

INTERNATIONAL REVIEW

THIRD PARTY COMPLAINTS
OF ANTI-SOCIAL BEHAVIOUR
in the private residential tenancy sector



Bord Um Thionóntachtaí Cónaithe Príobháideacha
Private Residential Tenancies Board

Author: Candy Murphy and Associates

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Canal House
Canal Road
Ranelagh
Dublin 6

www.prtb.ie

February 2007

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In 2006 the Private Residential Tenancies Board entered into a partnership arrangement with the Centre for Housing Research and it is managing a number of research projects on behalf of the PRTB.

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Author's Acknowledgments

The author would like to thank all those who co-operated in the study, both in Ireland and internationally. A special thanks is due to Fintan McNamara and Aideen Hayden for their help in sourcing international contacts. Thanks also to Sandra Roe for her excellent work on the study.



**THIRD PARTY COMPLAINTS
OF ANTI-SOCIAL BEHAVIOUR**
in the private residential tenancy sector

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Preface

In 1999, the Minister for Housing and Urban Renewal established the Commission on the Private Rented Residential Sector. The Commission Report was published in 2000 and one of the key recommendations was the establishment of a Private Residential Tenancies Board (PRTB).

The PRTB was established as an independent body on a statutory basis on 1 September 2004 following the enactment of the Residential Tenancies Act 2004 (RTA). It has 3 main areas of activity: the operation of a national registration system for all private residential tenancies; the operation of a dispute resolution service; and the provision of information, the carrying out of research and the provision of policy advice regarding the private rented sector.

Under the RTA the PRTB is empowered to establish committees to assist and advise it on matters relating to any of its functions. Following its appointment in 2005, the Research Committee of the Board identified two areas of concern in relation to the applications for dispute resolution. One was the very high proportion of applications coming before the Board concerning deposit retention, and the relatively high cost of processing these applications. The second was the possible ambiguity surrounding the concept of ‘anti-social behaviour’, which can be the subject of a complaint to the Board under the Act in certain circumstances. In relation to both topics, the Board sought information on how other jurisdictions with a private rented housing sector of a similar scale managed these issues. Invitations to tender for these comparative studies were invited. This was managed by the Centre for Housing Research on behalf of the Board. Candy Murphy and Associates were successful in being awarded the contract for both projects. The views expressed in the reports are therefore the views of the consultants and not the PRTB. We believe that these comparative overviews offer a diversity of options that need to be explored further, in particular their potential applicability to Ireland, and we commend the consultants for providing us with such a comprehensive overview.

The PRTB now seeks submissions from interested parties in relation to both of these topics. This report deals with the issue of Third Party Complaints Regarding Anti-Social Behaviour and another separate report deals with the topic of Deposit Retention. We hope that by publishing these comparative overviews, we can both initiate and inform a constructive debate that can allow a consensus to emerge on how best to move forward on these issues.

Dr. Eoin O’Sullivan, Chairperson,
Research Committee of the Private Residential Tenancies Board.

The background features a series of vertical white lines of varying heights on a dark red background. A large, dark red, angular shape is positioned in the lower right, partially overlapping the lines.

Third party complaints
regarding anti-social behaviour

Initiatives in selected countries

Introduction

The Residential Tenancies Act 2004 gives the Private Residential Tenancies Board (PRTB) responsibility for dealing with third party anti-social behaviour disputes referred to them by neighbours and which have not been dealt with to the neighbour's satisfaction by the landlord concerned. In such cases the neighbour is calling on the PRTB to take action to compel the landlord to deal with the anti-social behaviour carried out by his/her tenants.

The Act defines such behaviour as follows:

behave in a way that is anti-social means

- (a) engage in behaviour that constitutes the commission of an offence, being an offence the commission of which is reasonably likely to affect directly the well-being or welfare of others

- (b) engage in behaviour that causes or could cause fear, danger, injury, damage or loss to any person living, working or otherwise lawfully in the dwelling concerned or its vicinity and, without prejudice to the generality of the foregoing, includes violence, intimidation, coercion, harassment or obstruction of, or threats to, any such person

or

- (c) engage, persistently, in behaviour that prevents or interferes with the peaceful occupation
 - (i) by any other person residing in the dwelling concerned, of that dwelling

 - (ii) by any person residing in any other dwelling contained in the property containing the dwelling concerned, of that other dwelling

or

- (iii) by any person residing in a dwelling ("neighbourhood dwelling") in the vicinity of the dwelling or the property containing the dwelling concerned, of that neighbourhood dwelling.

The PRTB is currently handling a small number (approximately 40) of such disputes but is concerned that such disputes may increase in the future. This research is therefore aimed at exploring the ways that other countries deal with such disputes in the private rented sector, with a view to informing the PRTB's work in this area.

LEVELS OF ANTI-SOCIAL BEHAVIOUR DISPUTES

Anti-Social Behaviour is a generic term used to describe a spectrum of activities that adversely affect the social well-being of neighbourhoods even if some of these activities are not technically in breach of the law (Jacobs and Arthurson, 2003). Table 1 gives a typology of such behaviour.

Table 1 Typology of Anti-Social Behaviour

Adapted from the UK Home Office (2003) website: <http://www.crimereduction.gov.uk/toolkits/asoz20101.htm>.

EXAMPLES OF ANTI-SOCIAL BEHAVIOUR	
Excessive noise	Using and selling drugs
Unkempt gardens (those which attract the dumping of goods, creating eyesores)	Harassment (including racist and homophobic incidents)
Verbal abuse	Alcohol and solvent abuse
Uncontrolled pets	Intimidation
Vandalism	Dropping litter and dumping rubbish in public areas
Nuisance from vehicles (e.g. abandonment)	Intimidating gatherings of young people in public places

The term Anti-Social Behaviour is used to cover a wide spectrum of behaviour, ranging from mild to serious incidents. Bannister and Scott (2000:10) suggest a useful analysis of this spectrum, as set out in table 2.

Table 2 A Spectrum of Anti-Social Behaviour

Adapted from Bannister and Scott (2000: 10)

TYPE OF PROBLEM	NATURE OF PROBLEM
Neighbour	A dispute arising from nuisance, e.g. noise
Neighbourhood	Incivilities within public spaces, e.g. vandalism
Crime	All forms of criminal activity, e.g. housebreaking

One of the key issues in dealing with such disputes therefore is the level at which these disputes occur.

PREVALENCE OF ACTION WITHIN THE LOCAL AUTHORITY/SOCIAL
HOUSING SECTOR

It is worth noting that in the other countries reviewed for this study, as in Ireland, experience of dealing with such disputes is largely within the remit of the local authority or social housing sector. None of the countries reviewed had established special arrangements for the private rented tenancies sector. However, a number of countries are currently looking at ways in which the private and the public sector can work together in dealing with anti-social behaviour in both private and public housing estates. This is in recognition of the increasing overlap between public and private housing and of the considerable experience of the public sector and local authorities in dealing with such disputes.

The report begins by describing the situation in Ireland in relation to anti-social behaviour, drawing largely on experience in the social housing sector. It goes on to look at experience in other countries, again largely drawing on the social housing sector.

These countries were:

- UK
- US
- Australia

Additionally, a small amount of information was obtained from other countries that had been included in the review of rent deposit dispute mechanisms – Norway, the Netherlands and Greece.

Overall Conclusion

The literature review carried out in the course of this study indicates the following:

- There are no examples in the international literature of Alternative Dispute Resolution mechanisms that deal specifically with anti-social behaviour disputes involving private landlords, their tenants and their neighbours in the private rented tenancy sector
- Such disputes continue to be dealt with in the courts
- There are examples of mediation being used in anti-social behaviour cases, primarily in Australia, but this is currently only found in the social housing sector
- There are also examples in other countries of situations where local authorities can take action against private landlords who are not seen to be adequately dealing with the anti-social behaviour of their tenants. This is an area that is being developed in the UK at the present time
- There is a wide range of examples of initiatives being developed in the social housing arena, in Ireland and elsewhere, aimed at both preventing and minimising anti-social behaviour disputes in that sector.

These developments are all outlined below where they are seen to have relevance to the private rented sector in Ireland.

However, the overall conclusion that emerges from this analysis is that the Irish legislation in relation to dealing with third party anti-social behaviour disputes in the private rented sector is not currently replicated in other countries. Therefore the lessons that can be learned from the literature relate primarily to how private landlords and local authorities can work more closely together in dealing with such disputes.

The findings presented below must be seen in the light of this overall conclusion. These findings can at best give broad indications of the way the existing Irish legislation and related policies and procedures can be developed rather than giving specific examples to guide the PRTB's current work in this area.



