

# Strengthening powers to tackle anti-social behaviour

## A response to the Home Office consultation paper

**From the Shelter policy library**

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# Shelter

Shelter is a national campaigning charity that provides practical advice, support and innovative services to over 170,000 homeless or badly housed people every year. This work gives us direct experience of the various problems caused by the shortage of affordable housing across all tenures. Our services include:

- A national network of over 50 housing aid centres
- Shelter's free housing advice helpline which runs from 8am-midnight
- Shelter's website which provides housing advice online
- The Government-funded National Homelessness Advice Service, which provides specialist housing advice, training, consultancy, referral and information to other voluntary agencies, such as Citizens Advice Bureaux and members of Advice UK, which are approached by people seeking housing advice
- A number of specialist projects promoting innovative solutions to particular homelessness and housing problems. These include 'Homeless to Home' schemes, which work with formerly homeless families, and the Shelter Inclusion Project, which works with families, couples and single people who have had difficulty complying with their tenancy agreements because of alleged anti-social behavior. The aim of these particular projects is to sustain tenancies and ensure people live successfully in the community.
- We also campaign for new laws and policies - as well as more investment - to improve the lives of homeless and badly housed people, now and in the future.

## Executive Summary

- We welcome the opportunity to respond to the Home Office consultation paper 'Strengthening powers to tackle anti-social behaviour'
- For the purposes of this consultation response we will be focusing solely on the proposal to introduce a new Premises Closure Order for England and Wales to cover other forms of other anti-social behaviour beyond the existing 'Crack House' Closure Orders.
- We agree that anti-social behaviour can have a devastating impact on neighbourhoods and communities and must be tackled.
- However we have concerns that current approaches to address anti-social behaviour rely too heavily on enforcement measures and possession action in particular.
- We believe that enough powers already exist to address anti-social behaviour and more time and shared learning is required for them to be fully utilised before further measures are proposed.
- We believe that effective early support intervention projects are needed in more local authority areas before more punitive 'last resort' measures are sought.
- We are concerned that the proposal relies too heavily on the availability of relevant and local support services.
- Whilst we accept that the new Closure Order proposal would be equitable in tackling anti-social behaviour across all tenures, we are concerned that it could increase homelessness, with particular effect on vulnerable people.
- We are concerned that housing benefit payments would be effected.
- We are concerned that more vulnerable people could end up sleeping on the streets or become hidden homeless and that both informal and formal support networks could breakdown as a result of this proposal.
- If this proposal were introduced we would expect clear guidance on what constitutes significant and persistent disorder or significant, persistent and serious nuisance to members of the public.
- Again, if introduced we would expect clear guidance on the appropriateness and timely use of this measure. We would expect that all other relevant measures must have been made available and been exhausted to ensure the proposal is only used as a tool of 'last resort' - for example provision of evidence of failed attempts to engage people living in the property in relevant support and rehabilitation services.

## Introduction

Anti-social behaviour can have a devastating impact on neighbourhoods and communities and it is essential that local agencies and housing providers have the skills and resources to work together to address it. If we are to fulfil our aims of promoting the development of neighbourhoods where people want to live, appropriate measures must be available to protect the individual and the community at the earliest stage. A balanced approach is required which includes prevention, support and resettlement as well as enforcement. Shelter agrees that where behaviour is persistent and wilful, remedies must be available to protect the individual and community. In terms of enforcement we support the use of injunctions and, where appropriate, Anti Social Behaviour Orders (ASBOs) as tools that can be targeted to address specific behaviour of individuals, with linked support where applicable.

However we have been concerned that current approaches used to address anti-social behaviour rely too heavily on enforcement measures and possession action in particular. We acknowledge that there are circumstances where possession is the right course of action - but only as a last resort. It may be effective in dealing with the immediate problem but, as well as causing homelessness; eviction often simply displaces the problem to a new area and a new set of neighbours. Any further measures to tackle anti-social behaviour must be consistent with wider policies to tackle homelessness, reduce poverty and social exclusion and to promote sustainable communities.

We are therefore against the proposal to widen the use of Closure Orders beyond current measures particularly as ASBOs and injunctions<sup>1</sup> can already exclude individuals from any premises or area specified within their terms. We believe that the introduction of this proposal could increase homelessness and cause social exclusion, particularly affecting vulnerable people, who need support both to enable them to maintain their tenancies and participate in their community. A great deal of Shelter's housing aid work involves people at risk of homelessness. Our involvement is often required because of an inappropriate letting combined with the lack of an appropriate support service for vulnerable tenants.

