



HOMELESS LINK RESPONSE

A NEW MANDATORY POWER OF POSSESSION FOR ANTI-SOCIAL BEHAVIOUR

NOVEMBER 2011

Homeless Link is the national membership organisation for agencies working with people who are homeless across England. As the collaborative hub for information and debate on homelessness, we seek to improve services for homeless people and to advocate for policy change. Through this work, we aim to end homelessness in England.

INTRODUCTION

This consultation is of particular interest to Homeless Link and its member organisations as:

- Anti-social behaviour (ASB) mechanisms are commonly used with homeless people;
- Homeless people often experience difficulties reintegrating into society especially when recently housed. This difficulty can manifest in behaviour considered anti-social; and
- Cuts to homelessness service providers in some areas have reduced provision of the floating and tenancy support that can help manage an individual's transition to independent living and help avoid ASB.

We acknowledge that anti-social behaviour (ASB) is a serious problem which causes misery to the victims. We understand the government's motivation for addressing it, however, in many cases ASB is caused by poor living conditions and social inequality¹. Consequently we are concerned that these proposals focus too heavily on punitive approaches to behaviour change, focus too lightly on supportive interventions and overlook the potential of interventions that could regenerate areas where ASB is commonplace improving the quality of live for the whole community. The importance of environmental causes of ASB is reinforced by the Ministry of Justice's recent statistical bulletin which indicates that a disproportionate number of those convicted in conjunction with August's riots came from some of the most deprived areas in the country². We believe that an effective ASB strategy needs to address causes of ASB at both a structural and individual level.

Homeless Link's principle concerns with these proposals are:

1. They have the potential to increase homelessness for vulnerable groups and make it more difficult to realise the commitment of ending rough sleeping;
2. They are too heavily weighted towards punitive action rather than a measured balance of supportive and punitive interventions; and
3. They bring up proportionality and social justice concerns. It is not fair that individuals in social housing should be subject to sanctions that cannot be enforced on residents in other types of tenure.

¹ OMDP (2005) "Tackling Anti-Social Behaviour in Mixed Tenure Areas"
<http://www.communities.gov.uk/documents/housing/pdf/138706.pdf>

² MoJ (2011) "Statistical bulletin on the public disorder of 6th to 9th August 2011"
<http://www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/august-public-disorder-stats-bulletin.pdf>

THE IMPORTANCE OF SUPPORTIVE INTERVENTIONS

Notices seeking possession have increased since 2005³ and social landlords appear to be taking an increasingly “eviction-happy”⁴ stance against neighbourhood nuisance. The Home Office’s (HO) ASB reforms will reduce the number of tools in the toolkit meaning that eviction will be pulled out sooner simply because there are fewer options. We have distinct concerns with this consultation’s aim to link the MPP to these new untested ASB mechanisms. We are particularly concerned that the ASB reforms have done very little to improve or promote the tools that were designed to help perpetrators deal with underlying causes of their anti-social behaviour. Sadly these supportive tools are rarely used with only 8% of ASBOs issued to young people since 2004 having a supportive order attached⁵. In addition to this underuse we are losing a significant proportion of the SP services whose support addressed an individual’s needs including ASB. Homeless Link’s ‘Cuts Monitoring’ work has identified an overall funding loss of 22% with 21% of respondents reporting floating support service closures and 57% reporting reduced floating support capacity⁶.

The cumulative result of these factors is a system disproportionately weighted to punitive interventions. We have found that effective interventions for vulnerable groups should be balanced between punitive and supportive approaches. We believe that a MPP could only become a proportionate response after supportive interventions, such as mediation, tenancy and floating support and family intervention projects have been fully reinforced.

If the MPP is implemented we urge the Department to build in a requirement that supportive interventions have been fully utilised prior to possession being sought.

ENDING ROUGH SLEEPING

We welcome the acknowledgement that eviction should be the last resort. However we do not believe this goes far enough and urge DCLG to only consider eviction in exceptional circumstances and to not use it where the resident is vulnerable or where it may result in street homelessness. A key lesson from our Evictions and Abandonments work has been that even where a hostel resident is exhibiting challenging behaviour this can be addressed, their impact on others minimised and their tenancy retained through effective housing management and support⁷.

