

Complex possession claims: Hoarding

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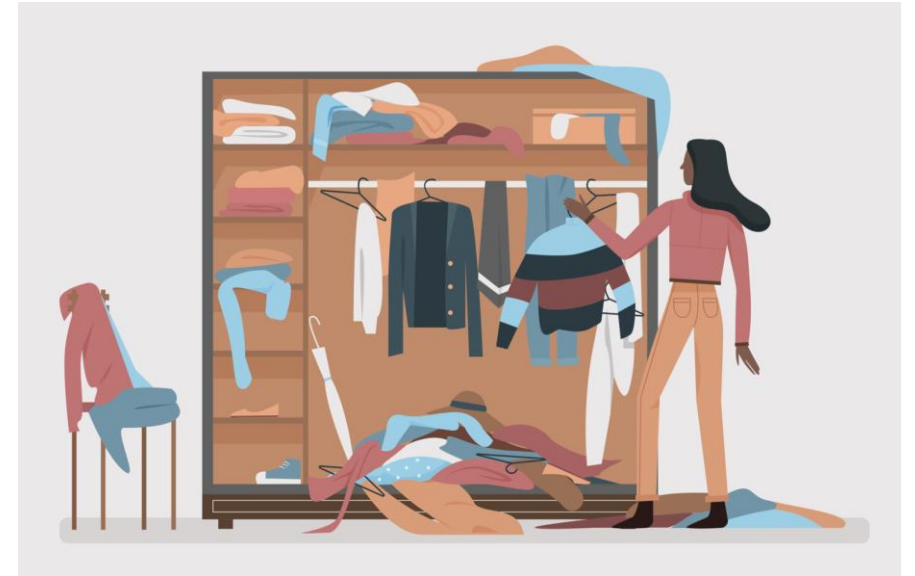
Today's topics:

- What is hoarding, and what problems can it cause in a housing context?
- Practical support that LAs/HAs might consider offering
- Alternatives to seeking possession
- Grounds for possession in hoarding cases
- How to approach disability and capacity (pre- and post- issue), with a focus on *Thiam v Richmond Housing Partnership* [2025] EWHC 933 (QB)

What is hoarding?

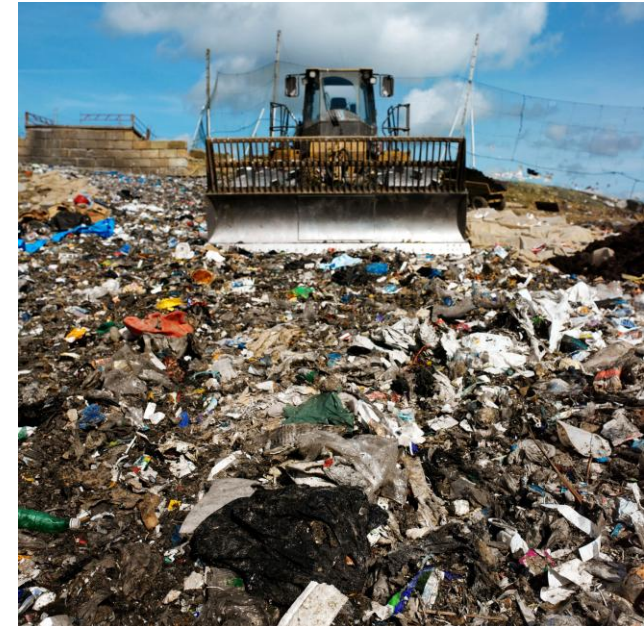
Cambridge Dictionary definition =

“Excessive accumulation: the act of gathering and keeping many objects”



What problems can it cause in a housing context?

- Fire risk
- Access issues
- Condensation and mould
- Infestation - bed bugs, rats and mice, cockroaches
- Structural damage
- Personal injury
- Odours



Key considerations pre-issue:

- 1. Is the tenant disabled?
- 1. Does the tenant lack capacity?
- 1. What practical support (e.g. medical, financial) could be offered to a tenant?



The relationship between hoarding and disability

S.6 Equality Act 2010:

"s6(1) A person (P) has a disability if—

(a) P has a physical or mental impairment, and

(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities."

NHS website:

"Hoarding disorder - a mental health condition where you collect lots of things and find it very difficult to get rid of them, even if it's affecting your life."

The relationship between hoarding and disability

Sources of more information

<https://www.nhs.uk/mental-health/conditions/hoarding-disorder>

<https://www.mind.org.uk/information-support/types-of-mental-health-problems/hoarding/about-hoarding/>

<https://hoardingdisordersuk.org/>

<https://www.rcpsych.ac.uk/mental-health/mental-illnesses-and-mental-health-problems/hoarding>

The relationship between hoarding & capacity

CPR Part 21 – Children and Protected parties:

CPR21.1(2)(d) - 'protected party' means a party, or an intended party, who lacks capacity to conduct the proceedings;

CPR21.2(1) - A protected party must have a litigation friend to conduct proceedings on their behalf.

The relationship between hoarding & capacity

Mental Capacity Act 2005 - definition of capacity:

s1(2) - A person must be assumed to have capacity unless it is established that he lacks capacity.

s2(1) - [...] a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.

