

Housing associations' use of anti-social behaviour powers

Housing associations have recently acquired a range of new powers to tackle anti-social behaviour (ASB). This study looks at how associations are making use of both newly acquired and longer-established legal responses to disorder as well as the other forms of action being taken to combat the problem. The research was conducted by Hal Pawson, Emma Davidson and Nicole Lederle of Heriot-Watt University, Edinburgh. The report should be read in conjunction with the wider review of social landlords' use of legal action to tackle ASB recently conducted on behalf of Communities and Local Government (CLG)¹.

Key findings

- The vast majority of anti-social behaviour reported to housing associations involves relatively minor misconduct – most commonly excessive noise;
- The nature of ASB faced by particular housing associations is highly influenced by the character of an association's housing stock; flats in converted buildings are liable to generate noise complaints, whilst landlords managing estates are more likely to face youth disorder;
- Supported housing schemes pose an inherently greater risk of ASB because of the problems leading to an applicant being classed as in need of such support;
- Whilst it is perceived that ASB complaints are on the increase, there is little sense that underlying rates of misconduct are rising;
- In tackling ASB there is evidence of a continuing trend towards functional specialisation with the establishment of specialist ASB posts and teams;
- While mediation is unsuitable for serious ASB, it is generally seen as having unexploited potential – front-line staff need to be encouraged to actively 'sell' its benefits;
- Acceptable behaviour contracts (ABC) are widely found to be a quick, cheap and effective means of tackling youth disorder;
- In 2005-06 more than three quarters (79%) of housing associations made use of at least one of the four main legal powers (ASBO, injunction, possession action, demotion order);
- Possession actions remain the most widely exercised counter-ASB power (two thirds of associations made ASB evictions in 2005-06),

¹PA Consulting (2007) Priority Review of the Uptake by Social Landlords of Legislative Powers to Tackle Anti-social Behaviour; Communities and Local Government Research Summary 232; London: CLG
<http://www.communities.gov.uk/index.asp?id=1505450>

with injunctions being used by just over half of housing associations. Associations using injunctions typically find them both quick and effective;

- ASBOs tend to be used only where injunctions cannot – in cases of misconduct by young people or other non-tenants; this reflects a general view that injunctions are relatively easy to use whilst ASBOs can be more problematic (in terms of both staff time and expense);
- Possession actions are 15 times as likely to be used in response to ASB by supported housing (SH) tenants than by general needs tenants. This probably reflects (a) the extent to which SH tenants are individuals at high risk of committing ASB, (b) the typically limited impact of alternative measures where vulnerable tenants are involved, and (c) the fact that many supported housing tenants occupy dwellings on (insecure) assured shorthold tenancy terms;
- ASB evictions in general needs housing account for 7% of all general needs evictions; for the supported housing the equivalent figure is 40%;
- Whilst overall housing association evictions fell by 6% in 2005-06, ASB evictions rose by 10%;
- Before proceeding with eviction action housing associations typically convene case conferences in an effort to identify any remaining alternative options;

- As yet, demotion orders have been used only in small numbers. However, this new power is welcomed by associations and seems likely to be used with growing frequency in future; and
- In addition to responding to reported incidents of ASB, housing associations operating in inner city and other urban areas typically undertake a wide range of preventative actions which are considered a vital element of their community safety strategies.

Introduction

Background

Along with collecting rents and arranging repairs, responding to complaints about anti-social behaviour (ASB) has been traditionally regarded as a core element of social housing management. A housing association is obliged to respond to complaints of ASB where such behaviour is either (a) allegedly committed by one of the association's tenants, or (b) affects an association tenant (even where the alleged perpetrator is not a tenant).

Housing associations have long experience of countering ASB. In the past few years, however, the context for such activity has changed in two important ways. Firstly, the phenomenon of ASB

has emerged as a high profile social problem in political and media debate. Secondly, and partly in response to this, a range of new legal powers has been made available to associations alongside the traditional ‘big stick’ threat of possession action. In particular, associations are now empowered to obtain anti-social behaviour orders – ASBOs (as from 2002) and injunctions (as from 2003) from the civil courts. A ‘final warning’ power to demote tenancies of ASB perpetrators was also introduced in 2003. The launch of the government’s Respect Action Plan in 2006 re-affirmed social landlords’ centre stage role in tackling ASB². Extensive good practice advice on how housing associations can maximise their contribution to this agenda has been published by the Housing Corporation and others³.

Commissioned in 2006, therefore, the current study was tasked with:

- examining the scale and nature of housing associations’ use of counter-ASB powers;

- analysing national trends and sub-national variations in associations’ use of counter-ASB powers; and
- contributing to the development of national policy and best practice guidance.

It is, however, clear that legal ‘enforcement’ measures alone are an insufficient response to ASB. This is partly because the term ‘anti-social behaviour’ is used to cover such a wide range of phenomena. Clearly, this can involve malicious actions verging on criminal offences. Much of what is classed as ASB, however, falls short of this threshold and is often termed ‘nuisance’ in the housing management vernacular.

