

Response to Department for Social Development Proposed Housing (Anti- Social Behaviour) Bill (NI)

March 2014

Introduction

Housing Rights Service (HRS) works to promote and protect the rights of people in housing need in Northern Ireland (NI). Last year we dealt with approximately 37,000 housing issues and assisted 7,770 individuals and households. Our policy work is based on the experience of our clients. Our services focus on the key areas of preventing homelessness; accessing accommodation; tackling affordability and poor housing conditions.

HRS is very aware of the devastating impact anti social behaviour (ASB) has on lives and communities. When behaviour is persistent and wilful, remedies must be available. There is already range of both statutory and non statutory measures available to the authorities, including landlords, to deal with ASB. These must be proportionate and appropriate. Eviction from a social housing tenancy should only be pursued when all other options are exhausted.

HRS has direct experience of advising and representing both people who have complaints about ASB in their neighbourhood and also people against whom complaints of ASB have been made. Last year we dealt with over 1,000 ASB enquiries. Approximately half of these related to eligibility for assistance for homeless applicants. On average there were similar numbers of issues relating to Housing Executive, Housing Association and Private Rented Sector housing. It is interesting to note, however, that in only 100 cases ASB was identified as the primary housing problem.

ASB is complex and often multi faceted. We have witnessed cases where there has been misunderstanding about the nature of some people's behaviour. This is particularly relevant where the behaviour is connected to mental health and/or disability issues. In our view, early intervention is critical to identify families who are vulnerable and who need additional support and advice to ensure any difficulties do not escalate. However, the provision of such support is not consistent throughout the social housing sector. We believe that a number of social housing providers need to take a more positive and proactive approach to the assessment and provision of support. This in itself could help change behaviour and prevent the need to resort to often costly statutory measures. The following cases illustrate this point.

Case studies

This case concerned possession action of a tenancy by a Housing Association on the grounds of anti-social behaviour. The client had been an introductory tenant for 8 months. Prior to allocation of this property he had been homeless for a couple of years following a relationship breakdown. The client had one child. The client suffered from both learning difficulties and other mental health problems e.g. clinical depression and anxiety. While these conditions had been diagnosed the client was not engaging with services or on medication. The client also had an offending history and had spent short periods of time in prison for shoplifting offences.

A Notice Seeking Possession (NSP) was served on the grounds that *“the tenant or a person residing in or visiting the dwelling-house has (a) has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting or otherwise engaging in a lawful activity in the locality”*. The Housing Association stated that the reason for the possession action was that the client had been arrested by the PSNI on suspicion of cultivating drugs and storing stolen goods at his premises. The client advised that he was asked to grow cannabis plants for a paramilitary group and was threatened that if he did not they would harm his young son. This threat was able to be verified by NIACRO.

Following this arrest the client was given a suspended sentence. At this stage he decided to make positive life changes by engaging with services. He completed an alcohol/drug counselling programme. He also started to attend a Probation Board programme and had strong letters of support from PBNI evidencing how the maintenance of his tenancy was vital to his recovery. The client also started attending the Jobtrack scheme.

HRS presented this information to the Housing Association to demonstrate the client’s change of behaviour and stressed the importance of keeping his home. However the Housing Association decided not to take this into account and is proceeding with possession. At no stage did they ever offer him tenancy support.

In this second case, the client had been a tenant of the Housing Association for nearly 2 years. The Housing Association issued a NSP after 12 instances of loud music/doors banging. The client only received a verbal warning regarding 3 of these incidents. Furthermore, the noise issue was not referred to Environmental Health for monitoring. No interim measures or support were offered despite the client having learning difficulties and mental health issues. The Housing Association is pursuing possession action.

Summary view of proposals

HRS is seriously concerned about the proposed new form of tenancy i.e. the Short Secure Tenancy (SST) which we interpret as a downgraded temporary tenancy for 6 months. After this time the SST either becomes secure again or possession is sought to bring the tenancy to an end. The court “would be required” to grant possession in such cases. The consultation document states (page 19) that this new form of tenancy is comparable to the Scottish Short Secure Tenancy (SSST). We do not support this view for the following reasons.

