

Briefing

Anti-social behaviour bill: second reading

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Shelter

This briefing focuses on Part 2 of the Bill which introduces new powers for social landlords¹ to tackle anti-social behaviour. It also sets out the context within which these measures should be seen.

Introduction

Shelter agrees that tackling anti-social behaviour (ASB) should be a priority for policy-makers. We work with many households whose lives are affected by ASB. This includes victims whose home lives have been ruined and perpetrators whose behaviour is often rooted in complex problems.

- Our Inclusion Project, set up in partnership with Rochdale Council, works closely with households to resolve behavioural problems that would otherwise leave them homeless or at risk of homelessness (see Annex A)
- Our housing aid centres deal with large numbers of cases involving neighbour nuisance, harassment and violence
- Our Homeless to Home projects provide support and resettlement for families whose homelessness has been caused by violence and harassment from their neighbours
- We provide training for local authorities and other agencies to improve their understanding of the law and the remedies available to them

From this work, we understand the individual anxiety, frustration and harm caused by ASB and the devastating impact it can have on communities. What tenants and communities want is solutions - this is the starting point for our response. However, as the case studies at Annex B illustrate, ASB is often rooted in complex problems and the response needs to recognise this if it is to be effective.

Background

Last month's White Paper *Respect and responsibility: Taking a stand against anti-social behaviour* stressed the key role of housing providers and managers within the overall response to ASB. The Bill gives social landlords wide-ranging new powers to address behaviour. This is one element of the housing-related response. The draft Housing Bill, which is currently out for consultation, includes new powers for local authorities to license private landlords, mainly in areas of low housing demand.

The Government has also indicated that it intends to consult on whether to give new powers to local authorities to withdraw Housing Benefit from tenants found guilty of ASB. This follows Frank Field MP's private member's bill in the last parliamentary session which unsuccessfully sought to introduce similar measures. Shelter continues to oppose the withdrawal of Housing Benefit - we believe this would be ineffective in tackling behaviour and would increase homelessness.

Anti-social behaviour: Shelter's response

Shelter agrees that where behaviour is persistent, wilful and reckless, remedies must be available to protect the individual and community. In some cases, this will include eviction and the use of criminal sanctions. However, in our experience, such responses do little to tackle behaviour and should only be used as a last resort, when other efforts to tackle a problem have been exhausted.

Last year's DTLR consultation paper on tackling ASB² stated that the Government does not wish to promote an increase in eviction. It acknowledged that social landlords already have strong powers available to them. These include injunctions, possession orders, ASBOs and the introductory and starter tenancy regimes. The Homelessness Act 2002 also gives local authorities new powers to refuse to offer accommodation or reduce the preference given to an applicant for housing where ASB is an issue.

Our experience is that there is a lack of understanding and expertise about how to use current remedies. As a result, interventions can be inconsistent, badly targeted and not made early enough, tenants do not get the support they need and poorly prepared cases are thrown out by the courts. This experience is backed up by the Social Exclusion Unit³ and research carried out by the Joseph Rowntree Foundation and Chartered Institute of Housing.⁴

Many local authorities now have dedicated officers, specialist teams and multi-agency partnerships in place to manage their response to ASB. The evidence is that these approaches have been successful in enabling them to develop the expertise to make effective use of the tools available, support victims through the process and promote innovative ways of tackling the problem. The use of specialist teams also improves the preparation of cases and helps promote certainty of outcome.

Shelter does not therefore believe that further enforcement measures for housing managers to tackle ASB are necessary. We are concerned that the overall effect of the Bill will be to increase evictions, undermining the Government's policies to tackle homelessness. Furthermore, we believe that the enforcement measures outlined in the Bill will do little to tackle behaviour and will serve to further complicate an already difficult area of policy.

The recent White Paper included positive statements about good practice and the role of prevention and support in finding long term solutions to ASB. It is therefore disappointing that the Bill focuses only on enforcement measures. Rather than introducing further legislative powers, we believe the Anti-Social Behaviour Unit (ASBU) should concentrate on working with local authorities to promote current good practice across the country, especially in the areas outlined below.

Prevention

Small-scale disputes can escalate quickly if left unchecked. The evidence is that early intervention and using imaginative ways to resolve disputes can be effective in preventing problems from intensifying and avoiding costly and unnecessary enforcement action. For example, Nottingham's Mediation Service dealt with 70 disputes last year, of which two-thirds reached a successful conclusion. Acceptable Behaviour Contracts have proved to be effective in challenging and reforming behaviour and are now being used in a number of local authorities. The ASBU should work with authorities and other agencies to promote innovation and develop good practice in preventing ASB.

