



Housing Management Brief

Issue 27

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Welcome

As you will gather from Donna's "Spotlight" piece in this month's edition, the time has come for me to hang up my social housing boots and retire from practice. This will therefore be my last Introduction to our HM Brief.

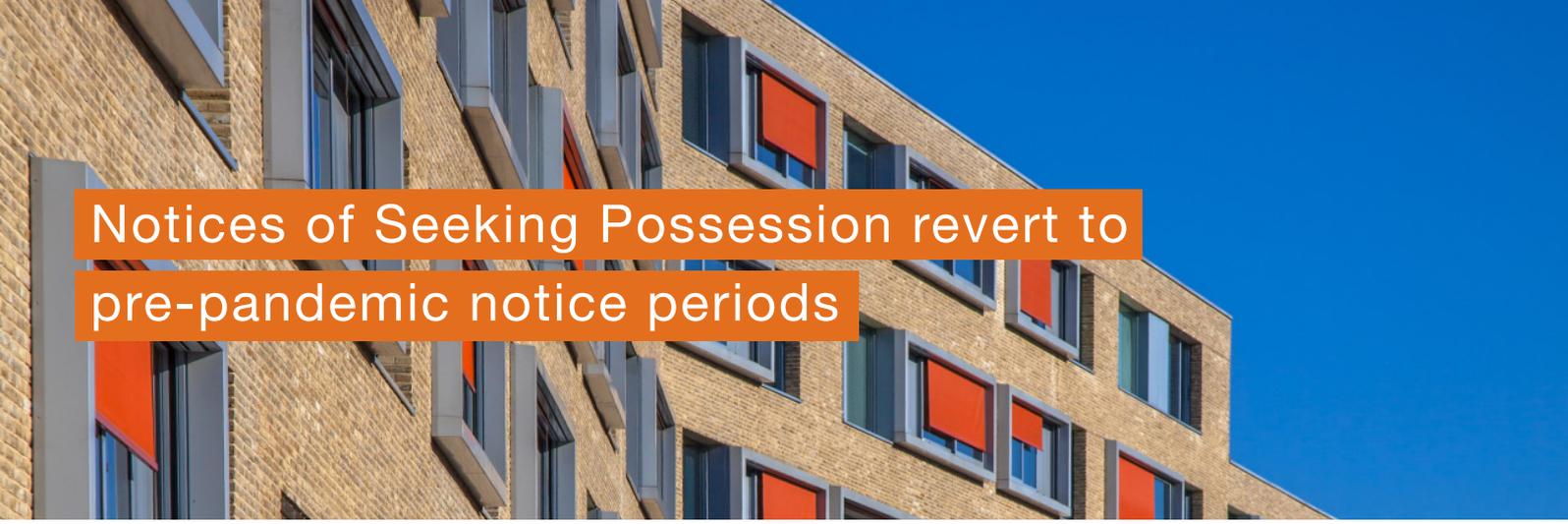
Working at Devonshires for the last 26 years has been a rollercoaster of a ride and an absolute blast, but it is time to hand over the reins as I approach my sixtieth. In anticipation of my retirement next April, Donna has taken over as Head of Department and I know that my legacy (if I can call it that) is in good hands. Donna will make a fantastic Head of Department and I know that she will take the Team to the next level over the coming months and years. Our staff and our clients are in very good hands.

In the meantime, do enjoy reading this edition. As I have probably said on too many occasions in past Introductions, there is something in here for everyone.

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Notices of Seeking Possession revert to pre-pandemic notice periods

The Coronavirus Act 2020 (Residential Tenancies and Notices) (Amendment and Suspension) (England) Regulations 2021, new Regulations laid before Parliament on 8 September 2021, has again changed the period of notice that a landlord must give to the tenant before commencing a claim for possession. These changes came into effect from 1 October 2021.

These Regulations amend and suspend various provisions to Schedule 29 of the Coronavirus Act 2020.

