

REPORT TO: HOUSING COMMITTEE – 17 MARCH 2003

REPORT ON: ANTI SOCIAL BEHAVIOUR

REPORT BY: DIRECTOR OF HOUSING AND DIRECTOR OF SUPPORT SERVICES

REPORT NO.: 219-2003

1. **PURPOSE OF REPORT**

- 1.1. To review the response by the City Council to anti social behaviour from outwith the Council housing sector in light of the positive response to the introduction of the Anti Social Behaviour Team in November 2001 and successes of the City Council in obtaining ASBOs against Council tenants.

2. **RECOMMENDATIONS**

- 2.1. Housing Department and Support Services Department to consult with Tayside Police regarding development of protocol for ASBO applications from owner occupiers and those in the private rented sector.
- 2.2. Additional resources are identified from General Services Account to fund investigation of serious cases of anti social behaviour emanating from the owner occupier and private rented housing sector and increased level of legal actions on ASBOs.
- 2.3. A mechanism for recharging costs associated with seeking private sector ASBOs should be explored.
- 2.4. The relocation of the Anti Social Behaviour Team to accommodate the additional staff required, funded from General Services Account, be agreed.

3. **FINANCIAL IMPLICATIONS**

- 3.1. ASBOs are expensive actions to take with the cost to be borne by the Council, either via General Services or the Housing Revenue Account. It would not be appropriate for the necessary investigation and action pursuing ASBO applications in the non Council housing sector to be borne by the HRA.
- 3.2. Additional staffing of 2 x Investigation Officers and 1 x Clerical Assistant at a total cost of £45 K. and relocation costs for the Anti Social Behaviour Team estimated at £30 K.

The full costs of the expansion of the service are to be funded from the General Services Account.

- 3.3. Depending upon the caseload which results it may be necessary for the Director of Support Services to employ additional staff and a further report on this matter will be brought forward if appropriate.

4. **EQUAL OPPORTUNITIES IMPLICATIONS**

- 4.1. The key theme of crime prevention, community safety and other initiatives to eliminate violence and harassment against people because of their race, gender, sexuality or connection to other target groups is addressed by this report..

5. **LOCAL AGENDA 21 IMPLICATIONS**

- 5.1. The key theme of people living without fear of personal violence from crime is addressed by this report.

6. **BACKGROUND**

- 6.1. The Anti Social Behaviour Team was established in November 2001 and has investigated and responded to complaints of anti social behaviour where a Council housing tenant is involved as either perpetrator or victim. This intervention is founded on our contractual relationship with our tenant, our interest as landlord of the victim, and the relevant legislation which gives us title and interest when dealing with such complaints.

No such case can be made for the majority of individual neighbour disputes where neither party is a Council tenant. The Council does not have title and interest to act for or against private individuals who are in dispute with their neighbours except in the most serious of cases where Anti Social Behaviour Orders (ASBOs) may be an appropriate remedy.

- 6.2. ASBOs became effective on 1st April 1999 and the Council's strategy for considering applications was outlined in Report No. 46/1999 approved by Policy and Resources Committee on 8th February 1999.
- 6.3. Report 46/1999 confirms that ASBO applications relating to Council tenants should be channelled to the Housing Department for investigation and action. All other ASBO applications will be channelled to the Director of Support Services for consideration.

The Scottish Executive announced recently that it intended to extend the power to seek ASBOs to Housing Associations and other Registered Social Landlords. At present only the Local Authority can seek an ASBO and as such Housing Associations have to request that the Council takes this action on their behalf. When the Criminal Justice Act comes into force Housing Associations will be able to protect their own tenants by applying for ASBOs themselves.

It is now considered that the responsibility for investigation of owner occupier and private rented sector ASBO applications should rest with the Anti Social Behaviour Team and that efforts should be made to offer advice and assistance with regard to specific types of behaviour to those outwith Council housing.

- 6.4. The Council's strategy regarding ASBOs has been successful to date, with Dundee City Council being granted 24 ASBOs since 1st April 1999. There have been very few applications from the non Council sector, e.g. Housing Associations, private landlords, owner occupiers, and it is this aspect that requires to be reviewed at this time as this is the only legal remedy open to the Council in respect of anti social neighbours outwith the Council sector.

- 6.5. ASBOs are a local authority power, not a duty. There is therefore no obligation on Dundee City Council to seek an ASBO and the Council has the final decision about whether a case is sufficiently strong to allow an ASBO application to proceed. Such a decision is based on the nature of the behaviour, the evidence to support the application and the appropriateness of ASBO as a remedy.

7. **MAIN TEXT**

- 7.1. Anti social behaviour extends across all housing sectors and the Anti Social Behaviour Team has been shown to be an effective means of delivering the Housing Department's service to its tenants in response to complaints of this nature. The Anti Social Behaviour Team does not, at present, have a remit for investigating anti social behaviour where there is no Council tenant involvement.

Individual citizens have their own range of legal remedies including interdict which they should consider should they be faced with a problem neighbour. The City Council does not have "title and interest" in such cases and therefore has no right in law to act on their behalf. Registered Social Landlords, including Housing Associations, have their own policies and procedures with regard to neighbour nuisance and their tenants should deal directly with them in this respect.

- 7.2. An ASBO is a potentially severe sanction for proven severe behaviour. This civil court order is designed to prevent a named individual, over the age of 16 years, from acting in an anti social manner or pursuing a course of anti social conduct. There must be evidence that the person has behaved in that way and that an Order is necessary to protect others from further anti social acts. They are specifically designed to be considered where other courses of action have been attempted or are deemed to be inappropriate. They should not be the first remedy considered.