In Scotland, a secure tenancy can **only** be downgraded to a SSST in cases where the tenant or other members of their household are **currently the subject of an ASBO**. However, in NI the DSD is proposing giving social housing landlords the power to convert secure tenancies to SSTs where, **in the previous 3 years**:

- A tenant, or household member, has been convicted of an offence which involves using the property (or allowing it to be used) for immoral or illegal purposes, or a commits a criminal offence in the property, or locality; or
- Certain court orders, such as ASBOS or injunctions have been made against the tenant or household members.

We have a number of issues with this approach.

Firstly, we question the relevance of taking into account historic convictions i.e. in the previous 3 years. HRS believes that a landlord’s focus should be on relevant, current behaviour and should not focus on past convictions. Where someone has been found responsible for ASB and convicted on that basis the court will have passed a sanction

relating to addressing the offence. Downgrading the tenant (and household) to a SST is a further unnecessary act of punishment.

Secondly, we object to a system which provides social landlords with significant powers to downgrade a secure tenancy without having to involve the court in this decision. In our view, the removal of secure tenants' rights by a largely administrative process which could ultimately "require" the courts to grant possession, runs contrary to the principle of natural justice i.e. duty to act fairly and the right to a fair hearing. We would caution against removing the court's discretion in such matters of importance and ask whether there has been consultation with judiciary about this constraint.

HRS believes that tenants facing possible eviction should be entitled to a legal hearing where they have the opportunity to present a defence. HRS has experience of representing social housing tenants in cases where their landlords are seeking possession on grounds of ASB. A number of cases are currently waiting on dates for court hearings. In each of these cases we have identified strong defence. This has been formally acknowledged by the granting of Legal Aid by the Legal Services Commission to fund the client's defence in court.

HRS cannot support the proposed system of a SST as it would deny the tenant the opportunity to defend the possession action in court as, at this stage, there would be a "minimum of litigation". HRS believes such action would be unjust and not in the interest of promoting access to justice. **We strongly urge the DSD to consider any human rights and due process issues arising from these proposals.**

Consultation questions

- 1. Do you agree that the proposals on short secure tenancies will provide social housing providers with an appropriate tool to ensure their tenants and others can peacefully enjoy their homes?**

HRS is not convinced that the proposals regarding Short Secure Tenancies (SST) will necessarily ensure that social housing tenants and others can peacefully enjoy their homes. The paper provides no evidence that the short secure tenancy will in fact lead to a change of behaviour. The proposed requirement for social landlords to offer “appropriate” support is positive. However, in cases where the tenant/household member does not engage with this support (or if the support is not effective) the landlord will obtain possession thereby moving the problem behaviour to another property. This is very likely to be in the private rented sector where there is little regulation of such activity by landlords.

- 2. Do you agree that the proposals on short secure tenancies will provide social housing providers with an appropriate tool to help struggling tenants to sustain their tenancies?**

HRS does not believe that the proposed SST is an appropriate tool to help struggling tenants. We are supportive of the proposed statutory requirement on social housing landlords to provide support to such tenants, but believe that this should become a legal requirement while the tenancy is secure. The consultation document states (page 5) that landlords could use a SST as an alternative to seeking possession. HRS believes that if this is the main purpose of the proposals, then there is a strong argument for legally requiring landlords to offer appropriate support under a secure tenancy. We do not believe it should be necessary to downgrade a tenancy in order to offer support, unless the intention is to create a more administrative legal eviction process.

According to the consultation document (page 5) a SST “will last for a term of at least 6 months”. Our understating is that there will be a 6 month upper limit to allow for the tenant/households to address the behaviour issues. We believe that 6 months may not be sufficient in all cases to address problems which can be associated with ASB. Quite often it can take considerably longer for individuals and families to change attitudes, lifestyles and behaviour.

It is generally accepted practice that social housing providers should offer support to help struggling tenants sustain their homes. However, in our experience, there is little evidence of social landlords providing the required support to assist individuals and families where there are complaints made regarding anti-social behaviour. In fact, despite comprehensive DSD guidance outlining the types of assistance which should be offered, we have experience of a number of possession cases where no support has been offered.

If the law is changed requiring social landlords to provide “appropriate” support there would need to be a procedure outlining the types of assistance to be offered which includes a proper assessment of need. In our view this should be carried out by a suitably ‘qualified’ person or organisation specialising in this area of work.

