

**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?**

Any powers that speed up the proper handling of Anti-Social Behaviour (ASB) cases will be welcomed and a mandatory order for possession will assist in those cases where it is proposed it shall apply. Any streamlining in these cases will reduce costs and also provide quicker relief to affected residents.

The Council however does not believe that this mandatory power in the format suggested will have the wide ranging impact envisaged. The mandatory power will only be available in very few cases and therefore the time and cost of taking ASB cases to court, as detailed at paragraphs 1.8 and 1.9 of the consultation document, will not be reduced in the majority of cases.

In the majority of cases where social landlords decide to take possession proceedings for ASB issues, the allegations founding the claim have not previously been before a court. Indeed it is the Council's view that it is only on very rare occasions that they have.

Furthermore, the mandatory order for ASB may result in a change in tactics by Defendant solicitors which may increase the length of cases. At present if a tenant defends a possession claim made on the basis of ASB they tend to argue that the allegations are false and even if proven it is not reasonable to order outright possession. If the proposed process is to follow the same principles as introductory tenancies, then the only way an order for possession could be challenged (if relevant facts are proved to justify the order) would be by way of a proportionality argument (as laid down in *Pinnock*) and/or by Judicially Review (JR) of the Landlord's decision to go ahead with the possession proceedings.

The proposal to increase the powers of social landlords to evict as a result of criminal behaviour that does not affect the housing management functions of the social landlord is again welcomed. However this facility may well not affect the timescales of the cases highlighted in the consultation document, as these would be additional cases as previously landlords could not take action due to this issue of locality.

Further, the Council questions why the criminal behaviour should just be linked to incidents of violent disorder. These types of behaviour are socially unacceptable whether done as an individual or as part of a larger incident of social unrest.

Under paragraph 2.8 of the consultation document the wording seems to interchange the words "suspended" and "postponed". These are in fact different types of order, both used in possession cases. The Council is pleased to note the intention to restrict the Court's powers in respect of the length of time that the Court can make a Postponed Order or a Suspended Order. However, should the restriction apply not only to mandatory ASB

cases but to all ASB cases? It is appreciated that a suitable definition of ASB would have to be arrived at for this purpose.

The Council is however concerned that landlords would see an increase in the use of adjourned orders in possession cases. Defendants may argue for the granting of an order adjourning proceedings generally on terms, under the powers contained in the CPR, with a restriction that the Case could not be reinstated unless a specific event occurs which may find favour in some circumstances. The Council therefore feels that provision should be made to restrict the length and perhaps number of adjournments it allows in any ASB case.

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

Clearly the consultation document is correct in its acknowledgement that tenants faced with losing their home must be provided with a proper opportunity to defend themselves. But there seems to be a belief in the consultation document that where the same facts have already been considered by another court that they are then considered a second time in the County Court before possession is granted. This does not reflect the Council's view.

The streamlined provisions would apply only in 2 cases: (1) Where there has been an ASBO obtained against a member of that household and breached and such breach has resulted in a prosecution; (2) Where a closure order has been obtained. The problem is that not all ASBO breaches are prosecuted.

Where ASBO's and Closure Orders are prosecuted or applied for in the Magistrates Court they have to be proven to the criminal standard of proof. When evidence of these breaches are produced in the County Court, the Judge only has to find to the civil standard of proof so this evidence is not re-tried as the Defendant is not in a position to deny the offence occurred, what is tried are unproven allegations and issues of law.

Therefore what the Council feels that the legislation should provide is that if ASB allegations have been proven against a tenant or someone for whom they have responsibility, in another court, then the Council would not have to prove any other allegations for a mandatory order to be made if it chooses to proceed.

The Council would also ask that consideration be given to the impact these proposals would make on tenants that allow persons who visit their property and whilst there undertake Anti-Social Behaviour and Criminal Activity. It would appear that these proposals will have a direct affect on tenants and persons that live with tenants, but most tenancy agreements make it an obligation of tenant to be responsible for the conduct of visitors to the property as well. If tenants allow persons to regularly attend their property and engage in Anti-Social Behaviour and Criminal activity, then the extension of the proposed mandatory possession orders applying in such circumstances, should be considered.

