

## **Legal Remedies for Social Landlords Managing Anti-Social Behaviour in England/Wales, Scotland, and Northern Ireland**

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### **1. Introduction**

The purpose of the first section of the paper is to examine the various steps that social landlords can take in resolving complaints regarding anti-social behaviour (ASB). For the purposes of the paper, the term “social landlord” is used to describe local authorities with housing stock across the UK, (with or without AMLOs in England), housing associations across the UK and the Northern Ireland Housing Executive, which act as landlords for social housing tenants. This stands in contrast to wider definitions that could include landlords in the private sector renting to tenants, where the legal proceedings can be quite different and powers are more limited.

### **2. England and Wales**

- 2.1. Social housing and laws regarding anti-social behaviour are devolved issues in the UK context, so the remainder of the paper dissects the commentary for each of the nations, beginning with England and Wales. Legislation that is relevant includes the 1996 Housing Act, which stipulated that under certain conditions social landlords can refuse to offer social housing to applicants who have a proven history of anti-social behaviour (section 161), or offer Introductory Tenancies, usually for a year, if there is a proven history (section 124). In the 2003 Anti-Social Behaviour Act, ASB is more explicitly linked to social housing in part 2, which sets out the responsibilities that social landlords have in regard to publishing guidance to tenants on anti-social behaviour policy. It also stipulates that in cases of anti-social behaviour, social landlords can demote a tenancy for up to 12 months, and if the behaviour has not ceased or notably improved in this time, the tenancy can be terminated without the need to prove grounds for possession (Shelter, 2020a).
- 2.2. The most recent significant policy development in respect of England and Wales is the 2014 Anti-Social Behaviour, Crime, and Policing Act that overhauls the tools available to deal with ASB. Specifically, it reworks former Anti-Social Behaviour Orders (ASBOs) and replaces them with Civil Injunctions. The 2014 Act defines anti-social behaviour as ‘behaviour causing harassment, alarm or distress to a member or members of the public’ (Home Office, 2019; 6). In line with the broader push towards Localism within the 2010-2015 coalition government, injunctions were designed to allow more local input into the

creation and monitoring of ASB related injunctions (Demetriou, 2020). This is achieved by adding positive as well as prohibitive provisions within injunctions, such as the need for defendants to attend prearranged alcohol counselling, as well as the prohibition to stay away from a certain area or stop engaging in a certain activity for example.

#### Mediation and other non-statutory interventions

- 2.3. While the main thrust of anti-social behaviour legislation is aimed at outlining the civil or criminal processes to combat it, there are several options available to social landlords to act proactively to address anti-social behaviour before it reaches this climax. Among the tools available for this is mediation, which aims to reduce minor arguments or differences between local residents that may amount to instances of ASB or have the potential for escalation. Neighbour disputes can appear quite minimal – a high fence for example - or may involve an ongoing nuisance complaint, such as loud music, drunken behaviour, arguing, dumping, and graffiti. These issues are not offences in and of themselves, but taken collectively they impinge quality of life and create considerable disturbance. Academic studies have cautioned that the line between what counts as ASB and what are simply disagreements between neighbours is not always clear-cut, and mediation acts as a method for social landlords to properly assess the severity and scope of disagreement, as well as a forum for successful dialogue for the parties involved (Demetriou, 2020). Some social landlords outsource mediation to religious or community leaders or use private sector or charitable mediation services, while others offer these in-house. The latter has the obvious benefit of the social landlord having more oversight, though resource constraints can pose a significant barrier.
- 2.4. An additional tool at the disposal of social landlords are Anti-social Behaviour Contracts, or Acceptable Behaviour Contracts (ABCs), which set down voluntarily binding agreements to address behaviour. While these instruments are voluntary and not statutory, the Home Office (2003) presents ABCs as forming part of a broader package that can prove that other attempts to bring ASB under control have been unsuccessful.