Whilst the consultation gives assurances that any closure orders should only take place after the implications for children or vulnerable adults have been carefully considered<sup>2</sup>, in our experience the vulnerability of the perpetrator or innocent members of a household are not always taken into account in deciding what is action the appropriate to take.

Housing benefit payments could be affected over the Closure Order period, leading to rent arrears and people being unable to pay any shortfalls. This could also increase mortgage arrears for

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<sup>1</sup> For injunctions issued under 153A, 153B and 153D where there is either use violence or threats of violence or there is significant risk of harm, the court can decide to attach a power of arrest and can exclude individuals from any premises or area specified within their terms. Note that significant risk of harm could include emotional or psychological harm.

<sup>2</sup> Home Office consultation paper 'Strengthening powers to tackle anti-social behaviour', November 2006

owner-occupiers if they had to pay for alternative housing arrangements over the Closure Order period.

To reduce the potential impact on vulnerable people and children and prevent homelessness, we would prefer a better use of existing alternative approaches rather than the introduction of new punitive measures, particularly, as the consultation assumes, the number of closure orders are likely to be small. Critically, additional resources and good practice models for better prevention and rehabilitation services should be put in place, with a remit to support both single person households and households without children as well as families. This would enable people to address their anti-social behaviour and remain within their home in a much larger number of cases.

## **Use of existing alternative measures and powers to tackle anti-social behaviour**

### **Existing enforcement powers**

There are numerous existing enforcement measures that can either temporarily or permanently exclude people from their homes or other premises for anti-social behaviour. As outlined above, ASBOs and injunctions 'in certain circumstances' can already be used as a temporary exclusion measure for specific incidents of anti-social behaviour.

The Anti-social Behaviour Act 2002 also enables social landlords to 'demote' secure and assured tenancies, reducing a household's security of tenure for 12 months along similar lines to the introductory tenancy regime.

According to the recent Communities and Local Government (CLG) review of powers taken up by social landlords, possession action is the most widely used power<sup>3</sup>. Injunctions are viewed as the easiest powers to use but as yet demoted tenancies have not been well used<sup>4</sup>. Unfortunately the review did not monitor the take up of prevention or support measures but it does show that recent enforcement legislation requires more time to bed in, particularly the use of demotion orders that provides a less punitive response than possession or closure tools.

We believe there are enough existing measures already available to restrict or permanently remove and evict people from their homes in those cases where this is needed.

### **Availability of relevant local support and rehabilitation services**

The consultation states that the closure order extension proposal 'provides an opportunity to engage the perpetrator(s) in support and rehabilitation that they have refused up until that point.'<sup>5</sup> However, we believe that a major hurdle in tackling the problem is that there are simply not enough

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<sup>3</sup> Housing Research Summary Number 232, 'Priority review of the uptake by social landlords of legislative powers to tackle anti-social behaviour', CLG, 2006

<sup>4</sup> Ibid

<sup>5</sup> Home Office consultation paper 'Strengthening powers to tackle anti-social behaviour', November 2006

prevention and support services available in local areas at the earliest possible stage, particularly services relevant to all household and tenure types. In addition not enough of the existing enforcement measures are linked to the provision of support being offered at all. For example, we have previously raised concerns about demoted tenancies not being linked to the provision of support. This would have ensured that tenants were given an opportunity to address their behaviour, and prevent landlords from using them to 'fast track' eviction for other reasons, such as rent arrears. A better option may be to change existing tools and link these to support engagement rather than introduce new measures.

In recent responses regarding welfare benefit sanctions, the Department of Work and Pensions (DWP) admitted that rehabilitation would actually be provided through existing services. Similarly we are not convinced that the current levels of drug/alcohol dependency or mental health services are adequate to ensure that vulnerable people affected by closure orders will be offered an "appropriate rehabilitative service".

Whilst we support the Government's expansion of services for the most 'challenging families', until all local authority areas have developed a range of intensive support services for all household types, including single people and couples without children and families, closure order proposals should not be considered. The Shelter Inclusion Project for example, has proved a unique and successful cost effective model that works in this way, offering floating support to a range of household types with a focus on tackling the underlying causes of anti-social behaviour.<sup>6</sup> Similar services should be available to provide early intervention and not just offered as a last resort to enable people to remain in their home.

