



**AGENDA ITEM: 6(r)**

**CABINET: 13 September 2011**

**EXECUTIVE OVERVIEW &  
SCRUTINY COMMITTEE:  
29 September 2011**

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**Report of: Director of Transformation**

**Relevant Head of Service: Assistant Director Housing and Regeneration**

**Relevant Portfolio Holder: Councillor Mrs Hopley**

**Contact for further information: Mr L R Gardner (Ex 5023)  
(E-mail: Lee.Gardner@westlancs.gov.uk)**

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**SUBJECT: CONSULTATION ON A NEW MANDATORY POWER OF POSSESSION  
FOR ANTI-SOCIAL BEHAVIOUR**

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Wards affected: Borough wide

**1.0 PURPOSE OF THE REPORT**

1.1 To consider the Council response to the Consultation proposing a mandatory order of possession where Anti-Social and criminal behaviour has been perpetrated by a tenant or someone for whom the tenant is responsible.

**2.0 RECOMMENDATIONS TO CABINET**

2.1 That the proposed response to the Department of Communities and Local Government (CLG) consultation paper on 'A New Mandatory Power of Possession for Anti-Social Behaviour', attached at Appendix 3 to the report be approved, subject to consideration of the Minute of Landlord Services Committee (Cabinet Working Group), attached at Appendix 4 to the report.

2.2 That the Assistant Director Housing and Regeneration, in consultation with the Portfolio for Housing, be authorised to make final amendments to the response and submit to the CLG, taking into account the agreed comments of the Executive Overview and Scrutiny Committee.

2.3 That Call In is not appropriate for this item as the report is being referred to Executive Overview and Scrutiny Committee on 29 September 2011.

### **3.0 RECOMMENDATIONS TO EXECUTIVE OVERVIEW & SCRUTINY COMMITTEE**

3.1 That the proposed response to the CLG's consultation, set out in Appendix 3 to the report be noted and agreed comments be referred to the Assistant Director Housing and Regeneration for consideration, in consultation with the Housing Portfolio Holder.

### **4.0 CONSULATION**

4.1 The Government has been increasingly concerned regarding the time and expense of Anti-Social Behaviour cases dealt with by the County Court.

4.2 When a social landlord applies for possession of a property on the grounds of anti-social behaviour they find that to bring the matter to a full conclusion can take up to a year (longer if there are appeals) at a substantial cost to the social landlord which due to the legal aid provision, are rarely recovered from the tenant.

4.3 The current position is that when anti social behaviour grounds are proven and the tenant has a secure tenancy the Court still has to find it reasonable to award possession, and even if they do, they can still award a postponed or suspended order so that a warrant to evict the tenant cannot be applied for unless there are further proven allegations of anti-social behaviour.

4.4 The government therefore have proposed that where a person has had allegations of anti-social behaviour or criminal activity in the vicinity of the landlord's housing stock and those allegations have been proven before another court, e.g in Magistrates Court Proceedings, that the order for possession is mandatory. Therefore the allegations do not have to be proven again before a County Court for the order to be made. The only defence that would be available to the tenant is to argue that the application for possession is disproportionate to the aims of the social landlord. This is a much harder test to prove than whether it is reasonable to award possession.

4.5 The proposals have been put forward by way of a consultation document which requires a reply by 7<sup>th</sup> November 2011.

### **5.0 RIOTS AND LOOTING**

5.1 After the publication of the Consultation the country suffered the effects of looting and rioting in areas such as London, Birmingham, Liverpool and Manchester.

5.2 It became apparent that a number of Social Landlords wished to evict those convicted of taking part in the social unrest but were unable to do so due to the current legislation.

5.3 The reason for this is that for a landlord to apply for possession the anti-social behaviour must affect the housing management function of that landlord. That means the behaviour must be in the vicinity of the housing estate on which the landlord manages or owns, so for example, if any West Lancashire tenant were

convicted of taking part in the riots and looting in Manchester or Liverpool, the Council could not apply for possession.

- 5.4 The Government has therefore amended the scope of the consultation on whether to remove the provision that the behaviour must affect the housing management function of that landlord for them to take action where that action involves criminal damage, arson and violent disorder. As the Government states "Where a social tenant or a member of their household decides to wreak havoc in someone else's community, social landlords should have the same scope to take action."

## **6.0 RESPONSE**

- 6.1 The Council welcomes any increase in its powers to quickly deal with anti-social behaviour, it feels that a reply to this consultation is important as the Government appears not to have taken account of why trials take a long period of time to come to a conclusion.
- 6.2 The majority of cases that take up to a year, do so as the allegations have not been proven in a previous court and the Tenant disputes those facts. The Courts also have pressure on listings and have to give the Tenant time to obtain evidence and witnesses statements so that they have a fair hearing, means that the case take months to get to trial.
- 6.3 The new power, if brought into force, to take action for Anti-Social Behaviour outside the immediate vicinity of the housing estate of the subject tenant, will not save the Social Landlords any time or money as it would not have taken action in respect of that behaviour previously. However, the availability of such a facility is welcomed.
- 6.4 The proposal will however assist where a Court has convicted a tenant of illegal use of the property, namely drug cultivation, but the reply should point out the misconception contained in the consultation documents.

## **7.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY**

- 7.1 If the Government implement the proposals in the Consultation it is likely to affect the level of fear of crime by reducing the level of crime and anti-social behaviour by adding a further deterrent (in that illegal and anti-social behaviour acts may result in a greater risk of loss of a Council / Social Landlord tenancy).

## **8.0 FINANCIAL AND RESOURCE IMPLICATIONS**

- 8.1 If possession orders become mandatory in certain cases, then the work required for drafting extensive witness statements and external legal costs of long trials will be reduced. The MAPS team would be able to intervene in more cases. However this could be counteracted by the eviction action taken against tenants that are involved in criminal behaviour outside the landlord's area (which previously a landlord we could not take action for).

8.2 Where it is envisaged that the MAPS team will be able to provide the same or improved level of service if the proposals are implemented, may result in an increase in legal actions taken for possession, and an attendant increase in the demand for in-house legal resources to take these actions to court.

## **9.0 RISK ASSESSMENT**

9.1 No significant issues arise as a result of the consultation exercise. If the legislation is introduced, then a review of the risks will need to be undertaken.

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### **Background Documents**

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

### **Equality Impact Assessment**

There is a significant direct impact on members of the public. However an Equality Impact Assessment is not required.

### **Appendices**

1. Consultation Document
2. Letter from the Minister of Housing and Local Government
3. Proposed response to the consultation
4. Minute of the Landlord Services Committee (Cabinet Working Group) – 5 September 2011 (To follow).