The key changes

The notice periods given to the tenant before a claim for possession can be issued have now reverted back to the pre-pandemic notice periods, as per Regulation 3. Full details can be found on the gov.uk website but for your information, the notice periods for the common grounds used by social landlords are as follows:

- Section 21 notices requiring possession of a property under an assured shorthold tenancy – tenants are entitled to at least two months’ notice before the landlord is able to apply to the Court for a possession order.
- Section 8 notices seeking possession of a property under an assured or assured shorthold tenancy depending on Ground for possession used-
 - » Ground 7 – death of a tenant – 2 months
 - » Ground 7A – serious anti-social behaviour - 4 weeks (periodic tenancy) or 1 month (fixed-term tenancy)
 - » Ground 8 – serious rent arrears at time of service of notice and possession proceedings – 2 weeks
 - » Ground 9 – alternative accommodation available – 2 months
 - » Ground 10 - Some rent arrears at the

time of service of notice and possession proceedings – 2 weeks

- » Ground 11 – persistent late payment of rent – 2 weeks
 - » Ground 12 – breach of tenancy agreement – 2 weeks
 - » Ground 14 - Nuisance/annoyance, illegal/immoral use of property - None – proceedings may be commenced immediately after service of notice
- Section 83 notices seeking possession of a property let under a secure tenancy-
 - » Ground 2 - Nuisance/annoyance, illegal/immoral use of property - None – proceedings may be commenced immediately after service of notice
 - » Section 83ZA – serious anti-social behaviour – at least 4 weeks
 - » All other Grounds – 4 weeks

The new Regulations also introduce new simplified prescribed forms i.e. notice of seeking possession under section 8 Housing Act 1988, notice requiring possession under section 21(1) and (4) of the Housing Act 1988 and notice of seeking termination of a fixed term tenancy and recovery of possession under section 83 of the Housing Act 1985 to reflect the change in notice periods.

You will also see that these new forms have been simplified, with the Section 8 form being renamed as a ‘Notice of intention to begin proceedings for possession’. These forms should be used as of 1 October 2021 and are available on the Government website.

Other things to consider

The Government has retained its emergency powers to impose longer notice periods until 25 March 2022, which is set out in Regulation 2. For reference, you can view

the new changes to Schedule 29 of the Coronavirus Act [here](#).

It is important to bear in mind that the Regulations, while they have changed the notice periods, it has not affected the lifespan on the Section 8 or Section 83 notice which can still be relied on for up to 12 months after they are served. Any claim based on a Section 21 notice must be issued within 6 months of the date of service of the notice.

For more information, please contact Amirah Adekunle-Fowora.



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Dealing with Data Protection Claims

We are seeing more and more claims by tenants for data protection breaches. The claims relate to a myriad of different scenarios with the most common breaches relating to:

- emails being sent to the wrong recipient
- disclosure of details in anti-social behaviour matters
- unauthorised members of staff having access to sensitive data
- insufficient data security

Causes of Action

Claimants allege the relevant sections of the Data Protection Act 2018 and principles of what is now the UK GDPR, but often also allege breach of privacy and confidentiality and on occasions, negligence. The “stacked” claims can appear substantial as a result but in the case of Reid v Price it was held that there is no material difference in claims made pursuant to data protection legislation, the law of privacy and/or confidentiality. The causes of action all relate to the wrongful retention or disclosure of data and as such, damages due will not be enhanced by the presentation of the case.

Claimants and Damages

When it comes to the question of damages, it must be borne in mind that you have to take your ‘victim as you find them’. This means that if the claimant has health issues or is vulnerable this may aggravate the claim somewhat and

the damages due may be increased. Whether a claimant has a protected characteristic and the type and extent of data to the breach will be highly relevant in determining damages.

The average value of claims we are coming across is fairly low at this point; being between £1,500 to £4,000. However, case law, such as the Reid v Price case (where £25,000 damages was awarded and that was only because the claim form limited damages to that amount); indicate that damages for data breaches could be far higher. The specific scenario of each case must be assessed on its own merits to determine the extent of liability and value of the claim.

An important point to remember is that claimants will always seek payment of their legal costs. As such it is important that attempts are made to settle the claim as soon as possible to limit the costs or the costs could quickly exceed the value of the actual claim.

If you need advice on anything to do with data protection or a data breach, please contact Samantha Grix.



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Ask the Expert:

Ikram El-Ahmadi

Q How has Brexit affected the right to rent scheme?

A The main change that has arisen following Brexit is with regard to EEA Citizens, as the transitional period of up to and including 30 June 2021 has officially coming to an end and has resulted in the government implementing permanent changes to the scheme.

By way of background, after the announcement of Brexit up to and including 30 June 2021 EEA citizens continued to use their EEA passports as evidence of their right to rent, alternatively they could have opted to use the Home Office Online Checking Service if they had status under the EU Settlement Scheme. In addition to this, there was no requirement on Landlords to conduct retrospective checks on EEA citizens who entered a tenancy agreement up to and including 30 June 2021 and the landlord maintained a statutory excuse against civil penalties if the initial checks were undertaken in line with the guidance that applied at the time the check was made.