### **Shelter Inclusion Project**

The Project has been developed in partnership with Rochdale Metropolitan Borough Council and works with households who are homeless, or are at risk of homelessness, due to anti-social behaviour. It works intensively with them to identify and tackle the causes of their behavioural problems by providing support, helping to build the parenting and other skills they need to deal with their situation and working with other services to ensure their wider support needs are met. In this way, it aims to tackle anti-social behaviour, whilst keeping the household in their home and thus preventing homelessness. It is one of the only projects that works with single person households and households without children, as well as families.

Its average cost of £9,000 per household represents good value, given the long lasting and wider social and economic benefits that come with using supportive schemes and of avoiding possession action. Of the households that completed their time with the project 60 per cent no longer exhibited any anti-social behaviour and a further 11 per cent showed improvements in their behaviour.

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<sup>6</sup> Addressing antisocial behaviour – An independent evaluation of Shelter Inclusion Project – May 2006 (Shelter). The Housing Corporation funded the three year evaluation

Additionally, 84 per cent of closed cases were assessed as no longer being at risk of homelessness.

One of the conclusions of the Evaluation of Shelter's Inclusion Project is that if people who would otherwise be evicted for unacceptable behaviour are allowed to remain in their homes, there is a reduction in the 'social churning' caused by rapid turnover of tenancies. As a result people are less likely to fall through the gaps in support provision and are also able to maintain informal support networks. (See Appendix A for more detailed consideration of this matter).

### **Risk of increased homelessness**

Whilst we accept that the new Closure Order proposal would be more equitable in tackling anti-social behaviour across all tenures, any anti-social behaviour legislation that removes people from their homes puts those households at greater risk of becoming homeless. One of our main concerns is that closure orders could disproportionately impact on vulnerable people who may be innocently residing in the premises. It could also impose dual housing costs as the tenant or owner is still liable to pay the rent or mortgage whilst the Closure Order is in place. The extra financial burden or housing benefit payment practices could cause a build up of mortgage and rent arrears over the closure period.

### **Rent arrears, mortgage arrears and private rented sector tenancies**

Whilst the rights of ownership for owner-occupiers or tenancy rights for those who rent from a private or social landlord remain during the Closure Order, the knock on effects may well leave the owner or tenant of the property more at risk of homelessness. The potential to get into mortgage or rent arrears may well result in possession action or repossession. The current proposals do not include any safeguards or proposed guidance to ensure that possession or repossession action is not halted or pay back arrangements negotiable as a result of a Closure Order.

In addition, most private rented sector (PRS) tenancies are Assured Shorthold tenancies. If the length of time the house is closed is taken into account when determining the end date, in most cases where the property is a PRS property, following the Closure Order, the tenancy will have expired, the landlord will have re-let the property to other tenants, and the household will have to find another form of accommodation.

### **Possession action**

The consultation does not include any safeguards to ensure that landlords do not seek to obtain a full possession order, which could happen even within the 12 week Closure Order period. To ensure that Closure Orders do not become a measure to fast track possession action more detailed assurances need to be given.

## Impact on housing benefit payments

The general rule is that housing benefit can be paid in arrears when a tenant has been absent from premises for no more than 13 weeks; potentially this could apply if the tenant goes back to the property after the 12 weeks. However we are aware of circumstances where housing benefit payments have been stopped as a result of 'Crack House' Close Orders and some local authorities appear to carry this out as policy<sup>7</sup>.

Housing benefit is only currently paid on two homes under certain circumstances<sup>8</sup>, so if the tenant has to pay for temporary accommodation (as opposed to being taken in by relatives or friends), they will return to 12 weeks' worth of arrears. The consultation does not cover any details regarding the complexities concerning payment for alternative accommodation or whether the circumstances under which housing benefit would be paid on two properties may be subject to change as a result of the Closure Order extension. If this proposal is to be taken forward we would seek clarification as whether a household could claim benefit on two properties if their previous home is subject to a Closure Order. If housing benefit is not payable in two properties then the tenant will be forced to give up their rights to the tenancy, leading to homelessness.

Current guidance from Scotland only acknowledges the financial burdens this places on households and that the potential for this to happen will be one of the factors that the Sheriff has regard to in considering an application for a Closure Order. It is therefore important that the police should liaise with housing and housing benefit officers of the local authority on the options available to the tenant and their consequences, and on the advice that should be given.

## Impact on vulnerable single people

As outlined above, our experience is that the vulnerability of people either involved in anti-social behaviour or innocent parties within a household are not always taken into account in deciding what action is appropriate to take. This can not only perpetuate anti-social behaviour but also lead to social exclusion and exacerbate any underlying factors.

