

Department for Communities and Department of Justice – A consultation on proposals to amend the legislation to help tackle Anti-Social Behaviour – Northern Ireland

Response from Propertymark

March 2024

Background

1. Propertymark is the UK’s leading professional body of property agents, with nearly 18,000 members representing over 12,800 branches. We are member-led with a Board which is made up of practicing agents and we work closely with our members to set professional standards through regulation, accredited and recognised qualifications, an industry-leading training programme and mandatory Continuing Professional Development.¹

Consultation – overview

2. The Anti-Social Behaviour consultation follows a 2018 Department of Justice (DoJ) public consultation² to review the criminal legislative framework around Anti-social behaviour (ASB). With ASB being a high-priority issue to address, the DoJ is hoping to deliver legislative change and is working with the Department for Communities (DfC) to address Anti-Social Behaviour Orders, drinking in public, injunctions against anti-social behaviour and absolute grounds for possession. If the proposals were to be brought forward, this would lead to a new Housing Bill that would amend both the Housing (Northern Ireland) Order 2003 and the Housing (Northern Ireland) Order 1983 to be more in line with the Anti-Social Behaviour, Crime and Policing Act 2014.

Propertymark response – summary

3. Propertymark welcomes the opportunity to respond to the DfC’s and DoJ’s Anti-Social Behaviour Consultation. Propertymark members have often shared their frustration with evicting or taking other action against anti-social tenants, where evidence gathering is both difficult and time consuming. As a result, many tenants guilty of ASB are left in properties where they continue to negatively affect local communities. We are therefore pleased to see that action is being taken to make it easier to evict tenants who engage in this kind of behaviour.
4. Broadly, we welcome the proposed reforms in Northern Ireland to support evictions for tenants who are engaging in anti-social behaviour. However, it is pertinent to point out that while

¹ <https://www.propertymark.co.uk/>

² <https://niopa.qub.ac.uk/bitstream/NIOPA/9508/1/review-anti-social-behaviour-legislation-northern-ireland-2.pdf>

broadening the definition of ASB is a positive step, which brings the legislation on par with England and Wales, there are still considerable issues in England and Wales when evicting anti-social tenants. We also acknowledge that there are no specific grounds for possession in Northern Ireland for private tenants, however, there are ways that an anti-social tenant can fight an eviction, leading to similar issues facing agents and landlords in England and Wales. In order to allow for landlords and agents to more easily evict anti-social tenants, the Department for Communities and Department of Justice have an opportunity to address these issues through the following ways:

- **Ensuring that local authority guidance on what should be considered ASB is available to landlords and agents** so they can begin the eviction process in confidence and that eviction cases are not dismissed in court and to ensure that tenants who are not engaging in ASB are not wrongly accused by their landlords or agents.
- **Support local police forces to engage with agents and landlords** so they can gather the evidence they need to ensure that cases against tenants are effective and can result in an eviction.
- **Explore the viability of a specialist housing court** to help increase the speed in which evictions can take place and so that judgements can be more consistent.
- **Introduce protections for tenants if positive requirements are introduced** to ensure that tenants who have changed their behaviour are not evicted.
- **Introduce the regulation of letting agents** to improve the ability for agents to resolve disputes, make more informed decisions on what constitutes ASB and to more effectively help landlords through the eviction process.

5. While the consultation focuses on a broad range of issues related to ASB, we have kept our response solely to questions related to housing.

Questions

Question 11: The current proposals suggest amending and expanding the definition of anti-social behaviour. Do you think that the definition of anti-social behaviour should be expanded to include provisions around housing as suggested?

6. Yes, we think the definition of anti-social behaviour should be expanded to include additional provisions around housing. This will make it clearer that activity inside a home would come under the scope of ASB, where previously it may have been argued that activity inside a home should be resolved by other residents of the house and should not involve the police.

Question 12: Do you think the ‘not of the same household’ qualifier should be amended to ‘any person’ as suggested?

7. Yes, we think the proposals to expand the definition of ASB to include conduct that affects any person, including other residents of the same household. Removing all doubt that the definition of ASB includes actions against any person would go a long way to make it easier to take action against tenants where their actions do not affect those outside of the property. This would be particularly beneficial for other tenants living with an individual who is causing nuisance in the home, who may have found it difficult to act against the individual as it is not clear if they would be considered of the same household under the current definition.

Question 13: Do you think the minimum age for imposition of an ASBO should be reconsidered?