Third party complaints regarding anti-social behaviour
Initiatives in selected countries

IRELAND

LEGISLATION

Anti-social behaviour (ASB) is defined in the Residential Tenancies Act 2004 (Government of Ireland, 2004) as behaviour that constitutes the commission of an offence, causes danger, injury, damage or loss, or includes violence, intimidation, coercion, harassment, obstruction or threats. It also includes persistent behaviour that prevents or interferes with the peaceful occupation of neighbouring dwellings by others in the building or its vicinity.

Under the Residential Tenancies Act 2004, tenants must not engage in or allow anti-social behaviour or act in a way that would invalidate the landlord's insurance.

The Residential Tenancies Act 2004 also strengthened local authority powers under the Housing (Miscellaneous Provisions) Act 1997 (Government of Ireland, 1997) to deal with ASB in their estates. Excluding order powers, whereby the District Court can exclude individuals engaging in ASB from social housing dwellings or areas, have been extended to occupants (other than the owner) of tenant-purchased homes. Existing powers to refuse sale of local authority housing on grounds of ASB have been applied to sales under affordable housing and shared ownership schemes.

Part 6 of the Residential Tenancies Act 2004 states that disputes arising between landlords and tenants, in relation to complaints by neighbours regarding tenant behaviour, are to be referred to the PRTB instead of the courts.

ANTI-SOCIAL BEHAVIOUR IN IRELAND

Fahey (1999) reported that ASB is the single biggest problem on troubled local authority estates in Ireland, while popular estates were almost universally characterised by the absence of activity of this type.

SOCIAL HOUSING MODEL

The most detailed policy and analysis with regard to ASB complaints in Ireland is focused on the social housing sector. The most significant literature in this area is the work of Norris (2003), who has completed a set of guidelines for local authorities in relation to preventing and combating ASB.

The aims and objective of the ASB guidelines is to help local authorities prevent problems of anti-social behaviour from arising in their rented accommodation and to deal proactively, efficiently, effectively and equitably with incidents of this type where they do arise.

The guidelines are also intended to help local authorities to develop strategies to combat anti-social behaviour, which will achieve the following objectives:

- Achieve value for money for all expenditure on the service
- Identify performance indicators that will help to assess the quality of the service on an ongoing basis
- Establish management information systems in order to collate the information necessary for performance measurement and service development
- Protect the welfare of tenants and their families, including both the victims and perpetrators of anti-social behaviour.

GOOD PRACTICE RECOMMENDATIONS

Norris (2003) sets out good practice recommendations in relation to all the stages involved in dealing with complaints regarding ASB. In designing systems for receiving complaints regarding anti-social behaviour, she believes: 'it is important to strike a balance between enabling tenants to report legitimate concerns to the local authority on the one hand, and discouraging frivolous or vexatious complaints on the other'.

Good practice guidelines have been developed in relation to:

- Receiving complaints regarding ASB
- Dealing with anonymous complaints regarding ASB
- Customer care of complaints
- Recording customer complaints
- Recording and monitoring complaints

- Recording action taken to combat ASB
- Additional records required.

These guidelines are reproduced in the Appendix to the report.

PREVENTING ANTI-SOCIAL BEHAVIOUR

Norris (2003:16) states that 'the most effective way of combating ASB is to prevent it happening in the first place'.

She suggests the following methods of prevention of ASB within the social housing sector:

- Appropriate design of dwellings
- Strategic allocation of tenancies
- The inclusion of clear ASB definitions and clauses within tenancy agreements
- Effective estate management, tenant participation structure and appropriate community development
- The development of a local authority strategy on all levels of ASB for all types of accommodation
- The adoption of a co-ordinated approach to combat ASB involving, as appropriate, local authorities and other statutory agencies, voluntary housing bodies, tenants and representative tenants groups
- The provision of an appropriate budget and staff with particular responsibility for preventing and combating ASB
- Accurate and standardised record keeping
- Swift investigation and action on ASB complaint
- The employment of a wide range of appropriate responses to ASB such as mediation.

These recommendations are being taken on board by the local authorities. For instance, Dublin City Council has produced a number of pamphlets on policies and procedures for dealing with anti-social behaviour and on how to avail of 'Neighbour Mediation'. Dún Laoghaire/Rathdown County Council has also taken a number of initiatives in this area, as have many of the other local authorities.

Building on the experience of the local authorities in Ireland, the key point of relevance to the private sector would appear to be the importance of having agreed policy and procedures in place for dealing with such disputes.

These should aim:

- To put in place comprehensive databases to record and monitor complaints and establish precedents
- To set up systems to protect people's interests and identities, e.g. the Freedom of Information Act, the Data Protection Act
- To develop an investigative process for responding to such disputes with adequately trained staff
- To ensure adequate supervision of the process
- To develop a multi-organisational approach that involves working closely with the local authorities, the gardaí, the Health Service Executive and other interests
- To provide locally-based responses that are best placed to develop strong local knowledge and contacts
- To set up time line targets for dealing with such complaints
- To set up procedures for liaising with other relevant third parties such as residents associations and other support services.

As the new Rental Allowance Scheme comes on line in Ireland new relationships will be developed between private landlords and the local authorities. This will allow new ways of preventing and responding to anti-social behaviour by tenants in private rented accommodation to be developed in a collaborative way by landlords, local authorities and the PRTB.



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Initiatives in selected countries

UNITED KINGDOM

INTRODUCTION

Overall the key point arising from the review of the situation in the UK is that the courts are the only statutory mechanisms in place for dealing with ASB disputes in the private rented sector. However, the Residential Property Tribunal, currently being established, will in the future have a role to play in relation to licensing private residences or related areas where there are particularly high levels of anti-social behaviour.

Below we review how ways of dealing with anti-social behaviour disputes relating to housing have been developing in the UK.

ANTI-SOCIAL BEHAVIOUR IN THE UK

Evidence from the UK suggests that ASB is a serious concern to both tenants and housing agencies. For example, Nixon et al (1999) reported survey findings to show that 75 per cent of UK social landlords considered ASB to be a problem, that 20 per cent of housing managers' time is spent on dealing with nuisance behaviour and that between 2 per cent and 10 per cent of tenants on any given estate have been the subject of complaints.

LEGISLATION DEALING WITH ASB

The UK government introduced new legislation within the 1996 Housing Act and the 1998 Crime and Disorder Act to enable law enforcement and housing agencies to address ASB more effectively. Some of the practices put in place as a result of these changes in legislation include probationary tenancies, anti-social behaviour orders and fast-track eviction procedures (Flint, 2002; Home Office, 2002). The UK government's claim is that legal measures are required to address the most serious cases of ASB and that these policies are the most effective for persistent offenders (Cowan et al., 2001).

The Anti-Social Behaviour Bill was introduced in 2003. Key measures include:

<http://www.number-10.gov.uk/output/Page4388.asp>

- Widening the use of fixed penalty notices, e.g. noise nuisance, graffiti and applying them to 16-17 year olds
- New action to close down 'crack houses'
- Restricting the use of air weapons and replica guns
- Making it an offence to sell spray paints to under-18s and giving stronger powers to local authorities to tackle felt-tipping, graffiti and fly-posting
- Widening powers to shut down establishments that create noise nuisance
- Courts to consider the impact of ASB on the wider community in all housing possession cases
- Improving the operation of anti-social behaviour orders (ASBOs).

The changes to the UK legislation resulted in:

- The implementation of introductory tenancies
- A broadening of the grounds for eviction and excluding of households from waiting lists
- The requirement for local authorities to work in partnership with police on local crime and disorder partnerships
- Provisions to implement anti-social behaviour orders (Cowan et al., 2001).

ANTI-SOCIAL BEHAVIOUR UNIT

The Anti-Social Behaviour Unit was set up in 2002 to work across the UK, with the police and local authorities, and the victims of ASB. An Action Plan was published by the Anti-Social Behaviour Unit in 2003 which introduced a wide range of specific initiatives and funding to tackle ASB and provide support for victims and witnesses.

GOOD NEIGHBOUR CHARTERS AND TENANCY AGREEMENTS

In the UK, neighbourhood charters and tenancy agreements are commonly employed as part of a range of strategies to address ASB. Neighbourhood charters attempt to set out, in consultation with residents, the particular standards of behaviour expected within the local neighbourhood. Likewise, tenancy agreements inform tenants of their rights and responsibilities and expected standards of behaviour.

The UK Chartered Institute of Housing Management Standards Manual (1995) argues that to successfully deal with ASB, policies and procedures need to be drawn up in consultation with tenants to facilitate ownership and awareness of the strategies. Both these forms of agreement ensure that the housing agency and tenants are aware of their rights and obligations in relation to preventing ASB. This reassures tenants that the housing department will take effective action to prevent or address ASB.

