Practice briefing

Tackling anti social behaviour in Scotland: challenges and responses

A practice briefing from CIH Scotland

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1 Introduction

Social landlords have often cited tackling anti social behaviour as one of the most challenging aspects of delivering good quality housing services. Expectations are high – social landlords are expected to be much more accountable and responsive to tenants and the wider community.

Dealing with anti social behaviour can be very resource intensive and does not always achieve positive outcomes. Although social landlords do have powers to tackle antisocial behaviour, they can still face significant challenges in resolving cases and meeting the expectations of the victims or other complainants. This briefing aims to identify some of the barriers and challenges faced by social landlords in tackling ASB in their communities and how some landlords have adopted new and innovative approaches to try and overcome these challenges.

There have been several government initiatives and policies over the years, highlighting the important role that social landlords play in dealing with the causes and effects of anti social behaviour. To achieve this there is a greater emphasis on taking a holistic approach including multi-agency working, early intervention and preventative work, support for victims and perpetrators as well as enforcement action where necessary.

2 Policy context

The Antisocial behaviour etc. (Scotland) Act 2004[1] and accompanying guidance[2] remains the most recent major piece of legislation that placed duties on local authorities and other agencies to tackle anti social behaviour. It placed a corporate duty on local authorities to publish and review ASB strategies together with the relevant chief constable in the area. RSLs were also expected to be involved in preparing and reviewing strategies, although in practice their involvement was expected to vary greatly depending on the nature of the RSL. Larger or main local providers of housing (e.g. stock transfer RSLs) are expected to make a greater contribution to the local strategies.

Legislation in relation to ASB has remained largely unchanged since the 2004 Act. There have, however, been some significant policy developments. A Scottish Government review of the national ASB strategy was launched in 2007. The aim was to identify where the legislation could be improved, particularly in relation to community involvement in tackling ASB. The review also recognised that enforcement action alone did not address all the problems associated with ASB, but that a more balanced approach was needed, with greater emphasis on prevention and addressing the underlying problems of ASB.

In the early 2000's CIH Scotland and the Joseph Rowntree Foundation published a series of Action Frameworks for social housing practitioners and governing bodies.

[1] http://www.legislation.gov.uk/asp/2004/8/contents

[2] http://www.scotland.gov.uk/Publications/2004/10/20146/45685

The most recent publication in 2008 Tackling antisocial behaviour in Scotland[3] was designed to enable practitioners, as well as tenants and residents, to develop an understanding of the complexities of dealing with ASB and to help identify potential solutions. Although the Government direction and policy context has changed somewhat since this was produced, much of the toolkit is still relevant in helping social landlords address the problems of ASB.

The outcome of the Scottish Government's review was a new framework published in 2009. Promoting Positive Outcomes: Working Together to Prevent Antisocial Behaviour in Scotland[4] introduced a new way of working, with a focus on effective communication across all agencies to develop more sustainable solutions to the problems of ASB. The framework was based on four pillars:

- Prevention: placing a greater focus on education, prevention and early intervention. This included steering people away from being involved in ASB through diversionary activities
- Integration: focus on sharing of resources and information across all partner agencies and stakeholders
- Engagement: focus on engaging local people to tackle the issues in their community through partnership working
- Communication: focus on encouraging people to report incidences of ASB as well as reassuring the public that action was being taken.

Whilst recognising that the legal measures available through the 2004 Act still had a role to play, the new framework sought to encourage prevention of ASB rather than short term quick fixes. There seemed little doubt that the 2004 Act had made a difference and had empowered communities and agencies to stand up to ASB, but the review also recognised the need for a smarter way of working to support the Scottish Government's commitment to a 'safer and stronger Scotland'.

With the emphasis on prevention and intervention, enforcement was seen as a last resort. The framework also recommended that education and support should be at the centre of all action taken to tackle ASB. This approach to tackling ASB has been adopted widely by social landlords across Scotland, who recognise the importance and benefits of prevention and early intervention. But the approach is still not without its challenges, and these will be highlighted later in the briefing.

Another key focus of the framework was on partnership working and a multi agency approach to tackling ASB. Landlords were expected to work with relevant local authorities, the police and the health service, among others, to share information and resources where necessary. Whilst recognising that there would always be tensions between the different services, the Scottish Government was keen to emphasise the importance of overcoming these tensions to deliver positive outcomes for communities. Some examples of a partnership approach to tackling ASB will be highlighted later in this briefing.

[3] http://www.jrf.org.uk/sites/files/jrf/2181-antisocial-scotland-housing.pdf

[4] http://www.scotland.gov.uk/Publications/2009/03/18112243/0

Scottish Social Housing Charter
Published in 2012, the Scottish Social Housing Charter[5] set the standards and outcomes that all social landlords should aim to achieve when performing their housing activities. It replaced Performance Standards originally published by Communities Scotland, COSLA and SFHA and established a basis for the Scottish Housing Regulator to assess and report on social landlords' performance. Landlords are expected to meet a set of outcomes, with outcome 6 relating to ASB:

> *Social landlords, working in partnership with other agencies, help to ensure that tenants and other customers live in well-maintained neighbourhoods where they feel safe.*
> *This outcome covers a range of actions that social landlords can take on their own and in partnership with others. It covers action to enforce tenancy conditions on estate management and neighbour nuisance, to resolve neighbour disputes, and to arrange or provide tenancy support where this is needed. It also covers the role of landlords in working with others to tackle anti social behaviour.*

