

Liability of Local Authorities for the Antisocial Behaviour of Third Parties

Antisocial Behaviour

One of the most difficult issues facing housing authorities is its potential liability to third parties for what is commonly referred to as the "antisocial behaviour" of its local authority tenants, or those living in accommodation under licence from the local authority. The term is now defined by s.1 of the Housing (Miscellaneous Provisions) Act 1997 as drug-related activity and/or:

... any behaviour which causes or is likely to cause any significant or persistent danger, injury, damage, loss or fear to any person living working or otherwise lawfully in or in the vicinity of a house provided by a housing authority...and...includes violence, threats, intimidation, coercion, harassment or serious obstruction of any person.

The problem is not unique to housing authorities and is part of the broader legal question of the liability of landlords for the acts and omissions of their tenants. Examples include innocuous activities such as the parking of cars in awkward places, the dumping of rubbish in gardens, noise (particularly late at night), aggressive dogs, as well conduct which involves serious criminality such as drug use/supply and assault.¹ As is noted by one commentator, local authorities' duties may not simply extend to its tenants:

"Anti-social behaviour sits at a strange juncture in the law. Maybe this is because of the many forms that takes— noise nuisance, fouling public areas, aggressive and violent conduct. Some of this is simply non-neighbourly whereas some is quite clearly criminal. The legal responses to anti-social behaviour also takes many forms, but the main focus—notwithstanding that anti-social behaviour affects the whole community—has been to see it as a problem to be tackled by local authorities wearing their 'housing management' hat. The focus on the housing dimension may well have fed the notion that it

is council tenants who cause anti-social behaviour, and council tenants alone who the local authority are responsible to, and for. Chadwick L.J. observed in *Northampton BC v. Lovatt* [1998] 1 EGLR 15 that "reasonably or unreasonably ... those who live or work on a council estate and are affected by the conduct of council tenants on that estate will expect the council to do something about it. The housing department will receive complaints which will have to be addressed."²

The Liability of Local Authorities

The extent of a local authority's obligations for the "anti-social" behaviour of its tenants is ill-defined and claims are grounded in a number of areas of law, e.g. nuisance, negligence, a breach of statutory duty, and landlord and tenant law. As is noted below, there are compelling policy reasons for not imposing duties for such behaviour upon local authorities as they have a statutory duty to house eligible applicants. Furthermore, the question arises as to why the cost of stopping any nuisance should fall on a landlord where it has done nothing to encourage the behaviour.³

However, from the viewpoint of a claimant there can be a superficial attractiveness to pursuing the landlord in such cases, as opposed to, or in addition to, the person causing the nuisance. Where social housing is involved the tenant defendants may be men and women of straw, thus negating the value of any remedy in damages obtainable against them.⁴ A damages award against a landlord, however, would not only compensate the claimant but encourage them to take steps to end the nuisance by seeking repossession of the property from the troublesome tenant. Furthermore, as one commentator notes:

"... it is credible for a claimant in this position, whose primary concern will be to get the nuisance to stop, to assume that the result is more likely to be achieved by a court granting a possession order to a landlord than by granting the claimant an injunction against the other tenant and then committing the tenant for contempt if the terms of the injunction are breached. Even if those draconian consequences did ensue, and courts are notoriously reluctant to gaol defendants in such circumstances ... the imprisonment would be temporary and the neighbour would remain in possession of her premises with the prospect that he/she would continue the

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nuisance in the future. An enforced possession order granted to the landlord would of course remove that possibility.⁵

Local authorities are seen in the eyes of potential claimants of having significant financial resources—a “deep-pocket” defendant for whom insolvency is not an option and who will always be there.⁶ As noted above, the ability to recover against a more culpable defendant may be worthless in practice, and under the rules of joint and several liability, the whole of the award may be recovered from one defendant irrespective of their share of responsibility.