Another important form of largely non-criminal ASB is the nuisance which can result from mentally ill tenants causing excessive noise and/or otherwise acting erratically in the vicinity of their home. Except perhaps as a last resort, legal ‘enforcement action’ is not an appropriate response to the discomfort

² Communities & Local Government (2006) Respect Standard for Housing Management: A Guide for Social Landlords; www.communities.gov.uk/index.asp?id=1502192

Housing Corporation (2006) Promoting Respect: Tackling Nuisance Behaviour www.housingcorp.gov.uk/upload/pdf/Promoting_Respect.pdf

³ Central Consultancy and Training (2004) Anti-social Behaviour: A Good Practice Guide; London: Housing Corporation www.housingcorp.gov.uk/upload/pdf/ASBgoodpractice.pdf.

Chartered Institute of Housing (2005) Anti-social Behaviour; Good Practice Briefing No. 30; Coventry: CIH

Nixon, J. & Hunter, C. (2006) Tackling Anti-social Behaviour: Action Frameworks; Coventry: Chartered Institute of Housing

experienced by neighbours as a result of such incidents.

For these reasons the study extended beyond the use of legal powers to cover (a) the use of formal measures not defined in statute, and (b) supportive or constructive measures aimed at tackling the causes of misconduct.

Methodology

The study involved two main elements. First, we analysed the Housing Corporation's Regulatory and Statistical Return (RSR) dataset to illustrate the scale and pattern of associations' use of counter-ASB powers in recent years. The analysis focused on housing associations with over 1,000 dwellings in ownership. In 2005-06 the 350 associations concerned owned over 93% of all housing association stock in England. They were split almost evenly between stock transfer housing associations (49%) and traditional housing associations (51%).

Second, we undertook detailed case study work focusing on six associations operating in different parts of England. The case study housing associations were selected from landlords with a significant presence in three local authority areas believed likely to experience appreciable rates of ASB. Among the associations operating in each of these three local authority areas (Birmingham, Hackney and

Liverpool), two were selected on the basis of the RSR analysis as 'highly active' and 'less active' in relation to their use of legal measures.

Whilst the selected case study housing associations were not strictly representative of the sector as a whole, the group encompassed substantial diversity (e.g. in relation to size and origin) as well as apparently contrasting approaches to the use of legal powers. With three of the selected housing associations managing significant amounts of supported housing, the researchers were able to explore ASB issues specific to this type of accommodation. The case study housing associations were: Bromford, Family Mosaic, Industrial Dwellings, Liverpool Housing Trust, Midland Heart and South Liverpool.

The case study work involved in-depth interviews with housing association managers and front-line staff, as well as analysis of relevant policy and procedure documents.

Findings

The nature of ASB faced by housing associations

Consistent with earlier research findings⁴, case study evidence confirms that noise is the commonest trigger for ASB complaints, with verbal abuse and ‘youth nuisance’ also accounting for a significant share of reported problems. Typically, only a very small proportion of complaints are triggered by ‘serious ASB’ such as vandalism, harassment or violence. Whilst youth gangs and drug dealing were a problem for several case study housing associations, there was a consensus that alcohol abuse rather than drug misuse was a more widespread underlying factor.

Vulnerable tenants (e.g. mental ill-health sufferers) generally constitute only a fairly small minority of ASB perpetrators. Such cases, however, generate a disproportionate burden on housing staff time. Vulnerability is also implicated in ASB, in placing certain tenants at greater risk of ASB victimhood. This may occur because vulnerable tenants are actively targeted

by perpetrators – e.g. exploitation of a young person’s lack of ‘door control’. It can also result from lower tolerance thresholds among certain vulnerable tenants making them more likely to experience certain behaviour as problematic.

The nature of the ‘ASB problem’ faced by each landlord was seen by case study housing associations as strongly related to the nature of their own housing portfolio. For example, flatted stock in converted buildings was particularly liable to generate noise complaints. This was compounded where older people tended to occupy ground floor flats below families and/or young single people. Hence, associations mainly managing stock of this type typically faced ASB complaints of a particular kind. Conversely, associations managing appreciable amounts of estate-style housing were more likely to be faced with youth disorder resulting from the congregation of young people in public areas. Such contrasts were also reflected in the forms of action typically taken to combat serious ASB (see below).

Supported housing schemes pose an inherently greater risk of ASB given the nature of the

⁴ Pawson, H, Flint, J, Scott, S, Atkinson, R, Bannister, J, McKenzie, C & Mills, C (2005) Possession Actions and Evictions by Social Landlords; London: ODPM
www.communities.gov.uk/index.asp?id=1153696

Pawson, H & McKenzie, C (2006) Social landlords, anti-social behaviour and countermeasures; in Flint, J (ed) Housing, Urban Governance and Anti-social Behaviour; Bristol: Policy Press

problems (e.g. alcoholism, mental ill-health) leading to a housing applicant being classed as in need of such support.

None of the case study housing associations maintained recording systems capable of mapping trends in the overall volume of ASB complaints over a run of years. However, it was generally perceived that a rising trend of reported complaints in recent times mainly reflected rising expectations – in part prompted by wider media coverage (e.g. Neighbours from Hell). Most staff interviewees believed the underlying rate of ASB to have been fairly stable over the past few years; the one exception being a view that an expanding caseload of vulnerable tenants housed by housing associations was inevitably generating a rising volume of ASB complaints to such landlords.

Several case study housing association staff anticipate a growing volume of ASB in the medium and longer-term future, as the tenant population becomes increasingly weighted towards younger people and with a dwindling presence of longer-established families, who have in some instances provided a source of stability on estates for many years.

