



Northside
Community
Law Centre

Housing Law Training Anti Social Behaviour and other issues

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Northside Community Law Centre

Mission Statement

NCLC is an independent community-based legal centre. We work to protect and develop the legal, social and economic rights of individuals and groups.

The Centre provides free information advice and representation to individuals and groups in its community who otherwise would not be able to get legal services and works to give power to the community through education, research and campaigns.

NCLC believes in the dignity of each individual. We are committed to working with the community for the creation of a just and tolerant society.

Northside Community Law Centre – history

- 1st April 1975 – FLAC initiative to persuade policymakers to introduce a strategic model of legal aid
- 1979 – Community controlled
- 1987 – Catchment area defined
- 1981 – Represented families of victims of the Stardust tragedy at Tribunal
- Dominated by case work
 - Limitations
 - Catchment area
 - Restriction on cases by type
- Community Empowerment
- Funding issues

Structure

- Funding – Department of Social & Family Affairs
- Management
 - Voluntary Board of Directors
 - Managing Solicitor, Staff (Professional, Support, Volunteer)
- Volunteers

Information, Advice & Representation

- 2,200 queries/consultations per year
 - Drop in, Advice Clinic, Specialist Clinics
- 1/3 Family Law
- Social Welfare, Debt, Employment & Housing
- 58% incomes of less than €15,000 pa
- Limits on cases taken – case selection criteria
- No waiting lists
- *Pro Bono* assistance

Community Education

- **First-tier Education** – directly to community
- **Second-tier Education** – training for information providers, community workers locally and nationally
- **Publications** – newsletters, leaflets, research, submissions
- **Networks** – Northside Partnership, Northside Community Forum, Independent Law Centres
- **Community Initiatives** – Youth Information Initiative & Intercultural Initiative

Research & Campaigns

- **Research Projects**
 - **Accessibility of the Social Welfare Appeals System**
 - **‘A Rights Based Approach to Welfare’**
- **Networks for Campaigns**
- **Submissions**
 - **In-Camera Rule**
 - **ASBO’s**
 - **Law Reform Reports**

The role of Northside Community Law Centre in supporting anti-poverty work

- Service and Strategic Model combined
- Reactive and Proactive
- Community Involvement
- Challenges existing legal norms
- Educates
- Works for Law Reform

Areas of Law

- Family Law
- Employment
- Employment Equality
- Social welfare Appeals
- Debt
- Consumer
- Equality
- Housing
- Education
- Community Care



Case Work

- Family Law in emergency
- Social welfare Appeals
- Employment & Equality
- Housing
- Community Care
- Consumer
- Debt

Case Criteria

- Human Rights Issue
- The case would benefit the local community
- In emergency (Family Law)

Volunteers

- Approx 40 Barristers for the Thursday night 'Advice Clinic'
- Junior and Senior Counsel do pro bono case work
- Full time intern
- Work Experience students
- Summer interns

Other Services

- Every Thursday evening we run an advice clinic
- This is free to those living in our catchment area
- 2/3 barristers/solicitors (volunteers) & NCLC Solicitor
- 6pm – 7.30pm
- First come first served basis
- Everyone is seen

■ ■ Catchment area



NCLC Membership

Full membership

- access to our advice services by phone
- a copy of our training programme and access to training at a reduced fee (20%)
- a copy of NCLC newsletter
- a copy of our annual report
- notification of seminars and conferences organised by Law Centre
- elect the directors to the board of the NCLC
- **€250**

Mediation Service

Focuses on disputes between people within a community over issues such as noise, invasion of privacy, litter, boundaries, barking dogs etc. Community Mediation empowers people to take control of their own lives, by resolving disputes themselves, and within their communities.

Areas for Discussion

1. Right to a home
2. Imbalance of Rights
3. Anti Social Behaviour
4. Right to a home when there are allegations of Anti Social Behaviour
5. Legal Aid?

Where do Local Authorities get Powers and Obligations?

- EU Legislation
- Constitution
- European Convention on Human Rights
- Legislation/Statutory Instruments
- Case Law
- Policy
- Procedure
- Protocols

1. Right to a Home

- Right to shelter
- Right to come and go freely from your home
- Obligation to provide a scheme for housing
- Other obligations
- ECHR

Bunreacht na hEireann

- Right to Shelter?
 - O.G. v. Eastern Health Board [1998] 1 I.L.R.M. 241
- Right to come and go freely from home?
 - *Roseanna Heeney, & Others v. Dublin Corporation* (unreported, Supreme Court, 17th day of August 1998)
- Over 40 per cent of the world's constitutions either refer to housing or have a specified right to housing

Obligation to Provide a Scheme

- Section 60 of the Housing Act 1966, repealed and replaced by
- Section 11 of the Housing Act 1988, repealed and replaced by
- Section 22 of the Housing Act 2009

What did Section 60, 1966 Act say?