The rules changed on 1 July 2021, whereby EEA and Swiss citizens (and their family members) now require

immigration status to enter the UK. They cannot rely on an EEA passport or national identity card as before, the reason being is that this only confirmed their nationality and did not prove their right to rent.

From 1 July 2021, the majority of EEA citizens will prove their right to rent using the Home Office online checking service. Those who have made a successful application to the EU Settlement Scheme will have been provided with digital evidence of their immigration status and can only prove their right to rent using the Home Office online checking service 'prove your right to rent in England'. To prove their right to rent from 1 July 2021, individuals will provide you with a share code and their date of birth which will enable you to check their Home Office immigration status via the online service available on GOV.UK: <https://www.gov.uk/view-right-to-rent>. You will obtain a statutory excuse against liability for a civil penalty if you carry out the check using the Home Office online service as set out in this guidance. If an EEA citizen has been granted 'Settled Status' by the Home Office, they will have a continuous right to rent, in the same way as someone with Indefinite Leave to Remain. If an EEA citizen has been granted 'Pre-Settled Status' by the Home Office, they will have a time-limited right to rent, and must carry out a follow-up check. The Home Office online service will advise when a

follow-up check must be carried out.

Other significant updates since July 2021 include:

- Changes to the way EEA citizens will prove their right to rent in England from 1 July 2021
- Changes to the acceptable document list, to remove the requirement of EEA passports, national identity cards and specified EEA Regulations documents, which only confirmed the individual nationality or that they were exercising EEA Treaty Rights from 1 July 2021
- Changes to the acceptable document list from 1 July 2021 to include:
 - o Irish passport and passport card
 - o A document issued by the Crown Dependencies Jersey, Guernsey or the Isle of Man, which has been verified as valid by the Home Office Employer Checking Service
 - o A frontier worker permit issued under regulation 8 of the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020
- The temporary adjusted right to rent checking process during COVID-19.

Overall, it is key for landlords to be aware of the changes in order to comply with their legal obligations to conduct accurate right to rent checks. While the entire scheme itself has not changed, it is imperative that the changes in the details are followed to ensure protection against all forms of penalties.

For more information, please contact **Ikram El-Ahmadi**.



Ikram El-Ahmadi

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Spotlight on...

Donna McCarthy

What have you been up to recently?

Well, it has been a busy 6 months since our last update! Earlier in September 2021, I was appointed the new Head of the HMPL Team, taking over from Nick Billingham. I first joined Devonshires some 22 years ago, and I am eager to work on spearheading the future of the department and leading the team. Nick has built a fantastic 35+ strong team as head of department and it is an honour to take over from him ahead of his retirement and I am really looking forward to working with him in his new consultancy role at Devonshires.

All in all, I am looking forward to the next chapter of my career with Devonshires and helping to grow the team further.

Tell us about your career so far:

My first job was in house in a local authority and I studied via the CILEx route alongside my full time job and became a qualified member of the Institute when I was just 20 years old. Housing law was something I was passionate about, and I decided to do a further diploma in landlord and tenant law as I decided that was what I wanted to specialise in. I thought about how I could do something with more of a social agenda, so I moved into legal aid work representing vulnerable tenants and specialised in representing the most vulnerable. After 5 years acting for

tenants I wanted to look at the bigger picture and thought about how one could make a difference working for the greater benefit. That's when I decided to work for social landlords, and joined Devonshires in 1999.

A big focus of my career now is looking to work with and develop others. I have a particular passion for working with those who are under-represented in the law. I want to share my 30 years of experience and help inspire the next generation of lawyers as well as work with my clients and contacts for example through the IN Laws programme.

What do you enjoy most about working in Housing Management law?

I enjoy the sheer variety of the work! Housing law is always evolving and changing, and there is never a dull day! It's exciting to be working in a sector that's always fast-moving, and to also work and lead on matters that have such a big impact on our clients and those they serve.

For more information, please contact Donna McCarthy.



Donna McCarthy

Partner

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The Domestic Abuse Act 2021 –

What does it mean for social housing providers?

