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Liberty's response to the Office of the Deputy Prime Minister's Consultation:

**“Enabling local authorities to contract their
anti-social behaviour functions to
organisations managing their housing
stock”**

February 2006

About Liberty

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

Liberty Policy

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at

www.liberty-human-rights.org.uk/resources/policy-papers/index.shtml

Contact

Gareth Crossman

Director of Policy

Direct Line: 020 7378 3654

Email: GarethC@liberty-human-rights.org.uk

Jago Russell

Policy Officer

Direct Line 020 7378 3659

Email: JagoR@liberty-human-rights.org.uk

Introduction

1. In November 2005 the Office of the Deputy Prime Minister published a Consultation Paper setting out its proposals to enable local authorities to contract their anti-social behaviour functions to organisations managing their housing stock (the “**Consultation Paper**”).¹ It is not the intention of this paper to reiterate Liberty’s concerns about Anti-Social Behaviour Orders (“**ASBOs**”) in general,² but to focus on the particular proposals set out in the Consultation Paper.

2. In outline our concerns about the proposals are as follows:

- a. The legal power to apply for an ASBO is very broad. This requires those with the power to make applications to make difficult decisions about when an ASBO might, in fact, be appropriate.
- b. The current requirement for local authorities to be involved in ASBO applications introduces an element of objectivity, expertise and accountability into the decision about whether to apply for an ASBO and in the conduct of legal proceedings.
- c. These proposals would enable tenant-run organisations to bring ASBO applications against fellow tenants. This would increase the risk of ASBOs being sought in inappropriate cases.
- d. There are insufficient safeguards against the inappropriate use of the power to apply for ASBOs.
- e. Greater efficiency is not a sufficiently compelling reason to enable local authorities to remove themselves from the process of applying for ASBOs.

¹ ODPM, “Enabling Local Authorities to Contract their Anti-Social Behaviour Functions to Organisations Managing their Housing Stock”

² Cf <http://www.liberty-human-rights.org.uk/issues/anti-social-behaviour.shtml>

Outline of Proposals

3. Section 27 of the Housing Act 1985 enables local authorities to delegate the management of their housing to a variety of organisations. The organisations to which functions may be delegated (“**Section 27 Organisations**”) include:

- a. *Arms Length Management Organisations* - independent bodies established by local authorities to manage and improve housing stock;
- b. *Tenant Management Organisations* - organisations established and run by tenants that deal with the day-to-day management and maintenance of local authority housing;
- c. *Bodies managing housing as part of Private Finance Initiative (PFI) schemes*; and
- d. *Registered Social Landlords*

The role of Section 27 Organisations “[t]raditionally ... has focused on providing services such as lettings, tenancy sign up, rent collection and recovering rent arrears, planned and responsive repairs and tenant consultation”.³

4. The Consultation Paper goes on to describe how the role of Section 27 Organisations has changed:

“In meeting the needs and concerns of tenants at local level it has become increasingly important for landlords and housing managers to develop approaches to tackling anti-social behaviour as a core component of their management activities”.⁴

In accordance with that principle, there has been an expansion in the nature of the functions performed to include “key elements of neighbourhood management such as tackling crime and anti-social behaviour, in addition to the more traditional tenancy management role”.⁵ Section 27 Organisations may currently perform statutory functions conferred on the local authority “as holder of an estate or interest in the houses or land”.⁶ This would include a number of powers of local authorities that are designed to tackle anti-social behaviour. A range of powers are, for example, set out

³ Para 4

⁴ Para 6

⁵ Para 5

⁶ Section 27(16)(b)

in Part V of the Housing Act 1996. These include the power to apply for anti-social behaviour injunctions, demotion of tenancy and possession powers.

5. Some of the powers of local authorities to tackle “anti-social behaviour” do not, however, relate to their housing management functions or land tenure. These cannot, therefore, be delegated to Section 27 Organisations under the current law. They include, most notably, the power to apply to a magistrates’ court for an ASBO.⁷ At present, if a Section 27 Organisation (other than a registered social landlord)⁸ thinks that an ASBO should be obtained, it must request that the local authority apply to the court for one.