Through the ‘Vision to End Rough Sleeping’⁸ DCLG has committed to ending rough sleeping. Furthermore it has committed towards achieving this through a cross government approach recognising the multiplicity of an individual’s support needs. We are concerned that defining parameters within which vulnerable people could be subject to the mandatory power of possession (MPP) runs contrary to this direction of travel. We do not believe the Department should be in the business of making people homeless. The loss of a home is a traumatic event (that can have profound material,

³ Home Office (2011) “More Effective Responses to Anti-Social Behaviour”
<http://www.homeoffice.gov.uk/publications/consultations/cons-2010-antisocial-behaviour/asb-consultation-document?view=Binary>

⁴ House of Commons Library (2011) “Subject: Anti-social behaviour in social housing” www.parliament.uk/briefing-papers/SN00264.pdf

⁵ Home Office (2011) “More Effective Responses to Anti-Social Behaviour”
<http://www.homeoffice.gov.uk/publications/consultations/cons-2010-antisocial-behaviour/asb-consultation-document?view=Binary>

⁶ Homeless Link (2011) “Cuts Monitoring Data – Online Survey 07/06/2011”

⁷ Homeless Link (2010) “Good Practice in Reducing Evictions and Abandonments from Hostels”
<http://homeless.org.uk/goodpractice-evictions>

⁸ Ministerial Working Group on Homelessness (2011) “Vision to End Rough Sleeping – No Second Night Out Nationwide” <http://www.communities.gov.uk/publications/housing/visionendroughsleeping>

emotional and psychological effects on the individual and significant cost implications for a community) and as such we are particularly concerned about legislation that seeks not different results but faster ones.

SOCIAL JUSTICE AND PROPORTIONALITY

The proportionality and social justice of these reforms is a key concern. These reforms further cement inequality reinforcing the scenario where the type of tenure an individual lives in has a bearing on the level of sanction they can receive.

The MPP cannot be used with owner occupiers (OO) and the consultation states that it is only to be used very rarely in the private rented sector⁹ (PRS). This creates an environment where social tenants are subject to stricter sanctions than people in other forms of tenure. House of Commons Library research has already highlighted on-going concerns with introductory tenancies relating to articles 6, 8 & 14 of the European Convention on Human Rights¹⁰ and in addition we are concerned about the reduced burden of proof required to implement the proposed upper tier ASB mechanisms. The essence of proportionality in the Human Rights Act 1998 is that the government not use “a sledgehammer to crack a nut”¹¹ as such we find ourselves unable to support legislation at odds with the principle of equality before the law.

We believe that these proposals should be fundamentally rethought and developed in a fashion that accord with an individual’s right for equality before the law.

Question 1: Do you agree that we should extend the scope of the current discretionary ground for possession for anti-social behaviour and criminality in this way?

We appreciate the need for effective anti-social behaviour mechanisms to address public disorder, however we are concerned that this proposal has the potential to increase homelessness at a time when homelessness in general and youth homelessness in particular are increasing¹².

Research by Centrepoin demonstrates that relationship breakdown between the young person and their family remains a major cause of youth homelessness¹³. Furthermore tensions caused by economic pressures, parents being held responsible for the behaviour of older children and the withdrawal of the EMA create a system that may push young people out of their home before they have acquired the necessary independent living skills.

In response to the riots some social landlords are looking to evict perpetrators and their families, however a number of landlords believe that this will simply increase homelessness and adversely affect the life chances of uninvolved family members¹⁴.

⁹ DCLG (2011) “A new mandatory power of possession for anti-social behaviour”

<http://www.communities.gov.uk/documents/housing/pdf/1959275.pdf>

¹⁰ House of Commons Library (2011) “Subject: Anti-social behaviour in social housing” www.parliament.uk/briefing-papers/SN00264.pdf

¹¹ DirectGov (2005) “Human Rights”

http://www.direct.gov.uk/prod_consum_dg/groups/dg_digitalassets/@dg/documents/digitalasset/dg_070456.pdf

¹² Centrepoin (2011) “Ending youth homelessness: Possibilities, challenges and Practical solutions” http://www.centrepoin.org.uk/media/72034/ending_youth_homelessness_2011_think_piece_-_full_report_final.pdf

¹³ Centrepoin (2010) “The changing face of youth homelessness: trends in homeless young people’s support needs” http://www.centrepoin.org.uk/media/11287/the_changing_face_of_youth_homelessness_-_final_report.pdf

¹⁴ House of Commons Library (2011) “After the 2011 riots – evicting social tenants” <http://www.parliament.uk/briefing-papers/SN06064>

This disadvantage is clear in the London Borough of Wandsworth's response to one riot related case. Wandsworth are seeking the possession of an individual's family home that will make his mother and 8 year old sister homeless. We do not believe that this indiscriminate sanction is proportionate and would like to see it removed or at the very least focused on the perpetrator alone. Where will these individuals go?