Support

Vulnerable people in need of support to enable them to manage their tenancies and relationships within their communities are often particularly at risk of becoming involved in disputes and being labelled as 'anti-social' (see case studies at Annex B). Effective support services can minimise behavioural problems, help sustain tenancies and prevent homelessness. The Supporting People programme and local strategies developed under the Homelessness Act will be crucial in delivering these services and the ASBU should work with the Homelessness Directorate and Supporting People strategists to develop and promote them.

Resettlement

In contrast to the lack of evidence that evicting people changes their behaviour, the indications so far are that resettlement schemes work. The Dundee Families Project is a residential scheme that works intensively with families with behavioural problems. It has helped 80 families, none of whom have been evicted since leaving the scheme, despite the fact that many of them had been evicted several times before and had not managed to change their behaviour. The evaluation of the Project also showed that it had widespread backing locally and represented good value for money.

While a handful of similar services are now being set up including Shelter's Inclusion Project (see Annex A) and a residential scheme in Manchester, they remain the exception. These services could play an important role in addressing and reforming behaviour and should be central to the ASBU's strategy. However, local authorities are often reluctant to develop them for financial and political reasons. We hope that ministers and the Unit will encourage innovation in this area by providing the political leadership and funding to develop more of these types of schemes.

The Bill

More detailed commentary on Part 2 of the Bill is at Annex B but the main provisions are:

- A new duty on social landlords to prepare policies and procedures on ASB and to publish them in a statement
- New powers for social landlords to seek injunctions in cases of ASB
- New powers for social landlords to 'demote' secure and assured tenancies with accompanying powers to seek fast track eviction
- Changes to the court's discretion where possession for ASB is sought

Shelter believes the response to ASB should meet a number of tests and should, in particular:

- Be effective in tackling behavioural problems and addressing the causes of those problems
- Strike the right balance between prevention, support and enforcement
- Provide practitioners with practical, proportionate tools that they can understand and use
- Be consistent with wider policies to tackle homelessness and reduce poverty
- Make effective and appropriate use of the courts

We are concerned that, as it currently stands, the Bill does not meet these tests.

Shelter's response to the individual measures in the Bill is set out in turn below.

New duty to publish a statement

Shelter supports the new duty on landlords to publish a statement of policies and procedures relating to ASB. This should ensure that landlords have a clear strategy in place and will provide tenants and the wider community with clarity about the level of response they can expect.

It will be important for policies to focus on prevention and support, as well as enforcement. They should also be developed 'corporately' in consultation with relevant local authority departments and local agencies to ensure they are consistent with other strategies such as crime and disorder strategies and the homelessness strategies currently being drawn up local authorities under the Homelessness Act 2002. Shelter believes these factors should be reflected on the face of the Bill in line with precedent in other legislation such as the Homelessness Act.

Injunctions

Shelter supports the use of injunctions as a quick and effective way of targeting problems. We also support the inclusion of measures to exclude a household from the property or the area, or attach a power of arrest, where the court is satisfied that violence or the threat of violence has been used, or there is a significant risk of harm.

We are, however, very concerned about the wide scope of the definition of behaviour that is used for these purposes - conduct that 'is capable of causing nuisance or annoyance'. This will mean that the use of injunctions will be less targeted and it will be difficult to apply the definition consistently and objectively.

Demoted tenancies

Shelter is opposed to measures to 'demote' tenancies. These provisions are similar to the existing introductory and starter tenancy regimes that social landlords can use for new tenants. There is no evidence that the use of these types of tenancy has reduced ASB.

We are very concerned that the behaviour for which demotion orders may be granted - once again any conduct that 'is capable of causing nuisance or annoyance' - is defined so broadly. This could greatly reduce the security of many vulnerable tenants and leave them at risk of eviction.

We are also concerned that, once a tenancy has been demoted, any application for possession can only be defended on procedural grounds (if proceedings are brought, the court must grant possession unless the landlord has failed to follow the correct procedures in making its application). This could leave tenants at greater risk of eviction on other grounds such as rent arrears. Research has found that rent arrears are the main grounds for possession in nearly 90 per cent of actions against introductory tenants.⁵

These measures would be less draconian if they were amended to ensure that, once a tenancy has been demoted, ASB is the only ground on which possession can be sought and that landlords are required to provide support to resolve a household's behaviour before possession can be granted. It cannot be right to remove the security of tenure of vulnerable people without providing them with an opportunity to resolve their problems.

Changes to the court's discretion

Case law has already firmly established that the courts must consider the impact of ASB on other tenants and the wider neighbourhood. The evidence is that the courts in fact very often grant possession where sufficient evidence is put before them. These changes are therefore unlikely to make much difference in practice.