6. The Consultation Paper proposes that Section 27 Organisations should be able to apply for ASBOs on behalf of the local authority:

“We believe it would be sensible for local authorities to be able to ask those carrying out housing management functions on their behalf, to also carry out some or all of the ASBO functions where both parties agree.”⁹

This proposal could be achieved by secondary legislation. The Serious Organised Crime and Policing Act 2005 created a power for the Secretary of State to provide by order that a local authority may make arrangements with specified types of body to perform their functions with respect to ASBOs.¹⁰ Liberty objected to the inclusion of this delegated power in the Bill.¹¹ The Consultation Paper proposes that such an order be laid before Parliament, specifying Section 27 Organisations as bodies to which a local authority’s ASBO functions may be delegated.

⁷ For a discussion of what an “ASBO” is see <http://www.liberty-human-rights.org.uk/issues/anti-social-behaviour.shtml>

⁸ Registered Social Landlords can apply for Anti-Social Behaviour Orders on their own account as they are included in Section 1 of the Crime and Disorder Act 1998 as “relevant authorities”.

⁹ Para 17

¹⁰ Section 1F Crime and Disorder Act 1998

¹¹ Cf “Serious Organised Crime and Police Bill: Liberty’s briefing for the Second Reading in the House of Lords”, March 2005, para 42 (available at: <http://www.liberty-human-rights.org.uk/resources/policy-papers/2005/policy-index-05.shtml>)

Liberty's Concerns about the Proposals

7. The legal power to apply for an ASBO is extremely broad, covering a wide variety of situations in which an ASBO application would, in practice, be inappropriate.¹² The scope of this legal power places enormous discretion in the hands of those who make the decision about whether to apply for an ASBO. It requires them to distinguish between the types of “anti-social behaviour” which might justify legal regulation and the many types of “anti-social behaviour” which would not.¹³ We must be very careful about who we trust to make these difficult decisions.

8. Liberty has argued that this broad discretion should not have been given to local authorities and the police.¹⁴ Our concerns about this wide discretion being used inappropriately would be magnified if Section 27 Organisations were also able to apply for ASBOs without local authority involvement. If Section 27 Organisations make inappropriate decisions, they are not publicly accountable, unlike the police and local authorities, and they may not even be required to respect human rights in the decisions they make.¹⁵ In addition Section 27 Organisations may be too close to the action, too directly affected by the actions which are considered to be “anti-social”, to be capable of making decisions which are, or would be perceived to be, impartial and objective.

9. It is, for example, proposed that Tenant Management Organisations (“TMOs”), would be able to apply directly for an ASBO. TMOs are, as the name suggests, organisations established and run by tenants. Although the direct involvement of tenants in questions about the emptying of bins and the repairing of roofs may be a

¹² Section 1 of the Crime and Disorder Act 1998 defines “Anti-social behaviour” as “behaviour that causes or is likely to cause harassment, alarm or distress”. People may be “distressed” or “alarmed” by those of another class, race or generation, by those who are irritating rather than threatening, in any objective sense, by those who are themselves vulnerable or just plain different.

¹³ The guest who arrives late, hogs the conversation, lights a cigarette without permission in the close proximity of diners or children, proceeds to become drunk and obnoxious, makes an unwelcome pass at his hostess and a swing at his host has undoubtedly engaged in a range of bad behaviour according to cultural norms (depending on the context and times) and certainly within the statutory definition of anti-social behaviour.

¹⁴ We have expressed our concerns about inappropriate decisions having been made by local authorities, the police and registered social landlords regarding what constitutes “anti-social behaviour” and about when an ASBO should be sought. Cases include children with ADHD or Tourettes being banned from swearing; a suicidal woman banned from bridges; and the mentally ill and the homeless being banned from begging.

¹⁵ Cf Section 6 Human Rights Act 1998

good thing; giving them the power to make ASBO applications against fellow tenants poses significant concerns. Imagine, for example, a small housing estate run by a TMO in which the majority of the tenants are elderly, straight couples but in which a single flat is occupied by a young, single and promiscuous gay man. It is not beyond the realms of the imagination that the majority of tenants, who would represent a majority of the TMO, might find the behaviour of this young man “distressing” or “alarming”. Given the wide legal definition of “anti-social behaviour”, they might therefore be able to apply for an ASBO. This type of damaging and unjust use of the ASBO regime would not be picked up until it reached the court, if at all.