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<sup>7</sup> 'It is also vital that the landlord and, or tenant inform the Housing Benefit office immediately they become aware that the property has been made the subject of a Closure Order. It is unlikely that Housing Benefit will be paid in these circumstances, as normally Housing Benefit stops when a claimant ceases to live in the property.' – Barrow Borough Council, Closure Order Notes - <http://www.barrowbc.gov.uk>

<sup>8</sup> The local authority will pay HB on two homes for up to four weeks, in certain circumstances, if it is unavoidable that the claimant pays rent on a new and a previous home for a short while. The applicant must have already moved into the new home. The local authority can also pay rent on two homes for up to 52 weeks if the claimant leaves her/his home because of fear of violence in that home **but intends to return** to the property and it is considered reasonable for her/him to receive HB for both properties (regulation 5(5) HB Regulations). If the claimant leaves because of violence but does not intend to return, HB can be paid for up to four weeks, for example if the claimant had to leave suddenly and is liable for rent during the notice period (regulation 5(7A) HB Regulations).

The last edition of Roof magazine highlighted the unforeseen consequences of 'Crack House' Closure Orders where vulnerable men and women, many of them struggling with mental illness or serial homelessness, have become unintended victims of this measure.<sup>9</sup>

*'Facing swifter police and local authority action, dealers are now targeting vulnerable people, befriending them and using their homes as a safer base to sell crack and heroin. Targets include older men who might be lonely, vulnerable young people and former rough sleepers trying to get back on their feet. Estate safety professionals call the practice 'cuckooing' or 'takeover' cases.'*<sup>10</sup>

Whilst it was not the intention of the Closure Orders to displace people, in certain cases very vulnerable people have ended up sleeping rough as a result and have fallen through the gaps of support provision.

Similarly, the Shelter Inclusion Project has cases where older vulnerable people and young single women have become victims in this way, yet viewed as the perpetrators of anti-social behaviour prior to the project's intervention.

A 70 year old single man, living in sheltered accommodation was referred to the project accused of committing acts of anti-social behaviour. He had been served with a notice seeking possession on the basis of allowing his dwelling to be used for immoral purposes and visitors to cause nuisance and annoyance.

After discussion, the gentleman disclosed that a small group of people had attached themselves to him, and had taken over the tenancy. He felt scared of them and was unable to deter them from gaining access. They had removed his belongings and he thought that they had been sold to buy drink and drugs. They had left their personal belongings in his property to give a reason for returning. If he refused them entry or ignored them, then they buzzed on other resident's bells until they were admitted. He also disclosed that they waited for him on pension day and followed him to the post office and took his money.

The support worker discussed her concerns with the scheme manager, who was unaware of the conditions the man had been living under. The support worker also expressed concerns that the gentleman was actually a victim of anti-social behaviour and not a perpetrator. The support worker reported her concerns to Social Services and referred him on as a Vulnerable Adult. The support worker and a colleague collected the gentleman on his pension day and escorted him to the post office to collect his monies.

The support worker referred the gentleman on to the Law Centre for legal representation in the court hearings. The outcome of the case was that the gentleman had to sign in/out any visitors to the project, but no enforcement action was taken and no costs were awarded.

The support worker continues to provide support to the gentleman and following more detailed assessments of need; additional support packages from other providers have been arranged. There have been no further reports of ASB to date.

<sup>9</sup> Roof Magazine January/February 2007

<sup>10</sup> Ibid

The case above highlights the role that early support provision has in providing alternative measures to tackle this problem.

### **Impact on children**

Whilst households with children would be owed a duty to be housed this will not overcome the inevitable shock of being moved suddenly under these circumstances. The emotional upheaval and practicalities of being re-housed will have a devastating impact.

The main service that would be needed when a closure takes place is temporary accommodation. Where there are children, the tenant will of course be in priority need, and the proposals envisage that the household would need to apply as homeless. This is not satisfactory. Temporary accommodation should be arranged in advance, whether as part of a homeless application or as part of the package.

The proposals say that special consideration will be given where there are children or vulnerable individuals living in the property. We would want there to be a list of statutory factors which the police must consider before deciding to seek a closure order, notably its effects on children and vulnerable adults. We would also want assurances that the appropriate support services are in place when such an event does take place.