Many housing authorities in the UK have tightened tenancy agreements to include serious ASB by a tenant or visitor as a breach of tenancy and grounds for eviction (Papps, 1998). Making tenants aware of the ability of housing agencies to reduce problematic behaviours seems to give more legitimacy to the housing authorities and demonstrates their ability to exert discretionary power. For instance, the ability to quickly evict drug-related cases and stop intimidation and vandalism is viewed favourably by other tenants (Flint, 2002).

ACCEPTABLE BEHAVIOUR AGREEMENTS

Acceptable behaviour contracts were first piloted in the UK, in the London Borough of Islington in 1999, to deal with young people aged between 10 and 17 causing problems on social housing estates. The contracts are now widely used by housing agencies as an alternative to legal remedies for addressing anti-social behaviour. The agreements are voluntary and made between the individuals involved in the ASB and their families, the housing department, the registered social landlord, police and, often, the education authorities. Whilst behavioural agreements are generally applied to youth, they can be adapted for use with adults. The sorts of ASB covered by the agreements include graffiti, harassment, vandalism, verbal abuse and criminal damage (Home Office, 2002; Armitage, 2002).

The advantages of the agreements are seen to be that:

- They focus on making individuals take responsibility for their ASB
- Individuals need to reach a decision on strategies to change their behaviour
- The process identifies the factors contributing to ASB.

The whole family is involved in designing the individualised written contract and if the individual involved is a child under 10 years old, the parents rather than the child sign it. As well as the threat of legal enforcement for a breach of the contract, the individual is encouraged to take part in other more appropriate activities, including youth activities, counselling or support for the family (Home Office, 2002). In many instances, it is the first time that the family becomes aware of the behaviour and is involved in jointly working with the housing department and police (Local Government Association, 2002).

BUILDING DESIGN

The available literature indicates that building design and layout can help to reduce the opportunities for ASB to occur. However, at the same time, it is recognised that physical design measures and security initiatives on their own are insufficient to address ASB (Feins et al., 1997; Murie, 1997; Naperstek, 2000; Flint, 2002).

The sort of design changes commonly implemented by housing authorities in the UK includes:

- Securing front and rear gardens, installing high quality door and window locks and double glazing (Bannister and Scott, 2000; DTLR, 2002)
- Making sure that approaches to dwellings and other public spaces are well lit, opening up public space to create better natural surveillance and designing windows to overlook streets and public areas while providing privacy for occupants (Bothwell, Gindro and Lang, 1998; DTLR, 2002)
- Enforcing noise insulation standards between dwellings (Bannister and Scott, 2000; DTLR, 2002)
- Installing traffic calming features and rerouting traffic (Fordham et al., 1997).

INTRODUCTORY / PROBATIONARY TENANCIES AND EVICTION

Social housing landlords in the UK can provide introductory tenancies, which mean there is no security for the tenant in the first year of occupancy. Previously, tenants had security of tenure and could only be evicted on certain grounds, which included nuisance, annoyance to neighbours, non-payment of rent. Landlords had to show that it was reasonable to evict, and decrees of eviction were issued at the court's discretion.

The basic premise underlying the changes was to identify problem tenants and to exclude people from social housing who are potential threats to the community or have previously been evicted for ASB. Under the new arrangements, the tenancy agreement can be terminated at any time within the initial 12-month period and the grounds for eviction cover visitors to the property and convictions for arrestable offences (Haworth and Manzi 1999; Burney, 2000). After the first year, if there are no problems, the introductory tenancy converts to a secure tenancy.

Research with social landlords in the UK found that most believed that eviction was ineffective as a way of dealing with ASB. While eviction sorted out the problem locally, it did not deal with the underlying causes of problems (Hunter, Nixon and Shayer, 2000). In two notable cases, individuals evicted from social housing moved to other addresses within the same community (Hunter, Nixon and Shayer, 2000). Indeed, it is not uncommon for evicted tenants to end up in the same locality, sometimes in adjacent streets, with a different housing provider or in the private sector where social landlords have no control over their ASB (Local Government Association, 2002).

ANTI-SOCIAL BEHAVIOUR ORDERS

In the UK, the local authorities and police have the option of applying for an Anti-Social Behaviour Order (ASBO) to address problem behaviour. An ASBO represents a form of injunction sought from magistrates against those likely to harass or distress people (not in the same household) but where criminal proceedings are not appropriate. The order applies for a minimum of two years. It contains individual, tailor-made prohibitions to prevent the offender from committing specific anti-social acts and from entering defined areas (Burney, 2000: 270).

Whilst ASBOs are not criminal penalties, breach of the order is a criminal offence, with criminal procedures and penalties applying.

The maximum allowable penalty is five years imprisonment for an adult offender (Home Office, 2002). Implementation of an ASBO requires cooperation between the local authority and the police and sharing of evidence (Flint, 2002: 634). The guidelines for ASBOs advise consulting social services if an order is sought against someone with drug, alcohol or mental health problems (Burney, 2000: 271).

According to The Home Office's Guide to Anti-Social Behaviour Orders (Home Office, 2002) the most appropriate situations for the use of ASBOs are the following:

- When individuals intimidate neighbours and others, using threats of violence or other unpleasant activities
- Where groups of individuals persist in unruly behaviour, dominate others or damage property as a means of intimidating people
- Where families challenged about their use of ASB resort to verbal abuse, vandalism, graffiti and threats of violence
- Where abusive behaviour is targeted towards the elderly, mentally ill or disabled persons
- In instances of ASB resulting from drugs or alcohol abuse.

Jacobs and Arthurson (2003) summarise the major advantages and disadvantages of anti-social behaviour orders in Table 3, drawing on the work of Armitage (2002); Chartered Institute of Housing (2002); DTLR (2002); Home Office (2002); Local Government Association (2002); and Scottish Executive (2003).

Table 3 Summary of major advantages and disadvantages of anti-social behaviour orders

ADVANTAGES	DISADVANTAGES
Can sometimes successfully reduce ASB and act as a deterrent without housing authorities actually having to apply their use.	The process of seeking an ASBO may be complex and financially costly.
Increases confidence of community and wider public in partner agencies	In the UK, 36 per cent of orders were breached within nine months of implementation (some up to five times)
Breaking an ASBO is a criminal offence.	
Implementation requires cooperation between the housing authority, local police and other agencies.	

TAKING A STAND AWARDS

The Taking a Stand Awards were launched to recognise those who have tackled ASB in their area and have made a real difference to their community. The awards are a partnership between the Anti-Social Behaviour Unit, the Co-Operative Group, Crime Concern and the National Neighbourhood Watch Association. There are up to 30 awards of £1,000, plus the top award of £5,000 to be won and spent for the benefit of local communities across England and Wales.

LOCAL CRIME AND DISORDER PARTNERSHIPS

Local-level area partnerships that address ASB are common in the UK. They are comprised of local police, social landlords, local authorities, and the health, business and voluntary sectors. Under the UK Crime and Disorder Act 1998, local authorities and police have a statutory duty to work in partnership to develop and implement a three-year plan for tackling crime and disorder. As part of this process, audits of local ASB problems and community consultations are undertaken (International Centre for the Prevention of Crime, 2000; Local Government Association, 2002; Renewal.net, 2003).

Welsh and Farrington (2000) report on a burglary reduction programme in a local housing authority estate that was a partnership between the local authority, police and community representatives. It used a variety of measures, including property marking, improved security and resident surveillance, to tackle the problems. The authors reported a 75 per cent reduction in burglaries over a three-year period.

WARDEN SCHEMES

Warden schemes are popular in the UK and part of their remit is to prevent crime and ASB. Often wardens provide a 24-hour on-site presence (Crime Concern, 2000).

The functions of wardens include:

- Undertaking mobile security patrols and foot patrols to report crime and ASB; and responding to minor incidences of ASB, including litter and graffiti removal
- Acting as concierges in buildings where, in addition to carrying out minor maintenance, they have a security role in controlling access to buildings
- Installing alarms and closed circuit TV on properties
- Providing information to local police and authorities
- Communicating with tenants and instilling confidence through their presence
- Visiting vulnerable tenants, anxious witnesses and victims of crime and racial harassment
- Setting up Neighbourhood Watch Schemes

(Jacobson and Saville, 1999; Crime Concern, 2000).

The warden schemes provide a complementary role for police and other local authority services but are not seen to be a substitute for them or considered suitable in neighbourhoods where crime rates are very severe. Some of the benefits of warden schemes are that wardens free up the police to pursue serious crime and their presence might act as a deterrent to ASB. A recent review of fifty projects in the UK acknowledged that further evaluation is required. However, it concluded that the schemes contributed to reductions in crime and fear of crime. The review also concluded that the schemes were beneficial in increasing the sense of confidence and well-being of residents of disadvantaged neighbourhoods (National Strategy for Neighbourhood Renewal, 2000).

