THE USE OF CIVIL LEGAL REMEDIES FOR NEIGHBOUR NUISANCE IN SCOTLAND

Roland Atkinson, Tom Mullen and Suzie Scott

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SUMMARY

MAIN FINDINGS

• The vast majority of complaints to social landlords of anti-social behaviour are successfully resolved by housing management action. However, there is little use of mediation as an alternative to legal remedies.
• Except where there were convictions for drug-dealing, cases were only taken to court where the offending behaviour continued, despite repeated warnings from the landlord. However, in a number of cases the tenants could be regarded as vulnerable due to mental health, serious alcohol abuse and 'out of control' children. This raises concerns that eviction action was not the most appropriate response to the problem.
• The way complaints are managed is crucial both to the successful use of legal remedies, and the prospects of resolving complaints without going to court. In that regard there was considerable variation in the nature and effectiveness of links between housing staff and other agencies and/or departments.
• Eviction is by far the commonest legal remedy used against anti-social behaviour, but there are substantial variations in the extent to which it is used by social landlords. Most eviction summonses result either in eviction or other outcomes which are acceptable to the landlord.
• The substantive law on eviction already covers all situations in which landlords might reasonably seek to evict. The most important obstacle is the difficulty of proving allegations stemming from the reluctance of potential witnesses to give evidence.
• Delay is a serious problem. However, there is considerable scope for reducing the extent of delay in eviction actions through changes in practice in both landlords and the courts.
• Interdict is much less commonly used than eviction as a remedy for anti-social behaviour, and misperceptions of its scope were not uncommon. However, landlords are almost invariably successful in obtaining interdict and find it a speedy remedy, except where there are proceedings for breach of interdict.
• There is some cause for concern over the appropriateness of the outcomes in both eviction and interdict cases in the courts, given the high proportion of cases in which the defender does not attend or is not represented.
• Other remedies (specific implement, title conditions, by-laws) are little used. Landlords were not convinced that anti-social behaviour orders will make a substantial contribution to dealing with anti-social behaviour.

INTRODUCTION

This research was commissioned by the Scottish Courts Administration (now Civil Justice and International Division, Courts Group, Justice Department) in response to a recommendation of the Scottish Affairs Select Committee, which called for research into delay in eviction cases, and the effectiveness of other legal remedies to deal with anti-social behaviour. The aims of the research were to:

• to establish the extent to which, and the way in which, the available legal remedies are used to deal with anti-social behaviour and neighbour disputes;
• to establish how effective the legal remedies are in practice
• to establish the extent to which particular factors contribute to the ineffectiveness (or effectiveness) of the legal process
• to assess how existing processes might be used or managed differently, and consider the need (if any) for reform of law and/or practice of parties and/or courts;
• to analyse the economic costs associated with the legal process.

Research methods

The report outlined the complexities in the definition of the problem but proposed the following working definition:

*Anti-social behaviour is behaviour which threatens the physical or mental health, safety or security of individuals and households, or causes offence or annoyance to individuals and households.*

The legal remedies examined were:

• eviction
• interdict
• specific implement
• title conditions
• local authority by-laws
• anti-social behaviour orders

A feasibility study was undertaken in Autumn 1997. Fieldwork in the main project was carried out between May 1998 and April 1999. The methods used were:

• a postal survey of all social landlords carried out in the Spring of 1998
• analysis of leases and policies of landlords responding to the survey
• case studies of 10 social landlords and 5 sheriff courts
• analysis of court records

The data analysed included 185 returns from the postal survey, over 100 cases in which legal remedies had been sought, and 60 interviews with lawyers, housing staff, sheriffs, court staff and witnesses to anti-social behaviour.

The research applied the following evaluative criteria:

• the speed with which the remedy may be obtained.
• the appropriateness of the substantive law for dealing with anti-social behaviour
• whether the statutory or other legal criteria are properly applied in practice
• the ease or difficulty of establishing the necessary factual basis of the legal action.
• the costs of legal remedies

Analysis of leases and policies

Although a Model Secure Tenancy agreement (the MoSTA) was produced in 1997, the analysis of the local authority leases found that few landlords had adopted this. There was no common style or content in local authority leases. However, many local authorities had
reviewed their leases following local government reorganisation and our research found leases had improved since previous research in 1996. Most housing associations followed the Model Assured Tenancy Agreement (MATA) and the leases in this sector were much more consistent in style. Rather than reform their lease, some landlords had introduced a ‘Good Neighbour Charter’ which aimed to spell out standards of expected behaviour to tenants.

Most landlords (86%) claimed to have written policies which covered neighbour disputes and anti-social behaviour. In general, both local authority and housing association policies were broadly consistent with good practice guidance and showed awareness of the complexity of the issues involved.

Management of anti-social behaviour

The postal survey found that only 15 per cent of landlords’ thought that neighbour nuisance was a big or very big problem and 40 per cent thought that it was a small or very small problem. Local authorities were most likely to perceive the problem of anti-social behaviour at the upper end of the scale. On average, landlords recorded 38 complaints per 1000 tenancies (the median figure) but levels of complaint about behaviour varied enormously between landlords.

The good practice literature suggests that landlords should consider a range of tools and the research considered some of these. The survey found that most landlords did not use professional witnesses, although a large proportion of those taking tenants to court did so. A quarter of social landlords said that they used mediation, with local authorities being most likely to do so. Only 9 per cent of landlords provided services responding to anti-social behaviour outside office hours.

The case study landlords provided an opportunity to consider the management of complaints about anti-social behaviour in more detail. Despite differences in the way policies were expressed, there appeared to be a broad consensus in practice about the sorts of behaviour that deserved eviction; for example, all were prepared to evict for persistent excessive noise. Conversely, there was a widely held view that purely bilateral neighbour disputes should not lead to eviction. One clear area where policies diverged was on drugs. Some landlords adopted a ‘zero tolerance’ approach to drug-dealing while others considered the merits of each case. There were far more mixed views on the treatment of sex offenders.

Our overall impression was that specialist staff had a better understanding of the legal process than generic staff. It is difficult to draw firm conclusions from this small sample but it should be noted that a parallel study of legal remedies in England found that specialist units were more effective in managing anti-social behaviour.

The postal survey revealed that a substantial number of landlords’ information systems were not adequate to provide the data required. The case study work also found evidence of inadequate record-keeping, including inaccurate information on the number of legal actions.

Most case study landlords aimed to resolve complaints through housing management action and were generally successful. It was clear that most landlords took a ‘traditional’ approach to resolving problems. Except where there were convictions for drug-dealing, cases were only taken to court where the offending behaviour continued, despite repeated warnings from
the landlord. For most landlords, this was a very small proportion of the total number of complaints. Only 2 case study landlords were using alternative legal remedies – interdict or specific implement and only 3 were using mediation. Mediation was seen in a positive light by those landlords who used it.

The case study work also examined arrangements for working with other agencies. Links with the police appeared to work well. There was less satisfaction with relationships between housing and social work staff. However, local authority housing staff felt that inter-departmental co-operation had improved since local government reorganisation. The least effective links appeared to be those between housing staff and environmental health departments.

**Eviction**

The postal survey found that willingness to evict varied by sector with local authorities expressing greatest readiness to use the legal process and co-ops the least. There were very substantial variations in the rates at which social landlords used legal action for eviction in practice.

The first stage of legal action is to serve a notice seeking possession (NOP). Under half (49%) had served an NOP on neighbour nuisance grounds in 1996/97 and only a third (33%) of landlords had taken a case to court. Overall, in the 2 years studied (1995/96 and 1996/97) around 1500 to 2000 tenants per year were served with a NOP due to their behaviour and at most 150 were taken to court each year. This was a very small proportion of all eviction actions raised by social landlords (most of which are for rent arrears) and a minute fraction of the total number of tenancies in the social rented sector.

The research also examined landlords’ case files for 90 eviction actions raised in the study period. Actions were raised for a wide range of behaviours. The most common were noise (63%), aggressive and abusive behaviour (43%) and vandalism or damage to property (34%). In most cases there was more than one type of complaint. With the exception of the drug-dealing cases, there was a history of complaints and problems prior to court action. One fifth of the cases (22%) were for drug-dealing. The majority of these (80%) were raised by one landlord, whose policy was to raise proceedings automatically following conviction for drug-dealing.

It should also be noted, however, that in a number of these cases the tenants could be regarded as vulnerable. These included vulnerability through mental health, serious alcohol abuse and 'out of control' children. In a number of these cases, the landlord had clearly tried to involve social work and health services, apparently without success. However, it raises concerns that eviction action was not the most appropriate response to the problem.

There was little evidence of discontent with the provisions of the substantive law. Moreover, the data suggest that the statutory grounds themselves, the reasonableness requirement and the manner in which either were applied by judges, did not present serious obstacles to eviction.

Proof of fact was clearly a substantial problem. This was largely due to the reluctance of neighbours to come forward as witnesses. There was widespread and serious concern about actual and potential witnesses being either intimidated or inhibited by fear of reprisals from
giving, or agreeing or to give, evidence. This problem was said to prevent many cases from getting started. However, the case studies suggested that practical measures, such as use of professional witnesses, and good witness support could alleviate it to some extent.

Excessive delay in the conduct of proceedings was perceived to be a major problem by social landlords and neighbours affected by anti-social behaviour. Solicitors and sheriffs were also concerned about delay, but had a greater understanding of the causes. On average, cases were concluded in 10 months – from the point at which the notice of proceedings became live to the date of disposal. However, there were considerable variations in the length of cases. Many undefended cases were disposed of at first calling and most of these were settled in under 6 months. However, defended cases took substantially longer.

On average, all stages of the process took longer than the minimum laid down by the rules of procedure, which govern the timetable for legal action. However, most delay was due to contingent factors. The most significant of these were:

- fixing the date for proof
- sitting the case to allow the defender to apply for legal aid
- sitting to monitor behaviour.

The research found that there was substantial scope for speeding up cases within the existing legal framework, without the need to alter the rules of procedure, by reducing contingent delay.

In practice, the legal process generally resulted in favourable outcomes for the landlord. The most common outcome was a decree for possession (56%). A third (33%) of cases resulted in a decree of dismiss, but in many of these cases tenant abandoned the property or the behaviour improved. Overall, probably no more than 5 per cent of cases were ‘lost’ by the landlord – i.e. resulted in an outcome with which they were unhappy.

However, a substantial minority of tenants (29%) were absent or unrepresented in court. The analysis of outcomes found that landlords were more likely to obtain a decree for possession in such cases. There is a possibility that some of these cases would not have resulted in eviction had the action been defended.

The research provided limited and inconclusive evidence on the broader effect of eviction in stopping, preventing, or deterring anti-social behaviour. Some interviewees thought that that eviction merely displaced the problem to another location, but others had not experienced further complaints about evicted tenants. There was no consensus on whether there was a substantial deterrent effect on other tenants.

**Interdict**

Despite the advantages claimed for it, and the encouragement of the good practice literature, interdict has not been widely used as a remedy for anti-social behaviour. There were only 32 interdicts raised in 1996/97. There was some evidence of that use of the remedy was misunderstood and this might be a factor which explains its limited use.

Only 2 of the case study landlords made substantial use of interdict for anti-social behaviour. They had used it a wide range of circumstances but most commonly when there was a regular
pattern of behaviour such a noisy parties, abusive and threatening behaviour or arguments. Both the main users had a policy of using interdict as a first step rather than proceeding straight to eviction, but this policy was not rigidly adhered to.

Interim interdict was found to be a genuinely speedy remedy in practice. However, breach of interdict was a slow and cumbersome process. Proof of fact was not a problem at the interim interdict stage. At the breach of interdict stage, the reluctance of potential witnesses to appear in court became a practical problem. As a result, where the interdict was not obeyed, landlords preferred to seek eviction. The substantive law posed no major problems for those seeking to obtain interdict, except with regard to title and interest to sue. The case of Dundee District Council v Cook 1995 SCLR 559, which suggested that landlords did not have title and interest to interdict owner-occupiers, might have deterred landlords from pursuing such cases.

In general, interim interdict and perpetual interdict were easy remedies for social landlords to obtain – almost all those sought were granted. Actions were rarely defended. This was a cause for concern because the pursuer’s allegations were not tested in court and it appeared that a prior interdict was likely to influence the outcome of eviction proceedings. There was evidence that, in a significant minority of cases, the use of interdict (without a subsequent eviction summons) had been followed by an improvement in the situation.

**Other remedies**

The postal survey found that only 5 and 6 landlords in each of the relevant years sought specific implement of the tenancy agreement. It was used mainly only in “amenity” cases, such as failure to maintain gardens. Landlords were generally successful in such applications, but some interviewees doubted the effectiveness. The use of by-laws to combat anti-social behaviour was uncommon.

The enforcement of behavioural title conditions in the deeds of property sold under the right to buy appeared to be virtually non-existent. The changes proposed as a consequence of abolition of the feudal system may limit their potential even further. This suggests that title conditions should not be given serious consideration as a potential remedy for the future.

Anti-social behaviour orders (ASBOs) came into force in April 1999: after the conclusion of fieldwork. However, interviewees did express a number of concerns about them. First, there was a concern that the scope of ASBOs was too wide. Second, landlords thought that it would be a much slower remedy than interdict. Third, there would be considerable problems with evidence. Finally, there were concerns that the landlord had far less control over this remedy, as enforcement would be the responsibility of the police and prosecutors. Many interviewees appeared unconvinced that the possibility of criminal sanctions for breach outweighed these disadvantages. Subsequent research has found that few ASBOs were applied for in the first 9 months of its operation. However, further research will be required to assess the impact of ASBOs in practice.

**Costs**

The final aim of the project was to analyse the economic costs associated with the legal process. We estimated that, in total, the costs of housing officers dealing with all complaints about neighbours was over £17.5 million per year. Within this figure, the cost to landlords of
dealing with more serious anti-social behaviour cases was estimated to be around £3.9 million per year. In total, we estimated that the costs of taking legal action were around £0.5 million in 1996/97. The costs involved in taking legal action were only a small proportion of the costs of dealing with anti-social behaviour and it is likely that that many of the costs of housing officer’s time would have been incurred anyway. Viewed from this perspective, the costs of taking legal action do not look excessive. Whether the legal process is cost-effective is more difficult to assess, particularly when judged against the broader criteria of effectiveness – success in stopping, preventing, or deterring anti-social behaviour.

Conclusions and Recommendations

• Social landlords may require further guidance and training on recording complaints, the use of a range of legal remedies, alternatives to the courts (mediation), inter-agency co-operation and the identification of costs.

• Landlords should consider whether to introduce:
  ➢ specialist units to respond to anti-social behaviour
  ➢ strategies for the use of legal remedies
  ➢ arrangements for support of witnesses/complainers,
  ➢ greater use of professional witnesses
  ➢ support units to assist vulnerable families.

• There is no case for further change to substantive law for either eviction or interdict with a view to making it easier to evict in cases of alleged anti-social behaviour.

• Reducing the extent of delay in eviction cases can be achieved through changes in the courts and landlords. Landlords should consider whether they can reduce pre-litigation delay and should manage cases more effectively to ensure that sists are recalled timeously. The courts could prioritise anti-social cases and could extend the practice of fixing a date for proof instead of sitting.

• Legislation would be desirable to clarify that social landlords have in appropriate circumstances title and interest to sue persons who molest their tenants. Legislation is also required to simplify and accelerate the enforcement of interdict in cases of breach.

• Further research is needed on:
  ➢ the effectiveness of specialist units for dealing with anti-social behaviour
  ➢ the relationship between mediation and legal remedies
  ➢ appearance by and representation of defenders in court
  ➢ the effect of legal remedies on behaviour including what happens to those who are evicted
  ➢ the impact and effectiveness of ASBOs
  ➢ the global costs of anti-social behaviour.
CHAPTER 1  INTRODUCTION

1.1  This research was commissioned by the Scottish Courts Administration (now Civil Justice and International Division, Courts Group, Justice Department) in response to a recommendation of the Scottish Affairs Select Committee, which called for research into delay in eviction cases and the effectiveness of other legal remedies. The aims of the research may be summarised as being: to establish how civil legal remedies are being used in practice to deal with the problem, and to evaluate the effectiveness of these remedies. This chapter sets out the background to the research. It then explored the context: first, examining the conceptual difficulties involved in defining the phenomena under inquiry; second, by summarising what we already know about these phenomena, however they may be defined. Finally, it sets out the aims of the research and outlines the research methods.

BACKGROUND

1.2  The social phenomenon variously described as ‘anti-social behaviour’, ‘neighbour nuisance’, and ‘neighbour disputes’ was a major focus of public concern in the 1990s. It has been a major media issue throughout the past decade. In the last 3 years there has been a rash of television series devoted to friction between neighbours, but for a much longer period the topic has been a staple of national and local newspaper reporting. Government has shown its concern by producing some good practice guidance for local authorities and legislation specifically targeted at the problem. Some local authorities have demanded new powers to deal with the problem. This does not seem to be purely a knee-jerk response to a moral panic created by the media. There seems to be genuine concern on the part of citizens based, in many cases, on personal experience of difficulties with neighbours and others. Local authority interest appears to be largely a product of pressure from their own tenants and, to a lesser extent, of other local citizens.

1.3  At an early stage the issue became closely identified with the housing functions of local authorities and other social landlords: it was seen as a problem for them to solve. In November 1991, a Tenant Participation Advisory Service seminar in Glasgow attracted over 100 landlords and tenants keen to debate solutions to the problem (Scott, 1991). In May 1994 the Chartered Institute of Housing in Scotland held a conference in Inverness, which brought together housing staff, elected members of local authorities, tenants and other professionals. In addition to confirming the interest in the subject it established that there was a substantial measure of discontent with the operation of the legal remedies that might be used to deal with the problem (Scott, 1994). Not long after this, central government responded to concerns with its own proposals. The first concrete proposals were contained in the consultation paper Anti-social behaviour on Housing Estates: Consultation Paper on Probationary Tenancies (SOED, 1995) published in tandem with a similar consultation paper from the Department of the Environment covering England and Wales (DoE, 1995). Both proposed introducing ‘probationary tenancies’ without security of tenure to replace secure tenancies for new lets in the public sector. The Labour Party, then in opposition, was also taking a keen interest in the topic, and published its own proposals applying to England and Wales, A Quiet Life: Tough Action on Criminal Neighbours (Labour Party, 1995) for a new type of order similar to an injunction, called a ‘community safety order’.
1.4 A raft of measures to improve legal mechanisms for dealing with the problem in England and Wales were introduced by the Housing Act 1996. This legislation did not apply to Scotland. Part V entitled ‘Conduct of Tenants’ implemented the proposals relating to probationary tenancies. There were also changes to the grounds for eviction for secure and assured tenancies, changes to procedures for eviction, provision for injunctions against anti-social behaviour, and for powers of arrest to be attached to injunctions in certain circumstances. In the same year, Lord Woolf undertook a wide-ranging inquiry into civil legal process in England and Wales. He recommended introduction of an expedited procedure for eviction cases where the allegations against the tenant included assault, damage to property and threats of either (Woolf, 1996), although this did not form part of the 1996 Act package.

1.5 One of the reasons why no Scottish legislation was contemplated at that time was that the Scottish Affairs Committee of the House of Commons had announced its own inquiry into housing and anti-social behaviour in May 1995. The report of the inquiry *Housing and Anti-Social Behaviour* was published in December 1996 (SAC, 1996). It made a number of recommendations as to how social landlords and other agencies might respond to the phenomenon of anti-social behaviour. Much of the evidence to the committee suggested dissatisfaction with the operation of the legal process, but there was countervailing evidence, and the committee considered that the criticisms of the legal process were not proven. Instead it recommended that the Scottish Office should fund research into the extent and causes of delay in eviction for anti-social behaviour, and that the Scottish Courts Administration should collect and publish detailed statistics on delay in eviction actions. The committee also made specific suggestions for law reform. For the remedy of interdict, they recommended clarifying the question of title and interest to sue, improving the enforcement procedures, and allowing for a power of arrest to be attached in certain circumstances. The committee also recommended extending police powers to seize noise-making equipment, but rejected suggestions for the creation of a separate housing tribunal to deal with cases involving anti-social behaviour. It also rejected the Government’s proposals for probationary tenancies for new public sector tenants, whilst supporting the introduction of a probationary tenancies for persons previously evicted for anti-social behaviour.

1.6 The Labour Government, which took power in May 1997, introduced further measures to deal with anti-social behaviour. Proposals for Scotland were summarised in a speech by the Minster for Housing on 17th October 1997. Some of these proposals were then incorporated, along with measures applying to England and Wales, in the Crime and Disorder Act 1998. This was a major piece of legislation affecting the criminal justice system and the criminal law, but with rather more impact on England and Wales than on Scotland. The provisions specifically addressed to the problem of anti-social behaviour included a new remedy – the anti-social behaviour order (ASBO). This was both north and south of the border, but with significant differences between the 2 jurisdictions (Hunter, Mullen and Scott, 1998). It was recognisably a descendant of the community safety order proposed by the Labour Party in 1996. In addition, the relevant grounds for eviction of secure and assured tenants in Scotland were replaced by new and broader grounds. The Act also extended police powers to seize noise-making equipment along the lines suggested by the Scottish Affairs Committee. The new grounds for eviction, and the extended police powers, became effective on 1 December 1998. The anti-social behaviour order was introduced on 1 April 1999.

1.7 In addition to legislative initiatives, the Scottish Office, in response to another of the committee’s recommendations, issued new guidance in a circular on the issues in November
1998 (SODD, 1998). The circular was directed mainly at local authorities, and attempted to provide comprehensive good practice guidance, including guidance on the role of specific legal remedies.

1.8 Further legislation is planned in Scotland. A consultation document issued by the Scottish Executive in December 1999 indicated acceptance of the Scottish Affair’s Committee’s recommendations for a restricted version of the probationary tenancy, and to remove the right to buy from people who were in the process of being evicted for anti-social behaviour. Both these measures would be included in the Scottish housing bill, due for publication in summer 2000. The paper also sought views on fast-tracking drug-related evictions, strengthening the compulsory transfer ground for eviction, the possibility of referring such cases to a housing tribunal and the use of a model agreement for the single social housing tenancy to discourage anti-social behaviour (Scottish Executive, 1999a).

DEFINING ANTI-SOCIAL BEHAVIOUR

1.9 Any research must begin by clearly specifying the phenomenon which is under inquiry. We cannot describe and evaluate the use of legal remedies unless we can define the problem to which they are said to provide a solution. However, as soon as we raise the issue of definition, we encounter difficulties. Although it is widely assumed in both popular and academic discussion that there is a specific social phenomenon to be observed, it is not clear what the boundaries of the phenomenon are. There are at least 3 areas of uncertainty. First, the variety of labels used to ‘name’ the phenomenon and whether these are descriptive or evaluative. Second, the geographical or spatial context. Third, the range and type of behaviour that may be included under the various labels.

The language used

1.10 A variety of labels are used to describe it: ‘neighbour nuisance’, ‘neighbour disputes’, ‘anti-social behaviour’. Both the 1995 consultation papers on probationary tenancies (DoE, 1995; SOED, 1995) use the phrase ‘anti-social behaviour’ in their titles, as do recent books covering relevant legal remedies in both Scots law (Collins and O’Carroll, 1997) and English law (Hunter and Bretherton, 1998). However, other published accounts refer to neighbour disputes (for example, Scott, 1991, Karn et al., 1993) or to neighbour nuisance (Hunter, Mullen and Scott, 1998). Some may treat these labels as interchangeable, but for others the choice may be important, and a particular label may be adopted for its rhetorical significance. The phrase ‘anti-social behaviour’ has obvious and strong negative connotations. Its use clearly implies that the behaviour is deemed to be undesirable, and generally also implies that the behaviour is blameworthy. ‘Neighbour nuisance’ does not carry such strong negative connotations, but does seem to imply that neighbours might reasonably be annoyed or discomfited by the behaviour in question. ‘Neighbour disputes’ appears to focus on the existence of conflict without necessarily implying that it is appropriate to attribute blame. As the preceding section shows, in government documents and ministerial statements ‘anti-social behaviour’ is the preferred, but not the only, choice.

1.11 Using a particular term may indicate not only a general attitude towards the behaviour in question, but also that a conclusion has been reached about the appropriate response, for example, that anti-social behaviour requires punitive responses, whereas neighbour disputes require mediation.
The spatial context

1.12 The second area of uncertainty is the geographical or spatial context. References to neighbour nuisance and neighbour disputes suggest that the focus of inquiry is problems people experiences with their immediate neighbours, but some sources extend the focus to the ‘neighbourhood’. The Labour Party document *A Quiet Life: Tough Action on Criminal Neighbours* (1995) linked the two:

> Across Britain there are thousands of people whose lives are made a misery by the people next door, down the street, or on the floor above or below.

1.13 This broader characterisation of the problem still refers to a relatively localised environment – it is a problem that you experience where you live. The passage quoted also suggests that the person whose behaviour causes complaint lives nearby. However, popular and official statements sometimes use the expression ‘anti-social behaviour’ with no implied geographical restriction, for example, when discussing ‘undesirable’ behaviour in public places such as drinking alcohol in the street or housebreaking. Bannister and Scott (2000) criticised the wide usage of the term. They suggested that it would be more useful to consider that anti-social behaviour comprises 3 distinct phenomena: these being: neighbour problems, neighbourhood problems and crime problems.

Types of behaviour

1.14 The third area of uncertainty is the range and type of behaviour subsumed under these general phrases. If we were simply inquiring what behaviour caused offence to neighbours or local residents, or stimulated complaints, there would be no closed list of types of behaviour that were relevant to the inquiry. However, if we wished to stigmatise behaviour as unacceptable, which is the approach taken in the 2 consultation papers on probationary tenancies, there would have to be some limits. Neither document offered a definition of ‘anti-social behaviour’ but both offered the same general description (DoE, 1995; SOED, 1995):

> Such behaviour takes many different forms with varying levels of intensity. It can include vandalism, noise, verbal and physical abuse, threats of violence, racial harassment, damage to property, trespass, nuisance from dogs, car repairs on the street, joy-riding, domestic violence, drugs and other criminal activities such as house-breaking.(SOED, 1995, p1)

1.15 Nearly all the types of behaviour in this list would be widely regarded as unacceptable, depending on the precise circumstances, and many of them would amount to crimes. Other accounts also stress the variety of behaviour. One widely quoted source states:

> There are annoying but relatively minor events like children playing games in unauthorised areas; there are also the serious matters such as burglaries, muggings and racial harassment. In between these two extremes there is a wide variety …… noise is a constant source of complaint in many areas. (Legg et al., 1981: p14)

1.16 Perhaps inspired by a perception that the ‘problem’ has been defined too broadly, there have been some attempts to steer the debate towards a narrower conception of the
problem. For example, the Scottish Affairs Committee sought to draw a clear distinction between neighbour disputes and anti-social behaviour:

Disputes between neighbours are common but they are not in the same league as situations where the behaviour of the household becomes unacceptable, not just to one set of neighbours, but to the neighbourhood in general. (SAC, 1996: para. 2)

1.17 Here, neighbour disputes are seen as essentially bilateral: the anti-social are those who upset all their neighbours. They went on to adopt Shelter’s suggested definition that anti-social behaviour occurs:

Where the problem is the direct result of behaviour by one household or individuals in an area which threatens the physical or mental health, safety or security of other households or individuals. (SAC, 1996: para.3)

1.18 This review of the language used in these debates and discussions suggests that we are not dealing with a discrete narrowly circumscribed phenomenon, but with a cluster of concerns, which have been united under the various labels discussed above. However, it is clear that there is a sense, from the sources already quoted, of being involved in the same debate. There is a core concern, shared by all the participants in the debate, that there are problems experienced by people in or around their homes which are caused by the behaviour of their neighbours. In other words, the behaviour complained of affects the quality of life in the home or neighbourhood. Depending on who is speaking concern may be extended to problems caused by local residents rather than just neighbours or even visitors to the area and the nature of the behaviour complained of varies.

Working definition for the research

1.19 We have tried to be sensitive to the need for such unpacking of concepts in carrying out this research. However, we have used the expression ‘anti-social behaviour’ throughout this report for a variety of reasons, including the need for a convenient label, the popularity of this label, and the terms of the research tender. Its use is not meant to imply that this label is necessarily better than others, nor to short circuit debate on the nature of the phenomena under inquiry.

1.20 However, there was a need to have a working definition of anti-social behaviour for the purposes of carrying out the research. Our feasibility study, which preceded this research, suggested the following broadly inclusive definition as a starting point:

Anti-social behaviour is behaviour which threatens the physical or mental health, safety or security of individuals and households, or causes offence or annoyance to individuals and households in the neighbourhood.

1.21 This is intended to be sensitive to the complexities discussed above, for example, the question whether or not it is possible to apportion blame in a neighbour dispute. It assumes that the behaviour in question occurs in the local neighbourhood, but not that the author of the behaviour is necessarily an immediate neighbour of the ‘victim’. Similarly, it is broad enough to encompass most of what has been described as anti-social behaviour, but clearly
excludes many other circumstances in which the persons might use the same legal remedies. Thus the definition would catch only ‘anti-social’ evictions and not eviction for rent arrears.

SCALE OF THE PROBLEM

1.22 The issues over definition also complicate discussion of the scale of the problem - what precisely is the problem which is being measured? But there is, in addition, the problem of lack of data. The Scottish Affairs Committee (1996) found it difficult to assess the scale of the problem. It noted a common perception amongst social landlords that the problem, at least as measured by complaints from tenants, was increasing, but little quantitative data was available to support this. However, there has been some research which has attempted to measure the prevalence of anti-social behaviour in Scotland. The 1993 Scottish Crime Survey (using a very wide definition of anti-social behaviour) estimated that there were approximately one million crimes perpetrated against individuals and households in Scotland during 1992. The majority of these crimes (84%) were property offences and 16 per cent were crimes of violence. A disproportionate proportion of both household and personal crime occurred in areas of poorer council housing (Anderson and Leitch, 1996). This may help to explain the finding by Bannister and Kearns (1995) that the most common causes of concern expressed by public sector landlords in Scotland, about housing estates, were drug abuse, housebreaking and vandalism.

1.23 However, the Baseline Study of Housing Management, which surveyed over 2000 public sector tenants, found that their concerns were rather different from those of landlords. The most commonly identified problems in the neighbourhood were litter (45%), traffic and car parking problems (44%) and problems with unattended dogs (42%). Vandalism was thought to be a problem by only a third of the respondents (36%) while only 1 in 5 (19%) were concerned about crime or theft involving property (Clapham et al, 1995). Tenants were also asked about problems with neighbours. Overall, one fifth (20%) of tenants interviewed said that they had experienced problems or nuisance from a neighbour or neighbours over the past year. Domestic noise was the biggest problem. Forty-three per cent of those with a problem cited this. The next most common problem was violence or verbal abuse, mentioned by over a quarter of the respondents (26%). Problems with children and teenagers were mentioned by just under a quarter of the complainants (24%) and drugs/drink and pets were each mentioned by 17 per cent (Scott and Parkey, 1998a). Limited as these sources are, they do suggest that the issues raised in the debates over anti-social behaviour concern substantial numbers of people.

THE AIMS OF THE RESEARCH

1.24 We have already said that the complexities of definition in this area suggest that research should not proceed on a prescriptive definition of the topic. A further implication of that discussion is that a single project could not cover all of the issues. This research was confined to the use and evaluation of specifically legal remedies for anti-social behaviour. It responds to the concerns of the Scottish Affairs Committee (1996) about the civil justice process, and their specific invitation to inquire into the use of legal remedies. The research itself was preceded by a feasibility study carried out by Mullen and Scott which, amongst other things, piloted the research methods used.
1.25 The aims of the research specified in the tender were:

a) to establish the extent to which, and the way in which, the available legal remedies are used to deal with anti-social behaviour and neighbour disputes;

b) to establish how effective the legal remedies are in practice, paying particular attention to issue of delay in the legal process, problems of proof of fact, the experience of witnesses/victims, judicial willingness to grant remedies, and outcomes generally;

c) to establish the extent to which particular factors contribute to the ineffectiveness (or effectiveness) of the legal process, clearly distinguishing between the effects of legal requirements and the effects of the practices of the parties and/or courts;

d) to assess how existing processes might be used or managed differently, and consider the need (if any) for reform of law and/or practice of parties and/or courts;

e) to analyse the economic costs associated with the legal process.

1.26 It is important to be clear about the focus and limits of the research. First, the research was largely confined to the use of legal remedies by social landlords. The Scottish Affairs Committee had also been concerned with problems in the private rented sector, and in owner occupied housing, and had emphasised that the problem was tenure-neutral. However, the feasibility study pointed out the greater methodological difficulties in researching use by these groups and, given the work involved in studying the social rented sector, the danger of rendering the project unwieldy. Use of legal remedies by private sector landlords and by private individuals might, of course, be usefully made the subject of a separate study provided the methodological difficulties are addressed.

1.27 Second, the legal remedies in question were solely civil remedies. It would not have been feasible to include the role of the criminal process in the same study. Third, and perhaps more importantly, the research was confined to the use and evaluation of specifically legal remedies for anti-social behaviour, and was not intended to examine or evaluate the use of other responses by relevant agencies. However, it was important to study the legal remedies in the context of the general approach and overall strategies of social landlords for dealing with anti-social behaviour. The way that housing managers handle a problem may have a major impact on the use of legal remedies. Nor could one neatly separate the use of legal processes from housing management responses.

1.28 As a consequence, we uncovered a great deal of information about housing management, and we make some comment on the differences in housing management approaches of different landlords, and their impact on legal remedies. However, the focus of the inquiry was firmly on legal remedies, and we have not attempted to evaluate non-legal responses to the problem. Nor have we attempted to evaluate the relative success of strategies based on the use of legal remedies as compared to non-legal responses. It follows that the findings of this research will need to be looked at in conjunction with the findings of research into other aspects of the problem.
THE RESEARCH METHODS

1.29 This section provides an outline of the research methods, discussion of the criteria to be used for evaluation of the legal remedies and their use in this context. A more detailed discussion of the research methodology has been included in Appendix 1. The legal remedies examined were:

- eviction
- interdict
- specific implement
- the enforcement of title conditions
- local authority by-laws
- anti-social behaviour orders

1.30 The methods used were:

- a postal survey of social landlords
- analysis of leases and policies
- case studies
- analysis of court records

Postal Survey

1.31 The purpose of the survey was to obtain national quantitative data on the use of legal remedies by social landlords, the outcomes of the legal process, and various ancillary matters such as the use of professional witnesses and mediation. The detailed findings of the postal survey are examined in Chapter 3.

Analysis of leases and policies

1.32 We asked landlords to send us copies of their written documentation on the topic along with the postal questionnaire. We collected and analysed these tenancy agreements, policies, guidance to staff and information given to tenants. The findings of this analysis are given in Chapter 4.

Case Studies

1.33 The case studies focused on geographical areas centred on a particular sheriff court. Within each area the objects of study were:

- the relevant local authority
- a housing association or fully mutual co-op
- sheriffs and the courts
- lawyers acting for the parties in anti-social cases
- victims/witnesses of anti-social behaviour.

1.34 The purpose of the case studies was to build up a picture of social landlords’ experience of the legal process. For each landlord in the study we sought access to documents on policy and practice for dealing with anti-social behaviour, the files of cases
involving the use of legal remedies and relevant cases in which landlord did not take legal action. We analysed relevant documents including tenancy agreements, and case files. We carried out semi-structured interviews with landlords’ solicitors, housing managers, housing officers, and any specialist staff. We also carried out some interviews with victims of anti-social behaviour who had been witnesses in court. In each court 1 or 2 sheriffs were interviewed, as were lawyers who had acted for persons defending relevant legal action. The case studies are described in more detail in Chapter 5.

Court records

1.35 The main source of information about specific cases was the landlords’ files. Court records were only used as a check where landlords’ data were incomplete or confusing.

THE CRITERIA FOR EVALUATION OF LEGAL REMEDIES

1.36 The Scottish Affairs Committee (1996) suggested that complaints about eviction fell into the following categories:

- undue delay in the legal process
- the difficulty of obtaining and presenting evidence to the required legal standard
- the unwillingness of sheriffs to evict when sufficient facts to justify eviction were proved
- poor treatment of witnesses and victims by the legal process.

The Committee was not convinced that the criticisms were justified but, in the light of the anecdotal nature of the evidence, suggested a need for research to which the Scottish Office responded by commissioning this research.

1.37 The general aim of the research was to produce a description and evaluation of the use of legal remedies for anti-social behaviour, in their housing management context. The research was carried out with a view to applying the following evaluative criteria:

- The speed with which the remedy may be obtained.
- The appropriateness of the substantive law for dealing with anti-social behaviour i.e. in what circumstances does the law allow the remedy to be obtained.
- Whether the statutory or other legal criteria are properly applied in practice, including whether judicial discretion is properly exercised.
- The ease or difficulty of establishing the necessary factual basis of the legal action, including the effect of the law of evidence, judicial attitudes to evidence, and practical obstacles to obtaining and presenting evidence.
- the costs of legal remedies

1.38 The application of such criteria may depend crucially on perspective. Speeding up the legal process may seem desirable to a landlord or a complaining neighbour, but may be less attractive to tenants threatened with eviction. That example also shows the possibility for tension between the actors involved. Many procedural rules are designed to protect the
interests of litigants and encourage accurate decision-making. However, they may have the effect of extending the time scale for litigation. Changes to procedures designed to reduce delay may purchase speed at the expense of fairness.

1.39 The legal system has to balance such conflicting values. Consideration of whether the balance is being properly struck must do justice to the different perspectives and interests involved. We have tried to be sensitive to the different perspectives in carrying out this research.

1.40 The costs of legal remedies are important if legal remedies are to be compared to other solutions. Our research attempted to assess the cost to social landlords of obtaining legal remedies, including not only the costs attributable to the work of lawyers, but also a variety of other costs.

1.41 However, even when carried out with regard to perspectives of different interest groups, the criteria above provide a relatively narrow definition of effectiveness geared to establishing that the legal process is working as intended: that remedies are in practice neither too difficult, nor too easy to obtain. What social landlords and those who complain about their neighbours most want is, that the behaviour complained of should cease. A broader assessment of effectiveness suggests as a further criterion:

- the extent to which pursuing legal remedies contributes to stopping or preventing undesirable behaviour.

1.42 However, evaluating the impact of legal remedies on behaviour and the incidence of problems is an enormously complex and difficult task. This would have required a different type of study. Our case studies provided some interesting opinions on these matters, but this research does not attempt to evaluate the legal remedies according to this broader measure of effectiveness.

THE STRUCTURE OF THE REPORT

1.43 Chapter 2 outlines the legal remedies, Chapter 3 gives the findings from the questionnaire returns, and Chapter 4 describes the written policies and leases of social landlord. Chapters 5 and 6 summarise the characteristics and approaches of case study landlords as a prelude to the more detailed discussion of remedies which follows. The remainder of the report is structured around the remedies with separate chapters on eviction, interdict, and the other remedies employed by social landlords. The penultimate chapter deals with the costs of legal action, while the final chapter provides conclusions and recommendations.
CHAPTER 2 THE LEGAL FRAMEWORK

INTRODUCTION

2.1 The aim in this chapter is to set out the legal framework on civil remedies for anti-social behaviour. The chapter begins by discussing eviction. Eviction is the most drastic remedy of the remedies available to a landlord for dealing with alleged anti-social behaviour. It is also the remedy which has figured most prominently in public debate, and the focus of most of the criticism of the legal process.

2.2 However, it is important to remember that anti-social behaviour is a problem that may be encountered in all tenures. For both symbolic and practical reasons it is important to have remedies against bad behaviour by persons other than tenants, including owner-occupiers. This chapter covers a range of measures, which are not restricted to rented housing, including interdict, the use of title conditions and by-laws. It concludes by examining the new remedies available and the proposals for further legislation.

SECURE AND ASSURED TENANCIES

2.3 The vast majority of tenants in the social rented sector will either be secure tenants, under Part III of the Housing (Scotland) Act 1987 (‘the 1987 Act’), or assured tenants, under Part II of the Housing (Scotland) Act 1988 (‘the 1988 Act’). (For a detailed description of the differences see Mullen et al, 1997). They will have security of tenure, meaning that the landlord cannot simply choose to remove them on the expiry of the lease. Instead, the tenancy can only be brought to an end in the circumstances permitted by the legislation. Private sector tenants will usually be assured or short assured tenants. The short assured tenancy is a variation of the assured tenancy. The tenant does not have security of tenure, but to create such a tenancy it is necessary to give the tenant a lease of at least 6 months duration. Tenancies which do not fall within any of the statutory regimes may be described as common law tenancies. Only small proportions of tenants occupy their houses under common law leases but they include one small but significant group within the social rented sector: tenants of fully mutual co-operatives.

2.4 Tenants of local authorities and Scottish Homes will usually be secure tenants. Pre-1989 housing association lets were usually on secure tenancies. However, post 1989 lets were on assured tenancies. The bulk of housing association tenants are now assured tenants, but there remain a substantial number of secure tenants in the sector (Mullen et al, 1997). Housing associations use the short assured tenancy only for limited purposes, and few of their tenants are of this type. All of the specific cases examined in the course of the fieldwork concerned tenants who had either secure or assured tenancies, and this account of the law concentrates on those tenures, with a brief comment on differences for other tenures. In both tenures the landlords’ right to recover possession is subject to substantive, procedural and evidential constraints.
SUBSTANTIVE LAW ON EVICTION

2.5 In both secure and assured tenancies, the landlord must establish one of the grounds specified in the legislation to obtain possession. The grounds for possession are of 2 sorts: mandatory, where the sheriff must award possession if the ground is established; and discretionary, where the sheriff must also be satisfied that it would be reasonable to award possession on the ground in question. The majority of the grounds in either tenure are not relevant to our inquiry. Those that are relevant are broadly to the same effect in the 2 tenures. To complicate matters, the Crime and Disorder Act 1998 substituted new versions of the most important grounds, with effect from 1 December 1998. These changes came too late for any experience of their use to filter through into our research. The data about cases, landlords’ policies, and the experiences of interviewees were based on the grounds as they were before that date. As the research was essentially based on the old law, we consider that first.

Secure Tenancies – the Law up to 30 November 1998

2.6 The relevant grounds, which were originally enacted for secure tenancies are contained in Schedule 3 to the 1987 Act. Ground 1 read:

*Ground 1:* Rent lawfully due from the tenant has not been paid, or any other obligation of the tenancy has been broken.

The second limb of the ground is the relevant part - if the lease forbids the behaviour in question, the landlord could seek eviction. If the lease defines anti-social behaviour then breach of its terms may become the basis for eviction.