8. Yes, we think that the minimum age for the imposition of an ASBO should be reconsidered and set to 16. Doing so would ensure that measures aimed at improving the ability for landlords to take action against tenants who have been given an ASBO would apply to all tenants within the PRS. However, we would encourage greater allowances to be given to 16-year-olds, due to their age, especially if they have no alternative accommodation available.

Question 14: If yes, should it be amended to allow an ASBO for:

- Those over 18 only.
 - Those under 18 but with suitable mitigations
9. Those under 18 but with suitable mitigations.

Question 15: Do you think the threshold for obtaining an ASBO should be lowered from ‘necessary to protect people’ to ‘helpful in preventing behaviour’?

10. Yes, we think the threshold should be reduced to ‘helpful in preventing behaviour’. The DoJ and DfC are correct in their assessment that meeting the threshold required to impose an ASBO is too high and therefore difficult to obtain. Reducing the threshold while promoting the prevention of further ASB is a positive step to take. We are conscious however that reducing the threshold and allowing landlords to use an ASBO as a ground for possession may lead to unnecessary evictions where a tenant is looking to improve their behaviour. We would therefore recommend that ASBOs cannot be used as a ground for possession unless a second one has been given to the tenant or

the tenant breaches their positive conditions, which shows that the tenant is not interested in improving their behaviour.

Question 16: If yes, should it be lowered for:

- **Orders on Application**
- **Orders on Conviction**
- **Both**

11. It should be lowered for “both” to create a consistent system of issuing ASBOs.

Question 17: Do you think the standard of proof threshold should be lowered from “beyond reasonable doubt” (the criminal standard) to “the balance of probabilities (the civil standard)?

12. Yes, we think the standard of proof threshold should be lowered to “the balance of probabilities”. Currently, landlords and agents often are tasked with providing evidence to police in order to prove that ASB has taken place. Even if suitably trained, this is a lengthy process on top of their existing responsibilities to what can be multiple homes and dozens of tenants. It is simply unrealistic for landlords and agents to be tasked with this, which ultimately leads to anti-social tenants to continue to live in properties where they cause distress to neighbours and fellow tenants. Lowering the proof threshold can go some way to improving the ability for landlords, agents and other tenants to gather the evidence they need for an ASBO to be issued. In order to maintain the proof threshold to “beyond a reasonable doubt” then local police forces will need to work more closely with landlords and agents, providing guidance on how best to collect evidence to the expected standards. Failing to act on this will result in anti-social tenants continuing to cause disruption for other tenants and local communities.

Question 18: Do you think that housing associations should be added to the list of “Relevant Authorities” who have the power to make an ASBO application?

13. Yes, we would encourage housing associations to be added to the list of “relevant authorities” who have the power to make an ASBO application. This would provide housing associations with a greater ability to tackle ASB within their properties.

Question 19: Do you think that positive requirements should be introduced as an option when making an ASBO application?

14. Yes, we think that positive requirements should be introduced as an option when making an ASBO application. This would help reduce the need for evictions if a tenant can improve their behaviour and would help create longer tenancies with security for tenants and landlords.

Question 20: The introduction of positive requirements, as suggested by these proposals, is intended to address the underlying conditions that cause the anti-social behaviour. With this in mind, if positive requirements are introduced, how do you think a breach of these conditions should be addressed?

- **Dealt with in the same way as the current legislation defines (i.e. through criminal court with the same terms for imprisonment and fines);**
- **Dealt with in the same way, (i.e. through criminal court), but duration of imprisonment and maximum fines are reduced;**
- **Dealt with in the civil court, removing criminalisation of the individual (however civil sanction i.e. contempt of court and imprisonment a possibility); or**
- **No action taken for breach of a positive requirements.**

15. As the leading professional body for property agents, the legal outcome due to a breach of positive conditions is less consequential for us when compared to the outcome of a tenancy for a tenant who is charged with breaching positive conditions. As such, while we recommend that the consequences for a tenant should be eviction, the criminal outcome of breaching positive conditions should be decided by professionals more closely involved within the legal system.

Question 21: If positive requirements are introduced, who should be responsible for ensuring the conditions of the order are complied with?

- **The Applicant (e.g. if the NIHE apply for an ASBO with positive requirements then NIHE would be responsible).**
- **The Service Provider (e.g. the organisation providing the alcohol awareness course).**
- **Other – please specify.**

16. The applicant and service provider should have a role to play in ensuring that the conditions are complied with, as both parties are involved with the individual. We would also recommend that agents and landlords be responsible or to have a role to play in reporting progress back to the applicant and service provider in cases where the ASBO is related to activity contained within a

house where the individual who received the ASBO is a private tenant. That way, progress towards improving behaviour or any breaches can be quickly recorded, and action taken if the tenant fails to improve their behaviour.