The literature identifies the following problems with warden schemes:

- There is often more punitive treatment of council tenants than non-council tenants, who may indulge in the same behaviour, but are not threatened with loss of their homes
- Some animosity and duplication exists between housing officers and wardens. This situation is improved by the lead role of housing officers being recognised
- Warden services can be costly in financial terms
- Often wardens resort to legal remedies at a very early stage
- There is a lack of focus on mediation as a solution to ASB (Papps, 1998)

- Using wardens, in isolation from social interventions, is likely to cause displacement of the problems to neighbouring areas.

(Ward, 1997; Schumacher and Leitner, 1999; Armitage, 2002; Flint, 2002).

TARGETING CRIME AND DISORDER HOT SPOTS

Some housing authorities in the UK utilise data provided by local police authorities to map incidences of crime. One study on a housing estate in Northern England, which involved victims and neighbours looking out for repeat offences, showed a 75 per cent reduction in domestic burglary over a three-year period (Forrester et al., 1988). A follow-up replication study showed similar results (Forrester et al., 1990).

MEDIATION AND INTERVENTION MODELS

Disputes between neighbours in the UK are often taken directly to the police. However, it is felt that early action using mediation could more appropriately resolve many such disputes before they escalate (National Strategy for Neighbourhood Renewal, 2000; Renewal.net, 2003; Scottish Executive, 2003). Mediation is found to work best for low-level disputes which represent most cases, although it is not an appropriate solution for violence, threats of violence or where police and courts need to be involved in legal action (Scottish Executive, 2003).

Mediation schemes in the UK have been found to be more cost-effective than going to court as in some areas 30 per cent of cases were successfully resolved through mediation (Crime Concern, 2000).

The advantages of mediation are outlined by Jacobs et al. (2003):

- It deals with disputes between neighbours without turning to formal legal remedies that are time-consuming and costly to administer
- The process is non-adversarial, confidential, low priced and provides a rapid solution
- The voluntary nature of the process means people learn skills for dealing with conflict in the future and responsibility for a solution remains with the parties concerned, rather than being imposed by a court, which makes the solution more likely to be permanent
- It is an independent and neutral service, and as mediators are independent of the dispute there is no 'conflict of interest'.

SOCIAL INTERVENTIONS

Social interventions can help address the source of ASB on social housing estates. Social intervention can include the introduction of sports and recreation projects for young people, and the establishment of drugs, alcohol and domestic violence services within an area. Armitage (2002) states that social intervention, such as providing after-school clubs, can trigger multiple benefits that include

keeping youth off the street at the time they are most at risk of committing crime or being victimised; providing remedial education to improve skills and encourage alternative options to engaging in ASB; providing children and young people at risk with positive non-criminal role models and alternatives to adopting ASB.

SOCIAL LANDLORDS CRIME AND NUISANCE GROUP

The Social Landlords Crime and Nuisance Group (SLCNG) is a housing-based local authority working group focusing on nuisance and ASB. The group grew from a housing conference in 1995 where a method for sharing ideas and lobbying on nuisance and ASB was identified. The SLCNG has a membership of more than 200 local authorities, registered landlords and tenant groups and represents over 2.6 million tenancies. The group has strong links with the local government association, the national housing federation and the chartered institute of housing. The SLCNG philosophy is to share information on good and best practice and to lobby for effective tools to tackle ASB.

The SLCNG has developed a model protocol for the exchange of information between police and housing staff. It also publishes a quarterly newsletter, *Nuisance News*, which gives examples of work being carried out around the UK to tackle nuisance and ASB within housing and community fields. In addition, it holds conferences and seminars annually for tenant groups and practitioners and has regional network groups who meet within their own regions to discuss local issues (www.crimereduction.gov.uk/antisocialbehaviour3.htm).

NOISE LEGISLATION IN THE UK

Noise Act 1996 as amended by the Anti-Social Behaviour Act 2003

The Noise Act 1996 as amended by the Anti-Social Behaviour Act 2003 introduced for the first time a night noise offence relating to domestic premises and a procedure for the seizure and forfeiture of noise-making equipment.

Investigation of Complaints of Noise from a Dwelling at Night

The night noise offence is intended to provide a swift remedy to problems of disturbance caused by noise from dwellings at night. Night noise may be investigated under the 1996 Act following a complaint made by any individual present in a dwelling that excessive noise is being emitted from another dwelling between the hours of 23:00 and 07:00. The offence is based on exceeding an objectively measured sound level value. It has the advantage of not being subject to the same subjective uncertainties about judgements of nuisance which can prolong court proceedings for noise offences. The availability of a fixed penalty system, as well as providing a swifter sanction, also prevents some cases being brought to court.

Warning Notices

If a local authority receives a complaint of noise exceeding a certain sound level, it must ensure that an officer of the authority takes reasonable steps to investigate the complaint. If the officer is satisfied after an investigation that noise is being emitted from the offending dwelling during night hours above the permitted level, he/she may serve a notice about the noise. There is a fixed penalty sum of £100 for this offence.

Seizure, Retention and Forfeiture

Where a warning notice has been served under Section 3 of the 1996 Act, and the noise emitted from the premises has exceeded the permitted level during the period specified in the notice, action to seize the noise-making equipment may be undertaken. Such noise-making equipment will typically comprise electronic items such as a HiFi, mixer desk, loudspeakers, TV, DIY equipment, and musical instruments such as drum-kits, keyboards or guitars and their amplification. It may potentially also include a collection of CDs, records, minidisks or tapes. The powers of the 1996 Act are not intended to cover noisy animals such as barking dogs.

An officer of the local authority or person authorised by the authority may enter the dwelling to seize and remove the equipment that he/she believes is being used, or has been used, in the emission of noise during the period when the noise exceeded the permitted level. The person carrying out the seizure must produce evidence of his/her authority to do so, if requested. Any person who wilfully obstructs a person who is attempting to enter premises or seize noise-making equipment can be liable for a fine of up to £1,000. The police are sometimes employed in the seizure process if an officer of the local authority is in fear of his/her safety.

SPECIFIC MEASURES IN THE UK INVOLVING PRIVATE LANDLORDS

UK Housing Act 2004

The Housing Act 2004 contains provisions that will require private landlords of houses in multiple occupation (houses with facilities shared by more than one family) to be licensed (if at minimum they are of three or more storeys and five or more unrelated persons). In such cases the landlords will need to take action if their tenants are anti-social. There are also linked provisions that will allow local authorities to selectively license all private landlords in specific areas of low demand or other areas of high anti-social behaviour.

The Housing Act 2004 provides authorities with new powers to deal with individual properties and landlords through Special Interim Management Orders (SIMOs). These enable the local authority to take over the management of individual properties with a significant anti-social behaviour problem that the landlord or manager is failing to tackle. By providing these powers to manage individual properties, it should not be necessary for the local authority to

designate a neighbourhood for a selective licensing scheme in order to deal with one or two specific properties that give rise to problems.

Not all private landlords, however, will fall within the licensing arrangements of the Housing Act 2004, nor are there requirements for them to be registered. Apart from liaising with local authorities over ASB cases and ensuring that an ASB clause is in their tenancy agreements, the actions that such landlords can take is limited.

The Housing Act 1988 provides the anti-social behaviour grounds on which a court may order the repossession of a privately rented property by a landlord, having regard to the provisions of Sections 7-9 of the Act. Ground 14 of Schedule 2 is concerned with a situation where the tenant, or a person residing in or visiting the dwelling-house:

- (a) Has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting or otherwise engaged in lawful activity in the locality
- (b) Has been convicted of using the dwelling-house or allowing it to be used for immoral or illegal purposes, or an arrestable offence committed in the property or the locality of the dwelling-house.

Section 9A of the Act (inserted by the Anti-Social Behaviour Act 2003) further provides that the court must consider in particular:

- (a) The effect that the nuisance or annoyance has had on persons other than the person against whom the order is sought
- (b) Any continuing effect the nuisance or annoyance is likely to have on such persons
- (c) The effect that the nuisance or annoyance would be likely to have on such persons if the conduct is repeated.

The 'anti-social behaviour ground' can be used without specific provision in the tenancy (in practice, through a written agreement). However, as Section 7(9) of the 1988 Act provides, this is only true if the tenancy is not for a fixed term. Because landlords tend to let on an initial fixed term of 6 or 12 months, many may be powerless for several months until the expiry of that term (although possession can then be sought with zero weeks' notice).

In practice few landlords use this power. Court procedures can take time and the court may not exercise its discretion in the landlord's favour. In practice most landlords would give two months' notice to the tenant under Section 21 of the 1988 Act – the 'no fault' Accelerated Possession Procedure – for recovery of possession of their property at the end of the fixed term. Even if a landlord has to go to court (to secure the services of court bailiffs) this procedure is quicker, despite having to give two months' notice.