Despite the fact that a local authority has statutory powers to tackle anti-social behaviour, they do not necessarily have a legal responsibility to do so.⁷ A local authority’s responsibilities emanate from two sources. First, if the local authority is in some way responsible for the behaviour in question. Such responsibility need not be from positive acts of the authority and may result from omissions. So, for example, the failure to remove those committing the antisocial behaviour from the land over a period of time may, in certain cases, be sufficient to argue a breach of duty. Second, an “expectation” responsibility can be generated through assurances given by the authority or from the nature of a particular relationship, e.g. a promise that the authority will take legal action to resolve the matter.⁸

Justiciability

Many housing authorities (and all local authorities) are public authorities.⁹ The fact that such authorities may be seeking to discharge their liability to the public as a whole will be highly relevant in determining the liability of the authority for the acts of third parties. Such authorities are distinct from private landowners in that they are often under a statutory duty to provide housing in particular areas. The presence of antisocial tenants often leaves an authority between the proverbial “rock and a hard place”.

Both options that are available—i.e. either to allow such tenants to continue to reside in an area where they have created disturbance, or moving these tenants to another area to create an inevitable disturbance in that area—potentially leaving the authority open to litigation for the acts of these third parties. Failure to provide any housing or site facilities for the tenants will leave the authority vulnerable to accusations that it has failed to perform its statutory housing function. Indeed, it may be compelled to do so in the courts. In such circumstances, it may not be appropriate that these matters be dealt with at all by

the courts. Booth and Squire note that in England and Wales the cases in which local authorities have been liable for the behaviour of third party occupiers of land were those in which the authority did not have any policy for dealing with the nuisances and had done nothing to deal with anti-social behaviour and, further¹⁰:

“Where the decision as to whether to remove an individual from land involves a ‘weighing of resources and the establishment of priorities’, and it is essentially a decision of housing or land use *policy*, it will be beyond the competence of the court to adjudicate upon it, and the decision cannot give rise to a claim in damages ... When the local authority has formulated a strategy that attempts to balance the rights of different parties and the wider community, it is unlikely that a court will interfere with its decision or conclude that it has been negligently taken.”¹¹

Claims for the misbehaviour of third parties tend to fall into three categories: 1) Nuisance, 2) Negligence, and 3) Derogation from grant. Claims in nuisance will seek to establish 1) that the acts of the occupiers of land interfered with the plaintiff’s use and enjoyment of the land, 2) that they arose from the use of the defendant’s land, 3) that they were expressly or impliedly authorised by the defendant. Nuisance need not, of course, amount to, or be limited to, anti-social behaviour. The elements of the tort were set down by O’Higgins C.J. in *Connolly v South of Ireland Asphalt*¹²:

“It has been said that an actionable nuisance is incapable of exact definition. The term nuisance contemplates an act or omission which amounts to an unreasonable interference with, disturbance of, or annoyance to another person in the exercise of his rights. If the rights so interfered with belong to the person as a member of the public, the act or omission is a public nuisance. If these rights relate to the ownership or occupation of land, or of some easement, profit, or other right enjoyed in connection with land, then the acts or omissions amount to a private nuisance.”¹³

Private nuisance is actionable *per se*, i.e. there is no need for proof of actual damage and may constitute i) physical damage to land, ii) interference with the enjoyment of land, or iii) interference with servitudes

such as easements.¹⁴

In cases where the housing authority has not created the nuisance the court may still fix it with liability if it “adopts” or “continues” the nuisance. However, this is limited to cases where the nuisance is caused by the act of a third party licensee/ trespasser upon the authority’s land. Nor does continuance require active participation by the housing authority. A failure to take steps to end the nuisance within a reasonable time from becoming aware of it may be sufficient to constitute continuance.¹⁵ Furthermore, as is evident from the discussion below, a housing authority may be liable for acts of third parties which are committed away from the property in which the authority has an interest if they are using such property as their base.¹⁶

Negligence claims tend to focus on the denial of a duty of care by the authority and where such a duty is arguable the case can often concern the liability for an omission, e.g. where there has been a failure to evict the tenants after the anti-social behaviour has been brought to the attention of the authority.

