



### Unusual ASBOs

**bto** has recently obtained two unusual ASBOs for clients.

The first was granted against a lady who fed seagulls in the locality of her tenancy, deliberately causing a nuisance to the neighbours. In addition to feeding seagulls, numerous complaints were made to the Association and the Police about the lady's behaviour, which included incessant banging on walls, slamming doors and verbal abuse. The ASBO prevents the Defender feeding birds within 500 metres of her tenanted property.

In the second case, an ASBO was sought against the partner of the RSL's tenant who frequently threatened and abused the neighbours on visits to the property. The tenant continued to invite the partner to the property despite the RSL's requests not to do so. An ASBO was obtained against the partner preventing him acting in an antisocial manner and banning him from going within fifty metres of the tenant's property.

According to nationwide statistics, ASBOs are sometimes regarded as ineffective in preventing or curtailing antisocial behaviour. This led to the Home Secretary suggesting abolishing ASBOs in England and Wales. It remains to be seen whether the Scottish Government will follow suit. However, in the context of social housing

it is not simply the ASBO which may influence a person's future conduct but also the serious implications for the tenancy. If an ASBO is granted against a tenant, a person residing or lodging with the tenant, or a subtenant, then the tenancy can be converted to a Short Scottish Secure Tenancy and the security of tenure is significantly diminished. In our experience and that of our clients, the combined remedies of an ASBO and conversion are proving to be effective in preventing antisocial behaviour.

As a final note, the Scottish Legal Aid Board has announced a 24% increase in the applications submitted to them, coinciding with cuts in public spending. Consequently, the Board will have to pay closer attention to the merits of a case. It is our experience that a landlord has a greater chance of successfully opposing a Legal Aid application to defend an ASBO than opposing a Legal Aid application to defend an eviction action. The reason being that an ASBO will do nothing more than require a person to behave in a manner to be expected of an ordinary citizen, whereas an eviction action has far more serious immediate consequences. A refusal of Legal Aid increases the prospects of obtaining an ASBO quicker and at reduced costs.

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Are ASBOs effective in curtailing antisocial behaviour? What will cuts in public spending mean for future ASBO applications?

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#### How an RSL Should Handle a Serious Complaint Against the Director/Chief Executive

Guidance from The Scottish Housing Regulator October 2010. The SHR wants to know that RSLs are ready. Do you have a plan?

#### Watch out for...

Budget

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Policy Exchange

## Incident Management Procedures - A Lifeline

Is your organisation ready to deal with a major incident, work-related death or serious injury?

In our experience, most RSLs are fully aware of their health and safety obligations, not just to employees, but to tenants, contractors, visitors, passers-by and members of the public at large.

Introducing or strengthening your organisation's Incident Management Procedures as part of a health and safety management system can provide a vital lifeline during this difficult time. Effective procedures can deal with anything from advice on what type of witness interviews may be conducted (such as interviews under caution and voluntary statements) or the powers of the investigating authorities to search or obtain documents including the RSL's own accident reports.

The consequences for an RSL of ill-considered co-operation (or lack thereof) with the authorities may be severe. The Health & Safety team at **bto** has a long proven history of providing specialist input and is often nominated by the RSL to do

so where there is an insurance policy in place to cover the matter and therefore there is Insurer input. We can provide you with proactive assistance now on compliance issues tailored to your business, coupled with hands-on advice and urgent assistance in the event of an incident.

In conclusion, effective Incident Management Procedures can assist by:

- Providing a framework for health and safety compliance;
- Ensuring decision making is in the hands of those qualified to make decisions, reducing stress on your staff;
- Providing decision-makers with a robust framework to ensure decision making is prompt and informed;
- Minimising unnecessary disruption to business;
- Increasing awareness of accident prevention across the organisation; and
- Improving insight into 'what went wrong' and ensuring lessons are learned promptly.

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## How an RSL Should Handle a Serious Complaint Against the Director/Chief Executive

On 4 October 2010, the Scottish Housing Regulator (SHR) published supplementary advice to their Notifiable Events Guidance Note of February 2009 (SHR 25). This advice sets out the SHR's expectations about handling a serious complaint against the Director or Chief Executive of a Registered Social Landlord (RSL).

RSLs will be aware from SHR 25 that they are expected to notify the SHR of "serious complaints, investigations, or disciplinary action relating to the governing body or senior staff".

Now, every RSL is expected to notify the SHR; take prompt, independent and appropriate professional advice; have strong governance systems setting out clear procedures for dealing with serious complaints or grievances; and be open and transparent about its decision-making process.

When the complaint or grievance is against the Director or Chief Executive, that individual cannot be involved in

managing the process or advising the committee. The SHR Guidance also expects the RSL in that situation to "take independent professional advice to support it in handling the complaint." Therefore, having the policies, procedures and plan is not enough. This is to protect the interest of the RSL and the Director to ensure a fair procedure is followed.

Does your organisation have suitable policies and procedures in place? Such policies will set out the rights and obligations of both parties. For many years, **bto** has advised RSLs on employment issues in line with the SHR's requirements. We can review your policies to ensure that they are compliant with up to date employment law and best practice and that your committee members know how to operate them. We can also provide training to your management committee on how to handle such matters to meet the SHR's expectations.

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## Watch out for...

### Budget

...or is it reckoning day for Scotland: 18 November 2010.

### Financial Services Authority (FSA) and RSLs

Abolition of the FSA. The Bank of England is to take over the role of regulator from the FSA .

### Policy Exchange

An independent think tank (Policy Exchange) has issued a very challenging report we believe all housing professionals should read: "Making Housing Affordable: A New Vision For Housing Policy"

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