A suite of indicators has been developed to help landlords assess their performance towards achieving the outcomes, and indicator 19[6] is designed to help landlords assess their performance on ASB:

> *Percentage of anti-social behaviour cases reported in the last year which were resolved within locally agreed targets.*
> *(i) Number of cases of anti-social behaviour reported in the last year*
> *(ii) Number of cases resolved in the last year*
> *(iii) Number of cases resolved within locally agreed targets in the last year.*

As they prepare to submit their first return on the Charter in May 2014, there has been some concern among social landlords about how they will measure their performance against this indicator and, in particular, how they will benchmark with other landlords setting their own locally agreed targets. Some landlords are still in the process of agreeing their targets and have been seeking clarification on this point from the Regulator.

Housing (Scotland) Bill
The Housing (Scotland) Bill[7] was published in November 2013. As anticipated, it includes measures aimed at giving social landlords more flexibility to deal with ASB. This is covered in more detail later in this briefing.

[5] http://housingcharter.scotland.gov.uk/

[6] http://www.scottishhousingregulator.gov.uk/sites/default/files/publications/Charter%20Indicators%20Document%20-%20Final%20Draft%20-%2027%20September_0.pdf

[7] http://www.scottish.parliament.uk/parliamentarybusiness/Bills/70102.aspx

3 Current challenges in dealing with anti social behaviour

The feedback in this briefing comes from discussions with staff from a number of Scottish social landlords about their experiences of dealing with anti social behaviour. Staff gave their views on what they saw as the current challenges in tackling ASB and what further tools might help them to provide more solutions.

Agreeing definitions: what constitutes anti social behaviour?
Landlords have often cited difficulties in trying to determine when the subject of a complaint actually constitutes ASB. It is almost impossible to be prescriptive about this as it is often based on individual perceptions and tolerance levels. This creates challenges for landlords trying to manage the expectations of tenants and the wider community. Legislation does not provide an absolute definition, but rather a loose legal definition. Sometimes the focus has been on the range of behaviours that could be considered to be anti social: this could include noisy neighbours, vandalism, groups of people hanging around, neighbour disputes and more serious cases including drug dealing and harassment.

The interpretation of ASB in the 2004 Act adheres closely to the Crime and Disorder Act 1998, which concentrates on the impact of behaviours rather than specific types of behaviour. It defines being anti social as:

"…to act in a way that causes or is likely to cause alarm or distress to anyone; or behave in a way that causes or is likely to cause alarm or distress to at least one person not of the same household as them."

The Scottish Government's 2004 guidance also recognised that ASB could mean different things to different people and that expectations of standards of behaviour could vary. The statutory definition leaves some flexibility for landlords and other agencies to decide what appropriate action should be taken, given the particular nature of problems within their communities. This highlights the importance of partnership working to help understand local ASB issues.

Recognising the difficulties in identifying what constitutes ASB, social landlords understand the importance of setting out in policies and procedures what they would consider to be ASB. Following a complaint it will often be necessary to carry out an initial investigation to clarify if the issue does indeed involve ASB and to identify what action is appropriate.

Tenant and community expectations
As a consequence of the difficulties in defining ASB, a key challenge is managing the expectations of tenants and the wider community when it comes to identifying and dealing with ASB. Landlords feel that tenants quite often have unrealistic expectations about what tools and powers a landlord has to deal with ASB. Tenant satisfaction surveys often reveal higher dissatisfaction with the ASB service than with any of the other services the landlord provides. If tenants or the wider community perceive that their landlord is not delivering the service they expect – for example not responding adequately to complaints of ASB – then this has an impact on the reputation of the landlord, even where satisfaction levels on other services may be high.

A lack of awareness and understanding among tenants and residents of what constitutes ASB was cited as a major concern for landlords. Landlords often receive complaints about what they would consider to be ‘domestic noise’ caused or exacerbated by poor insulation and/or wood or laminate flooring, particularly in tenement accommodation. Sometimes noise is simply down to someone coming home late at night due to working patterns, a washing machine on late at night or young children playing.

These kinds of lifestyle clashes commonly trigger complaints. Although they can annoy or irritate a neighbour, they are not necessarily ASB and rarely are they deliberately intended to upset others. It will not always be possible for the landlord to intervene as the behaviour is unlikely to be considered unreasonable or warrant further investigation. In such cases, the complainant will often see the issue as unresolved and will not be happy with the landlord. Much comes down to what individuals can tolerate and what each person deems to be unreasonable behaviour. This is something that the landlord has very little control over: it can only try to manage the expectations of complainants from the outset through clear policies, processes and standards of service.

Landlords reported that once a complaint had been accepted, there were often unrealistic expectations about how quickly a complaint could be dealt with and resolved. Again it is up to landlords to try to manage these expectations by making the complainant aware of the steps being taken and the timescales involved in investigating, and if possible resolving, the complaint.

A lack of awareness among tenants about what their responsibility is in terms of ASB also causes problems. Landlords reported that tenants were often reluctant to report incidences of criminal behaviour to the police, preferring instead to report these to the landlord. In cases of persistent ASB complainants also need to be encouraged to keep a diary of events.

This in an ongoing challenge for landlords, but it is important for both parties to be realistic and understand what powers they have to act and work with the appropriate agencies.