- Duty to make a scheme determining priorities
- Scheme may be reviewed from time to time
- Issues for consideration when making scheme:
 - Repair closure demolition of houses unfit for human habitation
 - Elimination of overcrowding
 - Provision of adequate housing for persons, including elderly and disabled, persons suffering from pulmonary TB
 - Scheme may specify categories of persons
 - Scheme approved by Minister
 - Minister can require the Housing Authority to vary the Scheme and the Housing Authority duty to comply
 - In assessing priority reports may be gotten from Chief Medical Officer

McDonald v. Feely

- In McDonald v Feely and ors it was found that:
 - Having the duty to prepare... *a (housing) scheme* would seem to involve a corresponding duty to operate such and in so doing to have regard to the housing needs of those living in unsuitable or overcrowded conditions and those in need of housing and unable to provide for themselves.
 - McDonald v Feely and ors (23rd July 1980) Supreme Court O'Higgins CJ

What did Section 11, 1988 Act say?

- Duty to make a scheme determining the order of priority for persons in need of accommodation
 - Who are, in the opinion of the authority, unable to provide accommodation from their own resources, and
 - Whose need for accommodation has been included in the most recent assessment by the authority, or
 - has been accepted by the authority, after the making of that assessment, for inclusion in the next such assessment
- The scheme shall permit the Housing Auth to
 - categorise persons and accommodation – as they see fit
 - Disregard property of persons if they have reason to believe the person occupying the accommodation has deliberately or without good and sufficient reason done or failed to do anything in consequence of which the accommodation he is so occupying is less suitable for his needs
- The scheme shall make particular provision for persons in need of accommodation arising from emergency
- Housing Auth may obtain reports from medical officer of health of the relevant health board when priority is claimed on grounds consisting of, or including, medical grounds
- Housing Auth may review the Scheme
- Scheme shall be made only with approval of Minister
- Minister can require a housing auth to amend the scheme and the housing auth must comply
- This should not be interpreted as meaning that a Minister has the power to direct the letting of a dwelling

What does 2009 Act require?

- Housing Authority may provide housing services
- Housing Services Plan
- Social Housing Support:
 - Dwelling provided by Housing Authority
 - Dwellings provided by approved body
 - Sale of houses under incremental purchase scheme
 - Rental Accommodation Availability Agreements
 - Provision of sites for caravans
 - Must counteract undue segregation in housing between persons of different social backgrounds
 - Ensure mixture of dwelling types; sizes; and classes of tenure

2009 Act

- Scheme:
 - Determines order of priority of persons who have:
 - Been assessed under social housing assessment
 - Applied for transfer
 - Applied to purchase
 - Matters to be included in consideration:
 - History of residing in an area
 - Proximity of an area to the applicant household's employment
 - Proximity to university, college, schools the applicant household attending
 - Other family members residing in the area
 - Order of priority can be disregarded when considering:
 - The household living in RAAA home
 - Exceptional circumstances
 - Medical priority 'report from a Medical Practitioner' employed by HSE
- Scheme can be reviewed from time to time
- Scheme shall be made only with approval of Minister and Minister can require a housing auth to amend the scheme and the housing auth must comply
- This should not be interpreted as meaning that a Minister has the power to direct the letting of a dwelling

Where am I on the list?