Such consideration is most pertinent where the social landlord has obtained an injunction against the tenant, not to allow such a visitor to attend their property and have breached such injunction.

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

Under the suggested offences and provisions that are detailed in the consultation document regarding when these powers should be used the Council make the following comments: -

*a) **Conviction for a serious housing related offence** – to apply to offences committed by tenants, members of their household or regular visitors which take place in the locality of the property or between neighbours away from it. The type of offences we propose to capture include violence against neighbours; serious criminal damage with violence; drug dealing or cultivation in the property; murder and rape. We think that 'indictable only' offences should broadly capture these.*

The Council considers that these provisions could go further. Firstly, a distinction needs to be made between ASB and illegal use of the property. Housing ASB by definition needs to have an adverse effect on persons not of the same household. Drug cultivation is not ASB if it is not affecting anyone within the vicinity of the property. Therefore, the Council feels that the mandatory possession orders should include ASB and "illegal" use of Council properties.

The Council also believes that it should not just be limited to indictable only offences. The Council has significant problems with people who bypass electricity meters. This is extremely dangerous and the Council would wish to see this being included as part of the mandatory possession orders. Also issues of taking without consent within the vicinity of the housing stock, handling stolen goods within the property and especially offences that are racially aggravated or have a hate crime element and also persistent repeat offenders, should be included.

Illegal use of property is a major issue for housing providers. Illegal activity in properties may be dangerous (e.g.. bypassing utilities) and could attract further criminal activity: why should a Council have to wait for such activity to be attracted to the area before it can take action? The ASB legislation does include the ability to take action for propensity to cause a nuisance, but social landlords would not get possession on the likelihood of events happening, although they may obtain an injunction, especially if no suitable evidence of ASB or complaints from neighbours.

Recently the Council has been involved in a case where a tenant had 30 cannabis plants and had bypassed the electricity meter at the property. The neighbours did not report problems with him and they had no knowledge of the cannabis factory he was running and the Judge granted a 2 year suspended order, even though the tenant had been successfully prosecuted for the two offences.

It would appear that the consultation is initiated due to the delay in the County Courts dealing with these actions. If these new procedures reduce these types of actions to 2 months from issue to gaining the Order will it actually reduce the impact on the local community and save the Council costs if an outcome is required before action is taken? Consider the following scenarios: the Council gain evidence of ASB and illegal activity to start possession proceedings. It takes the County Court 8 months to deal with this and possession is granted. Alternatively the council wait for the prosecution in the Magistrates'/Crown Court, it takes 6 months to conclude that hearing and then a further 2 months in the County court. It has still taken 8 months to get possession and the community has had no benefit from the new procedure. Has the Council saved any money from this? It is unlikely as the same evidence would still have had to be obtained as in the interim they would need to incur the cost of gaining an injunction to protect the local community while the criminal case is ongoing.

*b) Breach of an injunction for anti-social behaviour*

This situation will rarely occur. In the Council's experience having gained an injunction against a tenant which they subsequently breach, it is standard practice (due to time, cost and tactics) to issue a committal application and a possession claim at the same time or at least join the matters together so that the breach of the order is tried at the same time as the possession claim.

The only way for this to work practically is that at trial of the alleged breach of the injunction and possession claim, if proven to the satisfaction of the court that the injunction was breached, the claim for possession becomes mandatory. This will assist the local community in that possession would be granted in all cases (subject to any arguments raised on proportionality) and send out the message that if you breach an injunction you may lose your home, but will not reduce the time it will have taken to get to court or the length and costs of the trial.

*c) Closure of premises under a closure order*

This is an example where a mandatory order would work. The only considerations are that these are used because possession proceedings take so long. If the possession procedure is speeded up, these provision may no longer be used or the alternative outcome is that the use of these procedures will increase as by getting a Closure Order means that possession is mandatory.

It is envisaged that the advice for dealing with ASB will be to apply for Closure Orders where possible as it makes it easier to get possession.