### **Intentionally homeless**

Where a homelessness application is made, the assumption in the consultation paper is that the applicant is likely to be found intentionally homeless. This may well be the case, but there is a need for guidance here. First, the authority will need to carry out its own enquiries to establish the reason for the closure and who is responsible for the behaviour. Secondly, no final decision should be made until the 12 weeks have elapsed (or more if possession proceedings are pending), because until a possession order is made or the tenancy is given up, there is always the possibility that the occupier will be able to go back, so they have not yet lost the accommodation. Thirdly, as the consultation paper acknowledges, even where an intentional homelessness decision is justified, the authority still owes duties to the intentionally homeless under s.190 of the Housing Act 1996 (assessment of housing need; temporary accommodation to give the individual a reasonable opportunity of finding their own accommodation; advice and assistance).

### **Social exclusion and impact on neighbourhoods**

If a vulnerable single person loses their home as a result of a closure order, their housing options are likely to be limited. They could end up being housed in poor quality properties in areas of low demand. This may lead to a concentration of vulnerable households with behavioural problems in the most disadvantaged communities. This could undermine efforts to tackle social exclusion and create sustainable communities.

## **Definitions**

If the proposal were developed further, clear guidance on what would constitute severe nuisance and anti-social behaviour is needed. In addition, we would expect a breakdown of who would be considered as a 'vulnerable adult' clearly defined. This would help ensure that the individual needs of people who fall into this group are carefully considered; to either prevent action being taken or ensuring that the relevant support is available and accessible in the local area.

## **Method of last resort**

If introduced we would expect clear guidance on the appropriateness and timely use of this measure. We would expect that all other relevant measures must have been made available and been exhausted to ensure the proposal is only used as a tool of 'last resort' - for example provision of evidence of failed attempts to engage people living in the property in relevant support and rehabilitation services.

## **The Closure Order**

The closure order will be made within 48 hours of the notice being served. The tenant/owner-occupier will have a right of appeal to the court within 21 days, but they will need to get advice and representation in order to do so, at a time when they may well be homeless or living in a series of temporary accommodation. In other situations (such as an anti-social behaviour injunction) where an order is made on an emergency basis, the case is automatically listed to come back to court a week or so later, so that the tenant/occupier can come to court and defend the case. In this case, the burden is on the occupier to lodge an appeal. We believe that the appeal process outlined in the consultation is inappropriate, and by analogy with injunctions, the case should always come back to court a short time later, when the tenant can be legally represented.

**Shelter Policy Unit**

**February 2007**

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## Appendix A

### Shelter Inclusion evaluation summary

Not preventing antisocial behaviour costs more in the longer term because it can lead to homelessness, ill-health, social exclusion, educational underachievement and unemployment.

It has been estimated, for example, that the costs to a landlord to evict a tenant for antisocial behaviour are between £6,500 and £9,500. And recent research into the Supporting People programme calculated benefits from the expenditure valued at £45.92 million per annum for homeless families compared with total Supporting People expenditure on homeless households of £52 million per annum.

Preventing homelessness and encouraging children to attend school brings wider benefits to society, especially in terms of employment and earning potential. A 2002 study by Scott *et al* showed that the costs to society, in particular to the penal and benefits systems, for children who exhibited a persistent and pervasive pattern of antisocial behaviour in childhood or adolescence, were nearly 10 times higher than for children who exhibited no problems.

Tackling antisocial behaviour also has a positive effect on deprived communities. If people who would otherwise be evicted for unacceptable behaviour are allowed to remain in their homes, there is a reduction in the 'social churning' caused by rapid turnover of tenancies.

These considerations suggest that the average Shelter Inclusion Project cost of £9,000 per household is good value for money for the Exchequer and for society.

### Conclusion

Shelter Inclusion Project represents a unique and successful model for tackling antisocial behaviour. The evaluation showed that several key aspects of the project's design contributed to its positive outcomes:

- voluntary sector management and the independence of the project
- a voluntary approach to participation
- floating support
- a focus on antisocial behaviour and support to tackle it
- the capacity to work across many types of household and with all household members
- a flexible approach
- inter-agency partnerships.

Shelter Inclusion Project has been awarded ongoing Supporting People funding to cover two thirds of its costs. Grants from the Neighbourhood Renewal Fund and the Children's Fund are secure until 2008, and the project is seeking mainstream funding.

Future plans include developing the service for children, working in partnership with black and minority ethnic housing associations, and developing a volunteer scheme to extend capacity. Shelter Inclusion Project also intends to expand the range of its referral agencies in order to attract a more diverse range of service users.