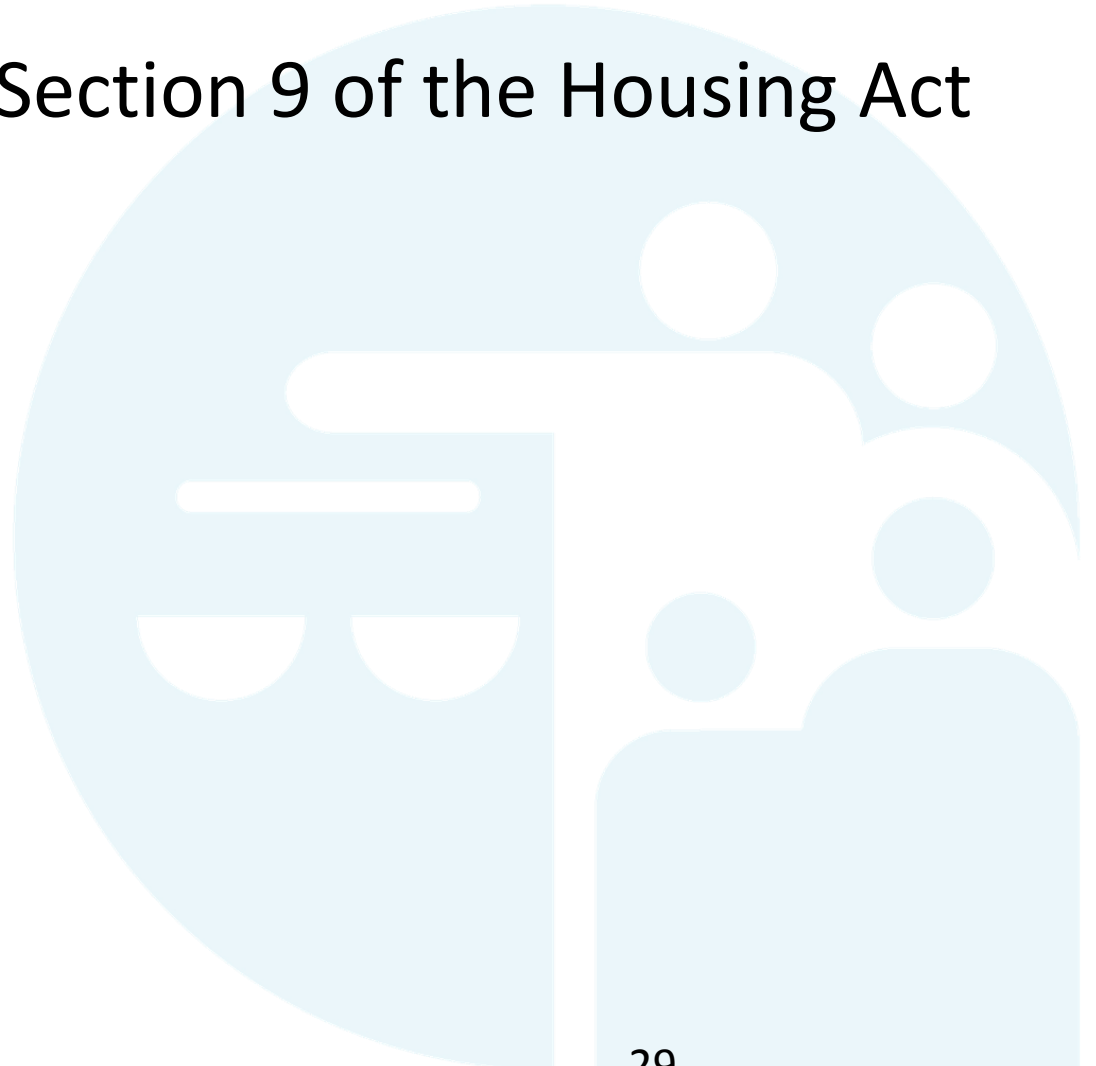
- By 30 April every year Manager must give to members of Housing Auth written report of allocations:
 - Must specify the different categories of dwellings and households
 - Proportion of each category housed by reference to the total number of such allocations

Housing Act 1988 - Homelessness

- A person shall be regarded by a housing authority as being homeless for the purposes of this Act if –
- (a) there is no accommodation available which, in the opinion of the authority, he, together with any other person who normally resides with him or who might reasonably be expected to reside with him, can reasonably occupy or remain in occupation of, or,
- (b) he is living in a hospital, county home, night shelter or other such institution, and is so living because he has no accommodation of the kind referred to in *paragraph (a)*,
- and he is, in the opinion of the authority, unable to provide accommodation from his own resources.

Housing Need

- Guidance under Section 9 of the Housing Act 1988



Other obligations

- McDonald v. Feely
- ECHR
 - Stankova v. Slovakia
 - Moldovan v. Romania
- Equal Status Obligations

ECHR

- ECHR does not give automatic right to home;
- ECHR does say accommodation should be made available, ie a right of access to accommodation
- Also rights to occupation of and to the peaceful and quiet enjoyment of your home
- Accommodation should be adequate to needs

ECHR

- **Article 8: Respect for Private and Family Life:**
- **Everyone has the right to respect for his private and family life, his home and his correspondence.**
- **There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others**

ECHR

- Article 6
- Right to a fair trial
 - 1 In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice

ECHR

- Article 3
- Prohibition of torture:
- No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Equal Status Acts

- Reasonable Accommodation
- Positive obligations regarding provision of housing
- Dublin City Council v. Deans

2. Imbalance of Rights

- Types of Tenants
- Minimum standards
- Other obligations
- LA Tenants Conditions
- Quiet and Peaceful enjoyment
- Private Rented Tenants obligations
- Private Rented Landlords obligations
- Consequences of breaches
- Caselaw

Types of Tenants

- Housing Authority
- Housing Authority tenants with Schedule 3 Tenancies
- Housing Association
- Private Rented with SWA
- RAS
- RAAA