Reluctance to report ASB

Whilst some tenants may report ASB which the landlord believes cannot be classed as such, a failure to report incidences of genuine ASB is also considered to be a problem. Landlords need to make it easy for people to come forward and report ASB: this can be through increased publicity and, for example, by providing a community presence through drop in centres. A lack of reporting of ASB also hampers prevention work where the landlord could intervene to stop a problem from escalating further.

Gathering evidence

The challenges of gathering evidence are a major concern for social landlords seeking to resolve ASB cases, particularly when initial warnings have failed and the landlord is left with no option but to pursue enforcement action. Unless the perpetrator admits to the allegations then the landlord will need other witnesses to

come forward to corroborate the complainant's story. Witnesses are the key to most successful enforcement actions and are required to provide the high quality evidence that demonstrates the distress caused by ASB.

Landlords believe that reluctance to be a witness and provide evidence in ASB cases is a cultural issue which is very difficult to resolve. In more serious cases reluctance tends to be through fear of reprisal or intimidation. It is important that witnesses are supported by the landlord in reporting incidences of ASB, and are confident that their landlord is going to take action. This again goes back to managing expectations and the landlord being clear about the remit and powers they have.

In cases where the landlord needs to apply to the court for an anti-social behaviour order (ASBO), the conduct of the alleged perpetrator needs to have been persistent over a period of three months: indeed it often takes at least this long for the landlord to build a case. This is where cooperation from victims, other tenants and residents is essential in building a robust enough case to put before the courts. This can often cause anxiety for the victim, who may feel uncomfortable or even persecuted if they are expected to continuously complain to provide evidence.

Resources and costs

Scottish Government guidance expects that social landlords match resources with their aims and activities as set out in their ASB strategies. Cost considerations for landlords can include covering court costs, staff training, outsourcing services and prevention activities such as mediation.

The number of cases of ASB varies widely across organisations, but, depending on the nature of specific cases, this can often be resource intensive and require specialist skills. Feedback from landlords suggests costs and resources for dealing with ASB are particularly a significant issue for smaller RSLs with fewer staff dealing with ASB as part of the wide range of responsibilities including allocations and rent collection.

This has led to some smaller RSLs outsourcing their more complex cases to other agencies, for example specialist community safety services based in the relevant local authority area. This can come with its own set of problems, and any landlord considering going down this route would need to weigh up the pros and cons in terms of costs and impacts on service delivery. If some of the services are going to be outsourced then landlords need to be in a position to 'manage' the performance of the organisation in question. Poor performance by the external organisation, particularly in terms of case management and keeping tenants and the community informed, will reflect badly on the reputation of the RSL and will lead to dissatisfaction from tenants with the service as a whole. On the other hand it might not prove cost effective to continue to deliver the cases in house without serious investment in staff training or employing staff with specialist skills.

Although pursuing legal action is considered by many landlords as the last resort after any early intervention has failed, the cost of doing so is still a major concern, particularly for smaller RSLs. As well as taking legal action against their own tenants, RSLs have some limited powers to take legal action against others whose behaviour is affecting tenants: this is primarily through an ASBO. The time and resource

involved in building the case and the cost of court action to obtain an ASBO all need to be considered. If the ASBO then fails, there is little likelihood of RSL recovering the legal costs.

Costs and resources are also increasingly becoming an issue for local authority ASB services. Funding cuts in some areas are affecting preventative services, including community wardens and tenancy support services. Landlords consider these to be crucial services in trying to stop ASB before it escalates and prevent legal action or even evictions. For some it is also becoming more difficult to cover the costs of mediation services for lower level cases of ASB such as neighbour disputes.

Each local authority targets its resources differently, which from the perspective of RSLs working across several areas, inevitably leads to inconsistencies in the levels of service.

The legal system

There is general consensus among social landlords that applying for an ASBO or repossession of a tenancy on ASB grounds can be a long and difficult process that does not always achieve the desired outcome. Hence the importance of the landlord ensuring it has exhausted all other options and can show that all attempts to resolve the ASB have failed.

Evidence put before the court needs to be robust: the court will usually require that the ASB has been persistent - at least three months in the case of an ASBO. This is frustrating for the victims of the ASB, who may think that their landlord is not taking any action to resolve their complaint.

One of the main frustrations appears to be inconsistencies within the court system across different local authority areas. Landlords reported feeling at the “mercy of the sheriff” in terms of achieving the desired outcome. Another frustration is in the case of a failed ASBO application where the landlord decides to go for repossession. The court requires the case to be proven again, and even after a decree for eviction has been granted it can take a further six weeks for the eviction to take place. The perpetrator meanwhile has nothing to lose and the behaviour often deteriorates further.

As things stand, landlords have little or no control over the court system and the decisions of individual sheriffs: they can only ensure that they follow the correct process to avoid unnecessary delays. Some of the changes in the Housing Bill could provide opportunities to speed up the process.

4 Current powers and tools

Anti social behaviour is a complex problem and landlords do recognise the need for a holistic approach to tackle it. There are a range of tools and powers available to assist them in preventing and tackling ASB, but some landlords are questioning if these are sufficient to enable them to achieve the outcome expected by their tenants and the wider community.

