

Briefing

Shelter Scotland briefing for the parliamentary debate on Stage One of the Anti-Social Behaviour (Scotland) Bill

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Shelter

When the Scottish Executive launched its strategy to tackle anti-social behaviour in June 2003¹, Shelter responded by welcoming the decision to make anti-social behaviour a priority. Shelter's clients are sometimes the very people the Scottish Executive wishes to target with the strategy and the new bill. By working with both perpetrators and victims of anti-social behaviour, we see at first hand the impact of anti-social behaviour on a household, and on a community.

Key points:

- **The bill compounds the view that it is only social tenants who are responsible for anti-social behaviour, by providing harsher punishment for those in social housing.** The bill extends the use of Anti-Social Behaviour Orders (ASBOs). Because of the way the orders currently work, social housing tenants can be evicted as a result of being served with an ASBO. This sanction does not apply to those who own or rent in the private sector. The bill should rectify this anomaly by separating the link between ASBOs and tenancies. Instead, the bill compounds the problem by extending ASBOs to under-16s and giving courts the power to grant ASBOs. This will, consequently, extend the threat of eviction for those living in social housing. Similarly, the operation of Closure Orders could impact harshly on those social housing tenants who claim housing benefit. These families could be forced into high levels of debt as a result of being moved from their home.
- **The bill will punish those who are not guilty of anti-social behaviour.** The Housing (Scotland) Act 2001 introduced an important change to how ASBOs work. While they were originally intended to respond specifically to the bad behaviour of an individual, they can now be used to demote the tenancy of a whole household. A family can be evicted more easily under the demoted tenancy. As a result, the behaviour of a child can cause the homelessness of a whole family. Closure Orders will have a similar impact. The bill sets out no measures for supporting or protecting other members of a household who may never have been anti-social, but whose home is now subject to a Closure Order. The Executive claims that this bill will deal with the most extreme forms of ASB. Unfortunately the bill also punishes those who have never been anti-social, but happen to live with someone who has.
- **The bill could dramatically increase the levels of homelessness in Scotland.** The bill could undo some of the progressive and effective measures introduced by the Scottish Executive in recent years to tackle homelessness. If Closure Orders are applied to hostels, hundreds of people could be made homeless. Furthermore, extending the use of ASBOs could result in more tenancies being demoted, potentially increasing the number of evictions.
- **Shelter is concerned about the potential effectiveness of the bill to deal directly with the behaviour of offenders.** Shelter is concerned that the bill focuses too much on sanctions and not enough on changing behaviour. Closure Orders, for example, move a family from a property for a short amount of time, rather than actually resolving the behaviour.

¹ *Putting Our Communities First: A Strategy to Tackle Anti-Social Behaviour*, Scottish Executive, June 2003.

Anti-Social Behaviour Orders (ASBOs) and tenancies

Shelter supported the introduction of Anti-Social Behaviour Orders in 1996 as a constructive approach to anti-social behaviour, as they punish the *individual* for the behaviour. However, when the Housing Act was being passed in 2001, an amendment was made to the bill at Stage Two that radically changed how ASBOs work, both in principle and in practice.

The change meant that under the law, ASBOs could be used to give a household a less secure tenancy, the short Scottish Secure Tenancy. This changes the principle behind how ASBOs work; it is not just the individual who is punished, but their whole family. And the change goes further than giving the family a less secure tenancy; the nature of the short tenancy means that a landlord can evict without having to take the household to court to prove reasons for eviction. Having a tenancy demoted to a short tenancy means living under threat of eviction. Shelter is very concerned that ASBOs can, and are, being used as a tool to fast track evictions. They could increasingly be used by landlords that take an aggressive approach to eviction.

What's more, the bill makes no allowances for the nature of the offending behaviour. A young person could cause a nuisance at a local supermarket, and be served with an ASBO. While not condoning the behaviour, Shelter questions the logic of making a family lose their home because of non-tenancy related behaviour by one member of that household. Extending the use of ASBOs to under-16s further compounds the problem; the behaviour of a child could cause the eviction of a whole family.

The concerns voiced by MSPs when the 2001 Act was being passed are still relevant today². It was claimed that the link between ASBOs and tenancies would put too much power in the hands of landlords³. Other MSPs felt that the provision would create a perverse disincentive on sheriffs not to serve ASBOs, given the potential impact of the sanction⁴. A number of MSPs were concerned that changing the way ASBOs work would lead to the eviction of a family with children⁵. Guidance has never been produced which would set out criteria which landlords should follow when considering when to demote a tenancy. As a result, there is inconsistency in practice across Scotland, with families at the mercy of the policy of each individual landlord.

The link between ASBOs and tenancies has resulted in two distinct consequences that run counter to the principle of social justice. The first is that only social tenancies can be converted as a result of an ASBO; this means that people living in council or RSL accommodation can be evicted as the result of an ASBO, whereas those outside of social housing face no such threat. The second outcome is the effect ASBOs can have on those who are not guilty of anti-social behaviour. The link between ASBOs and tenancies can impact not just on offenders, but also on members of the offender's household. This is

¹ Housing (Scotland) Bill 2001, Stage Two, 1st May, 2001.