Extending the scope of the discretionary ground for possession has the potential to nudge parents into pushing children out before they are ready to support themselves. Rather than extending the ground for possession we suggest that the government reinforce the underused supportive component of ASB mechanisms and investigate wider use of mediation¹⁵ and Family Intervention Projects¹⁶ (FIP) which have been used effectively to treat the underlying causes of ASB.

Question 2: Do you agree that we should construct a new mandatory power of possession in this way?

We are concerned, given the common use of ASB mechanisms with vulnerably housed and homeless individuals; the difficulties this group can experience reintegrating into society; and the extensive cuts to floating and tenancy support services, that the MPP may result in increased homelessness.

We believe that the existing discretionary grounds for possession of social housing and Registered Social Landlord accommodation are sufficient and do not need to be made mandatory. The 'discretionary' element of the existing grounds is incredibly important as this allows for a judge to take individual circumstances into account when making a ruling and ensures that any sanction is proportionate. Removing the discretionary element may result in vulnerable people becoming subject to the MPP where the discretionary system would have allowed their circumstances to be taken into account.

We are particularly concerned over the proposed 14 day time limit on a possession case in conjunction with the limiting of court discretion. We believe that the default perception of someone losing their home is that they should always be considered as in 'exceptional hardship' and that if the proposed process cannot be removed it should take place over a period of time sufficient for the resident to find and access suitable alternative accommodation. The need for a longer time period to access suitable accommodation is already tacitly acknowledged in Housing and Homelessness legislation that states people can approach LA for help if they are threatened with homelessness in 28 days.

Although the consultation document proposes examples of circumstances where the MPP will be triggered it is very difficult to evaluate the full impact of the proposals without knowledge of the specific triggers. Furthermore it should be acknowledged that these proposals will interact strongly with the as yet untested criminal behaviour order (CBO), crime prevention injunction (CPI) and level 2 community protection order. We do not advocate the introduction of a MPP, however if it is implemented we urge that the Department allow the courts, police and housing providers time to become familiar with appropriate methods of using the new ASB mechanisms before the MPP is rolled out.

¹⁵ House of Commons Library (2011) "Subject: Anti-social behaviour in social housing" www.parliament.uk/briefing-papers/SN00264.pdf

¹⁶ Ibid

We do not believe the MPP should be constructed in the proposed way as it affords very limited recourse for the tenant. The consultation proposes that the potential evictee can seek recourse through either the internal complaints procedure of the landlord or by mounting a human rights defence based on the proportionality of the landlord's decision. Given the profound effects of losing a home we are concerned that the options for challenging a decision are either insufficient or inaccessible particularly for vulnerable tenants. Rather than making a complaint through a landlord's internal procedures we would like to see these decisions given scrutiny by a court that has the discretion to take individual circumstances and the consequences of possession into account before reaching a decision. Mounting a human rights defence is complicated and costly. The reductions in legal aid and legal advice services provided by the voluntary sector make it very difficult for individuals with limited resources to have their day in court. We see this as another reason for retaining the existing discretionary system and seeking different results not faster ones.

The consultation acknowledges that there are numerous effective techniques for addressing the underlying causes of ASB. Promoting and supporting these techniques and retaining the discretionary system could act as a cost effective method of addressing ASB that prevents the individual from being made homeless.

Question 3: Are these the right principles which should underpin a mandatory power of possession for anti-social behaviour?

We are concerned about the principles underpinning these proposals. DCLG has made great strides towards addressing homelessness in the UK and in our view the MPP does not fit with the Department's current direction of travel. These proposals run contrary to the Department's commitment to ending rough sleeping.

The consultation proposes that where ASB has already been proven in a court then it should not have to be proved a second time in order for a landlord to gain possession of the property. The CPI, that is set to replace the ASBO, Interim ASBO, ASB Injunction, Individual Support Order and Intervention Order, only requires a Civil Burden of Proof. Reducing the burden of proof to 'nuisance and annoyance' rather than the existing definition of 'harassment, alarm or distress' means that the CPI will be considerably easier for the individual to breach. We are not aiming to minimise the trauma caused to victims of ASB but where a breach of a CPI could trigger the MPP we believe that mandatory possession based on a civil burden of proof is not proportionate where the individual could lose their home.

