



## **Housing Benefit Sanctions and anti-social behaviour**

### **Response by the Scottish council for Single Homeless**

The Scottish Council for Single Homeless (SCSH) is the Scottish membership body for organisations and individuals working to tackle homelessness in Scotland. Our 200 members include local authorities, housing associations, voluntary organisations and a range of individual professionals. SCSH has a long standing interest in benefits issues and has responded to a large number of consultations by the DWP (or DSS) and Social Security Advisory Committee. SCSH also includes a youth unit which seeks to both prevent homelessness and promote good practice in tackling homelessness amongst young people. This response is the result of consultation with our Executive Committee and draws on a survey of members undertaken during the passage of the similar Private Members' Bill promoted by Frank Field MP during the last parliamentary session.

### **General Principles**

SCSH supports effective and equitable methods of reducing anti social behaviour. However we are not convinced that the government's proposals are either equitable or that they will reduce anti social behaviour. We recognise that the most extreme forms of anti social behaviour cause misery and distress to the victims and need to be addressed quickly and effectively. We are concerned that the consultation paper confuses these very extreme cases with other forms of neighbour nuisance, which though distressing in their own right, can best be dealt with by other means such as good housing management or, for example, improvements to the fabric of houses to tackle soundproofing problems. The confusion of these elements has led to an exaggeration of the extent of the problem of anti social behaviour which is out of proportion to reality. That in turn has led in our view to an inappropriate response by the DWP in this paper.

Anti social behaviour is perpetrated by people in all tenures and in all income brackets. We welcomed the introduction of anti social behaviour orders which could be applied regardless of tenure or wealth. We do not support this particular proposal which only targets tenants, and specifically those who are poor. It reinforces the stereotypical views of anti social behaviour which only form part of a far more complex picture. The discriminatory approach proposed by the government puts the poorest tenants in the position of having a double jeopardy – punishment for their behaviour through the courts and a financial penalty through the benefits system – whilst leaving wealthier perpetrators of anti social behaviour with only the former punishment.

We oppose the linking of benefits entitlement to having to conform to a norm of behaviour. In our view welfare benefits should represent a safety net for all to prevent destitution and ensure that no-one needs to sleep rough or live in slum like accommodation. Welfare benefits should not be concerned with social engineering or creating the dangerous distinction between 'deserving' and 'undeserving' poor. The concept of linking assistance to good behaviour is based on the same principles as the workhouses of the 19<sup>th</sup> century,

surely an inappropriate model for the 21<sup>st</sup> Century. The equitable response to illegal behaviour is to fine the culprits. In that way those with a mortgage are equally treated with those who are tenants, and rich and poor tenants face the same penalty.

The paper provides no evidence to support the underlying theory behind the proposals i.e. that placing a family (which is already under stress) under additional financial hardship will actually improve their behaviour. In our view it is likely to have the opposite effect. Nor is there any evidence provided (other than assertion) that the existence of such a sanction has a deterrent effect.

We also have concerns about whether the proposal would conform to the European Convention of Human Rights. Whilst we recognise that the Convention rightly refers to the right to the peaceful enjoyment of your home, it is in our view highly questionable to reduce someone's housing allowance as a punishment for the actions of somebody else (e.g. a visitor to their home). It is quite possible that a survivor of domestic violence might be pursued by a violent partner creating nuisance in the neighbourhood. The proposals would make it possible for the victim to be held responsible for the violent partner's behaviour and pay a financial penalty for it. We are also aware of ASBOs having been imposed on a member of a tenant's family for shoplifting in a nearby town. It would be wholly inequitable if as a result the tenant were to incur rent arrears and the threat of homelessness (having had their housing benefit cut).

Having had representation on the Scottish Executive's Homelessness Task Force, we are extremely concerned at the impact the proposals could have on the ability of local authorities to carry out the new duties which are included in the Homelessness etc Scotland Act 2003. Under the provisions of that Act local authorities will have a duty to ensure that a 'short tenancy' including appropriate support is provided to households found to be intentionally homeless. This will apply not only to the vast majority of cases which relate to debt problems, but also to the minority of cases where anti social behaviour is the cause. It is the aim of the legislation to ensure that we do not simply punish people, but tackle the root cause of the problem. Effective work in combating anti social behaviour currently exists, such as the Dundee Families Project, and succeed in reducing anti social behaviour. It would undermine this aim if local authorities were to have to finance such work without being able to recover the rent costs (where appropriate) through housing benefit.

Neighbour problems and anti social behaviour are not new issues. There have been a range of new measures introduced in recent years, which now provide local authorities with considerable powers to combat anti social behaviour and neighbour nuisance. In general local authorities and registered social landlords take the issue very seriously and there are a range of effective interventions currently being employed across Scotland to tackle the issues. They involve good partnership working, early intervention, and appropriate responses to the type of behaviour. Some require mediation, some relate to the physical deficiencies of the house (e.g. poor soundproofing) and others require action through the courts by way of anti social behaviour orders or prosecution for criminal behaviour.

This positive and effective work currently being carried out does not require the additional sanction of loss of housing benefit. Indeed in many cases it could be counterproductive. It has been shown that in order to tackle anti social behaviour effectively it is better to work with families in a stable housing environment. Creating instability or making them homeless simply moves the problem elsewhere rather than solving it. The most significant issue hindering effective work by housing managers is the speed at which measures can be

introduced. We would therefore recommend that more emphasis be put on speeding up the processes.

We believe that the proposal for benefit sanctions will not contribute to reducing anti social behaviour.