Cases fail when they are poorly prepared or insufficient evidence has been gathered. Concerns about predictability of outcome should therefore be addressed by encouraging good practice among landlords. Manchester City Council, for example, has been very successful in obtaining injunctions, possession orders and ASBOs and won 559 legal cases in cases involving nuisance neighbours last year.⁶ We would not support such a hard line approach but it shows that landlords already have strong enough powers in this area. Better guidance for judges, who do not always have expertise in this complex area of the law, would also help improve consistency.

ANNEX A: SHELTER'S INCLUSION PROJECT

Shelter's Inclusion Project has been developed in partnership with Rochdale Metropolitan Borough Council as an innovative way of tackling ASB. It provides support to people who are homeless, or at risk of homelessness, due to alleged ASB, and works with them to tackle their behaviour and enable them to sustain their tenancies.

The project went live in September 2002. It is currently working with more than 30 households, the majority of whom are families with children. All of them have significant problems and would otherwise have been evicted for ASB.

Following an initial assessment with the household to identify the issues that need to be resolved and the support required to achieve this, a comprehensive support plan is developed to which they sign up. Behavioural issues are raised with the household who must be committed to a 'contract' with the Project. Support is then provided for a period of up to 12 months and is reviewed at regular intervals.

It is very early days, but the evidence so far is that the Project is already having some success. All the households involved have engaged positively and remain committed to tackling their issues. The number of complaints from neighbours has been significantly reduced and all the households have so far successfully maintained their tenancies.

The Project has a steering group of key local stakeholders. Shelter has also commissioned a full external evaluation which will be supervised by an advisory group. The evaluation will assess:

- The Project's effectiveness in tackling behaviour
- Its success in helping households to maintain their tenancies and in preventing homelessness
- Its effectiveness in resettling households that have experienced homelessness due to their ASB
- The Project's overall impact on service users, agencies and the wider community
- It's cost effectiveness and value for money

The main output will be a full report in September 2005, with two interim reports published before then, the first of which will be available in autumn 2003.

ANNEX B: CASE STUDIES

ASB is often rooted in complex problems and many people who behave in an anti-social way have very high levels of vulnerability. Research commissioned by the Joseph Rowntree Foundation based on ASBO case files ⁷ found that:

- Two-thirds of defendants had special needs or other specific problems
- 18 per cent had some form of mental illness
- 18 per cent had experience of physical or sexual abuse
- 9 per cent had a physical disability
- Drug problems were identified in 12 per cent of cases
- Alcohol was a problem in 11 per cent of cases
- In 15 per cent of cases children were out of control and the parents lacked the skills to cope with them

In depth interviews with a sample of clients from the Dundee Families Project revealed very serious levels of vulnerability, ill-health and abuse in the families' backgrounds:

- Over half the households were headed by a lone parent
- 53 per cent of the female adults had experienced domestic violence
- 40 out of the 83 children interviewed had experienced some form of abuse or neglect
- A significant number of families had high levels of ill health and disability including cerebral palsy, deafness and epilepsy
- Half the mothers were prescribed anti-depressants
- A high proportion of the adults were known to previously or currently have drug or alcohol problems

The evidence is that ASB is also more prevalent in deprived areas. Research for the then DETR found that it is perceived to be twice as high in these areas than nationally.⁸

Shelter's experience, as illustrated in the following case studies, backs this evidence up and shows that possession is often an inappropriate response to ASB.

A female client was undergoing possession action for nuisance. When we got copies of the evidence, it emerged that almost all the incidents involved her partner threatening, beating and, in one instance, raping her (this was witnessed by neighbours). She obtained an injunction with a power of arrest against her partner. We offered to help her fight the possession action.

However, she declined this and decided to leave and find alternative accommodation instead.

Our client lived with her husband and teenage daughter. She is disabled and suffers from severe depression. Her daughter suffers from Crohns Disease. Her husband had been served with an ASBO for harassment and verbal abuse. Neither her nor the daughter were implicated in the behaviour. However, despite this and the fact that the husband had kept to the terms of the order, possession was sought in early 2001. Although the application was initially rejected, possession was granted on appeal and the family were evicted. They were subsequently found to be intentionally homeless, the husband has lost his job and they have been living ever since in our client's mother's one bed flat.