#### Demoted tenancy arrangements

- 2.5. Among the first statutory instruments that can be used to deal with ASB is the social landlord applying to the County Court to demote a tenancy. In line with the 2003 ASB Act, the social landlord can ask the court to demote the tenancy from an assured, secure or flexible tenancy to a demoted tenancy. ASB, rent

arrears, use of the home for illegal activities, or a combination of these are the usual grounds for pursuing a demoted tenancy. Social landlords should provide two weeks' notice that they intend to move for a demotion order and supply the relevant information to the tenant to challenge this. The tenant is allowed two weeks from the date of the correspondence to challenge the decision by responding to the notice to demote, or later through judicial review. In preparing for a demoted tenancy, social landlords are expected to present the County Court with evidence that ASB has or is likely to take place.

- 2.6. The aim of a demoted tenancy is to enable the social landlord and the tenant to work together to resolve the problem. In this sense, engaging tenants to enter into mediation or an ABC would be appropriate at this juncture if these measures have not already been entered into. The demoted tenancy lasts for up to 12 months, after which it transfers to a full tenancy. As such, if ASB continues, social landlords can move to evict without moving for possession, but they must do so within the 12-month window. Four weeks' notice must be provided to the tenant and all other procedures followed correctly to be assured that the eviction will stand.

#### Injunctions, Criminal Behaviour Orders, and exclusions

- 2.7. Injunctions have replaced ASBOs in the way that they provide social landlords with structured ways of dealing with ASB. As with ASBOs, these are legally hybrid instruments, where, while the behaviours themselves are not considered criminal acts, breaking the conditions attached to the injunction is (Hendry and King, 2017). An Injunction to Prevent Noise and Annoyance (IPNA) is the instrument closest to the ASBO that preceded it, and is designed primarily to address matters that are not criminal behaviours. However, as stated above, in contrast to ASBOs, IPNAs include both prohibitive and positive requirements. Social landlords should apply to the County Court in the case of pursuing a housing related IPNA. This requires that they present the court with evidence according to the civil standard of proof (on the balance of probabilities) that there is ASB or risk of ASB occurring that relates to housing and affects the function of providing housing (Shelter, 2020b).
- 2.8. Injunctions of this kind can involve prohibitive injunctions (do not go somewhere, do not do something, do not leave the house after dark, etc.) or mandatory injunctions to do something (provide documents, allow access to property, etc.). Social landlords can request that the court attach a power to arrest to such injunctions that provide grounds for prosecution if conditions are

not met. In addition, INPAs include positive requirements. Typically, this incites the defendant to attend counselling or classes to help them deal with their ASB, and is intended to help the INPA address the causes of the ASB (Varley, 2016). Power to arrest cannot be attached to positive requirements (Shelter, 2020b). An IPNA can be a long process drawn out through appeals and evidence collection exercises, though in cases that there is considered to be a threat to health or security (domestic abuse, for example), a “without notice” IPNA can be applied for which allows a temporary injunction to be placed until the court hearing grants a full IPNA. In the most extreme cases, an IPNA can be used to exclude an adult from their home if there is significant risk of violence or serious harm. In practice, injunctions that involve exclusions are considered to be a last resort and rare. The Home Office (2019) guidance to social landlords on interpretation of the 2014 Act indicates the courts will take proportionality into account in applications for exclusions.

- 2.9 In instances where there is criminal behaviour involved that affects housing function and is related to ASB, social landlords can work with police for a Criminal Behaviour Order (CBO). The local police authority would need to be the lead applicant in approaching the court for a CBO. This is typically requested in addition to criminal prosecution for the committed crime, where upon discharge a CBO is requested that imposes additional injunctions on defendants. These might include injunctions to stop individuals doing things related to or that might lead to similar circumstances involved in their previous criminal prosecution. In contrast to housing IPNAs that are considered to be used for nuisance related incidents, CBOs are defined by their criminal element. Therefore, the criminal standard of proof applies (beyond reasonable doubt) to CBO applications.
- 2.10 In all cases, where an IPNA or CBO has been breached, these are grounds to move to possession of the property and eviction of the tenant. In the case of CBOs, breaking terms is considered to be grounds for mandatory possession. If the social landlord is able to make the case for mandatory possession, the court is unable to request that the defendant is given any other chances to change their behaviour.