Warnings
Warnings can be a very useful tool for dealing with lower level ASB and will usually serve to prevent the behaviour from escalating, particularly where the tenancy could be at risk. In certain cases, however they can prove futile, and landlords have experience of this among under 16s where there are very few additional sanctions that can be used. Although it is possible to get an ASBO for an under 16, the court is generally unlikely to grant one.

Acceptable behaviour contracts (ABCs)
Acceptable behaviour contracts are written agreements between a person involved in ASB and the agency seeking to prevent further ASB. Landlords indicated using ABCs more frequently, especially in relation to 16 and 17 year olds, with reported successes in terms of promoting positive behaviour and encouraging young people to engage with support services and sustain their tenancies. For over 18s, ABCs usually form part of the escalation process after initial warnings have failed, but have proven less effective among this age group.

ABCs are resource intensive and require a multi-agency approach for them to work. Landlords suggested that the voluntary nature of ABCs means that they are often refused.

Anti-social behaviour orders (ASBOs)
Anti social behaviour orders are civil court orders that prohibit a person, either indefinitely or for a specified period of time, from doing anything described in the order.

ASBOs form part of most landlords' ASB strategies, but landlords reported pursuing ASBOs only in cases where they have exhausted all the other options open to them. Pursuing an ASBO requires a lot of time and resource in ensuring that the evidence gathered will stand up in court. The burden of proof lies with the agency applying for the ASBO, whether it is a local authority or RSL. The process can be very time consuming and costly, particularly if it eventually fails.

Some landlords have suggested that there can come a point where issuing ASBOs can become counter productive for the landlord as it runs the risk of them being seen as a 'badge of honour' within the community and therefore no longer considered a credible sanction against bad behaviour. It is up to landlords to strike this balance and only use an ASBO where it is effective in relation to both the victim and perpetrator.

Interim ASBOs
Interim ASBOs are available to provide immediate protection from ASB and can be granted at an initial court hearing before the hearing for a full ASBO. The landlord must still provide evidence of the ASB and the sheriff must still be satisfied that the measure is 'necessary'. Although landlords did report using them as a means of protecting the victim or community from further harassment, there was anecdotal evidence that some courts did not take a breach of an interim ASBO sufficiently seriously.

Interdicts
An interdict is another type of civil court order that directs a person not to do something or to stay away from a specific person or place. They can apply to any type of behaviour, not just ASB. Residents and social landlords alike have the power to apply to the court for an interdict, but there is very little evidence of landlords using them with respect to ASB in Scotland. Landlords indicated preferring to apply for an ABSO when the behaviour warrants court action.

Closure orders
Introduced in the 2004 Act, closure orders are a tool that can be used when a property has become the centre for serious criminal activity. The police have powers to close premises, in consultation with local authorities, where a person has engaged in ASB in the preceding three months, though only where it has resulted in significant disorder or nuisance. They can be useful in providing immediate respite for a community. A few landlords have used closure orders, but feel that the fact that they can only be applied for by the police limits their ability to use them. Landlords suggested they would benefit from the power to apply for closure orders for their properties.

Mediation
Mediation is considered by many landlords as a very useful intervention tool, particularly in dealing with neighbour disputes at an early stage. It can also work across all tenures. However, mediation is not a statutory service and therefore access to it can be patchy and inconsistent. Some local authorities offer mediation services in-house and will receive referrals from RSLs, the police, tenants and owners. Other private agencies and charities provide a 'pay as you go' service to landlords.

Mediation is voluntary and for it to be effective it requires all parties to engage. It can also be resource intensive and relies on staff being trained to identify the cases for which a mediation referral would be appropriate.

Partnership working
Clearly social landlords cannot tackle ASB if they work in isolation and therefore need to engage with partner agencies at a strategic and operational level. In many areas a multi-agency partnership works well and there is evidence that these partnerships are successful in reducing levels of ASB and providing reassurance to communities.

Partnership working is, however, not without its challenges and inevitably works better in some areas than others. Larger, stock transfer RSLs often have very good links with the police, but for smaller RSLs with stock dispersed across a few local authority areas, partnership working arrangements can be more difficult or inconsistent. As covered previously in this briefing, there are particular challenges where an RSL buys in specialist services to deal with certain cases of ASB.

Some landlords are still reporting conflicts between the police and housing, with the police shifting emphasis onto housing particularly for lower level criminal cases. Landlords suggest that the police are reluctant to use their powers and are frequently passing reported cases back to the landlord. Landlords feel that the Scottish

Government needs to be clearer about whether the responsibility for low level criminal cases lies with the police or the landlord, and that there also needs to be greater awareness of the limitations landlords have to tackle such cases.

Although landlords did report some success in using the current tools they have to tackle ASB, there was overall frustration at the lack of intermediate measures and a feeling that they would benefit from having sanctions that would help plug the gap between warnings and an ASBO. In discussions around the provisions in the Housing Bill, landlords questioned whether the proposed new powers would have a significant impact (see below).

There is a strong feeling among social landlords that the current system, including the court system, is geared too much towards helping the perpetrator of the ASB to mend their ways, with little opportunity to help support the victim or the wider community. Inevitably, failing to support the victim of the ASB damages the reputation of the landlord.

5 New powers in the Housing Bill

The Housing Bill was introduced to Parliament in November 2013. The Bill introduces changes affecting social housing tenancies and how they are allocated and managed. Some of these changes include additional powers for social landlords specifically to tackle ASB. CIH Scotland has broadly welcomed these proposals, but is unsure about the precise extent of their usefulness to landlords over and above the powers they current have.