2.7 Ground 2 could be used to evict the tenant where anyone living in the house had been convicted of using the house for e.g. drug-dealing, prostitution, and resetting stolen goods:

*Ground 2:* The tenant (or any one of joint tenants) or any person residing or lodging with him or any sub-tenant of his has been convicted of using the house or allowing it to be used for immoral or illegal purposes.

2.8 Grounds 3 and 4 allowed possession to be recovered where the fabric of the house or furniture had been damaged through the fault of the tenant:

*Ground 3:* The condition of the house or of any of the common parts has deteriorated owing to acts of waste by, or the neglect or default of, the tenant (or any one of joint tenants) or any person residing or lodging with him or any sub-tenant of his; ...

Ground 4 makes similar provision to ground 3 for deterioration in the condition of any furniture provided.

2.9 Ground 7 allows eviction on the basis that persons living in the house have caused nuisance or annoyance:

*Ground 7:* The tenant of the house (or any one of joint tenants) or any person residing or lodging with him or any sub-tenant of his has been guilty
of conduct in or in the vicinity of the house which is a nuisance or annoyance
and it is not reasonable in all the circumstances that the landlord should be
required to make other accommodation available to him.

Ground 8 is similar to ground 7 except that the landlord must believe that it is appropriate to
move the tenant to other accommodation.

2.10 In the case of ground 8, the landlord must ensure that other suitable accommodation
will be available to the tenant. Ground 8 is in effect a compulsory transfer. All the other
grounds are outright evictions and, in addition to establishing the ground, the landlord had to
convince the sheriff that it would be reasonable to award possession (1987 Act, section
48(2)(a)). Thus, for example, possession could be refused even where the tenant caused a
nuisance, if the sheriff did not think it reasonable to evict.

2.11 New versions of grounds 2 and 7 were substituted by the Crime and Disorder Act
1998 with effect from 1 December 1998. The other grounds remain unchanged.

Assured Tenancies - the Law up to 30 November 1998

2.12 The grounds for eviction in assured tenancies are contained in Schedule 5 to the 1998
Act. As they were similarly worded we have not given the text in full in all cases:

Ground 13: Any obligation of the tenancy (other than one related to the
payment of rent) has been broken or not performed.

Ground 13 was equivalent to the second limb of secure ground 1 and permitted eviction of
the tenant for breach of the tenancy agreement.

2.13 Ground 14 covers deterioration of the house or common parts and corresponds to
secure ground 3. Ground 16 covers deterioration of furniture and corresponds to secure
ground 4.

2.14 Ground 15 was the key ground. This was an amalgam of secure grounds 2 and 7, and
covered both conviction for immoral or illegal use, and conduct which was a nuisance or
annoyance. For all these grounds, it was necessary to convince the sheriff that it would be
reasonable to evict (1988 Act section 18(4)), so that eviction was not mandatory on any of
these grounds. There is no direct equivalent of secure ground 8: assured ground 9 allows
recovery of possession where suitable alternative accommodation is available, but the sheriff
must consider it reasonable, so there can be no compulsory transfer.

Ground 15: The tenant or any other person residing or lodging with him in
the house has been guilty of conduct in or in the vicinity of the house which is
a nuisance or annoyance, or has been convicted of using the house or
allowing the house to be used for immoral or illegal purposes.

2.16 A new version of ground 15 was substituted by the Crime and Disorder Act 1998, and
this change was equivalent to the changes made to secure tenancy grounds 2 and 7. Table 2.1
shows a summary of the grounds for both types of tenancy:
Table 2.1  Summary of the grounds for possession for secure and assured tenancies

<table>
<thead>
<tr>
<th>Ground</th>
<th>Secure tenancy</th>
<th>Assured tenancy</th>
<th>Ground</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Breach of tenancy condition</td>
<td>Breach of tenancy condition</td>
<td>13</td>
</tr>
<tr>
<td>2</td>
<td>Conviction for immoral or illegal use of house</td>
<td>Conviction for immoral or illegal use of house</td>
<td>15</td>
</tr>
<tr>
<td>7</td>
<td>Causing a nuisance or annoyance</td>
<td>Causing a nuisance or annoyance</td>
<td>15</td>
</tr>
<tr>
<td>8</td>
<td>Causing a nuisance or annoyance but landlord provides alternative accommodation</td>
<td>Suitable alternative accommodation available</td>
<td>9</td>
</tr>
<tr>
<td>3</td>
<td>Waste or neglect leading to deterioration of condition of house or common parts</td>
<td>Waste or neglect leading to deterioration of condition of house or common parts</td>
<td>14</td>
</tr>
<tr>
<td>4</td>
<td>As above for furniture</td>
<td>As above for furniture</td>
<td>16</td>
</tr>
</tbody>
</table>

2.17 It should be clear that it is not necessary to show that a breach of the tenancy agreement has taken place in order to establish grounds for eviction. However, in theory, the range of behaviour that may lead to eviction may be expanded if the tenancy agreement is drafted to ‘catch’ behaviour that does not fall within the statutory grounds.

**Reasonableness**

2.18 The decision on whether it is reasonable to evict is a judicial discretion. It allows the sheriff to refuse to award possession even after the ground relied upon has been clearly made out. In exercising discretion the sheriff should take account of all relevant matters and ignore irrelevant matters. (For a full discussion, see Chapter 12 of Collins and O’Carroll, 1997). Because the decision is discretionary, it is subject to appeal only on limited grounds: the sheriff failed to consider a relevant matter, considered an irrelevant matter, or the sheriff’s decision was plainly unreasonable. The appellate court cannot simply substitute its own view of the correct decision. As a consequence, appeals against decisions on reasonableness are rare.

**EVICITION PROCEDURE**

2.19 It is important that the landlord follows the correct procedure. Failure to follow the proper procedures may lead to the action being dismissed regardless of its substantive merits. Procedure is also highly relevant to the issue of how long the eviction process takes. The procedural requirements come from several sources. Specific requirements are laid down by the 1987 Act and the 1988 Act for each tenure. In addition, there are the terms of the Summary Cause Rules, which regulate the procedure for court action in all summary causes, and do not distinguish between secure and assured tenancies. Because of the large common element in the procedures, we describe procedures for both types of tenancy together. The procedural requirements may be divided into 2 stages: preliminary steps and court action.
Preliminary Steps

2.20 In a secure tenancy only one preliminary step is required. The landlord must serve on the tenant a notice of proceedings for possession (1987 Act, section 47) which warns the tenant that the landlord may raise a court action from a specified date, and states the statutory grounds on which action may be taken. The date must be at least 4 weeks after the date of service of the notice. However, the time allowed may have to be longer than 4 weeks, because the date must not be earlier that the date when the tenancy could have been ended by a notice to quit at common law. Thus the period can be as little as 28 days only when the date specified coincides with the termination date of the tenancy at common law. If the landlord goes to court without having served the notice of proceedings, the action will be incompetent and the case must be dismissed, which would mean that the landlord would have to start the process again by serving another notice of proceedings.

2.21 A similar notice is required for assured tenancies (1988 Act, section 19) (except that the date specified for raising proceedings may be only 2 weeks after the date of service in a case brought under ground 13 or 15). The other difference is that the sheriff may dispense with the notice requirement if s/he considers it reasonable to do so. It is therefore possible, although unlikely in the normal course of events that the landlord might be excused failure to serve a notice. Hereafter the relevant notices for both secure and assured tenancies are referred to as the 'notice of proceedings' or 'NOP' for short, although there is a separate form prescribed for each by secondary legislation.

2.22 It may also be necessary to serve a notice to quit in an assured tenancy. This requires some explanation. The notice to quit and the NOP serve different functions. The purpose of a notice to quit is to terminate the contract between the parties. The purpose of the NOP is to warn the tenant that the landlord may soon raise a court action to evict him or her. Notices to quit have been dispensed with in secure tenancies, but they have been retained for various reasons in assured tenancies. So a landlord may need to serve a notice to quit to end the tenancy contract, and an NOP to warn the tenant of being taken to court.

2.23 But notice to quit will not always be required. Section 18(6) of the 1988 Act appears to allow recovery of possession in a contractual tenancy on any of the grounds listed above as relevant to anti-social behaviour cases. By definition, this must mean where no notice to quit has been served. If a notice to quit had been served there would no longer be a contract after the date specified in the notice. However, this is an area of some difficulty, and many landlords’ solicitors would be reluctant to go into court unless armed with a notice to quit (See Collins & O’Carroll, 1997 and Mitchell, 1995 for a detailed discussion).

Procedure in Court

2.24 In either type of tenancy, if the NOP has been served, and the date mentioned in it has passed, the landlord may raise proceedings for recovery of possession. This must normally be done as a summary cause rather than an ordinary action (1987 Act, section 47; Sheriff Courts (Scotland) Act 1971, section 35(1)(c)). The action will proceed in the same way whether it is a secure or an assured tenancy. The action is raised by a document called a summons. The summons states the date the case will call in court, and the tenant must be given at least 21 days notice of this, although this period may be reduced on cause shown under Summary Cause Rule 4, subject to a minimum of 2 days.
2.25 The case may be disposed of at the first calling. The Summary Cause Rules allow this (rule 18(6)) when the defender does not appear or is not represented, and has not stated a defence or if the court is satisfied that s/he does not intend to defend the cause on the merits. It is quite common for defenders not to appear in recovery of possession actions, and quite common for pursuers to obtain a decree for possession at the first calling. All prior research on eviction confirms this, (see e.g. Mason et al, 1995). However, it is possible to recall the decree under Summary Cause Rule 19.

2.26 If the case is to go further there are a number of options. If it is being defended on the merits the court should fix a proof at which evidence can be heard and the facts ascertained. However, this may not happen, and the case may instead be continued (adjourned) or sisted. As regards the first, the court has a broad discretion to adjourn proceedings in cases involving both secure tenancies (1987 Act, section 48(1)) and assured tenancies (1988 Act, section 20(1)). This may be done for a variety of reasons, for example, the defender has had difficulty obtaining legal representation, or the defender is unable to appear for good reason, or where there is some prospect of a speedy settlement. Given the terms of the legislation, a case may be continued on several occasions. Continuation is to a specific future date.

2.27 An alternative procedure is for the case to be sisted. This is done when either or both parties seek an indefinite delay. No date is set for the case to return to court and it will not do so unless and until either party moves to recall the sist. A sist is most frequently used in this type of case to allow the defender to apply for legal aid. But it is also used to allow the landlord to monitor behaviour with a view to dropping the eviction action if the behaviour improves (this is discussed in detail in later chapters).

2.28 Even if there are continuations and/or sists, there should eventually - if both parties maintain their positions - be a proof fixed. The proof may take 1 or more days depending on the amount of evidence. After the evidence has been heard the sheriff will decide what facts have been proved, rule on any issues of law, and give a decision which will normally be a decree of dismissal or an order for possession. The order for possession allows the landlord to eject the tenant from the house. A decree of dismissal means that the tenant is entitled to continue in occupation of the house. It is possible, however, in either type of tenancy, for the case to be continued or sisted after proof without the sheriff giving judgement on the merits, in order to allow monitoring of behaviour. Normally the decree of whatever type is granted at the close of the proof, but the sheriff may wish to take further time to consider the case, before pronouncing decree.

2.29 If a decree for possession is awarded, eviction does not follow immediately on a decree. The sheriff when granting decree in favour of the landlord must state a date when the decree may be executed. This is normally at least 14 days after the date of decree but may be longer.1 The legislation gives the sheriff different powers in the 2 tenures. In a secure tenancy, section 48(4) of the 1987 Act only requires the sheriff to fix a date for recovery of possession. However in an assured tenancy the Sheriff has a discretion (section 20(2), 1988 Act) to sist or suspend execution of the order, or postpone the date of possession for such period as he thinks fit. In theory this could allow an order for possession to be made but not permitted to be enforced for a substantial and indefinite period. Monitoring behaviour could, therefore, take place after, rather than before, a decree for possession in an assured tenancy.

1 Whether there is a legal minimum period is a matter of debate. See Mays (1995), paras 7.30-7.31. It seems clear that 14 days is regarded as the minimum in practice.
2.30 The case may not be fought to a conclusion. There may be an agreed settlement, or at
some point in the process either party may give up. How the court records this result varies.
If the tenant abandons the house, the landlord is likely to move for decree of possession, but
if the tenant agrees with the landlord to go, the landlord may instead ask for the case to be
dismissed. On the other hand, where the tenant stays by agreement, the case is likely to be
dismissed by consent. Thus, the formal outcome – decree for possession or decree of
dismissal – does not by itself distinguish between cases which are settled, and cases which
are ‘won’ by one side, nor does it not necessarily indicate which party has in substance ‘won’
the case. In order to work out whether the parties have got what they wanted from the
litigation, we would need to have other information as well.

The timetable for cases

2.31 The timetable for an eviction, therefore, depends not only on the periods laid down in
legislation, but also on contingent factors such as whether the action is defended or the tenant
represented, both of which will influence the possibility of continuation or sisting. In an
undefended eviction, assuming a decree is granted at first calling, the time limits described
above add up to a minimum of 9 weeks for a secure tenancy (assuming 14 days for the decree
to be executed) and 7 weeks for an assured tenancy. In practice, the minimum time is likely
to be greater for a variety of reasons, including the date of the term of the tenancy, and the
need to allow time for service of documents. Ten weeks for a secure tenancy and 8 weeks for
an assured tenancy (assuming no notice to quit is required) seem more realistic estimates of a
normal minimum. There is also the possibility that up to 19 days may be cut from the period
of citation to court under Summary Cause Rule 4.

2.32 A defended action will tend to take longer, perhaps a great deal longer. It is only
exceptionally that a decree of eviction would be granted at first calling in a defended action
(see above). The only additional step absolutely required is the fixing of a proof. The
interval between first calling and proof is not fixed and in summary causes generally tends to
depend on pressure of business in the court. Further delay will be caused if the action is
continued or sisted. However, if we assume an 8 week delay due to sisting for legal aid,
followed by a further 8 weeks before proof, it would appear that a defended action which
runs smoothly could be completed in a little less than 6 months. Indeed evidence given to the
Scottish Affairs Committee by a QC suggested 22 weeks as a realistic possibility (SAC, 1996). Figure 2.1 summarises the procedure and time scales:
Figure 2.1  Stages in repossession procedure

1. Serve notice to quit if required (not secure tenancies)
2. Serve notice of proceedings

[14 days (assured)  
28 days (secure)]
3. Serve summons to court

[21 days]
4. First Calling
   - Case dismissed or  
   - Decree for possession

[No fixed period]  
   - Case continued or sisted  
   - Or date fixed for proof

[Minimum 14 days]
5. Proof  
   (evidence heard and legal debate)

[No fixed period]
6. Decree of Dismissal or  
   Decree for Possession  
   (may be given at end of proof or later)

[Minimum 14 days  
In practice]
7. Date of ejection
EVIDENCE AND PROOF OF FACT

2.33 The landlord must prove facts that are sufficient in law to establish the grounds for possession relied on. In principle, any evidence may be used unless excluded by rules on admissibility. The rules on admissibility of evidence in civil cases were considerably relaxed by the Civil Evidence (Scotland) Act 1988. This removed the requirement of corroboration in civil cases, permitted hearsay evidence, and allowed for affidavits and witness statements to be lodged in evidence. However, the Act only removed technical barriers to admissibility. It remains the task of the judge to weigh the credibility and reliability of the evidence presented, and both the traditional constraints on admissibility, and the value of corroboration continue to be relevant to this task. It is likely, therefore, that landlords will continue to look for corroboration, and to prefer to present oral testimony in open court, because they perceive that the nature of the evidence put forward affects the likelihood that they can convince the sheriff of their cases. The absence of either corroboration, or of traditional witness testimony might, therefore, affect their willingness to raise an eviction action.

DIFFERENCES IN OTHER TENURES

2.34 For the sale of completeness, we briefly describe here the difference it makes when the tenant has a short assured tenancy or a common law tenancy.

Short Assured Tenancies

2.35 As indicated above, private sector landlords routinely let on short assured tenancies, and housing associations may do so for specific purposes. So, it is possible that a landlord may sometimes wish to remove a tenant from a short assured tenancy for anti-social behaviour. Much of the above applies to short assured tenancies but there are important differences. The special rules applying to short assured tenancies are in sections 32 to 35 of the 1988 Act. The approach to eviction differs according to whether the landlord wishes to terminate the lease prematurely (assuming the behaviour is a breach of the terms of the lease or falls within 1 of the relevant grounds), or whether the landlord wishes to terminate at the ish. In the former case, the action would be subject to the substantive rules and procedures described above for assured tenancies generally (notice of proceedings, grounds for possession etc). The action would proceed as a summary cause as described above, and the fact that it is a short assured tenancy should make no difference to the outcome or likely time scales.

2.36 In the latter case, the landlord does not need to show cause for terminating the tenancy (1988 Act, section 33). Assuming that all the necessary steps have been carried out, the court has no discretion to refuse a decree for possession. A landlord might prefer to take this route because there is a guarantee of recovery of possession, which in turn may make it more likely that the tenant would leave without forcing the landlord to raise legal action. Also, even if the action is defended, it ought to be concluded quickly because decree should be granted at first calling. The main disadvantage is that the landlord has to wait until the end of the term of the lease, which may be some months away. Also, it is possible that the tenant will raise a relevant defence, for example, that the lease is not a short assured tenancy, because the correct procedures were not followed at creation of the tenancy. In such a case, the court would normally have to fix a proof. Again, the action would be a summary cause.
Common Law Tenancies

2.37 Those with common law tenancies, such as tenants of fully mutual co-ops, have none of the protections outlined above. The landlord may refuse to renew the lease without any reason. However, the tenant is entitled to occupy the house for the period of the lease. Where the lease is short term, a landlord wishing to remove a tenant would be most likely to serve a notice to quit at the appropriate time terminating the right to occupy. It would still be necessary to raise a court action if the tenant did not go voluntarily, but the tenant would have no defence. It would not be necessary to prove any anti-social behaviour. Where the lease was of longer duration, the landlord faced with anti-social behaviour might want to end the lease prematurely, either by rescinding it for material breach of contract or by invoking an irritancy clause in the lease. Again, court action would be required, but the tenant might be able to defend the action as the landlord would have to establish grounds for rescission or irritancy. Once the case went to court, the action would proceed as a summary cause as described above.

NEW GROUNDS FOR POSSESSION

2.38 As explained above new grounds for possession were substituted for some of the grounds described above by section 23 of the Crime and Disorder Act 1998 with the intention of making it easier to secure recovery of possession in anti-social behaviour cases. Further changes to the law may be required if the Scottish Executive’s latest proposals on anti-social behaviour and their proposals for a single social housing tenancy are implemented.

New Grounds for Possession

2.39 The change made, with effect from 1 December 1998, by Section 23 of the Crime and Disorder Act 1998 was to substitute new versions of secure grounds 2 and 7, and assured ground 15. Secure grounds 1, 3, 4 and 8 were not changed, and neither were assured grounds 9 and 13. The effects of the changes are summarised below.

New Secure Ground 2

2.40 Section 23(2) of the 1998 Act substituted a new ground 2 which now reads:

The tenant, a person residing or lodging in the house with the tenant or a person visiting the house has been convicted of-

(a) using or allowing the house to be used for immoral or illegal purposes; or

(b) an offence punishable by imprisonment committed in, or in the locality of, the house.

2.41 ‘Tenant’ is defined to include joint tenants and sub-tenants. This differs from the previous version in 3 respects:

- whose convictions are relevant
• the type of conviction
• the relevant locus.

2.42 First, the new ground expressly covers convictions of visitors: the former version covered only convictions of residents of the house. Second, the convictions which may lead to eviction are not only those for immoral or illegal use of the house, but also convictions for any offence punishable by imprisonment which covers a much broader range of offences including assault, theft, vandalism, and breach of the peace. The requirement that the offence be punishable by imprisonment, is not a serious restriction on the scope of the provision as the common law crimes and many statutory offences are so punishable. Third, this additional category of offences is relevant if committed in, or in the locality, of the house. Therefore, dealing in drugs, or committing an assault, or a breach of the peace near the house would all be offences which could lead to eviction, even if committed by the tenants’ visitors rather than the tenant. There need not, on the face of it, be any direct connection between the offence and the tenants’ occupation of the house.

New Secure Ground 7

2.43 Section 23 (3) substituted a new ground 7 which now reads:

(1) The tenant, a person residing or lodging in the house with the tenant or a person visiting the house has –

(a) acted in an anti-social manner in relation to a person residing, visiting or otherwise engaging in a lawful activity in the locality; or

(b) pursued a course of anti-social conduct in relation to such a person as is mentioned in head (a) above,

and it is not reasonable in all the circumstances that the landlord should be required to make other accommodation available to him.

(2) In sub-paragraph (1) above -

‘anti-social’ in relation to an action or course of conduct, means causing or likely to cause alarm, distress, nuisance, or annoyance.

'Conduct' includes speech and a course of conduct must involve conduct on at least two occasions; and

‘Tenant’ includes any one of joint tenants and any sub-tenant.

2.44 This differs from the old ground 7 in 4 respects:
• the author of the conduct
• the nature of the conduct
• the range of victims
• the locus.

2.45 First, it has been extended to cover the behaviour of visitors to the house. The old ground only covered the behaviour of those living in the house. Second, the behaviour which may lead to eviction is described in a different way. The ground now refers expressly to acting ‘in an anti-social manner’ rather than conduct which is a nuisance or annoyance. As
the definition quoted above includes behaviour likely to cause alarm, distress etc. it will not be necessary to prove that any person was alarmed or distressed etc. whereas under the old ground it was arguably necessary to show that someone had experienced nuisance or annoyance. This is intended to allow people other than neighbours to give evidence of the likely consequences of behaviour they have witnessed, thus reducing the problems caused by the reluctance of neighbours to come forward.

2.46 Third, the original version of ground 7 did not specify to whom the nuisance or annoyance must be caused. Who could be a victim was, therefore uncertain but the new ground refers expressly to persons visiting or otherwise engaging in a lawful activity in the locality. This phrase is wide enough to cover housing officers and other employees or agents of the landlords, trades-persons, and persons from outside the area visiting friends and relatives. Fourth, the question of proximity to the tenant’s house is dealt with differently. The original version specified that the nuisance behaviour must be in the vicinity of the tenants’ house. The new version does not expressly locate the conduct – but instead refers to whom it affects. Since the victims include persons visiting and engaging in lawful activities in the locality, the ground can clearly cover behaviour outside the house. Whether the courts will consider the locality to be a wider area than the vicinity remains to be seen, but it seems likely that the new provision was meant to have a broader effect than the old ground.

New Assured Ground 15

2.47 The new version of assured ground 15, in effect, combines the revised secure grounds 2 and 7. Assured tenancies have, therefore, been subject to the same changes as secure tenancies.

2.48 These new grounds applied to all summonses for recovery of possession raised on or after 1 December 1998. However, where the summons is based on conduct occurring before that date eviction is only possible if the same conduct would have made the tenant liable to eviction under the old grounds. All the new grounds are subject to the requirement that it would be reasonable to order eviction, so it is still the case that eviction for anti-social behaviour is not mandatory (except where secure ground 8 is involved, but this is in effect a compulsory transfer).

INTERDICT

2.49 In essence, an interdict is an order of the court requiring the person to whom it is addressed to desist from some legal wrong s/he is currently committing, or to refrain from some legal wrong s/he is about to commit. It is an order not to do something. The leading text (Collins and O’Carroll, 1997) and good practice guidance (Reid, 1996) suggest the use of interdict to social landlords as a viable alternative to eviction, and similar views are expressed about injunctions – the equivalent remedy in England and Wales (Hughes et. al., 1994)

The Legal Requirements

2.50 The legal requirements may be summarised briefly. In the first place there must be grounds for granting interdict. The defender must have done something, or be about to do something, that infringes the pursuer’s legal rights. A landlord might, therefore, seek an interdict against anti-social behaviour which was a breach of the tenancy agreement or caused
damage to the landlord’s property. One neighbour could bring an action against another
based on violent or threatening behaviour towards the pursuer, or noise or other nuisance.
Interdict may be, and usually is, awarded on an interim basis pending final determination of
the merits. In other words, the order is made without proof of the facts, or full legal debate.
There are 2 tests for the court to apply in deciding whether to grant interim interdict. The
first is whether the pursuer has a prima facie case. The second is where the balance of
convenience lies. Once granted, the interim interdict is as effectual as a permanent interdict
to forbid the behaviour specified in the order.

2.51 Procedure is straightforward. The pursuer lodges an initial writ in court and seeks an
immediate hearing before the sheriff in order to make a motion for interim interdict. This
will take place in chambers, usually within 24 hours, and often the same day. At this stage
the defender is not present or represented in court unless s/he has lodged a caveat requiring
notice to be given of any application for interim interdict, and most interim interdicts are
awarded ex parte. The sheriff has discretion whether to grant the order subject to the 2 tests
above being satisfied. The initial writ and court order granting the interdict must
immediately be personally served on the defender – this is usually done by sheriff officer –
and the interdict does not become binding on the defender until service has been effected.

2.52 Although practice varies from sheriffdom to sheriffdom, a second hearing will usually
be arranged at this stage (usually to take place 7 days later). The defender will have the
opportunity to attend or be represented at this stage, and to argue that the order should not be
continued. If the action is defended, the sheriff must consider anew the question of balance
of convenience in deciding whether to continue the interdict. The defender may succeed in
having the interim interdict recalled by giving an undertaking to the court as to future
conduct. If continued the interim interdict remains in force either until perpetual interdict is
granted or the case is successfully defended on the merits. If the action is not defended
further, the pursuer may simply minute for decree for perpetual interdict. If the defender
does choose to maintain a defence s/he must lodge answers within 21 days of service of the
writ. Thereafter, the case will proceed as an ordinary cause action.

2.53 If the terms of the interdict are breached, the pursuer can only enforce the order by
raising a separate action for breach of interdict. Again, this is an ordinary cause action but it
requires the consent and concurrence of the Procurator Fiscal. The writ must be served on
the defender who is ordained to appear in person before the sheriff. If the allegations are
denied the case will eventually proceed to proof. The penalties for breach of interdict are
admonition, fine, censure, or imprisonment.

SPECIFIC IMPLEMENT

2.54 The remedy of specific implement is an order of the court requiring a person to
perform his or her legal obligations, for example, obligations under a contract. It could be
used by a social landlord to require a tenant to take positive action, for example, to maintain
garden ground where that was required by the lease. Sometimes, complaints to landlords
from tenants about their neighbours relate to matters which could be the subject of an action
for specific implement. In practice, landlords frequently receive complaints about the
condition of property including failure of tenants to maintain their own gardens, failure to
fulfil responsibilities to clean communal areas, dumping rubbish, and other behaviour
affecting the amenity of communal areas such as common closes and drying greens.
TITLE CONDITIONS

2.55 Social landlords have faced particular problems in recent years because the right to buy has resulted in the creation of mixed tenure on housing estates which were previously exclusively occupied by their tenants. However, tenants might, and in practice do, continue to hold the local authority responsible for maintaining good order on such estates, and look to them to deal with anti-social behaviour regardless of the tenure of the alleged wrongdoers. Doubts about the ability of local authorities to take action against owner-occupiers have focused attention upon the use of title conditions in sales under the right to buy to prohibit anti-social behaviour. Restrictive covenants have been used for this purpose in England (Hunter, Mullen and Scott, 1998). The idea is that the deed conveying the house to the purchaser includes or refers to conditions forbidding anti-social behaviour by those living in the house, such conditions being similar in their terms to the clauses forbidding anti-social behaviour found in leases.

2.56 To be fully effective such conditions would have to be created as real conditions (or real burdens) which affect the use or enjoyment of the land. If they are real conditions the obligations are imposed on subsequent purchasers as well as the original purchaser. i.e. they ‘run with the land’. If a real condition is breached, the person having title and interest to enforce it, for example, a local authority which had sold the house affected could seek interdict against the person whose behaviour breaches the condition. Where the condition requires positive action for its fulfilment it may be enforced by specific implement. Finally, the most drastic remedy is irritancy of the feu which allows the superior to recover the owner’s interest in the property i.e. the owner would be deprived of his or her house. There are considerable legal complexities and difficulties in the enforcement of title conditions, and the whole area will be affected by proposals for abolition of the feudal system (Scottish Law Commission, 1999). These are in the process of being enacted by the Scottish Parliament.

2.57 There are, however, doubts about the extent to which it is legally competent to attempt to control behaviour by imposing real conditions. Such conditions may be created by a feudal grant or an ordinary disposition. In the former case this puts the person creating the condition in the position of feudal superior of the land sold. The basic rules for the creation of real burdens and conditions were expressed in the leading case, Tailors of Aberdeen v Coutts (1840) 1 Rob App 296. They are:

(a) The words used to create the obligation must make clear that the condition/burden is a continuing obligation affecting the land itself and not merely an obligation imposed on the original grantee of the deed.

(b) The condition must affect land or the use of land, and must benefit the superiority estate or other (e.g. neighbouring) land.

(c) The burden must appear in full in the dispositive clause of the deed, and must enter the register of Sasines or the Land register.

(d) It must be specified with such precision that anyone wishing to purchase the land subject to the condition can work out the nature of the burden simply by examining the deed itself or the register, and it will be narrowly interpreted against the person entitled to enforce it.

(e) It must not be illegal, contrary to public policy, useless or vexatious, or inconsistent with the nature of the property.
2.58 The difficulties of applying this test and, more generally, of using title conditions to address anti-social behaviour are addressed in Chapter 11.

BY-LAWS

2.59 By-laws are in a different position from other remedies. They are general rules of conduct which are independent of a specific legal relationship between the parties, for example, a contract. Local authorities have a general power under Section 201 of the Local Government (Scotland) Act 1973 to make by-laws for the good rule and government of their areas or for the prevention and suppression of nuisance. They also have power under Section 18 of the Housing (Scotland) Act 1987 to make by-laws for the management use, and regulation of council houses. They may cover a range of matters which might be relevant to anti-social behaviour including domestic refuse, maintenance of common areas, and noise. One potential sanction for breach of a by-law is a criminal prosecution.

ANTI-SOCIAL BEHAVIOUR ORDERS

2.60 The anti-social behaviour order (ASBO) is a new remedy introduced by sections 19, 21, and 22 of the Crime and Disorder Act 1998, and it became possible to obtain them from 1 April 1999. The order was introduced for both England and Wales, and for Scotland, but with 2 major differences between the 2 jurisdictions. First, in Scotland, only a local authority may seek such an order, whereas in England it may be sought either by the police or by a local authority. Second, in Scotland, the order may be addressed only to a person aged 16 or over. In England the person need only be aged 10. There are other technical differences, but they are probably not of great significance.

2.61 The court may only make an order if 3 conditions are satisfied (1998 Act, section 19):

(i) the person has acted in an anti-social manner; or pursued a course of anti-social conduct.

(ii) Alarm or distress must have been caused, or have been likely to be caused, to one or more persons who are not members of the same household as the person against whom the order is made.

(iii) The order is necessary to protect persons in the authority’s area from further anti-social acts or conduct.

2.62 Acting in an anti-social manner and pursuing a course of anti-social conduct means acting “in a manner that caused or was likely to cause alarm or distress”. Conduct includes speech, and a course of conduct must involve conduct on at least 2 occasions. In deciding whether a defender has acted in an anti-social manner, or pursued a course of anti-social conduct, the court must disregard behaviour which the defender shows was reasonable in the circumstances. Breach of the order is a criminal offence even where the act which constitutes the breach would not otherwise be criminal. It should be noted that there is no specific spatial context to the behaviour. It can take place anywhere in the local authority’s area.

Those who are affected by it need not be in any sense neighbours. This is, therefore, a remedy which is not confined to neighbour disputes, or to situations which would fall within the responsibilities of housing managers. Rather, it is a general purpose remedy for anti-social behaviour, which could be used in the context of neighbour disputes.

2.63 The application for the order must be made by a local authority, although the relevant chief constable must be consulted first. The application must be made to the sheriff court within whose jurisdiction the alarm or distress was alleged to have been caused. If the necessary conditions are proved then the court may make an anti-social behaviour order which prohibits the defendant from doing anything which the court considers necessary to protect the inhabitants of the area from further anti-social acts or conduct by the defender. Unless revoked, the order will last for the period specified in it or indefinitely. The maximum penalties for conviction on indictment for breach of an order are 5 years imprisonment or a fine, or both. In summary proceedings, the maximum penalties are 6 months, or a fine not exceeding the statutory maximum, or both.

FURTHER PROPOSED CHANGES

2.64 The Scottish Executive’s latest consultation document on this area, (Scottish Executive, 1999a) proposes to ‘strengthen the management ground for possession ... to ensure that proceedings can be expedited’. This is a reference to Secure Ground 8. The document goes on to state that the role of the court will simply be to be satisfied that suitable alternative accommodation is available. It is not clear how this will expedite proceedings, or indeed whether the proposal amounts to anything substantially different from the current legal position.

2.65 The Scottish Executive has also published a consultation document on a single social tenancy for the social rented sector which would replace the secure and assured tenancies, and would be largely modelled on the secure tenancy (Scottish Executive, 1999b). Full details remain to be worked out but, although legislation will be required, the creation of the single social tenancy does not involve major change to the grounds for possession which relate to anti-social behaviour. Except for the management transfer ground, the grounds for possession relevant to anti-social behaviour in secure and assured tenancies are already to the same effect. The single social tenancy will be accompanied by the introduction of a single social tenancy agreement modelled on the Model Secure Tenancy Agreement (MoSTA). The consultation document states that this will spell out in detail the behaviour to be expected of a tenant and other residents in social rented sector housing. The single tenancy consultation document (Scottish Executive, 1999b) confirms that the agreement would embody core statutory rights. If this is the case then this aspect of the proposal would not result in any change to the grounds for possession.

COMPARING LEGISLATION IN SCOTLAND AND ENGLAND

2.66 It is useful to compare recent legislative initiatives in this area. Both in Scotland and in England and Wales there have been a mixture of narrowly focused and more broad brush approaches to definition and remedies. The changes made for England and Wales by the Housing (Scotland) Act 1996 were relatively specific. The power given to local authorities by section 152 to seek “injunctions against anti-social behaviour” (this is the text of the
marginal note) is limited in various ways. The nature of the conduct which may be subject to injunction is limited to (a) what causes or is likely to cause nuisance or annoyance, (b) immoral or illegal use of housing accommodation, or (c) entry to premises. Moreover, the injunction may not be granted unless the respondent has used or threatened violence, or there is a significant risk of harm. Therefore, this measure presupposes behaviour which is both blameworthy, and at the more serious end of blameworthy conduct. There is also clear spatial restriction. The power to grant the injunction is not restricted to cases of complaints about immediate neighbours. But the section does at least appear to be restricted to ‘neighbourhood’ issues. The conduct must involve the use of housing accommodation, entry to housing accommodation, or nuisance or annoyance to persons who are living in housing accommodation, or visiting it, or engaging in a lawful activity in or in the locality of such accommodation.

2.67 Section 153 of the 1996 Act which allows a power of arrest to be attached to injunctions sought by social landlords (not just local authorities) is subject to similar (though not identical) restrictions. Again, the power of arrest may not be attached unless the respondent has used or threatened violence, or there is a significant risk of harm. It only applies to conduct which is a nuisance or annoyance and to immoral or illegal use (or the threat of either) and which also amounts to a breach or anticipated breach of the terms of the tenancy. Again the remedy relates to blameworthy behaviour of the more serious kind, and is restricted to neighbour or neighbourhood issues.

2.68 Thus, for the purposes of both these measures a relatively narrow definition of anti-social behaviour has been adopted. They also focus on relatively specific deficiencies in the legal remedies available. Section 153 gives a firmer legal foundation for seeking injunctions against persons who are not tenants. It is no longer necessary to be concerned whether the wrongdoer is a tenant, or (in the case of tenants) whether there has been any breach of tenancy terms. Both sections 152 and 153 also address the issue of the effectiveness of injunctions in stopping undesirable behaviour by allowing a power of arrest to be attached to them.

2.69 By contrast the changes made to the grounds for possession, applying both in England and Wales and in Scotland, proceed on the basis of a much broader definition of anti-social behaviour. The ‘conviction limb’ of the relevant grounds now covers convictions of visitors as well as residents in the house. The convictions may be for any arrestable offence (England and Wales) or any offence punishable by imprisonment (Scotland). The offences may be committed either in the house or in the locality of the house. It may still be a neighbourhood issue which is being addressed here, but the scope of the conduct struck at has been very much broadened, so much so that the behaviour which triggers eviction is no longer closely tied to occupation or use of the house.

2.70 The anti-social behaviour order also takes a broad brush approach to defining the problem. The nature of the conduct which triggers the order is not especially broad as the conduct or course of conduct must have caused or be likely to cause alarm or distress (or in England and Wales, harassment), so it is limited to conduct which is blameworthy and non-trivial. However, the spatial focus is very broad. The emphasis both in the original Labour

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3 The court may also attach a power of arrest to a section 152 injunction.
4 Housing Act 1996, section 144, substituting new ground 2 for secure tenancies, and new ground 14 for assured tenancies.
Party document published in opposition (Labour Party, 1995) and in the consultation document for England and Wales issued after the last election (Home Office, 1997) is on protection of the local community: the issue is presented as a neighbourhood issue. The consultation paper issued by the Scottish Office Home Department (1997) lacks this emphasis bracketing together in its introduction two manifesto pledges to “tackle the unacceptable level of anti-social behaviour on Scotland’s streets” and “tough action to deal with threatening and disruptive anti-social neighbours.” The legislation is not restricted to neighbourhood issues as there is no attempt to restrict the locus of relevant behaviour (other than that it must occur in the local authority’s area). There is also no attempt to restrict the range of possible victims (other than that the order must be necessary to protect person’s in the authority’s area).

2.71 The most broad brush approach of all is the introductory tenancy introduced for England and Wales by Chapter I of part V of the Housing Act 1996. If a local authority adopts the scheme new tenants will not have security of tenure in their first year in occupation. Therefore, all new tenants, without distinction, are affected by a measure designed to prevent anti-social behaviour. The probationary tenancy proposal for Scotland is more modest and such tenancies would only apply to those who had already been evicted for anti-social behaviour. The vast majority of new tenants would continue to have security of tenure (Scottish Executive, 1999a).

SUMMARY

2.72 This chapter has sought to summarise the law relevant to anti-social behaviour, including a description of recent and proposed changes. The significance of the changes to the law is considered further in later chapters.
CHAPTER 3 THE POSTAL SURVEY OF SOCIAL LANDLORDS

INTRODUCTION

3.1 This chapter presents the results of the survey of social rented landlords in Scotland, which took place in June 1998. The survey was issued to a total of 225 landlords. Landlords were divided into 3 groups: local authorities (Scottish Homes was included amongst these as the only other public sector landlord), housing associations, and fully mutual housing cooperatives. From this 185 returns were received, a return of 82 per cent. This is a high rate of return for a survey of this type, and the results were considered representative of social landlords in Scotland. The response rates were highest for local authorities (97%) and lowest for fully mutual co-op's (74%) with other types of housing association in between (81%).

3.2 The purpose of the survey was to gain national quantitative data on the extent of the use of the various legal remedies by social landlords and the outcomes of the legal process. It also sought information on issues related to the legal process.

3.3 The chapter covers the following topics:

- landlords’ perceptions of the scale of the problem of anti-social behaviour
- the numbers of complaints about anti-social behaviour recorded by social landlords
- the extent to which social landlords have written policies and provide guidance for tenants
- the use of each of the main potential legal remedies for anti-social behaviour, namely eviction, interdict, specific implement, title conditions, and by-laws
- the use of professional witnesses and the extent of out-of-hours services
- the use of mediation.

SCALE OF THE PROBLEM

3.4 The questionnaire attempted to assess respondents’ perceptions of the scale of the problem of anti-social behaviour by asking them to describe the problem for their organisation on a scale from very small to very large. It is important to stress that this question was intended to assess landlords’ perceptions of the scale of the problem. Such perceptions are clearly not a measure of the actual incidence of anti-social behaviour.

3.5 Table 3.1 summarises the findings by sector. It shows that 38 per cent of all organisations felt themselves to be faced with an 'average' problem. Only just over 1 per cent of all organisations felt they had a 'very big' problem though 13.5 per cent of all landlords felt they had a 'very small' problem.
Table 3.1 Perceived scale of problem of anti-social behaviour by landlord sector

<table>
<thead>
<tr>
<th>Organisation</th>
<th>Scale of Problem</th>
<th>Very Big</th>
<th>Big</th>
<th>Average</th>
<th>Small</th>
<th>Very Small</th>
<th>Missing</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>HA</td>
<td></td>
<td>0</td>
<td>9.5%</td>
<td>40.1%</td>
<td>24.8%</td>
<td>16.8%</td>
<td>8.8%</td>
<td>100%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>13</td>
<td>55</td>
<td>34</td>
<td>23</td>
<td>12</td>
<td>12</td>
<td>137</td>
</tr>
<tr>
<td>LA</td>
<td></td>
<td>6.5%</td>
<td>32.3%</td>
<td>38.7%</td>
<td>16.1%</td>
<td>3.2%</td>
<td>3.2%</td>
<td>100%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2</td>
<td>10</td>
<td>12</td>
<td>5</td>
<td>1</td>
<td>1</td>
<td>31</td>
</tr>
<tr>
<td>Co-op</td>
<td></td>
<td>0</td>
<td>17.6%</td>
<td>17.6%</td>
<td>58.8%</td>
<td>5.9%</td>
<td>0</td>
<td>100%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>10</td>
<td>1</td>
<td>0</td>
<td>17</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>1.1%</td>
<td>14.1%</td>
<td>37.8%</td>
<td>26.5%</td>
<td>13.5%</td>
<td>7%</td>
<td>100%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2</td>
<td>26</td>
<td>70</td>
<td>49</td>
<td>25</td>
<td>13</td>
<td>185</td>
</tr>
</tbody>
</table>

Source: Postal survey 1998

3.6 A sectoral breakdown of these figures shows that, of the 3 sectors, local authorities were most likely to perceive themselves as having a serious problem with a total of 39 per cent claiming to have a big problem or a very big problem. This compares with less than 10 per cent for housing associations and less than 18 per cent for co-ops. No housing association or co-op claimed to have a very big problem. The reported perceptions of the 3 sectors are, therefore, markedly different with local authorities inclined to view the problem more seriously than housing associations, who in turn view the problem as more serious than co-ops.

COMPLAINTS OF ANTI-SOCIAL BEHAVIOUR

3.7 The level of complaints received might be thought a better indicator of the scale of the problem, than landlords’ perceptions. Including a question about complaints in the survey was the most straightforward way of obtaining quantitative data about the incidence of anti-social behaviour across Scotland. However, there is not a simple relationship between the level of complaints received by landlords, and the actual incidence of the types of behaviour which might give rise to complaint. This is discussed in more detail below after presentation of the findings.