Housing association procedures in responding to anti-social behaviour

Most of the case study housing associations referred to documented service standards for responding to ASB. Exemplifying the most succinct of these was the Family Mosaic commitment to:

- investigate all complaints through an initial meeting with the complainant (within five working days – or 24 hours if deemed an emergency);
- further investigate cases by gathering information from alleged perpetrators and witnesses (within ten working days of the initial complaint);
- where appropriate, develop an ‘action plan’ to address the problem (within 30 days of the complaint);
- regularly update complainants about progress on live cases (at monthly intervals, according to procedure guide);
- not normally take any action unless the complainant has tried to resolve the matter themselves;
- take action (against an alleged perpetrator) only with the complainant’s consent;
- close cases which have been resolved to the satisfaction of the complainant or have generated no further complaints over a three month period; and

- in cases to be closed, write to the complainant explaining the reason and inviting the complainant to contact the association if dissatisfied with case closure.

Most of the case study housing associations monitored the effectiveness of their ASB procedures through measures of customer satisfaction (e.g. through routine surveys of complainants), and/or indicators focusing on administrative processes (e.g. the monthly balance between ASB cases opened and cases closed). There was broad agreement that such systems needed to avoid an excessive focus on the simple numbers of legal actions initiated or concluded.

Again consistent with other recent research, most case study housing associations reported a continuing tendency towards a more functionally specialised style of operation in dealing with ASB⁵. Front-line staff were becoming less generic and designated ASB posts were being established. Specialist ASB officers, sometimes legally qualified staff, tended to be tasked with taking forward cases seen as potentially appropriate for court action. In some cases their role also involved training front-line and other non-specialist colleagues.

Non-legal remedies for ASB

Mediation

Mediation involves the intervention of a third party to reconcile individuals in dispute. Reflecting the good practice literature⁶, case study housing associations tended to see mediation as potentially useful in tackling 'low level' ASB – especially those involving claims and counter-claims.

All six case study associations made mediation referrals to external providers – either specialist voluntary agencies or local authorities. However, one organization – South Liverpool Housing – had also banded together with four fellow associations to commission staff training in mediation. Subsequently, the consortium had established a service level agreement under which the trained staff undertook mediation on behalf of other member landlords. This arrangement preserved an element of mediator independence, often seen as crucial in gaining the confidence of parties in dispute. Similarly, when providing mediation on an in-house basis, Bromford housing association had a policy of making referrals to trained staff members based in other offices (and, hence, with no direct involvement in the case in hand).

⁵ See footnote 4

⁶ See footnote 3

In some cases referrals could be made to external agencies free of charge (as in the Birmingham City Council service offered to local housing associations). However, even where mediation referrals attracted fees on a per case basis (e.g. £600 for Family Mosaic referrals to the Centre for Effective Dispute Resolution). This had the potential to be highly cost-effective where it enabled an association to avoid ongoing staff costs otherwise liable to be incurred in dealing with unresolved disputes.

One association (Bromford) reported that at least half of all ASB complainants were offered mediation. Another – Family Mosaic – recorded mediation as the association’s main response in relation to 14% of logged ASB cases. However, all case study housing associations acknowledged that the potential of mediation remained only partially fulfilled. A common problem was the need to overcome complainants’ reluctance to engage with the process. One response was the Family Mosaic policy on ASB complaints judged potentially suitable for mediation; here complainants were required to engage with a mediator as a condition of further landlord action should mediation fail to resolve the problem. More broadly, all case study housing

associations recognised the need for more active promotion of mediation and its benefits on the part of front-line staff.

While mediation was generally seen as having unexploited potential, it was emphasized that the technique is never suitable for cases involving harassment, violence or other criminal behaviour. Only to a very limited extent, therefore, can greater use of mediation be seen as a potential alternative to legal action such as repossession. Case study housing associations also saw mediation as having little relevance to tackling ASB involving supported housing tenants, since reluctance to engage with a mediator was an even more intractable problem here than in relation to tenants of general needs housing.

Acceptable Behaviour Contracts

Acceptable Behaviour Contracts (ABCs) were first developed in the London Borough of Islington and more recently adopted widely across the country⁷. An ABC (despite the term ‘contract’) is a voluntary agreement which places clearly defined limits on the subject’s behaviour. In that they involve anti-social behaviour perpetrators

⁷ Bullock, K. and Jones, B. (2004) *Acceptable Behaviour Contracts: Addressing anti-social behaviour in the London Borough of Islington*, London: Home Office

facing up to the impact of their actions on others, ABCs have been described as a form of ‘restorative justice’⁸. In spite of the absence of legal sanctions to enforce compliance, it has been widely reported that ABCs are often an effective means of tackling misconduct – particularly where this involves young people. Our earlier research showed that two thirds of housing associations had already made some use of ABCs by 2003⁹.

All six case study housing associations were making some use of ABCs and saw these as a useful response to moderate anti-social behaviour on the part of young people. Drawing up ABCs often involved joint working with the police, with schools or with social services. Agreements generally include a statement where the individual recognises the unacceptable nature of their behaviour, detail prohibited actions and specify the consequences of breaching the compact. Some housing associations include within ABCs actions on the association’s part to help buttress the contract e.g. regular visits or the provision of support. Typically, agreements are of six months duration.