ASBOs are a useful tool in attempting to control extreme anti social behaviour because breach of an ASBO is a criminal offence which carries a criminal penalty of up to five years imprisonment.

- 7.3. When introduced a number of seminars were held for local housing associations on how to apply to the Council for an ASBO.

In practice only a few cases of anti social behaviour have been referred from the Non Council Housing Sector but, after investigation, these have been found not to be sufficiently serious to merit applying for an ASBO..

- 7.4. The Housing Department places ASBOs at the high tariff end of the spectrum of actions available to us with regard to managing Council tenancies. This is consistent with the Scottish Executive guidance on the use of ASBOs and with current practice in other Scottish local authorities.

- 7.5. The ASBOs sought and granted with regard to Council tenancies have been related to extreme, persistent behaviour and in all cases other relevant actions have been considered prior to seeking an ASBO.

In many cases an ASBO has been sought in conjunction with an eviction action in an attempt to restore some order to a volatile situation and to provide some comfort to our other tenants while we wait for Court time for the repossession action..

- 7.6. Breach of an ASBO is a matter for Tayside Police to pursue and such breaches have been prosecuted successfully on a number of occasions.

Nationally the sanctions handed down by the Courts for breach of ASBO have ranged from modest fines to short periods of imprisonment.

Sheriffs in Dundee to date seem to be prepared to deal firmly with breaches of ASBOs.

- 7.7. ASBOs are not a panacea for anti social behaviour. Given the potential sanctions for breach, Sheriffs require to be sure that a serious problem exists and that the ASBO is required to address the problem.

A high standard of proof is therefore required.

The Court procedure gives the alleged perpetrator the opportunity to answer or defend the case against them. Legal Aid applications are made in almost all defended cases and almost all cases are defended.

In practice it can take a significant period of time for the Council to be granted an ASBO, perhaps running into many months. When the Criminal Justice Act comes into force it will be possible to apply for Interim ASBOs and this is widely supported by practitioners and tenants representatives.

- 7.8. Given the general acceptance that not all anti social behaviour relates to Council tenants and the proportion of households in Dundee which are non Council one would expect there to be more requests for ASBOs from the non Council sector.

The lack of requests may be explained in a number of ways. There may be a lack of knowledge regarding this remedy. There may be a view that owner occupiers should seek their own legal advice rather than seek assistance from the Council. There may be a lack of willingness by owners and private landlords to pay for the gathering of evidence to support any application.

- 7.9. The Council's power with regard to ASBOs is to petition the Court for the order.

Property ownership brings with it rights and responsibilities to deal with neighbour disputes. If the Council is agreeable, in principle, to take action in the private sector this is not a substitute for, but rather in addition to, these rights and responsibilities.

Council tenants pay, through their rents, for the full anti social behaviour service including ASBOs where appropriate. It is however appropriate that the Council provides a mechanism for those who feel an ASBO is the necessary and proportionate response to serious anti social behaviour problems affecting them or their tenants. It may be appropriate, to consider the introduction of a charging policy for the investigation aspect of owner occupier and private rented sector ASBO cases.

- 7.10. It is proposed that a simple protocol is developed between Dundee City Council and Tayside Police which channels non Council sector ASBO applications via the Police to the Council.

Only cases supported by Tayside Police will be pursued by Legal Services to court.

Given the serious nature of ASBO related issues it is almost certain that the Police will be involved in such cases. The Police are expert at gathering evidence and have the experience to identify where extreme behaviour is being evidenced. The Police are unable to raise actions for ASBOs in Scotland, unlike in England and Wales, but the Council is required to consult with the Chief Constable of Tayside Police before proceeding with any ASBO application.

- 7.11. Early discussions have taken place with Tayside Police regarding how such a protocol may operate.

Tayside Police are extremely unlikely to pursue ASBO requests where there is no ongoing criminal investigation.

- 7.12. In addition to ASBOs the newly developed Dundee Community Mediation Service became operational in February 2003. Referrals to this service will form part of the service to those suffering anti social behaviour in the non Council sector.

In summary it is proposed to expand the remit of the Anti Social Behaviour Team to include advice and assistance to those outwith the Council sector. The service to those who are not Council tenants will focus on advice, assistance, referral to Dundee Community Mediation where appropriate, investigation of potential ASBO cases and pursuit, in conjunction with Legal Services and Tayside Police, to Court action.

- 7.13. It is proposed that initially all such applications would be received by the Housing Department's Anti Social Behaviour Team for initial assessment with Support Services progressing any required Court action at Housing's request. As the Anti Social Behaviour Team will be required to investigate ASBO applications from private individuals the Team will require to be resourced accordingly. It would be inappropriate for the HRA to carry this additional cost.

Given the current experience of the Anti Social Behaviour Team and the unknown level of applications likely to be generated it is proposed that the Team is expanded by two additional Investigation Officers (AP2) and one additional Clerical Assistant. In addition there is no capacity for the Team to expand in its current location and so new premises will be required for the Anti Social Behaviour Team.

It is anticipated that the costs of physical relocation of the Team will be £30 K. approximately with additional staffing costs estimated at £45 K. The total costs of expansion are to be met from the General Services Account.

- 7.14. Depending upon the caseload which results it may be necessary for the Director of Support Services to employ additional staff and a further report on this matter will be brought forward if appropriate.

8. CONSULTATION

- 8.1. All Chief Officers, Tayside Police and DFTA have been consulted in the preparation of this report.

DFTA have asked for reassurance that the service to those who are not Council tenants is appropriately funded and adequately resourced in respect of the unknown level of enquiries which may be received.

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