3.8 Out of the 185 landlords who provided returns we found that only 93 (50%) claimed to keep records of complaints of anti-social behaviour for the period of the financial year, 1996-1997. Of these landlords, only 86 provided figures on the number of complaints. Local authorities were most likely to be able to give figures: 19 out of 31 did so. Only 59 of the 137 housing associations provided figures and only 8 of the 17 co-ops.

3.9 The figures that follow are based on the returns from these 86 landlords. In order to compare complaint figures across organisations with very different numbers of tenants we have calculated numbers of complaints per 1000 tenancies. In the period 1996/1997, on average, landlords recorded 81 complaints per 1,000 tenancies. This is the arithmetic mean produced by adding together the complaint rates for all landlords and dividing by the number of landlords. However, this figure may be distorted by extreme values. We therefore use the median figure - the mid-point of the range of values - for all further analysis in this section.

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6 A further 27 landlords claimed to have begun recording complaints since 1996/97, suggesting a growing interest in the problem of anti-social behaviour.
because it provides a better guide to variation within and across sectors. The median number of complaints per 1,000 for all landlords was 38. However, the range of complaints across all sectors (between 0.7 and 873 per 1000) shows the enormous variation in the apparent levels of complaints.

**Organisational type and anti-social behaviour**

3.10 Table 3.2 shows these figures broken down by sector. Local authorities had an overall median rate of 27.5 complaints per thousand tenancies with a range between 1 and 113 complaints per thousand tenancies. Housing associations had a much higher median rate of 41.2 complaints and a much wider range of between 3 and 873 complaints per thousand tenancies. Co-op’s had the highest median complaint rate of 47 per thousand, but a narrower range than housing associations of between 14 and 237 complaints per thousand tenancies.

**Table 3.2 Complaints per thousand tenancies for each landlord sector**

<table>
<thead>
<tr>
<th>Size</th>
<th>Records Kept</th>
<th>No Records</th>
<th>Mean</th>
<th>Median</th>
<th>Range</th>
<th>Min</th>
<th>Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>Co-op</td>
<td>8</td>
<td>9</td>
<td>83</td>
<td>47</td>
<td>223.7</td>
<td>13.6</td>
<td>237.3</td>
</tr>
<tr>
<td>Housing Assoc</td>
<td>59</td>
<td>77</td>
<td>95.2</td>
<td>41.2</td>
<td>870.5</td>
<td>2.9</td>
<td>873.4</td>
</tr>
<tr>
<td>Local authority</td>
<td>19</td>
<td>12</td>
<td>36</td>
<td>27.5</td>
<td>112.6</td>
<td>.7</td>
<td>113.3</td>
</tr>
</tbody>
</table>

Source: Postal survey 1998

3.11 There was a general clustering of figures in the lower ranges with a relatively small number of landlords recording relatively large numbers of complaints. Seventy percent of all organisations had 82 complaints per 1000 tenancies or fewer. Whereas the range of complaints of the top 30 per cent of recorded levels of complaints was between 84 and 873.

3.12 The returns, therefore, show clear sectoral differences. Using the median figures housing associations and co-op’s received complaints at approaching twice the rate of local authorities in 1996/97. We will return to possible explanations for these variations later. Giving figures for differences in complaint rates does rather assume that organisational type is the key to understanding differences in the rates of complaints as between landlords. It may be that other variables such as organisational size, and the housing environment (urban/rural) are also, if not more, important. We therefore examined variation on these dimensions also.

**Organisational size and anti-social behaviour**

3.13 Landlords were divided into 3 groups, labelled small (0-250 tenancies), medium (251-1048 tenancies) and large (1049-102,569 tenancies). Rates per thousand tenancies were then calculated for these new variables. The boundaries of the groups have been fixed in such a way as to ensure that some housing associations have been included in each range. Otherwise the large category might have included only local authorities. An inevitable consequence is that the large category covers a much wider range of stock sizes than the others.
Table 3.3 Complaint rates per thousand tenancies related to organisational size

<table>
<thead>
<tr>
<th>Size</th>
<th>Responses</th>
<th>Missing</th>
<th>Mean</th>
<th>Median</th>
<th>Range</th>
<th>Min</th>
<th>Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small</td>
<td>35</td>
<td>24</td>
<td>110.3</td>
<td>49.3</td>
<td>873.4</td>
<td>0</td>
<td>873.4</td>
</tr>
<tr>
<td>Medium</td>
<td>31</td>
<td>26</td>
<td>73.0</td>
<td>37.3</td>
<td>433.3</td>
<td>0</td>
<td>433.3</td>
</tr>
<tr>
<td>Large</td>
<td>27</td>
<td>31</td>
<td>31.1</td>
<td>25.6</td>
<td>112.6</td>
<td>.1</td>
<td>113.3</td>
</tr>
</tbody>
</table>

Source: Postal survey 1998

3.14 Table 3.3 shows that organisational size is strongly related to wide variations in complaint rates. Large organisations experienced half the median rate of complaints that small organisations had (again the median is used because of the distorting effect of the mean). The median rate (the mid-point of the distribution of complaint rates) is 49 per thousand for small landlords and 37 and 25 for medium and large organisations respectively. The range of complaints is smaller for large organisations (0.1 to 113.3 per thousand) than for small organisations (0 to 873.4 per 1000).

3.15 However, the pattern of results is not very different from that in Table 3.2. Therefore, although the rate of complaint varies according to organisational size, the comparison between the 2 tables does not really assist us to determine whether organisational size and organisational type are distinct explanatory factors. We should also note that, whether the data is cut by size or type, that there are very wide variations within each grouping. This suggests that there may not be a common or shared experience for landlords within each sector or grouping. This, in turn, suggests that a variety of other factors may be driving complaint rates, and some of these may have more explanatory significance than organisational size or type.

Rural and urban dimensions of the problem

3.16 A third obvious dimension of difference that is worth considering is the nature of the environment in which the landlord's stock is located, most obviously the difference between rural and urban stock. Landlords were divided into rural and urban groups using the Randall definition of rurality (an area with an overall population density of less than 1 person per hectare), and median rates derived for each sector. For housing associations the classification was based on the local authority area where the stock was situated. The results of this analysis are presented in Table 3.4.

3.17 If we compare all rural and urban organisations we see that, in aggregate, median complaint rates were about 50 percent higher for urban organisations. Urban organisations also show a much wider range of complaint levels. This is particularly pronounced for urban housing associations for whom levels of complaints varied between 0 per 1000 and 873 per 1000. The smallest range of complaints was for rural local authorities (7.2 per 1000 to 69.7). Thus, there appears to be some relationship between location and complaint levels, but it not clear why this should be so.
Table 3.4 Complaint rates (per thousand tenancies) by organisational location

<table>
<thead>
<tr>
<th>Landlord</th>
<th>Responses</th>
<th>Mean</th>
<th>Median</th>
<th>Range</th>
<th>Min</th>
<th>Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>Urban HA</td>
<td>58</td>
<td>89.2</td>
<td>41</td>
<td>873.4</td>
<td>0</td>
<td>873.4</td>
</tr>
<tr>
<td>Rural HA</td>
<td>8</td>
<td>55.4</td>
<td>8.9</td>
<td>284.9</td>
<td>0</td>
<td>284.9</td>
</tr>
<tr>
<td>Urban LA</td>
<td>12</td>
<td>36.7</td>
<td>25.3</td>
<td>112.6</td>
<td>.7</td>
<td>113.3</td>
</tr>
<tr>
<td>Rural LA</td>
<td>7</td>
<td>35</td>
<td>29.4</td>
<td>62.5</td>
<td>7.2</td>
<td>69.7</td>
</tr>
<tr>
<td>All Urban</td>
<td>70</td>
<td>80.2</td>
<td>37.5</td>
<td>873.4</td>
<td>0</td>
<td>873.4</td>
</tr>
<tr>
<td>All Rural</td>
<td>15</td>
<td>45.9</td>
<td>25.2</td>
<td>284.9</td>
<td>0</td>
<td>284.9</td>
</tr>
</tbody>
</table>

Note: Co-ops have been excluded from this table as there were too few to provide meaningful results.
Source: Postal survey 1998

3.18 Sorting the landlords according to type as well as location shows that urban housing associations have a far greater median number of complaints (41) than their rural counterparts (8.9). For local authorities the reverse is the case with rural authorities having a greater median number of complaints at 29.4 compared to urban authorities which had a median number of complaints of 25.3, although the difference is far less pronounced than for housing associations.

Conclusions on complaints

3.19 As the preceding paragraphs show, there are clear associations between the factors of organisational type, organisational size and location and recorded levels of complaints. Housing associations seem in general to receive more complaints about anti-social behaviour than local authorities; urban landlords tend to receive more complaints than rural, and small landlords more than large. No matter how the data is cut, clear differences emerge. What is less clear is exactly what causes these differences to emerge. It is possible that these are related to differences in the incidence of anti-social behaviour in the areas covered by different landlords. If the incidence of anti-social behaviour does tend to vary according to type, size and location of stock, that would explain the pattern of results. Thus within the local authority sector, the ‘small landlord effect ’ may explain the differences between rural and urban authorities, given that rural ones generally have smaller stocks. The small landlord effect is also consistent with the differences between housing associations and local authorities.

3.20 However, we noted at start of this section that we could not assume a simple relationship between levels of recorded complaints and the actual incidence of anti-social behaviour. There are 3 reasons for this. First, the definitions of anti-social behaviour applied by social landlords; second, the administrative practices of social landlords and third the ‘complaining behaviour’ of tenants and citizens generally. These may have an impact both on the overall volume of complaints recorded, and on variations in levels between landlords.

3.21 If social landlords were defining anti-social behaviour more narrowly than those who complain, then there might be a gap between public perceptions of the scale of the problem
and recorded complaints levels. However, the documents we analysed (see Chapter 3) and the interviews with housing staff in the case studies (see Chapter 4) do not suggest that social landlords are adopting a narrow definition of anti-social behaviour.

3.22 There is also a real possibility that administrative practices influence complaint levels. The Baseline Study (Clapham et al, 1995) found that many landlords preferred written forms of complaint. All landlords in that study said that they would accept a letter (100%) but only 79 per cent would accept a verbal complaint from a tenant. Only two-thirds (67%) would act on a problem reported over the phone. This suggests that administrative practices were likely to have been depressing complaint levels. Our case studies suggested that practices have changed since then, with landlords more likely to accept verbal complaints. However, we did find differences in recording practices. Some landlords recorded only complaints of extreme misbehaviour, while others recorded all complaints about neighbours. This would have considerable impact on complaint levels.

3.34 The Baseline Study also provided evidence that complaining behaviour is relevant to the link between recorded complaints and the actual incidence of anti-social behaviour. Its survey of tenants found that only 4 out of 10 tenants (39%) with a neighbour problem had complained to their landlord. Of these, only one fifth (20%) had made a written complaint (Clapham et al, 1995). This suggests that there may be substantial under-reporting of complaints. Scott and Parkey (1998b) suggested that there are also variations in the propensity to complain amongst different groups of tenants and citizens. This may also contribute to variations in recorded complaint levels.

3.35 These factors mean that the level of recorded complaints may not reflect the actual incidence of anti-social behaviour. It is therefore difficult to assess to what extent differences in complaint levels between landlords reflect differences in the scale of the problem they face. To have pursued the issue of the reasons for the pattern of results would have required a different type of study, and it was not one of the purposes of this research to establish the level of anti-social behaviour in Scotland. However, unless we assume that the level of recorded complaints seriously overestimates the actual incidence of anti-social behaviour (which seems unlikely in view of the points made above), the data does provide evidence that this is a significant social problem. Whether the differences in complaint levels between landlords according to type, size and stock location reflect differences in the actual incidence of anti-social behaviour as between these groupings is more uncertain.

WRITTEN POLICIES AND GUIDANCE

3.36 As Table 3.5 shows, the great majority of social landlords had some form of written policy on neighbour nuisance with 85.5 per cent of respondents claiming to have such a policy. Housing associations used written policies more often (88%) than local authorities (77%) with co-op's falling in-between (82%). This is much higher than the figure at the time of the Baseline Study which suggested only 37 per cent of local authorities had developed policies or procedures by 1993 (Clapham et al, 1995). The housing association figure is also significantly higher than that in Gibson’s unpublished survey carried out in 1997 (Gibson, 1997) which found that 64 per cent of respondents had written policies.
Table 3.5 Use of written policies and guidance by social landlords

<table>
<thead>
<tr>
<th>Type of landlord</th>
<th>Written Policies %</th>
<th>Guidance for Tenants %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local authorities</td>
<td>77</td>
<td>55</td>
</tr>
<tr>
<td>Housing associations</td>
<td>88</td>
<td>45</td>
</tr>
<tr>
<td>Co-ops</td>
<td>82</td>
<td>65</td>
</tr>
<tr>
<td>All landlords</td>
<td>86</td>
<td>49</td>
</tr>
</tbody>
</table>

Source: Postal survey 1998

3.37 Far lower proportions of social landlords provided written guidance for tenants with only 45 per cent of housing associations and 55 per cent of local authorities doing so. Interestingly, 65 per cent of co-ops were providing tenants with such guidance. The local authority figure is slightly up from 50 per cent at the time of the Baseline Study, but the housing association figure appears to have declined from 60 per cent at the time of the Gibson survey. The apparent drop may be due to the higher response rate in our survey, giving a more accurate picture of activity.

EVICITION

3.38 In this, and the following sections, we present information on social landlords’ use of legal remedies. We deal in turn with eviction, interdict, specific implement, title conditions, and by-laws.

3.40 Eviction is the most drastic sanction available to the landlord. It is also the legal remedy in which tenants’ groups and social landlords show the greatest interest, and which received the most detailed scrutiny from the Scottish Affairs Committee (1996). The legal requirements for eviction were discussed in detail in Chapter 2. Landlords were asked to classify eviction actions as anti-social essentially on the basis of the grounds on which they were brought. These were, for secure tenants, grounds 1 (excluding rent arrears), 2, 7 & 8; and for assured tenants, grounds 13 and 15. These grounds cover eviction for breach of tenancy conditions, immoral or illegal use of the house, and nuisance.

Willingness to evict

3.41 Landlords were first asked whether, in practice, they took legal action for possession for neighbour nuisance always, usually, sometimes, rarely or never. Table 3.6 summarises the responses and shows that, across all sectors, only a small minority of landlords (7.2%) claimed they would 'always' or 'usually' take legal action for possession in cases of anti-social behaviour. Nearly a quarter of landlords claimed that they took legal action ‘sometimes’, and about three fifths ‘rarely’ or ‘never’.

---

7 However, Gibson’s survey does not distinguish between fully mutual co-ops and other housing associations.
### Table 3.6 Willingness to use eviction as a remedy for anti-social behaviour

<table>
<thead>
<tr>
<th>Organisation</th>
<th>Always</th>
<th>Usually</th>
<th>Sometimes</th>
<th>Rarely</th>
<th>Never</th>
<th>Missing</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>HA</td>
<td>1</td>
<td>6</td>
<td>27</td>
<td>50</td>
<td>38</td>
<td>15</td>
<td>100%</td>
</tr>
<tr>
<td></td>
<td>0.7%</td>
<td>4.4%</td>
<td>19.7%</td>
<td>36.5%</td>
<td>27.7%</td>
<td>10.9%</td>
<td></td>
</tr>
<tr>
<td>LA</td>
<td>1</td>
<td>2</td>
<td>15</td>
<td>11</td>
<td>1</td>
<td>1</td>
<td>100%</td>
</tr>
<tr>
<td></td>
<td>3.2%</td>
<td>6.5%</td>
<td>48.4%</td>
<td>35.5%</td>
<td>3.2%</td>
<td>3.2%</td>
<td></td>
</tr>
<tr>
<td>Co-op</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>5</td>
<td>8</td>
<td>0</td>
<td>100%</td>
</tr>
<tr>
<td></td>
<td>5.9%</td>
<td>11.8%</td>
<td>5.9%</td>
<td>29.4%</td>
<td>47.1%</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>3</td>
<td>10</td>
<td>43</td>
<td>66</td>
<td>47</td>
<td>16</td>
<td>100%</td>
</tr>
<tr>
<td></td>
<td>1.6%</td>
<td>5.4%</td>
<td>23.2%</td>
<td>35.7%</td>
<td>25.4%</td>
<td>8.6%</td>
<td></td>
</tr>
</tbody>
</table>

Source: Postal survey 1998

3.42 There appear to be clear sectoral differences in the expressed willingness to raise eviction actions with local authorities expressing the greatest willingness and co-ops the least. A much lower proportion of local authorities responded ‘never’ (3% as opposed to 28% for housing associations and 48% for co-ops). Sectoral differences were much less marked for the other responses.

3.43 These findings may be compared with those of Mullen et. al. (1997) which found a generally higher willingness to evict across the board. That study, carried out before local government re-organisation, found that amongst local authorities (based on 43 responses) 2 per cent said that they always took eviction action, and 19 per cent said they usually took eviction action (compared to only 3.2 per cent and 6.5% respectively in Table 3.6 above). For housing associations (110 gave responses) the figures were: always: 5 per cent, usually: 7 per cent, sometimes: 24 per cent. However, that study did not distinguish between housing associations and co-ops, and that may be part of the explanation for the difference.

### Overall Figures For Use of Eviction

3.44 Table 3.7 summarises the overall figures for the use of eviction by social landlords across Scotland, and the outcomes of cases taken to court. The headings require some explanation. As noted in Chapter 2, the process of eviction begins with service of a notice of proceedings warning the tenant that the landlord intends to take her/him to court (NOP). ‘Summons to Court’ refers to the number of summonses for eviction raised i.e. the number of cases actually going to court.

3.45 It should be noted here the responses to the questionnaire indicated that landlords (particularly in the local authority sector) did not have information systems which provided reliable data on the use of eviction for anti-social behaviour. The figures supplied by the respondents to the questionnaire were therefore affected by incomplete and inaccurate returns. We obtained a more accurate picture for the case study landlords by comparing the figures in their questionnaires with the files and other data subsequently supplied to us. We also telephoned any other local authorities whose returns were incomplete, internally inconsistent, or otherwise obviously implausible to obtain further information. In this way we were able to obtain a more accurate picture of the extent of use of legal remedies than that provided by the original returns.

3.46 Table 3.7 shows the adjusted figures. These are still likely to overstate the number of NOPs served because the 2 largest returns were based on 'guesstimates' by the landlord.
However, these overestimates must be set against those other landlords who did not supply figures. Our inquiries (discussed in the appendix) suggested to us that the true figure for NOPs is below 2000 for each year, and could be as low as 1500. Our inquiries with regard to eviction suggest that the number of eviction summonses was unlikely to have been more than 150 in either year.

Table 3.7 Total notices of proceedings and summonses to court

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of landlords responding</th>
<th>NOP</th>
<th>Summons to Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>1995/96</td>
<td>159</td>
<td>1924</td>
<td>115</td>
</tr>
<tr>
<td>1996/97</td>
<td>163</td>
<td>2179</td>
<td>128</td>
</tr>
</tbody>
</table>

Source: Postal survey 1998 (adjusted)

Complaints, Notices and Court Action

3.47 It is interesting to compare the figures for complaints, NOPs, and summonses for eviction. Across Scotland the landlords that responded received 16,811 complaints in 1996/97, and (according to our estimates) issued somewhere between 1500 and 2000 NOPs, and raised in the region of 150 summonses for eviction. This suggests that the number of tenants taken to court is a very small fraction of those complained about: the ratio of complaints to summonses is of the order of 100 to 1.

3.48 Where matters proceed as far as the formal threat of legal action, the figures suggest that a small fraction of NOPs are followed by tenants being taken to court. However, we must exercise some caution with this interpretation of the data, as this is not a longitudinal analysis of the cases. The questionnaire merely asked for the total number of notices issued, and the total number of actions begun in each year. However, the aggregate numbers of both NOPs and summonses appear not be very different for the 2 years which suggests that there is not rapid change in the volume of legal action. If this assumption is correct then we can treat the proportion of court actions to notices of proceedings in the survey responses as a rough proxy for the true rate of conversion of notices to actions. This then suggests that most NOPs are not followed by court action with the number of court cases (allowing for the uncertainty over numbers) being in the region of one sixteenth of the number of NOPs.

3.49 When we compare these results to those from the Tenants’ Rights research (Mullen et al, 1997) we find that rates of conversion of notices to actions are significantly lower than for eviction actions generally in the social rented sector. In that study the equivalent proportions were 15.7 per cent for public sector landlords, and 22.5 per cent for housing associations. Given that most actions related to rent arrears and the other findings of that research this is unsurprising.

Rates of legal activity

3.50 Table 3.8 shows the rates per 1,000 tenancies. This indicates that around 1.5 tenants per thousand received an NOP in 1995/96 compared with around 1.8 in 1996/97. However, given that the real total figure for NOPs is likely to be lower than that shown in Table 3.7 of overall totals, it is likely that fewer than 1 in 650 tenants received an NOP on nuisance grounds in either year. The rate for tenants taken to court was 0.56 in 1995/96 and 0.43 in 1996/97. This suggests that around 1 tenant in 2,000 was taken to court on nuisance grounds in either year. These figures are much lower than those for overall rates for all eviction
actions in the tenancy rights research (Mullen et al, 1997). That research found that the rates for notices of proceedings were 159 per 1000 for local authorities and 28 per 1000 for housing associations: and rates of court action were 25 per 1000 for local authorities and 6.3 per 1000 for housing associations. It seems clear that anti-social behaviour cases are in fact only a small fraction of the total number of eviction actions in the courts.

3.51 It is also helpful to compare our figures with the civil judicial statistics. These do not give the actual number of summary causes for recovery of possession. However, they do give the number of cases in the land or heritable category disposed of by decree for the pursuer. This gives a rough guide to the number of possession actions, as the great majority will have been summonses for possession. The statistics for both 1996 and 1997 (SCA, 1997a, 1997b) show that, in both years, there were more then 9,000 summary causes in the land or heritable category disposed of by decree for the pursuer. These comparisons suggest that anti-social behaviour cases are, at most, not more than 2 per cent of all possession actions. This finding is also consistent with the information from the case studies.

Table 3.8 Mean numbers of legal actions per 1000 tenancies

<table>
<thead>
<tr>
<th></th>
<th>Number Responding</th>
<th>NOP</th>
<th>Summons to Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>1995/96</td>
<td>159</td>
<td>1.48</td>
<td>0.56</td>
</tr>
<tr>
<td>1996/97</td>
<td>163</td>
<td>1.77</td>
<td>0.43</td>
</tr>
</tbody>
</table>

Source: Postal survey 1998 (adjusted)

3.52 However, the aggregate figures conceal great variation in the extent to which different landlords took tenants to court or took the preliminary step of serving an NOP. Many showed no evidence of legal activity, with 110 respondents issuing no notices (nearly 60% of respondents) in 1995/96 and 94 (51% of respondents) issuing no notices in 1996/97. Rates of court action were 25 per 1000 for local authorities and 6 per 1000 for housing associations. Moreover, only 6 out of 185 respondents served more than 10 notices in total on neighbour nuisance grounds, and this figure rose to only 9 in 1996/97. Even in the latter year this represents only 5 per cent of respondents. Thus, although a substantial number of landlords do take the first step in the legal process in at least some cases, only a very small minority are regularly serving notices, suggesting that for most landlords even taking steps preliminary to court action is an occasional experience.\(^8\)

3.53 There is similar variation in the extent to which tenants were taken to court except that the number raising no court actions is higher at 131 (70%) in the first year and 125 (67.5%) in the second year. Only 27 landlords raised any actions in the first year, and only 11 raised more than one. 38 raised actions in the second year, and only 18 more than one. However, there were a significant number of don’t knows, and the apparent year on year rise is partly explained by there being more ‘don’t knows’ for 1995/96 than for 1996/97\(^9\). The most any landlord claimed for any one year was for 30 in the first year and 21 in the second (adjusted figures).

3.54 What can we conclude from the overall figures on the use of eviction? For the reasons given above, it is not possible to say definitely whether there was any increase overall

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\(^8\) The true number issuing notices may be slightly higher than indicated because of the number of ‘don’t knows’ (17).

\(^9\) Number of summonses : 26 respondents replied ‘don't know’ in 1995/96 compared with 21 in 1996/97
in the number of NOPs or the number of court actions from the first to the second year. However, it does not appear as if there was any great change in the numbers. It is clear that only a very small minority of tenants are subject to even a notice of proceedings on nuisance grounds. It is also clear that the great majority of landlords rarely, if ever, take tenants to court on nuisance grounds, although a larger group occasionally serves an NOP.

3.55 It is important to note that, in each year, the majority of landlords did not raise even one notice of proceedings. Actions based on anti-social behaviour are only a small fraction of all eviction actions, and the number of actions also appear small in relation to the level of media interest in the topic. Only a small fraction of NOPs are followed by a summons. This may indicate that issuing an NOP was routinely effective in resolving the situation. On the other hand it may represent unwillingness to take tenants to court – it is easy to serve a notice of proceedings. The impact of NOPs is discussed further in Chapter 6.

Outcomes of the legal process

3.56 Landlords were asked for the outcomes of the actions for eviction identified as beginning in either 1995/96 and 1996/97. This allows the actual rate at which legal actions are converted to different outcomes to be calculated. Responses on outcomes of actions for eviction are summarised in Table 3.9. Again, this table is based on adjusted data. There are a number of cases in each year for which we do not have information, where the outcomes noted by landlords did not add up to the number cases taken to court. This may be due to misreading of the questionnaire. These are shown as ‘outcome unclear’.

Table 3.9 Outcomes of eviction actions

<table>
<thead>
<tr>
<th>Year</th>
<th>Possession Decree</th>
<th>Dismissed</th>
<th>Continued</th>
<th>Sisted</th>
<th>Outcome unclear</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1995/96</td>
<td>66</td>
<td>25</td>
<td>4</td>
<td>2</td>
<td>18</td>
<td>115</td>
</tr>
<tr>
<td>1996/97</td>
<td>70</td>
<td>14</td>
<td>20</td>
<td>12</td>
<td>12</td>
<td>128</td>
</tr>
</tbody>
</table>

Source: Postal survey 1998 (adjusted)

3.57 The most frequent outcomes are that a decree for possession was granted or the action was dismissed. “Continued” and “Sisted” both imply that the action had not been concluded by the date of the survey. There are inevitably a higher number of unresolved cases in the second year i.e. there had been no final decree pronounced by the time of the survey. Our analysis of the specific cases (see Chapter 7) found that 30 per cent of cases took longer than a year and this data is consistent with this.

3.58 Only 66 of the 115 eviction actions (68%) brought in 1995/96 were known to result in a decree for possession. The rate at which possession was granted was even lower (at 60%) in 1996/97 (70 out of 128). However, the other outcomes are not necessarily a failure to use the legal process ‘successfully’ from the landlord’s perspective. Thus, a sist or continuation might often be associated with a positive outcome. As the data from the case studies will show, a sist is almost invariably either for the purpose of monitoring behaviour or to allow application for legal aid. We could reasonably expect that some of the cases, which were continuing, or sisted at the end of the period might ultimately be disposed of by a decree for possession. Alternatively, the behaviour complained of might have ceased, removing the need for eviction, which should also be regarded as a positive outcome for the landlord.
3.59 Considering only cases where the legal process had clearly been concluded (i.e. excluding those sisted or continuing), we find that 73 per cent of cases led to an eviction decree in 1995/96 (66 out of 91) and 83 per cent in 1996/97 (70 out of 84). In other words, where the landlord is pushing for eviction, it is usually granted. However, it would be wrong to assume that in the remaining cases the landlord failed to obtain a decree that they were seeking. Dismissal does not necessarily mean that the sheriff has rejected the landlord’s case. The case studies, and follow-up inquiries on the questionnaire, suggested that most dismissals came about because the landlords no longer needed a decree for possession, for example, because the tenant had abandoned the lease, or the behaviour had improved. In such cases the landlord will often have consented to dismissal, and been satisfied with the outcome. We can only speculate as to the proportion of cases ‘lost’ by landlords who really wished to evict, but if the experience of case study landlords is replicated across Scotland, it is likely to be below 10 per cent. A more precise indication of success rates was possible for our case study landlords, and this is discussed in Chapter 7.

3.60 It would appear justifiable to conclude that, in the vast majority of cases taken to court, landlords are able to obtain a decree for possession if they want one, and that other sorts of outcome are generally acceptable to them.

Enforcing Decrees

3.61 We know from earlier research (Mullen et al, 1997) that decrees for possession are often not enforced by landlords. The survey asked landlords how many of their decrees for possession were enforced, and Table 3.10 shows the responses.

<table>
<thead>
<tr>
<th>Year</th>
<th>Decree Enforced</th>
<th>Tenant Left</th>
<th>Outcome unclear</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1995/96</td>
<td>48</td>
<td>13</td>
<td>5</td>
<td>66</td>
</tr>
<tr>
<td>1996/97</td>
<td>41</td>
<td>17</td>
<td>12</td>
<td>70</td>
</tr>
</tbody>
</table>

Source: Postal survey 1998

3.62 These figures suggest that landlords usually enforce their decrees for anti-social behaviour. The case studies found that there were very few examples of tenants being allowed to remain when the landlord held a decree for possession. Cases were categorised as ‘outcome unclear’ where the landlord entered ‘don't know’, ‘zero’ or left the box blank. Putting the case study data and the questionnaire data together suggests that the non-enforcement of decrees is likely to be occurring only in a minority of cases.

SECTORAL VARIATIONS IN EVICTION

3.63 We noted above that there was considerable variation in the extent to which landlords generally served NOPs and eviction summonses. In this section we consider the extent to which there is variation between sectors.

3.64 Table 3.11 shows that most of the use of eviction occurs in the public sector which accounts for 90 per cent of NOPs in both years, and at least 80 per cent of court actions in both years. Housing associations make a small but significant contribution to the total, but the contribution of co-ops is negligible with only 4 actions raised in 2 years. It is also
apparent that a much higher proportion of the landlords within the local authority sector makes at least some use of eviction. Only 29 per cent (9) served no NOPs in the first year, and only 23 per cent (7) in the second year. Only 39 per cent (12) raised no summonses in the first year, and only 42 per cent (13) in the second year. So the majority of local authorities had taken at least 1 tenant to court in each of the 2 years.

3.65 By contrast, in 1995/96 63 per cent (86) of the housing associations did not serve even one NOP, and 77 per cent (106) did not serve raise even one summons for eviction. The corresponding figures for 1996/97 are 53 per cent for NOPs (72) and 71 per cent (97) for summonses. Co-ops are even less likely to have experience of legal action with 88 per cent (15 of the 17 responding) serving no NOPs or summonses in both 1995/96 and 1996/97. So, even the threat of legal action to remove tenants is a minority pursuit for both these sectors.

Table 3.11 Numbers of eviction actions and outcomes, by landlord type and year

<table>
<thead>
<tr>
<th>Landlord</th>
<th>1995/96</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>NOP</td>
<td>Summons</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>LA</td>
<td>1849</td>
<td>102</td>
</tr>
<tr>
<td>HA</td>
<td>73</td>
<td>11</td>
</tr>
<tr>
<td>Co-op</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Totals</td>
<td>1924</td>
<td>115</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Landlord</th>
<th>1996-97</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>NOP</td>
<td>Summons</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>LA</td>
<td>2070</td>
<td>102</td>
</tr>
<tr>
<td>HA</td>
<td>105</td>
<td>24</td>
</tr>
<tr>
<td>Co-op</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>Totals</td>
<td>2,179</td>
<td>128</td>
</tr>
</tbody>
</table>

Source: Postal survey 1998

3.66 This pattern of results is perhaps unsurprising given the proportion of the social rented sector that each of the 3 groups of landlords accounts for: these results might be related to the size of organisations. If eviction for anti-social behaviour is as infrequent as the figures suggest then one would expect there to be large number of landlords who do not raise even one summons in a year. These will predominantly be housing associations and co-ops. It is, therefore, also important to compare rates of activity between and within sectors.

3.67 If we compare rates per 1000 for serving NOPs and taking tenants to court we find substantial variation between individual landlords within all the sectors. Table 3.12 shows that rates of service of NOPs vary range from 0 to 18.07 per 1000 for housing associations in the first year, and from 0 to 15.87 in the second year. For co-ops, rates vary from 0 to 4.55 per 1000 in the first year, and from 0 to 6.69 in the second year. In local authorities rates vary between 0 and 31.70 per 1000 in the first year, and between 0 and 41.00 in the second year.
Table 3.12  Rates per 1000 for issuing notices of proceedings

<table>
<thead>
<tr>
<th>Landlord</th>
<th>Responses</th>
<th>Min.</th>
<th>Median</th>
<th>Max.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local Authority 1995/96</td>
<td>23</td>
<td>0</td>
<td>0.38</td>
<td>31.70</td>
</tr>
<tr>
<td>Local Authority 1996/97</td>
<td>25</td>
<td>0</td>
<td>0.60</td>
<td>41.00</td>
</tr>
<tr>
<td>Housing Association 1995/96</td>
<td>114</td>
<td>0</td>
<td>1.37</td>
<td>18.07</td>
</tr>
<tr>
<td>Housing Association 1996/97</td>
<td>116</td>
<td>0</td>
<td>0</td>
<td>15.87</td>
</tr>
<tr>
<td>Co-op 1995/96</td>
<td>17</td>
<td>0</td>
<td>0</td>
<td>4.55</td>
</tr>
<tr>
<td>Co-op 1996/97</td>
<td>17</td>
<td>0</td>
<td>0</td>
<td>6.69</td>
</tr>
</tbody>
</table>

Note: The co-op figures exclude one organisation which had a very small number of tenants, and raised an eviction action. This would have put the top of the range at 62.5

Source: Postal survey 1998

3.68 Table 3.13 shows that rates for housing associations taking tenants to court vary between 0 and 5.26 per 1000 in the first year and between 0 and 12.66 in the second. For co-ops, rates vary between 0 and 4.55 per 1000 in the first year and between 0 and 3.34 in the second. Finally for local authorities, rates vary between 0 and 0.62 per 1000 in the first year, and between 0 and 0.55 in the second.

Table 3.13  Rates per 1000 for issuing summonses

<table>
<thead>
<tr>
<th>Landlord</th>
<th>Responses</th>
<th>Min.</th>
<th>Median</th>
<th>Max.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local Authority 1995/96</td>
<td>26</td>
<td>0</td>
<td>0</td>
<td>0.62</td>
</tr>
<tr>
<td>Local Authority 1996/97</td>
<td>29</td>
<td>0</td>
<td>0</td>
<td>0.55</td>
</tr>
<tr>
<td>Housing Association 1995/96</td>
<td>116</td>
<td>0</td>
<td>0</td>
<td>5.26</td>
</tr>
<tr>
<td>Housing Association 1996/97</td>
<td>117</td>
<td>0</td>
<td>0</td>
<td>12.66</td>
</tr>
<tr>
<td>Co-op 1995/96</td>
<td>17</td>
<td>0</td>
<td>0</td>
<td>4.55</td>
</tr>
<tr>
<td>Co-op 1996/97</td>
<td>17</td>
<td>0</td>
<td>0</td>
<td>3.34</td>
</tr>
</tbody>
</table>

Note: The co-op figures exclude one organisation which had a very small number of tenants, and raised an eviction action. This would have put the top of the range at 62.5

Source: Postal survey 1998

3.69 These figures suggest that, amongst the group of landlords who do take tenants to court, that local authorities are more likely to issue notices of proceedings but much less likely to take court action.

3.70 Taking the various figures together, it is clear that, across the social rented sector as a whole, most landlords did not use eviction as a remedy at all over the 2 year period. Amongst those who did use eviction there are substantial variations in the rate of its use. There are also substantial variations within each landlord sector. Local authority landlords were most likely, and co-ops least likely, to take at least some tenants to court. Amongst the group of landlords who do take tenants to court, the highest rates for court action are found in the housing association sector and the lowest in the local authority sector. The local authority sector appears to have less internal variation than the other 3 sectors, given the much higher proportion serving at least some NOPs or taking at least some tenants to court.

3.71 One interesting difference between sectors is the rate at which NOPs are converted into summonses. We have already suggested that the proportion of NOPs to summonses in the returns can be treated as a rough proxy for the true rate of conversion of notices to actions. It is clear that only a small fraction (5.5% in 1995/96 and 4.9% in 1996/97) of local authority NOPs are converted into summonses. Both housing associations and co-ops are
very much more likely to follow up an NOP with summons. This finding is entirely consistent with those relating to eviction generally in the Tenants’ Rights research (Mullen et. al. 1997).

3.72 These figures are broadly consistent with landlord's statements of willingness to pursue eviction. The greater expressed willingness of local authorities to evict is manifested in the much higher proportions serving notices to quit and/or summonses. Similarly, co-ops were least likely to express willingness to evict, and are least likely to take tenants to court. Amongst the group of landlords who do take tenants to court, housing associations and co-ops show higher rates of legal action than local authorities, because most housing associations and co-ops are excluded from the comparison.

3.73 The reasons for the variation between landlords described above cannot be established from the figures, but it seems unlikely that they could be accounted for solely by differences in the incidence of anti-social behaviour between landlords. The possible reasons are discussed later in the report.

Outcomes

3.74 Ignoring the cases where the outcome is unclear, Table 3.11 suggests that a decree for possession was a more likely outcome in the housing association sector than in the local authority sector. We do not have enough information about the co-op sector for analysis. There is also a much higher level of continuations and sists in the public sector. It is possible that there is a different dynamic to housing association cases, which has affected this outcome. This is somewhat different from the findings of the Tenancy Rights research (Mullen et. al., 1997) which found that once they had begun the legal process local authorities were more likely than housing associations to obtain a decree for possession. The case studies and further inquiries on the questionnaires suggested that there were not important differences in the extent to which the sectors achieve favourable outcomes.

INTERDICT

3.75 Interdict is an order of the court which requires someone not to do something, or to stop doing something. It can be used to forbid specified anti-social behaviour. It has attracted increasing attention as an alternative to eviction in recent years. The details of law and practice are discussed in Chapter 2. This section presents information about the extent of its use and the outcomes of the legal process.

3.76 Landlords were asked whether, in practice, they took legal action for possession for neighbour nuisance. Table 3.15 summarises the responses. It shows that local authorities were more likely to claim substantial use of this remedy: just over 32 per cent indicated they would sometimes use interdict. However, 25 per cent and 41 per cent indicated they would rarely or never use interdict. Only 2 housing associations said they would usually use interdict, and no co-op's said they would either sometimes or usually use this remedy. The bulk of housing associations (75%) and co-op's (59%) said they would never use interdict.
Table 3.15  Willingness to use interdict as a remedy for anti-social behaviour

<table>
<thead>
<tr>
<th>Organisation</th>
<th>Use of Interdict</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Always</td>
<td>Usually</td>
<td>Sometime</td>
<td>Rarely</td>
<td>Never</td>
<td>Missing</td>
<td>Total</td>
<td></td>
</tr>
<tr>
<td>HA</td>
<td>0</td>
<td>2</td>
<td>4</td>
<td>13</td>
<td>103</td>
<td>15</td>
<td>137</td>
<td>100%</td>
</tr>
<tr>
<td>LA</td>
<td>0</td>
<td>0</td>
<td>10</td>
<td>8</td>
<td>13</td>
<td>0</td>
<td>31</td>
<td>100%</td>
</tr>
<tr>
<td>Co-op</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>7</td>
<td>10</td>
<td>0</td>
<td>17</td>
<td>100%</td>
</tr>
<tr>
<td>Total</td>
<td>0</td>
<td>2</td>
<td>14</td>
<td>28</td>
<td>126</td>
<td>15</td>
<td>185</td>
<td>100%</td>
</tr>
</tbody>
</table>

Source: Postal survey 1998

3.77  Table 3.16 shows the number of interim interdicts sought and granted, by sector. Only 22 interdicts were requested across Scotland in 1995/96 and in 1996/97 only 32. There were, therefore, 4 times as many eviction actions as interdicts in the latter year. However, it is worth noting that the reported use of interdict has increased since the Baseline Study (Clapham et al, 1995), which found that only one landlord had used interdict in 1992/93. The proportionately large increase year on year reflects, in part, an increase in the number of landlords seeking interdict from 8 to 12, and, in part, the high number sought by one landlord (12) in the second year. It is possible that the use of interdict is slightly higher than this as a number of landlords did not answer the question. However, most of these respondents answered “rarely” or “never” to the question on willingness, so it is unlikely that many uses of interdict in this context are unrecorded.

Table 3.16  Numbers of interdicts requested and granted by sector

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>HA</td>
<td>1</td>
<td>1</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>LA</td>
<td>21</td>
<td>21</td>
<td>29</td>
<td>27</td>
</tr>
<tr>
<td>Co-op</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>22</td>
<td>22</td>
<td>32</td>
<td>29</td>
</tr>
</tbody>
</table>

Source: Postal survey 1998

3.78  With only 8 and 12 landlords seeking interdict in the 2 years, this is very much a minority pursuit. Seeking interdict is also predominantly a local authority activity: 7 of the 8 landlords in the first year and 9 out of 12 in the second year were local authorities. Even within the local authority sector substantial use of interdict appears to be confined to a few ‘pioneers’: only 4 landlords sought more than one interdict in either year.

3.79  Rates of success were very high. Table 3.16 shows that, a total of 22 interim interdicts were granted in 1995/96 and 29 in 1996/97. This suggests that those landlords who chose to use interdict did not generally experience serious difficulties in obtaining it. The reasons why overall use of interdict remains low, despite the apparent ease with which some landlords obtain it, is discussed in Chapter 10.
SPECIFIC IMPLEMENT

3.80 A court may order specific implement of a legal obligation such as keeping gardens and common areas in good order. In such cases the landlord might ask the court to order the tenant to clean or maintain an area where the lease imposed an obligation to do so.

3.81 We begin with landlords’ statements of willingness to use this remedy and Table 3.17 shows the results. Local authorities expressed greater willingness to use this remedy compared to both associations and co-ops, with a nearly 23 per cent of authorities saying they would sometimes use implement. Whilst this may not seem a very positive response to the question it is much more positive than those of the other sectors. All co-ops claimed rarely (18%) or never (82%) to use implement. Housing associations were apparently slightly more open to its use with 7 per cent claiming to use it rarely, and 78 per cent never.

