

Welcome to the May 2010 edition of Fife Law News. This newsletter has been sent to you as a supporter of Fife Law Centre

The need for more specialist domestic abuse courts in Scotland?



A recent BBC documentary highlighted the work taken on by the specialist domestic abuse court based in Glasgow Sheriff Court. The court, which is the only one of its kind in Scotland, was set up in 2005 and dealt with over 2000 cases over the last year alone.

The court operates a fast track procedure which sees cases come to trial in a matter of weeks rather than months and court staff are specially trained to deal with domestic abuse cases. Estimates put the conviction rate of the court at over 80%, in considerable contrast to the usual 50% (at best) conviction rate for similar cases that go through the normal courts system.

Although there were plans to establish similar courts across other regions of the country financial constraints have meant that this has not been possible to date. In England and Wales, by contrast, a recent announcement by the Ministry of Justice this year confirmed that 14 more new specialist domestic violence courts (SDVC) would be set up across England which will bring the total number there to 141.

When taking into account the costs to establish more courts of this nature one must also consider the costs of domestic abuse itself. According to Scottish Women's Aid the estimated cost to the NHS in England and Wales for injuries caused as a result of domestic violence alone is around £1.2 billion with an additional cost of approximately £176 million for mental health care in such cases.

Many of those affected by domestic abuse find that the legal remedies available to them in such situations are often fraught with difficulty. Interdicts (with or without powers arrest) can be sought as a means of protection however breach of interdict is only a civil matter.

Non harassment orders (NHOs) are generally thought to be the best remedy available at present. The definition of 'harassment' is widely defined and is not simply restricted to illegal behaviour and cover acts like speech and texting. However the flipside of this is that they are considerably more difficult to obtain than interdicts due to the severe sanctions which are imposed for breach. Breach of an NHO is considered to be a criminal offence and the penalties can include imprisonment, a fine or both. Furthermore the person applying for the NHO must be able to demonstrate a 'course' of harassment on more than 2 different occasions before the court. NHOs can also be applied for at the sentencing stage of criminal proceedings however there are differing approaches in the courts as to when these should be granted in such situations.

The third type of protection available is an exclusion order however practice seems to suggest that these are not often sought. This is partly due to case law which has shown the approach of the courts to be fairly restrictive in granting such orders and also due to the time lengths involved. Such procedures which can take several months and where domestic abuse is taking place this clearly prolongs the time at which the applicant may be at risk to such behaviour.

According to government figures there were 53,681 incidents of domestic abuse recorded by the Scottish police in 2008 -2009. When one considers that many victims will have often experienced multiple incidents of abuse prior to contacting the police in the first instance or that many incidents simply go unreported this figure is no doubt considerably higher. Perhaps if further specialist courts like the one in Glasgow were able to be set up in other Scottish regions in the future one would hope that this would improve the chances of bringing those who perpetrate abuse and violence behind closed doors to justice and would serve to highlight that such behaviour is simply not to be tolerated.

Local and national organisations which operate to help those who experience domestic abuse and violence include:-

Scottish Women's Aid – www.scottishwomensaid.org.uk

East Fife Women's Aid – www.efwa.org.uk

Fife Domestic and Sexual Abuse Partnership - 01592 583690

Men's Advice Line (support for male victims of domestic abuse) - www.mensadvice.org.uk

The Potential Impact of the Housing (Scotland) Bill



The Housing (Scotland) Bill was introduced in the Scottish Parliament on 13 January 2010 and aims to improve the value and quality of social housing and to ensure supply is safeguarded for the future. In order to achieve this the Bill proposes changes to the current Scottish Housing Regulator (SHR) system. At present the SHR operates on behalf of the Scottish Ministers in overseeing and inspecting Council landlords and registered social landlords as well as services for the homeless. The Housing (Scotland) Bill proposes to establish the SHR as an independent body with the primary responsibility of upholding and looking after the interests of tenants and the homeless and to ensure the implementation of the proposals within the legislation.

It also sets out provisions for a Scottish Social Housing Charter which would provide a framework of outcomes and standards for social housing landlords. According to the Scottish Government's Social Housing division "Social housing tenants, homeless people and other service users [will potentially be] affected by the policy which is intended to ensure that they get good services and improving value from their landlords". The Chartered Institute of Housing in Scotland, although generally supportive of the Bill, does warn however that this section is currently somewhat "light on substance" and that there is no "clear image" as to what such a Charter would contain at this stage.

It is also noteworthy that there are provisions setting out further limits on the Right to Buy. It is thought that the aim behind this is to protect the current and future housing supply given that the exercise of Right to Buy has significantly reduced the availability of social housing across the country.

The Bill is currently only at Committee stage therefore it remains to be seen whether there will be any further developments or changes before the Bill is passed.

For a link to the Bill in its current form see:- <http://www.scottish.parliament.uk/s3/bills/36-Housing/index.htm>

Good neighbourly behaviour is always rewarded!

Case Review: *Souter v McAuley* 2010 GWD 12-218

Every member of the community has the right to enjoy their home in peace. When deciding who to grant a tenancy order to in a recent housing case between a same sex couple (whose relationship had broken down over the course of the tenancy), the decision came down to who had caused the least trouble whilst residing in the property.



The nature of the relationship between the parties was such that they were considered to be a cohabiting couple in terms of Section 18(1) of the Matrimonial Homes (Family Protection)(Scotland) Act, 1981. Section 18(1) provides that a so-called “non-entitled partner” i.e. the party whose name is not on the lease/title deeds to the property, can apply to the court for an order granting them occupancy of the property in question for a period of up to six months.

In this case the provision was used to make an order granting a sole tenancy to the partner who had **not** been the original tenant under the lease. The other partner, who had actually made the application to the court in the first place, was denied the tenancy due to his previous displays of volatile behaviour whilst at the property and on the basis that he was therefore considered to be a “disturbance to his neighbours”.

In the end the court’s decision came down to the fact that in the absence of any “clear distinction between the parties” it was reasonable to grant the order in favour of the partner “considered to be the less troublesome neighbour”.

Anti-social behaviour from neighbours can cause much distress and misery to tenants and homeowners alike. Cases like this however demonstrate hope that, at least in the end, good behaviour towards one’s neighbours can pay off in circumstances such as these.

Tenants to make landlords aware of hazards before going straight to claims court

Case Review: *Kirkham v Link Housing Group Ltd* [2010] CSOH 31



This recent housing case demonstrated how important it is in a tenant-landlord relationship that each side is aware of their legal rights and obligations.

Here a tenant tried to raise an action of damages against her landlord when she injured herself tripping on an uneven paving slab on the footpath outside the rented property. The tenant however failed to establish that the landlord was liable either under the tenancy agreement or the general law and her claim was therefore rejected.

There was no evidence to show that the landlord had been made aware of the paving problem beforehand nor anything to suggest that there had been any negligence on the landlord's part or that they had not taken reasonable care in terms of their contractual obligations. The tenant's claim therefore failed.

Although landlords have a general repairing obligation in law this is by no means absolute to cover every minor problem in a property and occupiers/tenants themselves have a duty to take reasonable care where risks are apparent and must make any problems known to the landlord in order to give them a reasonable opportunity to address the issue.

In this case the tenant used the footpath on a daily basis and the fact that she had never complained about it before this suggested that she herself was not aware of the paving hazard before the unfortunate incident therefore it was not reasonable to have expected the landlord to have been aware and taken preventative action beforehand either.