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

It is submitted that the problem with this proposal is not the definition; it is that the aims of the provisions will not have the required affect. By limiting the mandatory order to cases that have previously been proven in court, this

streamlined approach will only apply to a fraction of ASB possession claim and not the majority of the claims that take 8-12 months to come to trial (see above).

Of course the fraction that will be streamlined will reduce pressure on the County Court, but not it is suggested to the extent envisaged.

One scenario is that the work of the County Court may be reduced but to the detriment of the Magistrates Court which will see an increase in applications for Closure Orders so that when the Council applies to the County Court for possession the order is mandatory. This will not reduce Council costs.

**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?**

As a landlord the Council would use any powers that reduce cost and provide a quicker and suitable outcome to our tenants to protect them from ASB. As stated it is envisaged that these types of cases will not occur often.

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

It is suggested that ways to speed up possession claims and reduce costs is to require the County Court to hear these cases within specific time limits.

The main example of where this could be speeded up is firstly in the listing requirements. Usually 4 weeks notice has to be given on a Notice of Seeking Possession before proceedings can be issued. This does not apply to ASB cases, but on issue the Court has to wait 4 weeks before they can list it for a first hearing. Removal of that requirement and the imposition of a requirement to list the case within 14 days of issue is suggested.

To further expedite proceedings it is suggested that there be a requirement of the Landlord to serve a standard disclosure document with the pleadings.

The addition of a requirement for Defendants to request documents before the first hearing. This would then mean at the first hearing the Defendant would have access to all the allegations and evidence and can then prepare their defence to the possession proceedings without delay. There could then be a further requirement to list for a final hearing no more than 28 days from the first hearing for trial to make sure the matter is heard as quickly as possible.

Further, more consideration should be given to restricting the courts discretion to adjourn proceedings (eg no longer than 28 days if, say, medical evidence is required or a to handle a Defendant's application for specific/further disclosure and then the adjournment cannot be for more than a further 28 days).

This would put increase pressure on the courts but it would mean that ASB possession cases would be in court no later than 10 weeks from issue.

The other main issue that needs to be considered is linking this mandatory order to Homelessness legislation. In some circumstances a person evicted for criminality or ASB can present as homeless and have to be re-housed by the Local Authority.

Under homeless legislation if someone is evicted and in priority need, the Council has to provide temporary accommodation for 28 days. If they then refuse to leave that accommodation the Council has to go to court to obtain possession which means the problem can continue for another 3 to 4 months.

To illustrate, where ASB is committed by a child or young adult, it is not unheard of for a family who have young children to present as homeless after an eviction, saying that the person who was perpetrator of the ASB is no longer living with them. Under these circumstances if they can show that they did everything in their power to stop the behaviour and failed, the Council has to re-house them. There then is the possibility that after a period of time the perpetrator is moved back in and the Council have to start again with possession proceedings if they cause more problems.

The Council would therefore suggest that Homelessness legislation and case law need to be reviewed. It would suggest that if someone is evicted as a result of ASB or criminal behaviour, the Council should retain a discretion to refuse assistance for such a person if they present as homeless. That discretion may be circumscribed but the basic principle requires addressing.

It would also be helpful if a review of the demotion procedure landlords could be considered. To issue proceedings for an order for demotion social landlords cannot issue immediately as in ASB cases (even though demotion is applied for under the grounds of ASB). So the Council or other social landlord has to wait 4 weeks for the notice to run out and then 4 weeks before the court can list for a first hearing. This is then a deterrent to Councils to use demotion in all but the most minor of ASB cases and also stops Council's pleading demotion in the alternative.

**MINUTE OF THE LANDLORD SERVICES COMMITTEE (CABINET WORKING GROUP)  
5 SEPTEMBER 2011**

**42. CONSULTATION ON A NEW MANDATORY POWER OF POSSESSION FOR ANTI-SOCIAL BEHAVIOUR**

The Working Group considered a draft report of the Director of Transformation which set out a consultation being undertaken by the Department of Communities and Local Government (CLG) 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.

The Working Group raised concern regarding the lack of action in respect of action taken against home owners.

RESOLVED: That the proposed mandatory order of possession be welcomed on the basis that each case would be considered on individual circumstances.