Suspending housing applicants
The Bill introduces greater flexibility for landlords to consider previous ASB when deciding on an applicant's priority for housing. This in effect attempts to make the law clear on the circumstances in which a landlord can suspend an applicant from receiving an offer of housing. Through subsequent regulations, Ministers will determine how long a suspension can remain in force and the previous time period that a landlord can take into account when considering an applicant's behaviour. The Bill also introduces a new right for applicants to appeal a landlord's decision.

These provisions specifically do not apply to lets made by a local authority discharging a homelessness duty, and effectively do not apply to RSL lets which are the subject of a Section 5 homelessness referral or other local authority nomination: this is because the provisions relate only to lets made to people applying through the housing list.

For many landlords that already operate a suspensions policy in relation to lets made through the housing list, this change will have little impact other than confirming its legitimacy, providing that the landlord's current grounds for suspension are included in the newly prescribed grounds and the policy complies with the regulations on maximum period etc. But the new right of appeal will effectively mean that all landlords will need to be very clear about why and for how long they intend to prevent an applicant from receiving an offer.

Some landlords can encounter difficulties in gathering information on an applicant's history of ASB, particularly if previous landlords do not readily share information.

Amending the power to give a Short SST for anti social behaviour
Currently, a landlord can provide a new tenant with, or demote an existing tenancy to, a short Scottish secure tenancy (SSST) where there was an eviction for ASB, or an ASBO, in the last three years. The Bill widens the scope for giving SSSTs to situations where applicants or tenants have acted anti-socially in or near their home in the last three years. As now, during the period of the SSST landlords must also ensure that appropriate housing support is available to facilitate the conversion from the SSST to a full SST. And again as now, this measure is subject to a right of appeal to the court.

On the face of it this change would enable landlords to more closely manage the tenancies of those who have a recent history of ASB, with the ultimate aim of moving them into successful and sustainable Scottish secure tenancies. This chimes with the desire of tenants groups and others to see more action to deal with those who make the lives of their neighbours unbearable. However, this widened power raises issues about what constitutes ASB and how evidence is gathered etc.

Extension to Short SST minimum period
There will be an extension to the minimum term of a SSST from six to 12 months for those 'ASB SSSTs' intended to convert to a full Scottish secure tenancy. As now, the landlord will have to ensure that appropriate housing support is available for the duration of the SSST.

This change is one that will enable landlords and tenants to have a longer period of engagement before a decision is made on whether the SSST will convert to a full tenancy or be brought to an end. This seems to be a sensible approach to managing what can be very sensitive and challenging issues and provides a greater opportunity for a successful outcome. However, it will mean that in any cases where serious ASB arises in the very early stages of the tenancy, it will be many months before the landlord is likely to be able to end the tenancy if that is what is felt to be necessary.

Extending the term of a Short SST
Those Short Scottish Secure Tenancies which are intended to convert to a full SST after the 12 month minimum period will be able to be extended for a one off period of six months to enable further work with the household if a position has not yet been reached where the tenancy can be converted to a full tenancy. It will mean that SSSTs relating to ASB could last for up to eighteen months. The duty to provide or arrange the provision of housing support continues to apply during the six month extension.

As with the revision above which extends the minimum period of the SSST from six to 12 months, this will enable a longer period of time in which landlords can secure support and work with the affected household. It is not intended to be used on a regular basis, with its driver being to provide an alternative to eviction where insufficient progress has been made during the initial 12 months to resolve the issues.

Recovering a short SST
There will be a new requirement on social landlords to give tenants reasons why they are seeking to recover possession of a property let under a SSST where the SSST was given on ASB grounds (i.e. a SSST which would convert to a full SST after the minimum period) and the SSST has been breached. At the same time it introduces a statutory right to a review by the landlord, before court action is taken, for tenants whose SSST is not going to convert to a full SST.

The introduction of the need to give reason stems from case law[8] which suggests that in some cases reasons should be given when ending a SSST. On the face of it, giving an explanation to the tenant seems entirely reasonable, though alongside the new statutory right of appeal, it could be seen as adding layers of bureaucracy which could clog up the process and may even leave landlords in the position of inadvertently allowing a SSST to convert to a full SST, so this will need to be managed carefully.

Grounds for eviction after a criminal conviction
This change introduces a requirement that a court grants an order for recovery of possession made within 12 months of the tenant's conviction for using the property for illegal or immoral purposes or for an offence in or near the property that is punishable by imprisonment.

There are existing grounds for possession of a Scottish secure tenancy on the basis of ASB, but during the course of the original consultation process many landlords described the excessive cost and time involved in obtaining possession even where a court had already found the tenant guilty of activity which should have enabled them to do so more quickly. This simplified manner of evidencing that the ASB has already been proven is one that should reduce the distress of the victims by reducing delays and costs. There is some uncertainty, though, in that whilst this removes the reasonableness test the tenant still retains the right to challenge the court action.

A similar legislative measure is currently available in England and has been used successfully. Apart from the positive impact this would have on the victims of ASB, it is also more likely to encourage witnesses to come forward.

Will the Bill changes help tackle anti social behaviour?
Overall there has been a cautious welcome from social landlords to these proposed additional powers to deal with ASB. But at this stage landlords appear reluctant to claim that the changes will make a significant difference, and there is a worry that the Bill could unduly raise expectations among tenants of the landlord's ability to resolve ASB. The ongoing challenge for landlords will be to manage these expectations and be clear on how complaints of ASB will be approached.