Wherever possible, associations involve a young person’s parents in the process of drawing up and signing an ABC because parental commitment significantly improves the chances of an agreement’s terms being honoured by the subject. Some case study housing associations routinely required ABCs to be signed at the local police station and it was reported that young perpetrators often found this a sobering experience.

All case study housing associations had found ABCs effective in the sense that relatively few were breached. Regular monitoring of ABCs (housing association or police visits to the subject) was regarded as crucial in achieving successful outcomes here. Where ABC terms were broken, associations normally expect to progress to more serious measures. Often ABC breach would lead to consideration of an ASBO application. In one case study area local judges had been asking for evidence of a failed ABC before granting ASBOs. Another association noted that a parenting order is sometimes an appropriate follow on action after an ABC breach, since lack of parental support is a common reason for ABC failure.

⁸ Rubin, J., Rabinovich, L., Hallsworth, M. and Nason, E. (2006) Interventions to Reduce Anti-social Behaviour and Crime: A review of effectiveness and costs; Technical Report; National Audit Office www.nao.org.uk/publications/nao_reports/06-07/060799_rand_europe.pdf

⁹ See footnote 4

To promote the expanded use of ABCs two case study housing associations had drawn up standard templates for use by estate management staff.

As well as being typically successful in stemming unacceptable behaviour, ABCs were also seen as both quick and cheap by comparison with legal action. However, whilst there were concerns that excessive use of ABCs could devalue their impact, recorded numbers remained quite small for some case study landlords. Two believed that it would be helpful for the Housing Corporation to produce more specific guidance on ABCs and their effective use.

Legal remedies for ASB

Overview on use of legal powers

Most of the housing associations in the Housing Corporation's RSR dataset made use of at least one ASB power in 2005-06. As shown in Table 1b, almost two thirds evicted at least one tenant for ASB during the year, whilst just over half successfully obtained ASB injunctions. Nearly four fifths (78%) made use of at least one of the four powers listed in Table 1 (see Table 1b).

Table 1 – Use of powers: overview

(a) Number of housing associations using each power in 2005-06

Form of action	London	South	Central	North	England
ASBOs granted	22	14	27	42	105
ASB injunctions granted	31	39	52	65	187
Eviction (for ASB)	43	52	69	67	231
Creation of demoted tenancies	5	13	13	7	38
None of the above	15	22	19	21	77
HAs in region	70	85	101	102	358

(b) Percentage of housing associations using each power in 2005-06

Form of action	London	South	Central	North	England
ASBOs granted	31	16	27	41	29
ASB injunctions granted	44	46	51	64	52
Eviction (for ASB)	61	61	68	66	65
Creation of demoted tenancies	7	15	13	7	11
None of the above	21	26	19	21	22

In 2005-06 just over half of housing associations (52%) made use of two or more of the four powers listed in Table 1. More than a quarter (27%) used at least three powers. Conversely, as shown in Table 1, just over a fifth of associations invoked none of the four specified powers during the year. As might be expected, there is some relationship between association size and the number of powers invoked. The average stock total of those using none of the four powers was 3,000 – well below the sector-wide average of 5,000. Nevertheless, the 77 housing associations in this group included eight with more than 5,000 homes in management.

Regionally, whilst the proportion of housing associations using ASB eviction powers is

remarkably similar across the country¹⁰, ASBOs and anti-social behaviour injunctions (ASBIs) are much more commonly used in the North than elsewhere. The extent to which this simply reflects differences in the regional incidence of ASB cannot be determined.

As stressed by a number of case study housing associations, a factor common to all legal actions to tackle ASB is the critical need to facilitate witness testimony. This was recognized as calling for significant investment in terms of the staffing resources needed to visit, counsel, re-assure witnesses, as well as arranging for accompanied travel to and from court. One association felt that the importance of this issue and the lack of consistent landlord

¹⁰ Note that the regional analysis reported in this paper classifies housing associations according to the region where their head office is located.

practice called for specific Housing Corporation good practice guidance.

ASB injunctions

Injunctions are a civil law measure which can be imposed on an alleged ASB perpetrator to prevent continued misconduct. Like an ABC, an injunction specifies unacceptable actions which the subject must not commit. Injunctions usually apply for a specified period, but they can be of indefinite duration. Breach of such conditions amounts to ‘contempt of court’ – a criminal offence potentially punishable by imprisonment. Some injunctions come with a ‘power of arrest’ which means that, if in breach of conditions, the subject may be arrested and held in custody. Importantly, however, injunctions cannot be obtained for young persons under 18.

Since 2003 housing associations have been able to obtain injunctions to counter ASB where the

alleged perpetrator is a housing association tenant (legal powers under Housing Act 1996 S153). Injunctions are obtained through application to the County Court. The judge will grant an injunction if convinced, on the ‘balance of probabilities’, that the alleged anti-social acts have, indeed, been committed by the alleged perpetrator (it is not necessary to prove this ‘beyond all reasonable doubt’ as would be required in the criminal courts). This means that injunctions require a lesser burden of proof than criminal prosecution and consequently an injunction may be seen as a more suitable response than prosecution in cases of alleged – but hard to prove – criminal activity such as drug dealing.