### **3. Scotland**

#### Tenancy arrangements

- 3.1. In the Scottish context, the legislative framework differs from the English one, though it creates broadly similar statutory measures. In this case the Housing

Act 2001 (amended 2014) allows for the distinction between Scottish Assured Tenancies and Short Scottish Secure Tenancies (SSST), where the latter can be given to tenants when there is a proven background of ASB. Unlike in the English case where social landlords are expected to apply to the courts for a demoted tenancy, as of 2014 in Scotland the social landlord is allowed to impose an SSST if there is any prior conviction of ASB in the locality (Scottish Government, 2014). The amended 2014 Bill also provided provisions for social landlords to apply for suspension for tenants with prior history of ASB. While this does not apply to authorities discharging homelessness duties, it does lend legitimacy to social landlords who wish to develop a suspensions policy in relation to ASB. As such, some discretion is provided to Scottish social landlords to apply shorter tenancies at inception with the provision that there is prior ASB.

#### ASBO, interim ASBO, and Closure order

- 3.2. In the Scottish case, the primary legislation that can be used to tackle ASB remains the Antisocial Order etc. 2004 Act. Though it has been updated and further guidance has been offered to social landlords, most of the further guidance has revolved around conceptual issues, benchmarking, and voluntary measures. These include publishing the number of cases received and resolved, moving towards a preventative approach to ASB, and increasing the availability of mediation services. As such, the central tool to manage ASB is the ASBO, relying on injunctions designed to stop defendants engaging in certain behaviours or going to certain places. As yet, there are no provisions within the Scottish ASBO for positive requirements, and many of these are expected to be carried out in more informal settings (Chartered Institute of Housing Scotland, 2014).
- 3.3. Under more strained circumstances where there is risk of violence or severe harm, interim ASBOs can be sought, which take action immediately while the ASBO is heard in court. Emergency measures can also be taken in the form of closure orders to forcibly remove tenants. The process is driven by the application of the police force and must be supported by evidence of three months or more of ASB (CIHS, 2014).

#### **4. Northern Ireland**

- 4.1. The processes in place for dealing with anti-social behaviour in social housing share broad similarities with the English and Scottish cases outlined above. Principally, the main legislation that allows discretion over tenancies is the 1983

Housing Order (amended 2010), which allows for introductory tenancies. However, introductory tenancies are commonplace in Northern Ireland (NI) and therefore not specially related to ASB concerns.

- 4.2. The processes for dealing with complaints are also concerned with ASBOs and the potential grounds for possession in relation to ASB. The key difference that marks NI from the rest of the UK is that individual housing associations do not challenge ASB directly, but apply to the Housing Executive who make the application to the courts on the association's behalf (Housing Executive, 2016). In part, this is to ensure that the Housing Executive is assured that mediation and the use of ABCs have been thoroughly explored before they approach the courts for ASBOs. However, while the legislative process to social landlords achieving success in obtaining an ASBO bears similarities to Scotland and previous English law, the range of other minor legal hurdles in the NI context should be attended. These primarily relate to how complainants are heard, how interviews should be conducted, and how confidentiality should be secured. These are likely a direct response to religious tensions in the NI context that require that additional care is taken by authorities in arbitrating and ruling anti-social behaviour cases.

## **5. Relevant considerations**

### Conflict of principle within positive requirements

- 5.1. This section of the paper draws attention to the most relevant areas of consideration that have arisen in practice when authorities and associations have attempted to try cases. First, the inclusion of positive requirements remains something of a black hole, as there is no relevant case law that can inform legal professionals on how the imposition of positive requirements is being applied in law. There is guidance in the Home Office (2019) accompanying guidance to social landlords that such obligations not interfere with work, education, and other normal responsibilities. In addition, this guidance states that any positive obligations found in an injunction are reasonably achievable and proportionate.
- 5.2. Research studies and anecdotal evidence of trying such cases reveal where possible grievances might appear. For example, Varley (2016) reports several cases involving the use of positive requirements that relate to attending alcohol services. While she considers the use of these instruments as vital to ensuring the preventative element of the injunction, there have been problems ensuring that defendants are able to attend them. In these cases, the local housing

authority was required to take the defendant to the appointments. However, an additional element of the Home Office (2019) guidance states that the court needs to be assured that attendance and engagement is actually taking place in such instances. The problem with oversight of these kind of activities is that many services work on the assumption that interactions between services and service users are confidential, and therefore the assumption that they can be monitored conflicts with confidentiality. As such, ensuring that there is evidence that individuals have complied with an order can offend other legal principles, such as confidentiality. According to Varley (2016) judges are scrutinising such positive requirements for such potential conflicts and requesting that housing authorities adapt accordingly, though positive requirements may be subject to challenge as they are taken up more widely.