[8] http://www.tcyoung.co.uk/blog/2012/social-housing/housing-law-scotland-significant-legal-judgement

6 Potential further legislative changes

Two further changes relevant to tackling ASB were considered but rejected ahead of the Housing Bill. These were a new tribunal system for all court actions and other social sector landlord/tenant disputes, and the introduction of initial or 'probationary' tenancies for all new social sector tenants. Some social landlords have expressed disappointment that one or both measures are not being progressed.

A housing tribunal for the social sector
Housing practitioners have long been frustrated with the existing court system, with its costly delays, inconsistent decisions by sheriffs and the formal nature of the system that can put defendants off from attending hearings. CIH Scotland has always held the position that the development of a specialist 'housing tribunal' was preferable for resolving housing disputes across tenures and improving access to justice. In a briefing[9] produced in November 2012 on housing dispute resolution, CIH Scotland highlighted the problems with the current legal system and the benefits of a tribunal for cases including actions to deal with ASB, including eviction, interdicts and ASBOs.

In 2013 the Scottish Government consulted on proposals to introduce a New Housing Panel for Scotland[10] for better dispute resolution in housing. CIH Scotland strongly supported the concept of a new Housing Panel, and there was also broad support from social landlords across Scotland.

Despite the level of support, the Scottish Government decided that a new housing tribunal will apply only to the private rented sector. CIH Scotland has expressed disappointment that the tribunal will not include social sector cases, which take up a majority of the cases in the sheriff court system. Social landlords have indicated their frustration that there will not be the opportunity to speed up the court process and ensure that ASB cases are dealt with quickly and fairly.

Although the Scottish Government has not drawn a line under tribunals for the social sector, it is unlikely that they will be introduced in the foreseeable future. It may be that expected changes to the sheriff court system in the coming years will improve the way in which housing cases are treated but, so to speak, the jury is out on this.

Probationary tenancies
Despite being welcomed by a majority of social landlords and tenants groups, the Scottish Government decided not to proceed with the proposal to give all new tenants an initial (probationary) tenancy of 12 months. CIH Scotland was broadly supportive of the proposal, following consultation with members and other stakeholders, the majority of whom were of the opinion that this proposal could be useful in supporting them to manage ASB and sustain tenancies.

[9] http://www.cih.org/resources/PDF/Scotland%20Policy%20Pdfs/Dispute%20Resolution/Housing%20dispute%20resolution%20improving%20access%20and%20quality%20Nov%202012%20final.pdf

[10] http://www.scotland.gov.uk/Publications/2013/01/6589

Landlords in England have had the power to use probationary tenancies since 1997, and anecdotal feedback, for example at recent CIH Scotland events, suggests that the measure has been successful in sustaining tenancies and preventing ASB from occurring in the first place or from continuing or worsening. More importantly they have given landlords confidence in engaging with tenants to try and change their behaviour.

Whilst Scottish social landlords have recognised that this proposal would never be the panacea for tackling ASB, many felt that it would help to underline the two way responsibilities of landlords and tenants and emphasise the message that ASB will not be tolerated. Feedback suggests that many landlords see this as a missed opportunity to help prevent and tackle ASB and to balance the respective rights of individuals and communities.

Although the Bill's measure to widen the grounds on which a SSST can be given for ASB will be helpful, it does of course rely on the landlord knowing about previous ASB.

7 Existing and potential new powers in England

Anti social behaviour has recently come under the spotlight in England with the introduction of a new Anti-social behaviour, Crime and Policing Bill[11]. The new Bill proposes reforms to legal powers and seeks to address some of the issues and complexities facing social landlords. Its aim is also to provide better protection of individuals and communities from harm.

Along with social landlords in general, CIH has on the whole been supportive of the Bill, but has voiced concern about proposed amendments. The Bill proposes replacing the current Anti Social Behaviour Injunction (ASBI) with an Injunction to Prevent Nuisance and Annoyance (IPNA). Initially the Bill proposed that the new injunction would raise the burden of proof significantly, with landlords required to prove beyond reasonable doubt that the behaviour had caused harassment, alarm or distress. CIH and other housing bodies felt that this would be very difficult to do without victims giving evidence first hand, and so would be particularly detrimental to victims, with witnesses frightened to come forward and a consequent decline in community confidence.

At the time of writing and following a Lords debate, this proposal has been amended and accepted by the UK Government allowing the injunction (IPNA) to be gained for behaviour causing 'nuisance and annoyance' in residential settings only. It will also apply across all tenures. The stricter test of proof of 'harassment, alarm and distress' must be used in all other settings.

Currently, anti social behaviour injunctions prohibit a person from engaging in housing related ASB. They are considered a shorter term remedy to prevent ASB, particularly when all other interventions have failed. Currently they do not require the

[11] http://services.parliament.uk/bills/2013-14/antisocialbehaviourcrimeandpolicingbill.html

same level of evidence as is needed to obtain an ASBO and consequently, since they were introduced, there has been a reduction in the amount of ASBOs applied for across English landlords.

Evidence in England suggests that ASBIs in their current form are very effective and a popular tool among landlords not only in tackling ASB but also in contributing to reducing homelessness. Incidences of evictions for ASB have also declined since the introduction of the ASBI. Given the success of ASBIs, there will be a degree of uncertainty as to how the new IPNA will work.

