



The Law Society

Home Affairs Committee Call for Evidence

Draft Anti-Social Behaviour Bill

Law Society Submission January 2013



Home Affairs Select Committee Call for Evidence: the draft Anti-Social Behaviour Bill

Submission by the Law Society of England and Wales

Introduction

1. The Law Society is the representative body for more than 140,000 solicitors in England and Wales. The Society negotiates on behalf of the profession, and lobbies regulators, government and others.
2. This submission has been prepared by members of the Law Society's Housing Law Committee, which is made up of specialist legal practitioners who advise a wide range of clients including local authorities and housing associations.

Summary

3. Anti-social behaviour damages the quality of life of its victims and is a serious abuse of a tenancy. Current court timescales for securing possession orders do not reflect the gravity of offences or the distress caused to victims, and it is essential that timescales are reduced.
4. Paradoxically, the introduction of an absolute power of possession for anti-social behaviour will only serve to exacerbate delay, for reasons we explain below. Moreover, as a matter of principle, judicial discretion is essential to ensuring that possession orders are made justly and effectively.
5. Possession orders are an important tool for dealing with serious anti-social behaviour. Under the current law the court must be satisfied that anti-social behaviour has occurred and that it is reasonable to grant possession. The law as it stands is sufficient for enabling landlords to evict tenants who commit anti-social behaviour offences where it would be reasonable to do so: the problems with delay need to be addressed through other, practical steps.
6. The Law Society believes that an absolute ground for possession would be excessive and unnecessary. The removal of judicial discretion and the protection of due process in any circumstances has to be justified, and we believe that the justification has not been made out.

Pinnock proportionality

7. The draft Bill states that landlords will have an unqualified right to possession subject only to the courts considering the proportionality of the decision 'where they are required to do so', in keeping with the *Pinnock* principle. According to the Supreme Court in the *Pinnock* case, any person who risks losing their home in possession proceedings has a right to raise Article 8 and have the matter determined by an independent tribunal¹. This will in effect render the absolute power of possession route redundant, as proportionality arguments will be raised in nearly all cases. These challenges will be costly and will exacerbate existing delays.

¹ Manchester City Council v Pinnock & Ors [2010] UKSC 45

Without notice applications

8. The draft Bill states that injunctions will be available on a without notice basis but does not state what the legal test for seeking a without notice injunction is. This will be problematic. The case of *Moat Housing v Harris & Hartless* demonstrates the issues associated with seeking an injunction on a without notice basis. A clear test should be included in legislation. A good basis for this test would be the current test used for non housing related anti-social behaviour injunctions. This test states that a without notice injunction 'may be applied where:

8.1.1. It is both necessary and proportionate to the harm that is sought to be avoided; and

8.1.2. that the complainants would be deterred from giving evidence if notice is given due to the significant risk of threats of violence or harm.'

Ambiguity

9. The wording of the proposed power is likely to cause confusion which will have an adverse impact on timescales. Phrases such as 'housing related' and 'locality' are ambiguous and require clearer definition to prevent lengthy debates before the courts.
10. The draft Bill states that the absolute ground for possession will apply to offences committed by tenants, members of their household or regular visitors which take place in the locality of the property or between neighbours away from it. This presents multiple problems. For example, the eviction of a family is not a proportionate response to an offence committed by the friend of a teenage child who is visiting the property.

Riot related offences

11. The draft Bill proposes to extend the scope of the discretionary ground for possession so that landlords would have powers to evict a tenant where they, or a member of their household, is engaged in riot related offences anywhere in the UK.
12. The Law Society supports the use of possession orders to deal with riot related offences only where there is such a link between the offence and a tenancy that would justify eviction as an appropriate sanction. Anti-social behaviour offences can be linked to possession of property through the requirement that the offence has occurred 'in the locality'. The same requirement should be applied to riot related offences, if this provision is removed, it may be difficult for the courts to see the link between a riot related offence and the punishment of eviction.

Reducing delay

13. Delay is a major source of concern. Currently eviction cases take around seven months from application to completion. The reasons for protracted court times include defendants failing to appear or being unrepresented, because further evidence is required, or there are difficulties in finding court time for a trial. Absolute possession orders cannot be an appropriate response to the appearance of unrepresented defendants at court, or the fact that more evidence is required; nor should they be used to compensate for the lack of time available within a hard-pressed court system.

14. The introduction of an absolute power of possession for anti-social behaviour will only serve to exacerbate delay. The debate should focus on the practical steps that can be taken to reduce timescales. A modern court system properly staffed and with appropriate technological support would help to achieve this.
15. Early interventions by social landlords successfully resolve over 80% of complaints about anti-social behaviour. Without losing sight of the impact of serious anti-social behaviour on victims, there is no escaping the fact that perpetrators often present a complex combination of problems to which eviction is not necessarily the answer. Although possession proceedings are in some cases unavoidable, taking possession of a home has serious implications not only for the individuals concerned and their families but also for local authorities. While possession of a residential property must be preserved as a last resort, it is essential that in these cases judicial discretion is retained.