The Department for Work and Pensions is currently working on a Welfare Reform Bill which, if passed, would allow local authorities to reduce, or place conditions on, the payment of housing benefit to any person who has been

evicted, subject to a court making a relevant order for possession of a property rented as his/her home.

A relevant order for possession, for the purposes of private rented accommodation, includes two types of order: an order made under Section 7 of the Housing Act 1988 (assured tenancies) on ground 14 set out in Schedule 2 to that Act; or an order made under Section 98 of the Rent Act 1977 (protected or statutory tenancies) in the circumstances specified in case 2 in Schedule 15 to that Act).

The Antisocial Behaviour etc. (Scotland) Act 2004

The measures in the Antisocial Behaviour etc. (Scotland) Act 2004 (Scottish Executive, 2004) dealing with private landlords are part of the wider package of tools available to police and local authorities to address problems of anti-social behaviour in local communities within Scotland. They also provide a means, through registration, of regulating the private rented sector generally. Part 7 of the Act allows local authorities to serve anti-social behaviour notices on private landlords.

Consultation and other evidence has shown that the impact of anti-social behaviour in and around a privately rented house can be aggravated by the landlord's failure to take action in connection with such behaviour which would be considered normal good practice in letting any property. The anti-social behaviour notice tells the landlord what actions he/she should take to address the situation.

The Act sets out the basics of when and how anti-social behaviour notices can be used, and their consequences. It provides for some of the detail to be set out in regulations; it is also normal practice for the Scottish Executive to issue guidance to local authorities on the use of such powers (www.scotland.gov.uk).

Relevance of the UK Experience to the Private Rented Sector in Ireland

The analysis of how anti-social behaviour disputes are dealt with in the UK indicates that the local authorities, supported by the police and the courts, are the key players in dealing with anti-social behaviour in both the public and the private housing sectors. There are no specific measures in place to support third parties to deal with such behaviour beyond reporting it to the landlord, the local authority or the police.

The UK experience does, however, provide some pointers for the work of the PRTB:

- It provides evidence of the effectiveness of mediation in dealing with minor neighbour-to-neighbour disputes
- It points to the effectiveness of legislation which allows for objective measurement of noise levels and of related powers to seize such equipment
- It indicates actions that can be taken to deal with difficult tenants, e.g. the use of probationary tenancies

- It indicates preventative action that can be taken and encouraged in terms of building and neighbourhood design
- It indicates that in areas where there may be a concentration of anti-social behaviour disputes, involving both local authority and private tenancies, there are a number of actions that can be taken jointly by the local authorities and the private landlords and tenant groups involved, in order to minimise such disputes through for instance appointing wardens, agreeing good neighbour charters and establishing tenant agreements
- Finally, it indicates the type of actions that local authorities are taking in the UK to deal with landlords and related properties where anti-social behaviour is not being effectively managed. This includes the introduction of licensing agreements, taking over the management of such dwellings, or the imposition of anti-social behaviour orders on such landlords.



Third party complaints regarding anti-social behaviour
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UNITED STATES

INTRODUCTION

In this section we look at action taken in the US to deal with anti-social behaviour and housing. Again the information provided relates primarily to the social housing sector.

INTRODUCTORY/PROBATIONARY TENANCIES AND EVICTION

Similar to the UK, social housing landlords in the US can provide introductory tenancies, which mean there is no security for the tenant in the first year of occupancy. Previously, tenants had security of tenure and could only be evicted on certain grounds, which included: nuisance, annoyance to neighbours, and non-payment of rent. Landlords had to show that it was reasonable to evict, and decrees of eviction were issued at the court's discretion.

The basic premise underlying the changes is to identify 'problem tenants' and to exclude people from social housing who are seen to be potential threats to the community or have previously been evicted for ASB. Under the new arrangements, the tenancy agreement can be terminated at any time within the initial 12-month period and the grounds for eviction cover visitors to the property and convictions for arrestable offences (Haworth and Manzi, 1999; Burney, 2000). After the first year, if all goes well, the introductory tenancy converts to a secure tenancy.

In the US, there is a 'zero tolerance' approach under a law passed in 1988 to create incentives for public housing tenants to assist in reducing drug-related crime by policing their own families and guests. In essence, if any member of the tenant's family or guests is involved in drug-related criminal activity, on or off the premises, this provides grounds for eviction. This is seen to provide a way of demonstrating to the community that the rules must be followed and that ASB will not be tolerated (Feins et al., 1997).

LOCAL CRIME AND DISORDER PARTNERSHIPS

Local-level area partnerships that address ASB are common in the US. They are comprised of local police, social landlords, local authorities, and the health, business and voluntary sectors. They have been found to be successful in reducing crime rates in areas where they operate (International Centre for the Prevention of Crime, 2000).

One such example is documented by Feins et al. (1997). Genesis Park in Charlotte, North Carolina had a long history of high crime rates and drug-trafficking activities. A partnership between a local housing organisation and the police department bought up the drug houses and converted them into single-family homes. Home-ownership classes and credit support schemes were initiated in conjunction with the local residents' association to encourage self-sufficiency in public tenants. In addition, a complex range of traffic barriers and changes to the traffic pattern in the area were utilised to deter drug traffic, simultaneously implementing name changes to the most notorious streets. Evaluations of this initiative indicate that crime was reduced by 74 per cent.

WARDEN SCHEMES

Similar to the UK, warden schemes are popular in the US and are found to be successful in reducing crime rates (Grogan and Proscio, 2001). Many of the schemes are funded through local authorities using resources from their mainstream programmes (Jacobson and Saville, 1999; Crime Concern, 2000). For example, the Chicago Housing Authority has trained residents to undertake warden roles as an effective means of formal surveillance as well as mobilising local residents. The residents report any problems to security guards or police (Feins et al., 1997).

TARGETING CRIME AND DISORDER HOT SPOTS

Some housing authorities in the US target areas with high rates of crime and disorder through using data provided by local police authorities to map incidences of crime. Research shows that a quick response to incidences of ASB from housing authorities and the police can be effective in deterring a recurrence (Sloan-Howitt and Kelling, 1997).

MULTI-AGENCY ASB MANAGEMENT PANELS

Management Panels encourage regular meetings and information sharing across agencies that can be used to organise a range of responses to tackle ASB. Homel (1998) outlines a multi-agency partnership in Boston across a range of community services, housing and police that is seen to have successfully deterred youth crime. The project included a deference strategy to provide alternative pathways for youth instead of gang membership, including assistance with housing and returning to education and employment options. Based on these findings, Homel argues that partnership only works where: agencies share resources, have a common goal, and accept responsibility for the success or possible failure of initiatives.

RELEVANCE OF THE US EXPERIENCE TO THE PRIVATE RENTED SECTOR
IN IRELAND

This analysis suggests that anti-social behaviour disputes are dealt with in a similar way in the US to the UK. It indicates that housing authorities, supported by the police and the courts, are the key players in dealing with anti-social behaviour in the housing sector. No evidence is available to suggest that specific measures are in place to support third parties to deal with such behaviour beyond reporting it to the landlord, the housing authorities or the police. The analysis indicates the use of probationary tenancies and of joint action by the housing authorities, private landlords and tenant groups to minimise such disputes through for instance appointing wardens, agreeing good neighbour charters and establishing tenant agreements.



Third party complaints regarding anti-social behaviour
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AUSTRALIA

INTRODUCTION

In this section we show how public housing authorities in Australia deal with ASB in relation to housing tenants. This includes:

- Legislation
- Probationary tenancies
- Evictions
- Mediation in neighbour disputes
- Policies to address a community's reputation
- Strategies to enhance social cohesion and community status

(Jacobs and Arthurson, 2003).

LEGISLATION

In Australia, each State and Territory Housing Authority (SHA) has a set of policies in place to address ASB. In broad terms, these include a legislative framework, tenant complaint procedures, mediation practices and eviction policies. Public housing residents in each jurisdiction are subject to the conditions of tenancy as specified in their lease agreement. Each SHA's

Residential Tenancy Act contains provisions specifying the requirement of tenants to respect the rights of their neighbours. On the whole, SHAs are reluctant to enforce eviction strategies unless all other options to resolve disputes have been explored.

SHAs are also proactive in taking measures to address the causes of ASB. For example, in the Australian Capital Territory, The Housing Multi Unit Property Plan (ACT Housing, 2000) provides a framework for housing managers to address ASB practices including:

- Engaging in partnerships with the police
- An early response to vandalism
- Actively seeking to develop formal discussions with tenant representatives to develop appropriate solutions
- Overview of State and Territory housing authority procedures to address problems of anti-social behaviour (Jacobs and Arthurson, 2003).