A derogation from grant can be established where a landlord grants a right to a tenant (either expressly or by implication) and the landlord’s subsequent acts or omissions negate that right. The passage of the European Human Rights Act 2003 also allows potential claims for breach of the provisions thereunder.

Nuisance

Caused by Housing Authority Tenants

In cases against housing authorities for a nuisance caused by a third party, there appears a distinction in the English case law between nuisances caused by tenants and nuisances caused by other third parties such as licensees or trespassers over the Authority’s property.

*Smith v Scott*¹⁷ sets down the rule governing the liability of a housing authority where one of their tenants is causing the nuisance complained of. In this case the local authority placed a family in a house adjoining the plaintiff as tenant. The family were known by the authority to be likely to cause a nuisance, but the conditions of tenancy contained an express term which prohibited committing a nuisance. It stated:

“[The tenants shall] be responsible for the orderly conduct of all persons (including their children) who occupy the premises, their own and other occupants’ visitors on any part of the estate ...

[The tenants shall not] overcrowd the premises or do or permit or suffer anything to be done on the premises which in the opinion of the council may be or become a nuisance or annoyance to other persons.

The tenant shall be responsible for ensuring that members of his family, his visitors and other persons who occupy the premises or any part thereof comply with conditions ... [set down] hereof and accordingly any infringement of such conditions by such persons will be deemed to be and be treated as an infringement thereof by the tenant.”

The tenants damaged the plaintiff’s property and caused excess noises and he was obliged to leave his house and seek alternative accommodation. The plaintiff sought *inter alia* an injunction against the corporation from “allowing or permitting” the tenants from doing the acts complained of. The council were found to have taken no effective steps to control the tenant’s behaviour or to evict them. It was also found that the corporation had knowledge when they placed the tenants at the dwelling that they were likely to cause a nuisance, but there was no malice involved.

The court noted that, in the law of nuisance, the person to be sued is the occupier of the property which creates the nuisance and a landlord is not generally liable for acts of nuisance committed by a tenant. The landlord is liable if he or she has authorised the nuisance.¹⁸ However, the exception is a narrow one as set down by *Pennycuik V.C.*:

“... this exception has, in the reported cases, been rigidly confined to circumstances in which the nuisance has been either *expressly authorised or is certain to result from the purposes for which the property is let* ... The exception is squarely based in the reported cases on express or implied authority ... [It] is not based on cause and probable result, apart from express and implied authority.”¹⁹

As the tenancy agreement contained an express term forbidding the conduct causing the nuisance, the corporation was held not to fall within this exception as it could not be said that the corporation impliedly assented to it. The fact that the letting of the house would probably lead to such a nuisance was not relevant in the absence of this assent.

The rule in *Rylands v Fletcher*²⁰ was also held inapplicable as the judge noted that the person liable

under it "is the owner or controller of the dangerous 'thing' and this is normally the occupier and not the owner of the land ... a person parts with possession of the demised property in favour of his tenant and could not in any sense known to law be regarded as controlling the tenant ...".²¹ Furthermore, the court did not believe that it was open to it to impose a duty of care upon a local authority to its neighbours when selecting tenants to let the property and the case was dismissed.

