

The logo for Darwin Gray is displayed in white, bold, sans-serif capital letters on a dark brown rectangular background. To the right of the logo is a decorative graphic consisting of a grid of colored squares: a dark orange square, a light blue square, a purple square, and a yellow-green square. A small, light green square is also visible at the bottom right corner of the brown logo area.

**DARWIN
GRAY**

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Handling Hoarding and Cluttering: Decluttering the Legal and Practical Issues

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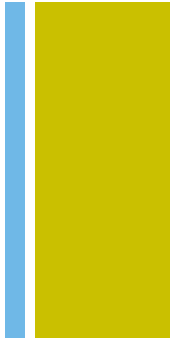


Handling Hoarding and Cluttering: Decluttering the Legal and Practical Issues





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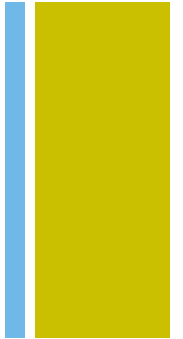


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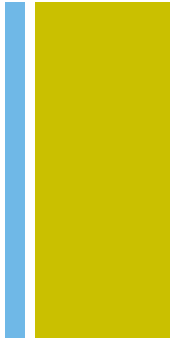


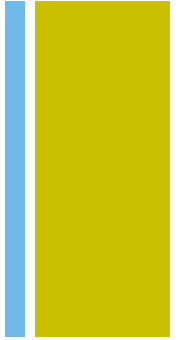
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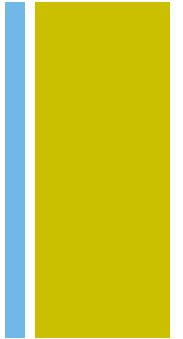


Hoarding Disorder

- Hoarding can be an illness in its own right, known as hoarding disorder
- Hoarding can also be part of another health problem e.g.
 - Dementia
 - Depression
 - Alcohol and drug misuse
 - Learning disability
 - Autism and related disorders
 - Obsessive Compulsive Disorder
 - Anxiety



Typical Symptoms (NHS):



- A hoard is usually very disorganised, takes up a lot of room and the items are largely inaccessible
- Keeping or collecting items that may have little or no monetary value, such as junk mail and carrier bags or items intended to reuse or repair
- Difficult to categorise or organise items
- Difficulty making decisions
- Struggle to manage everyday tasks, such as cooking, cleaning and paying bills
- Become extremely attached to items, refusing to let anyone touch or borrow them
- Have poor relationships with family or friends

American Psychiatric Association

- “People with hoarding disorder excessively save items that others may view as worthless. They have persistent difficulty getting rid of or parting with possessions, leading to clutter that disrupts their ability to use their living or work spaces.”

Royal College of Psychiatrists

- “People who hoard tend to collect things that others see as useless or of little value. Some people may have a large number of possessions and live in cluttered, messy or neglected conditions. However, such things would not usually be considered a problem, unless they disrupt people’s lives.”

National Fire Protection Association

- A particular concern of the fire service is the chaotic nature of the materials in many hoarding households, where blocked windows and exits can make fire attack and rescue difficult.

National Housing Federation



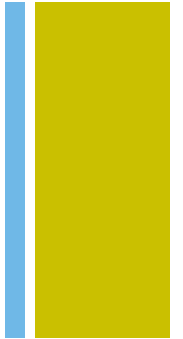
Guidance in 2015 which includes a series of photographs that can be used as a pictorial guide to show tenants the level of tidiness they are expected to achieve:

http://s3-eu-west-1.amazonaws.com/pub.housing.org.uk/Hoarding_briefing_-_August_2015.pdf



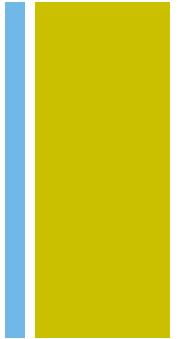
Is hoarding dangerous?

- Hoarded belongings might catch fire
- Fire can affect several properties
- Falling – no clear paths / accessibility might be affected
- Maintenance might not be possible
- A property can become infested as a result of hoarding food
- It can make cooking or eating at home difficult
- Inability to wash
- Nowhere to sleep
- Mould – can cause sickness
- Risks to staff safety





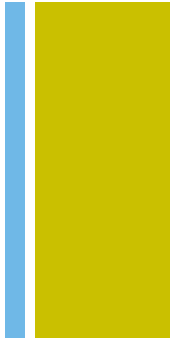
Is it a breach of tenancy?