Table 4 summarises relevant procedures in place across Australian states.

	ACT	TAS	NSW	NT	QLD	SA	VIC	WA
RELEVANT LEGISLATION	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
WORKING DEFINITION OF ASB	Yes	No	No	No	Yes	Yes	No	Yes
GOOD NEIGHBOURS POLICY	No	Yes	Yes	No	No	No	Yes	No
TENANT COMPLAINT PROCEDURES	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
MEDIATION PRACTICES	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
COURT ORDERS	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
EVICTION POLICIES	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

ACT: Australian Capital Territory; TAS: Tasmania; NSW: New South Wales, NT: Northern Territory; QLD: Queensland; SA: South Australia, VIC: Victoria; WA: Western Australia

In Tasmania, an incremental or tiered response is adopted and housing managers use their discretion in deciding the most appropriate forms of intervention. In some instances community mediation services are deployed and inter-agency policies are also used to tackle more acute problems associated with ASB.

In New South Wales, the State Housing Authority:

- Operates a good neighbour policy
- Will refer disputes where appropriate to independent community justice centres
- Has set up proactive measures to prevent incidences of ASB, e.g. ‘the joint guarantee of service’ with mental health agencies and memorandums of understanding with the police
- Provides outreach services for new tenants with prior experiences of homelessness at the start of a tenancy.

In the Northern Territory, the Residential Tenancy Act is the means by which housing managers address ASB. A series of incremental steps are taken to address the problem but eviction can be used as the ultimate sanction. In Queensland, housing staff adopt practices specified within the housing policy and procedure manual. Though the term ASB is not specified, housing managers are encouraged to use their own judgement and discretion as to the most appropriate response.

In South Australia, the Housing Trust has recently completed a review of ‘difficult and disruptive tenants’ (South Australia Housing Trust, 2002). Housing managers are encouraged to take early action and tenants are encouraged to play an active role in seeking resolutions of disputes. In Victoria, housing managers follow guidelines established by the ‘Dispute and Resolution Policy and Procedures’ document alongside a ‘good neighbours policy’ to encourage tenants to resolve problems at their source. In extreme circumstances, when other attempts at resolution have failed, eviction policies are used. Finally, the Western Australia housing authority ‘Homeswest’ follows usual procedures but also deploys an allocation policy that vets tenants with a poor tenancy history. Those tenants with substantiated breaches of tenancy are referred to the regional managers for appropriate action.

Under Section 23 of the Residential Tenancies Act 1994 tenants must not cause or permit a nuisance; interfere, cause or permit any interference with the reasonable peace, comfort or privacy of their neighbours; use, or permit to be used, their premises for any illegal purpose. Under Section 30 of the Act tenants are responsible for the actions of all those on their premises with their consent. If they are creating a persistent noise or nuisance problem, this could be cause for eviction.

Under Section 22 tenants have the right to quiet enjoyment without interruption by the landlord or head-tenant or someone acting on behalf of the landlord. Under the Noise Control Act 1975, tenants have protection against certain types of noise during certain hours.

Under the Noise Control Act 1975, restrictions apply to a variety of noises, including radio, television, domestic air conditioners, lawnmowers, cars, musical instruments, power tools and swimming pool and spa pumps. Offenders can face a penalty of up to \$500.

RESOLUTION OF ANTI-SOCIAL BEHAVIOUR DISPUTES

New South Wales Tenants Resources suggests the following measures in dealing with disputes with neighbours:

Try to talk directly to the neighbours. If this is not successful and depending on the nature of the noise, you could:

- Ask your local community justice centre to mediate the dispute
- Make a complaint to your local council. For instance, in the case of noisy dogs they can issue a noise abatement order
- Complain to the Environment Protection Authority. They may be able to issue a noise abatement direction or a noise control notice
- Ring the police. (www.tenants.org.au)

Dispute resolution mechanisms in Australia can generally be divided into court-based and non-court-based systems (Law Reform Commission, 1991). The non-court-based systems involve many different types of agencies.

NON-COURT-BASED DISPUTE RESOLUTION

The Law Reform Commission (1991) believed there was a need for a more flexible, quick, inexpensive and appropriate set of resolution procedures than those that existed at the time. The Commission favoured the option of an attempt at mediation through Community Justice Centres in the first instance before proceeding (in the event of failure to mediate) to use the court-based dispute resolution process.

Police and Councils

The first point of complaint in the case of most neighbourhood disputes, especially about noise, is the police and sometimes the local council. Generally, local councils deal with noise in residential areas in daytime hours and the police deal with evening noise. The State Pollution Control Commission also has the power to issue Noise Abatement Orders to residential occupiers. Pursuant to amendments made by the Environmental Offences and Penalties (Amendment) Act 1990, the police, officers of local councils and other authorised officers are empowered to issue on-the-spot penalty notices to offenders.

Section 40 of the Noise Control Act 1975 empowers local councils to serve a Noise Control Notice on an occupier in respect of offensive noise. However, it is understood that the current practice of local councils is not to take this course of action unless at least three or four complaints about a particular situation are made (Law Reform Commission, 1991).

Although the police and local councils do have some powers in relation to noise problems and are often contacted in relation to other neighbourhood disputes, they have more of a policing role than a dispute settlement role. However, they do act as an active referral source for Community Justice Centres, as do Chamber Magistrates and legal aid providers (Community Justice Centres Annual Report, 1989/90).

Community Justice Centres

The next step on the ladder of the resolution process through non-court-based means is often the Community Justice Centres. These Centres were established by the New South Wales Government in 1980 to provide for the resolution, through mediation, of minor civil and criminal disputes that tend to be unresponsive to conventional legal remedies.

Essentially, mediation involves a third party who intervenes in a dispute to assist the parties to negotiate towards reaching an agreement. Both parties must agree to the intervention of a mediator, who can be appointed by an authority or approached by the parties (Faulkes, 1986).

Neighbourhood problems have been identified as those most suitable for mediation, because they involve people who must continue to live in close proximity and people who were usually engaged in what was a minor dispute. The majority of matters dealt with by Community Justice Centres have been disputes between neighbours. The Annual Report of 1989/90 states that 'neighbours continue to be represented most frequently in the case load at 57.6 per cent.' In 1988/89 neighbour disputes comprised 61.6 per cent and in 1987/88 67.5 per cent of the total case load (Community Justice Centres Annual Reports, 1989/90, 1988/89, 1987/88).

The types of mediation services available range from highly specialised services, conducted as part of a court system, to quite unstructured groups based in the community. The aims of the different services also vary, from achieving peace, to achieving understanding, communication, co-operation or the recognition of differences, to encouraging the parties to take responsibility for their own actions. The 1989/90 Annual Report states that where a mediation session was held, agreement was reached in 84.6 per cent of sessions.

Mediation at a Community Justice Centre offers an inexpensive and speedy means of resolving neighbourhood disputes. However, there is no guarantee that the dispute in question will not continue or re-emerge since there is no provision to enforce any agreement reached (Community Justice Centres Act, 1983). Some may regard this as a major drawback. Nevertheless, the Community Justice Centres claim that any move to make an agreement legally enforceable would undermine the essential empowering function of mediation and inadvertently create more work for an already overworked justice system.

Despite the fact that court action often means a time-consuming, expensive and sometimes enervating experience with no guarantee of effective resolution of the dispute, some people do resort to court-based dispute resolution with or without prior unsuccessful attempts at mediation.

The Attorney-General's Department also offers some basic legal assistance through its Chamber Magistrate service. Chamber Magistrates and clerks of local courts are court officials with legal training who provide general legal assistance. Where mediation breaks down at a Community Justice Centre, the parties are often referred to a Chamber Magistrate.

COURT-BASED DISPUTE RESOLUTION

The courts that have jurisdiction for the resolution of neighbour disputes are: the Supreme Court, the District Court and the Local Court.

The Supreme Court is rarely the most appropriate forum for the resolution of neighbourhood disputes in view of the cost and delay factors.

The District and Local Courts have the power to deal with civil and criminal matters but have limitations on their jurisdiction.

In civil cases Local Courts are limited to hearing disputes in which the claim for damages is not in excess of \$10,000, while the District Court limitation is \$100,000. The vast majority of disputes come before the Local Courts but even in this court the process may become lengthy and costly.

The Local Courts are a more suitable forum for the resolution of neighbour disputes. Each Local Court is divided into a General Division and a Small Claims Division.

Although the Supreme Court, District Court and Local Court provide the majority of the state's dispute resolution services to the community, there are other courts which have specialised powers to handle certain types of disputes. The Land and Environment Court is one such court which has powers to make determinations in disputes concerning building and development applications, land valuations and environmental matters.

