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**Anti-Social Behaviour – Symptoms, Solutions, Strategies**

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**RESPOND Conference**  
**Wednesday 15<sup>th</sup> September 2010.**

***The implications for residents, local authorities and housing associations.***

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**Introduction.**

The enforcement of the law on anti-social behaviour (ASB) is becoming an integral part of the work of housing management. Housing legislation now criminalises certain behaviour and enforcement of sanctions takes place through exclusion from social housing (or former social housing) rather than traditional criminal law enforcement. This incorporates into the role of social housing management the enforcement of criminal law sanctions against a category of persons, defined by the place they live, who are alleged to have committed anti-social behaviour. This approach by the State is placing new pressures on housing managers, who must now comply with all the legal procedural requirements required under constitutional and human rights law, as well as managing housing, and addressing the needs of vulnerable tenant family members and neighbours.<sup>1</sup> It also raises important issues in relation to women's rights.<sup>2</sup>

Of course, the impact of criminal behaviour in some housing estates and communities has been shocking in Ireland, and the effects on individuals, who are intimidated, threatened and subjected to violence can be disastrous. Their rights to quiet enjoyment of their home and other rights are denied. Social housing tenants have a right to expect that their landlord will take action to control and prevent anti-social behaviour. There is clearly a need for action to prevent and deal effectively with such criminal behaviour. Of course, those involved in housing management have rights too and

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<sup>1</sup> For a summary of recent case law in this area, see Kenna, P. & Crowe, O. *Legal Briefings, Anti-social Behaviour*, (Dublin, Centre for Housing Research, July 2009).

<sup>2</sup> A recent report conducted in the UK highlighted some policy considerations in relation to anti-social behaviour orders granted there. In conducting a study of many anti-social behaviour orders the research found that such interventions had a disproportionate impact on women-headed households (over half). The findings showed that a majority of these cases involved single-parent mothers. Half of these women were subject to domestic violence, not only from their partners, but also from mother-son domestic violence. Two-thirds of those accused of anti-social behaviour were themselves victims of anti-social behaviour and victimisation. In some Court of Appeal cases examined, the judges, while recognising the presence of domestic violence and victimisation from neighbours, nonetheless stated that such did not excuse the behaviour of these mothers' children. The cases showed that unless the women accepted responsibility (predominantly for their children) and wished to change, they would lose their homes. Therefore the inability of these women to control their children, who were mostly adults themselves, was the main reasons ultimately for them losing their home. See Judy Nixon and Caroline Hunter, 'Disciplining Women: Anti-Social Behaviour and the Governance of Conduct' in A. Millie (ed.), *Securing Respect: Behavioural expectations and anti-social behaviour in the UK* (Policy Press, 2009).

should not be subjected to aggression or violence in their work. However, Anti-social Behaviour Strategies introduced under the Housing (Miscellaneous Provisions) Act 2009 can offer a new opportunity to address some of these issues, through a proactive approach involving key agencies and individuals in prevent ASB.

This short presentation outlines the legal definitions of anti-social behaviour, the obligations of housing authorities under the Act of 2009 and the implications for residents/tenants, local authorities and housing associations.

### **Definitions of Anti-social Behaviour**

Section 1 of the Act of 1997 defines “anti-social behavior” to include either or both of the following:

- “(a) the manufacture, production, preparation, importation, exportation, sale, supply, possession for the purposes of sale or supply, or distribution of a controlled drug (within the meaning of the Misuse of Drugs Acts, 1977 and 1984 ),
- (b) any behaviour which causes or is likely to cause any significant or persistent danger, injury, damage, alarm<sup>3</sup>, loss or fear to any person living, working or otherwise lawfully in or in the vicinity of a house provided by a housing authority under the Housing Acts 1966 to 2002 or Part V of the Planning and Development Act 2000, or a housing estate in which the house is situate or a site and, without prejudice to the foregoing, includes
  - (i) violence, threats, intimidation, coercion, harassment or serious obstruction of any person,
  - (ii) behaviour which causes any significant or persistent impairment of a person’s use or enjoyment of his or her home, or
  - (iii) damage to or defacement by writing or other marks of any property, including a person’s home;”<sup>4</sup>

A “tenant” is defined in the Act of 1997 as any person to whom a housing authority has let a house under the Housing Acts 1966 to 2002 or Part V or the Planning and Development Act 2000, or to whom a dwelling is let under a Chapter 4 tenancy agreement (within the meaning of the Housing (Miscellaneous Provisions) Act 2009).<sup>5</sup>

The Act of 1997 provides for “excluding orders”, which has the meaning assigned to it by s 3.<sup>6</sup>

- “(1) A tenant or relevant purchaser may, in respect of a house—
  - (a) let to the tenant by a housing authority, or
  - (aa) let to a tenant under a Chapter 4 tenancy agreement,<sup>7</sup> or
  - (b) in respect of which he or she is such a purchaser,apply to the District Court for an order (to be known and referred to in this Act as an ‘excluding order’) against a person including, in the case of an application by a

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<sup>3</sup> Inserted by Housing (Miscellaneous Provisions) Act 2009, Part 5.