#### Mixed incentives in ASBOs and more advanced legal measures

- 5.3. An additional area of concern is that in the Scottish and Northern Ireland cases, ASBOs remain punitive, rather than rehabilitative. According to reports by the Chartered Institute of Housing Scotland (2014), while in the Scottish case the law and surrounding guidance are geared towards directing associations towards mediation, these remain informal and less well-regulated than might be desired. Relying, as informal processes do, on under-resourced multi-agency working, the CIHS (2014) reports that results are patchy. Moreover, there is concern that ASBOs in Scotland rely on a much harsher test of evidence than they do in England, and are more costly and tend to be more drawn out. According to the CIHS (2014), this leads some associations and authorities to move towards more punitive sanctions as a first choice, partly to satisfy that government-imposed resolution targets are met, and partly because ASBOs are considered to lack the necessary decisiveness to meet victim expectations. As such, the informal nature of mediation and prevention appears to have some perverse incentives involved.

#### Reasonableness, proportionality, and incompatibility

- 5.4. Of the cases of note that have been challenged in the High Courts in terms of anti-social behaviour, those that have been successfully challenged have often been found wanting on the grounds that the requested injunctions have been too broad, poorly specify the action that the individual must follow, or are disproportionate to meet those ends (Levy and Hall, 2016). For example, requesting an injunction that requires that a defendant not do anything to cause damage is too vague and open to interpretation. For example, *R v Boness*

(2005) dismissed claims against the defendant by the local authorities on the grounds that the prohibitions were too broad. The measures sought to stop the defendant wearing face coverings and stopping them from causing damage, both of which were too broad and could have referred to wearing a scarf, in the case of the first, or simply scuffing a shoe in relation to “causing damage”. The proportionality issue was also used as grounds to dismiss the claim in *R v Boness* (2005), since these measures were also thought to limit the defendant in ways that would not truly limit the nuisance that they were intended to stop. The proportionality clause can also be seen in *R v Lawson* (2005) where an intended prohibition to stop the defendant getting into a car was dismissed on grounds that it was overly punitive and not directly linked to the measures it intended to remedy. On review of the cases, the Crown Prosecution Service (2019) recommends that the following actions be taken in ensuring that prohibitions are able to do what they say they intend to do.

- Provide a link between the ASB that the defendant is accused of and the prohibitive measures that have been developed to solve it.
- Proportionate and realistic prohibitions are reliant on clearly expressing what activities are curtailed. This needs to assure that it can reasonably be expected that the prohibition can be achieved. (*R v Boness*, 2005)
- Related to point 2, prohibitions should be tailored to the situation and not be generic.
- Injunctions and ASBOs should not conflate with existing law. If the injunction or ASBO has been created to stop individuals from engaging in something that is already illegal (theft or drug dealing, for example) then the injunction is considered invalid as the prohibition already exists in criminal law. An example of this can be seen in *R v Kirby* (2005) where injunctions sought regarding driving offences were dismissed on grounds that the punishment was already restricted by law. By extension of this case, injunctions suspected of seeking to enhance the punitive sanctions associated with a behaviour are likely to be dismissed.
- Injunctions and ASBOs cannot be made with the intention of increasing the penalty already afforded to a particular crime or action.



## Bibliography

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Chartered Institute of Housing Scotland (2014) *Tackling Anti Social Behaviour in Scotland: Challenges and Responses*,  
<http://www.cih.org/resources/PDF/Scotland%20Policy%20Pdfs/Anti%20Social%20Behaviour%20and%20Crime/anti%20social%20behaviour%20-%20practice%20briefing.pdf> (accessed September 2020)

Crown Prosecution Service (2019) *Criminal Behaviour Orders – Annex G*,  
<https://www.cps.gov.uk/legal-guidance/criminal-behaviour-orders-annex-g> (accessed September 2020)

Demetriou, S. (2020). Crime and anti-social behaviour in England and Wales: an empirical evaluation of the ASBO's successor. *Legal Studies*, 40(3), 458-476.