The long awaited Domestic Abuse Act finally received royal assent on 29 April 2021. The Act has a broad scope encompassing the establishment of a Domestic Abuse Commissioner; makes provision to assist victims to give evidence or otherwise participate in proceedings; provides for new and extended criminal offences as well as making changes that assist victims of domestic abuse in accessing housing and maintaining their security of tenure. In this article I highlight the key provisions that social housing providers need to be aware of.

Homelessness: Victims of domestic abuse

Section 78 of the Act came into force on 5 July 2021 and amends Part 7 of the Housing Act 1996, to substitute the old definition of domestic violence for domestic abuse. The new definition is set out in Section 1 of the Act and states the 'behaviour of person (A) towards another person (B) is 'domestic abuse' if:

- a. A and B are each aged 16 or over and are personally connected to each other; and
- b. The behaviour is abusive

Behaviour is abusive if it consists any of the following: physical or sexual abuse; violent or threatening behaviour; controlling or coercive behaviour; economic abuse or psychological, emotional or other abuse. It does not matter whether the behaviour consists of a single incident or course of conduct. Further, A's behaviour may be 'towards B' despite the fact it consists of conduct directly at another person (for example B's child).

Section 2 of the Act states that two people are 'personally connected' if any of the following applies:

- a. they are, or have been, married to each other;
- b. they are, or have been, civil partners of each other;
- c. they have agreed to marry one another (whether or not the agreement has been terminated);
- d. they have entered into a civil partnership agreement (whether or not the agreement has been terminated);
- e. they are, or have been, in an intimate personal relationship with each other;
- f. they each have, or there has been a time when they each have had, a parental relationship in relation to the same child;
- g. they are relatives.

The application of these definitions will expand the categories of those who may qualify for homelessness assistance. The Act also makes it easier for victims of domestic abuse to be found eligible for accommodation if they are homeless as a result of being a victim of domestic abuse, by creating a new and defined category of priority need. The Homelessness Code of Guidance for Local Authorities has been significantly updated to take account of the new provisions.

Section 79 – Grant of Secure Tenancies in cases of domestic abuse

This provision is due to come into force on 1 November 2021 and inserts a new Section 81ZA into the Housing Act 1985. It applies when a local housing authority is granting a tenancy where the applicant or a member of their household is or has been a victim of domestic abuse, and the new tenancy is granted for reasons connected with that abuse. The housing authority must grant a secure tenancy that is not a flexible tenancy if the tenancy is offered to someone who was previously a

tenant under a qualifying tenancy. A qualifying tenancy is a secure or assured non-shorthold tenancy granted by registered provider of social housing or housing trust which is a charity. This is designed to ensure that those who need to be rehoused as a result of domestic abuse do not lose their previous security of tenure.

Part 5 – Protection for victims, witnesses etc. in legal proceedings

This part of the Act brings in wide ranging measures to safeguard witnesses who may have been the victims of domestic abuse in criminal, family and civil proceedings. The provisions in relation to civil proceedings are likely to be relevant to landlords, particularly when seeking injunctions and are due to come into force in Spring 2022.

Section 64 provides that rules of court must make a provision to enable the court to make a special measures direction in relation to a person who is a party or witness in civil proceedings where that person is or is at risk of being a victim of domestic abuse or is the victim or alleged victim of the specified offence. This will ensure that victims of domestic abuse are given the opportunity to give evidence without intimidation, for example behind a screen, via live link or in private. The civil procedure rules will need to be amended to bring this into effect. Although it is not anticipated that this will be in force until spring 2022, it is worth considering in current proceedings and asking the court for similar directions relying on the overriding objective which gives the court wide powers. In particular CPR 1 provides that the case should be dealt with ‘justly’ and ensure ‘that the parties are on an equal footing and can participate fully in proceedings and that parties and witnesses can give their best evidence.’

Section 66 inserts a new Part 7A into the Courts Act 2003, which will make a provision to limit the right of a litigant in person to cross examination of vulnerable witnesses in civil proceedings. Once in force, a party to the proceedings will not be able to cross examine the witness in person if they; have been convicted of or cautioned for a specified offence, are subject to an on notice injunction which is in force, or where a witness has been a victim of domestic abuse carried out by that party. The court will need to consider whether there is a satisfactory alternative means for the witness to be cross examined or of obtaining the evidence. If there is not, the court has power to invite the party to arrange

for a qualified legal representative to cross examine, and if that is not possible the court must appoint a representative to cross examine the witness.

For more information, please contact Donna McCarthy.