10. The current requirement that the TMO must ask the local authority to make the ASBO application may not be a perfect guarantee against inappropriate ASBO applications, but it is better than nothing. One would hope, for example, that a local authority officer would bring a degree of impartiality and objectivity to the determination of whether an ASBO should be sought and would refuse to apply for an ASBO in cases, such as that described above, in which an application is obviously inappropriate.

11. The experience, objectivity and accountability of those making ASBO applications is also important to the fair conduct of application hearings. Hearsay evidence can be used in such proceedings to establish that a person has acted in an anti-social manner. This means that individual witnesses need not appear to tell the court about the behaviour they have witnessed and the effect this has had on them. Instead, in practice, a local authority officer will often appear as a “professional witness”, presenting a report to the court about the evidence of anti-social behaviour that s/he has gathered. Under these proposals, in place of the local authority officer, one could find the most vociferous and outraged TMO representative appearing in court to represent the concerns of his/her fellow tenants. This would give rise to a significant risk that the evidence of anti-social behaviour presented to the court will be coloured by the personal experience and judgments of the TMO representative.

12. The Consultation Paper states confidently that: “sufficient safeguards are in place to ensure that functions would only be contracted out where there is confidence

they will be exercised sensibly”.¹⁶ We do not agree. For example, the Consultation Paper stresses that “regardless of the applicant ASBOs are granted at the discretion of the court (i.e. the court considers whether or not it is reasonable to make an order).” The courts’ power to refuse to grant inappropriate applications does not, however, provide sufficient safeguards:

- a. The courts’ involvement does not prevent the risk that Section 27 Organisations would inappropriately use the threat of an ASBO application.
- b. By the time the court decides whether to grant the application public money will already have been spent on spurious legal proceedings.
- c. In addition to the personal anxiety of involvement in legal proceedings, one’s reputation can be severely damaged by being the subject of an ASBO application, even if the application is ultimately rejected. The fact that an ASBO has been sought may itself be publicised and, as ASBO hearings are civil proceedings, there are no automatic reporting restrictions even where children are involved.¹⁷ A child’s reputation might, therefore, be seriously tarnished by a spurious and unfounded ASBO application.
- d. The reality is that courts only rarely turn down ASBO applications. This is evident from the Home Office’s own statistics which show that, of the 3,069 applications made in England and Wales between 1 April 1999 and 30 June 2004, only 42 were turned down by the courts.¹⁸

13. The arguments provided in support of the proposals are not sufficiently compelling to justify the potential risks associated with them. The Consultation Paper stresses the possible efficiency savings, explaining that some Section 27 Organisations currently experience administrative difficulties when going through local authorities to seek an ASBO:¹⁹

“the process could be more effectively and efficiently delivered if the housing managers were able to seek ASBOs without having to ask the local authority

¹⁶ Para 64

¹⁷ Section 39 Children & Young Persons Act 1933. *R (on the application of T) v St Albans Crown Court; Chief Constable of Surrey v JHG & DHG* [2002] EWHC 1129 (Admin). Automatic reporting restrictions only apply in criminal proceedings (Section 49 CYPA 1933 and Section 45 Youth Justice & Criminal Evidence Act 1999)

¹⁸ Home Office figures

¹⁹ Para 17

to pursue applications ... this would prevent unnecessary delays caused by liaison between the local authority and the housing management organisation in preparing cases to bring to court”.²⁰

Given the serious implications of an ASBO application, discussed above, some delays and liaison may be justified. Unnecessary delays could be more proportionately addressed by providing additional resources and/or sharing best-practice guidance about how local authorities should respond to requests that they apply for an ASBO.²¹

Jago Russell
Policy Officer, Liberty

²⁰ Para 16

²¹ The Consultation Paper itself explains that “some [Section 27 Organisations] have developed ways of working with their parent authorities” (Para 16)