Distinction between Acts of Tenants and Acts of Trespassers

A different legal standard applies if the act causing the nuisance was caused by a licensee or trespasser, as opposed to a tenant of the authority. This is set down in the case of *Sedleigh-Denfield v O'Callaghan*.²² It states that a landlord who does not take reasonable steps to abate a nuisance caused by a third party within a reasonable time of becoming aware of it can be held liable. Lord Wright stated the law as follows where the nuisance was not caused by the defendant but he had "come to the nuisance" which may have been caused by a trespasser or stranger:

"Then he is not liable unless he continued or adopted the nuisance, or more accurately, did not without undue delay remedy it when he became aware of it, or with ordinary and reasonable care should have become aware of it."²³

The case concerned a nuisance claim in respect of the physical condition of the land in question caused by a blockage to a rain water culvert. The blockage had been caused by a trespasser onto the defendant's land. However, the defendant was held liable for the damage caused to the adjoining land as there was ample time to fix the problem but he had failed to do so. The direct applicability of this case to claims involving the antisocial behaviour of their parties on a landlord's property has been questioned.²⁴

The case was cited in argument in *Page Motors v Epsom*²⁵ the plaintiffs were lessees of a premises from the defendant and conducted their business there. A gypsy community camped on a part of the estate close to the premises. They caused considerable nuisance and interfered significantly with the plaintiffs' business. The plaintiffs made a series of complaints to the defendant, and a court order of possession was obtained in 1974. However, it was not until 1978 that the site was finally cleared. It was found that the

council had made a deliberate policy decision in allowing the gypsies continue in possession of the land and had provided them with facilities for the site. The defendant was held liable in nuisance and this was upheld by the Court of Appeal. There liability was held to run from the start of 1975.

The court stated that the defendants had a duty to take reasonable steps to remove the cause of the nuisance to adjoining occupiers once they became aware of it within a reasonable time. The court further held that it was obliged to have regard to the fact that the defendant was a public body with a duty to consider wider issues which would not be necessary for a private body and had public responsibilities in the discharge of its function. It was held that if reasonable steps had been taken to remove the nuisance, it would have ceased by the beginning of 1975. The decision of *Smith v Scott* was distinguished by Ackner L.J. who noted that it was:

"... essentially a claim brought against a local authority on the basis that as landlords' they expressly or impliedly authorised the nuisance complained of. *Sedleigh-Denfield v. O'Callaghan* [1940] A.C. 880 does not appear to have been cited nor, apparently, was any point taken that the non-enforcement by the council of their covenant against the commission of a nuisance by their tenant could have resulted in their adopting his tortious behaviour."²⁶

In *Hussain v Lancaster City Council*²⁷ the plaintiffs owned a shop and residential property on a council housing estate. They were subjected to severe harassment (including racial harassment) from persons who were mostly council tenants. This included verbal threats, intimidating behaviour such as loitering at the property and serious criminal behaviour, namely an attempt to "burn them out" by placing mattresses against the door of the property and setting fire to them. The council had been made fully aware of the suffering inflicted on the plaintiffs from 1991 through various contacts made and through the local media. Notwithstanding this the council had failed to take any repossession proceedings against the perpetrators of the various forms of antisocial behaviour. Again the council's standard tenancy agreement provided that the tenant would show "proper consideration towards other residents in the area."

Hirst L.J. upheld *Smith v Scott* as "good law" and rejected a submission that it had been overtaken by

the doctrine of "adoption" espoused in *Page Motors*. He distinguished that case as follows:

"The conduct of the gypsies in the *Page Motors* case clearly constituted nuisance in the technical sense, since in all its various manifestations it involved use (or rather misuse) of the council's land which the gypsies had been occupying over a period of several years; on that footing alone it is plainly distinguishable from the present case. ... the key to the case is the fact that...the council deliberately continued the gypsies' possession of the land on policy grounds, and provided them with a water supply, skips etc. thus in effect adopting the gypsies nuisance. No similar adoption occurred in the present case."²⁸

Hirst L.J. does not appear to regard *Smith and Scott* and *Page Motors* as incompatible. Rather, he takes a more restrictive view of the circumstances in which a landlord can "adopt the conduct" of the occupants of land. In *Page Motors* it was a *deliberate* decision of the council together with deliberate acts acquiescing and supporting the continuance of the gypsies in possession of the site and not simply inaction which led to the finding that the local authority was responsible in nuisance. On the interpretation of Hirst L.J. mere passive conduct such as the failure of a local authority to evict tenants engaged in antisocial behaviour would not be sufficient to render the council responsible in law to those neighbours. A further factor militating against the imposition of liability in this case was the fact that the antisocial behaviour did not occur on the leased property, but away from it.