Determining capacity - the 2-stage test:

1. Functional test - is the person unable to make a particular decision? (see s.3, s.1(3 & 4), s.2(3)(b))
2. Diagnostic test - is such inability due to an impairment of, or a disturbance in the functioning of, the mind or brain?

Practical support (before or during proceedings):

- Clearance plans
- Objectivity - Clutter Image Rating Scale assessments
- Hoarding policies
- Referrals to Adult Social Care, Mental Health services, support organisations, charities etc.
- Funding for holistic assistance e.g. storage, skips, cleaning



Alternatives to possession

1. **Injunctions** (contractual or under the Anti-social Behaviour, Crime and Policing Act 2014)
 - a. Test in s.1(2) & (3) ASBCPA 2014
 - b. *Wookey* capacity - does T understand the order and its effects?
2. **Application to the Court of Protection**
3. **S.80 Environmental Protection Act 1990** proceedings to abate statutory nuisance
4. **S.4 Prevention of Damage by Pests Act 1949**
5. **S.287 Public Health Act 1936**

Typical grounds for possession in hoarding cases

Secure tenancy (HA 1985)

- Ground 1 - obligation of tenancy broken/not performed
- Ground 2 - nuisance/annoyance to people in locality
- Ground 3 - deterioration in condition
- Ground 4 - condition of furniture

Assured tenancy (HA 1988) (where assured tenancy of social housing provided by Private Registered Provider, until 2027, otherwise as amended by the Renters' Rights Act 2025)

- Ground 12 - breach of tenancy obligation
- Ground 13 - deterioration in condition of property
- Ground 14 - nuisance/annoyance to people in locality
- Ground 15 - deterioration of furniture

How does disability affect proceedings?

- Duty on court to make reasonable adjustments
- Advocate's Gateway Toolkits - No. 17 Vulnerable Witnesses in Civil Courts
- Appointment of an assessor - s.114(7) Equality Act 2010:

"(7) In proceedings in England and Wales on a claim within subsection (1), the power under section 63(1) of the County Courts Act 1984 (appointment of assessors) must be exercised unless the judge is satisfied that there are good reasons for not doing so."

s.63(1) County Courts Act 1984:

"In any proceedings in the county court a judge of the court may, if he thinks fit, summon to his assistance, in such manner as may be prescribed, one or more persons of skill and experience in the matter to which the proceedings relate who may be willing to sit with in the county court a judge of the court and act as assessors."

How does disability affect proceedings?

Laidley v Metropolitan Housing Trust Limited [2025] EWCA Civ 448 at [64]:

“In summary: i) ii) iii) iv) v) The role of the assessor in this case was suitably and sufficiently defined; Where an assessor’s contribution is to the evaluation of the evidence in the case, no obligation of disclosure would normally be required; Where an assessor goes beyond contributing to the evaluation of the evidence and either (a) provides additional evidence or (b) otherwise gives rise to a new line of enquiry of which the parties had not had proper notice and a fair opportunity to respond, disclosure is required; The principles set out in (ii) and (iii) represent the normal position, which may need to be adjusted in a particular case if there is a compelling reason to do so; There is no reason to go behind the Judge’s decision on Mr Laidley’s application for disclosure or his explanation in [10]-[11] of his trial judgment; and there is no basis for any speculation that the assessor in the present case either gave evidence or otherwise gave rise to a new line of enquiry. ”

How does disability affect proceedings?

- *Manchester CC v Pinnock* [2010] UKSC 45
- *Hounslow LBC v Powell* [2018] UKSC 8
- *Akerman-Livingstone v Aster Communities* [2015] UKSC 15 at [36]:

“There may also be cases where a discrimination defence is so lacking in substance that summary disposal is merited. The test is whether the claim is “genuinely disputed on grounds that appear to be substantial”. I agree with Lord Neuberger (para 59) that the case could be summarily disposed of if the landlord could show (i) that the defendant had no real prospect of proving that he was disabled within the meaning of the Act; or (ii) that it was plain that possession was not being sought because of something arising in consequence of his disability; or (iii) that bringing and enforcing the claim were plainly a proportionate means of achieving a legitimate aim. Like him, I suspect that such cases will be rare. [...]”

How do capacity issues affect proceedings?

- Delay for assessment of mental capacity
- Delay for the appointment of a litigation friend under CPR Part 21
- Delay if need to contact/involve the Official Solicitor



Thiam v Richmond Housing Partnership [2025] EWHC 933 (KB)

Mr Justice Swift explained that:

1. The question of proportionality under s15(1)(b) is objective
1. It is not the same as whether there is something more that might have been done
1. The court must consider in the round:
 - (i) The nature of the unfavourable treatment
 - (ii) The nature of the tenant's disability
 - (iii) Any acts or admissions of the alleged discriminator in context

Here, there was a contractual relationship only. RHP were not an LA.

Thiam v Richmond Housing Partnership **[2025] EWHC 933 (KB)**

Takeaways

- If in doubt, assume that hoarding tenants may be disabled and act accordingly pre-issue
- Context is important – consider the nature of the landlord and tenant relationship
- Local authority landlords are likely to need to go to greater lengths pre-issue to demonstrate the proportionality of proceedings for possession

Any questions?