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Focus on tenancy fraud – Tips from Raj Vine, Counter Fraud Specialist for Riverside Housing following recent Court of Appeal decision

In June 2021, Riverside Housing obtained a possession order and Unlawful Profit Order against a tenant who was unlawfully sub-letting their home.

The tenant was ordered to pay more than £155,000 to Riverside Housing, in what is said to be the second largest case of its kind.

Prior to joining Devonshires in April this year, solicitor Vicky Smith, worked on the case with Raj Vine, Counter Fraud Specialist for Riverside Housing.

The tenant had sublet her two bedroom flat in Camberwell, South London, to two women and their children. Through partnership working with Oxford City Council, it was found that the tenant had not been living at the property since at least 2008.

At Clerkenwell & Shoreditch County Court on 3 June 2021, the Judge dismissed the tenant's account. The Judge granted Riverside Housing an outright possession order and made an Unlawful Profit Order in the sum of £145,178, together with a demand that the tenant repay £3,000 of rent arrears and £9,955 of legal costs.

Within his judgment, the Judge commented that *"individually all of the above [evidence] may not be enough [to prove sub-letting] but put all the pieces together and it beats with a single rhythm"*.

Tell us a bit about your role and what you love about it. Riverside have over 56,000 properties nationally and my role is to investigate cases of unlawful subletting and key selling. I've worked for Riverside for over 13 years and it's great to know that the counter fraud service is able to

prevent and detect cases of fraud. I enjoy working with people who are passionate about the importance of social housing and put our customers at the heart of the service.

What would you say are the tell-tale signs that someone is subletting a property?

There are different indicators of unlawful subletting- no sign of the tenant using the property as their main or principle home, padlocks on doors, people coming in and out with suitcases, objects such as pictures and extra bedding that don't belong to the tenant, credit on the rent account and access issues. There are many signs to look out for, all cases are different, being observant is key to any case as the person may want to remain undetected, it's vital to look out for the clues.

When you think a tenant may be subletting, what are the first steps you take?

Referral information is key, obtaining as much detail as possible. As soon as information comes through ask the right questions. Getting a description of the person(s) who might be in the property and how long it's been happening, when was the tenant last seen and is the property advertised online? Ask housing/asset officers and operatives if they have seen anything suspicious and of any upcoming appointments to visit the property.

How do you gather evidence of subletting, what sources do you use and what evidence do you think is key to a successful claim?

Looking at internal systems is important to establish how someone might want to remain undetected and also how someone has obtained the tenancy. Internal systems can also tell you the story of how active the tenancy has been. It's a great starting point and also gives you information on

repairs that might be carried out or gas inspections, this might be useful to gather intelligence and gaining access. Finding a linked address can also help and establish where the tenant has moved to. Gathering intelligence from open source can be helpful to obtain information.

What did you find particularly interesting about this particular Unlawful Profit Order case?

Partnership/multi-agency working was a great success. Working with Vicky was fantastic as we worked hard to put all the evidence together to show the extent of the case. The property was unlawfully sublet for twelve years, it was important for Riverside to gain possession and ensure the property went to someone who really needed a home.

Why do you think it's important for social landlords to be taking action against tenants that sub-let?

With so many people on the housing waiting list, it's essential that Housing Associations and Local Authorities protect the asset, ensure property are not misused and homes go to people who really need them.

Raj Vine - Riverside Housing

For more information, please contact **Victoria Smith**.



Victoria Smith

Solicitor

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Faces behind the Devonshires Team:

What we've been up to...



Hetal Ruparelia, Solicitor:

"I am back from maternity leave and looking forward to getting stuck back into a new caseload and all things data protection"



Donna McCarthy, Partner:

"I have been busy putting together the autumn webinar programmes for the HMPL team; the InLaws and our Care Group"



Kerri Harrison, Solicitor:

"I have recently returned from maternity leave and will be hosting our upcoming webinar HMPL Building Blocks: An Introduction to Rent Arrears and Possession" - I look forward to seeing those who are attending!"



Zoe McLean-Wells, Solicitor:

"I have been spending my days advising on a wide range of leasehold issues including those relating to cladding, waking watch, Personal Emergency Evacuation Plans, and overhanging trees. I also have a number of access injunctions in relation to flat front door inspections for fire safety."



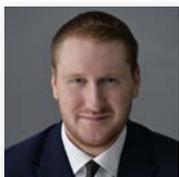
Georgia Goddard, Paralegal:

"I have started the preparation course for the Solicitor's Qualifying Exam and the exam will take place in July 2022."