<sup>4</sup> As amended by Housing (Miscellaneous Provisions) Act 2009, Part 5. Section 34 of the Housing (Traveller Accommodation) Act 1998 extends the definition to cover sites for Travellers.

<sup>5</sup> As amended by Housing (Miscellaneous Provisions) Act 2009, Part 5. Section 13 provides that this procedure can also be used by approved bodies.

<sup>6</sup> As amended by s. 197 Residential Tenancies Act 2004.

<sup>7</sup> As amended by the Housing (Miscellaneous Provisions) Act 2009.

tenant, a joint tenant (referred to in this Act as ‘the respondent’) whom the tenant or relevant purchaser making the application believes to be engaging in anti-social behaviour.

(2) A housing authority may, in respect of a house referred to in subsection (1), apply to the District Court for an order (which shall also be known and is in this Act referred to as an ‘excluding order’) against a person, other than the tenant or relevant purchaser of the house, (in this Act also referred to as the ‘respondent’) whom the authority believe to be engaging in anti-social behaviour where the authority—

(a) having consulted the tenant or the relevant purchaser and the Health Service Executive, believe that the tenant or relevant purchaser—

(i) may be deterred or prevented by violence, threat, or fear from pursuing an application for an exclusion order, or

(ii) does not intend, for whatever other reason, to make such an application, and

(b) consider that, in the interest of good estate management,<sup>8</sup> it is appropriate, in all the circumstances, to apply for the excluding order.

(3) Where the court, on application to it, is of the opinion that there are reasonable grounds for believing that the respondent is or has been engaged in anti-social behaviour it may by order—

(a) direct the respondent, if residing at the house in respect of which the application was made, to leave that house, and

(b) whether the respondent is or is not residing at the house—

(i) prohibit the respondent for the period during which the order is in force from entering or being in the vicinity of that house or any other specified house or being in or in the vicinity of any specified area, being an area one or more of the houses in which are under the control and management of a housing authority, or

(ii) prohibit the respondent, during the said period, from doing all or any of the things referred to in subparagraph (i) save where specified conditions are complied with”.

[3A as inserted by s. 35 of the Housing (Traveller Accommodation) Act 1998 extends the exclusion order provisions to caravans on a site].<sup>9</sup>

(4) An excluding order may, if the court thinks fit, prohibit the respondent from causing or attempting to cause any intimidation, coercion, harassment or obstruction of, threat to, or interference with the tenant, relevant purchaser or other occupant of any house concerned.

(5) Where an excluding order has been made, the tenant, the relevant purchaser or the housing authority, as appropriate, or the respondent may apply to have it varied, and the court upon hearing the application shall make such order as it considers appropriate in the circumstances.

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<sup>8</sup> “Estate management” is defined in s 1(1) of the Act of 1997 to include: (a) the securing or promotion of the interests of any tenants, lessees, owners or occupiers, whether individually or generally, in the enjoyment of any house, building or land provided by a housing authority under the *Housing Acts, 1966 to 1997*, (b) the avoidance, prevention or abatement of anti-social behaviour in any housing estate in which is situate a house provided by a housing authority under the *Housing Acts, 1966 to 1997*.

<sup>9</sup> Section 197 of the Act of Residential Tenancies Act 2004 amended the Housing (Miscellaneous Provisions) Act 1997 by extending the provisions on excluding orders under the 1997 Act from local authority housing and estates to the occupants, subsequent purchasers and inheritors of (other than the owner) of tenant-purchased homes. The provisions in s 197 (a)(ii) extend to a ‘relevant purchaser’ which means “(a) a person to whom a housing authority have sold a house under the Housing Acts 1966 to 2002, or (b) a person in whom there subsequently becomes vested (whether for valuable consideration or not and including by means of inheritance) the interest of the person referred to in paragraph (a) of this definition in the house referred to in that paragraph”

(6) An excluding order, whether made by the District Court or by the Circuit Court on appeal from the District Court, shall subject to subsection (7) and section 9, expire three years after the date of its making or on the expiration of such shorter period as the court may provide for in the order.