We are also concerned about the interaction of these reforms with those to ASB mechanisms and Legal Aid. An application for a CPI is most likely to be heard in a civil court and the MPP means that a possession hearing will not necessitate a court hearing. Subsequently we are concerned that there will be some cases where an individual will be subject to the MPP without having been able to access professional legal advice or representation. We would like reassurance that anyone facing the prospect of losing their home as a result of an ASB infringement should have the right to full professional representation regardless of whether the ASB sanction is handed out as part of a criminal or civil proceeding.

One of our largest concerns with these proposals is the fact that they seek to cement a system where all people are no longer equal before the law; subjecting social tenants to the additional sanction of the MPP defies the ethos of equal treatment.

“Our courts have recognised constitutional rights inherent in the common law as matching some European Convention rights, including...a right to equal treatment without discrimination”¹⁷. In addition, the Human Rights Act 1998 also requires legislation, so far as possible, to be read and given effect in a way which is compatible with the Convention rights¹⁸. This proposal is at odds with the ECHR and the Human Rights Act 1998.

The principle underpinning the MPP is in need of revision. It is unfair to apply additional sanctions on the basis of tenure type. We would like to see these proposals revised and for the supportive element to be strongly reinforced and the discretionary procedure retained.

Question 4: Have we defined the basis for the new mandatory power correctly? If not, how could we improve the definition?

We do not believe that a mandatory power is justified or necessary. We propose that the MPP is dropped and the discretionary system allowed to continue. However if the Department goes ahead with the proposal we think the definition could be substantially improved by removing the proposal that allows for someone to become subject to the MPP due to the actions of a regular visitor.

Homeless people who have been recently rehoused often experience difficulty establishing new and supportive social networks. Due to long periods of disempowerment these individuals can often find it very difficult to ask old acquaintances to leave their home. In some geographic areas, services to assist an individuals' adaption to independent living are being cut. It is therefore conceivable that a vulnerable tenant could be subject to the MPP and find themselves back on the street as a result of the actions of a third party. Moving to a mandatory rather than a discretionary system will make occurrences such as this more difficult to identify.

Although there is some acknowledgement of this definitional problem when it comes to ASB perpetrated by a non-resident third party we believe that in an environment of reduced professional support this acknowledgement does not go far enough. Possession should only ever be an option in exceptional circumstances and stemming from the direct actions of the tenant.

Question 5: As a landlord, would you anticipate seeking possession using the mandatory power in some or all of the instances where this would be available?

Homeless Link is not a landlord. We would hope that landlords do not seek to use this mandatory power. Now that local authorities (LA) can use the PRS to exercise their duty to the statutorily homeless this tenure type has become even more important for our stakeholders. Homeless people can experience pronounced problems making the transition to independent living and we would not want their security of tenure reduced.

¹⁷ MoJ (2011) “Commission on a Bill of Rights – Discussion Paper Do we need a UK Bill of Rights” <http://www.justice.gov.uk/downloads/about/cbr/cbr-discussion-paper.pdf>

¹⁸ The Human Rights Act 1998 <http://www.legislation.gov.uk/ukpga/1998/42/contents>

Question 6: Are there other issues related the introduction of a mandatory power for possession for anti-social behaviour that we should consider?

A final issue we would like to highlight relates to translating these proposals into a local framework. Allowing LAs to choose how vociferously they enforce the MPP could lead to pronounced geographic disparities in security of tenure for social tenants. Reductions in tenancy support services and / or legal advice services have not been uniform across the country. This will result in some vulnerable tenants being made subject to the MPP because they happen to live in an area where the LA is taking an overzealous approach to enforcing ASB sanctions.

We would like to see these proposals dramatically reformed. As they stand, vulnerable individuals may be subject to disproportionate responses. They are at odds with basic human rights and the Department's direction of travel. We believe that ASB is best addressed through a balance between enforcement and support and as such we would like a judge's right to use their discretion in a possession hearing retained and more emphasis placed on tried and tested supportive interventions such as mediation, floating support, family intervention projects and tenancy sustainment services.

FOR MORE INFORMATION

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