Where the terms of an injunction are breached the case must be brought back to court and evidence of the breach submitted. If found guilty of contempt of court the subject can be imprisoned for up to two years.

Table 2 – ASB injunctions granted to housing associations in 2005-06

Form of action	London	South	Central	North	England
2005-06 ASBIs – number	111	119	176	331	737
2005-06 ASBIs per 100,000 stock	30	30	38	56	41

Source: Housing Corporation RSR dataset

Just over half the housing associations in the RSR (>1,000 stock) dataset obtained injunctions against tenants responsible for ASB in 2005-06 (see Table 1b). Injunctions granted totalled 737 – more than double the number of ASBOs (see Tables 2 and 3). Again, the incidence of housing association injunctions is substantially higher among associations operating in the North of England than among those working elsewhere (see Table 2). Because data on ASB injunctions was collected in the RSR only for the first time in 2005-06 it is not possible to track trends over time.

Five of the six case study associations had obtained injunctions in the previous year. These were seen as appropriate for cases of serious ASB calling for a rapid response to protect victims from possible harm. In most areas ‘without notice’ injunctions could be obtained within 24-48 hours. Injunction applications were also straightforward because – in contrast to anti-social behaviour orders – there was no routine necessity for consultation with other parties (e.g. local authority departments).

Offences prompting injunction applications usually involve conduct of a criminal or near-criminal nature. Threatening behaviour or violence (including domestic violence) is often implicated. Sometimes applications by associations are triggered by a police request in relation to criminal activity where evidence

is believed inadequate to sustain a criminal conviction.

As a rule the courts were seen as sympathetic to injunction applications aimed to counter ASB. It was, however, stressed that convincing witness testimony was crucial and that judges’ willingness to grant injunctions depended on victims appearing in court. Conditions imposed under ASB injunctions often included a requirement for subjects to desist from specific noisy activities or a prohibition of contact with neighbours.

Since breach of an injunction is a criminal offence, case study housing associations saw monitoring of conditions as being largely a police responsibility. Clear and effective housing association procedures for notifying the police of injunctions granted were, therefore, important.

Universally, case study housing associations saw injunctions as an effective response to ASB in that relatively few were breached. Where such breaches did occur, imprisonment was almost certain to result.

As well as being quick and effective, injunctions were viewed by case study housing associations as providing good value for money. Estimates of the typical ‘cost per action’ varied from £800-£3,500 in one instance, to £2,000-3,000

in another. Legal fees generally form a large element of such costs. Partly for this reason there is increasing interest in the concept of 'DIY injunctions'. One case study housing association – South Liverpool Housing – had successfully secured an injunction on this basis in 2005, with the case being brought single-handedly by a member of the association's community safety team, trained in relevant legal procedures. Family Mosaic Housing planned to introduce 'DIY injunction' applications in 2007.

However, other case study housing associations had experienced difficulties in attempting to take on greater direct responsibility in seeking injunctions. One had seen a recent application rejected by a judge on the grounds that the association staff member charged with the case was not a professionally qualified solicitor. Another case study housing association reported difficulties stemming from the fact that, in cases involving anti-social behaviour, staff without a formal legal qualification lack rights of audience with judges. While judges were believed sometimes willing to overlook this issue, legal reform to extend rights of audience in such cases was considered a priority.

Case study evidence suggests that injunctions are often used in combination with possession actions so that a victim of serious ASB can benefit from immediate protection even though a possession action is likely to take at least

six months before resulting in actual eviction (see below). Case study housing associations strived to avoid the use of injunctions against vulnerable perpetrators. In the last resort, however, an injunction was seen as preferable to possession action in such instances. According to one association, an injunction application might be actioned in respect of a vulnerable perpetrator in part to secure the intervention of social services which had not previously been forthcoming.

Anti-social behaviour orders (ASBOs)

Anti-social behaviour orders were established under the Crime and Disorder Act 1998. Similar to an injunction, an ASBO is a civil law measure where breach of conditions specified in the order is a criminal offence. From a housing association perspective, however, ASBOs differ from injunctions in that (a) they are not restricted to housing association tenants, and (b) they may be obtained against alleged ASB perpetrators aged under 18.

Since 2002 housing associations have been empowered to make ASBO applications direct to the County Court. Previously, associations could obtain an ASBO only indirectly, with the help of a local authority which would be the formal applicant for the order. In seeking an ASBO from the County Court, the applicant organisation (police, local authority or housing association) proposes a set of conditions and a duration for

the order. Whilst few applications are rejected judges may, in some cases, modify the proposed conditions and/or the duration of the order.

ASBOs may be obtained as interim orders or full orders. An interim ASBO is a temporary measure designed to restrain 'serious ASB' where any delay could put victims at risk of repeated offences. An applicant (police, local authority or housing association) seeking an interim ASBO can request such an order without notice and such applications are usually granted pending a full hearing at the next scheduled court sitting.

Another form of ASBO, recently created, is the criminal law ASBO or CRASBO. These are orders made by a criminal court as a sentence for a proven criminal offence (for example, as an alternative to immediate imprisonment). CRASBOs are distinct from normal ASBOs in that they do not start out as civil orders. Therefore,

they are not susceptible to the criticism that they blur the distinction between civil and criminal law¹¹.