Table 3.17 Willingness to use specific implement by sector

<table>
<thead>
<tr>
<th>Organisation</th>
<th>Always</th>
<th>Usually</th>
<th>Sometimes</th>
<th>Rarely</th>
<th>Never</th>
<th>Missing</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>HA</td>
<td>1</td>
<td>0</td>
<td>3</td>
<td>9</td>
<td>107</td>
<td>17</td>
<td>137</td>
</tr>
<tr>
<td></td>
<td>0.7%</td>
<td>0.0%</td>
<td>2.2%</td>
<td>6.6%</td>
<td>78.1%</td>
<td>12.4%</td>
<td>100%</td>
</tr>
<tr>
<td>LA</td>
<td>0</td>
<td>0</td>
<td>7</td>
<td>11</td>
<td>13</td>
<td>0</td>
<td>31</td>
</tr>
<tr>
<td></td>
<td>0.0%</td>
<td>0.0%</td>
<td>22.6%</td>
<td>35.5%</td>
<td>41.9%</td>
<td>0.0%</td>
<td>100%</td>
</tr>
<tr>
<td>Co-op</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>14</td>
<td>0</td>
<td>17</td>
</tr>
<tr>
<td></td>
<td>0.0%</td>
<td>0.0%</td>
<td>0.0%</td>
<td>17.6%</td>
<td>82.4%</td>
<td>0.0%</td>
<td>100%</td>
</tr>
<tr>
<td>Total</td>
<td>0</td>
<td>0</td>
<td>10</td>
<td>23</td>
<td>134</td>
<td>17</td>
<td>185</td>
</tr>
<tr>
<td></td>
<td>0.5%</td>
<td>0.0%</td>
<td>5.4%</td>
<td>12.4%</td>
<td>72.4%</td>
<td>9.2%</td>
<td>100%</td>
</tr>
</tbody>
</table>

Source: Postal survey 1998

3.82 In practice, very few landlords sought specific implement. Only 5 requested implement in 1995/96, and only 6 in 1996/97. Only one of the landlords in the second year was a housing association and none in either year were co-ops, so use of the remedy was almost exclusively confined to local authorities. Even amongst local authorities hardly any make substantial use of the remedy. Total applications and outcomes are shown in Table 3.18.

Table 3.18 Numbers and outcomes of actions for specific implement

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Requested</td>
<td>Refused</td>
<td>Granted</td>
<td>Requested</td>
<td>Refused</td>
<td>Granted</td>
</tr>
<tr>
<td>Housing Association</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Local authority</td>
<td>25</td>
<td>2</td>
<td>23</td>
<td>46</td>
<td>3</td>
<td>43</td>
</tr>
<tr>
<td>Co-op</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

Source: Postal survey 1998

3.83 The number of applications granted for those respective years was 23 and 43. Two were apparently refused in the first year and 3 in the second year. None were still continuing at the date of the survey.\(^\text{10}\) This represents a very high success rate. It should be noted that

\(^{10}\) One return caused difficulties of interpretation, suggesting that in 1996/97 that landlord made two requests for implement, that two decrees were granted and that two cases were continuing. Perhaps this was an indication that further action was contemplated in these two cases. In any event, we resolved to treat 'this as only two cases with a final outcome of 'granted'. Whatever, the interpretation it makes little difference to the pattern of outcomes.
one local authority landlord accounted for 20 requests of the 25 in 1995/96. The same landlord made 20 applications the following year and another made 19 applications.

3.84 There is one very important caveat to these figures. We are fairly certain that one landlord's return is wholly inaccurate. This landlord made a zero return to this question but their solicitor confirmed that he had mounted a very large number of cases for specific implement within the period of the survey. However, all these cases fell when one, which was regarded as a test case in that court, was dismissed as incompetent. The landlord has since entirely given up using specific implement. So, paradoxically, Table 3.18 probably provides a more accurate picture of current usage than if it showed the true (and much higher figures) for use between 1995 and 1997. The example of this authority also shows that the attempt to obtain implement sometimes fails. The difference between its failure and the success of others may have been related to difference in terms of tenancy agreements given that that the order must be firmly grounded in an obligation in the agreement.

3.85 Although the remedy can only be used in limited situations, essentially for breach of positive obligations in the tenancy agreement such as maintenance of gardens, and cleaning common closes, breaches of such obligations will affect many tenants. This suggests that the very restricted use of this remedy is more likely to be explained by landlords' policies and practices rather than the absence of acts or omissions by tenants which could generate its use. This is explored further in Chapter 11.

**TITLE CONDITIONS**

3.86 The enforcement of title conditions is a traditional method of controlling what is done on land (see Chapter 2). In theory, title conditions are potentially useful to social landlords where the person complained of is a former secure tenant who has exercised the right to buy their house. A landlord might include in a deed transferring property conditions intended to control the use of property in such a way as to cause a nuisance to neighbours. Breach of the conditions would give the landlord grounds to seek interdict against the occupier, or perhaps in extreme cases to eject the occupier from the property.

3.87 We asked local authorities whether, in practice, they imposed title conditions on sale which would restrict anti-social behaviour. Roughly half of the local authorities (42%) said they would always impose such conditions but an almost equal proportion (39%) said they would never use them. Housing associations were much less likely to express interest. Only 21 housing associations (15%) said they 'always' likely impose title conditions for anti-social behaviour when selling their properties. This was greatly exceeded by those who said they would never use such conditions (45%). Co-ops were either of the opinion that they would never use such or that such a question was not applicable to them, which may explained by the fact that fully mutual co-ops are excepted from the right to buy.

3.88 Enforcement was extremely rare. One local authority enforced title conditions twice in 1996/97. Therefore, most of those authorities who do have relevant conditions in their deeds either do not have a significant problem with right to buy tenants, or do not in practice enforce the nuisance clauses.
BY-LAWS

3.89 By-laws may cover a range of matters which might be relevant to anti-social behaviour including domestic refuse, maintenance of common areas, and noise. Local authorities were asked whether they used and enforced by-laws to deal with neighbour nuisance. Housing associations were asked if they referred breaches of by-laws to the local authority.

3.90 Table 3.19 shows landlords’ perceptions of their use of by-laws. Perhaps surprisingly, housing associations seem more ready to contemplate their use than local authorities. The vast bulk of local authorities (77%) claim never to use them as a remedy for anti-social behaviour. A number of landlords thought that no by-laws were available for use in remedying anti-social behaviour. Seven housing associations claimed that they did not use by-laws while a further 57 thought that their use was not applicable to them.

Table 3.19 Willingness to use by-laws as a remedy for anti-social behaviour

<table>
<thead>
<tr>
<th>Organisation</th>
<th>Always</th>
<th>Usually</th>
<th>Sometimes</th>
<th>Rarely</th>
<th>Never</th>
<th>Missing</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>HA</td>
<td>0</td>
<td>3</td>
<td>22</td>
<td>15</td>
<td>81</td>
<td>16</td>
<td>137</td>
</tr>
<tr>
<td>LA</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>5</td>
<td>24</td>
<td>0</td>
<td>30</td>
</tr>
<tr>
<td>Co-op</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>5</td>
<td>12</td>
<td>0</td>
<td>17</td>
</tr>
<tr>
<td>Total</td>
<td>0</td>
<td>3</td>
<td>23</td>
<td>25</td>
<td>117</td>
<td>16</td>
<td>185</td>
</tr>
</tbody>
</table>

Source: Postal survey 1998

3.91 No local authorities recorded any enforcement of by-laws in either year. By contrast, there were 26 examples of breaches of by-laws being referred by housing associations and co-ops to the local authority in 1995/96 and 43 cases in 1996/97. These cases were reported by 11 landlords in 1995/96 and by 15 in 1996/97. Co-op's recorded the use of 2 by-laws breaches in each of the 2 years with all the remainder coming from housing associations. The reasons for this distribution of results were not resolved by the research.

USE OF PROFESSIONAL WITNESSES

3.92 The questionnaire also asked whether social landlords used professional witnesses in anti-social behaviour cases. The expression “professional witness” refers to someone who witnesses anti-social behaviour in the line of work, as opposed to a neighbour. Examples would include housing officers, police officers, and private investigators. The use of professional witnesses is recommended in the good practice literature as a possible solution to difficulties in proving the facts necessary to take legal action, for example, the reluctance of neighbours to give evidence.

3.93 At first sight it appears as if few landlords did use professional witnesses. Figure 3.1 summarises the results. Only 13 per cent of all respondents used professional witnesses. There were substantial sectoral differences. No co-ops reported using professional witnesses, but 7 per cent of housing associations and 45 per cent of local authorities did. However, it must be borne in mind that these figures relate to all respondents, and most apparently do not
take tenants to court. Amongst those who actually took tenants to court the proportion using professional witnesses is much higher. Although, the proportion of local authorities using them does not rise when the assessment is restricted to those raising at least one eviction summons, there is a considerable rise in the proportion of housing associations using them.

3.94 Respondents also reported the type of witness used. For housing associations: 8 out of the 10 used general housing officers, one used specialist anti-social staff, one used environmental health officers, 4 used the police, 4 used private investigators and, finally, one used an unspecified source as a witness. Turning to local authorities: 12 used housing officers, 5 specialist staff, 5 environmental health officers, 9 police, 3 private investigators and one other. As already noted, no co-ops claimed to use professional witnesses.

3.95 In a sense the finding that a high proportion of those taking legal action use professional witnesses is inevitable given the need to have witnesses, and the broad definition of professional witnesses adopted. The questionnaire did not ask about the use of private individuals as witnesses e.g. neighbours, so we can draw no conclusions about the balance of use of private citizens and professionals as witnesses, far less about their impact on the legal process. What is clear is that most of those landlords who do go to court do not rely exclusively on neighbours and other private citizens as witnesses. The issue of professional witnesses was pursued in the case studies as part of a general inquiry into questions of evidence and proof.

Figure 3.1 Number of landlords using professional witnesses

![Figure 3.1](image)

OUT OF HOURS SERVICES

3.96 Only 16 landlords (9%) had an out-of-hours service dealing with complaints. Breaking this figure down by sector shows that only 8 housing associations (7%) and 2 co-ops (12%) operated such a service while 6 local authorities (19%) did so. It should also be noted that 11 per cent of housing associations did not provide an answer to this response. The questionnaire merely asked about current practice in both of these areas. We do not know if use of professional witnesses and out-of-hours services has increased over the last few years.
MEDIATION

3.97 Good practice literature recommends mediation as a possible solution to neighbour problems in appropriate cases (see Dignan and Sorsby, 1999 and MacKay and Brown, 1999). Figure 3.2 summarises the extent of the use of mediation by social landlords. Only 24 per cent of social landlords claimed to refer disputes to mediation although local authorities were considerably more likely to do so (39%). For housing associations and co-ops the figures were 21 per cent and 24 per cent respectively. This represents a major increase since the time of the Baseline Study (Clapham et. al, 1995) which found that there was only one in-house specialist mediation service, and no specialist mediation service used by local authorities in Scotland.

Figure 3.2 Number of landlords using mediation

3.98 Overall, 45 organisations said that they used mediation. This included 12 local authorities, 29 housing associations and 4 co-ops. There were differences in the pattern of use. Local authorities were most likely to use in-house services: 7 (58% of those with a mediation service) used this. In contrast, only one association and none of the co-ops had an in-house service. Almost all the housing associations (27-93%) and all the co-operatives (4-100%) used independent mediation services. However, only 5 local authorities (42%) used an independent service. Two housing associations (7%) used some other form of mediation service though this was not specified. These figures are not mutually exclusive: organisations could use one or more of the above.

SUMMARY

3.99 We have presented a large amount of detailed information in this chapter, and in this final section we attempt to summarise the findings of the postal survey:
• Local authorities were most likely to describe how the problem of anti-social behaviour appeared to them as being average or at the upper end of the scale. Co-ops were least likely to do so with housing associations falling in between.

• Rates of complaints made about anti-social behaviour varied enormously as between landlords. Housing associations showed the greatest variation in rates of complaint. That sector also had the highest median levels of complaint, whereas co-ops had the lowest. However, we are unsure to what extent differences between landlords in this area are a function of sector, size and geography. Perceptions of the scale of the problem were not closely matched to numbers of recorded complaints.

• Willingness to evict also varied by sector with local authorities expressing greatest readiness to use the legal process and co-ops the least.

• Anti-social behaviour cases appeared to be only a very small fraction of all eviction actions raised in the sheriff court, and a minute fraction of the total number of tenancies in the social rented sector.

• There were very substantial variations in the rates at which social landlords used the process of eviction, and on balance this seems to be true across the whole of the social rented sector. However, housing associations and co-ops (especially the latter) are more likely than local authorities to take be taking no action. Amongst those landlords using eviction to some degree, housing associations were more likely to be raising court actions at higher rates.

• Most landlords appeared not even to have served a single NOP on neighbour nuisance grounds. Local authorities were most likely to have served at least some NOPs.

• A substantial proportion of those serving NOPs did take some tenants to court, but the proportion of all landlords taking any tenants to court was small. Analysis of outcomes suggests that most cases produced a favourable result from the landlords perspective, whether a decree of eviction or improvement in the behaviour.

• Interdict was employed much less frequently than eviction (around a quarter of the number of landlords using eviction), and by an extremely small proportion of landlords overall. However, it appears as if applications for interdict were nearly always successful. Interdict was mainly a local authority pursuit. Other social landlords rarely expressed even slight willingness to use it, and only a handful recorded any actual use of it.

• Only 5 and 6 landlords in each of the relevant years sought specific implement of the tenancy agreement, almost exclusively local authorities. They were generally successful in such applications. The enforcement of behavioural title conditions in the deeds of property sold under the right to buy appears virtually non-existent. The use of by-laws to combat anti-social behaviour is uncommon and seems to be confined to housing associations.

• Most landlords do not use professional witnesses, but large proportions of those taking tenants to court do use such witnesses.
• Mediation is much more common than a few years ago. A quarter of social landlords use mediation with local authorities being most likely to do so.

• In a substantial number of cases landlords’ information systems were not adequate to providing the data required for the survey, with a large number of “don’t knows” and blank entries, and some plainly incorrect entries against certain questions.

3.100 Many issues arise from these figures. To what extent does the variation in the rates of use of legal remedies reflect differences in the levels of anti-social behaviour problems experienced by different landlords? To what extent is it due to other factors such as size of stock, location, and the type of landlord? To what extent is it due to differences in policy and management as between landlords? These issues were pursued in the case studies.

3.101 The generally low level of legal action both in absolute terms, and relative to the number of tenants in the social rented sector, is interesting in the light of the degree of concern expressed about anti-social behaviour in general and the controversy over legal remedies. The high success rates experienced by those landlords who do use legal remedies is equally interesting in view of the criticisms that have been expressed that legal remedies are too difficult to obtain. However, even if success rates for some are high, the case studies found that some landlords were deterred from using the legal process by such concerns, or would only use legal remedies where they felt certain of success.
CHAPTER 4 POLICIES AND PRACTICES OF SOCIAL LANDLORDS

INTRODUCTION

4.1 As part of our research we examined social landlords’ written policies on anti-social behaviour. This chapter first considers the leases used by social landlords and second, general policies on anti-social behaviour and legal remedies. Information for this chapter came from 2 main sources. First, landlords were asked to supply copies of their main tenancy agreement, policies on neighbour nuisance, and any written information given to tenants, along with the questionnaire. Second, there were the case studies, which provided further relevant documents and interviews with social landlord’s staff. We describe the local authority position first, and then that of housing associations and co-ops.

LEASES

4.2 We analysed the leases of both local authorities and housing associations. Good practice guidance has in recent years stressed the importance of the lease in relation to anti-social behaviour nuisance (see, for example, SFHA, 1996, Housing Policy and Practice Unit, 1995). There appear to be 2 purposes behind such guidance. The first is to enhance the effectiveness of the lease as a basis for legal action. The second is to use the lease as a means of communicating the expected standards of behaviour to the tenant.

4.3 Case study landlords acknowledged both of the purposes acknowledged in good practice guidance:

A number of years ago we revised the tenancy agreement to specifically make reference to visitor's behaviour. All the standard things that people seem to all have in their tenancy agreements were made explicit. We can now go to people and say 'you're breached clause 15 of your tenancy agreement'. We can raise a notice of proceedings, under section 15 and breach of tenancy clause 7 and that way we are cutting down any of these problems ….. It is also helpful from the tenants' point of view, so that they can see what obligations it places on us and on their neighbour. (Housing Manager, Local Authority B)

4.4 In relation to the first purpose, the significance of the lease is that it allows the landlord to raise an eviction for breach of tenancy (under ground 1 for secure tenants, or ground 13 for assured tenants) where the circumstances do not fit within the other statutory grounds. For example, the lease might expressly cover the behaviour of visitors who until the recent changes to the law were not covered by the statutory nuisance grounds (grounds 2, 7 and 8 for secure tenants, and ground 15 for assured tenants). These grounds were discussed in detail in Chapter 2. The first aim has clearly been affected by the recent substitution of new grounds for eviction in anti-social cases. This point is discussed in more detail below. The obligations in the lease might also be used as a foundation for interdict, and this function has not affected by the legislative changes.
Local authority leases

4.5 The local authority leases were drafted with no common style or content. There is a model secure tenancy agreement (MoSTA) whose use is endorsed by the Chartered Institute of Housing in Scotland and the Scottish Office (O’Carroll, 1997). However, it is clear that most authorities had not adopted it as a model either for their tenancy agreement in general, or for the clauses relating to neighbour nuisance and anti-social behaviour. This may be due, in part, to the timing of its publication which was some months after local government reorganisation created a need for new leases. However, there was also some evidence, from the case studies, of reluctance to adopt it on the part of some landlords.

4.6 The relevant clauses are 3.1 – 3.7 headed ‘Respect for others’. They are considerably more detailed than anti-nuisance clauses in leases have traditionally been, and clearly go beyond the reach of the most relevant statutory grounds as they were at the time MoSTA was published. The MoSTA clauses expressly cover the behaviour of visitors as a cause of nuisance. The potential victims are listed as including the landlords’ employees, contractors and agents, and generally ‘any person in the neighbourhood’, a phrase which also confirms the geographical focus. The behaviour which would be in breach of these clauses is described as ‘anything …. which could reasonably cause nuisance or annoyance to other people, or which amounts to harassment of other people’. A long list of specific examples is given which includes:

- noise nuisance
- failing to control pets
- immoral or illegal use of the house
- using or selling drugs or alcohol
- failing to control children
- harassing or assaulting persons for any reason including race, gender, religion, and disability.

The lease expressly states that these categories are not exhaustive of the general concept. The geographical focus is the house and ‘the neighbourhood’.

4.7 Case study landlords varied in their views on MoSTA. Some (unlike most councils) had used it as a basis for reviewing their lease:

*(Our lease) is in plain English, it is comprehensive. That was a big decision because there was a view that it should you go for something that succinctly puts down your rights and responsibilities or should you go the other way and … and say it is a valuable document, keep it as source of reference …. So we thought we would go for that. Then when the Model Tenancy Agreement came up, we thought there is value in looking at that as well and basically I would say that the principles of the two the Tenancy Agreements were the same… we have taken stuff from (our lease) reformed it and tried to tailor it.*

*(Housing Manager, Local Authority E)*

4.8 Others thought that MoSTA was too detailed for their needs:

*Also there is the Model Secure Tenancy Agreement - pages and pages of the stuff - it’s just too daunting. I don’t see a need for going into it in quite so*
much detail. That's overkill. At that stage, it's not so much what is written down, it's if the housing officer is going over the tenancy agreement at the start and should explain the clause to the tenant. Give them some examples. That would be a more effective way of getting the tenants attention. The MoSTA has a massive list which people won't bother reading'. (Solicitor, Local Authority B)

4.9 The latter comment suggests that there may be a potential conflict amongst the desired aims for tenancy agreements: clarity and comprehensiveness, may increase length which in turn may interfere with communication. In defence of MoSTA it may be said that a summary – much shorter than the main document - is provided expressly for the purpose of discussing the obligations of the lease with tenants.

4.10 Some of the leases included very short and general anti-nuisance clauses with no detailed specification of what behaviour might constitute a nuisance. However, vague, general, and simple formulae were in the minority: most were more detailed. There were substantial variations on each of 4 dimensions of variation mentioned above: the agent of the behaviour, the victim, the nature of the behaviour, and the geographical focus. The majority of leases tried to extend the reach of the lease along one or more of these dimensions above. Here is one example:

**Figure 4.1 Example of a local authority lease clause of anti-social behaviour**

<table>
<thead>
<tr>
<th>Responsibilities to your neighbours</th>
</tr>
</thead>
<tbody>
<tr>
<td>You must be a good neighbour. This means that you and anyone living in or visiting your house must not annoy, harass (including racial or sexual harassment), cause nuisance (such as running a business or other commercial activity from the house), act violently or use the house as a base for anything illegal (such as drug dealing). This applies not just inside the home but also outside it.</td>
</tr>
<tr>
<td>By signing this agreement you are assuring us that you will act responsibly and be a good neighbour.</td>
</tr>
<tr>
<td>If you break any of these conditions we will go to court to get a court order to evict you.</td>
</tr>
</tbody>
</table>

4.11 So even if few leases copied MoSTA, or were as comprehensive in the way they dealt with anti-social behaviour, there were signs that good practice guidance was having an influence on the drafting of leases. In addition, attempts were being made to enhance legal effectiveness by clarifying or extending the scope for eviction and interdict.

4.12 However, some interviewees felt that the precise wording of the tenancy agreement made little difference in court in eviction actions:

I don’t think that the wording of the lease makes much difference. If there were a breach of tenancy conditions, the council would still have to show that it would be reasonable to evict. Changing the wording would not achieve that much difference in court. That said, there could be other reasons for
strengthening the lease - to let tenants show where they stand. (Private solicitor, court B)

Sometimes we go on breach of tenancy but it is usually just an adjunct to the nuisance issues.... It doesn’t really matter whether it is because they are breaching the term of the tenancy agreement that says ‘don’t play music louder’, or because they are doing it on the anti-nuisance ground.... In my experience anyway, it really makes little difference. (Solicitor, Local Authority A).

4.13 However, this whole question of the drafting of the lease appears to be much less of a practical issue for the future because of the substitution of extended grounds for eviction in the Housing (Scotland) Act 1987 and the Housing (Scotland) Act 1988 by the Crime and Disorder Act 1998. The leases we examined had all been drafted before these amended grounds came into operation. As chapter 2 notes, the relevant grounds now clearly cover the conduct of visitors, expressly provide for a wide range of potential victims, and have a wide geographical focus extending some distance away from the dwelling house. It is hard to see how a landlord would need or want a broader prohibition in its leases. Similarly, it is difficult to imagine a court considering it reasonable to evict for breach of tenancy if the circumstances could not be fitted within the new grounds.

4.14 So, the lease may no longer make much of a difference when eviction is sought. However, the terms of the lease might somehow influence decisions on whether it is reasonable to evict, (for example because the sheriff takes account of how clearly the “message” has been put across to the tenant). But, it would be premature to conclude that the lease does not matter. Nor only might it influence the sheriff’s decision on reasonableness, we also have to consider its role as a foundation for interdict, and the second aim mentioned above – communicating standards of behaviour to the tenant.

4.15 Tenancy agreements of public sector landlords were analysed in the Baseline Study, and the more recent Tenancy Rights research assessed the leases of both public sector and housing association landlords. Both these studies found that many public landlords had leases which were poorly presented and over-legalistic (Clapham et al., 1995; Mullen et. al., 1997). Our scrutiny of leases for this research suggested that there had been definite improvements. No leases were as legalistic or difficult to understand as the worst examples in the Tenancy Rights research, and there was a general shift towards plain English drafting styles. A plainer drafting style was thought by some to assist both staff and tenants:

The original Tenancy Agreement that was used was a bit unwieldy, the whole language, the terminology was Edwardian, sort of Dickensian, very much in legalistic terms. Now the Tenancy Agreement is quite crystal clear...common English, easily understood. So I suppose that that does help our staff in managing cases, talking to tenants about their responsibilities. (Housing Manager, Local Authority D)

4.16 Rather than change the lease, one local authority had produced a ‘Good Tenants Charter’. This was a separate document in plain language, which aimed to spell out the key elements of tenants’ responsibilities. The council had taken various steps to publicise the charter and its message that tenants were entitled to peaceful enjoyment of their homes, and that nuisance behaviour on council estates would not be tolerated. The council issued to all
new tenants in leaflet form the good neighbour charter and a code of conduct for housing tenants. New tenants were also required to sign an acknowledgement that they had received, understood, and agreed to abide by the charter. The charter and code of conduct were also to be issued to existing tenants whose behaviour was giving cause for concern. The council’s approach was emphasised by this sentence in the charter:

*Actions against people causing nuisance will be pursued relentlessly, and will not be dropped unless the nuisance behaviour finally stops to the satisfaction of the council.*

4.17 The charter and code of conduct gave some guidance on the meaning of anti-social behaviour, although the scope of these documents was somewhat broader than the issues of anti-social behaviour, since they covered all aspects of ‘good neighbourliness’. They were also prefaced with a general statement of the rights of tenants, which included ensuring that:

- every tenant enjoyed their right security of tenure in their home
- every tenant enjoyed their right to a decent environment
- every tenant enjoyed their right to live peacefully without disturbance for neighbours
- every victim of nuisance behaviour received swift and effective support

4.18 The charter included general statements that tenants should not cause a nuisance to neighbours and should observe their tenancy conditions. There was also specific reference to excessive noise, nuisance caused by pets, disposal of rubbish, failure to keep clean and maintain gardens and communal areas, the behaviour of pets and the behaviour of children.

4.19 The local authority staff thought that the charter had been effective in reducing the number of complaints about neighbours. Despite the fact that charter was separate from the tenancy agreement, they had been able to cite it in court to demonstrate that tenants should be aware of their obligations:

*All of these, from the Housing Management side of things, are good tools to try and make the tenant aware of his obligations but there is that legal input where I want to be able to hammer an anti-social tenant in court. The way I can do it is to say, ‘you knew what you were doing, and you knew you were breaking the tenancy agreement and the Good Neighbour Charter. We've explained them all to you in plain English.’ That way you are seeking to persuade a Sheriff that it is reasonable to evict because he knew exactly what he was doing.’* (Housing Manager, Local Authority C)

4.20 This landlord’s approach to its charter suggests that purpose of more effective communication with the tenant may be seen as two-fold. It may reduce the incidence of anti-social behaviour. It may also make it easier to evict in cases taken to court. This strategy of using a document other than the lease (which may be seen as similar to the MoSTA summary albeit with a narrower focus) may also reflect doubts that the lease itself is the best document to use to communicate standards of behaviour. Some housing officers did feel that they could use the lease to advise tenants of their rights and obligations but there was a general view that this would not stop the behaviour of all tenants:

*We make sure that they are aware of the conditions of tenancy in relation of what they must and must not do and we give them a handbook which explains...*
in detail about that sort of thing. I think while these things are important and really have to be there, I don’t think these impinge very greatly on the minds of people when they are engaged in anti-social behaviour. They simply don’t think about it. (Housing Manager, Local Authority E).

I think in cases where they are easily resolved and you quote the terms of tenancy agreements, people who are prepared to be reasonable take notice. That is effective then. (Housing officer, Association D)

4.21 Moreover, other comments suggested that tenants did not pay attention to the discussion of lease terms at the initial interview, being more concerned to obtain the keys to their new home.

4.22 The doubts expressed about tenants’ comprehension of leases, or lack of interest in the detailed terms of leases, perhaps suggests that we should accept legal effectiveness as the primary goal in drafting leases. However, this is less of an issue, given the changes made by the Crime and Disorder Act 1998. Social landlords may consider whether communicating the standards of behaviour expected is best achieved by the lease itself or other forms of literature, and also how much by way of communicating messages about behaviour can reasonably be expected from the initial interview when the lease is signed.

**Housing association leases**

4.23 Housing association leases displayed much less variety of content. This was due to the widespread adoption of the Model Assured Tenancy Agreement (MATA) of the Scottish Federation of Housing Associations (SFHA, 1997). The Tenancy Rights research (Mullen et al, 1997) noted almost universal acceptance of MATA, and the survey for this research suggests that MATA is still the lease preferred by nearly all member of the housing association movement. The MATA was originally published in October 1990 and a revised version was published in July 1997. The revisions were mainly directed towards the purpose of achieving a closer correspondence between secure and assured tenants’ rights, most importantly as regards eviction for rent arrears.

4.24 The original version of MATA covered the behaviour of visitors. It referred only to neighbours as victims, but a new sub-clause in the revised version covers violence and harassment directed against association staff, committee members and representatives. As regards the behaviour, there is a general prohibition on causing a nuisance or annoyance and a specific prohibition of harassment on grounds of race, colour, religion, gender, sexual orientation, disability, and (in the newer version) age. The majority of the leases supplied with the questionnaires had adopted the revised MATA. However, a number had amended the section on the ‘Use of the house’ (which covers nuisance) to include additional clauses or to vary clauses. Some examples are given below.

4.25 The MATA, and most housing association leases would, therefore, allow for eviction in some circumstances not covered by the original form of the nuisance grounds. However, the changes to the grounds made by the Crime and Disorder Act 1998 apply equally to housing associations. For them also, the drafting of the lease is likely to have less significance in future in establishing the legal basis for eviction, although the MATA will continue to provide an effective legal basis for interdict.
Figure 4.2   Examples of additional anti-social clauses in housing association leases

The tenant agrees:

Not to use or allow the house to be used for illegal or immoral purposes, in particular drug-dealing.

To keep the noise, at any time, from radio or audio visual aid equipment, musical instruments or any similar equipment at a level which does not cause nuisance or annoyance to neighbours and at a level which cannot be heard outside the building.

To comply with the association's written approval in relation to the keeping of pets and to accept that any failure to comply will be treated as a breach of the tenants' obligations under his/her tenancy and will require that the offending pet/s be removed from the premises within a period of 7 days and not more than 21 days.

Not to store explosive/highly flammable materials in the house/external store, outhouse or garage.

To make proper use of any refuse disposal system supplied and to deposit household refuse and salvage as such times as be directed. No accumulations of ashes, sticks, brick, stones, coals, boxes, wastepaper, refuse or salvage will be permitted in the garden, communal stores or vacant ground of the subjects of let.

Not to park or allow visitors to park caravans, boats or commercial vehicles in any area within the boundaries of the estate of which the house is a part without the prior consent of the association.

(Examples drawn from a number of HA leases)

LOCAL AUTHORITY POLICIES

4.26   The documents supplied along with the questionnaire were included both policies and guidance manuals for staff. Policy documents had generally been prepared for and/or adopted by local authority and housing association committees. However, individual authorities tended to supply only documents of one or perhaps 2 types rather than send documents in all categories, or even all the material they claimed to have available. Thus, not every authority who claimed to provide written guidance for tenants (55% of respondents) gave us a copy. However, the extent and nature of documents supplied did tend to back up the questionnaire returns which showed a large increase in the proportion of local authorities claiming to have written policies on anti-social behaviour since the Baseline Study (Clapham et al, 1995).

4.27   Given that the documents from different local authorities were often written for different audiences (tenants, officials etc) it is not surprising that some were far more detailed than others, particularly with respect to legal remedies. The majority of local authority documents were recent – less than 3 years old. Again, not surprising in view of the reorganisation of local government areas in 1996.

4.28   As regards terminology, ‘anti-social behaviour’ was more popular than ‘neighbour nuisance’ but there was no clear sense emerging from the documents that the choice of terminology indicated a particular attitude towards the problem. However, one council did try to distinguish different expressions. Their policy and procedure manual commented that the use in the past of the terms ‘anti-social behaviour’ and ‘neighbour nuisance’
interchangeably ‘had not been helpful in the establishment of uniform policies and procedures based on good practice’.

4.29 Many of the documents showed some awareness of the issues of definition discussed in our introduction, by discussing terminology in this way, or by stressing the variety of types of behaviour that cause complaint, or by grading behaviour according to perceived seriousness. Some authorities did not seek to define the ‘problem’ at all being content to tell tenants what to do if they wished to complain. However, the majority did attempt some definition or indication of the nature of the problem. Amongst those, 3 part classifications were popular with the categories tending to be varying degrees of seriousness. A typical example is given below. Unsurprisingly behaviour classified as more serious was more likely to lead to legal action, or to legal action at an earlier stage. However, some authorities contemplated legal action even for the least serious category if it persisted for a long enough period.

4.30 The degree of detail given about housing management procedures or procedures for involving legal action varied enormously, so we were not able to build up a picture of how all local authorities handle cases involving legal action.

**Figure 4.3 Example of landlords categorisation of anti-social behaviour**

<table>
<thead>
<tr>
<th>Category One – Extreme Cases of anti-social behaviour</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category One disputes include allegations of drug-dealing, criminal dishonesty involving violence or house-breaking, assault, violence, criminal threats, racial harassment, child abuse, serious harassment, serious damage to property including fire-raising and any other form of anti-social behaviour requiring an urgent response.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Category Two Disputes – Serious Cases of anti-social behaviour</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category Two disputes include allegations of aggressive/abusive behaviour, frequent disturbances, vandalism (i.e. relatively minor damage to property), drug/solvent/alcohol abuse, verbal/written harassment, frequent noise pollution, and any other form of serious anti-social behaviour requiring a priority but not urgent response.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Category Three Disputes - Neighbour Nuisance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category three disputes include allegations which involve simple breaches of tenancy conditions e.g. pet nuisance, pets kept without permission, untidy gardens, minor noise pollution, access disputes, litter, running a business without permission, car repairs etc. all to the detriment of neighbours ‘peaceful enjoyment’ of their homes.</td>
</tr>
</tbody>
</table>

4.31 A significant minority of landlords included performance standards for dealing with anti-social behaviour cases. For example the council quoted above promised responses by the housing department within these time scales:

- Category One - 1 working day
- Category Two - 3 working days
- Category Three - 5 working days.

4.32 Nearly all the local authorities supplying documents explicitly stated willingness to seek legal remedies in appropriate cases, although the use of legal remedies (in particular, eviction) was often stated to be a last resort. Eviction, interdict, specific implement of
tenancy obligations, and enforcement of title conditions were all mentioned in some documents, but only the first two frequently.

4.33 A significant minority mentioned, or recommended, the use of mediation in appropriate cases. Consistent with the questionnaire returns, the references in general appeared to be to mediation by local authority staff rather than by independent mediators. Mediation is discussed in more detail in Chapter 5.

4.34 The general impression given by the documentation is that the local authority sector is comfortable with the use of eviction, and to a lesser extent other remedies, in response to anti-social behaviour with nearly all discussing the use of legal remedies to some degree. This impression is perhaps slightly at odds with that given by the questionnaire, which suggested that only 11 local authorities raised more than one eviction action in 1995/96 and only 18 more than one in 1996/97. Furthermore, only 4 local authorities raised more than one interdict in either year and the numbers raising any were only 7 and 9 respectively. On the other hand, nothing in the documentation suggests that local authorities are over zealous in their use of legal remedies. Evidence for that included statements that eviction was a last resort, the popularity of categorising behaviour according to seriousness, and the same low figures for legal action in the questionnaire returns.

HOUSING ASSOCIATION POLICIES

4.35 Eighty-four housing associations (61%) and 14 co-ops (82%) supplied policy and procedure documents along with their questionnaire returns. These are discussed together in this section. As in the local authorities, these varied widely. In some cases, the policy was a 1 or 2 page paper. In others, the document was a detailed and comprehensive manual containing policies and procedures. The titles of these documents also varied. The most popular titles were 'Anti-social Behaviour Policy' or 'Anti-social behaviour and Neighbour Disputes'. However, there were a number of policies which encompassed the wider topic of 'Estate Management' and a few 'Good Neighbour' policies. A small association, which provided support to people with a mental health problems, supplied the most unusual policy. This association had a document entitled 'Ending Occupancy Agreements', which discussed the special circumstances of the role of the organisation and how it would deal with 'gross misconduct' by occupants of its property.

4.36 Most (but not all) attempted to define the subject and various definitions were offered. Most of these were very general. Some examples are given below:

\[\text{Anti-social behaviour is any action which contravenes the tenancy agreement and takes place in, or in the vicinity of the tenancy and causes, or is likely to cause, disturbance to the people living within those tenancies}\]

\[\text{Anti-social behaviour can be defined as behaviour which affects a persons quality of life and peaceful enjoyment of their home and, which in (name) housing association's opinion constitutes anti-social behaviour}\]

\[\text{Nuisance and annoyance will be deemed by the co-operative to have been caused where tenants' quiet enjoyment of their homes has been disrupted by neighbours, whether knowingly or unknowingly, including drug-dealing,}\]

67
playing loud music, allowing unruly children or failing to control dogs or other domestic pets'

4.37 Categorisation was common. Four-part classifications were more popular than 3-part groupings - though the content of the groups varied. Figure 4.3 show a typical example:

**Figure 4.4 Housing association policy example A**

<table>
<thead>
<tr>
<th>Category A - Extreme Behaviour.</th>
<th>This category includes cases such as drug-dealing, unprovoked assault, violence and anti-social behaviour.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category B - Serious Anti-social Behaviour</td>
<td>This includes cases of threatening and abusive behaviour, frequent serious disturbance or vandalism and damage to property</td>
</tr>
<tr>
<td>Category C - Nuisance cases</td>
<td>This will include cases of excessive noise; family disputes affecting neighbours, control of pets, behaviour of visitors or children and infrequent disturbance.</td>
</tr>
<tr>
<td>Category D - Other breaches of Tenancy</td>
<td>This category will include complaints about garden upkeep and litter.</td>
</tr>
</tbody>
</table>

4.38 While categorisation by perceived seriousness of behaviour was common, some associations had adopted an alternative classification by responding agency. Figure 4.4 shows an example which was typical of this approach.

**Figure 4.5 Housing association policy example B**

<table>
<thead>
<tr>
<th>Category 1</th>
<th>Complaints which concern clear breaches of tenancy conditions and require a response only from housing management. e.g. neglect of gardens, dog fouling</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category 2</td>
<td>Complaints which require a response from housing management in conjunction with other agencies. e.g. disruptive behaviour, excessive and frequent noise, harassment of other tenants.</td>
</tr>
<tr>
<td>Category 3</td>
<td>Complaints which are not primarily housing matters and should be referred to more appropriate agencies or departments for action e.g. Criminal behaviour such as drug-dealing and one to one neighbour disputes.</td>
</tr>
<tr>
<td>Category 4</td>
<td>Complaints relating to racial harassment and abuse</td>
</tr>
</tbody>
</table>

4.39 As in the local authorities, some policies specified time-scales for responding to complaints. Usually, staff were expected to respond in 24 hours to the most serious allegations while responses to complaints about stair-cleaning and gardens were typically stated as 5 to 7 days.

4.40 Most associations expressed willingness to take legal action and almost all mentioned eviction action and interdict. Some mentioned a wide variety of legal remedies including specific implement, by-laws, compulsory transfer and noise legislation. A few discussed the use of title deeds where problems had been caused by owner-occupiers. A number had an appendix to their policy and procedure document, which outlined the range of remedies available. The similarity in style of many of these suggests that they were copied from a single source. While most association’s policies were positive about legal remedies, a few expressed reservations. One stated: 'Due to the nature of anti-social behaviour and the lack of clear legal remedies, it may not always be possible to find a solution to the problem'. It
should also be noted that, though many policies indicated that associations would, in principle, be prepared to use a wide range of remedies, the questionnaire returns often indicated that, in practice, these were never used.

4.41 Many of the policy documents spelt out the procedures that staff should follow in some detail. A number also included appendices with complaint forms, interview record sheets, witness statements, standard letters requesting information from the police and standard warning letters for breaches of tenancy conditions. A number of policies also indicated that there was a central recording system for logging complaints and some noted that regular reports would be made to the associations’ committee.

4.42 A number of the policies also discussed non-legal remedies. Many discussed mediation - though this was often by a housing officer. Some indicated that an external independent mediation service could be employed in appropriate cases and a few provided addresses of such agencies. The emphasis of the policies showed considerable variability. A number indicated that they had ‘vetting’ policies for new applicants and would not house people whose references indicated previous problems with anti-social behaviour. Others indicated that they would aim for sensitive lets, to reduce the likelihood of problems arising. A typical, though detailed, example is noted below in figure 4.5:

**Figure 4.6 Example of role of allocation policy**

<table>
<thead>
<tr>
<th>The association recognises the part played by insensitive or inappropriate allocations in potentially contributing to neighbour disputes, whilst also acknowledging the rights of all people in housing need to gain access to association housing.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>(Name) Housing Association</strong> will:</td>
</tr>
<tr>
<td>always allocate property on the basis of need but, within its policy, will aim to create settled communities whilst avoiding obvious lifestyle conflicts where possible, e.g. avoiding:</td>
</tr>
<tr>
<td>• large numbers of children sharing a common access</td>
</tr>
<tr>
<td>• too many large families up one stair</td>
</tr>
<tr>
<td>• young people and elderly people immediately above or below one another</td>
</tr>
</tbody>
</table>

4.43 A few policies stressed the importance of design measures, such as sound insulation, to reduce potential problems. Many emphasised the role of other agencies. In some cases, this was only to note that other agencies should be contacted in appropriate circumstances. However, a number of policies had sections entitled 'Multi-agency working' and suggested that links should be established with the police, social work and environmental health. Only a few suggested that this had actually been done.

**SUMMARY**

4.44 Examination of the content of leases of social landlords raised issues of their technical adequacy, and of their value as a tool for communicating expected standards of behaviour. The broader grounds for eviction substituted by the Crime and Disorder Act 1998 have greatly reduced the scope for extending the scope for eviction by contract. It could now be said that the terms of the lease are of little importance in establishing that grounds for
eviction exist, although the terms of the lease remain significant with regard to interdict and perhaps other remedies. Views were divided with regard to how useful the lease is as a medium of communication with the tenant.

4.45 Reviewing the policies of social landlords in general suggests that their approach to anti-social behaviour has developed over the last 5 or 6 years. More effort has gone into planning responses to anti-social behaviour than was apparent at the time of the Baseline Study (Clapham et al., 1995) and the study of housing associations by Kearns and Malcolm (1994). Although the documents suggest widespread readiness among landlords to use eviction, and to a lesser extent other remedies, in response to anti-social behaviour, the postal survey suggests that a substantial proportion of social landlords have made little or no use of legal remedies in this context. Both local authority and housing association policies were broadly consistent with good practice guidance, and where more detailed documents were supplied, showed awareness of the complexity of the issues involved.
CHAPTER 5  CASE STUDY LANDLORDS

INTRODUCTION

5.1 In this chapter we give an overview of the characteristics and approach to the use of legal remedies of the case study landlords, as a prelude to the following chapters which take a thematic approach analysing each remedy in turn. As a consequence, much of the detailed information about the use of legal remedies in practice is in the following chapters.

