the country without the consent of every person who has parental responsibility failing which the leave of the court must be obtained (*s13 (1) (b) Children's Act 1989*).

In considering the appeal made by the father the court had to consider the principles set out in the leading relocation case *Payne v Payne [2001] EWCA Civ 166 [2001] Fam 473*. The overriding principle is, of course, that the welfare of the child is paramount when making any decision in relation to residency. Furthermore there is no presumption in case law or the legislation in favour of the applicant parent. Other key considerations which the judges had to weigh up in making their decision included: - the reasonableness of the proposed relocation and motivation behind this; the future plans the parent(s) have for the child; the effect any lack of contact with the absent parent would have on the child; the opportunities for the child to maintain contact with the parent left behind and the effect any refusal to leave would have. In the case of this appeal the court was satisfied that the judge who made the

order under challenge had taken the correct approach in considering the factors noted above. The appeal judge also considered that the contact arrangements which were already in place were sufficient for the 2 boys to maintain contact with their father and that their relocation to Slovakia would not affect the quality of this contact. Consideration was also given to Articles 6 & 8 ECHR (right to fair trial and hearing a right to privacy and family life).

Potential for extended leave could cost local authorities

New mothers could potentially be entitled to a further extended period of maternity leave accordingly to the Convention of Scottish Local Authorities (COSLA).



This comes in light of some recent European and House of Lords case law which, COSLA has warned, could have cost implications of up to millions of pounds for local authorities. Teachers could potentially be entitled to take their annual leave at the end of their maternity leave thus effectively getting up to 2 months extra maternity leave. This due to fact that they are currently entitled to over 60 days of annual leave. As the law currently stands women are entitled to 1 year of maternity leave - the first six weeks of these on 90% pay then 33 weeks of Statutory Maternity Pay.

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