Minimum Standards relate to all

- **Proper State of Structural Repair**
- **Sinks, toilets, fixed baths, showers and water supply**
- **Cooking and food storage Ventilation**
- **Lighting**
- **Fire Safety**
- **Refuse Facilities**
- **Electricity and Gas**

Other obligations

- **Fit for human habitation**
- **Duty of Care**
- **Equal Status obligations**
- **Health and Safety**
- **Planning**
- **Building Legislation**
- **Fire Safety**

LA Tenant's conditions

- Note: Tenancy never negotiated is imposed
- Rent
- Maintenance
- Pet ownership
- Behaviour
- Lodgers / visitors
- Obligation not to leave the house unoccupied
- What if local authority wants dwelling back

What about LA Landlord's obligation re

- RIGHT TO QUIET AND PEACEFUL ENJOYMENT?
- Generally written into Rent book.
- Is a very important implied term of any tenant/ leaseholder's contract

Private Rented

- PRTB
- Tenant Obligations
- Landlord Obligations
- Consequences of breach of obligation for tenant – landlord's remedies
- Consequences of breach of obligation for landlord – tenant's remedies

PRTB

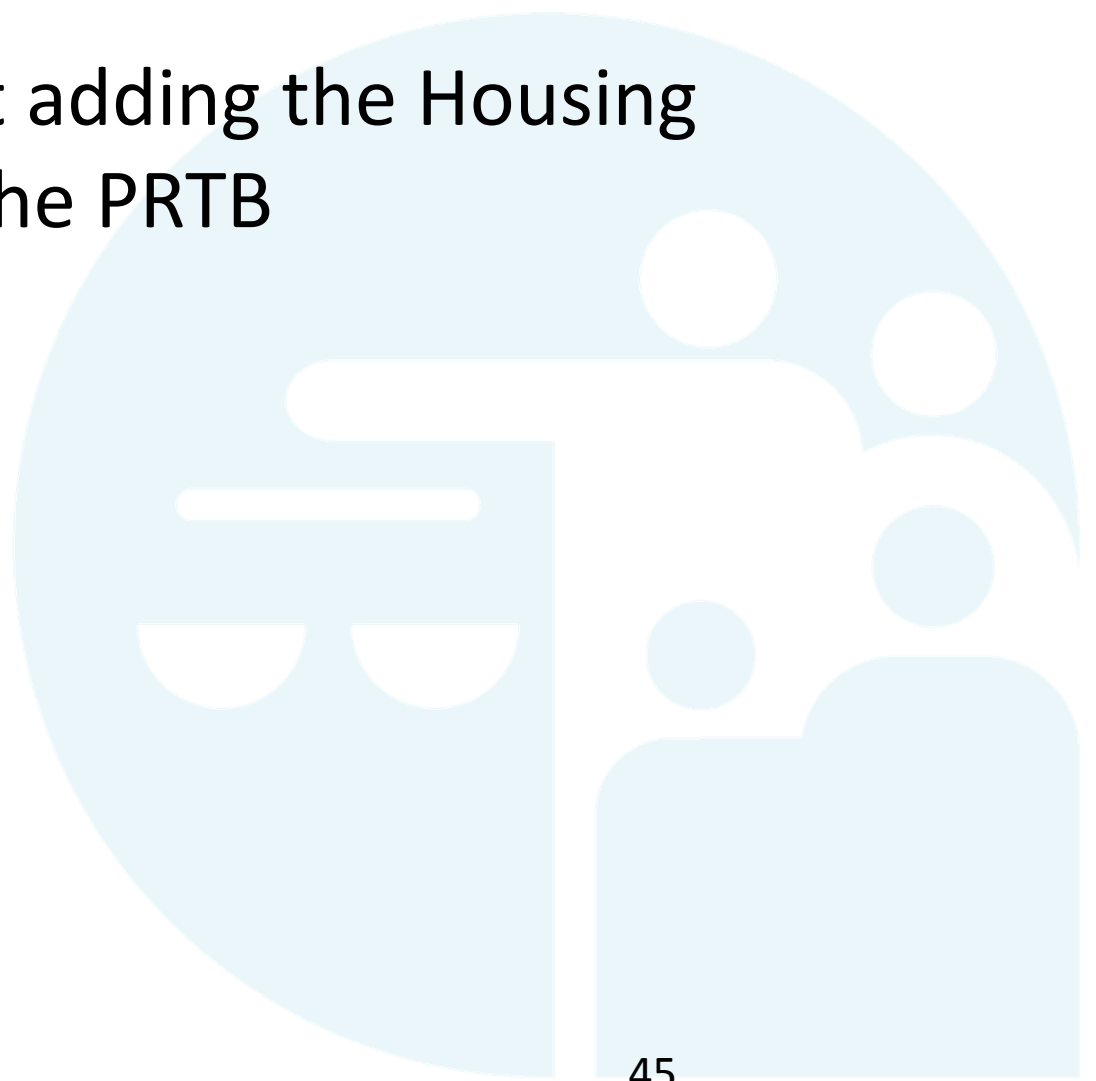
- The PRTB provides a dispute resolution where a tenant, landlord or third party is unable to resolve the matter themselves. The service provided includes Mediation, Adjudication and/or a Tribunal.
- Definition from www.prtb.ie

Who does this apply to?