A survey of SCSH members on this issue elicited the following responses:

- All were opposed to the automatic withdrawal of all or part of housing benefit from anti social tenants
- 80% were opposed to the option of withdrawing housing benefit
- Support, mediation, advice and advocacy, education and joint working were identified as effective means of tackling anti social behaviour
- Better use of current powers, and the ability to implement them more quickly were seen as means to tackle the problems more effectively and
- There was a general concern that housing benefit sanctions would be more likely to punish the accommodation provider (with arrears) than the perpetrator of anti social behaviour.

### **Specific points**

The definition of anti social behaviour used in the document is both broad and very subjective. It ranges from rubbish thrown into gardens, to loud music being played, to serious criminal behaviour. Much of what is commonly described as anti social behaviour can relate simply to a clash of lifestyles or poor housing management. It has been our long held view that using a single label to cover this broad range of behaviour both trivialises serious and criminal anti social behaviour and exaggerates the issue of neighbour nuisance.

If the very serious threat of removal of a benefit is to be considered by government (and we have already stated that it should not) it must be able to be measured against clear and objective criteria and only for the most serious cases. Making the withdrawal too discretionary could allow for victimisation of particular households (or types of household) and make an appeal against the withdrawal of benefit very difficult. There are two sides to every story and it is extremely important that anyone threatened with this very serious sanction has a fair opportunity to appeal, and access to advocates to assist them in that process.

Paragraph 13 of the document makes a number of assertions which are not backed up by evidence. Firstly, it refers to *'people's sense that it is profoundly unfair to provide continuing financial support for the housing costs of people who behave without regard to their neighbours.'* What is this new measure called 'people's sense'? It would be equally legitimate to say that this document does not respond to people's sense that it is unfair to penalise the poor but let off the rich who behave badly. It is disingenuous to confuse the term 'people's sense' with 'the department's view.'

Secondly it asserts that *'the prospect of sanctions should act as a preventative measure'*, but does not point to any equivalent measure which would lead one to that conclusion. The New Deal is not equivalent since it does not punish bad or criminal behaviour, and there is the prospect of the reward of a job at the end.

The third issue relates to pursuing households across tenures. It is unclear how this is in any way joined up with the aims of the government to minimise rough sleeping (and in Scotland that no-one will need to sleep rough by the end of this year). Nor does it appear

to fit with the welfare requirements of any children under the Children Acts in the various parts of the UK. It would appear to fall foul of the UN Rights of the Child, if it were to be applied to families with children.

Finally, it asserts that it would complement other measures used by local authorities. In our view it could undermine them.

Paragraph 15 talks of the measure being applied swiftly and fairly. Who will judge what is fair? The paper does not describe any test of proof. We reiterate our comments relating to the need for objective criteria in order to ensure fairness.

There is a contradiction in paragraph 17. The statement that *'there is no point devising a sanction which is not used'* sits uneasily with the view that it should primarily act as a deterrent (i.e. not be used).

We have already stated our concerns about whether the measure would conform to the ECHR, and we cannot see how it would *'reduce, not increase social exclusion.'* The experience of projects working with perpetrators of serious anti social behaviour show that for the most part they are already families under stress who are amongst the most excluded. The objective should not be to punish and further exclude but to work toward eliminating the cause of anti social behaviour.

The evidence from the evaluation of such projects is that families require stability in order to address the other problems leading to anti social behaviour. Making their housing situation less secure is likely to have the opposite effect.

We are wholly opposed to changing the basis of our welfare system from one which provides an essential safety net to all who require it, to a system where one has to be 'deserving' of support. This is a severely retrograde step with fundamental implications for our welfare provision.

We find it astonishing and totally unacceptable that the DWP is even considering imposing any sanction (even if it is a reduced one) on households where there is pregnancy or serious illness, perhaps endangering the health or life of those affected.

## **The two options**

We believe that neither of the options is acceptable for both reasons of principle and practicality outlined above. Although option one contains the safeguard that the sanction can only follow a conviction in the criminal court limiting the sanction to criminal cases, it still contains an element of 'double jeopardy.' In imposing its sentence the court would take account of how bad the behaviour was. It would appear inequitable to impose a further fine on someone, simply because they were a tenant, and one reliant on benefit. It would mean a far harsher sentence for poor tenants than those who are better off and not reliant on benefit.

The process described is quite cumbersome, and, as described, does not include the part of the process where the local authority makes a decision about whether to apply the sanction (in addition to the court's punishment). It is not clear from the description whether the sanction is intended to be a standard amount for a standard period, or whether the amount or duration of the sanction could be varied by either the local authority or the court according to the severity of the case. (The exception of course being the reduced sanction against the frail elderly, chronically sick or pregnant).

The only (superficial) advantage in Option 2 is that it would be up to the Scottish Executive whether to implement it (and we would hope, for the reasons stated above, that they would choose not to). The disadvantage is that it involves the creation of a totally new bureaucratic structure, a new appeals process and involves the local authority being prosecutor, judge and jury (which again may contravene natural justice and the ECHR).

The processes prior to the sanction being considered in option 2 appear to make a welcome concentration on counselling and support. We are disturbed by the final bullet point which states that consideration *'might be given to reinstating benefit if anti social behaviour ceases for a significant period.'* It is important that if sanctions are considered that there is a regular review as to whether there is a reason to impose the sanction (perhaps every month or even more frequently). The bullet point appears to imply that the sanction could be indefinite and regardless of any improvement in behaviour which would be contrary to natural justice.

The specific question is asked about how sanctions might be triggered. In our view, there should be no housing benefit sanctions. However if they are to be considered there must be clear and objective criteria against which each case is judged on an individual basis. There should be no blanket policies.

**Robert Aldridge**  
**5 August 2003**