

RH 14

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/  
Communities, Equality and Local Government Committee

Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill

Ymateb gan: Resolve Antisocial Behaviour (Grŵp Troseddau a  
Niwsans Landlordiaid Cymdeithasol)

Response from: Resolve Antisocial Behaviour (Social Landlords  
Crime and Nuisance Group)

### **Introduction**

I write on behalf of RESOLVE Antisocial Behaviour (formerly known as the Social Landlords Crime and Nuisance Group).

Established in 1995, RESOLVE Antisocial Behaviour is a not-for-profit organisation that exists to help those involved in the social housing sector to deal positively with antisocial behaviour (ASB) and empower communities.

Tackling ASB is core business for our 300 plus members who manage in excess of 3 million homes throughout the UK including the majority of social housing provision in Wales.

Our membership includes a large proportion of the leading practitioners at the sharp end of tackling ASB across Wales and with a proven track record of positive achievement stretching back almost two decades.

This response represents the views of RESOLVE Antisocial Behaviour and not necessarily those of individual members. However, the views of the membership in Wales have been sought in the preparation of this response.

### **RESOLVE Antisocial Behaviour's response**

Consistent with our response to the earlier consultation on the White paper in August 2013, RESOLVE Antisocial Behaviour remains supportive of the Bill's principal objectives.

We do, however, have concerns over two specific aspects of the Bill as it is currently drafted, namely:

1. Section 55 - Anti-social behaviour and other prohibited conduct
2. Possession claims (withdrawal of Ground 7a)

Our concerns arise from the understanding that these provisions if not amended will unintentionally impede the ability of housing providers and their partners to resolve ASB in specific circumstances and, in the case of Section 55 particularly, will introduce avoidable uncertainty in the courts thereby increasing the costs to litigants and the courts in terms of time and money and extending the suffering of victims.

The remainder of this response elaborates on these issues more fully.

## **1 Section 55 Anti-social behaviour and other prohibited conduct**

The prohibition on the contract holder in subsection (5) to “not allow, incite or encourage any person who is living in or visiting the dwelling” to act as mentioned in subsections (1) to (4) represents a fundamental departure from the current position whereby tenants are responsible for the behaviour of everyone residing in and/or visiting the property.

The current position effectively requires the tenant to ‘take control’ of their tenancy/household whereas S 55(4) as in the Bill suggests that responsibility on the part of the tenant for the acts/behaviour of such others will only apply in circumstances where s/he has express knowledge of or is complicit in the acts/behaviour involved.

When seeking the views of our members many cited cases where this wording could present difficulties. Examples of these cases include:

- Where a Parent/Guardian is away from the property and in their absence the child causes problems for the neighbours
- Where a tenant may be vulnerable and has an “open door policy”, with lots of visitors causing nuisance to neighbours and the tenant refusing (or often unable) to keep them away.

We understand that the inclusion of such wording is to prevent landlords seeking possession in cases where alternative remedies may be more appropriate, however we feel that through the adoption of proportionality assessments (whether formal or informal) landlords already take this into consideration. For these types of matters, landlords will routinely try many informal methods, including support referrals – it is the cases where these are unsuccessful in changing the behaviour that the Landlord may take the decision to seek possession, often to prevent the continued suffering of entire communities. In addition to the Landlord’s internal checks, given the discretionary nature of this ground, the Court provides a further test of necessity and reasonableness and therefore explicit provision in the Bill not required.

We also recognise the view that once a tenant has been warned of the behaviour and subsequently fails to curtail it, it could be argued that they are “allowing” the behaviour to occur. We are however concerned that whilst the inclusion of these words may not prevent Landlords from ultimately securing possession, they invite legal uncertainty which inevitably results in delays, additional costs and further suffering for the victims.