(7) On or before the expiration of an excluding order to which subsection (6) relates, a further excluding order may be made by the District Court or by the Circuit Court on appeal from the District Court for a period of three years, or such shorter period as the court may provide for in the order, with effect from the date of expiration of the first-mentioned order".<sup>10</sup>

Significantly, the court can examine the evidence presented, since this is not a summary procedure for obtaining possession, as in the case of s 62 of the Housing Act 1966.<sup>11</sup> Section 21 of the Act of 1997 (as amended by s 36 of the Housing (Traveller Accommodation) Act 1998) provides that in any proceedings under s 62 of the Housing Act, 1966, or s 3, [3A,] 4 or 9, a member of the Garda Síochána or an officer of a housing authority or a health board states that he or she believes that a person is or has been engaged in anti-social behaviour, then, if the Court is satisfied that there are reasonable grounds for such belief and that another person would be deterred or prevented by violence, threat or fear from providing evidence in that regards, the statement shall be evidence of such anti-social behaviour. The procedures adopted by local authorities were illustrated in the case of *Pullen v Dublin City Council* (No. 1).<sup>12</sup>

Section 5 of the Act of 1997 provides that a person who contravenes an excluding order or an interim excluding order shall be guilty of an offence and shall be liable on summary conviction to a fine or, at the discretion of the court, to imprisonment for a term not exceeding 12 months, or to both. This is without prejudice to the law as to contempt of court or any other liability, whether civil or criminal, that may be incurred by the respondent concerned.<sup>13</sup>

An excluding order or interim excluding order shall take effect on notification of its making being given to the respondent,<sup>14</sup> and copies are to be given to the applicant concerned, the respondent, the housing authority in whose functional area the house in respect of which the application for the order was made is situate, the Health Service Executive, and the member of the Garda Síochána in charge of the Garda

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<sup>10</sup> Section 4 as substituted by s 197 of the Residential Tenancies Act 2004 provides for the making of interim excluding orders

<sup>11</sup> Section 11 (as amended by s 36 of the Housing (Traveller Accommodation) Act 1998) provides that proceedings under s 3, [3A,] 4 or 9 may be heard otherwise than in public. Section 18 provides that a person who causes or attempts to cause any threat, intimidation or harassment, coerces, obstructs, impedes, or interferes with, an officer or employee of a housing authority or of a health board or a member of the family of such officer or employee or any person who provides or is to provide evidence in any proceedings under s 62 of the Housing Act, 1966, or the Act of 1997, shall be guilty of an offence and liable on summary conviction to a fine not exceeding €1,904.61 [£1,500] or, at the discretion of the court, to imprisonment for a term not exceeding 12 months, or to both.

<sup>12</sup> [2008] IEHC 379.

<sup>13</sup> Section 12 provides that a member of the Garda Síochána who has reasonable cause for believing that a person has contravened an excluding or interim excluding order, may, on complaint being made to him or her by the tenant or the housing authority, arrest the respondent concerned without warrant.

<sup>14</sup> Section 6.

Síochána station for the area in which the house in relation to which the application for the order was made is situated.<sup>15</sup>

A local authority may refuse to let a dwelling or defer the letting where it considers that the person is or has been engaged in anti-social behaviour or that the letting would not be in the interests of “good estate management”<sup>16</sup> or the person fails to provide information including information relating to persons residing or to reside with that person, which is requested by the housing authority and which the authority considers necessary in connection with an application for the letting.<sup>17</sup>

### **New obligations under the legislation of 2009**

The Housing (Miscellaneous Provisions) Act 2009 introduced the obligation on housing authorities, by reserved function, to draw up and adopt an Anti-social Behaviour Strategy for the prevention and reduction of anti-social behaviour in its housing stock, including sites, Chapter 4 tenancies and dwellings which are being purchased.<sup>18</sup> The section specifies the principal objectives of a Strategy; notably the promotion of co-operation with other persons, including the Garda Síochána, to avoid duplication of effort. It also outlines the matters that may be dealt with in a Strategy and sets out the bodies that must be consulted in drawing up a Strategy. A housing authority may review its Strategy from time to time and is required to do so at least 6 months before the expiry of its Housing Services Plan.