- Keep the inside of the home in reasonable condition
- Not to cause damage to the home
- Keep the garden in reasonable condition and free from rubbish
- Carry out inside painting and decorating
- Keep communal areas clean and tidy and free from obstructions
- Allow access for inspections, maintenance and gas safety checks
- Not to use or store dangerous materials/inflammable products



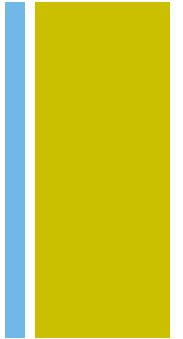
Is it a breach of tenancy?



- Not to do anything to affect landlord's insurance
- Not to do anything which may give rise to a risk of danger to occupiers / visitors / neighbours
- Not to cause nuisance or annoyance to neighbours
- Not to damage landlord's property
- To occupy the home?



Is it anti-social behaviour under the ASBCP Act 2014 ?



Section 2

■ Anti-social behaviour means:

- (a)
conduct that has caused or is likely to cause, harassment, alarm or distress to any person
- (b)
conduct capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises
- (c)
conduct capable of causing housing related nuisance or annoyance to any person

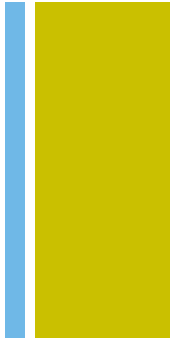
“Housing related” means directly or indirectly relating to the housing management functions of a housing provider.



What remedies are available?



Issues to consider before commencing any court action

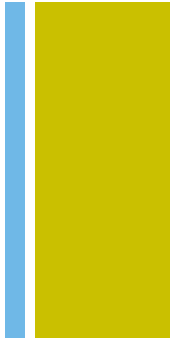


■ 1. Mental capacity

- Presumed capacity
- Only capacity to understand the legal case
- Can come and go, depending on episodes of alcohol / substance abuse / taking medication / engaging with support services
- If no capacity cannot take any steps except issue and save a claim form
- Litigation friend needs to be appointed
- Official solicitor?
- Deputy under the Court of Protection



Issues to consider before commencing any court action



■ 2. Discrimination

Section 6 Equality Act 2010

- “A person (P) has a disability if –
 - (a) P has a physical or mental impairment, and
 - (b) the impairment has a substantial and long-term adverse effect on P’s ability to carry out normal day-to-day activities”

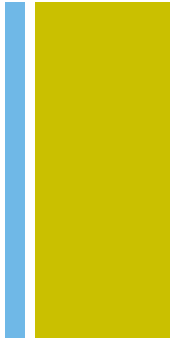
Section 15 Equality Act 2010

- “A person (A) discriminates against a disabled person (B) if -
 - (a) A treats B unfavourably because of something arising in consequence of B’s disability, and
 - (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim”

Akerman-Livingstone v Aster Communities (2015) – Supreme Court



Issues to consider before commencing any court action

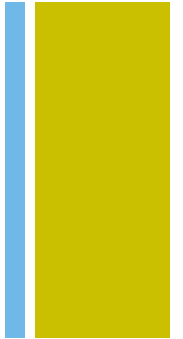


■ 3. Proportionate / Reasonable action?

- Relevant to whatever remedy you ask the Court to provide
- Maybe less / more onerous depending on the remedy
- There will be an expectation that:
 - Assistance will have been offered
 - Attempts made to work alongside support services
 - Where possible medical evidence obtained
 - Any disability considered
 - Proportionality considered
 - Choice of remedy carefully considered
- Burden of proof on you as landlord to establish remedy sought is reasonable / proportionate



Issues to consider before commencing any court action



■ 4. Will the remedy be effective?

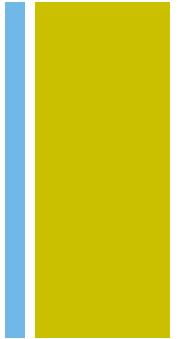
- Consider practical implementation as part of the decision process
- The aim is to solve the issue
- Built it in to the order if possible
- Consider review hearings

■ 5. Has adequate support been provided?