European Convention on Human Rights (ECHR)

In *Mowan v Wandsworth London Borough Council*,²⁹ the plaintiff was a secure tenant of a flat owned by the defendant local authority. She exercised a right to buy the flat and was assigned a long lease of the property. The secure tenant in the flat above suffered from mental illness and it was claimed that she deliberately made excessive noise at night, had left taps running causing flooding to the plaintiff's flat and had made threats to kill her. The plaintiff sought an injunction restraining the second defendant from causing the nuisance and damages from the local authority for failure to abate the nuisance even though they were made aware of it.

The claim was struck out as against the authority and, on appeal the plaintiff argued that the common law should be reviewed in light of the guarantees of

private and family life contained in art.8 of the European Convention on Human Rights. The striking out of the proceedings, the plaintiff claimed, was a breach of art.6 of the Convention governing her right to have access to the courts as it operated as an exclusionary rule.

The court noted that an occupier of land can be held liable for a nuisance created by others if he "continues or adopts it" citing *Sedleigh-Denfield v O'Callaghan*.³⁰ After noting that common law leans in favour of a landlord who is not an occupier in such cases the court held that there was no liability in nuisance.³¹ The court also rejected the claim that the council owed a duty of care in negligence.³² The argument based on the European Convention of Human Rights was similarly given short shrift. Gibson L.J. stated as follows:

"I do not accept that there is any breach of Article 6(1) of the Convention through English law not recognising that a landlord owes a duty of care to a tenant in a situation like this. There is no exclusionary rule comparable to the public policy rule under English law giving police investigating crimes immunity from suit which was held by the European Court of Human Rights in *Osman v. United Kingdom* (1998) 29 E.H.R.R. 245 Mrs. Mowan has adequate remedies ... against the tenant causing nuisance or against the council by an application for judicial review. It is also to be borne in mind that English law recognises the liability to a tenant of a landlord who directly causes or authorises a nuisance, derogates from his grant or breaches the tenant's right to quiet enjoyment."³³

Essentially, *Osman* forbids exclusionary rules, i.e. rules which confer blanket immunity on a class of persons against whom the plaintiff has a cause of action. The claim failed as the plaintiff had no cause of action as no duty of care had been recognised between her and the local authority. Contrast this with a situation where a cause of action did exist, but the plaintiff was prevented from enforcing it by reason of an exclusion or immunity of local authorities from liability.

As the events complained of were prior to the passage of the Human Rights Act 1998 (which, as in Ireland, does not enjoy retrospectivity) this ground was withdrawn. The court declined to "interpret" the common law in line with art.8 of the Convention noting that "we cannot accept the invitation to bend the

common law so that it affords a remedy against the council. The principles are too well established for that. If they are to be altered, that must happen elsewhere.”³⁴

Criticism of Distinction

The distinction between the liability in nuisance for a tenant’s behaviour and a licensee/trespassers behaviour has been criticised. It seems there is no conceptual reason why it should be more difficult to establish a claim on the basis that the third party creating the nuisance was a tenant of the defendant. The landlord of tenanted property will often have more remedies to end the nuisance at his disposal than in cases where the nuisance is caused by acts of trespassers. Furthermore, the applicability of the *Sedleigh-Denfield* principle of “continuing or adopting” the nuisance to cases involving anti-social behaviour has been questioned. One commentator observes that:

“If a property owner knows that the physical state of his property might cause harm to neighbouring land if he does not rectify it then, even if the physical condition came about because of the act of a third party, it seems fair enough to talk of him ‘being responsible’ for it. It is quite different, however, if the harm is caused not by a physical condition created by the third party, but the behaviour of the third party itself. As noted in the Australian case of *Smith v. Leurs* (1945) 70 CLR 256, at 261: ‘The general rule is that one man is under no duty of controlling another to prevent his doing damage to a third’.”³⁵