² Sandra White MSP, Housing (Scotland) Bill 2001, Stage Two, 1st May, 2001.

³ Karen Whitefield MSP, Housing (Scotland) Bill 2001, Stage Two, 1st May, 2001.

⁴ Bill Aitken MSP, Housing (Scotland) Bill 2001, Stage Two, 1st May, 2001.

particularly unjust given that it can lead to homelessness among children who have never carried out anti-social behaviour.

Forthcoming research by Shelter⁶ will show that landlords are increasingly using the option to convert tenancies when an ASBO has been served on one member of the household. According to the research, which consisted of a survey of twenty local authorities, of the seventy-two ASBOs granted in that year, at least six (one in twelve) resulted in a demoted tenancy. The research also gives an example of a landlord acting illegally by excluding households from waiting lists because one member has been served with an ASBO. A culture is developing in some local authorities whereby ASBOs are being used to deny access to permanent housing. Shelter believes guidance is urgently required from the Scottish Executive to put an end to this practice.

Instead of rectifying the situation, the Anti-Social Behaviour (Scotland) Bill will compound the problem by extending Anti-Social Behaviour Orders to under-16s, and giving courts the power to serve an ASBO. This creates the potential for the bizarre scenario whereby a thirteen-year-old girl, causing nuisance at a supermarket, could be served with an ASBO thereby causing the eviction of a whole family.

Shelter believes that the Anti-Social Behaviour (Scotland) Bill should be used to reverse the amendment made to the 2001 Housing Act, and end the current situation whereby a whole family can be made homeless as a result of the behaviour of one member. Responses to anti-social behaviour should be effective, but they should not result in a whole family becoming homeless in order to punish one member of that family. Continuing with this approach will further convince organisations like Shelter that the Executive's approach is more about 'getting tough' than bringing forward solutions to anti-social behaviour.

Shelter calls on the Scottish Executive to commit to overturning the amendment made to the 2001 Act to link ASBOs to tenancies.

Closure Orders

The bill introduces a provision called Closure Orders with the intention of closing access to both residential and non-residential premises where significant and persistent nuisance has occurred. Shelter has a number of questions about how the orders will work in practice, as well as having concerns that they could increase homelessness, both among families and hostel dwellers.

The orders will work by closing access to premises for between three and six months. Closing access to residential premises will effectively make people homeless. It is claimed that these orders, along with other provisions in the bill, such as designated areas and dispersal of groups will give 'breathing space'⁷ to a community. However, Shelter believes that the community would

⁶ For more information on this research, contact Nuala Toman, Shelter Scotland. nuala_toman@shelter.org.uk

⁷ Evidence given to Communities Committee by Minister for Communities Margaret Curran, 3rd February 2004.

benefit more from the actual behaviour being targeted, and changed, rather than, for example, moving a family out of their home for a period of time, only to return to continue the offending behaviour.

Shelter's Families Projects, based in Edinburgh, Glasgow and South Lanarkshire work with homeless families to sustain tenancies. This can often mean working with families to change their anti-social behaviour. According to our project workers, some of the answers to anti-social behaviour lie in giving people the best opportunity to be a decent neighbour and to keep their home, to prevent anti-social behaviour occurring in the first place and to take innovative and lasting approaches when it does.

Shelter seeks clarification on how the orders will work in practice.

- It is unclear from the legislation what will happen to families claiming housing benefit on their property. If they are moved from their home due to a Closure Order, will benefit be payable on a second property? If not, how will the family pay for accommodation?
- Shelter provides support to many families that may have carried out anti-social behaviour. A family moving around due to homelessness or for other reasons puts support in jeopardy. As they are currently presented in the bill, Closure Orders will make it difficult for support workers to stay in touch with the household. It is intended for Closure Orders to be applied within a matter of days of a Closure Notice. Shelter seeks clarification of how, under these circumstances, support staff and other agencies will be informed of the family's move.
- In some households, individuals are intimidated by members of their own family into tolerating anti-social behaviour on the premises. Closure Orders could place a double burden on those individuals, by making them homeless. The bill, in its present form, does not obligate the police to investigate the causes of the behaviour, only whether it has taken place. Shelter calls on the Scottish Executive to commit to publishing guidance, which would ensure that steps are taken by the police and local authorities to protect any member of the household being intimidated. In cases like this, a Closure Order should not apply, and sanctions should only be taken against the offending individual. Shelter wants to ensure that Closure Orders cannot be applied to those not guilty of anti-social behaviour. Similarly, Shelter calls on the Scottish Executive to clarify how those household members who are innocent of anti-social behaviour will be supported.
- Shelter is concerned about the potential impact of Closure Orders on hostels. The Rough Sleepers Initiative provided substantial funding to this form of accommodation as part of the drive to end the need to sleep rough. The nature of hostel provision and the vulnerability of those who use hostels mean that hostels could regularly be subject to Closure Orders. Shelter seeks clarification from the Scottish Executive as to whether it is intended that Closure Orders will apply to hostels. If this is the case, the good work of previous years could be undone. Closure of hostels, even for short periods, could result in increases in the number of people sleeping rough.