Section 35(2) sets out the principal objectives of the Anti-social Behaviour Strategy:

- “(a) the prevention and reduction of anti-social behaviour,
- (b) the co-ordination of services within the housing authority directed at dealing with, or preventing or reducing, antisocial behaviour,
- (c) the promotion of co-operation with other persons, including the Garda Síochána, in the performance of their respective functions insofar as they relate to dealing with, or the prevention or reduction of, anti-social behaviour, having regard to the need to avoid duplication of activities by the housing authority and such other persons in the performance of those functions, and
- (d) the promotion of good estate management”.

Proposals for the achievement of these objectives including but not limited to the following, must be set out in the Strategy: Section 35(3) states:

- “(a) procedures in relation to the making of complaints to the housing authority in respect of anti-social behaviour;
- (b) initiatives for the prevention and reduction of anti-social behaviour;
- (c) the provision of education relating to, and the carrying out of research into, anti-social behaviour and its prevention and reduction”.

Section 35(5) specifies the organisations which must be consulted in drawing up the Strategy:

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<sup>15</sup> Section 7 as amended by the Health Act 2004.

<sup>16</sup> “Estate management” is defined in s 1(1) of the Housing (Miscellaneous Provisions) Act of 1997.

<sup>17</sup> Housing (Miscellaneous Provisions) Act 1997 s 14 as amended.

<sup>18</sup> Section 35(1).

- (5) When drawing up a strategy, or before amending a strategy, a housing authority shall consult with—
- (a) any joint policing committee established under section 36 of the Garda Síochána Act 2005 in respect of its administrative area,
  - (b) the Garda Síochána,
  - (c) the Health Service Executive, and
  - (d) any other person as the authority considers appropriate.

Remarkably, this list does not include tenants or residents of the area, possibly reflecting the absence of any social housing tenants organisations in Ireland. It is also significant that this list is quite limited when compared to the requirements in relation to the preparation of Homeless Action Plans which include FAS and the VEC, although there is an opportunity for authorities to include any other person which the authority considers appropriate.<sup>19</sup>

The Anti-social Behaviour Strategy is not intended to create any new liabilities on housing authorities in relation to its functions or anti-social behaviour, or enable anyone to seek damages for a housing authority's failure to perform any particular function.<sup>20</sup>

### **Implications for local authorities [and residents/tenants and housing associations]**

In addressing the implications for local authorities, tenants/residents and housing association in this context, it is useful to outline the existing commentaries and recommendations of existing reports and research. Indeed, the social housing context in which these Strategies are being prepared is highly significant.

The NESC Report, *Housing in Ireland: Performance and Policy, Background Analysis, Paper 6, The Provision of Social and Affordable Housing*<sup>21</sup> pointed out that the focus of local authorities has traditionally been on administration rather than management of housing. It recounts the recommendations for social housing management set out in Fahey, *Social Housing in Ireland*,<sup>22</sup> which included:

- continued support to local authorities in developing effective housing management support;
- clarity around the appropriate level of current funding and mechanisms by which that funding might be secured;
- consideration of the structures and operation of local authorities (including their

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<sup>19</sup> Section 36 of the Act of 2009 specifies the organisations to be consulted in relation to the drawing up of Homelessness Actions Plans as (a) an Foras Aiseanna Saothair, (b) the Irish Prison Service, where there is a prison located in— (i) the administrative area of the housing authority, or (ii) in the case of a joint homelessness consultative forum, the administrative area of any housing authority concerned, (c) the Probation Service, (d) a vocational education committee within the meaning of section 7 of the Vocational Education Act 1930 whose functional area corresponds to— (i) the administrative area of the housing authority, or (ii) in the case of a joint homelessness consultative forum, the administrative area of any housing authority concerned, and (e) such other body as may be prescribed for the purposes of this Chapter.

<sup>20</sup> Section 35(7). See also Stack, S, "Anti-Social Behaviour of Local Authority Tenants: When will the authority be liable" [1999] *Conveyancing and Property Law Journal*, Vol. 4, No. 1, pp 2–6.

<sup>21</sup> Dublin, NESC, 2004, Para 6.31-32.

<sup>22</sup> Fahey, T, (ed.) *Social Housing in Ireland – A Study of Success, Failure and Lessons Learned*, (Dublin, Oak Tree Press, 1999)

- relations to central government), the impediments to change in management practices which these give rise to, and the reforms which might be adopted to overcome these;
- recommendation that local authorities should regard services targeted at the support of dysfunctional or disruptive individuals or households as an essential back-up to effective housing management, and where necessary, should adopt an active role in soliciting the required services from the relevant provider
  - formal consultation mechanisms was also deemed necessary and useful, local authorities were urged to be open to informal communication with as wide a range of residents as possible, and to have at least one key official (such as a Tenant Liaison Officer or Estate Officer) who has good informal knowledge of the estate and personal acquaintance with a wide number of residents.