5.2 In order to examine landlord practices, and their experience of the legal process in more detail, we selected 5 local authorities and 5 associations/co-operatives to act as case studies. The main criterion for the selection of local authorities was that they had taken cases to court. This was both to ensure that we had a substantial sample of cases in which legal action had been taken to analyse, and interviewees with actual experience of the use of legal remedies in this context. Therefore, apart from the postal survey, our findings reflect the experience of local authorities which pursued legal action to greater extent than those which did not. However, the selection of local authorities was not based on use of legal remedies alone. Within the group making substantial use of legal remedies, we had regard to stock sizes, the mix of remedies in use, the desire to achieve a spread of rural and urban locations and management factors. This data was derived mainly from the postal survey.

5.3 Housing association landlords were included in order to reflect a major tenure divide within the social rented sector. However, in the interests of coherence, and the manageability of the project we decided that the housing association or co-op should operate in the same area and use the same sheriff court as the local authority. This strategy helped to produce a mix of landlords with more or less experience of legal action. The other key criterion was to ensure that there was a range of different types of association. The selection criteria, and how the case study landlords relate to them, are summarised in Appendix 1.

LANDLORDS PRACTICES

5.4 The purpose of the case studies was to examine these issues in more detail, and, more generally to build up a picture of social landlords’ experience of the legal process. The operational styles of each case study are outlined below.

Local Authority A

5.5 Local authority A covered a predominantly urban area. It had medium sized stock, in relation to other Scottish local authorities, and was predominantly urban in character. The authority had taken some court action in both years of the study period and had also made some limited use of interdict. The authority did not use any other legal remedies.

5.6 Authority A did not have a comprehensive written policy statement or a staff procedure manual for dealing with anti-social behaviour. Nor did it distribute literature to tenants on this topic. Definitions of anti-social behaviour, and procedures were worked out through practice. However, a 1995 report to the housing committee provided a statistical analysis of complaints. The primary causes of anti-social behaviour were categorised as excessive noise (67%) drink/drugs (15%), harassment (15%), and violence/threats (3%). The
same report also noted that there was often a secondary cause, for example, in over 40 per cent of cases referred noise was linked to drink or drugs, and in about 35 per cent noise was linked to “general harassment”. These types of behaviour acted as a working definition of anti-social behaviour. The report also noted that anti-social behaviour was not confined to any one age group.

5.7 The council had been seriously concerned about the problem of anti-social behaviour since the early 1990s when it had set up a working group on anti-social behaviour. This had recommended setting up a specialist team to deal with anti-social behaviour. This was first established as a pilot scheme and became fully operational in 1994. Authority A was the only case study authority that had a specialist unit. The team consisted of several investigators whose functions were to investigate complaints, establish the facts, and try to achieve a resolution of the situation. If that failed they were expected to gather the evidence necessary for legal action and to liaise with the council’s solicitors.

5.8 However, even after the team was established, the council’s policy was that complaints should initially be investigated and, if possible, resolved by the neighbourhood offices. Cases were referred on to the specialist team only if the neighbourhood office felt unable to resolve the matter. Within the neighbourhood offices complaints against neighbours were dealt with by generic housing officers. If satisfied that a complaint was well founded, the officer would give the tenant a warning in writing, and monitor the situation. If the behaviour continued, the neighbourhood office would serve a final warning, although there might be 2 or 3 warnings before the final warning. Therefore, a complaint might stay with the neighbourhood office for several months, and by the time of referral to the specialist team a thick file might have been built up.

5.9 Over time, the specialist unit had become more selective about accepting complaints and had begun to send cases back to the local office, when they thought insufficient work had been done, with suggestions for further action. Once the team accepted a complaint, they would review the file. Then they would inquire afresh into the facts. They formed their own opinion of the situation rather than to rely on neighbourhood office’s perception. They would interview the principal complainer initially, then any affected neighbours, and finally the person allegedly responsible for the anti-social behaviour. Where appropriate, they spoke to other agencies including the social work department, the police, and the health service.

5.10 After the initial contact the situation was monitored. If there were further complaints the alleged wrongdoer would be visited again. Where they felt it appropriate, they would give the principal complainer a telephone number for a ‘hot-line’ which was available 24 hours a day. This allowed complainers to call when incidents were occurring. Members of the team, and a rota of housing officer volunteers, would go out to witness such incidents at night and at weekends.

5.11 The team claimed to resolve 70-80 per cent of cases referred to them without taking court action. Some cases were resolved by the behaviour complained of ceasing. In such cases the team monitored the behaviour for a substantial time to ensure that the improvement was not merely temporary. Where they were satisfied (in consultation with the complainer) that the situation had improved, they would notify the complainer and person complained of in writing that the situation had been resolved, although an investigation would be revived if there were further complaints. In other cases, the complaints might stop because either the
complainer or person complained of moved to another house. In a further group of cases the person complained of simply abandoned the tenancy.

5.12 The only legal remedy used to any substantial extent was eviction. If the specialist team were unable to resolve the situation they would consider legal action. As a first step the solicitors would be asked to serve a notice of proceedings. The team would continue to monitor the situation and would instruct the raising of summons if the offending behaviour continued.

5.13 The team were responsible for gathering evidence for any court action and liaison with the council’s solicitors. Members of team had given evidence themselves in all cases which had proceeded as far as a proof: they had often witnessed relevant incidents as a result of being called out. Other housing staff who had attended incidents would also be used as witnesses. This authority also used the principal complainer and other neighbours as witnesses wherever possible. All the contested cases had resulted in a decree for possession, and such decrees were always enforced, although in practice the tenant might leave before the decree was executed.

5.14 Other legal remedies were used rarely or not at all. The use of interdict was confined to unusual situations. There were title conditions in right to buy conveyances which forbade nuisance but there had never been an attempt to enforce these. Similarly, there was no attempt to seek specific implement or enforce by-laws in cases of complaints about neighbours’ behaviour.

5.15 There was no mediation service as such but some housing officers and members of the specialist unit had received training on mediation. The team had good links with other agencies (police, social work and health) and often attempted to enlist support to resolve problems such as alcohol dependency and mental illness.

5.16 The council’s approach and the role of the specialist team was due to change as we were completing our fieldwork. In April 1998 it was proposed that 3 new specialist teams were to be created each including 1 investigator and other officers, although the central team was to remain. There was intended to be more emphasis in future on developing best practice, and auditing neighbourhood office performance.

Local Authority B

5.17 Local authority B was a city with a large public sector housing stock. It had a high rate of court action for the period under investigation and had also made substantial use of interdict. It did not make use of any other legal remedies.

5.18 As in authority A there was no formal written policy on anti-social behaviour and no staff procedure manual, however, there were leaflets for tenants which were in the process of being updated at the time of the research. Definitions and procedures were matters of practice. There was no statistical information available on the incidence of anti-social behaviour, though estimates were provided. Noise was said to be the largest single source of complaints, but complaints covered a wide variety of behaviour. The council had a definite policy of evicting tenants who had been convicted of using the house for drug-dealing. The council treated anti-social behaviour as a major priority, and had been actively using legal remedies for several years.
5.19 The authority had a decentralised housing service with a number of neighbourhood offices. Complaints were initially handled by neighbourhood officers who attempted to resolve complaints themselves without recourse to legal action. The first step was to categorise the complaint according to how serious it appeared from the initial information, and to set a target of a certain number of days for completing initial investigation which included interviewing neighbours and other witnesses. If the complaint was deemed well founded the tenant would receive a warning. If the behaviour persisted the council would consider legal action, but normally only after several warnings. In certain types of case the council would begin legal action after the initial investigation without going through a process of warning, notably in cases of conviction for dealing drugs from a council house. The decision to instruct legal action was taken by the team leader in the neighbourhood office. Neighbourhood offices dealt directly with the legal section without any intermediary.

5.20 As in authority A, the council said that the great majority of complaints were resolved without resort to court action. The number of NOPs served annually was only a small fraction of the number of complaints received and only 1 in 10 NOPs were followed by a summons for eviction. The NOP was served by the legal department. Thereafter the initiative lay with the housing department to request further action. However, it was the practice of the legal department to contact the housing department when the notice had expired (after 6 months) to see if they wished another served.

5.21 There was no out of hours service to respond to complaints. The council relied on the police to provide evidence of incidents occurring outside office hours: *The line we have always taken with professional witnesses is that there is an out of hours service - it's the police* (Housing Manager, Local Authority B). The council used housing staff and the police as professional witnesses, but in general they tried to persuade neighbours to give evidence in court. Private investigators had been used experimentally but were not regarded as a major tool.

5.22 The decision to raise a summons for eviction was made by the housing department although they almost invariably followed the legal department’s advice. The council were usually successful in contested cases in obtaining a decree for possession, and almost always successful in obtaining interdict. Decrees for possession were always enforced, although in practice the tenant might leave before the decree was executed. If improvement in behaviour did not follow interdict, the council began eviction proceedings.

5.23 There was liaison with other agencies particularly the police and social work. Links with the police were more geared towards exchange of information than producing solutions. There was also an independent mediation service operating in the area to which some cases were referred.

**Local Authority C**

5.24 Local authority C was another city with a large housing stock. It had a decentralised housing service with a number of neighbourhood offices. The authority had a fairly high rate of court action but had not used any other legal remedies during the study period. It had used specific implement in the past but had ceased doing so by the time of the fieldwork. Interdict was used only in a very restricted range of cases.
5.25 Authority C had consciously taken a more hard-line approach to anti-social behaviour since 1996. Following a change in the Convenor of the housing committee, clear political direction was given to the housing and legal departments to be less tolerant in their approach to tenant misbehaviour, and to be more ready to evict tenants whose behaviour was deemed unacceptable. However, there had clearly been some hardening of the line before this: guidance to staff had been amended so that complaints were no longer required to be in writing, a complaint from one person was enough to trigger action, and in cases of serious misbehaviour the NOP was served immediately following the complaint.

5.26 One of the consequences of the increased profile of policy in this area was the production of a good neighbour charter. New tenants were required to sign an acknowledgement that they had received, understood, and agreed to abide by the charter. The charter and code of conduct were also issued to existing tenants whose behaviour was giving cause for concern. At the same time as the launch of these public documents, housing staff were given an ‘implementation pack’ detailing procedures for dealing with anti-social behaviour.

5.27 The authority had also set up a central support team within the housing department consisting of neighbourhood managers, housing officers and central support staff. There was also representation from the legal service and the social work department. Its functions were to provide advice and support to neighbourhood managers dealing with difficult cases, to ensure consistency in implementation of the charter, and to collate, share and publicise best practice in dealing with nuisance behaviour. It did not have the investigative role of the specialist team in authority A.

5.28 The new guidance to staff was very detailed including a statement of procedure to be followed for investigating complaints in general, and specific guidance on the use of the code of conduct, complaints by and against owner-occupiers, dogs, use of specific implement and interim interdict, and on writing letters. There was also a new system of recording complaints. The procedural guidance distinguished between ‘minor complaints’ and ‘serious complaints’, but these concepts were not defined. Minor complaints were to be investigated by interviewing the complainer, and all potential witnesses, and contacting other agencies where appropriate. Where it appeared to be a neighbour dispute, the housing officer was expected to initiate mediation (see below). If clearly about nuisance behaviour further action should be taken. After inquiries had been completed the housing officer was expected to take an initial decision about appropriate action, for example, issuing a verbal or written warning. The housing officer would then continue to monitor the case. The guidance on minor complaints appeared to assume that legal action would not be taken, although it did suggest that a minor complaint might turn into a major complaint.

5.29 The serious complaint procedure was more formal, suggesting for example, those 2 officers rather than one should be present when interviewing the complainer, and visiting the person complained about. It also presupposed that eviction was the appropriate legal response. If a major complaint could be verified immediately, for example by the police or by witnesses, an NOP was to be issued immediately. In ‘less serious’ cases, the tenant complained about was to be interviewed, and sent a warning letter and a copy of the charter and code. If a further complaint was received, and NOP was to be issued. Again, other agencies were to be involved, if appropriate. If the behaviour causing complaint continued the neighbourhood manager would interview the tenant and threaten legal action which
would follow if there was no improvement. In cases involving ‘serious criminal activity’ all steps in the procedure were to be accelerated.

5.30 Interestingly, there was no specific mention of misuse of drugs or drug-dealing from council property in the charter, the code of conduct or the guidance to staff included in the implementation pack. However, the council had adopted a ‘zero tolerance’ approach to drug-dealing which was confirmed in a separate memorandum issued to housing staff.

5.31 The council was successful in obtaining a decree for possession in most cases, and such decrees were always enforced, although in practice the tenant might leave before this happened. Eviction was the only legal remedy being used to any extent. The guidance to staff stated that ‘The Council will not be granted interdicts raised on behalf of tenants. Tenants seeking interdict … must be advised to obtain these for themselves.’ Interdict had only been used in the past to deal with behaviour directed against council staff property. However, at the time of the fieldwork, this policy was in the process of change and a small number of interdicts had been served on tenants for anti-social behaviour.

5.32 The council had used specific implement where tenants failed to maintain gardens and clean common stairs. However, the council had lost a test case where the order they sought was rejected as incompetent. As a consequence they had given up using implement, although the guidance to staff continued to refer to the possibility of specific implement in the context of maintaining gardens.

5.33 As regards alternatives to legal action, there were internal protocols requiring consultation with the social work department, and a clear requirement in the guidance to contact the social work department as soon as an NOP was served in cases involving children or young people. The guidance and several interviewees referred to ‘mediation’ being provided by local housing officers, but this did not appear to be mediation in the normal sense and it was not clear whether housing officers had been trained in this.

Authority D

5.34 The area of authority D was predominantly rural, but with much of the stock located in a medium sized town. It had a decentralised housing service with a number of neighbourhood offices. It had made some use of court action for eviction, interdict and specific implement.

5.35 Authority D had begun using legal remedies against tenants beginning with eviction in the early 1990s. In 1993 a cross-departmental group had been set up to review policy in this area, and policies and procedures had been evolving since then. By the time of the fieldwork they, alone among the case studies, were using all 3 of the main legal remedies – eviction, interdict, and specific implement. A help-line that could be called outside office hours was also in operation. They also had an in-house mediation service funded by housing services, but described as performing ‘an independent, impartial role’.

5.36 They did not have a comprehensive policy statement or procedure manual, but there were various internal documents including a neighbour support protocol, a memorandum on exchange of information with the police and a statement of policy on management transfers in cases of neighbour disputes. There was no document which attempted a comprehensive definition of anti-social behaviour, although training materials for housing staff categorised
anti-social behaviour into 3 groups: neighbour disputes, anti-social behaviour and criminal activities. The same materials referred to enforcement action against the following types of behaviour:

- annoy or cause nuisance
- anti-social or racist
- threatening behaviour
- violent behaviour
- convicted of drug-dealing
- illegal activity.

5.37 The council also had a policy of seeking eviction in all cases where someone was convicted of dealing drugs from a council house, although the issue did not have as much prominence as in authority C. There were no statistics available but excessive noise from neighbours was said to be the most common cause of complaint, with some cases of aggressive and intimidating behaviour, and 1 eviction for dealing drugs.

5.38 The approach was described as incremental one beginning with general advice, proceeding to verbal warnings if behaviour did not improve, then formal written warnings, and finally legal remedies if there was no improvement in the situation. Training materials also stressed the need for a balanced and even-handed approach in handling complaints, and encouraged staff to seek non-legal solutions including management transfer of tenants, mutual exchanges of tenancies, mediation, and the involvement of other agencies or other departments of the authority.

5.39 The neighbourhood offices carried out initial investigations. Complaints in writing were preferred but not essential. The neighbourhood office decided whether legal action was required and instructed the legal service accordingly normally only after a second written warning to the tenant. The council claimed to seek interdict initially, and eviction only if interdict failed to secure an improvement in behaviour. The policy was to proceed straight to eviction following a conviction for drug-dealing from a council house, but in practice there were also non-drugs cases where the council proceeded straight to eviction.

5.40 In cases where eviction was contemplated, the neighbourhood office decided whether to serve the NOP and instruct the raising of a summons for possession. In contrast to other authorities, there was little difference between the number of NOPs and the number of summonses, indicating that by the time the NOP was served the housing service had exhausted other possibilities and was determined to seek eviction. The council was invariably successful in obtaining decrees for possession in anti-social cases. Possession decrees were generally enforced. They were, in principal, prepared to use both neighbours as witnesses and professional witnesses, but this strategy was untested in court, as no case had resulted in a defended proof.

5.41 They were also invariably successful in obtaining interim interdict. On occasion they had attempted breach of interdict proceedings where the interdict had not been obeyed, but they appeared more likely to seek eviction when interdicts were breached.

5.42 The council used specific implement for failure to keep gardens in a neat and tidy condition where tenants did not respond to warning letters. These actions were raised as small claims, and the policy was to ask the court for a decree of implement with an
alternative claim for the costs of carrying out the work required on the garden. Decrees for implement and payment of costs were invariably obtained. However, in practice, tenants often tidied up their garden once, to comply with the order, and then allowed it lapse into an untidy state again. There was limited success in recovering costs incurred by the council in doing the work. The council did operate a ‘garden aid’ scheme but eligibility was restricted to the elderly and the disabled.

5.43 As regards alternatives to legal action, the policy was to encourage involvement of other agencies where felt appropriate. There was also the option to refer neighbour disputes to the mediation service which had developed a substantial caseload, and was reported to have a high level of success in resolving cases.

Authority E

5.44 The land area covered by authority E was predominantly rural, but the population was concentrated in a number of urban centres where the bulk of the councils’ housing stock was also located. It had a decentralised housing service. It had made some use of court action for eviction but did not use other remedies.

5.45 This council had been formed as a result of local government re-organisation in 1996, and comprised of areas from several smaller authorities. As a result, they were unable to provide some of the statistics and files asked for, and were at the time of fieldwork still in the process of finalising council wide policies on a range of housing issues. There was, however, a draft of the policy in circulation, and a communication strategy, which was intended to lead to the production of a number of relevant leaflets. As there had been no formal definition in operation in the study period, the definition of anti-social behaviour was worked out through practice. There was no standard system for recording and classifying complaints although the council intended to introduce one.

5.46 Investigation of complaints was the responsibility of the neighbourhood offices. However, there was clearly some variation of practice according to the former district council area in which the office lay. The common elements were that on receipt of a complaint, the neighbourhood office would investigate, including a visit to the person complained about. Initially a verbal warning would be given if a complaint were thought to be well-founded. A written warning would be issued if there was no improvement. The decision to refer a case for legal action was triggered by failure to heed a number of warnings. The decision to serve an NOP was taken by the neighbourhood office. In practice, legal action meant eviction. Other remedies were not used although there appeared to be willingness to use specific implement in relation to gardens and common areas, and there had been 1 instance of the enforcement of title conditions.

5.47 Information was regularly exchanged between the housing department and the police, and neighbourhood offices were expected to contact the social work department at an early stage in cases where legal action was a possibility. In cases involving amenity issues e.g. rubbish dumping, the environmental health department might be involved. The council had set up a central in-house mediation service in 1998 to which neighbour disputes could be referred.
Housing Association A

5.48 Housing Association A operated in the same court area as Local Authority A. It was a medium-sized general needs association. The majority of its stock was tenemental. During the study period, the association had raised 5 eviction actions (a very high court rate) and had had a number of cases over a 10-year period. Almost all of these cases had resulted in decree being granted. The association said that it would always implement any decrees granted. Other legal remedies were not used. The staff felt that drug abuse and drug dealing was more common than in the past and they had also had several cases which involved mental health problems. There were some problems caused by mixed tenure, with owners complaining about tenants.

5.49 The association had a written policy on Neighbour disputes and Anti-social Behaviour which had been in operation for around 2 years (at the time of the fieldwork). The policy classified complaints into 3 categories:

1. Breach of tenancy conditions of minor nature- cleaning stairs, rubbish dumping etc.
2. Serious anti-social - excessive noise, vandalism
3. Very serious anti-social - violence, drug dealing, criminal offences

5.50 All complaints received from tenants, whether reported by phone, letter or in person, were logged manually in a book. Most complaints were trivial and ‘run of the mill’ - children scribbling on walls, throwing bread out to birds, and dogs barking. Noise, drunken behaviour and loud music were common. Housing officers dealt with the minor problems while the housing manager became involved in more serious cases. In very serious cases, the association tried to involve other agencies.

5.51 There was no mediation service but the association was considering sending staff on mediation courses. The association vetted housing applications and asked for references from previous landlords. However, they had housed people where references had indicated a previous problem.

5.52 The housing manager dealt with cases where eviction was contemplated. Cases were passed the association's solicitor when a notice of proceedings had been served and there had been no improvement. There was a close working relationship with the private solicitor who acted for the association. The housing manager monitored court cases - contacting the solicitor regularly to assess progress. The association had used tenants to give evidence and tried to support witnesses. Both housing staff and the police had also given evidence.

Housing Association B

5.53 This organisation was a small fully-mutual co-operative which operated in the same court area as Authority B. The co-operative had been established for around 8 years at the time of the interview and had a mix of rehabilitated tenemental properties and new build houses. It considered that it had a below average problem in comparison with the local authority. The main complaints were about children, noise and car-parking. The co-operative had a written policy on anti-social behaviour and issued guidance to tenants. There was a separate policy on racial harassment.
5.54 The anti-social policy stated that staff would attempt to differentiate between anti-social behaviour and neighbour disputes. Where the problem arose due to life-style clashes the co-op would investigate but would not take legal action itself. Interdicts were mentioned as the means to prevent breaches of the tenancy agreement. Serious cases (such as assault) would be considered for court action. In practice, staff felt that most complaints were successfully handled informally. They had access to an independent mediation service, but had been rarely used. The housing officer would attempt to mediate in cases involving disputes between 2 tenants:

99% of disputes are done in an informal way, they tend to be quite successful. OK, the situation may only last for a few months and it may raise its head again, but a number of disputes have been resolved in that manner. Quite often the Housing Officer may invite both parties to come along so, in effect, the Housing Officer is assuming a mediation role. (Housing Manager, Housing Association B)

5.55 The co-operative had taken one case to court for possession during the study period. This case was abandoned at the proof stage. This single case produced a high rate of court action per 1000 tenancies, due to the small stock size. The co-operative had also used interdict on 1 occasion (outwith the study period).

5.56 As a fully-mutual co-operative, there were 2 interesting differences in legal procedures compared with those of local authority and housing association tenants. First, fully mutual tenants do not have assured tenancies. This means that ‘When we issue a notice to quit and it expires after thirty days, the tenancy has effectively ended’. Second, in a fully-mutual co-op, the tenants are also required to become members. Termination of membership was therefore deemed to be a ground for seeking possession:

All the tenants must become members of the co-operative and they become a member before they sign their tenancy rather than the other way about. Theoretically ... there is a mechanism for expelling somebody from the co-operative as a member and then theoretically we can say well now that you are now no longer a member can you please hand back your keys... it requires a resolution to go forward to a meeting, in general terms and there is a majority say that you can't be a member .. but we've never attempted that.... There's possibly a whole legal area here that just hasn't been tested'. (Housing Manager, Housing Association B)

Housing Association C

5.57 Housing association C was a large community based association operating in the same court area as authority C. The majority of its stock was rehabilitated pre-1919 tenemental property. The association's tenancy agreements were based on the SFHA model agreements and there was a policy on estate management which covered nuisance, annoyance and harassment. The policy also included a section on illegal use of the premises and stated that where tenants were convicted under the Misuse of Drugs Act, ‘the association will seek to terminate the tenancy in all but the most exceptional circumstances’
5.58 Only serious cases (excluding complaints such as stair cleaning) were recorded as neighbour complaints. A small number of eviction actions had been raised in the study period. The association expressed willingness to use interdict but had not used this remedy in practice. They had, however, referred breaches of local authority bylaws on stair cleaning to the local authority and noise problems to the environmental health department.

Housing Association D

5.59 This was a large national general needs association. There were a number of properties in the same court area as Authority D and the association had a local office in this area. They did not keep records of neighbour complaints but considered that they had an average problem across their stock. In area D, the problem was considered to be less severe than in other areas of the association’s operation. The association had a number of properties for young single people and this was felt to be the more problematic area:

‘We do have concentrations often of young people together. Maybe this is their first independent home. And it turns out some of them can’t handle this you know, they are not working, they are around all day and have their friends round for drinking parties and playing music loudly, so that does tend to produce a number of complaints of incidents of anti-social behaviour’. (Housing Manager, Housing Association D)

5.60 The association did not have a separate policy on anti-social behaviour, but the issue was addressed in its estate management policy. This categorised problems into 3 groups, with examples of the type of activity which would considered in each group. At the lowest level were breaches of tenancy and at the highest a range of issues including violence, drugs and community care issues. The association would not pursue straightforward disputes between neighbours. At levels 1 and 2 the association would consider eviction. At level 3 they would consider interdict and the deployment of private investigators and covert cameras. The policy was not positive on the use of court action noting that ‘court action can be taken for breach of tenancy but these cases can be notoriously difficult to prove’. In practice, the association had only raised 1 eviction action during the study period and had not used interdict. However, it was admitted that a few cases involving anti-social behaviour had been taken to court for rent arrears:

You get situations where we... have evictions of ..people who are evicted on the grounds that they are not paying their rent and there could be a culmination of issues. They are not only not paying their rent but they are causing problems so they don’t go through as being evicted on the grounds of anti-social behaviour. . (Housing Manager, Housing Association D)

5.61 Occasionally, the association dealt with problems by transferring the complainant, if it seemed unlikely that court action would be successful:

If you have got someone who is creating merry hell for all and sundry around them then we can’t move everyone else out or moving that person just moves the problem, but there are cases where it is two folk have fallen out and they are maybe adults behaving like children and the simple solution often is to move one away and give them a fresh start. (Housing Manager, Housing Association D)
5.62 The association did not try to enforce title conditions or by-laws. They had a formal protocol with the police for information on tenants' convictions for drug-dealing but did not have a formal policy on this issue. Social work would only become involved in cases occasionally.

Housing Association E

5.63 This association was a national organisation which specialised in housing for people with disabilities. The stock was spread across Scotland, with some in the same court area as Authority E. It was a medium sized association which also had some shared ownership property. The association did not have a local office in this area but 1 of the housing management officers covered this ‘patch’ from the association's main office. The association considered that it had a big problem with neighbour nuisance. Their largest problem was ‘allegations of criminal behaviour, usually associated with drug use or drug dealing’. Overall, they felt that they had ‘50 per cent noise, 25 per cent teenagers' behaviour or children and 25 per cent drugs’ complaint’.

5.64 The association had an anti-social behaviour policy that stressed the preventative measures that the association should take and identified a range of behaviours which might be considered anti-social. The policy was also clear that the association would aim to prevent people who had a history of anti-social behaviour from becoming tenants and would seek to avoid lifestyle conflicts by carrying out ‘sensitive lets’. All complaints were recorded on a monitoring sheet and a central record kept of these. The policy categorised complaints into 3 levels of severity: from failure to clean stairs to serious criminal activity. In minor disputes, which were not a beach of the tenancy, the association would provide advice to tenants on the legal options available for them to take action themselves. The policy stated that the association would consider all forms of legal action.

5.65 During the study period, 1 eviction action had been raised. This case had resulted in a decree for possession being granted. One interdict had also been requested and granted. The association did insert nuisance clauses in its deed of conditions for sharing owners, but in practice, these had never been enforced. The reason for this was explained as ‘I just don’t think we have any credible leverage over owners through the Deed of Conditions’.

SUMMARY

5.66 This chapter has summarised the characteristics and approaches of each of the 10 case study landlords. The following chapter discusses the management of anti-social behaviour thematically.
CHAPTER 6 THE MANAGEMENT OF ANTI-SOCIAL BEHAVIOUR

INTRODUCTION

6.1 This research is mainly about the use of legal remedies, but the use of legal remedies cannot be considered in isolation from the totality of social landlords’ approaches to dealing with the problem of anti-social behaviour. The case studies identified a number of common management issues which are discussed below.

6.2 This chapter therefore provides a more detailed account of how they made decisions to on the management of anti-social behaviour and how they made decisions about legal action. The chapter is based on documents landlords supplied, interviews with staff, and analysis of the cases in the database. Most of the policy and procedure documents supplied with the postal survey claimed (as recommended by good practice guidance) that legal action was used as a last resort, and this sentiment was echoed in some interviews. Before considering whether this claim was borne out by the practice of the case study landlords, the notion of ‘last resort’ requires some unpacking. The more obvious meaning is that legal action is initiated only after other efforts to resolve the problem have failed. This raises both questions of process, and of which alternative solutions to eviction have been exhausted. However, it may also mean that the use of eviction is restricted to certain types of case, perhaps ‘more serious’ anti-social behaviour. In this chapter we, therefore distinguish:

- staff definitions of anti-social behaviour
- the process landlord’s follow in deciding whether to evict
- the extent to which cases of alleged anti-social behaviour are resolved without legal action
- the alternatives to eviction which are considered

STAFF DEFINITIONS OF ANTI-SOCIAL BEHAVIOUR

6.3 The interviewees in the case studies provided a wide variety of definitions of anti-social behaviour. Some explicitly referred to their policies or tenancy agreements but most appeared to be giving their personal definition. A few used the definition given in the Scottish Affairs Committee report but, more commonly, the definitions were more general and referred to ‘causing a nuisance or annoyance to neighbours’ or ‘interfering with peaceful enjoyment of their own home’.

If I was a tenant occupying a property where my peace was being disrupted by whatever means, e.g. loud noise, abuse by a neighbour, I would consider that to be antisocial. The peaceful occupation of the home being disrupted would be my definition. (Housing officer, Local Authority A)

It would be conduct by one tenant which is a nuisance or annoyance to at least one other tenant. (Housing Manager, Association E)

6.4 Some staff cited issues which might be considered as a breach of tenancy conditions:
Anything which causes nuisance to your neighbours; nuisance, annoyance, vandalism towards the property within a community or anything which stops a member of staff carrying out their normal duties in the course of any working day. (Housing officer, Local Authority C)

6.5 Some interviewees said that they would consider anything that tenants complained about as an anti-social matter: ‘Anti-social behaviour has a wide definition. We would consider all complaints’. (Specialist officer, Local Authority A). However, most differentiated between neighbour disputes and anti-social behaviour. In these definitions, neighbour disputes were seen as differences of opinion or minor matters while anti-social behaviour was seen to be more serious. A typical description was:

There is a difference between anti-social problems and neighbour disputes. Anti-social problems we class as the more serious neighbour problems where there is maybe sometimes violence involved as opposed to somebody falling out over whose turn it is to use the washing line. (Housing officer, Local Authority E)

6.6 Several interviewees distinguished clearly between purely bilateral disputes, and those in which a tenant caused nuisance to a range of neighbours, much as the Scottish Affairs Committee had done (SAC, 1996, para 2):

What we did was to separate out the neighbour disputes from the general consideration of anti-social behaviour, and these are straight fifty-fifty disputes between tenants and their use of drying areas and so on, which would not imply that either tenant was anti-social as such. It just means they are in dispute … (Housing Manager, Local Authority C).

6.7 However, there was also recognition that neighbour disputes of minor problems could escalate so that there was merit in the landlord getting involved at an early stage:

Often in practice you will see it escalate into something else. There will be tit for tat or there will be an escalation of the problems because the person will bang on the wall and then that person will get annoyed and they will go around and hit them or something. … It becomes a bigger issue or someone threatens someone else or they get the police round all the time. (Housing Manager, Local Authority B)

6.8 Many interviewees went on to discuss problems with definitions of the topic. These problems revolved around different tolerance levels between different individuals ‘everybody has a different perception of what actually bothers them’ and what was seen as acceptable behaviour in different areas. It was generally acknowledged that that there were such variations and many staff gave examples from their personal experience of working in different areas:

It is complicated. What is anti-social in one part of (C). isn’t anti-social in another part. In some parts of C… a neighbours children swinging on a fence may be anti-social. It may really annoy the person sitting in their house, somebody parking their car in the wrong place could be anti-social, drive
them crazy and they would be down here complaining about it. In other parts of the estate, children swinging on a fence - nobody would think twice about that. (Housing officer, Local Authority C)

6.9 The interviewees also echoed Scott and Parkey (1998b) in suggesting that there was also a contextual element: in a ‘good’ area quite minor issues would be the subject of complaint while in ‘poor’ areas, tenants had more serious things to worry about.

‘Now in M... an anti-social complaint could be that too many children are coming up to the wee boy underneath and chappin’ his door for him to go till 8 o’clock at night and the neighbours dislike these kids coming up the stairs and dropping their litter. But the likes of R...it might be somebody being on smack and the junkies injecting and they fear their kids picking up the needle’. (Housing officer, Local Authority C)

6.10 Finally, a number of interviewees made a further distinction between their working definitions of anti-social behaviour and the types of cases they would consider for court action. It was acknowledged that many activities caused a nuisance to neighbour or were in breach of the tenancy agreement but would not be considered serious enough to serve a notice of proceedings or commence court action:

I think you have to distinguish between anti-social behaviour as defined in the Tenancy Agreement and the kind of things that you maybe want to take to a Sheriff.... These tend to be major anti-social - you are talking about severe harassment of neighbours, continual noise disturbance over long periods involving the police being called out, fighting and aggressive towards neighbours, things like drug dealing or drug abuse (Housing Manager, Local Authority A)

VIEWS ON DRUGS AND SEX OFFENDERS

Drugs

6.11 The general picture of anti-social behaviour was characterised by many officers as a problem of drink and associated noise, parties and physical and verbal abuse. There was marked variation in the degree to which drug taking and dealing formed a key component of the anti-social problems in different areas. Not just between local authority areas, but within the smaller social ecology of estates and parts of estates, there was variation in the prevalence of these activities. However, the majority of housing officers said that drugs were a bigger problem now than they had been 5 years ago.

6.12 In response to this, many of the landlords had strong policy statements on the use of drugs. Authorities B, C and D took a harder line on this than the others. In authority C, in particular, there was a well publicised ‘zero tolerance’ approach to drug-dealing. In all cases where a person was convicted of dealing drugs from a council flat, the council took steps to evict the tenant. No exceptions were permitted to this policy;

This could have been the best tenant that we have ever had but there is still drugs in their houses... (Housing officer, Local Authority C)
6.13 Landlords did not tend to distinguish between the type of drugs involved, partly because all dealing was deemed bad and partly because the attendant social problems were perceived as similar:

*It wouldn’t concern us if somebody was dealing in cannabis or heroin; the fact that they were dealing would automatically result in us taking us action.*

(Housing Manager, Association B)

6.14 However, landlords did commonly discriminate between a conviction for possession of drugs and a conviction for intent to supply:

*Maybe somebody caught with cannabis that was only for their own use then it would be unreasonable for me to take that to court because I have got to prove it in front of the Sheriff….. if you think about it realistically there is quite a lot of my tenants who would probably indulge in that type of activity, but if it is for sale then they definitely go for an eviction order.*

(Housing Manager, Local Authority C)

But, even in cases where a policy of eviction for dealing was evident it would be simplistic to suggest that this was a blanket and non-discretionary policy.

**Sex Offenders**

6.15 There were far more mixed views on what might be seen as an equally problematic use of the property - that of sex offences. It was the policy of some landlords to take action for eviction where a person was convicted of a sex offence against a child in a council house.

*We have had a couple of eviction actions in X where they have tried to evict people because of sexual offences within the property* (Private solicitor, Area C).

6.16 On one hand, this could clearly be seen as an illegal and immoral use of the property, which was of great concern to the local community. However, a number of interviewees took the view that such matters were for the criminal courts rather than issues for housing organisations.

*We have tended not to pursue action against tenants for criminal activity as such unless we are clear that there is a breach of the Tenancy Agreement. I am aware of that kind of immoral use of a tenancy could be used but it is not a road we are going down at present, mainly because I would expect criminal law to pick anything up and deal with it rather than ourselves to be pursuing that.* (Policy officer, Local Authority C)

6.17 Officers also noted that they had statutory duties under the Sex Offenders Act to rehouse sex offenders:

*The sex offenders issue is going to be a key one because the way it is here, people will come to the housing and say ‘would you re-house that sex offender’* (Housing Manager, Local Authority B).
6.18 Nonetheless, it was an issue of concern. One housing association, which had experience of a tenant convicted of abusing neighbours’ children, expressed a desire for further guidance on the issue:

Trying to get hard and fast advice on that particular issue we found very difficult. Unfortunately there's no textbook that you can pick up, turn to page whatever, and so you deal with it. (Housing Manager, Association B)

Conclusions on landlords' definitions of anti-social behaviour

6.19 Thus, although some landlords lacked clear written definitions of anti-social behaviour, there was a large common element in their approach to determining the types of behaviour for which eviction was thought to be appropriate. There were certain commonly occurring types of complaint that were treated as grounds for eviction by all landlords...There was agreement that bilateral disputes should not normally lead to legal action, and there was a recognition that neighbours would complain about behaviour that was too trivial to warrant eviction. The only really clear differences to emerge were with regard to using the house for drug-dealing, and sexual offences against children. Even here the differences were limited to the question of whether eviction should follow conviction automatically or whether some discretion should be exercised, and the relative priority accorded to this aspect of policy.

THE ORGANISATION OF THE TASK

6.20 The case studies show that housing organisations organise the task of dealing with anti-social behaviour in different ways. Three of the local authorities had similar practices where central policy staff were responsible for drawing up policies and procedures. However, all neighbour problems were dealt with by staff in local offices. Cases which were considered for legal action were referred initially to the area manager and then on to the council’s solicitors. The council solicitor’s liaised direct with local offices to gather evidence. None of these authorities had an out-of-hours service.

6.21 Local authority C had a slightly different arrangement, with its central support unit which included senior housing staff, council solicitors and area managers. The unit’s role was to give advice to local housing officers. However, it was local officers who dealt with neighbour complaints and who had the responsibility for gathering evidence. The central support unit did not necessarily see cases for court action but the unit monitored some serious cases. The council's homeless unit provided out-of-hours, victim support.

6.22 Local authority A was the only one of the case studies to have a specialist unit. Matters were initially handled by neighbourhood offices and only passed on to the specialist team when the neighbourhood office felt that they could not resolve it. The specialist team then re-investigated the matter. A tenant would only be taken to court if they felt it necessary. In effect there were 2 fact-finding procedures, and 2 monitoring periods before any tenant was taken to court. The officers in this team were responsible for gathering evidence for court action and liaison with the council’s solicitors. They also offered an out-of-hours service in which members of the team and a rota of housing officer volunteers would go out to witness problems at night and at weekends.
6.23 Several of the other case study authorities had considered establishing a specialist unit but decided against because they felt that local staff should see cases through:

We went to have a look at that and our members were very keen to do that. …But we voted not to do that because we felt it was very poor for the staff to take the initial complaint and do a lot of support work with victims and then have to hand it over to someone else to take through the final stages. (Housing Manager, Local Authority C)

6.24 The practices in the 5 associations were similar in that housing officers managed initial and minor complaints referring more problematic cases to senior staff. All the associations used solicitors in private practice to give legal advice on anti-social behaviour cases and to take cases to court. Most of the association staff had dealt with only a small number of serious cases and thus had only limited experience of legal action.

PROCEDURES

6.25 Once account is taken of the different organisational structures, the procedures of all the case study landlords were (except in drug-dealing cases) essentially similar. The ‘normal case’ was started for all landlords by receipt of complaints. This was followed by investigation, which included interviewing complainers and relevant witnesses. Where there appeared to be a case to answer, the person complained of would be interviewed at their home or the housing office. If it was felt that the complaints had been established a warning would be issued, and the landlord would monitor the situation, issuing further warnings if necessary. If the problems persisted after warnings the landlord would raise proceedings for eviction. Monitoring meant waiting to see if there were further complaints, giving further warnings if further complaints were received and perhaps visiting the tenant again or interviewing him/her at the housing office. Most landlords encouraged complainants to continue to report misbehaviour and to keep a diary of relevant incidents.

6.26 Housing associations sought approval for eviction from their management committees before a summons was served, but local authorities did not usually involve committees of councillors in the decision to raise legal proceedings.

6.27 There were, however, some significant variations between landlords. For example, authority C explicitly distinguished between ‘minor’ and ‘serious’ complaints. In minor disputes it was assumed that court action would not be necessary. In the more serious cases, if the complaint and its serious nature could be verified immediately, the procedure required an NOP to be served immediately. This suggests that authority C was prepared to serve the NOP at an earlier stage than other case study landlords and, in practice, proportionate to the number of complaints this was the case (see table 6.2 below). There were also indications, in interviews in authority B, that the NOP might be served at an earlier stage in a serious complaint, and in practice they too served more NOPs proportionate to the number of complaints:

Well, it goes on the severity of the complaint obviously. If you got a complaint initially that was so bad … you wouldn’t go through monitoring the verbal warning… … I would phone up the legal department and say ‘what do you
6.28 The type of behaviour exhibited in the case could make a difference to procedure. Authorities B, C, and D were prepared to go straight to court, by-passing the usual procedures, where the tenant had been convicted of an offence of dealing drugs from the house. Authority B was also prepared to do this where a sexual offence against a child had been committed in the house.

6.29 Analysis of the files of eviction actions suggested that the procedures claimed to be in operation were generally carried out, and that (except in drug-dealing cases) tenants were not taken to court unless there had first been investigations, warnings, and an opportunity to improve behaviour. Staff in all the case study landlords appeared to be aware of the importance of establishing the facts before taking action, of interviewing the tenant complained about, and giving the opportunity: to improve behaviour where complaints were felt to be established:

A typical case comes in, we will get a letter or a call or a person calling into the office complaining about some sort of behaviour. Our initial step is to categorise that depending on how serious it sounds from that initial information.... We would seek to build up some sort of background on: what has happened; is it a one off; is it a recurring problem; was is witnessed by anybody; were the police called, and we will chase that avenue down. We would seek to resolve all the complaints through our own actions if we could ... We would go to legal action when we have been through the process of investigation. I would say almost all cases go through a warning process. .. I it is only in very unusual cases would we go straight to legal action from an initial complaint. (Housing Manager, Local Authority B)

What we have is a standard approach. We receive a complaint. We will speak to the complainant. We will speak to the person who is the subject of that complaint and try to get a feel for where the truth is...If there is a likelihood of a breach of tenancy, we will pursue that with the person who they are complaining against ...and get their side of the story ... If we had failed at the managerial approach ...that had not made any impact, the next step would be to....issue a notice of proceedings warning them that we may take legal action. (Housing Manager, Association D)

6.30 Drawing together the views expressed in interviews, and the information about cases derived from the files, suggests that one of the crucial determinants of the decision whether to seek eviction was the success or failure of housing management efforts to resolve the problems. Whilst the type of behaviour was important, there were also many complaints which did not result in an eviction summons which showed a similar behaviour pattern to cases which had been taken to court. In common complaints, such as excessive noise and abusive behaviour towards neighbours, it was generally the persistence of that behaviour over a period of time, despite the landlord having given warnings to the tenant, which led to the decision to seek eviction.
LANDLORDS SUCCESS IN RESOLVING CASES WITHOUT LEGAL ACTION

6.31 The discussion of procedures raises the question of how often landlords were successful in achieving a satisfactory resolution of cases where there were complaints of anti-social behaviour without taking court action. In general, housing managers in case study landlords thought that most cases were successfully resolved without litigation:

*The vast majority are dealt with on that basis rather than to go to court. It is very much the minority that actually goes to court, but that doesn’t prevent us from explaining to people the seriousness of that, and if it continues, then we will issue proceedings.* (Housing Manager, Local Authority C)

*I would say the majority we don’t have to seek formal, legal procedures to be implemented.* (Housing Manager, Local Authority E)

*The vast majority are dealt with in that way.* (Housing Manager, Association E)

6.32 These comments were echoed by legal staff:

*I would say the vast majority are solved by housing management and in a sense the tip of the iceberg are the ones which are in fact referred. Obviously, from the Legal Services department’s side, we only see the more serious matters which have not been resolved. ... So my perception is that although the number of cases which legal are dealing with are on the increase, the vast majority of anti-social cases are still solved out in the neighbourhoods by use of housing management techniques.* (Solicitor, Local Authority C)

6.33 These comments of interviewees were broadly consistent with the returns from the postal survey. However, precise rates for resolving cases without court action could not be quantified for most landlords because they did not keep statistics at that level of detail. Some case study landlords had no statistical records on complaints. Where complaints were recorded, the recording practices varied widely. In some cases, all complaints were centrally logged while in other only more serious cases, where legal action was contemplated, were recorded. As noted in Chapter 3, this makes comparison of the level of complaints difficult.