While Shelter accepts that severe forms of anti-social behaviour take place in both residential and non-residential premises, we are not convinced that Closure Orders are an appropriate sanction, given their potential ineffectiveness. The orders are being justified as meeting the need for ‘breathing space’ without dealing with the main causes of anti-social behaviour, or helping to resolve the problem. In fact, Closure Orders could put support, which is proven to be effective in tackling anti-social behaviour, in jeopardy. Shelter believes that there are currently sufficient legal remedies available to local authorities and police without adding an extra legal instrument that will not actually deal with the offending behaviour.

Shelter believes that Closure Orders will be potentially burdensome to implement and an ineffective approach to anti-social behaviour. Substantial clarification is required on how the orders would work in practice.

Designated Areas

Shelter supports the principle behind the provisions in Part 8 of the bill. The bill will allow local authorities to designate specific areas where there are persistent problems of anti-social behaviour in private rented housing. It will therefore be a criminal offence to knowingly let an unregistered property. The policy here is absolutely correct; the intention being to create a system to hold landlords to account, to ensure that local authorities know who is letting in a particular area, and to guarantee that the landlord can be contacted if required.

However, we are concerned that the bill will be ineffective in ensuring that all landlords are held to account. This is because the way the provision would operate suggests that it is possible to track and predict patterns of anti-social behaviour. In reality, instances of anti-social behaviour are random, so trying to decide which area merits ‘designated area status’ would be problematic. Introducing a system whereby local authorities, can, if they wish, assign designated status to an area, could potentially be very difficult to administer. Local authorities will have to decide the area boundaries, and implement the system themselves. The rationale for the boundaries will be difficult to articulate and therefore open to constant challenge.

We believe that a much simpler and more effective option, both for the government and for local authorities, is to introduce a mandatory registration scheme for all private landlords in Scotland.

Under a mandatory registration scheme, all landlords would be required to register in order to trade. To be on this register, they would have to submit contact details to their local authority. This would make it possible for the local authority or police to contact them should their help be required in managing the behaviour of a tenant. Since all landlords must take part in the scheme in order to trade, it will hold landlords to account, but will take a huge administrative burden off local authorities. In addition, it will prevent a patchwork of varying local schemes, which is a risk associated with local authorities designating some areas and not others. If these proposals for registration were to be introduced alongside the government’s proposals in Part 7 of the bill

(Anti-Social behaviour notices), this would ensure that all landlords will be held to account. The 'catch-all' nature of certification would ensure that we have information on all landlords, with Section 7 giving us the powers to take legal action against landlords' poor management in dealing with anti-social behaviour.

Resources

In our written evidence to the Finance Committee, Shelter raised our concerns about how the bill will be funded. We are disappointed at the level of funding which has been targeted at support services. On Monday 8th March, the Scottish Executive announced funding of £30 million for local authorities to tackle anti-social behaviour. £20 million has been allocated for the production of anti-social behaviour strategies. £10 million is therefore earmarked for a range of projects, including mediation, and the development of 'helplines'. Shelter welcomes the focus on mediation as a preventative tool. However, we are very concerned at the low level of funding set aside for supporting those households and individuals who have carried out anti-social behaviour. The work of support projects across Scotland has shown how effective support can be in tackling anti-social behaviour. **Shelter believes that the Scottish Executive's plans to tackle the problem will fail if substantial funding is not targeted at support projects, and at large-scale recruitment of support and social work staff.**

Conclusion

In each of our support projects, Shelter works with families and individuals to change their anti-social behaviour. Support workers spend time with clients to find the root causes of their behaviour. They look at what needs to change to prevent continued anti-social behaviour by examining support needs and building confidence.

Shelter is concerned that elements of this bill could undermine some of the ongoing work to tackle anti-social behaviour, by jeopardising access to support, and increasing the level of evictions and homelessness.

We are convinced that the bill misses an opportunity to

- effectively resolve anti-social behaviour by guaranteeing the provision of support
- rectify particular anomalies that exist in law relating to anti-social behaviour, for example regarding the operation of Anti-Social Behaviour Orders (ASBOs).

Clarification is required on a number of measures contained in the bill. Shelter's greatest concern is that the high expectations of communities will not be met, because the bill introduces tough sanctions but will fail to put an end to bad behaviour. The approach of the Scottish Executive should be to get behaviour to change rather than applying punishment. MSPs should ensure that vulnerable people, such as hostel dwellers, and the families of perpetrators do not lose out because of the sanctions imposed by the bill.

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