EFFECTIVE DISPUTE RESOLUTION

A recent Australian study found that there was a general consensus from housing staff that informal approaches are often the most effective in addressing ASB incidents. Tenants interviewed for the study tended to adopt different strategies depending on the context and the predicament. Some tenants would chart their own course of action to address the problem either in the form of retribution or encouraging neighbours to take a stand as well. There was a general expectation that housing managers had an important role in combating ASB (Jacobs and Arthurson, 2003).

The study's findings also suggest that the most effective policies are those that address the causes of ASB as well as the symptoms, and solutions sensitive to these two factors usually produced the most favourable outcomes.

There was a general consensus that the most effective forms of intervention were practices sensitised to the needs of the local community that prevented problems taking place or managed problems to ensure that the effects were contained at the source.

Examples of effective intervention cited by staff and tenants in Jacobs and Arthurson's (2003) study include:

- Allocation policies
- Probationary tenancies
- Transfers

- Communication strategies
- Working directly with tenants
- Collaboration with law enforcement agencies
- Mediation services.

Allocation Policies

Allocation policies are an important way to help minimise the potential for neighbourhood disputes and conflict. The scope for effective allocations policies is enhanced in areas of low demand but in areas of high demand other priorities tend to prevail (i.e. housing category 1 applicants). The increased demand for social housing and tighter targeting effectively limits the possibility of using allocations policy as an effective policy instrument.

Probationary Tenancies

Another important innovation identified by Jacobs and Arthurson (2003) was probationary tenancies. South Australia operates a probationary tenancy scheme, and in Tasmania probationary tenancies are a state-wide policy. New tenants, previously unknown to the SHA, are placed in conditional six-month tenancies. If these are successfully completed, the tenants are given ongoing tenure. The housing managers described these conditional tenancies as positive in developing relationships between tenants and housing staff.

However, some parties view probationary tenancies as an ineffective instrument in tackling ASB in the long term as tenants can comply with their probationary tenancy period and then start engaging in ASB.

Transfers

In both Tasmania and South Australia, in some cases, depending on the background to longstanding disputes, transfers are a justified course of action. Tenant transfers have been found to be effective, particularly where disputes are not easily resolved. However, transfers do not address the source of the problem and are unlikely to be an effective policy for the majority of cases.

RELEVANCE OF THE AUSTRALIAN EXPERIENCE TO THE PRIVATE RENTED SECTOR IN IRELAND

The analysis of how anti-social behaviour disputes are dealt with in Australia again indicates that the local and regional authorities, supported by the police and the courts, are the key players in dealing with anti-social behaviour in both public and private housing sectors. However, Australia has placed a strong emphasis on voluntary and informal mediation in the social housing sector and has found such an approach effective in dealing with neighbour-to-neighbour disputes where both parties are willing to participate in such a process.

Neighbourhood problems have been identified as those most suitable for mediation, because they involve people who must continue to live in close proximity and people who were usually engaged in what was a minor dispute. The 1989/90 Annual Report provides that where a mediation session was held, agreement was reached in 84.6 per cent of sessions.

The Australian experience provides some pointers for the work of the PRTB (bearing in mind that the approaches outlined here refer to the social housing sector).

Examples of effective intervention cited by staff and tenants in Jacobs and Arthurson's (2003) study include:

- Allocation policies
- Probationary tenancies
- Transfers
- Working directly with tenants
- Collaboration with law enforcement agencies
- Mediation services.



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OTHER COUNTRIES

A number of other countries provided some feedback on how third party anti-social behaviour disputes are resolved. These include the Netherlands, Denmark and Norway. The feedback from experts in these countries indicates that the courts and mediation are the mechanisms in place to deal with such disputes.

For instance in the Netherlands some municipalities have volunteer mediators for dealing with anti-social behaviour/nuisance while others have neighbourhood managers or ‘janitors’ who can be called upon by tenants in such disputes. Again, however, the main dispute resolution mechanism is the courts. Table 5 provides information on the prevalence of nuisances caused by neighbours relative to other causes of dissatisfaction that Dutch people experience in relation to their living conditions.

Table 5 The Netherlands: Causes of dissatisfaction in relation to living conditions

	IN 4 LARGEST CITIES (1)		IN 26 LARGE CITIES (2)		IN OTHER NEIGHBOURHOODS (3)	IN THE NETHERLANDS
	Priority neighbourhoods (4)	Other neighbourhoods	Priority neighbourhoods (4)	Other neighbourhoods		
FEAR OF BEING ROBBED/TROUBLED	30%	16%	16%	9%	6%	9%
TRAFFIC UNSAFETY	25%	23%	25%	24%	20%	21%
GRAFFITI ON WALLS/BUILDINGS	40%	36%	26%	20%	13%	18%
DESTRUCTION	48%	34%	36%	30%	23%	27%
TRAFFIC NOISE /NUISANCE	37.8%	36.4%	35.4%	33.3%	28.6%	30.9%
NUISANCE CAUSED BY NEIGHBOURS	29.5%	26.2%	22.1%	18.3%	14.3%	17.1%
NUISANCE CAUSED BY STENCH, DUST, RUBBISH	41%	36%	29%	24%	19%	23%
NOISE NUISANCE	48%	45%	42%	37%	30%	34%
NUMBER OF DWELLINGS (X 1,000)	244	734	284	1080	4285	6627

Source: *Cijfers over Wonen 2004*, a statistical booklet published annually by the Netherlands Ministry of Housing c.a.

- (1) Amsterdam, The Hague, Rotterdam and Utrecht: the 4 largest cities in the Netherlands
- (2) The 26 middle-sized cities/towns
- (3) Neighbourhoods in towns/cities outside the two above mentioned categories
- (4) The 'priority neighbourhoods' are neighbourhoods which have been identified as in need of special attention in the framework of Dutch national urban regeneration policy.

As the table shows, 'noise nuisance' is referred to by almost half of those living in the four largest cities in the Netherlands. 'Nuisance caused by neighbours' is also reported as a source of dissatisfaction by a considerable percentage of the Dutch population.

In Denmark legislation is in place to deal with anti-social behaviour to be pursued through the courts.

In Norway standard 'House Rules' are in place which outline what constitutes expected standards of behaviour by tenants. These rules are binding on tenants. Again, however, disputes are dealt with through the courts.

KEY FINDINGS FROM INTERNATIONAL REVIEW

The literature review undertaken in this study has found no evidence of specific initiatives in place in other countries to address third party claims of anti-social behaviour in the private rented sector. Some countries, however, most notably Australia, have put a considerable emphasis on mediation in dealing with such disputes in the social housing sector. While such mediation relates only to the social housing sector, it does indicate that mediation can be an effective route for dealing with neighbour-to-neighbour disputes where both parties are willing to participate in such a process, and where this does occur the process can have a high success rate.

Nevertheless in all the countries examined the courts remain the main mechanism for dealing with such disputes.

A number of lessons can be learned about how to minimise such disputes, drawing on experience in the social housing sector. These include probationary tenancies, allocation policies, local partnerships, etc.

A number of initiatives are currently being implemented in the Irish social housing sector, particularly in relation to minimising such disputes. The new Rental Allowance Scheme also offers an opportunity for the PRTB to work with landlords and local authorities in the future to develop new approaches for dealing with anti-social behaviour, particularly in areas where such behaviour may be found to be concentrated.

ADDRESSING ANTI-SOCIAL BEHAVIOUR

In terms of addressing ASB, the literature reviews and the contacts with international experts indicate that the most effective approaches are those that seek to prevent incidences of ASB through the development of partnership across agencies. Evidence suggests that successful schemes usually entail a set of integrated practices such as social intervention measures, design modifications and effective mediation (Judd et al., 2002). For persistent offenders, however, more legalistic measures are sometimes seen by housing authorities to be necessary, as in the UK.

The procedures adopted in such cases include evictions and ASB behavioural orders, although again the literature indicates that these measures do not necessarily ensure that underlying problems are addressed.

LESSONS FROM THE SOCIAL HOUSING SECTOR

In this section of the report we summarise the main mechanisms highlighted in the literature review for dealing with anti-social behaviour and assess their relevance to the work of the PRTB.

Mediation and Intervention Models

The effectiveness of the mediation model, already an option within the PRTB, has been supported by the literature, which indicates that mediation:

- Can resolve disputes before they escalate
- Works best for low-level disputes which represent most cases
- Is not an appropriate solution for violence, threats of violence or where police and courts need to be involved in legal action
- Can deal with disputes between neighbours without turning to formal legal remedies that are time-consuming and costly to administer
- Offers a process that is non-adversarial, confidential, low priced and provides a rapid solution
- Through its voluntary nature allows participants to learn skills for dealing with conflict in the future and leaves responsibility for a solution with the parties concerned, rather than such solutions being imposed by a court.