While there is a limit on the “continuation or adoption” principle in that it requires “reasonable” steps be taken to abate the nuisance, there is still some academic concern that it imposes overly onerous obligations upon property owners. It will in most cases require that a housing authority litigate against third parties. In determining whether a local authority has acted reasonably, it would also be necessary to consider the other statutory obligations of the authority *vis-à-vis* the victims of the nuisance, the neighbourhood as a whole, the use of resources and the relationship with other enforcement agencies.³⁶ The eviction of a nuisance-creator may conflict with a duty to provide for Traveller accommodation. A complaint to the Gardaí may in many cases be a more appropriate avenue for the victim to pursue. Furthermore, the authority may be reluctant to act as they would simply be shifting the problem elsewhere.

There is also some confusion in the terminology used by the courts. Judges will often discuss “continuing and adopting the nuisance” in relation to the activities of tenants. This is not necessarily incompatible with also stating that the landlord must have authorised or licensed the activity in some way. It is conceivable that conduct which would amount to “continuing or adopting” the nuisance complained of could also amount to authorising the nuisance. However, for tenants, it appears that the landlord must have some direct responsibility for the nuisance. Acquiescence to a nuisance created by tenants is not sufficient to establish a claim against the landlord unless the nuisance was known to be an inevitable consequence of the letting by him or her. On the other hand, even if the nuisance is not expressly authorised it may be authorised by implication.

Acts Which Take Place Away From the Landowners’ Property

In *Hussain v Lancaster City Council*,³⁷ one of the grounds for the failure of the claim of nuisance was that the conduct did not occur through use of the tenants land. The acts of vandalism and harassment which took place may have been in the neighbourhood of the property but this was not sufficient to establish the tort. While *Hussain* concerned the local authority’s liability for acts of its tenants, *Lippiatt v South Gloucestershire Council*³⁸ concerned the local authorities’ liability for the acts of Travellers in occupation of their land who were either licensees or trespassers.

In this case, the defendants were seeking to have the claim struck out as revealing no cause of action. The plaintiffs were farmers with an interests in lands situated on either side of a main road. The Travellers in question had occupied a large strip of land owned by the council on one edge of the road. It was claimed that these Travellers had entered onto the plaintiffs’ land and engaged in numerous acts of anti-social behaviour including obstructing access to a neighbouring field, leaving rubbish and excrement on it, stealing fixtures, damaging a wall and crops and permitting their dogs to chase the plaintiffs’ sheep. Of relevance, was the fact that the council was aware of the incursion onto their land for three years prior to evicting the Travellers and Evans L.J. noted that:

“Thereafter, it resolved that it would ‘tolerate’ what it regarded as an unauthorised encampment. This went beyond passive tolerance, because (mindful no doubt of statutory duties which are not relevant to this

appeal) it provided toilet, water and other facilities for the travellers ... from a legal point of view, the travellers never became tenants of their land, and the council was in possession and control of it throughout ...³⁹

The issue of the council's vicarious liability for the wrongs of the Travellers was not raised, nor was it argued that the council had "adopted" the nuisance. Cited in argument was *A.G. v Corke*,⁴⁰ where an injunction was granted preventing a landowner from allowing occupiers of caravans whom he had permitted to use his land from inter alia committing acts of trespass in the neighbourhood of the property. The basis of the judgment was that the acts complained of amounted to a public nuisance and gave rise to a danger "to the health of the neighbourhood". Applying *Rylands v Fletcher*,⁴¹ the court imposed responsibility in law on the defendants for acts done in the vicinity of the camp by persons the landowner brings onto his land for profit. It was also noted that *A.G. v Corke* could have been equally well decided on the basis that the landowner was in possession of the property and was himself liable in nuisance for the acts of his licensees.⁴² A further precedent for the proposition that a landowner may be legally responsible for the acts of his or her licensees which take place off the land was noted. In *Thompson-Schwab v Costaki*,⁴³ the defendants were operating a brothel in premises adjoining that of the plaintiff. An injunction was granted against using the premises for the purposes of prostitution which was upheld by the Court of Appeal. While there was no material interference with the plaintiff's property, the activities complained of were held to constitute a "sensible interference with comfort and convenient enjoyment" of the residence. Such acts, it was held, could constitute a private nuisance.⁴⁴