The NESR Report pointed out that diversity in approaches to the management of local authority housing has increased correspondingly in recent years, with the implementation of a number of new management approaches – primarily through increased tenant participation and the devolution of administrative and estate management functions to local offices. Training in housing management and the dissemination of best practice is supported by the Housing Unit (now Centre for Housing Research). A network of housing officers - the Local Authority Housing Practitioners Network - has been developed which further supports this end. Funding for the development of management capacities in housing has been provided with the establishment of the Housing Management Initiatives Grants scheme in 1995 by the Department of Environment and Local Government, which provides support for initiatives outside of the day to day management of local authority housing.

However, the NESR Report also points out that while the above measures have been taken to counter traditional weaknesses, difficulties persist in relation to the managerial capacity of local authorities in relation to housing. These include:

- Shortage of financial resources due to differential rental system (considered further below), which fall short of the economic costs of providing a housing service in many local authorities;
- Centralised policy making and funding reduces scope for local innovation;
- Challenges in retaining experienced staff and building up core professionalism due to the career structure of local authorities;
- A continuing preoccupation with bricks and mortar as a solution to socio-economic and general management housing problems.

In *Good Practice in Housing Management, Guidelines for Local Authorities – Preventing and Combating Anti-social Behaviour*,<sup>23</sup> Norris put forward a number of key issues for local authorities in developing and implementing strategic plans on combating and preventing anti-social behaviour. The following issues should be taken into account in order to achieve good practice. She pointed out that the most efficient way of combating anti-social behaviour is to prevent it from arising in the first place and the suggestions as to how this can be improved include:

- ensuring that the design of dwellings, estates and halting sites does not facilitate vandalism and crime

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<sup>23</sup> Dublin, The Housing Unit, 2003.



- ensuring the strategic allocation of tenancies; this involves, for instance, avoiding allocating households that are likely to be victims of anti-social behaviour tenancies in areas where such problems are prevalent, and vetting applications for housing and accommodation to ensure that they are not involved in anti-social behaviour and refusing or deferring a letting on this basis
- including a clause prohibiting anti-social behaviour in tenancy agreements and ensuring the meaning of this clause is clearly explained to tenants
- establishing effective tenant participation and estate management structures and working with other agencies to provide appropriate community development and social services.
- Many of the causes of and solutions to anti-social behaviour on local authority estates cannot be addressed by local authorities on their own, therefore other statutory agencies, community groups, voluntary and co-operative housing bodies and tenants associations should be involved in preventing and combating anti-social behaviour.
- The importance of preventing and combating anti-social behaviour should be taken into account in decisions regarding current and capital expenditure on the housing service. If appropriate, designating staff with particular responsibility for combating anti-social behaviour will aid effective implementation of strategies to improve practice in this area of work.
- Effective management of staff resources is the key to improving practice in preventing and combating anti-social behaviour. The expertise of the staff involved in this area of work should be taken into account in policy development. Furthermore, adequate procedures should also be put in place to protect the personal safety of these staff and to facilitate their professional development
- Accurate and standardised record keeping is vital for assessing the seriousness of anti-social incidents and devising appropriate responses. In addition, detailed records of all incidents of this type should always be kept.
- Fair procedure requires that, as far as possible, all incidents and cases of anti-social behaviour are assessed in a systematic and standardised fashion. In order to achieve this, protocols should be devised to guide staff in this area of work. Decisions to take legal action in cases of anti-social behaviour should be approved by a case conference of relevant local authority staff and representatives of other relevant statutory agencies.
- Incidents of this type should be investigated quickly and action to deal with them should be undertaken within a specified timeframe.
- The full range of appropriate responses to anti-social behaviour should be utilised. In the first instance, non-legal solutions to this behaviour such as mediation should be used if appropriate. Where non-legal solutions have failed or are deemed inappropriate, the option of excluding the perpetrator of the activity from the household should be explored.
- When the termination of a tenancy is the only viable solution to anti-social behaviour every possible effort should be made to protect the welfare of vulnerable members of the household affected, by referring them to appropriate agencies for accommodation and other necessary supports.
- A customer care code should be devised in order to ensure that the rights and welfare of all tenants who come into contact with the anti-social behaviour service are protected.