Our client had previously lived in a two bed council flat with his two sisters, one of whom had a child. The flat was in his name. He received notification of possession proceedings on the grounds of nuisance caused by a visitor to the flat - the boyfriend of one of his sisters. His sister moved out at his request and the boyfriend did not come to the property again. Shortly after this, our client went away on holiday. On his return, he discovered that a possession order had been made against him on the grounds of nuisance. He had mistakenly believed that by asking his sister to leave, the breach of tenancy had been remedied. He is now homeless and occasionally stays in the local nightshelter.

A single mother with a large family had escaped a very violent background. One of her children had very severe Attention Deficit Behaviour Disorder.

The mother was working with education and health services to support him - he was due to be prescribed Ritalin and obtain a place at a special school. At this point, the landlord sought possession for ASB. The police served an ASBO and invited the press to witness this. The resulting publicity caused the school place to be withdrawn and the Ritalin prescription to be reviewed. Shelter became involved and prevented the eviction from taking place. We sought a transfer for the family but they were offered a series of unsuitable

places. Eventually, the family moved out of the area and the son ended up in a secure unit.

A client with an introductory tenancy was suffering domestic violence from her partner. The landlord brought forward 50 allegations of ASB, only four of which were eventually accepted by the local authority's appeal panel. Three of the valid complaints were about noise nuisance - including door slamming in the house and the client shouting at her children. The other was for letting her dog off its lead twice. She was evicted.

ANNEX C: COMMENTARY ON CLAUSES

The main provisions relating to Part 2 of the Bill are set out below.

Clause 12

Clause 12 places a new duty on social landlords to prepare policies and procedures on ASB and to publish them in a statement no more than six months after the Bill comes into force. In doing so, they must have regard to any relevant guidance issued by the Secretary of State or, in the case of housing associations, the Housing Corporation.

Clause 13

Clause 13 extends the circumstances in which social landlords can apply for an injunction where ASB is concerned. An injunction can be sought where a household's conduct 'is capable of causing nuisance or annoyance' and this 'directly or indirectly' affects the landlord's management of their housing stock. The conduct need not take place within the vicinity of the landlord's property. Injunctions can also be sought where a household has used or threatened to use a property for immoral or illegal purposes, for example drug dealing or prostitution.

Before granting an injunction, the court must be satisfied that the household 'is engaging, has engaged or threatens to engage' in conduct that, again, is 'capable of causing nuisance or annoyance' to residents of the landlord, anyone visiting the area or the landlord's staff. The court can exclude a household from the property or the area, or attach a power of arrest, if it is satisfied that violence or the threat of violence has been used, or if there is a significant risk of harm.

Clause 14

Clause 14 enables a social landlord to apply to the county court for a demotion order against a secure tenant or a tenant with an assured tenancy. The circumstances in which a landlord may apply for a demotion order are the same as those for which it may apply for an injunction ie where behaviour 'is capable of causing nuisance or annoyance'. Before granting an order, the court must be satisfied that a tenant (or someone residing with or visiting a tenant) has engaged or threatened to engage in this conduct and that it is reasonable to grant the order.

The conditions attached to a demoted secure tenancy are set out in Schedule 1. A demoted secure tenancy normally lasts for one year, at which point the tenancy reverts back to a secure tenancy unless, during this period, the landlord serves a notice seeking possession (see below).

Clause 15

Clause 15 sets out the conditions attached to a demoted assured tenancy. Again, the demotion lasts for one year. The tenancy becomes an assured shorthold tenancy with provision for it to revert to an assured tenancy at the end of that period, unless possession proceedings are brought.

Schedule 1

Schedule 1 sets out the procedures governing possession where demoted tenancies are concerned. If proceedings are brought, the court must grant possession unless the landlord has failed to follow the correct procedures in applying for it. The tenant can apply for an internal review within 14 days of a landlord serving a notice of possession.

Clause 16

Clause 16 introduces new provisions relating to the court's discretion where a social landlord seeks possession for ASB (ie where a tenancy has not first been demoted). In exercising its discretion, the court must particularly consider the effect or likely effect of that behaviour on others.

End Notes:

- 1 Relevant social landlords are defined throughout the Bill as local authorities, registered social landlords and housing action trusts
- 2 Tackling anti-social tenants: A consultation paper; DTLR, April 2002
- 3 Report of Policy Action Team 8: Anti-social behaviour; Social Exclusion Unit, March 2000
- 4 Neighbour nuisance, social landlords and the law; JRF/CIH, 2000
- 5 Local authority policy and practice on allocations, transfers and homelessness; H Pawson et al, DTLR, 2001
- 6 Housing Today, 28 February 2003
- 7 Neighbour nuisance, social landlords and the law; JRF/CIH, 2000
- 8 Analysis of the Survey of English Housing 1997-98; DETR, 1999