In order to constitute a private nuisance there would normally be some form of emanation from the defendant's land such as noise, dirt, fumes, vibrations etc. but *Thomson-Schwab* establishes that conduct on the defendant's land may be so offensive as to amount to an actionable nuisance, although it has been held that this is a relatively rare occurrence.⁴⁵ Having considered this line of authority Evans L.J. noted that in *Page Motors* "no attention was paid to

the question of whether the acts complained of took place on or off the defendant's land" and held further that:

"In my judgment, the facts alleged in Hussain's case ... were materially different from those in the present case. The disturbance complained of in Hussain's case was a public nuisance for which the individual perpetrators could be held liable, and they were identified as individuals who lived in council property; but their conduct was not in any sense linked to, nor did it emanate from, the homes where they lived. Here, the allegation is that the travelers were allowed to congregate on the council's land and that they used it as a base for the unlawful activities of which the plaintiffs, as neighbours, complain. It is at least arguable that this can give rise to liability in nuisance, and so the claim should not be struck out; and it seems to me that upon proof of the alleged facts, and subject to any defences, e.g. the statutory responsibilities of the council, such liability could be established."⁴⁶

Such a distinction seems arbitrary. The perpetrators of the antisocial behavior in the *Hussain* case were living in local authority premises in the neighbourhood of the plaintiffs. It seems conceivable that they would set out from such premises to commit the acts complained of and return thereafter.

Conclusion

As can be seen from this brief discussion, the issue of the liability of local authorities for antisocial behaviour is one of Byzantine complexity. One wonders, however, if attempts made to impose such liability take the paternalism of the Housing Acts too far. This is reflected in the reluctance of judges to impose such duties, unless special circumstances exist. The term "antisocial behaviour" is itself a source of difficulty being too broad and ill-defined in its scope. Ultimately, where private remedies exist against troublesome persons, this will mandate, in the vast majority of cases, that the disaffected tenant pursue these instead of seeking to assign blame to the local authority.

* The author's forthcoming book *Housing Authority Law* will be published by Round Hall Thomson Reuters in September 2010.

¹ Martin Davey, "Neighbours in Law" (2001) Conv. 31.

² Susan Bright, "Anti-Social behaviour: Local Authority

Responsibility and the Voice of the Victim" [2003] *Cambridge Law Journal* 305.

³ Susan Bright, "Liability for the Bad Behaviour of Others" 2001, 21 O.J.L.S. 311.