- Exclusions
 - Business property
 - ‘Controlled Dwellings’ – rent control
 - Local authority or housing authority housing
 - Property which tenant has right to buy – Property which Ground Rents apply to
 - Property obtained under Shared Ownership Scheme
 - Holiday homes
 - A dwelling which the landlord also resides in
 - A family member – ie parent child or spouse of the landlord and no lease or tenancy agreement in writing has been entered into
 - Where an application for long equity has been made and the court order is outstanding

Future for PRTB

- Discussion about adding the Housing Associations to the PRTB



Dwelling!!

- property let for rent or valuable consideration as a self-contained residential unit and includes any building or part of a building used as a dwelling and any out office, yard, garden or other land appurtenant to it or usually enjoyed with it and, where the context so admits, includes a property available for letting but excludes a structure that is not permanently attached to the ground and a vessel and a vehicle (whether mobile or not)

Private Rented Tenant's Obligations – In short

- Pay rent when due
- Pay lawful charges and taxes
- Not do any act which would put the landlord in breach of legislation
- Allow reasonable and agreed access to landlord and/or his agents for works and to comply with obligations
- Not to cause damage over and above normal wear and tear
- Not to behave or allow visitors to behave in anti-social manner
- Not to carry out any activity which would invalidate insurance policies
- Not to assign or sublet without permission
- Not to alter or improve without the written consent of the landlord

Private Rented Tenant's Obligations

- a tenant must pay rent to the landlord when the rent is due;
- the tenant should pay any charges or taxes imposed by the agreement, except where to do so is unlawful or in contravention of any other act;
- not to cause the landlord to be in breach of any obligation under any acts

Private Rented Tenant's Obligations

- allow the landlord or their agent to have access to the dwelling at reasonable times. The time should be on a date and time agreed with the tenant in advance;
- notify the landlord or their agent of any defect requiring them to repair to enable them to comply with their obligations;
- allow reasonable access to the landlord or his / her agent to carry out works which the landlord is responsible for

Private Rented Tenant's Obligations

- the tenant is obliged not to cause any deterioration to dwelling. Normal wear and tear is disregarded. In determining this, the length of time the tenant has been in residence will be taken into consideration.
- In the case of non - compliance with this provision the tenant is obliged to take the steps necessary to the condition that it was at the commencement of the tenancy. The steps taken should be what the landlord would reasonably do to restore the condition of the tenancy.
- In the case of non - compliance the landlord can restore the property and the tenant then refund the landlord

Private Rented Tenant's Obligations

- there is an obligation on tenants not to behave or allow visitors or other occupiers to behave in an antisocial manner;
- not to act or allow any visitors or occupiers to act in a manner which would invalidate the policy of insurance. If actions result in an increase in the policy of insurance the tenant is obliged to pay the increased element to the landlord;
- the tenant should not assign or sub-let the tenancy without the written consent of the landlord which is at the discretion of the landlord. This discretion is an absolute right of the landlord. The tenant can opt to surrender their tenancy at that point under a procedure set out in the act

Private Rented Tenant's Obligations

- the tenant should not alter or improve the dwelling without the written consent of the landlord. Consent can be withheld at the discretion of the landlord but not when such improvement or alteration consists of repairing, painting and / or decorating, in which event consent may not unreasonably be withheld. To alter or improve includes changing the locks and adding to or altering the building or structure which is subsidiary or ancillary to the dwelling

Private Rented Landlord's Obligations – Tenant's Rights

- Tenant's right to peaceful and exclusive enjoyment
- Landlord to carry out necessary structural repairs
- Landlord to carry out interior repairs as set out in regulation and also to keep interior at standard it was in at start of tenancy
- Keep structure insured
- Return deposit promptly – not to unreasonably withhold
- Notify the tenant of his/her contact details and of agent's details where agent appointed.
- Reimburse tenant for reasonable and vouched expenses if works carried out with permission (and where permission unreasonably withheld may also be obliged)
- Keep tenant informed of management company information where that applies

Private Rented Landlord's Obligations

- allow the tenant peaceful and exclusive occupation of the dwelling
- carry out to the structure of the dwelling all such repairs as are from time to time necessary and ensure that the structure complies with any standards for houses as may be prescribed