Although the provisions in the Bill will not of course apply in Scotland, they could provide a starting point from which to call for additional powers and tools for social landlords here. In their current form ASBIs could be very useful. Frustrated by ineffective warnings and the time and cost of pursuing ASBOs, landlords in Scotland have indicated their desire for additional intervention tools which could provide better protection for victims and their communities.

Many of the challenges experienced by social landlords in Scotland in tackling ASB are the same UK wide. Despite differences in the legal remedies, many of the principles involved in managing ASB apply to all social landlords regardless of location. CIH's UK office, in conjunction with other agencies, has produced recent guidance on effective case management for ASB. How to…manage anti social behaviour cases effectively[12] and Effective ASB Case Management Principles[13]. Both are reference tools for practitioners on the essential principles of ASB casework. They include advice on managing tenants' expectations as well as considering the right approach in response to particular cases. Some social landlords in Scotland have already indicated that they have found this guidance useful when reviewing how they deliver their ASB service and, in particular, how they manage casework.

[12] http://www.cih.org/resources/PDF/Policy%20free%20download%20pdfs/How_to_Manage_ASB_cases_effectively.pdf

[13] http://www.cih.org/resources/PDF/Policy%20free%20download%20pdfs/HO%20-%20ASB%20Case%20Management%20Principles.pdf

8 Responding to the challenges

This section includes some examples of the ways in which landlords are working to deal with some of the issues and challenges presented by anti social behaviour.

Project Cipher – Dunedin Canmore Housing Association

Project Cipher is a multi-agency partnership project involving local housing associations, the police, NHS and City of Edinburgh Council. It was set up to respond to relevant neighbourhood issues aiming among other things to reduce ASB in the local area. One of the key themes of the project was to identify what was important to tenants in the local area and encourage tenants to get involved.

A survey of tenants highlighted areas of concern, including:

- Feeling safe
- Dog fouling and dumped rubbish
- Tackling drug dealers
- Communication and feedback on actions taken

The message to tenants in relation to ASB was 'report it' and the partnership project enabled the Association to use additional resources to engage with tenants and encourage them to come forward and report incidences of ASB. Dunedin Canmore held a series of tenant meetings in public places such as shops and community centres. There was also a strong police presence with patrols, drug raids and CCTV. As part of the project there were two designated police officers with a visible presence in the community and along with environmental wardens they used social media to update on cases being picked up and resolved.

Reported successes from the project included:

- Increase in reports of ASB
- Drug dealing cases with procurator fiscal
- Reporting allowed the association to gather information on their tenants and their concerns
- Increased engagement with the wider community including private tenants and owner occupiers
- Evictions for serious crimes sent a positive message to the community that action was being taken.

One of the main lessons learned through project Cipher was that the Association cannot tackle ASB alone and operation cipher has created a model and template for future operations hoped that 'mini ciphers' can continue having a positive impact on communities.

Aberdeen City Council – Community Safety HUB

The Community Safety Hub is an innovative collaborative approach designed to deal with issues of crime and disorder in Aberdeen. Representatives from Aberdeen City Council's community safety team and housing teams have joined forces with the police, fire service and NHS to increase prevention and early intervention for all types of ASB.

Through partnership working the Hub is intended to make it easier to identify emerging problems of ASB early and then ensure that the right resources and services are targeted more effectively to deal with any problems before they escalate further. Ongoing cases will also be monitored with improved communication between partner agencies and the complainant.

Since the start of the Hub which was officially launched in April 2013 Aberdeen City Council has reported a positive downward trend in cases of ASB, with long term difficult cases becoming easier to deal with.

It has also had a positive impact on the amount of people coming forward to report incidences of ASB as they can see that action has been taken and are therefore more confident that their complaint will be resolved.

The next step will be to build on the current approach and develop even closer methods of information sharing.

Community Safety Glasgow case study of an integrated approach to tackling anti social behaviour

CSG Community Relation Unit (CRU), who are a specialist ASB investigation team, received a complaint of a local gang causing considerable problems around an area in the Southside of Glasgow. The complaints were mainly from owner occupied properties. The area has a mix of owners, privately and socially rented accommodation. Three large housing associations have properties in the area.

Youth disorder, gang fighting
The complainants reported fights, shouting, swearing, people being assaulted, robbed and traffic being disturbed at all hours but mainly at night. There were also problems in the tenement closes with the youths reported as drinking, vandalising the property and threatening residents.

CRU investigations
CRU investigators began gathering information, taking statements from local housing providers, community Police and local businesses. Statements were then taken from as many residents as possible. Complainants/victims were encouraged to have residents meetings where investigators attended to gather information and provide reassurance. Youths were aware of the presence of a CCTV camera and therefore avoided the area. Several windows were smashed and residents targeted, which was believed to have been retribution for the police being called.

Action Plan
In response a multi agency action plan was implemented in partnership with the local Community Policing Team, local housing providers, local Regeneration Agencies, Glasgow Life (Glasgow's recreation service provider) and other voluntary youth service providers.

Graffiti packages
Some youths were known to the victims/complainants, resulting in probable identification of those responsible. CSG CRU prepared information packages to allow the police to follow up graffiti offences and several youths were charged with relevant offences; this was then followed up with ASB and housing/tenancy action. The CSG also removes graffiti, both pro actively with patrols and in response to complaints.