Some 105 housing associations successfully applied to the courts for ASBOs in 2005-06 (see Table 1a). While the 306 orders granted was a modest rise on 2004-05 (see Table 3), the rate of increase is well under that recently registered by local authorities and the police. The most recently available figures for local authority/police ASBOs granted show these increasing at an annual rate of over 150%^{12 13}.

Disaggregating the RSR figures to regional level reveals that only in the North of England is housing association use of ASBOs on the increase. As a result the incidence of ASBOs granted in this region (at 28 per 100,000 housing association dwellings) was well above the national average (17 per 100,000 housing association dwellings – see Table 3).

¹¹ Burney, E. (2002) Talking Tough, Acting Coy: Whatever Happened to Anti-social Behaviour Orders? *The Howard Journal* Vol 41(5) pp469-484

¹² Home Office crime reduction website: www.crimereduction.gov.uk/asbos/asbos2.htm

¹³ It should be noted that a proportion of ASBOs recorded as being obtained by local authorities or the police will involve housing association tenants. Some of these actions will have been initiated and taken forward with significant housing association involvement. Case study evidence suggests that at least some housing associations include such ASBOs within the numbers recorded on RSRs. This is potentially problematic since it means such orders will be double counted. RSR guidance needs revising here.

Table 3 – ASBOs and ASB injunctions granted to housing associations in 2004-05 and 2005-06

Form of action	London	South	Central	North	England
2004-05 ASBOs – number	84	36	65	98	283
2005-06 ASBOs – number	47	30	64	165	306
2004-05 – ASBOs per 100,000 stock	24	9	15	17	16
2005-06 – ASBOs per 100,000 stock	13	8	14	28	17

Source: Housing Corporation RSR dataset

In assessing the scale of use of ASBOs by housing associations it is useful to bear in mind the number of orders granted in 2005-06 (306) with the number of eviction actions entered in court (around 1,100 in relation to general needs housing only – see below). Therefore, whilst some ASBO applications are made in parallel with eviction action, such an approach is clearly not standard practice.

Three of the six case study housing associations had made use of ASBOs. In countering serious misconduct affecting their tenants, associations tended to prefer to use injunctions wherever possible; ASBOs were sought only where injunctions were inappropriate, either because the perpetrator was aged under 18 or because the local authority or another agency had a direct interest in the case (e.g. where the perpetrator was a council tenant).

Partly because it always involved multi-agency working, obtaining ASBOs was generally found to be a more time-consuming process than was true of injunctions. Another factor was financial, with ASBOs typically costing at least £5,000 in legal and other charges.

Associations nevertheless saw ASBOs as potentially effective in that relatively few were breached. Equally, however, there were concerns that the deterrent impact of ASBOs had been seriously diluted by sensationalist media treatment.

Two case study housing associations voiced enthusiasm for CRASBOs as a penalty for criminal offences committed by association tenants. One association had collaborated

extensively with the police in assisting with prosecutions leading to CRASBOs ¹⁴.

Evictions

A housing association may recover possession of a dwelling where the tenant is in breach of terms in the tenancy agreement. This usually involves rent arrears or ASB. To secure repossession a landlord must apply to the County Court and secure a possession order (PO). In practice, the courts have quite a high threshold for granting POs in cases prompted by ASB. As a rule the judge must be convinced that the misconduct is serious and that there are no extenuating circumstances.

Judges may grant outright possession orders (OPOs) or suspended possession orders (SPOs). Under an OPO, a landlord is simply granted possession of the property after a specified period – usually 28 days. Similar to an injunction or ASBO, a suspended possession order specifies conditions which the tenant must uphold. If these are breached the landlord can return to court to obtain an eviction warrant.

RSR data shows that, in all, housing associations evicted some 11,600 tenants in 2005-06 (see Table 4). Of these, 78 % were general needs tenancies, with the remainder involving supported housing.

Table 4 – Housing association evictions, 2005-06

Trigger factor	General needs – number	Supported housing – number
Rent arrears only	8,043	912
ASB only	517	832
ASB and rent arrears	132	185
ASB total	649	1,017
Other	401	611
Total	9,093	2,540

Source: Housing Corporation RSR dataset

¹⁴ Case study evidence suggests that some housing associations may be including CRASBOs obtained by the police with association assistance within the ‘housing association ASBO’ figures submitted in RSRs. This calls for revision of RSR guidance.

Evictions for anti-social behaviour in 2005-06 totalled 1,666. Of these, 1,017 (62 %) involved supported tenancies. Taking account of the much smaller size of the supported housing stock, the 2005-06 rate of ASB evictions from supported housing was 15 times as great as the equivalent figure for general needs housing – 2.97 per thousand dwellings as compared with just 0.44 per thousand dwellings.