Further to the above, Landlords report the current wording of the ASB ground (as found in the Housing Act) assists them in reducing levels of ASB at early stages. Many have an Acceptable Behaviour Contract (ABC) process, with letters being sent to the Parents/Guardians of young people starting to exhibit ASB. Where these young people

reside in social housing property, letters sent often refer to the behaviour representing a breach of the Parents/Guardians tenancy conditions. This very cost effective intervention can often be enough to make the Parents/Guardians take responsible, given the powerful incentive of wishing to maintain their tenancy. We fear that S 55(4) weakens these low-level remedies.

Our view is that S 55(4) as currently drafted represents a significant and worrying diminution of the landlord's ability to address ASB and to protect victims adequately.

We see little or no evidence of landlords using the current ASB ground in a manner which could be deemed irresponsible and would respectfully submit that it is effective and does not need to be changed,

Accordingly, we recommend that the subsection is amended to replicate as fully as possible the current position as described.

## **2 Possession claims (withdrawal of Ground 7a)**

One negative impact, in our opinion, of the measures set out in the Bill if enacted will be the removal of the absolute ground for possession (7a) introduced last October by Section 97 of the Anti Social Behaviour Crime and Policing Act 2014.

We remain of the opinion set out in our response to the Welsh Government's consultation on the then proposed "*New mandatory power of possession for anti-social behaviour*" in 2012:

"The SLCNG [now known as RESOLVE Antisocial Behaviour] welcomes the recognition that tackling anti-social behaviour effectively requires implementation of a holistic approach within which prevention and early intervention techniques are used effectively by social landlords to deal with the majority of issues.

As noted in the consultation document, eviction is used sparingly, but without hesitation when it is necessary, to resolve cases.

Where eviction is necessary to resolve anti-social behaviour, the experience of many of our members is that it takes far too long to secure it.

For that reason we are fully supportive of the objective that the proposals seek to deliver – i.e. that of speeding up the eviction process in the interests of victims, witnesses and justice.

It is our view that the proposals, when implemented, have the potential to speed up the eviction process in a limited number of circumstances."

We recognise that there are some concerns about the effectiveness of a mandatory ground for possession, given case law which concludes that a landlord's right to possession is never absolute, however we

highlight further case law which confirms that challenges to these powers should only succeed in “exceptional circumstances”.

We also recognise a view that the absolute ground could result in an increased amount of possession cases: however, we believe that there are a number of safeguards that prevent inappropriate use of this power, including:

- Landlords having the discretion whether to use the absolute ground, even where circumstances would allow
- Landlords completing equalities/proportionality assessments before and during the case to determine whether action is reasonable/necessary
- Landlords adopting an internal review process, allowing for an independent scrutiny of the decision and for the tenant concerned to provide supporting evidence

We also consider that the withdrawal of the absolute ground would impact significantly on victims and witnesses to their detriment. The key benefit of the absolute ground for witnesses is that they do not have to attend Court and give evidence. It is the view based on experience of very many practitioners in Wales that victims and witnesses find attending Court and giving evidence a traumatic experience, even where intense support is put in place for them, and may refuse to support a case. This is increasingly likely in matters relevant to the absolute ground, where cases would be likely to relate to serious criminal/anti social behaviour and/or issues that have been on-going for some time.

Further, in some of the matters where the circumstances for the absolute ground would otherwise be made out, the victim may already have given evidence in the original hearing (e.g. the criminal conviction or breach of injunction hearing) and may find the prospect of having to do so again in a possession hearing too difficult to consider. Indeed, whilst speaking to Welsh members they cited cases where there had been two sets of proceedings for a matter (e.g. they had applied for an injunction which had not resolved the behaviour, leading to subsequent possession proceedings) and the witness had refused to support the second hearing after their experiences of the first.

Accordingly, we recommend that the Bill be amended to incorporate the current ground 7a for possession,

### **Closing comments**

Good and effective practice to tackle antisocial behaviour is at the heart of our purpose as an organisation. If there are any matters arising from this response, or should anything further be required, please do not hesitate to contact me.