6.34 It should also be noted that we found discrepancies between the number of cases, which housing organisations considered were the subject of legal action, and the records kept by their solicitors. The housing associations were likely to be accurate, because they usually only had a small number of cases. But, in a number of local authorities, there were wide discrepancies between the number of cases reported by housing and the legal actions actually raised. In the remainder of the authorities, where cases were usually referred to legal departments by local officers, there was a combination of lack of central record keeping – and an assumption that court action commenced when a case was referred. This was not usually the case: the solicitors carried out their own enquiries and assessed the strength of the evidence. They did not serve a summons in all the cases that were referred.

6.35 Only 2 landlords were able to quantify their ability to resolve cases without legal action. Authority A were able to do this from the stage where the specialist anti-social team became involved, the latter having kept records summarising the outcomes of all cases
referred to them between the inception of the team in spring 1993 and late 1997. The specialist team staff had estimated during an interview that 70-80 per cent of cases sent to the specialist team were resolved without legal action. Their records summarised in Table 6.1 tended to back up this estimate.

**Table 6.1 Cases handled by specialist team**

<table>
<thead>
<tr>
<th>No.</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total cases resolved</td>
<td>238</td>
</tr>
<tr>
<td>Advice only</td>
<td>5</td>
</tr>
<tr>
<td>Action by team</td>
<td>233</td>
</tr>
<tr>
<td>Resolved without formal steps</td>
<td>162</td>
</tr>
<tr>
<td>NOP served</td>
<td>71</td>
</tr>
<tr>
<td>Summons served</td>
<td>21</td>
</tr>
</tbody>
</table>

Source: Local Authority A

6.36 Around 275 cases had been referred to the team of which 238 had been resolved by late 1997. That figure includes 5 cases in which the team acted in an advisory capacity only. Of the 233 where the team had taken some action, 162 cases were resolved and referred back to the neighbourhood office without even an NOP being served. Of the remaining 71 cases in which an NOP was served, 50 were resolved without raising a summons for eviction. In all, 21 summonses were issued. In other words, just under 9 per cent of referrals to the team led to court action by the local authority. It should be borne in mind that these figures do not include cases resolved by the neighbourhood offices without referral to the anti-social investigations team, so it is likely that the proportion of complaints resolved without recourse to legal remedies was considerably higher.

6.37 There were a variety of reasons why a case might be treated as concluded and referred back to the neighbourhood office. The most common were that the behaviour appeared to improve (the majority of cases), the tenant who was complained about abandoned the tenancy or moved away, or the principal complainer moved away. In a few cases the subject of the complaints died or was hospitalised or imprisoned for a lengthy period. In a few cases the complaint was treated as unsubstantiated. In 2 cases, the complainers refused to co-operate, and in 2 cases it was felt police action was more appropriate. Most of these outcomes were regarded as having acceptable outcomes because it appeared that the neighbours no longer had cause for complaint.

6.38 However, this is a limited measure of success. Although, in the majority of cases, there was an improvement in the behaviour and the tenant complained of remained in the house, there were a substantial number in which the ‘voluntary’ departure of the complainer or the subject of complaint was the outcome, or where the tenants abandoned their tenancies. These cases could be regarded as failures in the sense that the tenant complained of lost their accommodation. Moreover, we do not know if there was a repetition of the behaviour complained of at any new address.

6.39 Association A had records of over 900 complaints received between August 1993 and October 1997. This figure related to all complaints and was therefore, rather higher than the number of tenants complained about. However, over this 5-year period the association had raised only 12 summonses to court.
6.40 Authority E did not have any historical statistics but did provide us with a table of cases, which were ‘current’ or recently concluded as at March 1999. Out of a total of 12 cases of ‘serious anti-social behaviour’, only 4 lead to court action, and out of a total of 31 cases of ‘anti-social behaviour’ only 3 lead to court action.

6.41 As noted above, the main difficulty in quantifying landlords’ rates of success in resolving cases without recourse to legal action is the lack of statistical information available to confirm the general impressions of housing and legal staff. What we can at least say is that the accounts given by different people within each organisation were consistent on this point, and that those landlords who kept statistics could support the proposition that most cases were resolved without legal action.

The role of the notice of proceedings

6.42 It is interesting to inquire whether the NOP had a more significant impact than less formal attempts to resolve the problem. There was some evidence for this. Most obviously, the fact that most notices are not followed by court action. The questionnaire returns suggested that for landlords generally there were about ten times as many notices as summonses for possession. But there were great variations in the rate at which NOPs were converted into summonses. Table 6.2 shows figures for case study landlords.

### Table 6.2 Complaints, NOPs and summonses in 1996/97

<table>
<thead>
<tr>
<th>Authority</th>
<th>Complaints</th>
<th>NOPs</th>
<th>Summonses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Authority A</td>
<td>270</td>
<td>9</td>
<td>3</td>
</tr>
<tr>
<td>Authority B</td>
<td>800 (est.)</td>
<td>150</td>
<td>13</td>
</tr>
<tr>
<td>Authority C</td>
<td>1622</td>
<td>1056</td>
<td>21</td>
</tr>
<tr>
<td>Authority D</td>
<td>1500</td>
<td>6</td>
<td>2</td>
</tr>
<tr>
<td>Authority E</td>
<td>unknown</td>
<td>unknown</td>
<td>unknown</td>
</tr>
<tr>
<td>Association A</td>
<td>82</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Association C</td>
<td>15</td>
<td>4</td>
<td>2</td>
</tr>
</tbody>
</table>

Source: Postal survey 1998 and documentation from landlords

6.43 Bearing in mind the qualifications about the different bases on which the complaints figures are based, the table shows that the ratio of complaints received to summonses issued in 1996/97 issued for a given year varied between 750 to 1 and 61.5 to 1 for the local authorities. For housing association A, the ratio was 82 to 1 and for association B, 7.5 to 1. The other 3 had taken no cases to court in the relevant period.

6.44 The same comparison cannot be made for previous years as landlords were not asked to supply complaint figures for 1995/96. The figures suggest that the more ready landlords were to serve NOPs (as evidenced by the ratio of complaints to NOPS) the lower the rate at which NOPs were converted into summonses (as evidenced by the ratio of NOPs to summonses). Thus, authority C had by far the lowest ratio of complaints to NOPs at only 1.5 to 1, suggesting that in practice service of NOPs became a matter of routine in cases of anti-social behaviour. However, this authority had by far the highest ratio of NOPs to summonses (at 44 to 1) showing that the vast majority of its NOPs did not lead to court action. In contrast, in authority D, the NOP was served only once the housing department had made up

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11 This is not the actual rate at which NOPs were converted into summonses since landlords were not asked to track cases from the NOP stage. However, as suggested in Chapter 3, the ratio of NOPs to summonses in a given year is a useful proxy for the actual rate of conversion.
its mind to seek eviction. In authority A, the NOP was served only after both the
neighbourhood office and then the anti-social investigations team had investigated the case.
Both authorities had a much lower ratio of NOPs to summonses: 3 to 1 in both cases.

6.45 Interviewees were asked for their views on the effect of the NOP. Some felt that at
least some tenants would be encouraged to reform their behaviour by the service of an NOP:

Q: So do most of the notices do the trick in stopping the behaviour?
A: We hope so. Another thing that we did was to change the style of the
notices. The content is laid down by statutory instrument. We used to have a
tiny wee piece of paper – like toilet paper. Now we’ve got bigger ones. I may
be over optimistic here, but I think receiving this larger piece of paper has
more of a psychological effect than a wee piece of paper. Maybe it’s helped
to get the message across. (Solicitor, Local Authority B)

6.46 However, the same solicitor acknowledged that the issue of causation was complex:

There could be many reasons why cases do not get beyond the notice. It may
be that some people do get a jolt from what’s sent with the notice. Others are
situations that may have quietened down anyway. …Another factor may be
that people know that we’ll have further action. Cases have been well
publicised. If people think that we are using a heavier hand they may take
more notice at the notice stage. (Solicitor, Local Authority B)

6.47 Only authority A had sufficiently detailed records to allow for statistical inquiry into
this question. They had served 71 NOPs between spring 1993 and late 1997. Only 21 of
these led to a summons to court. The other 50 cases were referred back to the neighbourhood
office and regarded as resolved. The outcomes of these cases are shown in Table 6.3. The
categories used in the table were based on the description in the records.

Table 6.3 Outcome of cases in which NOP served – Authority A

<table>
<thead>
<tr>
<th>Outcome</th>
<th>No.</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Summonses</td>
<td>21</td>
<td>29.6</td>
</tr>
<tr>
<td>Situation improved</td>
<td>22</td>
<td>31</td>
</tr>
<tr>
<td>Tenant rehoused/moved/ moved on</td>
<td>8</td>
<td>11.3</td>
</tr>
<tr>
<td>Tenancy terminated</td>
<td>10</td>
<td>14.1</td>
</tr>
<tr>
<td>Tenancy abandoned</td>
<td>6</td>
<td>8.5</td>
</tr>
<tr>
<td>Unclear</td>
<td>4</td>
<td>5.6</td>
</tr>
<tr>
<td><strong>Total NOPs</strong></td>
<td><strong>71</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

Source: Local Authority A

6.48 In cases which did not go to court the most likely outcome was that the situation had
improved: 22 out of the remaining 50 cases, although this includes 6 cases in which it was
also recorded that the tenant was re-housed or moved subsequently. In a further 8 cases it
was recorded that the tenant was re-housed or moved, or moved on with no reference to
improvement. In 16 cases, it appears that the tenant simply gave up the house: in 10 cases the
outcome was recorded as ‘tenancy terminated’, in 6 cases ‘tenancy abandoned or
‘absconded’. These figures should be treated with a little caution: in particular it is not clear
whether the improvement was independent of the tenants departing the scene. Thus, although
there is some uncertainty over how results were classified, it seems clear that the most likely
outcomes in cases which did not go to court were for the situation to improve, or for the tenant to give up occupation of the house.

6.49 Staff of other landlords tended to report a similar range of types of outcomes when interviewed but, because of a lack of comparable information, we cannot work out the proportions for different outcomes for them. All that is clear is that, in the social rented sector as a whole, the vast majority of notices do not lead to court action. It is tempting to draw the inference that the notice of proceedings does have an independent effect on outcomes, but that remains a rather speculative statement. The fact that many tenants leave or improve their behaviour after the NOP is served, but before any summons to court is served, could be coincidental. These could be cases where this would have happened anyway, and the improvement in behaviour may reflect the continuing efforts of the landlord to resolve the situation. Those who leave may simply recognise that the writing is on the wall, and that eviction is on the cards. In either case, it may be the tenant becomes convinced that the threat of future eviction is realistic because of the totality of the landlord’s action, and that they do not attach special significance to the notice.

THE ROLE OF SOLICITORS IN THE DECISION TO SEEK EVICTION

6.50 It is worth considering separately the role of lawyers in the decision-making process, since housing management staff are reliant on solicitors to raise court actions for them. Solicitors became involved at different stages. Housing association A’s solicitor commented that cases only came to his attention once the association had been through all their managerial procedures and had decided to raise a summons for possession. In local authorities there seemed to be more of a tendency for housing staff to seek advice from lawyers before any decision was made, for example, before an NOP was served:

What you will find is that quite often when it is anti-social behaviour, the housing officers will phone the legal for advice on what they should be doing. The advice we would generally give if it is just one neighbour that is making the complaint is that you have to identify whether this is an isolated neighbour dispute or whether there is a more generic problem. ... So what you generally find is that there is a developed advice service anyway that the housing officers know to phone the legal department if there is a problem if they feel they are getting slightly out of their depth or they are not sure where the boundaries are. (Solicitor, Local Authority C)

6.51 In interviews, the solicitors tended to describe their role as exclusively or primarily technical – advising whether there was good case in law, sufficient evidence, grounds for arguing that it was reasonable to evict, and prospects for success:

Yes, The housing department is the client. We act on their instructions unless we don’t have a ground of action or for other reasons the action should not be raised. (Solicitor, Local Authority D)

6.52 However, there were some complaints from housing staff about the excessive caution of solicitors in taking legal action:
I suppose the clear message coming from us, from the housing side, was for goodness sake if we lose in court we lose in court. It doesn't matter - people will know that we have tried. Whereas the legal point of view was don't take on a case unless you are going to win it and that is crazy from a public relations perspective. (Housing manager, Local Authority C).

6.53 In most cases, there appeared to be little conflict in decision process: solicitors' advice on the strength of the case and the prospect of success was usually followed by housing managers. However, the solicitors also stressed that they would take cases even where the evidence might not be particularly strong, if the client wished them too. In some cases that might mean that cases would go ahead anyway against their advice.

Thankfully, they take our advice 99.9% of the time. We feel that as legal advisers we should only take cases where there is evidence and a good case. As clients, housing may sometimes feel that there is an overriding case and they want to take a chance. There is a need to be diligent about it. (Solicitor, Local Authority B)

In certain cases ... where we have thought that legal action is not particularly appropriate, but because of political pressure, or the volume of complaints from neighbours, it has been decided to raise the action anyway and see how we get on (Solicitor, Local Authority D).

6.54 Housing officers also stressed that they looked to their solicitors to provide advice, but would some-times ask them to take cases where they considered the evidence to be weak:

They can turn round and say well the evidence isn’t there, you need a bit more....If we are saying we need your help, we need to go for a decree, then they will try their best to go for it (Housing manager, Local Authority E).

6.55 However, the case files suggested that lawyers being forced to pursue cases which they regarded as unsound either for legal or for policy reasons was a rare occurrence. None of the files we examined included a record of advice that the solicitors thought that legal action was inappropriate, although it is possible that such sentiments had been expressed in unrecorded conversations.

6.56 It is not possible to say how often lawyers were successful in putting housing staff off legal action, or whether this ever occurred on grounds which were not related to the legal adequacy of the case for eviction. By definition, the files of cases which were taken to court would not show this, and the research was not designed to provide systematic analysis of complaints files in general.

6.57 However, most case study landlords appeared generally content with the service supplied by their solicitors. To the extent that there was dissatisfaction on the part of housing staff, it may have reflected differing perceptions between housing managers and lawyers of how high the prospects of success should be before a case was taken to court.
ALTERNATIVES TO EVICTION

6.58 Although all the case study landlords claimed to treat eviction as a last resort, and expended considerable housing management effort on investigation and monitoring of cases, they varied considerably in the alternative solutions they considered. The relevant issues to consider here are use of other legal remedies, use of non-judicial processes such as mediation, and the involvement of agencies other than the landlord/housing department.

6.59 Taking the case study landlords as a whole, little use was made of other legal remedies. Only authorities B and D were using interdict regularly in cases involving complaints from neighbours, although others had tried interdict in the past. Similarly, only authority D was using specific implement to enforce positive tenancy obligations such as maintenance of gardens. For most of the case study landlords taking legal action meant only eviction.

MEDIATION

6.60 Mediation is widely recommended in the good practice literature as a useful approach for low level disputes (SAC, 1996; SFHA, 1996, SEOD, 1998). Although there are around 65 mediation schemes operating in England (Dignan et al, 1996) the idea is relatively new in Scotland. The postal survey found that only a quarter of social landlords referred disputes to mediation and that local authorities were far more likely to do so than housing associations or co-operatives. There were a variety of practices among the case studies. Local authority B had an independent mediation service operating in its area while authorities D and E had established in-house mediation services. Local authority D were considering expanding their in-house mediation service to owner-occupiers:

The way the system operates just now is exclusively for council tenants but there is a strength of feeling that says we should be broadening that out to ensure that all members and sections of the community have access to the service as far as possible. (Housing manager, Local Authority D)

6.61 Local authority A did not have a mediation service - though staff sometimes performed this role:

I have been on a couple of courses on mediation. It helped me to identify when mediation might be appropriate. .... A lot of what we do is 'shuttle diplomacy' - seeing one person then the other. (Housing manager, Local Authority A).

6.62 In local authority C, ‘mediation’ was provided by local housing officers, though this was not a formal service.

We tend to do it as a matter of course at the beginning of an anti-social problem because we would rather solve it at that stage than let it go on to anything. You can offer them the opportunity to come in, whether it be in one house or the other or an office, somewhere mutual, or a community room and sit down and talk over the problem. And the housing officer is the referee. (Housing officer, Local Authority. C)
None of the housing association case studies had a mediation service. However, the co-operative had access to an independent mediation service.

Generally, housing staff saw mediation as part of a range of tools that they might use to deal with particular situations:

\[\text{We will take a range of action depending on the nature of the behaviour and degree of evidence available. We develop a range of possible solutions through .... other agencies like mediation, through warnings, through formal legal action right up to and including eviction (Housing manager, Local Authority B).}\]

The principles of mediation services are that they are independent, neutral and non-judgmental (SAC, 1996). Dignan and Sorby (1999) noted that independent services most closely meet these criteria while in-house services may not be perceived to be neutral or independent. Our research found mixed views on whether mediation should be carried out by local staff, a specialist in-house unit or an independent service. The 2 authorities with an in-house mediation service welcomed the fact that the service relieved pressure from front-line staff. There were also comments that the mediators were perceived to be independent:

\[\text{An awful lot of estate management officers would probably tell you that they were inundated with cases which came back to them on a regular basis where there was no breach of tenancy condition.... Pressures just wouldnae give you time to become involved in sitting there sort of knocking heads together..... I think what our Mediation service has given is a positive way dealing with the situation, when somebody has got the time, in a structured fashion, to actually help these two people...to effect some resolution. (Housing manager, Local Authority E)}\]

However, in authority A, where specialist staff carried out mediation, there was some feeling that a separate independent service would be more appropriate:

\[\text{I think that, ideally, there should be an independent mediation service - an in-house service is not the way to go. (Specialist officer, Local Authority A)}\]

Use of mediation

The literature suggests that mediation is particularly useful for ‘low level disputes where people are amenable to discussions’ where disputes have arisen due to ‘non-communication and misunderstandings’ (SAC, 1996). Several landlords claimed that housing staff played a mediating role. However, this appeared to mean merely that housing officers (who were not trained in mediation techniques, and who might end up recommending eviction later in the same case) attempted to broker a solution between neighbouring tenants. Use of mediation in the proper sense of referring cases to an independent professionally trained service was confined to authorities B and D and E (and for E only from 1998). Housing officers tended to consider mediation where there was a one-to-one dispute with no independent witnesses or other corroboration. In many of the cases where mediation was used there was no clear breach of tenancy conditions and the main problem was a clash of lifestyles:
I have got another one just now that I am thinking about referring to the mediation service. An old woman on this side and a young couple on that side with family. The whole street was full of old people and suddenly there is young kids in and you know, they leave the gate open and they bang the gate, they bang their Mum’s door and all the usual stuff that children do and dropping sweetie papers. (Housing officer, Local Authority B)

6.68 However, there was recognition that mediation was not suitable for all cases:

We’ll try involving mediation if at all possible. Normally if it’s a very serious type case, or the police have been involved mediation would tend not to get involved, they want to try and get it earlier on. (Housing manager, Local Authority E)

6.69 Some commentators have suggested that cases which end up in court are entirely different from the sort of cases in which mediation be useful. However, many of the interviewees felt that there was at least some element of overlap.

The Mediation Service may have nipped stuff in the bud so it doesn't need to turn into a potential court case later. I think common sense almost would dictate that friction between two people can certainly result in verbal abuse or harassment. It can escalate. These things tend to spiral. (Housing manager, Local Authority E)

6.70 There was also positive support from sheriffs for mediation as an alternative to court action:

I've suggested that instead of wasting the court's time, and from their point of view producing a result that can only be inflexible, that instead they might like to consider seeking the assistance of the local authority's mediation service…. If that was happening, I would certainly regard that as an eminently sensible way to proceed if there is a level of co-operation. If there is no level of co-operation then the matter would have to come to court. (Sheriff, Court B)

Effectiveness

6.71 A number of interviewees concurred with Dignan et al (1996) that mediation services can be an effective and cheaper way of dealing with neighbour disputes than traditional methods. However, in practice, interviewees reported that there was mixed success. Housing officers noted that mediation would only work if both parties wanted to make it work:

(Mediation) has got limited effects because it will only work if both people want it to work. ... They've both got to be rational about the problem, sometimes they can't even look at each other and discuss it. That's often the reaction that we had. (Housing officer, Local Authority B)

6.72 Housing staff also felt that, even if mediation failed, it was useful because it demonstrated that everything possible had been tried:
There's some times they'll come back and they'll say there's nothing we can do. But we feel that there's a benefit there because if you get to the stage of going to court and you've tried all you can, and you've brought in mediation and they've tried and they've not been able to fix it... It's another way to show the court that you've tried everything possible, to try and resolve the dispute. (Housing manager, Local Authority E)

6.73 Overall there was a very positive response from organisations that had used mediation. However, it should be noted we found little evidence in case files that mediation had been attempted in the cases which were taken to court.

MULTI-AGENCY WORKING

6.74 One important aspect of the landlord’s approach is links with other agencies. The Scottish Affairs Committee (1996) which considered legal remedies in great detail also stressed the importance of a multi-agency approach mentioning, in particular, the roles of the police, and the social work and environmental health staff of local authorities. This theme was taken up by the Scottish Office in Circular 16/1998. Although the research was not designed to examine links with other agencies this was an issue which came up in many interviews with housing managers.

The role of the housing service

6.75 There was some evidence that the message of the Scottish Affairs Committee report and of Circular 16/1998 - that anti-social behaviour is not solely a problem for housing managers - had not filtered through into everyday practice. There was a strong feeling from many of the housing staff that we interviewed that tenants, and sometimes councillors and committees, expected them to deal with any problem that arose on housing estates: ‘Our councillors are very keen on being able to lay everything at our door and making sure that we try and resolve it’ (Housing Manager, Local Authority B). Many staff expressed the view that they carried out a wide range of roles and were, in effect seen as a universal service and first point of contact. The quote below is typical of the views of housing officers:

I would be involving anything from a minor tenant dispute to anti-social behaviour ... I also deal with the repairs to properties...I’m a housing officer, social worker, policewoman, the general agony aunt, the whole lot. (Housing officer, Association B)

6.76 Staff also felt that they were often asked to deal with issues which were not tenancy or housing matters. A commonly expressed view was that council and housing association tenants preferred to ask their landlord to deal with matters rather than go to another department or another agency:

If they were both renting a house from a private factor would they both go to the private factor about the two daughters battering each other - no, they’d go to the police. (Housing officer, Local Authority B)

6.77 The interviewees felt that there were a number of reasons why they were the preferred point of complaint. A number of interviewees said that they were known and trusted by
tenants. In the case of issues which were more properly police matters, several said that there was a culture within estates that people did not report problems to the police:

They either don’t want their neighbours to see them talking to the Police because they will be called a grass or they know that they will get repercussions from the youths because they have gone to the Police.

(Housing officer, Local Authority C)

6.78 In the case of issues where social work might be expected to have responsibility, several interviewees felt that people were sometimes frightened to ask for help. Families were concerned because social workers had powers to ‘take the children away’ while elderly people did not ask for assistance because they saw social work services as charity. As a result, staff felt that the boundaries of their jobs were blurred and that they were often acting as a go-between.

6.79 Although housing staff felt burdened by a perception that they were expected to resolve almost any behavioural problem upsetting their tenants, they were frequently in contact with other agencies: most often social work, and the police and, to a lesser extent, environmental health departments. In most cases, it also seemed to be the responsibility of individual housing officers to co-ordinate and request the support of other agencies as required:

We would speak to Social Work or the Police if we needed their involvement and any other appropriate agency which could have input, e.g. hospitals, drug & alcohol unit (Housing officer, Local Authority A).

6.80 Inter-agency and inter-departmental working were often viewed as positive and most local authorities and housing associations had procedures in place for regularly contacting and informing other organisations in order to make more effective their dealing with particular cases of anti-social behaviour. However, arrangements and relationships with different agencies varied from organisation to organisation and it is worth examining these in more detail.

Relationships with the police

6.81 At the formal level, all the case study landlords had established protocols for information-sharing with the police. This took 2 forms. First, there were protocols which related to convictions for criminal offences. Often these had been established to deal with drug offences. However, in case study C the protocol had been widened to cover ‘all forms of criminal activity that would lead to a breach of the Tenancy Agreement’. This included house-breaking in multi-storey flats and storing and resetting stolen goods. Second, there were arrangements for police disclosure of information about incidents of anti-social behaviour that they have attended, such as noisy parties and late night disturbances.

6.82 In general, these protocols were thought to work well. However, authority D noted that the Crime and Disorder Act 1998 had forced a review of procedures on access to police information. Despite the protocols some housing officers noted that the flow of information was not automatic ‘it is only specifically where the Police feel it would be relevant or if we are concerned and felt that we would actually go proactive’ (Housing Manager, Local Authority C). In practice, many organisations seemed to pick up information on criminal
proceedings from the local papers and would them contact the police and the courts for further information.

6.83 In addition to the formal protocols, there were varying levels of informal co-operation at a local level. These seemed to be a more two way process: ‘They rely on you for information; you rely on them’ (Housing officer, Local Authority C). Housing officers said that if a clearly criminal activity was reported to them that they would pass this on to the local police. This local liaison was also seen to be useful where housing officers had complaints reported to them which they could not deal with:

If we’ve had bother with specific groups of youths in a specific area ... the chippy ... where all the youths hang out...they were gathering in the stairwell of my block and obviously upsetting my tenants. So we would contact this policeman and say ‘could you target that area’. (Housing officer, Local Authority B)

6.84 In local authority C relationships seemed particularly close. Several officers, in different areas, said that they would do joint visits with the police. In some cases this was because they were concerned about possible violence: ‘we have all had to say look I have got to go to (x) house, will you come with me’. In cases joint visits were carried because the problem was seen as an issue which affected both organisations: ‘we will call them into the office for an official interview. And there is 2 of us will interview them’. Staff said that they would drop into the police station while out on their rounds and that the police would drop into their offices. Not surprising, most housing officers in this case study reported that they had a very good relationship with the local police:

No matter what office I have ever worked in, we have always had a good relationship with the local police.(Housing officer, Local Authority C).

6.85 Although relationships did not appear to be quite so close in other case study organisations, staff seemed to think that there was effective local liaison on local information:

The Community Police in particular know certain families, know the people well and can give you information about them which is brilliant and we have a good relationship with them. (Housing officer, Local Authority E)

6.86 The exceptions were the 2 national associations (D and E) which found that making effective contact with local authorities, police and other relevant agencies was more difficult with a dispersed housing stock and a centralised housing management structure:

One of the difficulties which we have got is that because we are national we don’t tend to know the local police. My colleagues ...working in community based Housing Associations, seem to have quite good working relationships with the police. The police would drop in their office, they would tell them this and that and that way they get to know what is going on. We obviously are outwith the area and, we just don’t have that type of working relationship with the police. (Housing manager, Association E)

6.87 However, many interviewees reported areas where expectations of co-operation were not always met. In some cases this was because police priorities were different. In
authority C several officers noted that the police were more interested in large scale drug-dealing than small local dealers who were causing a nuisance to neighbours:

‘The police maybe know that someone is a dealer but they are very small scale and they want to get the next one up’ (Housing officer, Local Authority C)

6.88 A few interviewees complained that the police did not always record these incidents, so that when they asked for information, there was no record which could be used in court:

If the police at an early stage took action and recorded things properly, that is the best help you can get and the best way society can be protected. If the police respond to these call-outs, note it, deal with it, and charge people rather than just warning them and get it on record. ... I tend to find there isn’t any conviction, for breach of the peace, etc. you tend to find they are going back warning people every time without actually charging them. (Private solicitor, Area C)

Relationships with Social Work

6.89 Housing officers had contact with social workers for a variety of reasons. Interviewees cited cases involving elderly people, those with mental health problems and those involving concerns about children, as cases they would refer to social work. Although some of these referrals were the result of complaints about anti-social behaviour, this was by no means always the case. Examples were cited of referring tenants to social work for assistance in getting grants to buy carpets and getting home help services for elderly tenants. In anti-social behaviour cases, the most frequently cited need to involve social workers involved mental health problems:

There is one case we have got ongoing at the moment where it is a chap who is mentally ill. He is going through a spell where is he not taking his medication which is causing him to hallucinate and rant and rave in the close at all hours of the night and fling things around. It is very disturbing for the neighbours so we are involved in with social work in that... The ideal solution is that he gets sufficient supervision and starts taking the medication. (Housing officer, Local Authority D)

6.90 Many of the interviewees said that there had been tension between housing officers and social workers in the past:

‘Social Work viewed us very much as the enemies and, I think, to be fair, housing officers and the Housing Department looked at Social Work as the enemy’ (Housing officer, Local Authority E).

6.91 However, all the case study landlords had agreed ‘eviction protocols’ with social work. In most cases, these meant that social work departments were informed when they were considering taking legal action against a tenant - whether for rent arrears or for anti-social behaviour. Although this was generally thought to be useful, it was not clear to what extent social workers acted on the information:
To what extent they get involved, we don't have any sort of jurisdiction over that but we let them know and it's then up to them to decide whether they feel they should intervene. (Housing manager, Association C)

6.92 Where housing officers felt that there was a particular social work interest, or a need for input, they would request a case conference - often involving the tenant themselves. Case conferences were felt to be useful in flagging up both problems and possible solutions: ‘it might well be that they are in the wrong environment, the wrong house and they really need to be moved. We can sort that out’. In local authorities, they were also seen as important in establishing a corporate line on how cases would be tackled.

Gone are the days when we worked in different authorities ....We want to make sure again that they are not getting a different set of advice from Social Work and ourselves. That we are saying, ‘look you are facing eviction here if you don't shape up’ and Social Work aren't going to say ‘it is OK, don't worry they can't evict you’. They are taking a corporate council line. (Housing manager, Local Authority C)

6.93 As with the police, housing officers noted that social workers had different priorities. Examples cited included people with alcohol problems, child welfare and mental health problems. In 2 of the local authority case studies, housing staff cited cases where social workers had appeared in court as witnesses on behalf of their clients against the council - although both noted that this was less likely to happen since local government re-organisation. There were also examples where the social work ‘solutions’ were not acceptable to housing officers:

One case springs to mind recently where it was a young girl who was behaving bizarrely... so we called in social work and .. they wanted us to move her to a nice area because she was living in quite a rough area and this was a problem. But the problem was that we couldn’t knowingly put an anti-social person, who we were getting complaints about, into a nice area. We weren’t convinced that her behaviour would change wherever she was. But they wanted her to have super-duper accommodation with really nice neighbours that would look after her and we felt that was a bit unfair. (Housing officer, Local Authority C)

6.94 However, despite the existence of unitary authorities, there appeared to be less information-sharing than with the police. Housing officers complained that they were not involved in risk assessments of social work clients that they were expected to re-house, and that social workers had knowledge or information that would have been helpful in deciding how to deal with cases, that they chose not to share:

We don’t want to know about all the details about everybody but, if there is a risk assessment going on, we should have an input because they would be living next to our other tenants. (Housing manager, Local Authority B)

I had a case where it turned out that she had a drugs problem and she was schizophrenic, and we didnae know that until she got arrested for shop lifting. (Housing officer, Local Authority C)

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6.95 In the majority of cases there was recognition that tensions and conflicts were based on differing client interests and responsibilities. A number of interviewees expressed the view that social work ‘is focused on the social welfare of the individual whereas Housing probably take a broader perspective on that.’ While, some housing officers clearly found this frustrating, others welcomed alternative perspectives on the sometimes complex issues raised:

I think that it is very healthy that there are different views and conflicts of interest. To give you an example of potential conflicts would be in relation to the Children Act. We have had a couple of cases which have involved drug related activity where the parents had very small children. There has been a major reaction from the community, and members of the council, to take very robust action. Services within the council have had a considerable debate as to the best way to manage the communities’ concerns, the services concerns and indeed the perpetrators themselves and their families. It is healthy because it helps further concern and influence decisions that are taken. (Housing manager, Local Authority D)

6.96 There was recognition that both agencies needed to understand the operational difficulties and limitations of the other. However, housing officers admitted to resorting to rather questionable ‘bluffing’ tactics to secure social work involvement where it was felt that assistance might not be forthcoming due to reluctance of the family to accept support or the lessor priority of the case from the social work perspective:

We would drop in on the family and say… you have been offered services by Social Work and it is in your interest to accept them. If you don't your tenancy may be under threat. And that is really how that works … it is quite effective. (Housing manager, Local Authority C)

Sometimes we will serve the notice. not actually because we intend to take them to court, but because it can also sometimes help to get the social work involved ... sometimes the only way we can get an involvement from another agency is to threaten to terminate somebody's tenancy. (Housing manager, Association C)

6.97 Some interviewees felt that the size of social work departments, and the specialisation within the service, caused problems because there was no single point of contact. As one area manager pointed out ‘we have a good relationship with social work. The main problem is that the department is so big you are dealing with different people all the time’. However, some officers pointed out that with increased size came an attendant specialisation of roles, which meant that there was an increased capacity to deal with issues, such as developing expertise in housing law. Proximity was also considered potentially important as in ‘one area office (where) the housing and social work staff share the same office and work together much more there’s a better understanding of each others roles.’ The majority of housing officers said that their organisations had sought to improve working relationships between the 2 services. Although there were mixed views on whether this had been successful, the majority indicated that the protocols and case conferences were producing results.

Social work has got a long way to go but ... we have got a much better relationship with Social Work now than we ever used to before.... We are
now knocking heads together at a much earlier stage, particularly on anti-social cases. We are getting more cases now where Social Work will stand up and support what we are doing and we are doing everything possible with them and it is in the best interests of everyone. (Housing manager, Local Authority C)

Relationships with Environmental Health

6.98 Although noise was one of the most common sources of complaint, and local authorities have statutory functions in relation to noise pollution, many of the case study organisations said that they received only limited support from Environmental Health Services. In local authorities A and B interviewees said that environmental health officers distanced themselves from issues in council property:

In this organisation environmental health seem to separate themselves from dealing with issues of a noisy nature in a tenanted housing scheme. In the owner-occupier schemes where there are problems of noise and the owners seek help, then environmental health seem to step in there, but the message came across that they would only deal with commercial and owner-occupier cases. The housing department’s responsibility would lie with the tenanted schemes. (Housing officer, Local Authority A)

6.99 In other areas, they provided a limited supporting role in monitoring noise levels and visiting properties where there were suspected health hazards. Local authority E appeared to be unusual in that housing officers had regular meetings with environmental health officers to discuss issues of common concern:

If something came up that was unusual then it would be brought up at the monthly meeting with public protection and environmental health officers to see if there was something that was maybe a grey area. They would come back to us in regard to the legal side from their point of view. (Housing manager, Local Authority E)

6.100 In some cases, the result of the involvement of environmental health was that housing organisations were advised to improve sound insulation in the properties: ‘They go out and do sound tests and sometimes that has resulted in us having to go into the property and increase the insulation level’. However, few of the interviewees could recall a case where the statutory nuisance powers available to the environmental health department had been used:

I have had a few notices served on people for the condition of their house but we either managed to get them into institutions … or the people have actually cleaned up their house or they have got Social Work to go in and clean it up for them. It is very rare that we would use environmental health powers. (Housing officer, Local Authority C)

Multi-agency forums

6.101 In 3 of the case study areas multi-agency forums had been established. Two of these had racial problems as their specific focus but the third seemed to be more broadly based. These joint forums were welcomed by housing officers who felt that they assisted in dealing
with common problems. They were also seen as a way of improving understanding about the powers and limitations of the respective agencies:

*I think it’s lack of education about who has different powers … you don't know what they're able to do. It’s how you can work together instead of all trying to pass the buck. So really, I think, definitely, consultation and trying to work together to solve a problem, knowing each others limitations.* 

(Housing manager, Association B)

### The effect of involvement by other agencies on legal action

6.102 The main source of information on the involvement of other departments and agencies was interviews with housing staff. A number of the eviction files did show evidence of the involvement of other departments and agencies, whilst others showed that attempts to involve other agencies had failed. The police were involved in many of the cases, having been called out to disturbances and there were records of requests for police reports and, in some cases, precognition interviews. In some cases, police had acted as witnesses in court. It did appear therefore, that protocols with the police were working and were important in the collection of evidence - and possibly the outcomes of cases.

6.103 In many of the case files we analysed there was no evidence of social work involvement, although it is possible that intervention in some cases went unrecorded. It was, therefore, difficult to quantify the extent of, or evaluate the effect of, input from them on legal cases. Similarly, whilst the involvement of social work might sometimes have prevented cases even being referred to solicitors, this is not something that could be quantified given that the research was not designed to provide systematic analysis of complaints files in general.

6.104 In a number of cases, there was evidence that landlords had attempted to involve social work services and health services, without success:

*There were two cases… where they tried to involve social work because there were mental disabilities involved. But at the end of the day it was really a case of nobody was willing to take responsibility for it. Maybe it is fair to say that they didn’t have the powers to do so but at the end of the day it ended up the buck stopped with the association. …Dealing with these cases in the courts ..is not always the best situation.* 

(Private solicitor, Association A)

6.105 In others, support by other agencies had only been provided once an NOP had been served. In these cases co-ordinated support from the relevant agencies would have been a more appropriate response than simply evicting the tenant. However, there were indications in some of these files of difficulties in arranging such support. In such cases, if support was not forthcoming, some landlords thought raising a court action was appropriate:

*In that case the action was started to get everyone else moving. We would not allow it to get to court. We have another case now which is similar and we are going to have to do the same thing. We have spoken to the GP and the psychiatrist and they accept that the man has mental health illness, but he is not bad enough to be sectioned. He was causing absolute havoc.* 

(Private solicitor, Association A)
responsibility to other tenants. We are a housing department, so there is a limit to what we can do. (Specialist officer, Local Authority A).

6.106 The concept of social work supported specialist projects was one positive way forward for some of these cases. Two of the case study authorities had said that they used these for families who had a history of anti-social behaviour. The projects aimed to provide intensive support on alcohol and drug problems, parenting, anger management and basic tenancy skills. In both cases, these projects were considered to have a high success rate, although no formal evaluation had been carried out at the time of the fieldwork.

The Family Support Project has a couple of houses where they provide intensive support, quite often on parenting issues and things like that. It takes them out of the environment that they are in and moves them to, in some cases, a slightly better one. Families are given a second chance and the success rate seems pretty high. We will either put the families back in to their previous premises or move them. (Housing Manager, Local Authority C)

An evaluation of one of these projects, by the University of Glasgow, is now taking place and is due to report in spring 2001.

SUMMARY

6.107 Despite the fact that several landlords did not have explicit policies defining anti-social behaviour or the circumstances in which tenants would be evicted there was in practice a large common element in the approach of case study landlords. There appeared to be a broad consensus about the sorts of behaviour that deserved eviction, for example, all were prepared to evict for excessive noise, and for dealing drugs from the tenants’ house. Conversely, there was a widely held view that purely bilateral neighbour disputes should not lead to eviction.

6.108 One clear area where policy diverged was on drugs. The common element was that they did not tend to distinguish between different classes of controlled drugs and there was a prevalent attitude that one drug was as bad as another. However, they often differentiated between drug-dealing and drug use. Some authorities took a harder line on dealing – their approach was to seek eviction as a matter of course if the tenant or anyone living in the house had been convicted of dealing regardless of the other circumstances of the case. Other landlords, although regarding it in principle as grounds for eviction, were prepared to exercise discretion, although it must be said that some landlords had had no experience of such cases.

6.109 There were far more mixed view on the treatment of sex offenders. Some landlords would treat a conviction for child abuse (where this took place in the property) as a ground for eviction but others took the view that justice was served by the criminal conviction. Both these issues are of considerable concern to local communities, who would almost certainly prefer drug-dealers and paedophiles to live elsewhere. The argument of double penalty (criminal conviction and eviction) could apply to both cases - and particularly where when there are ‘innocent’ family members involved.
6.110 Our overall impression was that the staff with specialist knowledge and experience were more confident about legal action and had a better understanding of the legal system. They were actively involved in the management of cases through the legal system. Where there was direct liaison between local housing staff and solicitors, local staff effectively handed over the cases to their legal advisors. In practice, case management of legal action in most of the local authorities, including much of the evidence gathering, was carried out by the small legal sections. It is difficult to draw firm conclusions from this as only one local authority had a specialist unit. However, it should be noted that a parallel study of legal remedies in England found that Specialist Units were more effective (Hunter, Nixon and Shayer, 2000).

6.111 The lack of adequate record-keeping, including inaccurate information on the number of legal actions, is also a matter for concern, not least because there has been pressure for changes in legislation from landlords. In the absence of statistical evidence, such pressure can only be based on anecdote.

6.112 As regards the process leading up to the decision to take legal action, case study landlords did appear genuinely to believe that they should try to resolve complaints through housing management action and recourse to court action at an early stage. Again, the main exception related to drug-dealing where authorities B, C, and D would issue a summons to court once a conviction for drug-dealing from the house had been confirmed, without further monitoring of the situation. Complaints were investigated to ascertain whether they were well founded. Where complaints were deemed to be well founded the initial action was generally a warning. Apart from special categories of cases, notably drug-dealing, the main reason tenants were taken to court was that the offending behaviour continued despite repeated warnings from the landlord. There was no reluctance to take legal action when it was felt managerial efforts had failed to produce improvement in the situation.