Hendry, J., & King, C. (2017). Expediency, legitimacy, and the rule of law: a systems perspective on civil/criminal procedural hybrids. *Criminal Law and Philosophy*, 11(4), 733-757.

Home Office (2003) *A Guide to Anti-social Behaviour Orders*,  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/219663/asbos9.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/219663/asbos9.pdf) (accessed September 2020)

Home Office (2019) *Anti-social behaviour, Crime and Policing Act 2014: Anti-Social Behaviour Powers Statutory guidance for Frontline Professionals*,  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/823316/2019-08-05\\_ASB\\_Revised\\_Statutory\\_Guidance\\_V2.2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/823316/2019-08-05_ASB_Revised_Statutory_Guidance_V2.2.pdf) (accessed September 2020)

Housing Executive (2016) *Anti-social Behaviour*, Northern Ireland Housing Executive,  
[https://www.nihe.gov.uk/Documents/Community/statement\\_of\\_policy\\_antisocial\\_behaviour.aspx?ext=.](https://www.nihe.gov.uk/Documents/Community/statement_of_policy_antisocial_behaviour.aspx?ext=.) (accessed September 2020)

Levy, H. and Hall, E. (2016) *A guide to Prohibitions in Reported Cases*, Crown Prosecution Service,  
[https://www.cps.gov.uk/sites/default/files/documents/legal\\_guidance/Annex-H-a-guide-to-prohibitions-in-reported-cases.pdf](https://www.cps.gov.uk/sites/default/files/documents/legal_guidance/Annex-H-a-guide-to-prohibitions-in-reported-cases.pdf) (accessed September 2020)

R v Boness (2005) EWCA Crim 2395

R v Kirby (2005) EWCA Crim 1228

R v Lawson (2005) EWCA Crim 1840

Scottish Government (2015) *Short Scottish Secure Tenancies for Antisocial Behaviour and Other Miscellaneous Changes to Short Scottish Secure Tenancies*, <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2019/05/short-scottish-secure-tenancies-antisocial-behaviour-miscellaneous-changes-short-scottish-secure-tenancies-statutory-guidance-social-landlords/documents/short-scottish-secure-tenancies-antisocial-behaviour-miscellaneous-changes-short-scottish-secure-tenancies-statutory-guidance-social-landlords-housing-scotland-act-2001-2014/short-scottish-secure-tenancies-antisocial-behaviour-miscellaneous-changes-short-scottish-secure-tenancies-statutory-guidance-social-landlords-housing-scotland-act-2001-2014/govscot%3Adocument/short-scottish-secure-tenancies-antisocial-behaviour-miscellaneous-changes-short-scottish-secure-tenancies-statutory-guidance-social-landlords-housing-scotland-act-2001-2014.pdf> (accessed September 2020)

Shelter (2020a) *ASB: Overview of Legislation*, Shelter Legal, [https://england.shelter.org.uk/legal/harassment and antisocial behaviour/harassment and antisocial behaviour/asb overview of legislation#\\_edn20](https://england.shelter.org.uk/legal/harassment_and_antisocial_behaviour/harassment_and_antisocial_behaviour/asb_overview_of_legislation#_edn20) (accessed September 2020)

Shelter (2020b) *Injunctions to prevent nuisance or annoyance (IPNAS)*, Shelter England [https://england.shelter.org.uk/legal/harassment and antisocial behaviour/harassment and antisocial behaviour/injunctions to prevent nuisance or annoyance IPNAS#:~:text=An%20injunction%20to%20prevent%20antisocial,prevent%20housing%2Drelated%20antisocial%20behaviour.](https://england.shelter.org.uk/legal/harassment_and_antisocial_behaviour/harassment_and_antisocial_behaviour/injunctions_to_prevent_nuisance_or_annoyance_IPNAS#:~:text=An%20injunction%20to%20prevent%20antisocial,prevent%20housing%2Drelated%20antisocial%20behaviour.) (accessed September 2020)

Varley, K. (2016). The anti-social behaviour, crime and policing act in practice—a practitioner perspective. *Safer Communities*. 15 (4), 176-182.