Social networking sites
CRU investigators were able to uncover evidence of ASB and criminality though relevant social networking sites. This information was then passed onto the police who questioned and charged several youths with relevant offences.

Interviewing youths and parents
The known youths and their parents were then interviewed and the impact of their behaviour on the community was explained to them. They were also made aware of the implications of the antisocial behaviour continuing, which included the possibility of ASBOs and actions against their tenancies. Ten youths were issued with warnings under ASB legislation. Reasons for the behaviour and possible solutions were also explored at the interviews.

Surveillance
Despite initial warnings, the ASB continued, which led to the CRU conducting a surveillance operation. This operation captured incidents that led to several arrests and convictions for incidents such as culpable and reckless conduct and breaches of the peace. These were then followed up by formal warnings under the Anti Social Behaviour etc. Scotland Act 2004 e.g. acceptable behaviour contracts (ABCs) for the youths along with their parents.

Informing social work youth justice teams
CRU investigators also made sure that the behaviour of many of the youths was brought to the attention of colleagues in social work and youth justice teams to allow them to try and address the underlying reasons for the behaviour. This resulted in several youths having their existing care plans upgraded with allocated criminal justice workers.

Diversionary Activities
Analysis of the particular days, time and locations of any disorder were used to target the deployment of mobile football pitches and youth workers, especially in areas where no existing facilities existed. Diversionary activities were also sourced and arranged, such as five a side football and access to local leisure facilities.

Youth Programmes
CSG Prevention and Diversion from Offending Team also selected several of the youths for programmes aimed at tackling anti social behaviour and training for work through work experience placements. These individuals were selected on an intelligence led basis from products prepared by CSG analysts. To date there are a number of youths undergoing training courses with the possibility of full time employment.

Results
CSG analysts assessed this area before and after this approach was introduced and the figures suggest a reduction of more than 40% in reported youth disorder. Local housing providers have also reported much higher figures for those feeling safer in their communities. They also report a 50% drop in incidents reported by residents. The work of CSG has also resulted in many of the youths now considering employment as a realistic goal, with some now in full time employment. Work is ongoing in this area, in partnership with local agencies, to maintain this improvement.

Redesigning your ASB service – the North Lanarkshire approach

North Lanarkshire Council has recently completed a comprehensive review of their ASB service and are hoping to begin implementing changes to the service by April 2014.

Faced with the ongoing challenge of how to tackle ASB, the Council set up a working group to look at how the service could be redesigned to meet these challenges. The group had representation from elected members, officers from other Council services, Police Scotland as well as consultation with tenants, residents and other partners. The aim was to design an efficient and effective service that met the needs of the people using the service. It was also important for the level of service to be consistent from the point of the resident's initial contact through to action being taken, if necessary, by legal services.

The service is being redesigned based on six core principles:

- Clarity of purpose
- Improved first point of contact
- Pro active service with increased visibility
- Improved communications and processes
- Improve marketing of new service
- Improve sustainability and break cycle of ASB

Approved recommendations from the review will include:

- A new response and intervention team to tackle ASB across North Lanarkshire at peak times – this was recommended in response to figures showing that 85% of incidents take place on Thursday to Sunday and between 7.00pm and 3.00am
- Revised categorising of complaints to ensure that the most serious cases are dealt with timeously
- Improving advice services by ensuring a central and consistent point of contact for all initial ASB calls
- Maintaining local connection by retaining six dedicated teams working across each local housing area and increasing the visibility of the service
- An increased focus on breaking the cycle of ASB which will include greater utilisation of in house mediation services and sustainability teams as well as working in conjunction with partner agencies to tackle and address the issues behind ASB and in particular work with offenders.
- Offering diversionary activities for youths and rolling out educational opportunities to high school pupils.

9 Conclusion

Although it has in recent years been relatively quiet on the policy front in relation to ASB, it is quite clear that some of the problems facing landlords in dealing with ASB have not disappeared and are unlikely to in the near future. Landlords continue to use the tools and powers open to them to tackle ASB and some have more success than others.

It is very difficult to think of one particular solution to the challenges of dealing with ASB, as the nature of the problem varies so much across organisations and geographical areas. Landlords have indicated that new tools or sanctions would be welcome to enable them to better protect victims and wider communities suffering from ASB. Some of these may come from the provisions outlined in the new Bill, but landlords have suggested that the Scottish Government could consider introducing more specific sanctions that would sit between warnings and an ASBO. One possibility could be injunctions, which have proven very effective in helping tackle ASB in England.

It is clear that access to mediation services is also inconsistent and patchy across the country. Landlords using mediation find it very useful in dealing with lower level incidences and in particular neighbour disputes. If there were a duty to provide or arrange such a service, then all landlords would be able to access it as a key intervention tool.

Partnership working is crucial to tackling ASB. But landlords are still reporting some conflict between the police and housing in terms of lower level criminal cases. Some landlords feel that it would be beneficial for the Scottish Government to be more precise about where the responsibility lies for low level criminal cases lies.

CIH Scotland understands that the Scottish Government may be intending to review the current legislation, guidance and framework for tackling ASB. We would of course welcome the opportunity to respond to any future consultation on changes to legislation or policy that could help social landlords deal with anti social behaviour in their communities.