Duvaraka Balachandran, Paralegal:

"I am new to the team and have been working on a number of cases including ex-parte injunctions, rent possession claims and ASB breaches"

**Lee Russell, Partner:**

“I have had a busy few months assisting building owners and landlords with the ambit of all things fire safety, including some detailed preparations for resident engagement strategies as part of the Building Safety Bill’s proposals.”

**Rebecca Brady, Chartered Legal Executive:**

“I have been busy working on a number of cases, including delving into the realms of Japanese Knotweed and evicting trespassers from a commercial site which was imminently due to be demolished.”

**Dunya Amini, Paralegal:**

“I have been assisting with anti-social behaviour injunctions, access injunctions and possession claims.”

**Tom Molony, Paralegal:**

“I am currently dealing with a number of pre-action disrepair claims and also working multiple possession claims for Registered Providers.”

**Billy Moxley, Paralegal:**

“Currently dealing with numerous access injunctions and disrepair matters”

**Samantha Grix, Solicitor:**

“Recently advised a Registered Provider on a three phase redevelopment project and how to achieve vacant possession of all units to allow for demolition.”

**Ben Townsend, Trainee Solicitor:**

“I’m a trainee solicitor and have recently moved into the department with Donna McCarthy as my supervisor. I will be working alongside Billy Moxley on gas injunctions as well as Hetal Ruparelia as part of the information team.”



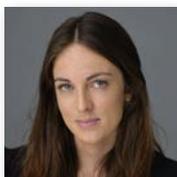
Narin Masera, Paralegal:

“At the moment I am assisting on a number of anti-social behaviour injunctions and preparing them for hearings. I am also conducting research on a right to buy query relating to the right of first refusal and discount repayment.”



Anna Bennett, Solicitor:

“Between advising clients on everything from equitable tenancies to disputes with managing agents, I have been focused on providing training to clients on everything from Housing Co-operatives to Leasehold Management”



Hannah Keane, Solicitor:

“Since qualifying as a Solicitor in the Housing Management and Property Litigation Team earlier this year, I have been expanding my practice to include some aspects of property litigation in addition to housing management matters.”



Ikram El-Ahmadi, Paralegal:

“I assist on a wide variety of diverse matters including data breaches and GDPR, right to rent and post brexit/covid-19 related housing issues.”



Victoria Smith, Solicitor:

“I have been busy managing a varied and interesting caseload. On some days, I have been working on possession, injunction, committal and disrepair matters. On others, I have been dealing with tricky disputes with leaseholders and advising on fire safety issues. I have also been preparing for the implementation of the Renting Homes (Wales) Act 2016”



Kassim Abshir, Paralegal:

“Having recently joined the Housing management team at Devonshires, I’ve been working on several cases ranging from disrepair claims to access and without notice ASB injunction applications. Also dealt with some interesting sub-let cases for possession and utilising mandatory ground 7A for serious breaches of Injunction orders.”



HMPL Building Blocks Webinar Programme - 2021/2022

Devonshires Housing Management and Property Litigation Building Blocks Webinar programme is back due to popular demand! These webinars are aimed at those at the beginning of their careers in tenancy and leasehold management and are suitable for anyone wanting to learn the basics of housing law and how it relates to their day to day job.

An Introduction to Tackling Non-Occupation

24 November 2021
11.00 - 12.00 with Q&A

An Introduction to Tackling Anti-Social Behaviour

8 December 2021
11.00 - 12.00 with Q&A

Leasehold Management – An Introduction to Service Charges & S20 Consultation

13 January 2021
11.00 - 12.00 with Q&A

Leasehold Management – An Introduction to Breach of Lease

3 February 2022
11.00 - 12.00 with Q&A

Leasehold Management – An Introduction to Shared Ownership

24 February 2021
11.00 - 12.00 with Q&A

How to Book

If you are signed up to our mailing list, invitations outlining the programme and speaker details will be issued for each webinar with a registration link. Once your place has been confirmed, you will receive the link for the webinar which you will use on the day to access it.

If you are not signed up to our mailing list, and you want to hear more about our Building Blocks programme, or any of our other future HMPL webinars, articles and updates, make sure to join! [Click here](#) to sign up.

Helplines:

Why not give us a call?

Housing Management Helpline

0800 0854 529

Monday - Friday, 9am - 5pm

Leasehold Management Helpline

0845 994 0091

Monday - Friday, 9am - 5pm