The document outlines examples of good practice including the Dundee Families Project. This model involves a multi disciplinary approach to supporting families involving NCH and Dundee Council’s housing and social work departments. HRS believes that it is worth exploring the suitability of developing a similar initiative for Northern Ireland. We recommend that this, and other support models, be further considered.

3. How can social landlords best work in partnership with others in the delivery of support services to those tenants holding short secure tenancies.

As stated earlier, HRS believes that there is scope to improve delivery of support services well in advance of any type of legal action for possession being initiated. This would

include a change in tenancy status which could ultimately lead to a more administrative eviction process.

HRS recommends that referral protocol arrangements be developed with support providers to allow for an independent assessment of household need. Once need has been identified appropriate, tailored (and if necessary multi agency) support should be put in place and progress regularly monitored. Referral procedures should be timely, effective and outcome focused.

4. Are there any additional proposals, including non statutory which could be considered?

HRS is of the view that there are already adequate means of addressing ASB in social housing, both statutory and non statutory. What is missing from the proposals is any kind of analysis of the current use of these existing 'tools'. There is no compelling evidence in the document to support the need for a new form of tenancy, the SST which has the potential to enable social housing landlords to evict a secure tenant without providing the opportunity for defence at court (unless on appeal). HRS therefore recommends that the DSD provides a breakdown of usage of the current legal powers and non statutory remedies to determine their effectiveness or otherwise.

HRS firmly believes the eviction should always be as a last resort. We suggest that the DSD considers the following alternative options:

- Legally require social landlords to offer "appropriate" support to a secure tenant and to revise the Notice Seeking Possession procedure. DSD has advised us that although this is possible "we have no plans to do so". HRS recommends that this option be properly considered.
- We object to measures which will allow landlords to downgrade secure tenancies without a court hearing which allows the opportunity for defence. If there is to be a temporary suspension of security of tenure, which could lead to an easier eviction process, then we believe this must be heard in court and allow judicial discretion to be applied.

- We would also support greater use of non-statutory measures such as ABCs, floating support and management transfers where appropriate.

5. Do you have any comments on the proposal to amend the Housing (NI) Order 1988 as proposed above i.e. to provide that a person can be found ineligible for homelessness assistance at any stage before they are allocated a tenancy of social housing?

HRS is aware of that there could be legal uncertainty with the current wording under Article 7A(5) of the Housing (NI) Order 1988 (as amended). If proposed change is made we would ask for safeguards to ensure that special consideration be given to the circumstances of homeless people whose behaviour may be as a result of their temporary housing circumstances. We would ask for detailed DSD guidance for the Housing Executive to assist it to apply this change fairly and consistently – taking all relevant circumstances into account.

HRS has sought assurances from the DSD that where a Full Duty homeless applicant was subsequently found to be ineligible for assistance that s/he would be issued with a revised homelessness decision. The DSD has assured us that this is correct and furthermore, under Article 11A of the 1988 Order the applicant has the right to request a review of any decision regarding eligibility.

6. Is there anything additional that should be considered? Nothing further to add at this stage.

7. Do you have any evidence that the proposals within this document would create an adverse differential impact on any of the nine equality categories under Section 75 of the NI Act 1998?

Our experience has been that possession action on the grounds of ASB can involve people who we would consider as being vulnerable and/or have a disability. To determine whether there could be a differential impact we would ask the DSD to request evidence from social landlords on the number of people claiming disability benefits against whom any action for ASB has been taken.

- 8. Do you have any evidence that there is any scope for the proposals within this document for promoting good relations between the equality categories? None**
- 9. Do you have any evidence that the proposals within this document would create an adverse differential impact on rural areas? None**

10. Do you have any comments on the potential regulatory impact of the proposals?

The document (page 11) states that the costs associated with enforcement and sanctions are not anticipated to be additional to the current regime. However, there is likely to be additional costs associated with the proposed right to review and appeal to the county court. Most of these costs will be applicable to the landlord but also will involve a cost to the NI Courts & Tribunal Service. There is also likely to be additional costs of providing “appropriate” tenancy support above that which is currently provided through floating support providers.

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