The Report by Cunneen, J, *Tackling anti-social behaviour: international problems, indigenous solutions*, (Dublin, Centre for Housing Research, 2008) set out a number of recommendation for local authorities including building sustainable communities and provide good quality of life for all tenants in social housing by expanding on the community safety partnership strategy for tackling anti-social behaviour; taking a multi-disciplinary approach to tackling anti-social behaviour; and recognising diversity and multi-culturalism.

Recent Submissions to Dublin local authorities in relation to proposed Anti-social Behaviour Strategies by the Housing Lawyers Practitioners Group from a number of agencies suggest a number of recommendations:

- any anti-social policy should be transparent, fair, proportionate and have strict adherence to the principles of natural justice
- more emphasis on preventative and mediation measures than on complaint handling
- better procedures for cross-community broad consultation
- Strategies must be holistic, proactive and focus on multi-disciplinary preventative measures
- ensuring that only the legally defined anti-social behaviour attracts the sanctions under the law, rather than including less serious behaviour
- in keeping with the principles of proportionality and legality the Strategy should clarify and specify the categories which fall into the ASB definition more clearly, as well as the level of sanctions applied to each. A list of examples of behaviour which falls within the definition of “*breaches of the Tenancy Agreement*” be published
- disposal of complaints after a period of time, especially those which are malicious or frivolous.
- observance of the rights of tenants under administrative, human rights and constitutional law, especially rules of fair procedure in the investigation of anonymous complaints of anti-social behaviour.
- use of section 62 of the Housing Act 1966 should be excluded from the Strategy and Section 14 of the 1881 Act or the Act of 1997 used instead, as both of these offer an opportunity for a defence
- fair procedures are used to make the finding that such anti-social behaviour has been committed where the letting or sale of property is refused or deferred
- use and dissemination of information received to observe the requirements of natural justice and fair procedures.
- mechanism for appeal/review of all findings of anti-social behaviour in the interests of natural justice and fair procedures
- inclusion of an independent, impartial and non-judgmental Neighbour Mediation Service to service users as a means of assisting to resolve disputes by authorities
- particular regard for the welfare and interests of children involved in anti-social behaviour

### ***Other Approaches to Anti-social Behaviour***

Of course, other more structural approaches to anti-social behaviour are also important, which involve avoiding the residualisation of housing estates, better estate design, improved and more active housing management, statutory provision of educational, recreational and other facilities in housing estates, as well as properly resourced co-ordination of education, health, housing and policing.<sup>24</sup> The regeneration programmes now underway on residualised social housing estates offer a valuable platform to address ASB, although it is accepted that this is not an easy task.

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<sup>24</sup> See Flint, J, ‘Maintaining an Arms’s Length? Housing, Community Governance and the management of ‘Problematic Populations’ *Housing Studies*, Vol. 21, No. 2, 171–186, March 2006. Flint, J, & Nixon, J, ‘Governing Neighbours: Anti-social Behaviour Orders and New Forms of Regulating Conduct in the UK’, *Urban Studies*, Vol. 43, Nos. 5/6, 939–953, May 2006. Burney, E. *Making People Behave*, (Uffculme, Devon, Wilan Publishing, 2005); Papps, P, “Anti-social Behaviour Strategies – Individualistic or Holistic?” (1998) 13(5) *Housing Studies* 639.

Many studies have shown that local authority tenants are among the poorest in Irish society, with much unemployment and reliance on low paid and casual employment.<sup>25</sup> Indeed, the NESC Report of 2004 described this residualisation of local authority housing<sup>26</sup>.

Increasing levels of residualisation have been recorded in the local authority stock in Ireland in the past fifteen years. In 1987, 53.2 per cent of local authority tenants in urban areas were below 60 per cent of average income (this rose to 63.9 per cent for rural local authority tenants). By 2003, 62.2 per cent of all local authority tenants were below 60 per cent of the median, compared with 22 per cent of all households. This increase in the level of residualisation can be attributed to the following:

- As the stock of local authority dwellings has shrunk as a proportion of the total housing stock, the characteristics of the population who are public tenants have come to depict an increasingly marginalized group;
- Some of the poorest and most vulnerable households which traditionally would not have been located in the social housing sector are now being accommodated (e.g. persons leaving institutional care, homeless etc.).

Ironically, a residualised local authority stock has some positives for social policy. It confirms that public housing is targeted more tightly on people in need. Providers of diverse social supports are able to exploit the spatial concentration of households in need to target delivery of their services (e.g., social welfare offices, health clinics, MABS offices, area-based partnerships etc.).