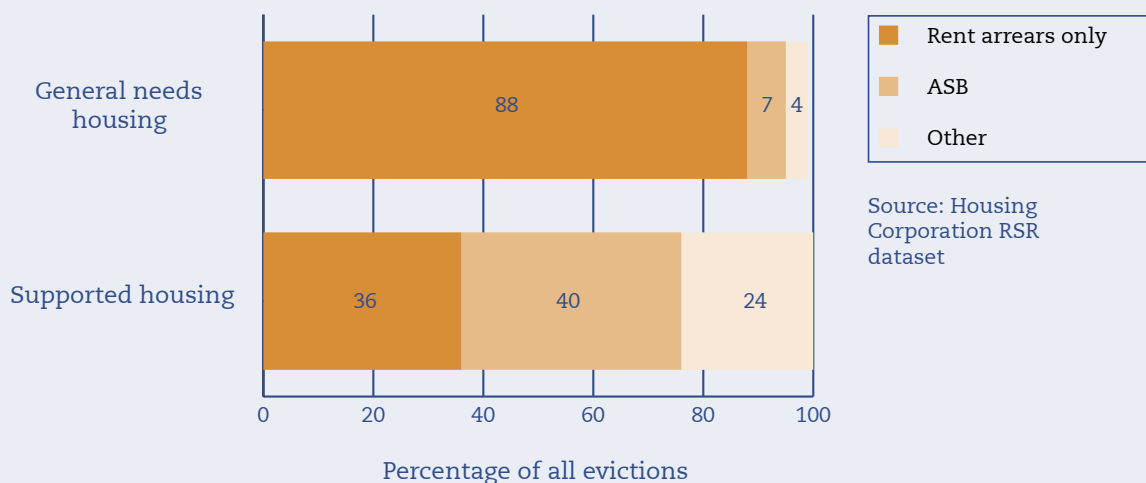
Case study and other evidence suggests that the relatively high rate of evictions from supported housing probably reflects:

- the extent to which SH tenants are members of groups at high risk of committing ASB (e.g. people with a history of alcohol or substance abuse);

- the typically limited impact of alternative measures (e.g. mediation, injunctions) where vulnerable tenants are involved; and
- the fact that many supported housing tenants occupy dwellings on (insecure) assured shorthold tenancy terms.

Within general needs housing the 649 evictions in 2005-06 primarily or partly triggered by ASB accounted for 7% of all evictions. The equivalent figure in supported housing was 40% (see Figure 1).

Figure 1 - Evictions by housing associations in 2005-06



Total housing association evictions fell by 6% in 2005-06 (allowing for the growing size of the sector). ASB eviction rates, however, grew by 9% for general needs housing and 10% for supported housing (see Table 5). Notably, in contrast to the picture for ASBOs and injunctions (see Tables 2 and 3), general needs housing eviction rates for northern housing

associations were somewhat below the national average (see Table 5a).

With respect to supported housing, ASB eviction rates appear to be more variable from year to year. Generally, however, rates were above the national average in London and in the Midlands (see Table 5(b)).

Table 5 - Housing association evictions for ASB in 2004-05 and 2005-06

(a) General needs housing

	London	South	Central	North	England
2004-05 – no.	120	115	194	154	583
2005-06 – no.	147	135	191	176	649
2004-05 – no. per 1,000 stock	0.41	0.38	0.53	0.32	0.41
2005-06 – no. per 1,000 stock	0.48	0.47	0.50	0.35	0.44
Annual % change in rate	19	23	-5	10	9

(a) Supported housing

	London	South	Central	North	England
2004-05 – no.	231	131	294	173	829
2005-06 – no.	226	72	368	351	1,017
2004-05 – no. per 1,000 stock	4.03	1.48	4.12	1.93	2.70
2005-06 – no. per 1,000 stock	3.70	0.64	4.78	3.82	2.97
Annual % change in rate	-8	-57	16	98	10

Source: Housing Corporation RSR dataset

The incidence of ASB evictions from general needs stock is generally proportional to association size. There is, for example, no evidence that smaller associations are generally more likely to evict tenants than their larger counterparts.

Previous research¹⁵ has shown that for every ASB eviction there are around 1.7 ASB-triggered possession cases entered in court. This would suggest that the number of such actions entered in court by housing associations in 2005-06 will have totalled around 1,100 (giving rise to 649 actual evictions).

Five of the six case study housing associations had made some use of possession actions in the previous two years. Possession actions were judged appropriate only in cases of very serious and persistent misconduct. All saw repossession as a last resort measure to be carried through only when all other possible ASB responses had proved unsuccessful. In many cases, however, possession actions were pursued in tandem with other measures, particularly injunctions.

Typically, a case conference is held before possession action is initiated. Such meetings

bring together other relevant agencies such as social services and probation to review the situation and – where possible – identify alternative responses not yet attempted. One interviewee commented that, by the time any tenant is evicted, they will usually have been subject to a series of warnings, visits and other measures – including offers of support. Interviewees stressed the reluctance of the courts to grant possession except where it could be clearly demonstrated (a) that the ASB was serious and persistent, (b) that eviction was a last resort measure, and (c) there were at least two witnesses attesting to the misconduct concerned.

As noted above, ASB eviction rates are particularly high for tenants of supported housing. One case study association reported that in cases involving serious ASB on the part of the supported housing tenants, efforts are typically made to step up support before initiating possession action. Only after unsuccessfully working with a supported housing perpetrator for up to a year would the association potentially take this step.

¹⁵ Pawson, H., Flint, J., Scott, S., Atkinson, R., Bannister, J., McKenzie, C. & Mills, C. (2005) Possession Actions and Evictions by Social Landlords; London: ODPM

Tenancy demotion

The power to demote tenancies was introduced in the Anti-Social Behaviour Act 2003. The terminology here refers to the fact that most housing association tenants have an assured tenancy which provides them with substantial security. Demotion transforms an assured tenancy into a (less secure) assured shorthold tenancy. If the tenant subsequently commits another offence – whether ASB or rent arrears – an association may evict without needing to return to court. A tenant’s right of redress in these circumstances is very limited – ultimately, a case can be referred to the Independent Housing Ombudsman.