6.113 Landlords were generally successful in resolving most complaints of anti-social behaviour without taking tenants to court. However, that includes cases which were resolved as a result of the tenant complained of abandoning the tenancy, moving away, dying, or other situations not implying any improvement in behaviour. Cases which went to court represented, for most landlords, a very small fraction of the total number of complaints.

6.114 Thus, in general, behaviour had to reach a minimum threshold of seriousness, and there had to be repetition over time before landlords raised proceedings for eviction. This to some extent supports the common claim that eviction is a ‘last resort’. Where this claim seems weakest for some landlords is in relation to the alternatives to eviction which have been considered. Only 2 landlords were using alternative legal remedies – interdict or specific implement, only 3 were using mediation in the proper sense, and although all claimed to involve other agencies as appropriate, it was not clear that serious efforts to involve other agencies were always made in practice. For some landlords efforts to avoid eviction were in many cases confined to the repetition of warnings by the housing department/housing staff. This does not mean that landlords were wrong to approach their task in this way. Judgements have to be made about the effectiveness of alternatives. However, it is clear that for some landlords little by way of alternative solutions was being attempted in practice.

6.115 Mediation was seen in a positive light by many of those with experience of it, albeit with an awareness that it was likely to be effective in for particular types of cases. As the
focus of this research was on legal remedies, we are not in position to evaluate the use of mediation by the case study landlords, far less its efficacy as a solution to neighbour disputes. However, the case studies suggest that mediation was becoming a significant element in the way some social landlords handle anti-social behaviour and neighbour disputes. Where dedicated mediation services had been set up, they had achieved a significant measure of success. While we did not find any evidence of mediation being used in any of the cases we examined, the value of mediation in general, and its capacity to reduce dependence on legal remedies, particularly eviction, as a solution to anti-social behaviour is something that merits further inquiry.

6.116 This chapter also reviewed arrangements for working with other agencies, in particular police, and social work and environmental health departments of local authorities. This material suggested that housing managers and officers are still expected to take the lead in dealing with the problem of anti-social behaviour in social rented housing, but that there were significant links with other agencies. Links with the police appeared to work well with regard to exchange of information which was subject to formal protocols. Less formal links also existed, but these were less uniformly effective.

6.117 There was less satisfaction with relationships between housing and social work staff. However, attempts had been made in the unitary authorities since 1996 to increase the degree and effectiveness of inter-departmental co-operation. Housing associations appeared to have less success in achieving social work co-operation than local authorities. We were concerned that a number of cases among the files we examined involved vulnerable households. The concept of social work supported specialist projects was one positive way forward for some of these cases.

6.118 The least effective links appeared to be those between housing staff and environmental health departments. The latter, in most authority areas, saw domestic noise giving rise to neighbour disputes in the social rented sector as primarily a matter for housing departments/associations to deal with.
CHAPTER 7 QUANTITATIVE ANALYSIS OF EVICTION ACTIONS

INTRODUCTION

7.1 We have already reported the results of the postal survey as regards the use of eviction in Chapter 3. One of the purposes of the case studies was to obtain more precise quantitative data on the use and characteristics of eviction actions than the postal survey could provide. In this chapter we present information on numbers and outcomes of the eviction process, attendance and representation, the duration of the legal process, and the nature of the behaviour in the cases brought to court. The material is based on the documents supplied by case study landlords, files of cases in which eviction actions had been raised or considered by case study landlords; court records; and interviews with housing staff, solicitors; sheriffs and tenants called to court as witnesses.

7.2 Each of the 10 case study landlords were asked to provide housing department and legal files relating to eviction actions begun in the 2 years 1995/96 and 1996/97 (i.e. the period covered by the postal survey). We also looked at a number files outwith that period for some of the landlords in order to get a better sense of the history of attempts to seek legal remedies. Legal department files were available for nearly all cases begun in the relevant period, but many of the housing department files were not provided.

7.3 The intention in creating the database was to enable a quantitative assessment of eviction actions on a number of points including total number of cases, duration and outcomes, attendance and representation, and the nature of the behaviour on which legal action was grounded. There were some difficulties in gathering data which are discussed in more detail in appendix 1, but we were able to include in the database 90 cases in which we were able to confirm that a summons was issued between 1 April 1995, and 31 March 1997. One authority – authority E had very great difficulty in recovering files, as a result none of its cases were included in the database. Subject to that exception, the cases included are the vast majority of the court actions brought by the case study landlords in the period 1995/97.

TOTAL NUMBER OF EVICTION SUMMONSES

7.4 Table 7.1 shows the numbers of cases entered in the database for each landlord. Over the 2 year period there were 90 eviction summonses in all issued by our case study landlords (excluding authority E). Although the absolute numbers are not high, these cases do represent a substantial fraction (perhaps around a third) of all cases in the Scottish courts over the 2 years. The sample can therefore be regarded as reasonably representative of eviction actions for anti-social behaviour in the Scottish courts in the period 1995/97. All 5 authorities, but only 2 associations, had taken some tenants to court in the 2 year period. The other associations had no cases, and very limited experience of eviction for anti-social behaviour at any time in recent years.
Table 7.1 Case study landlords' use of eviction in 1995/96 & 1996/97

<table>
<thead>
<tr>
<th>Case Study</th>
<th>1995/96 Summons</th>
<th>1996/97 Summons</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local Authority A</td>
<td>4</td>
<td>3</td>
<td>7</td>
</tr>
<tr>
<td>Local Authority B</td>
<td>12</td>
<td>13</td>
<td>25</td>
</tr>
<tr>
<td>Local Authority C</td>
<td>30</td>
<td>21</td>
<td>51</td>
</tr>
<tr>
<td>Local Authority D</td>
<td>0</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Local Authority E</td>
<td>not available</td>
<td>not available</td>
<td>n/a</td>
</tr>
<tr>
<td>Housing association A</td>
<td>2</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Housing association B</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Housing association C</td>
<td>0</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Housing association D</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Housing association E</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>48</strong></td>
<td><strong>42</strong></td>
<td><strong>90</strong></td>
</tr>
</tbody>
</table>

Source: Case database

7.5 The distribution of these numbers raises obvious questions. The database is dominated by cases from authorities B and C with 76 of the 90 cases, and, therefore, by cases in only 2 sheriff courts. However, this does not mean that the results can be discounted as unrepresentative of the experience of eviction on anti-social grounds across Scotland as a whole. In the first place, it is important to note that use of eviction is very unevenly distributed. Across Scotland, a small number of landlords are responsible for the bulk of the cases. We can also note that there are a significant number of cases from other landlords included (14 in all), and a substantial number of cases in a third court - court A which had 10 cases.

7.6 We were also able to check the characteristics of cases in the database against those of other cases outwith the period for which we had access to the files. Authorities A and D, and association A produced a substantial number of files from outwith the period 1995-97. We did, therefore, analyse a significant number of cases from 4 different courts, and subject to some exceptions, similar patterns emerged in all 4 courts in the mid-1990s. In addition, the interviews and other data provided by the case studies (which are discussed below) tended to confirm the impressions produced by the numerical data.

THE NATURE OF ANTI-SOCIAL BEHAVIOUR IN EVICTION ACTIONS

7.7 We examined 2 questions in relation to the behaviour which prompted legal action: the general nature of the behaviour, and the statutory grounds pleaded in the summons.

The nature of anti-social behaviour

7.8 We were interested to see what sort of behaviour was occurring in cases that were taken to court. The most commonly occurring types of complaint are summarised in Table 7.2. In most cases there was more than 1 type of complaint, and in some cases most of the above list figured. Cases were allocated to the above behavioural categories if the effects were felt by near neighbours, or by landlords’ staff. The behaviour in question might be that of the tenant, of family members, or of visitors. In fact, the frequency of some categories of behaviour may well be underestimated as the amount of information recorded in landlords’ files varied. The most commonly occurring complaint was excessive noise from neighbouring properties, figuring in 63 per cent of cases. The noise took a variety of forms
including excessively loud music, noise caused by shouting swearing, arguing and fighting (sometimes within the house but audible in neighbouring houses, sometimes in communal areas), banging doors, and stamping on floors. Often several kinds of noise were combined in the same case, for example when drunken parties led to loud music, then shouting swearing and fighting.

Table 7.2 The nature of anti-social behaviour where eviction action is taken

<table>
<thead>
<tr>
<th>Type of complaint</th>
<th>No.</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Noise</td>
<td>57</td>
<td>63.3</td>
</tr>
<tr>
<td>Abusive behaviour</td>
<td>39</td>
<td>43.3</td>
</tr>
<tr>
<td>Vandalism/property damage</td>
<td>31</td>
<td>34.4</td>
</tr>
<tr>
<td>Threats/violence</td>
<td>30</td>
<td>33.3</td>
</tr>
<tr>
<td>Drink/Drunkenness</td>
<td>28</td>
<td>31.1</td>
</tr>
<tr>
<td>Visitors</td>
<td>25</td>
<td>27.7</td>
</tr>
<tr>
<td>Children</td>
<td>21</td>
<td>23.3</td>
</tr>
<tr>
<td>Fighting</td>
<td>20</td>
<td>22.2</td>
</tr>
<tr>
<td>Drug-dealing</td>
<td>20</td>
<td>22.2</td>
</tr>
<tr>
<td>Cleaning/rubbish/amenity</td>
<td>16</td>
<td>17.7</td>
</tr>
<tr>
<td>Pets</td>
<td>6</td>
<td>6.7</td>
</tr>
<tr>
<td>Theft/burglary</td>
<td>4</td>
<td>4.4</td>
</tr>
</tbody>
</table>

Note: Multi-category responses. Numbers do not add to 100%
Source: Case database

7.9 Noise was often combined with other complaints such as verbal abuse and aggressive behaviour towards neighbours, including when they complained about the noise. Aggressive behaviour was the next most common complaint, occurring in 43 per cent of cases. We have distinguished general abuse from cases in which there was actual violence or specific threats of violence. These occurred in 33 per cent of cases. Amongst the assaults which did occur there were both assaults on neighbours and on landlord’s staff. Although there were threats or actual violence in only a third of cases, it is likely that neighbours were put in a state of fear and alarm in a higher proportion of cases given the number of allegations of aggressive and abusive behaviour.

7.10 The third most common complaint (34%) was of deliberate or negligent damage to property, including neighbour’s houses, the defender’s own house and communal areas. Some of these cases involved deliberately setting fires or carelessly causing fires. Drink/drunkenness (31%) refers to cases in which the file made specific reference to drunkenness as a problem in itself, or as the cause of other objectionable behaviour such as noise. The reference to fighting (22%) is to nuisance caused by the defender, family members or visitors fighting with each other, as opposed to neighbours.

7.11 Dealing in controlled drugs was the next most common type of complaint. In 20 cases (22%) the principal allegation was dealing in controlled drugs, and in 2 more cases drug abuse was mentioned as one of a string of complaints. In most of the 20 cases there had been a conviction for dealing (possession with intent to supply, or being concerned in the supply), and most cases related to cannabis or to heroin or other opiates. These cases were confined to 3 landlords. Authority C, with only 57 per cent of the case load, had nearly 80 per cent of the drug-dealing cases (16 out of 20). Authority B, with 28 per cent of the case load, had only 15 per cent of the drug-dealing cases (3). The remaining case was brought by housing association C.
7.12 It is also interesting to contrast the proportions of the case load drugs account for in each authority: 31 per cent of authority C’s cases related to drug-dealing, as compared to only 12 per cent of authority B’s cases. The other 3 authorities took no such cases to court in the 1995/97 period. This may well indicate a higher incidence of drug-related problems in authorities B and C, but it also appeared to reflect the fact that they took a harder line on drug-dealing than other landlords. Authority C gave especially high priority to fighting drug-dealing within its anti-social policy. Whatever the explanation, it does appear that the figures for one landlord are skewing the sample. It may be that drug-dealing cases would figure less prominently in an analysis of all evictions in the Scottish courts than it does in this analysis of cases brought by the 10 case study landlords.

7.13 Twenty-three per cent of cases included allegations of misbehaviour by juvenile children of the tenant. Eighteen per cent of cases involved dumping rubbish, failure to clean communal areas, and other behaviour affecting the amenity of the area such as persons urinating in common closes. The reference to burglary and theft covers incidents affecting only immediate neighbours or the landlord e.g. breaking into neighbouring houses or stealing neighbours property. Finally, the table does not cover every specific type of complaint, for example, there were several cases where neighbours complained of objects being thrown from windows.

CASE HISTORIES

7.14 The preceding section summarised the patterns of behaviour which led to eviction actions. In this section we try to give a better flavour of the circumstances which lead landlords to seek eviction by describing some case histories. The details were gleaned from summonses, other material in landlords’ files, and interviews. The cases were selected to give a range of cases from different landlords, and to cover a range of situations. They do not all fall within the 1995/97 period.

**Figure 7.1 Eviction action case histories**

1. **Ms A**
   The tenant was a single woman in her 20’s living in a tenement flat. The landlord began to receive complaints shortly after the tenancy began in March 1995. Neighbours said that the woman was regularly drunk, and played loud music into the early hours of the morning. Her friends came and went at all hours of the day and night frequently causing a disturbance by shouting, singing, using foul language and fighting. The police were called on a number of occasions. Ms A was charged with a breach of the peace arising from a disturbance at the house on at least one occasion. An NOP was served in June 1995 and summons to court in September 1995. The defender did not appear and a decree for possession was granted at first calling in October 1995. Sheriff officers were instructed to carry out an eviction but Ms A abandoned the house before then.

2. **Ms B**
   Ms B lived in flat with her cohabitee and 4 children (aged 2, 4, 6, 9). The tenancy began in August 1993. Complaints were received from several neighbours about excessive noise generally after the couple had been drinking – which occurred regularly. The noise included playing loud music at all hours, shouting, swearing and banging doors. The woman appeared with bruising on several occasions. The children were often left alone all evening and ‘ran wild’ in the street. The older children were accused of vandalism to cars and gardens. When one neighbour complained, she was verbally abused and the following day her door was smeared with excrement. The police were called on many occasions. The most serious incident was when a large group, including the defender’s visitors, besieged the principal complainer’s house: *Yes, we actually had to sit with our backs to the front door to stop them actually coming into the house. That’s me, him and the 5 kids. It went on for ages, they had sticks as weapons. They were shouting up at the window ... they were going to burn us out, they were going to smash all the windows. As I say they laid siege to the house. (Witness)*
Ms B was visited and warned about her conduct, but complaints continued. An NOP was served in February 1994 and a summons in September 1994. The case was continued once then sisted to allow application for legal aid, and did not come to proof until May 1995. The proof was continued twice and not concluded until August 1995. The sheriff granted a decree for possession. The Sheriff Principal dismissed an appeal in November 1995, and the family abandoned the property early in December 1995 before the decree was enforced.

3. Ms C
The tenant was a single mother with 3 children (aged 10, 12 and 14) who lived in a multi-storey block. The tenancy of a flat in a multi-storey block began in May 1993. It was not clear when complaints began but the first incident referred to in the summons was in February 1994. There were a number of incidents between February 1994 and March 1995 where 1 of the daughters was identified as part of the group of youths writing graffiti, playing in lifts, using abusive language, setting fires outside the block, pulling up shrubs from landscaped areas and generally creating a disturbance by excessive noise. There were also allegations that the oldest daughter had thrown bricks around the concierge post and objects out of the flat window. Ms C admitted having difficulties in controlling her children. An NOP was served in October 1994, and a summons to court in April 1995. The sheriff granted a decree in the absence of the defender which was recalled in June 1995. Proof began in March 1996, but the case was then continued for 3 months on the condition that there would be an improvement in behaviour. The action was eventually dismissed in September 1996 although there was some evidence in the file that there had been further complaints.

4. Mr and Ms D
The tenant was a woman occupying a flat with her cohabitee. There were allegations that the couple were dealing drugs but no-one was willing to make a formal complaint because the neighbours were frightened. There were reports of regular drug-dealing in or near the house, and of violent incidents. There were allegations of local residents being assaulted with a hammer, abducted, driven off in a car and beaten up, and of a neighbour being threatened with a gun. In March 1996 the tenant’s cohabitee was convicted of a dealing offence under the Misuse of Drugs Act 1971 and sentenced to 4 years imprisonment. A notice of proceedings was served a few days after the trial, and the council sought to evict on the basis that the tenant was responsible for the conduct of her cohabitee. The sheriff agreed and after a proof granted decree for possession.

5. Mr E
Mr E (aged 55) had been sleeping rough and living in hostels for many years before he was given a tenancy. The complaints began shortly after his tenancy began in April 1992. The tenant had a history of alcohol abuse, and when drunk regularly behaved in an intimidating way towards neighbours. A summons raised some time in 1992 or 1993 (the date is unclear) but the defender’s behaviour improved and the action was dropped. A new NoP was served in March 1995, and a summons in July 1995. The summons noted 9 separate incidents between November 1992 and June 1995 but there were many other complaints. The specific incidents included threatening concierges by brandishing a knife and screwdriver at them, grabbing a concierge and attempting to pull him through the glass screen of the concierge station, assaulting a neighbour and chasing him out of the building, and further attempted assaults on concierges. The police were called on a number of occasions and he was charged with breach of the peace. The defender appeared at the first calling of the second action and a proof was fixed, but Mr E died before the proof took place.

6. Mr F
The tenant was a male who had occupied the flat (1 of a block of 4) since the tenancy began in January 1991, originally with his wife, and on his own after the breakdown of the marriage. The summons referred to 17 incidents between April 1995 and June 1996. The allegations were of neighbouring tenants being disturbed by excessive noise caused by loud music, frequent shouting, swearing and fighting, and drunken aggressive and abusive behaviour at all hours of the day and night. Several incidents involved the defender and his girlfriend fighting inside and outside the house including one occasion when he severely assaulted her in the street. The police were called on many occasions. The council obtained an interim interdict against the defender in December 1995, but, as the incidents continued, raised an action for eviction in September 1996. Mr F did not appear and a decree for possession was granted at first calling.

7.15 As the case histories illustrate, although there was substantial evidence of anti-social behaviour, a number of the cases in which eviction action took place could be regarded as vulnerable. There were 7 cases (out of 90 in the database) where the file indicated that the landlord knew or suspected that the tenant had mental health problems. In 4 cases, the landlord was specifically aware of a serious alcohol problem and the consistent evidence of
interviews suggests that abuse of alcohol was likely to have been a factor in a considerably higher proportion of cases. Finally, 21 cases involved misbehaviour by children of the tenants. In at least 10 of these cases, the children could be regarded as 'out of control' children. In a number of these cases, the landlord had clearly tried to involve social work and health services without success. However, it raises concerns that eviction action was not the most appropriate response to the problem.

THE LEGAL GROUNDS OF ACTION

7.16 All of the actions in which there was a conviction for drug-dealing were brought under the illegal/immoral use grounds. The NOP usually also included the nuisance grounds (7/13) and grounds 1/13 (breach of tenancy) but the statements of claim frequently did not separate these out, although they did usually aver facts which could have supported them. In the other cases grounds 7/13 (nuisance) were always used, usually in conjunction with grounds 1/13, but authority A based its NOPs and summonses solely on ground 7. Scrutiny of the facts averred suggests that the statutory grounds by themselves were in general adequate to establish a legal basis for eviction assuming the facts could be proved. Although references to breach of tenancy were frequently made, none of the cases in the database relied on breach of tenancy alone. Apart from the few cases where the reason for dismissal was not clear, it appears that none of the cases in the database had been dismissed because the circumstances did not fit within one of the statutory grounds.

OUTCOME OF EVICTION CASES

7.17 The outcomes of the cases in the database are summarised in Table 7.3. The most common outcome was a decree for possession (56% of cases). The next most common was a decree of dismissal (33% of cases) with the remainder being cases where the case had been sisted and not recalled, or where no further proceedings had been taken since the last day in court, or where there was a decree for expenses only. These figures are based on the decision of the sheriff at first instance. There were 2 cases in which the defender succeeded in avoiding eviction only after appeal, and these cases are therefore included in the figure of 50 possession decrees.

Table 7.3 Outcomes of eviction actions 1995/96 & 1996/97

<table>
<thead>
<tr>
<th>Decree for possession</th>
<th>Decree of dismissal</th>
<th>Sisted</th>
<th>No further proceedings</th>
<th>Expenses only decree</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>50</td>
<td>30</td>
<td>6</td>
<td>3</td>
</tr>
<tr>
<td>55.5%</td>
<td>33.3%</td>
<td>6.7%</td>
<td>3.3%</td>
<td>1.1%</td>
<td>100%</td>
</tr>
</tbody>
</table>

Source: Case database

7.18 These results suggest that landlords were generally able to secure a result which was acceptable to them as an outcome of the legal process. We state it in this way to take account of the fact that most landlords claim to see legal action as a last resort. Success in a legal action may, therefore, be seen as a failure in a broader sense in that the landlord could not resolve the situation without evicting someone. This conclusion might seem to require some explanation, given that a third resulted in dismissal, which would be the appropriate outcome where the landlord’s case is defective in some way, or the sheriff does not think it reasonable to evict.
As we noted in Chapter 3, dismissal does not necessarily mean that the landlord has failed to make out a case for eviction. Dismissal would be the normal result where the landlord accepted that the tenant’s behaviour had improved, and no longer wished to evict. Also, if the tenant abandoned the tenancy, the landlord would often not seek a decree for possession but would instead ask for the action to be dismissed. So many dismissals are not in any real sense defeats for the landlord. We were able to ascertain the reasons for dismissal from the files in most cases, and the results are summarised in Table 7.4.

Table 7.4 Reasons for dismissal of eviction actions 1995/96 & 1996/97

<table>
<thead>
<tr>
<th>Situation improved</th>
<th>Tenant left/abandoned</th>
<th>Unclear</th>
<th>Simple Dismissal</th>
<th>Other</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>13</td>
<td>9</td>
<td>2</td>
<td>1</td>
<td>5</td>
<td>30</td>
</tr>
<tr>
<td>43.3%</td>
<td>30%</td>
<td>6.7%</td>
<td>3.3%</td>
<td>16.6%</td>
<td>100%</td>
</tr>
</tbody>
</table>

Source: Case database

In 13 of the 30 cases (43%) which had been dismissed there was evidence in the file that the situation had improved with the tenant remaining in occupation, for example, where dismissal was at the pursuer’s request following a lengthy sist to monitor behaviour. It seems reasonable to assume that in these cases there had been a genuine improvement, and that dismissal was an acceptable outcome for the landlord. It seems unlikely that the landlord would have agreed to dismissal where there had been further well-founded complaints.

In 9 cases (30%) the tenant had abandoned the tenancy, or moved away voluntarily, and the case was dismissed because a possession decree was no longer required. The other causes of dismissal were a management transfer, the death of the tenant and the tenant being in jail, where only the husband of a couple was convicted of drug-dealing. In one case, the action was incompetent (failure to raise action before NOP expired), but in this case a decree for possession was obtained in a second action (included in the figure of 50 possession decrees above). Only one case was unambiguously dismissed because the sheriff thought it was not reasonable to evict. However, the outcome in 2 cases was unclear, and there were indications that the landlord would not have been satisfied with these 2 outcomes. In neither case had there been a sist to monitor behaviour, and in one of them the tenant had been convicted of dealing drugs, and the particular landlord’s policy was always to press for eviction in such cases.

Six cases had been left sisted and had not been returned to court. In one case the tenant had terminated the tenancy 4 months later. The remaining 5 had, by the end of 1998, been sisted for periods of between 26 months and 3 years. Four of these cases had been expressly sisted to monitor. In the fifth, a sist originally to allow the defender to apply for legal aid had latterly been used to monitor behaviour. In all these cases there was evidence in the file that there had been an improvement in behaviour that had been sustained over a period of time. Although there is the possibility that cases still subject to monitoring might return to court if there were further complaints, none of these cases could at the time of our analysis be regarded as a ‘defeat’ for the landlord. The remaining outcome was one case where the decree was for expenses only. In that case the situation improved and the tenant was re-housed by the local authority.

Taking all these outcomes together, it would appear that the number of cases which in a real sense were ‘lost’ by the landlord (including on appeal) was very small – perhaps only 4
or 5 cases, and around 5 per cent of the total. Even if a few more of the dismissals were unacceptable to the landlord than appeared from the information on file, it is doubtful if the number of ‘defeats’ is greater than 10 per cent of the total. Therefore, case study landlords were generally successful in obtaining outcomes to the legal process which were acceptable to them. With very few exceptions they obtained a decree for possession, or the tenant left the property, or the situation improved with the tenant in the property. These findings, which were based on the files, were confirmed by the interviews with landlord’s staff.

7.24 Table 7.5 shows that there did not seem to be substantial differences in outcomes between different sheriff courts, although meaningful comparisons are only possible for courts A, B, and C. The ratio of decrees for possession to decrees for dismissal does appear to vary but, bearing in mind the reasons why cases are dismissed (see above), this does not appear to imply differences in the willingness of different courts to grant decrees for possession. Thus, the higher proportion of dismissals in court A reflects a higher proportion of abandonments in cases in court A.

### Table 7.5 Outcomes of eviction actions by court (both years)

<table>
<thead>
<tr>
<th>Court</th>
<th>Decree for possession</th>
<th>Dismissed</th>
<th>Sisted</th>
<th>No further proceedings</th>
<th>Expenses only decree</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>5</td>
<td>4</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>10</td>
</tr>
<tr>
<td>B</td>
<td>14</td>
<td>8</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>25</td>
</tr>
<tr>
<td>C</td>
<td>30</td>
<td>17</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>53</td>
</tr>
<tr>
<td>D</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>E</td>
<td>not avail</td>
<td>not avail</td>
<td>n/a.</td>
<td>not avail</td>
<td>not avail</td>
<td>n/a.</td>
</tr>
</tbody>
</table>

Source: Case database

7.25 Table 7.6 shows the pattern of outcomes by landlords rather than by court, although given the low number of cases for some landlords this is little different from the preceding table, and meaningful comparison is effectively restricted to authorities A, B, and C. For those 3 landlords the spread of outcomes was broadly similar. Again, the higher proportion of dismissals for authority A reflects a higher proportion of abandonments amongst its cases.

7.26 However, for both association A and authority D we also had access to files outwith the 2 year period. In the case of association A, we examined files for 6 cases covering the period 1994-97. The ultimate outcome in all cases, except one, was eviction. The association claimed that it had failed to obtain a decree for possession in only one case over a 10 year period. Authority D had taken around 13 cases to court over the period 1992-98 and claimed always to have achieved an acceptable outcome to the legal process – either a decree for possession, or dismissal based on improvement in behaviour. In the case left sisted the tenant subsequently terminated the tenancy. They claimed that no case had been dismissed against their wishes. This claim was certainly borne out in 7 files which we examined.
Table 7.6  Outcomes of eviction actions by landlord (both years)

<table>
<thead>
<tr>
<th>Authority</th>
<th>Decree for possession</th>
<th>Decree of dismissal</th>
<th>Sisted</th>
<th>No further proceeding</th>
<th>Expenses only decree</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Authority A</td>
<td>2</td>
<td>4</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>7</td>
</tr>
<tr>
<td>Authority B</td>
<td>14</td>
<td>8</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>25</td>
</tr>
<tr>
<td>Authority C</td>
<td>29</td>
<td>17</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>51</td>
</tr>
<tr>
<td>Authority D</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Authority E</td>
<td>not avail.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Association A</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Association B</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Association C</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Association D</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Association E</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

Source: Case database

7.27  We were also able to look at case files over a longer period in local authority A together with other internal records which confirmed that the pattern of success in 1995-97 was typical of the pattern over a longer period. Indeed it appeared that only authority B and authority C – the 2 with the largest caseloads – had definitely experienced losing cases. In the case of authority E, the difficulty of retrieving information arising from the 1996 local government re-organisation made it impossible to be precise about their track record.

7.28  The general pattern is, therefore, that those case study landlords who made substantial use of the legal process were successful in the sense that the outcomes of the process were generally acceptable to them. These results are broadly consistent with those from the postal survey, which also suggested that social landlords were generally successful in their use of the legal process.

**ATTENDANCE AND REPRESENTATION**

7.29  Despite the consequences, a substantial minority of cases were undefended. In 49 of the 90 cases (54%) there was evidence that the tenant was represented by a solicitor at some stage. In a further 13 cases (14%), the tenant had appeared to defend the action. In 26 (29%) cases the tenant appeared to not to have been represented or attended court at any stage. In 2 cases (2%) it was not clear whether there was either representation or attendance.

Table 7.7  Attendance and representation in anti-social eviction cases

<table>
<thead>
<tr>
<th>Represented by solicitor</th>
<th>Attended but not represented</th>
<th>Not represented or attended</th>
<th>Unclear</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number Percentage</td>
<td>49</td>
<td>13</td>
<td>26</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>54.4%</td>
<td>14.4%</td>
<td>28.8%</td>
<td>2.2%</td>
</tr>
</tbody>
</table>

Source: Case database

7.30  However, these figures for representation or attendance are very much higher than those found in previous research into eviction actions generally (Mason et al, 1995; Nixon et al, 1995; Mullen et al, 1997). This suggests that attendance and representation are much more common in anti-social cases than in eviction cases generally. Having said that it is
important to realise that the figures refer to attendance and representation at any stage in the action. In a significant number of cases either the attendance or the representation (or both) is confined to the early stages.

7.31 Attendance and representation did correlate with differences in outcome. Of the 26 cases where there was no representation or appearance at any stage, 20 (77%) resulted in a decree for possession. By contrast, of the 49 cases where a solicitor appeared at some stage, only 22 (45%) resulted in a decree for possession, and of the 13 cases where the tenant appeared unrepresented at some stage, 7 (54%) resulted in a decree for possession. This was not a study of representation and attendance so we do not have enough information to establish to what extent attendance and representation actually did influence outcomes. However, these results are consistent with findings of previous research on attendance and representation in this and other contexts which has suggested they do influence outcomes (Genn and Genn, 1987; Mason et al, 1995).

DURATION OF EVICTION ACTIONS

7.32 The length of time it takes a landlord to secure an eviction has been perhaps the most frequently heard complaint about the legal process, and was the issue which received most attention from the Scottish Affairs Committee (1996, paras 84 – 103). The research attempted to measure the time scale for eviction actions, and the extent and causes of delay. As noted in Chapter 2, although some of the time taken to hear a case is dictated by the procedure rules, the extent of delay is also influenced by a range of contingent factors including the resources available, and the behaviour of the parties. We suggested that a reasonable minimum time for an undefended case would be 10 weeks for a secure tenancy and 8 weeks for an assured tenancy. For a defended case, which ran smoothly, we suggested that 6 months, was a reasonable time scale.

7.33 Table 7.8 gives a reminder of the stages in an eviction action, and the extent to which a minimum time scale is dictated by the rules of procedure. Before looking at the figures it is worth noting that the extent of contingent and, therefore, avoidable delay is at least partly under the control of the landlord. The landlord decides how long to deal with complaints by other means before serving a notice of proceedings, and how long to sit on the notice of proceedings before serving a summons (up to a maximum of 6 months). At the other end of the process, the landlord decides whether to enforce an eviction decree on the first possible day. While the case is proceeding, the prospects of a sist to monitor behaviour being granted would be affected by whether the landlord objected. Other delays are in the hands of the court, for example the listing of cases for first calling and for proof. The defender may affect the length of time in the sense that the defender’s conduct or needs may be the reason for continuations or sists, but the decision to continue or sist rests with the court.
Table 7.8  Stages of eviction action

<table>
<thead>
<tr>
<th>Stage</th>
<th>Minimum duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>NoP served – NoP ‘live’</td>
<td>28 days for secure tenancies</td>
</tr>
<tr>
<td></td>
<td>14 days for assured tenancies</td>
</tr>
<tr>
<td>NoP ‘live’- summons warranted</td>
<td>None. Summons may be served on day notice becomes live</td>
</tr>
<tr>
<td>Summons warranted – First calling</td>
<td>21 days notice for first calling required.</td>
</tr>
<tr>
<td></td>
<td>Rule 4 allows shorter period on cause shown.</td>
</tr>
<tr>
<td>First calling – Proof</td>
<td>No statutory minimum</td>
</tr>
<tr>
<td>Proof – Decree</td>
<td>No statutory minimum</td>
</tr>
<tr>
<td>Decree granted – Decree enforced</td>
<td>No statutory minimum but court fixes period before decree can be enforced</td>
</tr>
</tbody>
</table>

7.34 The first issue we wanted to examine was how long cases were actually taking to complete, and how much time was taken on average at each stage. To examine this we used the case database. There were 90 cases in all in which a summons had been served. Unfortunately, we were not able to get comprehensive information about every case in the database. The extent to which information about cases was missing varied according to the stage of the process. Thus we were able to establish the date of first calling in court for 88 of the 90 cases, but were able to establish the date the summons was warranted in only 50 cases, and the date the summons was served in only 23 cases.

Overall duration

7.35 The overall duration of cases may be measured in a number of ways depending on what is seen as the starting point. The legal process can be seen as starting with the date the notice of proceedings becomes ‘live’ that being the first date on which it is competent to raise a court action. Alternatively, it can be seen as starting with service of the summons, as until then there is not a court action. Less plausibly the process can be seen as beginning on the day the case first calls in court. Table 7.9 shows the mean overall duration computed from each of these starting points to the date of disposal. In each case the third column shows the number of cases for which we had both the starting point and the date of disposal. In other words, even by the longest measure, cases are on average concluded in about 10 months. Since the landlord decides if and when a notice of proceedings should be followed by a summons, and most NOPs are not followed by a summons to court, the time

Table 7.9 Overall duration of cases

<table>
<thead>
<tr>
<th>Starting point</th>
<th>Mean duration (in days)</th>
<th>N=</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notice of Proceedings live</td>
<td>313.27</td>
<td>71</td>
</tr>
<tr>
<td>Summons warranted</td>
<td>275.28</td>
<td>50</td>
</tr>
<tr>
<td>First Calling</td>
<td>202.83</td>
<td>87</td>
</tr>
</tbody>
</table>

Source: Case database

7.36 In other words, even by the longest measure, cases are on average concluded in about 10 months. Since the landlord decides if and when a notice of proceedings should be followed by a summons, and most NOPs are not followed by a summons to court, the time

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12 This is the last date on which the case was in court. This will normally be the date on which a decree for possession or dismissal was granted. However, where a case was sisted on the last day it called in court, but no longer appeared to be active litigation, we used the date of sisting as the date of disposal. None of the cases in the database were regarded as being continuing cases. The decision to treat a sisted case as effectively finished was based on the information in the case files.
between the warranting of the summons by the sheriff clerk and the date of disposal is arguably the most relevant measure of the length of the legal process. On that measure cases take on average about 9 months. The date of first calling cannot, in a realistic sense, claim to be the start of the case, but we have included this because we had both dates for this interval in nearly all the cases (87), so that it is the most representative of all the figures shown.

7.37 The figure for the interval from summons warranted to disposal is affected by the fact that we were only able to establish the date the summons was warranted in 50 cases. In fact, entirely coincidentally, the cases in which we were not able to establish the date the summons was warranted on average had a substantially shorter overall duration than those in which we could establish the date of service. This explains the difference of 73 days between the overall duration measured from first calling and the overall duration measured from warranting of the summons. Had we had the date of warranting of the summons for all cases the mean interval between that date and the date of disposal would have been significantly less than 275.28 days.

7.38 However, the mean figures include both a few cases of extravagant length, and a large number – 28 in all – which were relatively short as the case was disposed of at first calling. So, it is important also to look at the distribution of values. Table 7.10 shows the proportion of cases concluded within 6, 12, and 18 months of the summons being warranted.

Table 7.10  Duration from date summons warranted

<table>
<thead>
<tr>
<th>Duration</th>
<th>No.</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-6 months</td>
<td>25</td>
<td>50</td>
</tr>
<tr>
<td>6-12 months</td>
<td>10</td>
<td>20</td>
</tr>
<tr>
<td>12-18 months</td>
<td>7</td>
<td>14</td>
</tr>
<tr>
<td>More than 18 months</td>
<td>8</td>
<td>16</td>
</tr>
<tr>
<td><strong>Total cases</strong></td>
<td>50</td>
<td>100</td>
</tr>
</tbody>
</table>

Source: Case database

7.39 So, 50 per cent of cases had been disposed of within 6 months and 70 per cent within one year. However, these figures are for only 56 per cent of cases as we did not have the date of warranting the summons in 40 cases. As noted above, we did have the date of first calling in 87 (97%) cases, and it is worth looking at the distribution of values for first calling to date of disposal to confirm whether the pattern shown in Table 7.10 holds good for the whole sample. Table 7.11 suggests that it does:

Table 7.11  Duration from first calling

<table>
<thead>
<tr>
<th>Duration</th>
<th>No.</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-6 months</td>
<td>50</td>
<td>57.5</td>
</tr>
<tr>
<td>6-12 months</td>
<td>20</td>
<td>23.0</td>
</tr>
<tr>
<td>12-18 months</td>
<td>9</td>
<td>10.3</td>
</tr>
<tr>
<td>More than 18 months</td>
<td>8</td>
<td>9.2</td>
</tr>
<tr>
<td><strong>Total cases</strong></td>
<td>87</td>
<td>100</td>
</tr>
</tbody>
</table>

Source: Case database

7.40 Looking at overall duration does not help to explain why cases take the length of time that they do. Looking at the time taken at different stages may shed some light on that. Some of the stages discussed below apply to all cases in the database, for example, the
interval between the summons being warranted and the first calling. Others will apply only to some cases, for example not all cases are sisted, or set down for proof.

Summary of time taken at different stages

7.41 The mean figures for time elapsed at the above stages, and overall, are summarised in Table 7.12. Bear in mind that each column is based on a different group of cases. This is partly due to gaps in the information obtained, and partly because many cases do not go through all stages e.g. being sisted or set down for proof. The mean duration measured from warranting of the summons to disposal is 275 days. If the clock is started when the NOP is served rather than when the summons is warranted the mean duration is necessarily longer, however, the figure of 48 days cannot simply be added to the figure of 275 days because these figures are for slightly different groups of cases.

7.42 The figures suggest that cases routinely take longer than the minimum required by the rules of procedure. The mean duration is also a great deal longer than the estimate of 6 months as a reasonable time for a defended case given above: especially in view of the fact that the figure for overall duration includes 28 cases (many undefended) disposed of at first calling. This suggests that much of the time taken to conclude cases is not caused by the statutory time limits, but by contingent factors. These might include the management of the case by the parties, and the resources available to the court.

Table 7.12 Mean duration of legal process (in days) by stages

<table>
<thead>
<tr>
<th>NOP live – Summons Warranted</th>
<th>Summons Warranted - First Calling</th>
<th>First Calling - Proof begins</th>
<th>First Calling - Disposal</th>
<th>Sisted for Legal Aid</th>
<th>Sisted To monitor</th>
<th>Summons Warranted – Disposal</th>
</tr>
</thead>
<tbody>
<tr>
<td>48.2</td>
<td>44.16</td>
<td>184.25</td>
<td>202.83</td>
<td>202.23</td>
<td>393.58</td>
<td>275.28</td>
</tr>
<tr>
<td>N = 44</td>
<td>N = 50</td>
<td>N = 40</td>
<td>N = 87</td>
<td>N = 30</td>
<td>N = 12</td>
<td>N = 50</td>
</tr>
</tbody>
</table>

Source: Case database

Pre-litigation delay

7.43 The most obvious way to assess pre-litigation delay was by finding the mean time between referral of the case to the landlord’s solicitors and the service of an NOP. The mean time was 53.1 days (based on 73 cases where we had the necessary dates). However, in some local authorities NOPs were served by the solicitors, in others by the housing service. As a result, the date of referral for action is often after the date of service of the NOP, and the figures which go to make up the mean include many minus values. This is not, therefore a meaningful indicator of delay in progressing legal action.

7.44 Of more value is the time between the NOP becoming live (i.e. the first date proceedings can be raised) and the date the summons is warranted for service. The mean figure here was 48.2 days (based on 44 cases). Bearing in mind that the landlord can take the tenant to court as soon as the NOP becomes live, this shows that in general landlords did not ask for a summons to be warranted on, or even close to, the first available day.
Summons warranted to first calling

7.45 This interval is of interest since it shows how far beyond the minimum 21 days for service of the summons it takes to get a case into court. The average time (based on 50 cases) was 44.16 days. This seems rather longer than is necessary to allow time for postal service of the summons, which would be a few days at most. In some cases the delay was clearly due to difficulties of service as the case did not go ahead at the first calling but, to a significant degree, it also appears to reflect an additional delay imposed by the scheduling of court business. That itself includes 2 different reasons for delay. One is that courts do not sit to hear this type of business on every single court day – it may only be once or twice a week, and one must also take account of public holidays. The other is that cases are not simply put down for the earliest date when a summary cause or heritable court is sitting that would allow time for service of the summons. They are sometimes put down for later dates because there are already too many cases down for the first available court day(s).

First calling to proof

7.46 In many cases no proof is necessary. However, there were 40 cases out of the 90 in the database in which a proof was fixed. The mean time between first calling and proof was 184.25 days – about 6 months. There are several reasons why it took this long on average. Firstly, a date for proof is often not fixed at the first calling. Relatively frequently, cases are continued one or more times between first calling and proof, or sisted to allow the defender to apply for legal aid. Only part of the delay can be attributed to the practices of sheriff courts in scheduling cases, and interviewees in each court district typically suggested that proofs were fixed for dates very much less than 6 months ahead.

7.47 The distribution of values is shown in Table 7.13. This indicates that in 55 per cent of cases the time between first calling and proof beginning (or being scheduled to begin) was less 6 months, and in the 92.5 per cent of cases (37) less than one year.

Table 7.13 Duration - First calling to proof

<table>
<thead>
<tr>
<th>Duration</th>
<th>No.</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 – 3 months</td>
<td>9</td>
<td>22.5</td>
</tr>
<tr>
<td>3 – 6 months</td>
<td>13</td>
<td>32.5</td>
</tr>
<tr>
<td>6 – 9 months</td>
<td>11</td>
<td>27.5</td>
</tr>
<tr>
<td>9 – 12 months</td>
<td>4</td>
<td>10.0</td>
</tr>
<tr>
<td>More than 12 months</td>
<td>3</td>
<td>7.5</td>
</tr>
<tr>
<td><strong>Total cases</strong></td>
<td><strong>40</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

Source: Case database

Sisting for legal aid, or to monitor behaviour

7.48 In all, 30 cases of the 90 cases were sisted to allow application for legal aid. The time sisted for legal aid varied between 42 and 560 days with the average time spent sisted for legal aid being 202.23 days – approaching 7 months. This is very much longer than the time normally taken to process legal aid applications. The Scottish Legal Aid Board consistently

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13 This includes cases in which a proof was fixed but the case was ultimately disposed of without the proof going ahead. It seems appropriate to include these cases as they give an indication of how long it takes to get a proof underway.
claimed to process over 85 per cent of Civil legal aid applications within 6 weeks, and over 99 per cent within 12 weeks over the relevant period (SLAB, 1995, 1996, 1997). Applications in anti-social behaviour cases take longer to process than the general run of cases. There are several reasons that could explain these figures. One is that defenders delay putting in the legal aid application. The second is that applications in anti-social behaviour cases take longer to process than the general run of legal aid application. The third is that there is a considerable gap between the legal aid application being determined and the sist recalled. We return to this issue later in the chapter.