However, the strengthening association between local authority tenancy and marginal households has negative implications also. A local population with high levels of different social needs can overwhelm the social services and neighbourhood amenities that are available locally. The local population may be less likely to generate the indigenous leadership that contributes to the successful redress of local imbalances.

A scenario of ‘poor services for poor people’ easily develops in public and private sector service provision. A growing stigma becomes attached to local authority tenancy; being housed by a local authority may even accelerate a household’s slide into social exclusion. Despite the high quality characterising new local authority building, the overall housing service can deteriorate<sup>27</sup>.

Of course, NESC points out that the impact of housing policy, including the provision of local authority housing, should not be measured in terms of housing alone, but also in terms of its impact on poverty, as a redistributive mechanism, and a means of guaranteeing a minimum standard of accommodation for all. This paradigm offers a wider role for local authorities in their housing role, and measures such as positive

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<sup>25</sup> Nolan, Whelan & Williams, *Where are the Poor Households? The Spatial Distribution of Poverty and Deprivation in Ireland* (Dublin, Oak Tree Press, 1998); Murray & Norris, *Profile of Households Accommodated by Dublin City Council 2002: Analysis of Socio-demographic, Income and Spatial Patterns* (Dublin City Council and the Housing Unit, 2002); Fahey, T, Nolan, B and Maitre, B. *Housing, Poverty and Wealth in Ireland*. (Dublin, CPA, 2004).

<sup>26</sup> The term “residualisation” refers to the process whereby public housing is used largely to house those who are unable to go elsewhere, and who are on the whole economically and socially vulnerable. See Nolan & Whelan. “Urban housing and the role of ‘underclass’ processes: the case of Ireland” (2000) 10(1) *Journal of European Social Policy* 5. Forrest et al point out that this residualisation is further emphasised in a society where “home ownership is mass produced and marketed as the *leitmotif* of settled affluent family life” - Forrest *et al*, *Home Ownership, Differentiation and Fragmentation* (London, Unwin Hyman, 1990), p 3.

<sup>27</sup> NESC (2004) *Housing in Ireland, Background Analysis, Paper 6. The Provision of Social and Affordable Housing*, Box 6.3.

action programmes to redress poverty or social exclusion are required. The comprehensive provision of playgrounds and other facilities, targeted personal assistance, local employment in housing work, and meaningful participation in housing and estate management and maintenance could be advanced, either in a paid or voluntary capacity.

The concentration of poor people in densely populated areas which can occur in social housing requires not just good housing management but facilitating access to a range of supports, opportunities and networks. While this is intimated slightly in the objectives of the ASB Strategies there is an opportunity to specifically include these as objectives and specific actions, such as facilitating or creating an opportunity for every tenant to access education and training suited to their aspirations, to work towards the reduction and prevention of poverty among tenants and their families, to comprehensively consult tenants on all changes to housing management arrangements, including the drawing up of new policies and strategies etc. The link between social exclusion in housing and other areas of life is obvious, and there is an opportunity to utilize the Strategies to involve voluntary and sporting organizations, schools, third level institutions, and other agencies, which can divert anti-social behaviour.

It is suggested that education, training and work is the key to preventing anti-social behaviour. In this context the vast State resources expended on public contracts in construction, design, management and maintenance can be incorporated into initiatives for the prevention and reduction of anti-social behaviour within the objectives of the Anti-social Behaviour Strategy. For example, the public procurement tenders for redevelopment, regeneration and other contracts can include requirements that a specified number of local tenants (male and female, of all ages) receive training in administrative, technical, professional, trades and management aspects of the work (this is not a breach of EU law so long as all tender on the same terms). Placing obligations on large-scale developers, suppliers or consultancy firms undertaking local authority housing projects to provide training or employment to tenants and others excluded from the labour market, would enhance this element of local authorities activity. Regeneration and redevelopment represents a one off opportunity to significantly improve the socio-economic position and life chances of social housing tenants and their families.<sup>28</sup>

### Support and care

While there is a great focus on community facilities and resources, community development and other social organizations (which is also essential), many tenants in social housing require individual or group care and support, and many have a disability. For those with a disability, there is a need to make reasonable accommodation for their needs, but this does not include tolerating anti-social behavior.<sup>29</sup> Nevertheless, while there is often a recognition that tenants are not

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<sup>28</sup> McCrudden, C. *Buying Social Justice: Equality, Government Procurement, and Legal Change*, (New York, OUP, 2009).