Tenancy demotion is supposed to serve as a ‘serious warning’ to the tenant. The same could be said of a suspended possession order (SPO –see above). However, it is argued that tenants subject to demotion may better understand their precarious situation than where an SPO is used. It is argued that a demotion ‘sends a clearer message’ than an SPO which is ‘often seen as a positive result’¹⁶.

Powers to create demoted tenancies were introduced only in 2004. The scale of activity here remained quite small in 2005-06; nationally, only 38 housing associations created one or more demoted tenancies during the year – 80 such tenancies in all. Discounting implausible data it appears that around half of demoted tenancies result in eviction.

Most of the case study associations had made some demotion applications in circumstances where possession orders would otherwise have been sought. One landlord had adopted a practice of seeking demotion in any case where the judge was unwilling to grant outright possession. This was linked with the association’s practice of making concurrent possession and demotion applications to save on legal fees and administrative time. Associations welcomed demotion powers because, by comparison with a suspended possession order (where breach requires a landlord to return to court), demotion places the landlord in control of responding to further offences (no requirement to return to court). It was, however, recognized there is a responsibility on housing associations to use this power responsibly.

¹⁶ ODPM (2005) Demotion Orders; Factsheet No. 3. www.together.gov.uk/category.asp?c=79

However, there had been contrasting experiences of judicial decision-making in demotion cases. In one area judges were perceived as more willing to grant demotions than suspended orders. In another area the opposite was true; efforts to obtain demotions had resulted in SPOs. Nevertheless, notices of intent to demote tenancies had been found effective in deterring ASB.

On the basis of this evidence it would appear likely that tenancy demotions will be sought in growing numbers in coming years, with a corresponding reduction in applications for possession.

Diversionsary and preventative approaches

Case study evidence suggests that associations operating in areas with higher rates of ASB typically undertake a wide range of preventative actions. These range from 'diversionary activities' for young people to the incorporation of security and sound-proofing features within asset management strategies. Commonly featured among 'diversionary projects' are:

- sponsorship and/or organisation of youth football;
- holiday activity programmes; and
- after-school and youth clubs.

Several case study housing associations involved local young people in environmental clean-up activity (e.g. South Liverpool's 'youth squad') or engaged them in estate management through youth committees (South Liverpool, IDS) or as 'junior wardens' (LHT). Work placements for local youngsters had also been introduced by some landlords.

Recently instituted environmental improvements to help deter ASB commonly included upgraded estate lighting and CCTV.

One association stressed its programme to modify its supported housing stock profile to eliminate flats with shared facilities and to break up large blocks creating concentrations of vulnerable people.

Conclusions

The vast majority of anti-social behaviour complaints made to housing associations involve relatively minor misconduct, most commonly excessive noise. Such complaints are appropriately dealt with through informal, non-legal responses.

However, most associations are regularly faced with at least some ASB incidents serious enough to warrant the use of legal powers. Almost 80% of housing associations used at least one of

the four main available legal sanctions in 2005-06. Such actions are generally triggered only by criminal or near-criminal offences such as drug dealing, harassment or violence. Overall, possession actions and injunctions are the most widely-used forms of ASB-triggered legal action used by housing associations. Whilst sharing some of the features of injunctions, ASBOs tend to be used only where injunctions cannot – in cases of misconduct by young people or other non-tenants. Consistent with other recent research, this reflects a general view that injunctions were relatively easy to use whilst ASBOs could be more problematic¹⁷.

As a relatively new device, tenancy demotion orders have so far been used only in small numbers. However, the new power is welcomed by associations and is consequently likely to be used on an increasing scale in years to come.

In addition to responding to reported incidents of ASB, housing associations operating in inner city and other urban areas typically undertake a wide range of preventative actions which are considered a vital element of their community safety strategies.

Particularly where responses include actions such as ABCs or ASBOs, an effective approach to tackling anti-social behaviour on the part of housing associations requires effective partnership working – especially with local authorities and the police. Whilst such liaison has clearly improved considerably in most areas over the past few years, case study evidence suggests that there is scope for further advances in some localities. This is a particular challenge for associations managing a large stock spread thinly across many localities and for councils presiding over a social housing stock highly fragmented across many non-locally based providers.

Action points

Case study housing associations saw a need for additional Housing Corporation guidance on the use of acceptable behaviour contracts and action to assist ASB witnesses whose evidence could be vital in pursuing court actions.

There was also a call for legal reform to extend rights of audience in ASB legal cases. This would

¹⁷ See footnote 1.

facilitate the presentation of cases by staff without a formal legal qualification, thereby eliminating the necessity of involving solicitors in straightforward cases.

Associations need to be encouraged to take more seriously the maintenance of consistent record keeping systems to enable the tracking of trends over time in relation to both ASB incidents and actions.

The RSR form needs to be modified to distinguish between:

- ASBOs sought by an association from the courts;
- ASBOs sought by a local authority on behalf of an association; and
- CRASBOs imposed as part of a criminal sentence involving housing association tenants (and where the association may have contributed to the prosecution case).