

Zero Tolerance

After the riots, several local authorities promised to evict those involved. Tilly Rubens examines whether they have the power.

Wandsworth Council in London was one of the first to issue a notice of seeking possession against one of their tenants, after her son was arrested and charged in connection with the riots in Clapham Junction.

Writing in *The Times*, the leader of Wandsworth Council, Ravi Govindia, argued that his council had not taken the decision to evict such tenants lightly, nor was it a kneejerk reaction to recent events. He said that having the long-term security of a council flat was a privilege and with that privilege must come “a sense of responsibility to your neighbour and neighbourhood”.

However, housing legislation as presently drafted will only allow tenants to be evicted when the antisocial behaviour alleged occurs in the neighbourhood of the property that they live in, under ground 2 of the Housing Act 1985.

The second limb of ground 2 specifically deals with criminal activity and states that the court may grant a possession order where the tenant (or a person residing with him) has been convicted of using the property, or allowing it to be used, for immoral or illegal purposes or an indictable offence committed in, or in the locality of, the property.

There is no statutory definition of ‘locality’ and case law suggests that any issue as to whether the antisocial behaviour complained of took place within the ‘locality’ of the tenant’s property is to be resolved as a question of fact on all the evidence. In *Manchester v Lawler* [1999] 31 HLR 119, the tenant threatened a child with a knife in a shopping centre three streets away from the tenant’s property. The Court of Appeal held that the offence was committed in the locality where the defendant held her tenancy.

Therefore, if a mother holds a secure council tenancy in Haringey and her teenage son has been convicted of an indictable offence involving looting in nearby Wood Green shopping centre, then the local authority may have a reasonable chance of evicting the family. However, the same London authority would face difficulties in trying to evict this family if her son was involved in looting or other antisocial behaviour in Croydon or another South London borough.

Misguided and unworkable

It is to solve the problem of ‘riot tourists’ that the housing minister, Grant Shapps, recently announced that the government would be pressing ahead with tightening legislation so that “neighbours from hell who become visitors from hell should not be able to escape through some loophole in the legislation”. However, amending the

present legislation, by removing the 'locality' requirement, is I believe imprudent, unworkable and unfair.

Shapps' statement that dysfunctional families are escaping eviction through some loophole in the law is completely misguided. The present housing legislation was enacted to ensure that tenants behaved reasonably in the immediate locality, so their neighbours were protected from antisocial acts and not so that housing authorities or social landlords could act as a law enforcement agency.

Moreover having no geographical restrictions in place will result in logistical difficulties for local authorities as it will mean that any tenant convicted of an indictable offence anywhere in England and Wales could be evicted from their property. Do legal departments of local authorities really have the resources to deal with detailed investigations into antisocial behaviour which occurs perhaps 50 or even 500 miles from where their housing stock is situated?

The second limb of ground 2 is also subject to the condition that the court must be satisfied that it is reasonable in all the circumstances of the case for a possession order to be made (the Housing Act 1985, section 84 (2)). The court will therefore need to consider such factors as the seriousness of the offence, pattern of offending, personal circumstances of the defendant and the relationship (or lack of one) between the offence and the landlord-tenant relationship. A 13-year-old convicted of stealing six bottles of water during the riots is not going to fulfil these criteria.

Evicting such tenants and making them homeless will only further marginalise them and move the problem elsewhere. Lord Macdonald, the former Director of Public Prosecutions, said that to "have young former rioters bereft of income and homeless roaming the streets, with their families also rendered homeless... I'm not quite sure how that would help us to improve social harmony".

Finally, it is extremely unlikely that any new powers to change the eviction laws could be applied retrospectively. Therefore anyone convicted of looting or damaging property in the recent riots would not be caught by any change in the legislation.

Postscript: Tilly Rubens is a partner at Alan Edwards & Co in London specialising in housing law