Private Rented Landlord's Obligations

- carry out to the interior of dwellings all such repairs and replacement of fittings as are, from time to time, necessary so that the interior and those fittings are maintained in, at least, the condition in which they were at the commencement of the tenancy and in compliance with any such standards for the time being prescribed, (save for situations when the repair is needed following damage done by the tenant's actions or inactions)

Private Rented Landlord's Obligations

- keep the structure of the dwelling insured against loss damage and destruction and take out liability cover for at least €250,000 – this does not apply if the policy is not available or not available a reasonable cost;
- return or repay promptly any deposit paid by the tenant – this does not apply in situations where the tenant has damaged the property or owes rent arrears and the damage or rent arrears exceeds the amount of money owing
- Notify the tenant of the details of any agents acting on his / her behalf and also give the tenant the details where he can be contacted if needed

Private Rented Landlord's Obligations

- reimburse the tenant in respect of all reasonable and vouched for expenses that may be incurred by the tenant in carrying out repairs to the structure or interior of the dwelling for which the landlord is responsible where the following conditions are satisfied—
 - (i) the landlord has refused or failed to carry out the repairs at the time the tenant requests him or her to do so, and
 - (ii) the postponement of the repairs to some subsequent date would have been unreasonable having regard to either—
 - a significant risk the matters calling for repair posed to the health or safety of the tenant or other lawful occupants of the dwelling, or
 - a significant reduction that those matters caused in the quality of the tenant's or other such occupants' living environment

Private Rented Landlord's Obligations

- if the dwelling is one of a number of dwellings comprising an apartment complex—
- forward to the management company, if any, of the complex any complaint notified in writing by the tenant to him or her concerning the performance by the company of its functions in relation to the complex,
- forward to the tenant any initial response by the management company to that complaint, and
- forward to the tenant any statement in writing made by the management company in relation to that complaint

Consequences of breach of obligation for tenant – landlord's remedies

- Rent arrears – demand for rent
- Discussion with tenant???
- Notice to Terminate???
- 28 days notice for breach of contract
- 7 days for serious asb

Consequences of breach of obligation for landlord – tenant's remedies

- Demand in writing that the issue be repaired / responded to
- Reasonable time to resolve the matter
- Notice to terminate if not dealt with or
- Lodge complaint with PRTB
- 28 days notice
- 7 days if immediate risk

Rental Accommodation Scheme / Rental Accommodation Availability Agreements

- Three parties to the relationship
- Landlord tenant relationship falls within the remit of PRTB
 - Landlord and local authority
 - Local authority and tenant
 - Tenant and landlord

Caselaw

- Larkos v. Cyprus



3. Anti Social Behaviour

- Definitions
- Anti Social Behaviour or Nuisance?
- Obligation to provide homes that are fit for human habitation
- Eviction process
- Excluding Orders
- Information / Data / Ombudsman
- Policy / Strategy / Guidelines

ASB: Definitions

- Estate Management:
- “the securing or promotion of the interests of any tenants, lessees, owners or occupiers, whether individually or generally, in the enjoyment of any house, building or land provided by a housing authority under the *Housing Acts, 1966 to 1997*,
- the avoidance, prevention or abatement of anti – social behaviour in any housing estate in which is situate a house provided by a housing authority under the *Housing Acts, 1966 to 1997*

Deirdre Carton v. Dublin Corporation [1993]

ILRM 468

- This case dealt with the issue of ‘Good Estate Management’.
- The facts of the case are that Deirdre Carton made an application for Local Authority housing for herself and her sister and father.
- The local authority had issue with the family, the father in particular, as the family had been re-housed 37 times and on each occasion the father had either caused nuisance where he was moved to or was dissatisfied and sought a transfer. The application for housing in this case was made by the daughter Deirdre. The local authority took a view that this was simply a ploy to get around the difficulties with her father.

The Judge in this particular case, Geoghegan J. decided:

- It is Dublin Corporation and not the court which is the housing authority and the court can therefore only interfere with the decision of the respondents if that decision flew in the face of reason or was defective on the grounds of failure to observe the rules of natural justice or was illegal or ultra vires. State (Keegan) v. Stardust Victims Compensation Tribunal [1986] IR 642 and O’Keeffe v. An Bord Pleanála [1992] ILRM 237 followed.
- There was ample evidence to justify the view that the insertion of the applicant’s name on the application was simply a ploy to get around the respondents’ refusal to re-house the applicant’s father.
- The assistant city manager was entitled to look at all the relevant factors in coming to his decision to refuse the said application.
- There has been no guidance from courts beyond this as to what the local authorities deem to be good estate management.