- Multi-agency hoarding protocol
- Tenancy support services
- Suitable alternative accommodation
- Record decisions made



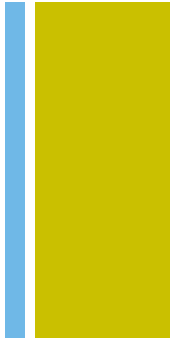
Injunction



- Do you choose breach of tenancy / 2014 Act / both?
- Action for breach of tenancy is straightforward
- Some judges might not see hoarding as ASB
- Why might you choose the 2014 Act?
 - (a) –Section 3 –
“An injunction under Section 1 that includes a requirement must specify the person who is to be responsible for supervising compliance with the requirement. The person may be an individual or an organisation”
 - (b) Power of arrest? – Section 4(1)(b) –
“there is a significant risk of harm to other persons from the respondent”
 - (c) Breach = mandatory ground under 7A
- In either case the sanction is contempt of Court



Injunction Pros & Cons



Pros

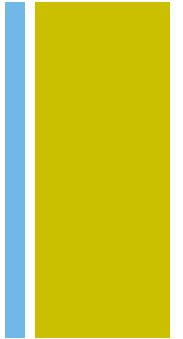
- Reasonable and proportionate
- Opportunity to address the issues
- Possibility of a positive obligation?
- Quicker
- Timescale built in
- Less costly
- Possible mandatory ground if breached?

Cons

- Not a magic wand
- Some judges might be reluctant to injunct
- Contempt not really the best sanction



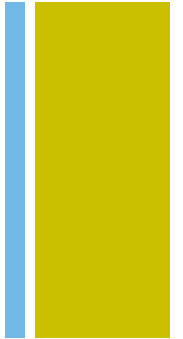
Possession



1. Consider all possible grounds
2. Consider whether you might already have an SPO
3. Directly relevant grounds – 12, 13, 14 (aa), 15 (?), 7A (see 7 below)
4. Some judges may prefer the injunction route and consider possession as disproportionate
5. An SPO might be more likely but not necessarily so in most cases
6. The NSP serves as a shot across the bows
7. Breach of an ASB injunction could be a mandatory ground for possession
8. *Smith v Contour Homes (2016)*



Possession Pros & Cons



Pros

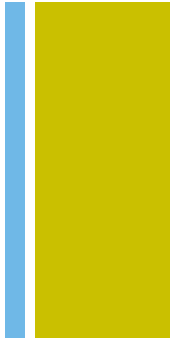
- Does bring the matter to a head
- May force family and support services to be more pro-active
- Again a positive obligation
- Timescales built in
- Sanction better than contempt
- Possible mandatory ground for breach of injunction?

Cons

- Some judges will be reluctant
- Is it reasonable and proportionate?
- More risk of a discrimination defence?
- More cost
- Take longer to get to final hearing
- Possession not really the desired outcome
- Left with cost of clearing and cleaning the property



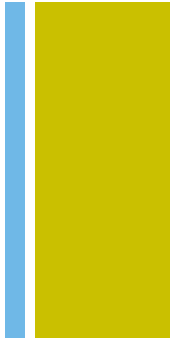
Demotion



- “Conduct that is capable of causing nuisance or annoyance and that directly or indirectly relates to or affects the landlord’s housing management functions”
- Need to be careful because it’s a new tenancy
- More of a punitive remedy



Demotion Pros & Cons



Pros

- Arguably a 12 month period to resolve it
- Serve a section 21 notice in the event of a continuing breach
- May be persuasive on family and support services
- Could possibly be done by agreement
- Could put in specific terms in new tenancy

Cons

- Some judges will be reluctant
- Risk again of a discrimination defence?
- Punitive in nature?
- Risks associated with creation of a new tenancy

Case Studies

Mr A

- One bedroom flat in a block of 6
- Limited access to the hallway with wood piled up
- Front door could only be partially opened
- Kitchen, living room, bedroom and bathroom all inaccessible
- Abundance of combustible items

Mrs B

- Terraced house
- Combustible items
- Unmaintained and damaged electrical equipment
- Visible fire damage
- Faulty smoke detectors
- Tenant hiding from housing officers
- Tenant refusing access for maintenance of solar panels and gas installations

Discussion

- What would be your concerns?
- How urgent would you consider each matter?
- What remedy would you seek and why?
- What objections might you face?

Outcomes

Mr A

- Injunction
- Access to be granted for safety inspections within 14 days
- Tenant to clear the property in order to allow unimpeded access for safety inspections
- Tenant to comply with safety recommendations
- Tenant's compliance to be supervised by housing officer

Mrs B

- Injunction
- Access to be granted for safety inspections within 48 hours
- Tenant to clear the property in order to allow unimpeded access for safety inspections
- Tenant to allow all necessary remedial works to be carried out and to permit all necessary follow up appointments
- Tenant's compliance to be supervised by housing officer



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Questions?

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