Good Neighbour Charters and Tenancy Agreements

Such agreements can:

- Inform tenants of their rights and responsibilities and expected standards of behaviour
- Facilitate ownership and awareness
- Reassure tenants that effective action will be taken to prevent or address ASB
- Give more legitimacy to the housing authorities
- Demonstrate housing authority's ability to exert discretionary power.

Such agreements may be of limited use in the more dispersed private rented sector in Ireland. However, as local authorities, through the Rental Allowance Scheme, begin to contract blocks of tenancies in concentrated areas, the PRTB could begin to work with relevant landlords and management agents to develop such agreements aimed at minimising anti-social behaviour disputes, particularly in areas with a relatively high level of such disputes.

INTRODUCTORY/PROBATIONARY TENANCIES

When records are built up both by the PRTB and the local authorities, tenants who have a history of being engaged in anti-social behaviour can begin to be identified. It may be worth considering at that stage the possibility of having introductory tenancies for such tenants. This approach may be particularly relevant where problematic tenants are moving from the social housing sector to the private sector.

IMPLICATIONS FOR IRELAND

This review of other countries has not identified any specific initiatives for dealing with third party anti-social behaviour disputes in the private rented sector. All the countries examined continue to rely on the courts to deal with such disputes. However, specifically in relation to neighbour-to-neighbour disputes, mediation has been found to be successful in the social housing sector. In relation to noise the UK noise legislation has been found to be effective in dealing with noise-related disputes. A range of preventative measures has been developed in the social housing sector, some of which could be adapted for the private rented sector.

KEY ACTIONS TO BE CONSIDERED BY THE PRTB

Based on this review, the PRTB could consider taking the following key actions:

- Setting up and maintaining a comprehensive database to record and monitor third party anti-social behaviour complaints
- Reviewing tribunal decisions and related enforcements required in relation to third party anti-social behaviour disputes to assess the effectiveness of existing mechanisms
- Working in collaboration with the local authorities to develop good practice guidelines for dealing with clients with a history of ASB across the sectors
- Promoting and encouraging the use of mediation to deal with neighbour-to-neighbour disputes
- Examining available noise legislation in Ireland to assess its adequacy for dealing with noise-related complaints and relative to such legislation in the UK
- Exploring with relevant local authorities and with landlord and tenants groups the optimal way of dealing with such disputes in relation to the Rental Allowance Scheme
- Developing guidelines for preventing and minimising such disputes in the private rented sector, drawing on experience in the social housing sector in Ireland and abroad, in collaboration with landlords and tenants groups
- Encouraging individual landlords and landlord groups to incorporate 'good behaviour' clauses in tenants' contracts.

Appendix

Good practice guidelines for dealing with anti-social behaviour in the local authority sector in Ireland

Good practice recommendations in relation to receiving complaints regarding ASB:

(Source: Norris, M. (2003). *Preventing and Combating Anti-Social Behaviour*. Dublin: The Housing Unit.)

- Local authorities should establish simple, easy-to-use and accessible methods for reporting anti-social incidents in their rented accommodation
- Complaints should be accepted at central and local offices, by post and over the telephone
- Appropriate systems should be put in place to ensure that all complaints regarding anti-social behaviour are treated as confidential.

Norris (2003:30) suggests the following best practice in relation to receiving complaints regarding ASB: 'Where anti-social behaviour is particularly prevalent local authorities may wish to consider establishing a dedicated telephone service, staffed by experienced and appropriately trained personnel, to receive complaints regarding these incidents.'

Good practice recommendations in relation to anonymous complaints regarding ASB:

- Anonymous complaints regarding anti-social incidents should not normally be accepted by local authorities
- Instead complainants should be encouraged to supply their contact details to the authority and assured that all information provided will be treated in the strictest confidence
- Section 26 of the Freedom of Information Act 1997, as amended, requires public bodies to refuse to disclose information that was given to them in confidence
- Where complainants are unwilling to supply contact details, or the source of a complaint cannot be identified, the complaint should be recorded, but should not normally be acted upon by local authorities

Good practice recommendations in relation to customer care of complaints:

- All complaints regarding anti-social behaviour incidents should be acknowledged in writing and complainants should be informed that the local authority will be in touch again once a decision has been reached regarding the appropriate response
- The local authority should write to update the complainant if any progress has been made with regard to the investigation of the complaint, any action has been taken in relation to it or the complaint has been found to be without foundation

Good practice recommendations in relation to recording complaints regarding ASB:

- Local authorities should design standardised forms for recording all complaints regarding anti-social behaviour
- These forms should require the following information as a minimum:
 - Name and contact details of complainant
 - Any other relevant personal information about complainant that is relevant such as age, gender, ethnicity, whether living alone, etc
 - The nature of the complaint
 - Name and contact details of the alleged perpetrator(s) if possible and if relevant
 - Where the alleged incident(s) took place
 - When the alleged incident(s) took place
 - Whether the alleged incident(s) were reported to the Gardaí and if so, when and to whom

Good practice recommendations in relation to recording and monitoring complaints regarding ASB:

- Local authorities should utilise a computerised system for storing and analysing all records of complaints regarding anti-social behaviour and of measures taken to combat these activities. This system should be capable of the following:
 - Differentiating between the complainant and alleged perpetrators of anti-social behaviour
 - Differentiating between individuals and households
 - Differentiating between current and former tenants
 - Differentiating anti-social incidents (for instance one fracas which generated a number of complaints) and cases (a number of incidents and complaints associated with a particular individual or household)
 - Categorising the type of behaviour involved
 - Recording details of investigations of, and action taken to combat, anti-social behaviour
 - Identifying the current status of each anti-social case
 - Producing a complete history of the complaints regarding anti-social behaviour made by and against individuals and households
 - Identifying trends in anti-social incidents, for instance according to the personal and household characteristics of alleged perpetrators, time of year or location

- Producing regular reports on anti-social complaints and incidents for the purposes of monitoring by the local authority
- Interfacing with computer systems for the management of other housing functions such as allocation of tenancies, rents, etc, if appropriate

Good practice recommendations in relation to recording action taken to combat ASB:

- Housing management computer systems should be capable of categorising the current status of anti-social cases and identifying all previous action taken in regard to the case. The UK Social Landlords Crime and Nuisance Group suggests that the following categories can be used for this purpose:
 - Case is under investigation because further information is required before a decision can be reached regarding appropriate action
 - No action is required because the complaint is not substantiated or is very minor
 - Tenants living in the area where the activity took place have been informed of the local authority's commitment to taking action against this behaviour
 - Case has been referred to a mediator
 - Case has been referred to an internal support service such as the social work or housing welfare service
 - Case has been referred to an external support service such as the health board social work department, family support, ex-offender or drug and alcohol support service
 - Case has been referred to the Gardaí
 - Alleged perpetrator has received written correspondence from the local authority giving warning that he/she is contravening the clause of the tenancy agreement which prohibits anti-social behaviour
 - Alleged perpetrator has negotiated a written agreement with the local authority to cease his/her involvement in anti-social behaviour
 - Tenant has served an exclusion order against the alleged perpetrator
 - Local authority has served an exclusion order against the alleged perpetrator
 - Local authority has refused to sell a dwelling to the alleged perpetrator
 - Local authority has served a notice to quit the dwelling and a demand for possession
 - Court has granted a warrant for repossession of the dwelling
 - Court has failed to grant a warrant for repossession of the dwelling
 - Dwelling has been repossessed
 - Accommodation has been abandoned

Good practice recommendations in relation to additional records required:

- The following records should be kept of investigations and action taken to combat anti-social behaviour:
 - Transcripts of complaints regarding anti-social behaviour
 - Minutes of all case conferences held regarding anti-social behaviour, both internally within the local authority and with external agencies
 - Copies of all written correspondence with alleged perpetrators of anti-social behaviour, including letters sent and written agreements negotiated with them concerning their activities and legal notices
 - Minutes of all interviews with alleged perpetrators of anti-social behaviour and with witnesses to these activities, together with attendance records at these interviews
 - Details of any additional evidence gathered such as incident diaries kept by witnesses to the alleged behaviour and information supplied by the Gardaí or other relevant agencies

International Contacts

Martin Preisler Knudsen	Ministry of Social Affairs Denmark
Hubert van Eyk	Ministry for Housing, Social Planning and the Environment The Netherlands
Alex Tshulak Phil Alter	Department of Communities and Local Government United Kingdom
Ger Engebraten Arno Rasmussen	Norwegian House Owners Association Norway
Stratos Paradias	President, International Union of Property Owners Greece
Johanna Ode	Ministry of Sustainable Development Sweden

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