- ⁴ Ian Loveland, "Fixing Landlords with Liability for the Anti-Social Behaviour of Their Tenants 1: Stretching the Orthodox Position" [2005] J.P.L. 273.
- ⁵ Ian Loveland, "Fixing Landlords with Liability for the Anti-Social Behaviour of Their Tenants 1: Stretching the Orthodox Position" [2005] J.P.L. 273 at 273–274.
- ⁶ S.H. Bailey and M.J. Bowman, "Public Authority Negligence Revisited" [2000] C.L.J. 85.
- ⁷ Susan Bright, "Liability for the Bad Behaviour of Others" (2001) 21 O.J.L.S. 311 at 312.
- ⁸ Susan Bright, "Liability for the Bad Behaviour of Others" (2001) 21 O.J.L.S. 311 at 312.
- ⁹ Booth and Squire, *The Negligence Liability of Public Authorities* (Oxford: OUP, 2006), p.818.
- ¹⁰ Booth and Squire, *The Negligence Liability of Public Authorities* (Oxford: OUP, 2006), p.818, fn.78.
- ¹¹ Booth and Squire, *The Negligence Liability of Public Authorities* (Oxford: OUP, 2006), p.818
- ¹² [1977] I.R. 99.
- ¹³ [1977] I.R. 99 at 103.
- ¹⁴ Brian McMahon and William Binchy, *Law of Torts*, 3rd edn (Dublin: Butterworths, 2000), p.687.
- ¹⁵ *Sedleigh-Denfield v O'Callaghan* [1940] A.C. 880. See Susan Bright, "Liability for the Bad Behaviour of Others" (2001) 21 O.J.L.S. 311 at 313.
- ¹⁶ *Lippiat v South Gloucestershire Council* [1999] 3 W.L.R. 134 at 147; Susan Bright, "Liability for the Bad Behaviour of Others" (2001) 21 O.J.L.S. 311 at 313.
- ¹⁷ [1973] Ch. 314.
- ¹⁸ *Harris v James* (1876) 35 L.T. 240 where a landlord let property and authorised the tenant to engage in quarrying on the land which involved blasting, thus creating a nuisance. The landlord was held liable for the acts of the tenant as the terms of the demise authorised the activity which was a consequence of the mode of occupation contemplated under it.
- ¹⁹ Page 320. Emphasis added.
- ²⁰ L.R. 3 H.L. 330.
- ²¹ Page 321. This is notwithstanding the rather anomalous decision in *Attorney-General v Cork* [1933] Ch. 89 where the rule was invoked against a defendant who had brought gypsies onto his land as licensees.
- ²² [1940] A.C. 14.
- ²³ Page 904. Although this passage applies to a person in occupation and possession of the property.
- ²⁴ Susan Bright, "Liability for the Bad Behaviour of Others" (2001) 21 O.J.L.S. 311 at 315.
- ²⁵ (1981) 80 L.G.R. 337, C.A.
- ²⁶ Pages 347–348.
- ²⁷ [2000] Q.B. 1.
- ²⁸ Page 24.
- ²⁹ (2001) 33 H.L.R. 56.
- ³⁰ Page 620, referring to *Sedleigh-Denfield v O'Callaghan* at p.894.
- ³¹ (2001) 33 H.L.R. 56. In *Lippiat*, Evans L.J. states that a landlord must have in some way licensed the behaviour in order to be responsible for it in law: "... where the land from which the nuisance emanates is subject to a tenancy, the landlord may be liable notwithstanding that he does not have possession and control of the land. It has been held that the landlord can only be held liable when he expressly or implicitly authorised the creation or continuance of the nuisance".
- ³² Pages 621–622.
- ³³ Page 626.
- ³⁴ Per Sir Christopher Staughton at 621.
- ³⁵ Ian Loveland, "Fixing Landlord's with Liability for the Anti-Social Behaviour of Their Tenants 2: Challenging the Orthodox position" (2005) J.P.L. 405.
- ³⁶ (2005) J.P.L. 405 p.317.
- ³⁷ [2000] Q.B. 1.
- ³⁸ [2000] 1 Q.B. 51.
- ³⁹ Page 55.
- ⁴⁰ [1933] Ch. 89.
- ⁴¹ (1868) L.R. 3 H.L. 330.
- ⁴² See the comments of Sir John Pennycuik V.C. in *Smith v Scott* [1973] Ch. 314 at 321–322 cited by Evans L.J. in *Lippiat* at p.58.
- ⁴³ [1956] 1 W.L.R. 335.
- ⁴⁴ [1956] 1 W.L.R. 335 at 339.
- ⁴⁵ See the comments of Lord Goff of Chieveley in *Hunter v Canary Wharf Ltd.* [1997] A.C. 655 at 685–686.
- ⁴⁶ [2000] 1 Q.B. 51 at 61.