ASB: Definitions cont'd:

- “the manufacture, production, preparation, importation, exportation, sale, supply, possession for the purposes of sale or supply, or distribution of a controlled drug (within the meaning of the Misuse of Drugs Acts, 1977 and 1984),
- any behaviour which causes or is likely to cause any significant or persistent danger, injury, damage, alarm, loss or fear to any person living, working or otherwise lawful in or in the vicinity of a house provided by a housing authority under the *Housing Acts, 1966 to 1997*, or a housing estate in which the house is situate and, without prejudice to the foregoing, includes
 - (i) violence, threats, intimidation, coercion, harassment or serious obstruction of any person,
 - (ii) behaviour which causes any significant or persistent impairment of a person’s use or enjoyment of his or her home, or
 - (iii) damage to or defacement by writing or other marks of any property, including a person’s home;”;

Duty of care

- Moldovan v. Romania (2005) 44 EHRR 16
- Donnelly v Northern Ireland Housing Executive [2003] NICA



Section 35 (7) Housing (MP) Act 2009

- The drawing up and adoption of, and amendment of, an anti-social behaviour strategy is not to be taken to confer on any person a right in law that the person would not otherwise have to require a housing authority in a particular case to exercise any function conferred on it under the Act of 1997 or this Act or to seek damages for a housing authority's failure to perform any such function.

Responding to Anti – Social Behaviour

- General Practice
 - Gardaí
 - Peaceful and quiet enjoyment of your home
 - Letters
 - Meetings / Interview?
 - Access to Information / Allegations?
 - Investigation?
 - Excluding Order
 - Notice to Quit
 - Section 62 – possession proceedings
 - Warrant for possession
 - Refusal or deferral to let
 - Social Welfare – Supplementary Welfare Allowance
- Anti - Social Behaviour Strategy

Section 62 Proceedings – Proofs – no hearing???

- Byrne v. Scally, unreported, High Court, 12 October 2000 at pg. 11
 - (1) The proof of the tenancy agreement
 - (2) The due issue of the Notice to Quit
 - (3) The due service of the Notice to Quit
 - (4) The form of the Notice to Quit
 - (5) The form of the summons
 - (6) That under the Notice to Quit the Tenant was given the appropriate Notice

Section 21 of the Housing (MP) Act 1997

- **21.**—Where, in any proceedings under section 62 of the Housing Act, 1966, or [section 3](#), [4](#) or [9](#), a **member of the Garda Síochána** or an **officer of a housing authority** or a **health board** states that he or she believes that a person is or has been engaged in **anti-social behaviour**, then, if the **Court is satisfied** that there are **reasonable grounds** for such belief and that **another person** would be **deterred or prevented by violence, threat or fear** from providing evidence in that regard, the statement shall be evidence of such anti-social behaviour.

Caselaw

- State (O'Rourke) V. Kelly [1983] IR 58
- Dublin Corporation v. Hamilton [1998] ILRM 542
- Wynne v. Dublin Corporation (unreported, High Court, Shanley J, 22nd July 1998)
- Byrne v. Judge Scally and Dublin Corporation [2000] IEHC 72
- *Connors v. The United Kingdom (Application No. 66746/01)*
- Dublin City Council v. Fennell [2005] IESC 33
- McConnell v. Dublin City Council and Ors [2005] IEHC 7
- Gifford v. Dublin City Council [2007] IEHC 387
- Leonard v. Dublin City Council (unreported High Court, 31st March 2008)
- Donegan v. Dublin City Council (unreported High Court, 8th May 2008)
- *McCann v. United Kingdom (Application No.: 19009/04)*
- Dublin City Council v. Gallagher (unreported High Court, 11th November 2008)
- Pullen v. Dublin City Council (unreported High Court, 12th December 2008)

Excluding Orders

- (*a*) direct the respondent, if residing at the house in respect of which the application was made, to leave that house, and
- (*b*) whether the respondent is or is not residing at the house, prohibit the respondent for the period during which the order is in force from entering or being in the vicinity of that house or any other specified house or being in or in the vicinity of any specified housing estate.
- Length of order: up to three years

Grounds for an Excluding Order

- When an application is made for an excluding order, the court must be of the opinion that there are **reasonable grounds** for believing that the respondent has been **engaging in anti-social behaviour**

Interim Excluding Orders

- reasonable grounds for believing that there is an **immediate risk of significant harm** to the tenant / relevant purchaser / RAS
- EX PARTE – only the applicant present
- Short term order

Who can apply for an excluding order

- **Tenant**
- **Local Authority**
- **Relevant Purchaser**
- **RAAA Tenant possibly**

Local Authority

- A local authority may apply to the District Court for, and be granted an excluding order in the following situation:
 - If they believe that a respondent is engaging in anti-social behaviour, and
 - They have consulted the tenant, or relevant purchaser, and
 - They have consulted with the Health Board or Health Authority in the local area and
 - The tenant is not going to apply for an excluding order as they are deterred or prevented from doing so because of
 - Violence
 - Threat
 - Fear
 - The local authority consider that in all the circumstances it is necessary in the interests of good estate management

Information / Data

- Section 15 HMPA 1997 as amended
- Right to seek records under FOI subject to restriction
- Right to have accurate records held under FOI
- Right to have incorrect records corrected
- Obligation on data holder – how long can records be held

POLICY???