Question 22: Who do you think should be responsible for funding of services that are not free of charge?

- **The Applicant (e.g. if the PSNI apply, the PSNI, if NIHE apply, then NIHE would be responsible).**
- **The body responsible for delivery of the service (e.g. Health & Social Care Trusts would be responsible for addiction services).**
- **The Department of Justice.**
- **Other – please specify.**

17. The Department of Justice should be responsible for funding these services, as the funding spent on these services can help reduce subsequent cases of ASB, which is a net benefit for the country.

Question 23: Article 5 of the 2004 Order places a statutory obligation on the Relevant Authority making an ASBO application to consult with the other Relevant Authorities in advance of doing so. Do you think this legislative requirement should be extended to include managing, monitoring and reporting on ASBOs?

- **Yes**
- **No**

18. We do not believe that this should be a requirement. We have concerns that consulting with other Relevant Authorities to this extent would reduce the speed of the process.

Question 24: Please provide any additional feedback in relation to the proposals

19. We have no further comments to make at this stage.

Question 33: We are proposing that an absolute ground for possession along the lines of the absolute ground provided for in section 84A in the Housing Act 1985 and described above should be inserted in Part I of Schedule 3 to the Housing (Northern Ireland) Order 1983 Would you support the proposed amendment?

- **Yes**
- **No**

20. Yes, we support an amendment to establish an absolute ground for possession for secure tenancies. We would also request that the Departments consider extending this absolute ground into the private rented sector as an explicit reason that a landlord can evict a private tenant. This would be more effective than the existing powers for landlords to evict a tenant as there would be a clear written absolute ground for a landlord to reference during eviction proceedings.

21. If this is taken forward, there are several considerations to make in order for any ASB policy to be effective while enabling the Department for Communities and Department of Justice to meet their objectives. While this is a positive step that provides landlords and agents in Northern Ireland with more powers to evict tenants who are convicted of anti-social behaviour, there are still considerable challenges to evicting these tenants in England and Wales. There are five ways to address these challenges:

- **Firstly, guidance from local authorities must be made available for landlords and agents to enable them to gather the evidence required to evict a tenant based on the anti-social behaviour ground.** While the ground exists in England and Wales, it is notoriously difficult to evict a tenant on these grounds. Additionally, tenants could be at risk of landlords or agents seeking to begin the eviction process when the tenant's actions do not constitute anti-social behaviour. In order to protect tenants and ensure that evictions can be successful for tenants behaving in a way that constitutes ASB, guidance must be introduced that makes it clear what a local court would consider grounds for eviction under ASB and how this can be proven in court. Failure to do so could lead to lengthy eviction processes that are dismissed by the time they go to court, even if the tenant accused is causing distress for the landlord, local community and or fellow tenants.
- **Secondly, local authorities must be encouraged to ensure that local policy forces collaborate with landlords and estate agents when they are proceeding with an eviction case.** If police reports would be essential in proving that a tenant should be evicted on the grounds of ASB, the police should be encouraged to work with landlords and agents in order to produce these reports or to provide the sufficient guidance needed for agents and landlords to gather the evidence required for an eviction.
- **Thirdly, in time Stormont should consider introducing a specialist housing court, similar to the First-tier Tribunal for Scotland Housing and Property Chamber.** A specialist court

can help reduce the overall stress of court proceedings, while hiring specialist judges to ensure that rulings are consistent. This is a serious weakness of the eviction system in England and Wales, which leads to lengthy eviction procedures. Failure to do so could result in landlords not issuing eviction notices due to the cost and length of time for evictions or due to a lack of confidence with the court process.

- **Fourthly, as mentioned earlier, in certain cases where positive requirements are introduced, we would recommend that the evictions should only take place when positive requirements are breached or if a different case of ASB occurs.** This will help prevent evictions if the tenant takes a genuine effort to change their behaviour, while allowing for evictions of the most unruly tenants and repeat offenders to be carried out.
- **Fifthly, the Department for Communities must progress with its plans to regulate letting agents in Northern Ireland.** Mandating an effective Code of Practice, with minimum qualification and CPD requirements can provide the training that agents need to effectively identify and take steps to address ASB before the point where an eviction is necessary but also to provide agents with the ability to ensure that sufficient evidence is gathered for an eviction on the grounds of ASB is successful.

Question 34: If no, please provide some details as to the reason why you would not support this amendment.

22. We have agreed with the proposal.