<sup>29</sup> In *Mayor and Burgesses of the London Borough of Lewisham v Malcolm*, [2008] UKHL 43 HL, a tenant who was evicted from his home for subletting his apartment in violation of the terms of his lease. He opposed the eviction, on the grounds that because he suffered from schizophrenia, which had influenced his decision to sublet his apartment, his eviction constituted discrimination on the basis of

receiving adequate care and support, yet the housing provider is unable to arrange this. There is a strong case for local authorities and housing associations being in a position to direct the provision of such care and support to vulnerable tenants, rather than merely requesting this from other agencies. Such contracts for care and support have been introduced in other jurisdictions.

### Collusion

There are many anecdotal accounts of anti-social behavior sanctions being directed at a tenant, at the instigation of, or collusion, with other tenants. This can result in very unfortunate outcomes, especially when combined with some vulnerability or incapacity in the tenant being evicted.<sup>30</sup> Of course, the consultation processes within many new ASB Strategies where many agencies are involved acts as a type of filtering process where any other options can be considered and implemented outside legal action.

### Implications for residents/tenants

Naturally, the prevention of anti-social behaviour advances the interests of tenants and residents. Improvements in socio-economic status, education, training and access to higher positions in the labour market can only enhance their lives.

The recommendations above on consultation and involvement in the management and policy making in relation to their housing are valuable in this context. However, many tenants require support and care services and these may be included in an ASB Strategy. This is particularly important where research has shown that single parent female heads of household often suffered domestic violence, anti-social behaviour and victimization themselves, revealed in the course of prosecutions for anti-social behaviour of family members.<sup>31</sup>

Indeed, the objectives of preventing and reducing anti-social behaviour can embrace many new opportunities to be developed by the housing authority. Ultimately, the shortage of resources available to local authorities and some housing associations to provide a holistic housing management and support system impacts on the lives of tenants, and the ASB Strategy offers an opportunity for representative tenants (and Traveller) associations be established in each area and across the country to advance their case for more resources.

### Implications for housing associations

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his disability. A new standard adopted by the court, in this case, meant that plaintiffs face a higher threshold for claiming discrimination, as they must show that they have been treated less favorably than a similarly situated, nondisabled person. The House of Lords further held that a defendant cannot be liable for discrimination if it was unaware of the disability.

<sup>30</sup> In the case of *Brid Cummins RIP* (2004), a middle-aged woman tenant was dead in her home, following a court order for possession obtained under the Housing Act 1966 by Galway City Council, arising from allegations of anti-social behaviour.  
<http://www.galwaycity.ie/AllServices/YourCouncil/CouncilMeetings/Minutes/2005/January/File,580,en.doc>

<sup>31</sup> See footnote 2 above.

Section 13 of the Act of 1997 allows approved bodies to use the anti-social behaviour legislation available to local authorities to exclude tenants and others. Of course, some associations use tenancy agreements based on Landlord and Tenant Amendment (Ireland) Act 1860, which allows a possession order to be obtained without any cause being presented to a court.

Many of the same issues arise within housing association properties in relation to the control and prevention of anti-social behaviour. Some associations have made great strides to address this through tenant participation and involvement, as well as the protection of the welfare of vulnerable tenants. However, while not directly referred to in the ASB Strategies, housing associations can be included as “any other person the authority think is appropriate” (s. 36) and play a part in achieving the objectives of the Strategies. Some Housing Associations can access greater resources for care and support than local authorities, and there are opportunities for associations to undertake contracts for tenancy support with local authority tenants. There are also opportunities for some associations with expertise in the area to become involved in the provision of education relating to and carrying out research into anti-social behaviour and its reduction and prevention. Associations may develop initiatives through social and personal development of local authority tenants. There is also a role for housing association to offer independent mediation services, as well as training on tenant organisation and consultation.

### **Conclusion**

Social housing providers are being asked to take on a policing role, involving collecting evidence, and taking court action to implement sanctions for certain behaviour. The term “anti-social” is defined largely as personal acts against individuals or their homes. It does not cover corporate acts against the community at large, such as building defective housing, breaching planning obligations, non-payment of development levies, or abandoning unfinished estates. This takes place in a context of increasing residualisation of social housing, a major recession and inadequate resources available to local authorities for housing management. While the new obligations on housing managers are not ideal, there are some opportunities within the ASB Strategies under the legislation of 2009, to develop innovative approaches which can involve tenants/residents and housing associations in the prevention and reduction of anti-social behaviour.