- The new Anti Social Behaviour Strategies
- Good Practice in Housing Management – Guidelines for Local Authorities – Preventing and Combating Anti Social Behaviour

What do the Guidelines say?

- **NB**
- One of the things is the most effective way of combating anti social behaviour is to prevent it from arising in the first place

How Does Estate Management Work

- New strategy will indicate how each local authority will conduct their business
- Strategies are in Draft form at the moment

4. What is the future for people with a label of 'anti social behaviour'?

- When does the label end / how do you clear your record
- Deferral of allocation
- Refusal of allocation
- Refusal to right to buy

- When does the label end
- how do you clear your name
- How do you correct the records
- Are their Article 6 and Article 8 issues?
- When does a person pay their debt to society?

Refuse to make or defer an allocation

Sect 14, 1997 H (MP) Act 1997 (amended by 2009 Act)

- Where the authority considers that the person is or has been engaged in anti social or that it would be in the interest of good estate management
- Where a person has failed to provide information, including information relating to persons residing or to reside with that person which is requested by the housing authority and which the housing authority considers necessary in connection with an allocation
- NB LETTING CHANGED TO ALLOCATION AND RAAA ALSO INCLUDED NOW

Refuse to sell a dwelling

Sect 14, 1997 H (MP) Act 1997 (amended by 2009 Act)

- A housing authority may refuse to sell a dwelling to an eligible household where the authority considers that the tenant has been engaged in anti – social behaviour or that a sale to that eligible household would not be in the interest of good estate management
- Refuse to consent to a sale of a dwelling if they are of the opinion that
 - a) The intended purchaser is not a person in need of housing
 - b) The intended purchaser is or has been engaged in anti social behaviour or that the intended sale would not be in the interest of good estate management, or
 - c) The intended sale would, if completed, leave the seller or any person who might reasonably be expected to reside with that person without adequate housing

Social Welfare Legislation – SWA

- CWO may refuse to give rent supplement or mortgage supplement or may terminate or suspend the payment if:
 - the person has been required to deliver up possession of their home and the reason for such a requirement includes anti-social behaviour and/or good estate management
 - the person has had an application for tenancy or an application for purchasing of local authority property refused or deferred due to anti – social behaviour and/or due to failure to provide information which the local authority considers necessary
 - the person is a respondent to an excluding order or interim excluding order
 - the person is illegal occupier and has been asked to leave the property under section 20 of the Housing (MP) Act

2007

5. Legal Aid

- Byrne v. Scally
- Entitlement to Legal Aid
- Importance of Legal Advice



Byrne v. Judge Scally and Dublin Corporation [2000] IEHC 72

- Whether or not Ms. Byrne should have been granted an adjournment of her case pending a consultation with a solicitor of the Legal Aid Board, the decision on whether to grant her legal aid had been made. At this point there were extensive delays within the Legal Aid Board system and her appointment would not have been for 6 months.
- Ms. Byrne had been served a notice to quit and demand for possession in this case as it was in the interests of Good Estate Management. She was not given any other reason nor was she on request of reasons.
- O’Caoimh, J in this case determined that the matters were not that complex as to warrant legal aid.

Entitlement to Legal Aid

- Civil Legal Aid Act 1995
- Dispute relating to a right or interest over land

A relevant exemption in these proceedings would be that as set out at Section 28 (9) (c) (iii) of the Civil Legal Aid Act 1995:

- ‘where a subject matter of the dispute is the applicant's home (or what would be the applicant's home but for the dispute) and the Board considers that the applicant—
 - suffers from an infirmity of mind or body due to old age or to other circumstances, or
 - may have been subjected to duress, undue influence or fraud in the matter,
- and that a refusal to grant legal aid would cause hardship to the applicant;’
- To qualify for legal aid you therefore must have a disability or in the alternative be in a position to argue that you have been subjected to duress; undue influence; or fraud. If the person falls within one of the aforementioned, the second matter to be considered is whether by refusing legal aid, the applicant would suffer undue hardship.

Section 28 (9) (a) (ii) of Civil Legal Aid Act 1995

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Importance of Legal Advice

- Can legal intervention prevent court proceedings?
- Injunction?
- Long term consequences?

Finally

Thank you!!!

**Please fill out the
evaluations!!!**