7.49 Only 12 cases were sisted expressly to monitor behaviour. The time sisted to monitor behaviour varied between 175 days and 756 days. The mean time elapsed while a case was sisted to monitor behaviour was 393.58 days. There were a few cases that were sisted for legal aid where the sist seemed later to be used for monitoring behaviour but these are not included in the 12. In most of these cases there was no need for further proceedings in court after the sist (other than to dismiss the action).

**REASONS FOR DELAY**

7.50 The contingent delay just referred to occurs at all stages. Each of these merits some discussion.

**Delay in serving the summons**

7.51 It appears that landlords, on average, waited nearly 7 weeks (48.2 days) after the NOP became live before having a summons warranted. This suggests that raising a court action in anti-social behaviour cases was not usually treated as a matter of great urgency. The reasons for this are discussed below.

**From warranting the summons to first calling**

7.52 The average interval between warranting the summons and first calling is also about 3 weeks longer than the minimum period of citation, plus time for service. The reasons for this were mentioned above. They include difficulties of service, and the way sheriff courts schedule business.

**Sisting for monitoring and legal aid application**

7.53 However, the major delay clearly occurs between first calling and proof with the mean for all cases being 184.25 days. All of this delay is, in a sense, contingent since the rules of procedure do not require any delay between first calling and proof. It was clear from the records we examined that the main reasons for the time taken at this stage were:

- the ‘normal’ wait for a proof date
- continuations for a variety of reasons
- sisting either for legal aid or to monitor behaviour

7.54 Overall, it is sisting of cases which appears to cause the largest amount of delay. Where cases were sisted, the mean time sisted for legal aid was 202 days, and for monitoring 394 days. That the latter figure is much greater than the former is perhaps unsurprising. One would expect that where cases are sisted for monitoring the landlord is likely to want to
monitor the behaviour for a considerable length of time before agreeing to drop the action. It is worth noting that most cases sisted for monitoring behaviour resulted in the action being dropped because the behaviour had improved or the tenant abandoned the property.

7.55 However, the bulk of sists (30 out of 42) were to allow the defender to apply for legal aid. As noted above, the time spent sisted for this purpose, might seem excessive in the light of the fact that legal aid applications are usually processed within a much shorter time.

7.56 The Scottish Legal Aid Board was kind enough to supply information, based on analysis of their records, which throws light on the reasons why cases are sisted for such long periods. The Board does not separately code applications for legal aid to defend an eviction summons for anti-social behaviour. However, they were able to identify all cases between 1995 and May 2000 in which the applicant was the defender in an eviction case and the pursuer was a local authority or housing association. There were 975 such applications. However, the great majority of these cases would have been evictions for rent arrears. The mean time taken to arrive at a final decision on legal aid was 43 days. Only 12 took more than 202 days, the mean time sisted for legal aid in our database.

7.57 What is of more direct relevance is that the Board was able to provide detailed information on the 8 cases which had been sisted for the longest in our sample: i.e. all those sisted for more than 300 days. In 5 of the 8 cases, the cases remained sisted for over a year after the application was decided. The Board took 15 weeks or less to make a decision in 7 of the 8 cases. The time between the first calling and the application being lodged was 6 weeks or more in 5 of the 8 cases, providing some evidence of applicant's delaying the lodging of applications for legal aid.

7.58 This suggests that that the major cause of the difference between legal aid decision times and the length of sists in anti-social behaviour cases is the failure of landlords (for whatever reason) to recall the sist at the earliest opportunity. It is not possible to assess, from these figures, whether applications for legal aid to defend anti-social behaviour cases take longer than other applications. However, the length of time taken to process applications for legal aid does not appear to be a major cause of delay in antis-social behaviour cases.

**Completing the proof**

7.59 In a number of cases completing the proof was a significant source of delay because it had to be adjourned on more than one occasion, usually but not always because of insufficient court time. Other reasons for continuation included the withdrawal of the defender’s solicitor, and the failure of the defender to appear.

**After decree**

7.60 At the final stage, where a decree of eviction was granted, the date fixed for recovery of possession was usually 14 or 28 days from the date of decree, but in some cases longer. The period fixed is at the discretion of the sheriff. The information we had about this interval tended to be incomplete in many cases, and we have not calculated average times or the distribution. It did, however, appear that it was not uncommon (a) for the defender to abandon the house before the decree was executed so that physical removal of the tenant was not necessary; (b) for the landlord to delay executing the decree beyond the date set by the court.
7.61 When the Scottish Affairs Committee (1996) were given examples of how long evictions took, they wondered whether the examples cited to them were typical. Our research shows that on average cases took 275 days from the date of summons being warranted to the date the case was disposed – i.e. about 9 months – and 70 per cent of cases were disposed of within one year. Whether this is acceptable is a matter of judgement. However, the figures suggest that the extent of delay is not as great as claimed by some witnesses before the Scottish Affairs Committee.

7.62 Nevertheless, the figures also suggest that there might be room for improvement in the speed with which cases go through the system. If there are to be efforts to reduce the delay, the greatest scope for improvement seems to lie in the interval between first calling and proof, in particular the delay occasioned by sisting for legal aid. The granting of sists and continuations is at the discretion of the court. However, whether matters are expedited during continuations and sists depends on the parties and, to some extent, the Scottish Legal Aid Board. Moreover, there is also scope for reducing contingent delay at other stages, albeit improvements at other stages are likely to result in less substantial reductions in the overall time scale.

SUMMARY

7.63 This chapter has presented the number of eviction actions brought by our case study landlords and their outcomes. The eviction actions that we examined suggested that there was a range of situations in which all the case study landlords were in practice prepared to take tenants to court. These included excessive noise; abusive behaviour towards neighbours; violence to neighbours and to the landlord’s staff; and vandalism to homes or council properties. The behaviour of visitors and of juvenile children was also generally treated as an appropriate basis for eviction, on the assumption that the tenant was responsible for controlling them.

7.64 With the exception of those evicted for drug-dealing, all the cases involved a number of distinct complaints over a period of time. Many cases involved a very large number of complaints. The case histories give some indication of this. However, they also indicate that there were a number of cases in which the defenders could be considered to be vulnerable in some way.

7.65 The data suggest that, in the great majority of cases, landlords are able to achieve results which are acceptable to them as outcomes of the legal process. It appears to be rare for landlords to lose a contested case. In any event a large proportion of cases do not result in a case being contested as far as a proof. Rates of representation and attendance are much higher than for eviction actions in general. Even so nearly half of defendants were not represented by a solicitor, and in more than a quarter of cases the defender was neither represented nor present. Attendance and representation appear to be related to outcomes.

7.66 Detailed figures on the progress and duration of eviction actions have been presented. Many cases are disposed of at first calling. The figures suggest that at all stages of the process the time taken is on average substantially more than the minimum laid down by the rules of procedure. The overall time taken depends in part on whether cases are defended. The extra time taken – “contingent delay” - is much more significant in defended cases than
in those disposed of at first calling. Overall the mean duration, measured from warranting the summons to final disposal, is around 19 months. The most substantial causes of delay appear to be the interval the court allows when fixing the date for proof, sitting to allow the defender to apply for legal aid, and sitting to monitor behaviour. It is clear that landlords’ management of cases makes a significant contribution to the extent of contingent delay.
CHAPTER 8 PERCEPTIONS OF THE EVICTION PROCESS

8.1 In this chapter we report the views of the interviewees on aspects of the eviction process. The areas discussed were the same as those identified as possible areas of concern by the Scottish Affairs Committee (1996): the statutory grounds for eviction, the reasonableness requirement, questions of evidence, and proof of fact, and delay in the legal process. These views are also compared to the information gathered from case files and court records.

VIEWS ON THE GROUNDS FOR EVICTION

8.2 We sought views on the statutory grounds for eviction and their influence on the outcomes of cases. The scope of the statutory grounds for eviction, and the reasonableness requirement, were discussed by the Scottish Affairs Committee (1996). The principal suggestion for change (paras. 112-114) made to the committee was that in certain circumstances, for example, a conviction for drug-dealing, eviction should be mandatory. The committee rejected this suggestion. However, since then the Crime and Disorder Act 1998 has recast the relevant grounds of eviction so that, even though not mandatory (with the exception of secure ground 8), their scope is now broader than it was before. The precise legal effects of these changes were described in Chapter 2. Collins & O’Carroll, (1997) also commented that there were very few situations in which landlords found the old version of statutory grounds to be too narrow for their purpose when they sought to evict a tenant, and that:

Extending the scope of the nuisance and annoyance ground is unlikely to make any real change in practice: the authors know of no reported cases which have turned on a narrow definition of the persons affected or vicinity. (Collins and O’Carroll, 1997, p. 149)

However, their conclusion was based largely on cases in the law reports rather than on an empirical survey.

8.3 The changes made by the 1998 Act came too late to have an impact on any of the cases in the database, all of which were begun before the end of March 1997. The experience of interviewees was also limited to the former narrower versions of the grounds. However, we did seek views on the difference the new grounds might make in practice.

8.4 The views of lawyers - whether landlord’s solicitors, tenants’ solicitors, or sheriffs - were fairly consistent. They did not see the statutory grounds as a substantial impediment to eviction in cases of anti-social behaviour:

No, I wouldn’t say so, because nuisance and annoyance can be so widely defined, that I have never experienced any difficulty with that. (Solicitor, Local Authority D)

In the main, no, I can’t say I have had any problems with the actual grounds. The argument, you will tend to find if there is going to be an argument is
normally - or a defence ... the main plank of defence is invariably on the question of reasonableness. (Housing association solicitor, Court A)

8.5 None of the sheriffs could recall hearing a case in which technical arguments about the scope of the grounds had been important to the outcome, and one commented:

*I am surprised that landlords don’t bring more. I think the legislation is there and I am genuinely surprised there are not more actions. (Sheriff, Court C)*

8.6 Housing staff tended not to comment in detail on the statutory grounds nor did they raise points which suggested that this was an issue for them.

8.7 These views were entirely consistent with the evidence from the database. None of the 90 cases had been dismissed on the basis that the statutory ground pleaded by the landlord did not apply. On the basis of the information available, we also concluded that all these cases were within the scope of the statutory grounds assuming that the facts alleged by the landlord were true. Where cases were dismissed by the court, this was either on procedural grounds, or because it was not considered reasonable to evict, or recognition that the behaviour had improved, or because the case had been resolved in some other way such as the tenant abandoning the house.

8.8 There were some limitations on the scope of the former grounds, as we indicated in Chapter 2. But both the interviews and the database suggested reasons why these rarely or never arise as problems in the types of cases which landlords routinely have to deal with. First, although there might be complaints about tenant’s visitors (whose behaviour is not covered by ground 7), there were generally also in such cases complaints about the behaviour of the tenant. Second, even if some of the offending behaviour occurred beyond the vicinity of the house (again, not covered by ground 7), there was generally also evidence of behaviour in and around the house that could be brought within a statutory ground. Third, the level of complaints, and the nature of the behaviour complained of generally made it clear that it could reasonably be described as ‘nuisance or annoyance’ in law.

8.9 The new grounds introduced by the 1998 Act clearly have a broader scope in law than the former grounds, but there were varying views about whether the new grounds would make much difference in practice:

*Probably none! I can’t think of any that were done under the old ground 7 which would need the new ground 7. (Private solicitor)*

*I think it is helpful in that it clarifies exactly what you have to establish to satisfy the ground of action, but we have not experienced any difficulties in establishing the ground so I don’t know how that will affect us in practice. (Solicitor, Local Authority D)*

*Q ..how many cases statistically would come within the expanded grounds that could not have been fitted within the old grounds? A....I don’t know - a small but significant proportion I would think. Those cases probably would not have been taken because we are talking about areas*
where we would have no way of proving a ground 7 (Solicitor, Local Authority C)

8.10 Not all the interviewees had considered the new grounds in detail. However, the general view was that, although the new grounds were clearly broader as a matter of law, this would not lead to large numbers of actions being brought which would not have been brought under the old rules. As indicated above, our review of the files suggested that on the basis of past practice the new grounds would not lead to an increase in the number of cases being brought. However, landlords might react to the new grounds by seeking eviction in circumstances in which they would not have contemplated eviction in the past. There was some indication of this possibility in the views of 2 local authority solicitors:

I think that it (the extended grounds) is a welcome extension which will be of some use to us. (Solicitor, Local Authority D)

They are much more helpful in cases in high flats, where concierge staff are the victims of abusive or violent behaviour. The new grounds 2 and 7 include the objective tests and whether it is likely to cause fear, alarm, nuisance or annoyance, and also the person is going about their lawful business. That is a very important addition to our armoury. It is helpful in expanding the scope of the evidence which can come in without objection. (Solicitor, Local Authority C)

VIEWS ON REASONABLENESS

8.11 However, important as the statutory grounds are, the lawyers interviewed emphasised that the most important factor in determining whether a tenant is to be evicted on any given set of facts (at least in contested cases) is the sheriff’s decision on reasonableness. The question of how the reasonableness test is applied was raised before the Scottish Affairs Committee with some criticising sheriffs for being unwilling to evict even when legally sufficient grounds were proved. The Committee received conflicting evidence on this point but thought that it had not been established that sheriffs were in general too reluctant to evict (SAC, 1996, paras. 112-114).

Reasonableness in General

8.12 Landlords were able to recall only a few cases where they had been defeated on reasonableness, but they were the exception rather than the rule:

I think the Sheriff perhaps almost took the line that we would normally take, that eviction is an absolute last resort. The fact that he was satisfied himself that we had totally exhausted all possibilities but he had as well. ... I wouldn’t say the case was cast iron, but we didn’t expect that outcome (i.e. to lose). (Housing manager, Association B)

We got one where the Sheriff had said no, it is not reasonable to evict this guy … we won’t give you a decree. The guy was only out of court about 3 hours and he had 2 of the people up the stair, broke into their properties, kicked their doors down, assaulted 2 individuals and was lifted by the Police. And
they got that back to court extremely quickly and it was the same Sheriff and he says Sorry - decree immediately, no problem (Housing manager, Local Authority C)

8.13 Most interviewees who expressed an opinion were generally content with the approach of sheriffs in their area. But, despite the rarity of cases being lost on reasonableness, several interviewees expressed dissatisfaction with the assessment of reasonableness by the courts. In authority D, there was a perception that the local sheriffs were reluctant to evict:

I think there is sometimes a feeling, certainly from local managers when they come back from having managed a case, that sheriff’s are sometimes far removed from the reality. … But we have had visiting sheriffs who actually come to us from (name of place) who have come up with a particular judgement which has surprised and delighted us (Housing manager, Local Authority D)

8.14 But given that the council had obtained a decree in all its anti-social cases, none of which had even proceeded as far as a proof, it seems likely that this impression of sheriffs was based mainly on rent arrears cases. Indeed, one of the council's solicitors appeared to confirm this:

In the cases we have had, more in relation to the rent arrears actions, where reasonableness has cropped up, the sheriffs seem to be particularly concerned with what will happen to the tenants if ejection is granted, in terms of what their rights will be to homeless persons’ accommodation. I feel that the sheriffs in (Court D) are pretty much biased against the council - we are always seen in the role of oppressors - and I think they are very sympathetic towards tenants, which can be very difficult. (Solicitor, Local Authority D)

8.15 Authority C seemed even less satisfied with the approach of sheriffs:

That is when we started to see that there were defects from the local authority’s point of view in the court system …in the reasonableness test when one sheriff may take a different view from another sheriff on exactly the same set of circumstances …. As I have said before, because of the inconsistency of sheriffs and the reasonableness test is so open-ended, legal can never say that you will win come what may. Every anti-social case generally has some complicating factor - children, spouses who are unwell - some mitigating factor, or a child who may go to Lourdes for immediate treatment, or a second cousin of King Hussain who is stricken with grief. There is usually something which can be looked at favourably by a sheriff to say it just fails the reasonableness test. (Housing manager, Local Authority C)

8.16 However, it did appear likely that this dissatisfaction was based largely on the experience of drug-dealing cases. Authority C clearly gave higher priority to tackling drug-dealing by eviction than any of the other case study landlords, and the examples given of cases which they felt should not have been dismissed were of this type.
8.17 Some interviews suggested that dissatisfaction might be more likely amongst ‘outsiders’ to the legal process:

It is an irritation, and I can understand the way that sheriffs make their decisions, and I can generally explain to my client department that this is why the sheriff has made his decision, and why it has been dealt with in the way it was. What I find difficult sometimes is to get over to elected members why that is. Elected members take perhaps a slightly more simplistic view of life, especially in [x] and [y] where it is an endemic problem, they simply see the system not working …. The fact that I am telling them that perhaps the system is working, because the system allows that discretion, is not something that they are particularly interested in at the end of the day. They are interested in a result that will satisfy the community. (Solicitor, Local Authority C)

8.18 This was perhaps echoed by the thoughts of a housing manager in authority E:

Very unwilling. Very unwilling. It was almost as if they were looking for a way not to grant the order. If it could be - if the ‘i’ wasn’t dotted, the ‘t’ wasn’t crossed that was sufficient to adjourn the case, to dismiss the case and go back and think again. … The Sheriff was bending over backwards .. to protect the interests of the guilty party as it were, and not to take cognisance of the interests of the wider community. (Housing manager, Local Authority E)

8.19 But solicitors in the same authority did not share this negative perception:

I think, in fairness, in all the courts that we have dealt with, the sheriffs will listen to all sides of the case before them,. They will look at it, they will consider the question of reasonableness, even if it is not put forward by the tenant. (Solicitor, Local Authority E)

8.20 However, although most interviewees did not consider that sheriffs in general were ‘too soft’ on reasonableness, several of them did note that there were differences of approach as between individual sheriffs:

What is reasonable to one sheriff may not be reasonable to another, and often in these cases it really depends on the individual sheriff that you are before. You know which sheriffs are more likely to take a hard line on a tenant, and you know which sheriffs are more likely to find reasonableness in their situation, and you just turn up on the day and see who you have been allocated. So that I can’t say that there is any particular one way in which they interpret reasonableness. (Private solicitor, Court A)

It is difficult to generalise because it is such a personal thing for the sheriff who hears the case. …Even on the same set of circumstances you will get sheriffs taking diametrical opposite views. Effectively, what they have to do, because it is a discretion that is vested in them by the legislation, they have to look at all the relevant factors. (Solicitor, Local Authority B)
One sheriff has a hang ‘em and flog ‘em approach. Another is a bit of a softie. (Housing manager, Association A)

8.21 Again, these views were based not just on anti-social behaviour cases but also on experience of rent arrears cases. However, this variation was not necessarily seen as a major cause for concern. There was some recognition that it might be an inevitable consequence of giving sheriff’s discretion, and not unique to this area of law:

I suppose again the difficulty is that reasonableness in itself is rather vague. I mean reasonable to whom? This is the difficulty in that.. the sheriff can say “well its not reasonable because of the defenders circumstances to evict them” but then again it may not be reasonable to the neighbours to allow the tenant to remain in situ, so it really depends on what angle they approach it from. ….I wouldn’t say it’s necessarily wider because you tend to find that in any area where you are giving a sheriff discretion by using words like reasonable. But, it's the old chestnut being, put in cases before 5 different sheriffs and get 6 different outcomes. (Private solicitor, Court A)

8.22 The concerns of some interviewees about sheriffial approaches to reasonableness are not supported by the evidence of the cases they actually took to court. Of the 90 cases in the database only one was unambiguously dismissed on the ground that it was not reasonable to evict, although there 2 other cases where reasonableness might have been the reason for dismissal. Where we were able to examine files and/or other records over a longer period than that used for the database (1995 – 1997), the same pattern emerged.

8.23 Authority A had been involved in several contested proofs but had not lost a case on reasonableness, since the inception of the specialist team. Authority D had not even been seriously tested on the reasonableness issue given that none of its cases had ‘gone the distance’. Their solicitor confirmed that the council had never lost an anti-social eviction case (any dismissals being by consent) and that no case had even proceeded to a proof in 7 years. Association A had almost certainly raised more anti-social eviction actions than any other housing association. It had lost only one of 11 cases in a 14 year period. In that case, the sheriff agreed to evict one of the occupants of a house convicted of dealing drugs, but had not thought it reasonable to evict the other occupant, who had not been convicted. Association B had been successful in all its cases. Authority E could not supply the necessary files. In the case of authorities B and C, we confined our scrutiny of files to the period 1995/97, in view of the much larger number of cases. The remaining associations had not recently taken cases to court.

8.24 It might be suggested that the high success rate of landlords in pursuing eviction is due to their taking only cases which they are sure to win, and that sheriffial attitudes are deterring landlords from bringing other cases. However, one would then still expect some historical evidence of sheriffs taking a 'soft line' on reasonableness, otherwise there would be no foundation for landlords' perceptions that it was 'too hard' to get a decision in their favour. As indicated above, there is no evidence for this in the case of authorities A and D. Authorities B and C, and association A, seemed largely undeterred by any adverse decisions they may have had in eviction cases. Certainly both authorities B and C adhered to their policy of always seeking eviction where there was a conviction for drug-dealing.
Reasonableness in drug-dealing case

8.25 The obvious alternative to leaving discretion with the sheriffs is to make eviction mandatory under certain circumstances. It was suggested to the Scottish Affairs Committee that eviction might be mandatory in cases of conviction for drug-dealing, but the committee rejected this suggestion (1996; para 114.). However, authorities B, C, and D took the view that a conviction for drug-dealing automatically merited eviction, and always served a summons in such cases. Some staff in authority C were particularly concerned about its failure to secure eviction in some of these cases.

8.26 However, sheriffs did not support the idea of mandatory eviction:

_ I don’t think I would be happy with that, because I think that when we are dealing with something as basic as the right of a person to have a roof over his head, then there should always be the possibility of discretion because there may be very strong mitigating factors._ (Sheriff, Court B)

_ Drug-dealing is incapable of definition because it covers such a wide range of conduct. I could see that a person is supplying drugs to the extent that drug addicts are regularly calling at the premises day after day, possibly several times a day, leaving unguarded syringes and other paraphernalia of drugs littering a common area. then that is an entirely different type of case from giving one or 2 reefers to a friend. .. I think one has to draw a distinction, ...... it would depend on the extent of the supply and .. on the extent to which is affected other neighbours in the close. .. So, I think one has to be very careful about saying ‘drug dealing’ should lead to automatic eviction, because it is far too wide._ (Sheriff, Court D)

_ If it was some sort of commercial supplying operation, the chances are you wouldn’t need to worry about evicting them because they would be in the jail. So anything that has not brought a jail sentence with it is likely to have some mitigating features about it and it may not look as serious up close as it did in the distance._ (Sheriff, Court E)

8.27 However, one sheriff did incline towards the mandatory position:

_ That was really a very straightforward one. If somebody was dealing in drugs, it is clearly reasonable that they be asked to leave._ (Sheriff, Court C)

Although even he conceded that each case turned on its own facts.

8.28 The database suggested that, whilst eviction is not automatic in cases where the tenant or someone else living in the house has been drug-dealing, it is the norm. There were 20 cases in which the main complaint was of drug-dealing: in 18 of which the tenant had been convicted of a dealing offence. In 15 of these cases the outcome was a decree for eviction. One case was sisted to monitor behaviour and did not return to the court, and 4 were dismissed. The sisted case, and all 4 of the cases which were dismissed, were brought by authority C, so that they only obtained a decree in two-thirds of their drug-dealing cases.

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14 In the other two cases, it was not clear from the file whether there had been a conviction.
However, in one of the dismissals cases the council had asked for proceedings to be dismissed. In 2, the dismissal followed a period of monitoring with the tenant being allowed to stay on the basis of good behaviour following conviction. Only one of the dismissals was clearly on the basis that it was not reasonable to evict. Thus, the perception of some staff that sheriffs were not strict enough in drug-dealing cases did not appear to be entirely in line with the actual outcomes of cases.

8.29 One housing manager noted that, in some cases, the incident which lead to a conviction for drug-dealing might be some years before the eviction case, due to the time taken for a hearing of the criminal case. The manager commented that, in such cases, if the perpetrator had been 'clean' since the offence, the sheriff might not consider it reasonable to evict:

*By that time, two years have passed and they have been squeaky clean. Now staff get very uptight about that because they still say they should be evicted .... Sheriffs are saying 'no they are dealing with it and they haven't offended since and so they have learned their lesson' (Housing manager, Local Authority, C)*

**VIEWS ON EVIDENCE AND PROOF OF FACT**

8.30 Two different problems with proof of fact were suggested to the Scottish Affairs Committee. The first was that there was an unduly technical and legalistic approach to the admission of evidence. The second was that it was difficult to obtain evidence because complainers were reluctant to come forward, or complainers would not agree to be witnesses in any future court action (SAC, 1996, para. 104). The committee did not accept the first point. It accepted that the second was probably a substantial problem, and suggested a variety of professional solutions including the use of professional witnesses (paras. 108-111)

**Undue technicality**

8.31 In contrast to the anecdotal evidence presented to the select committee, landlords’ solicitors did not consider that the admissibility of evidence posed problems in this area, indeed the majority had not ever been confronted with arguments on admissibility from defence solicitors in anti-social behaviour cases. Similarly, defence solicitors and sheriffs thought admissibility was not a problem.

*Given the Civil Evidence Act and the use of hearsay, and the lack of corroboration, if they find obstacles then they are not doing their job properly. (Private solicitor)*

*Particularly since the Civil Evidence Scotland Act, obviously you don't need corroboration. As so often in these cases, it really comes down to the credibility of the pursuers as witnesses against the credibility of the defenders' witnesses. (Solicitor, Association A)*

*I can’t think of an incidence of that happening here. With the Civil Evidence (Scotland) Act being in the terms in which it now is, with hearsay documentary evidence being admissible, you would almost be restricted to*
questions as to whether or not the witness was competent before you would get anywhere near non-admissibility. (Sheriff, Court B)

8.32 Although admissibility was not a problem, one solicitor suggested other possible technical legal difficulties with regard to evidence:

*Certain sheriffs, if you have a serious anti-social case, will not allow you to lead evidence if you have a cut-off point in pleadings. If there are other serious incidents between the time when you have last adjusted your pleadings to the point where you come to a proof, then a technically-minded sheriff may take the view that you are not allowed to lead evidence. ... I had difficulty in one case, although it did not impact on the case at the end of the day because we did get decree granted. The sheriff was not prepared to allow that technical viewpoint that you can lead evidence in a general way if there was no record for that evidence beyond date X when the proof was at date Y.* (Solicitor, Local Authority C)

However, this was not seen as a common problem for this or other landlords.

8.33 At least one solicitor thought that too flexible an approach to evidence was taken by some sheriffs in drug-dealing cases. Rather than lead neighbours as witnesses, authority C routinely led evidence from housing officers about the general effects and consequences of drug-dealing in the area. In effect, the Sheriffs were asked to conclude that there must necessarily be a nuisance even where no neighbours gave evidence that they had been discomfited:

*In many cases there is absolutely no evidence that the neighbours even knew of the offence so how could it be a nuisance? Although they will use ground 7, they will come in and argue that drug-dealing per se is a nuisance because it creates traffic to and from the close and leads to hard-to-let areas and people are frightened to speak out.* (Private solicitor).

8.34 This practice also occurred in Authority B:

*In cases like that (drug-dealing) when we do get to court it could well just be me giving evidence on the basis of.. the conviction.. and I am arguing it is reasonable to evict... There have actually been cases where there have been no complaints from neighbours not just that they haven’t come forward.* (Housing manager, Local Authority B)

8.35 Perhaps surprisingly, this evidence seems to have been accepted by more than one sheriff as proof of that there was a nuisance in the particular case. Proof of nuisance is not necessary for a case brought under ground 2, but would still have been relevant to the question whether it was reasonable to evict. Proof of nuisance is necessary under ground 7. The existence of a nuisance was, therefore, being taken for granted rather than being proved in the conventional way.

15 It would also be relevant to prove nuisance under the revised ground 2 which came into effect on 1 December 1998.
8.36 Landlords and defender’s lawyers and sheriffs agreed that the traditional constraints on admissibility ought to be seen as relevant to the reliability and probative value of evidence, and that the concept of corroboration was a valuable one. Therefore, the quality of evidence continued to be important, but there were few complaints about the assessment by sheriffs of the evidence presented to them.

8.37 That admissibility would not be a problem was perhaps to be expected given that the Civil Evidence (Scotland) Act 1988 had removed some technical barriers to admissibility and sufficiency of evidence, for example the requirement of corroboration and the refusal of hearsay. Now, it may be the case that criticisms of excessive technicality and legalism were valid in relation to particular cases in the years immediately before the Select Committee conducted their inquiry,\(^\text{16}\) but it was not seen as a problem by those interviewed.

8.38 The evidence from the database also confirms that this was not a problem in practice. In none of the 90 cases examined did the outcome appear to have turned on questions of admissibility or sufficiency of evidence. There was no sign in the case files that technical difficulties with evidence had figured at any point. It is also unlikely that there were unrecorded difficulties given the views expressed in interviews.

**Reluctance of Witnesses**

8.39 By contrast, the difficulty of persuading potential witnesses to come forward, or to agree to give evidence was a recurring theme in interviews:

> We have, in general, problems with people that don’t want to come forward and, not in relation to going to Court, but in general, they just don’t want to get involved. They will bring it to your attention but it is up to you as the Housing officer to sort it out. It is your problem, they have done their duty by drawing it to your attention, and they don’t want you to come to their door … they just want you to sort it out. (Housing officer, Local Authority C)

> People are frightened to complain for fear of reprisals. They’d rather move sometimes than complain because they are frightened of their neighbours or what they’ll do to them. (Housing officer, Local Authority B)

> We have no problem finding witnesses in the first instance, but not witnesses that will go to court. Because the biggest issue there is the fear or reprisals … They give us the information as soon as they know we will protect their anonymity, but if we explain to them, as we have to, that ultimately they may have to appear in court and give evidence, that can be the resistor. That is the bridge that they won’t go over. (Housing manager, Local Authority E)

> They have been threatened and they dinnae tell you anything and you know that they have been threatened. They will speak to you and say “I have changed my mind and I am no wanting to go to court”. And I’ll say “How no! You were all for it last week.” And you know something has happened but they are so scared that they wouldn’t even tell you what happened, and if somebody has got involved and he’s said if you go to court then the bairns

\(^{16}\) One case was discussed in evidence. See SAC, 1996, Vol. II, paras 561-566).
will not be here next week, and I mean that happens! (Housing officer, Local Authority B)

8.40 It is worth distinguishing between actual intimidation and more generalised fears either of neighbours or of the legal process. Maynard (1994) distinguished between:

- individuals who are at high risk of serious, even life threatening, intimidation
- individuals who are frightened of giving evidence, but intimidation is non-life-threatening
- people whose perception of intimidation (real or otherwise) means that they are not prepared to come forward as witnesses

8.41 There were a few cases of unambiguous serious witness intimidation taking place after an eviction action had been raised:

Once they knew that she was a witness at court she was being threatened, things thrown at the windows and threats and verbal abuse. So we eventually had to move her to a safe house. (Housing officer, Local Authority B)

Sometimes they face threats. There was one case where a couple were driven out of their home shortly after giving evidence - stone throwing. People are sometimes in genuine fear of their lives. (Solicitor, Local Authority, B)

Where you have people that are brave enough to phone the police and go out and chase the people, and the people then get their cars broken into and they get their windows broke, they get verbal abuse in the street, they are threatened you know – “We know where you stay and we are going to get you, and we know where your son stays” and there is a general fear ... (Housing officer, Local Authority C)

8.42 However, the more common problem in practice seemed to be that potential witnesses were unwilling to come forward in the first place, thus preventing legal action being raised. Interviewees surmised that this was mainly due to fear of what their neighbours might do. They agreed that there might also be a general reluctance to go to court, arising from perceptions of an excessively formal atmosphere which was intimidating to the ordinary person:

We were only in court once but the whole process was very long. It would have helped me a lot if we could have been shown the room beforehand, just to get used to or something. The defendant, well she seemed quite at ease in there, but I was going through hell, my mouth dried up and I found it really difficult to concentrate, to remember all the details and that - could have done with some notes to help me remember. It was terrifying. (Witness, Court B)

(I have) concerns for tenants who have got to go as witnesses and they will tell you “yeah, yeah, yeah. I will go there” and then at the final – “Oh I can’t go through with this. I am not going to court” and the case falls. ... I have got to say.. what actually takes place in that court, and maybe take them along to see a case in action, and the way that they got questioned...Some folk are OK and they are confident - other folk are very competent but very frightened just by the whole kind of atmosphere of going into a court - the uncertainty as to what is going to happen if they say something - and they are
going to be tripped up because they don’t know the format. They don’t know what is expected of them. (Housing manager, Local Authority C)

Well I have been to court on a couple of occasions..... you could be sat 3 or 4 hours in a room with some pretty dodgy characters and if you have never been in court before. I know that one or 2 of the neighbour witnesses in that case I was in were shaking like a leaf .. and it was a terrible ordeal. And, I am sure if they were asked to do the same again they would say definitely no.... I think the courts could look at where (witnesses) go when they are waiting their turn. Things could be made a lot easier. (Housing manager, Association D)

However, even those making this point thought that this effect was relatively minor compared to the effect of fear of neighbours.

8.43 All the case study landlords reported the reluctance of witnesses as being a very real problem. There was some evidence for this in the files of cases that had gone to court, although only a few contained a definite indication that witnesses had fallen away. However, the major problem was said to be the reluctance of witnesses to come forward in the first place which prevented actions from being raised at all.

Professional witnesses

8.44 Good practice guidance suggests the use of professional witnesses as a means of compensating for the reluctance of neighbours to come forward (Reid, 1996). Most of the case study landlords appeared to attempt this to some degree. The great majority of professional witnesses were housing officers or concierge staff though police officers were occasionally called to give evidence:

We try to plug the gap by getting the housing officers themselves to come along in all cases to speak of what they have done, the impressions they have formed. We get third parties such as the police, perhaps environmental health, concierge officers who have witnessed these things and try and get round the absence of neighbours that way. (Solicitor, Local Authority, B)

It is always much better to have a real tenant but in the main we are using housing staff as witnesses and much more importantly police. (Housing manager, Local Authority C)

It tends to be the concierge that takes the brunt here but I have been cornered, in a lift, with families there or in an entrance of the building by somebody - you learn to talk your way out of these situations (Housing officer, Local Authority C)

8.45 There was evidence that this strategy could be successful and did not meet with judicial resistance:

I've taken the view that the local authority does not want to be seen to be dragging witnesses to court if they don't want to come. Both from a practical point of view and a publicity point of view, it's not on. Although we could
have people brought, if they don't want to come then we won't force the issue. I've never had to justify that in court to a sheriff. The Sheriff may ask why the neighbours are not in court and I would just say that they don't want to. I've not been told to cite them. (Solicitor, Local Authority B)

We can still win cases like that on police evidence, police reports but the majority of times we are really depending on people standing up for themselves. (Housing officer, Local Authority C)

8.46 However, in general, landlord’s solicitors and housing staff had a strong preference for having neighbours willing to act as witnesses before they raised an eviction action, even where there was evidence from other sources to establish the statutory ground(s). It tended to confirm the truth of the landlord’s version of events and direct evidence from the neighbours of the effect of the defender’s behaviour on them might influence the Sheriff’s decision on reasonableness:

Probably because they can see that the person has been so affected by the situation that he or she has lived in for so long and they are here now to tell us about it ... that is my impression. Their body language says a lot. It was almost as if (the sheriff) was saying that I fully understand that it has been extremely difficult for you to come before me and relate the problems you have been experiencing. (Housing officer, Local Authority A)

8.47 Little use was made of private investigators. Moreover, it was felt that this did not provide a complete solution to the reluctance of neighbours. In practice, there were a considerable number of cases in which there tended not to be sufficient evidence without the addition of neighbours as witnesses:

We had a couple of trial goes with professional witnesses. I did one of them in a previous office where we had no tenant to come forward and we felt there was a problem with noise. We got a private detective to keep tabs on someone for a couple of weekends. In the end his report wasn’t enough in itself for us to go to court so really we hadn’t gained anything by doing that. We still reserve the right to use it, if it is appropriate to the circumstances, but we haven’t gone in lock, stock and barrel for it. (Housing manager, Local Authority B)

8.48 There were also concerns about costs:

Other people use professional witnesses and - but again, if they are going to use us as professional witnesses you are going to need to employ a lot more Housing officers because we already spend enough of our time at court. (Housing officer, Local Authority C)

We have used private investigators, professional witnesses if you like, for really more serious stuff involving drugs and serious vandalism and that kind of thing. But again that is an expensive option and sometimes even that doesn’t satisfy the courts .... (Housing manager, Association D)

8.49 Finally, it also appeared that landlords’ staff might sometimes be reluctant witnesses:
The Department has a problem, it doesn’t recognise it as a problem but it is a problem. ... We don’t provide a training course that briefs staff as to how to project themselves or how to go through a session at Court. It is quite a worrying time and staff get quite anxious about doing it, for having to give evidence and all they see is what is on the telly, and most problems aren’t like that. (Housing officer, Local Authority C).

Where we have the big drug dealers and where we know there are firearms and things like that, we have had housing staff saying “No!” (Housing Manager, Local Authority C)

It has even been considered that housing officers as part of a training programme should be taken to court. We have asked neighbourhood managers to release housing officers to let them come to court with us for the experience. This is just for reassurance. (Housing officer, Local Authority A)

8.50 The case files indicated that authorities A, B, and C and association A did indeed use professional witnesses (mainly housing officers) regularly as claimed. The issue had not been tested in authority D which had never yet had to conduct a proof, and the remaining housing associations had much less experience of anti-social behaviour litigation than association A. Authority E had been able to provide only 2 case files, one of which was still continuing.17

8.51 Authority A had a particularly interesting approach to professional witnesses through its specialist investigation team. Their duties included attending disturbances if called out by neighbours of the tenant complained of, and there was a rota of staff available to be called out outside office hours. As a consequence the staff of this team (and some of the mainstream housing staff) were able to give direct evidence of relevant incidents much more frequently than housing staff of most other social landlords. The team also thought that their independence (in the sense that they were not party to disputes) was an advantage when giving evidence:

Sheriffs have commented on the fact that independent witnesses were there. They thought this to be very valuable. In the (x) case I was referred to as an expert witness. The Sheriff was satisfied that I could say that a certain level of noise was unacceptable. (Specialist officer, Local Authority A)

Views on solutions to witness problems

8.52 Two possible solutions to the problems of witness intimidation and the reluctance of witnesses to come forward were considered. The first was the use of legal devices such as affidavits and witness statements instead of oral evidence. The second was practical steps to protect actual witnesses and decrease the feelings of fear and insecurity of potential witnesses.

17 Neither was included in the database as both were begun after the relevant period.
There was some support for the use of statements in lieu of evidence, but there were also comments that this might not make much difference given that the defender and the complainer were often near neighbours:

One of the biggest problems in these areas is there are repercussions, they’re just too scared of the people that they want to complain about. Even though you stress to them that their names will never be revealed, they know ultimately, at the end of the day, that in court it will come out that they were the complainers (Housing officer, Local Authority B)

It was also clear that Sheriffs regarded written statements and hearsay as a poor substitute for oral testimony: evidence from witnesses that could not be tested by cross-examination was unreliable. More generally, the demeanour of a witness was important to judging credibility, and this required their presence in court.

The only other way to do it would be by affidavit evidence where the witness presented an affidavit rather than appearing in court personally. But the difficulty about that is that if the evidence in the affidavit is contested by the defender, it is impossible to judge the credibility or reliability of the witness giving the evidence. And, you don’t know what weight to place on the affidavit. That is one of the problems we have in other areas of law, where we do have to rely on affidavit evidence. It is impossible to test the credibility or reliability of the affidavit. To an extent, although the person who gave it, signs it, the affidavit is generally worded by the solicitor,... so you don’t know to what extent it totally and completely reflects the witness’ evidence. I can see no real alternative to coming into court and saying your piece. (Sheriff, Court D)

Although hearsay evidence - from people like housing officers is allowed - I think that the court would take a dim view. Most sheriffs would want to see the best evidence presented and that means that the people who were first hand witnesses - the neighbours - really should give evidence. (Solicitor, Local Authority, B)

As regards witness support, the experience of authority A also suggests that the nature and level of support is crucial in persuading witnesses to come forward. Their specialist team certainly thought that their work had helped greatly in several cases:

The main complainant decided against going to court. I had managed to talk her round and persuaded her, and that we would be there. We would be going in to give evidence to support her. It was going to be a conscientious effort by everyone involved. (Housing officer 1, Local Authority A)

I am not convinced that every case going to court would have gone that far. In 2 of the cases that went to court, the people were threatening to abandon the tenancy - we have managed to persuade them to stay and we would resolve it. I don’t know if the neighbourhoods would have put in the time and effort it took, equally other authorities. (Housing officer 2, Local Authority A)
In some cases, they had also moved witnesses to other housing. In others, they used their out-of-hours service to increase complainers’ sense of security:

However, when the cards are issued the tenants seem to take a great deal of comfort out of the offer of being able to phone someone in the middle of the night when they need to, when they are actually going through the anti-social behaviour. We would go out then. Quite often it is a comfort call. (Housing officer, Local Authority A)

The other landlords did not appear to provide the same level of support. One manager in authority C felt that the police could do more to support witnesses in anti-social cases:

Housing and social work have a big role in here and the police have an even bigger role because the number of cases you get where the police advise the individual to leave rather than use police resources to protect that individual in their home should really be their right (Housing manager, Local Authority C).

However, the same manager said that the authority had not considered moving witnesses, temporarily to other accommodation to prevent intimidation, although this had been done in criminal cases:

We haven’t tried safe houses, I mean we have safe houses for our criminal witnesses but it is not something on balance that we have actively pursued. And if you actually think about how long it takes to come to court then it is not exactly a temporary solution. (Housing manager, Local Authority C).

Authority D had a protocol with a victim support scheme in its area. However, its role in relation to cases taken to court could not really be evaluated, as the council had not had to lead evidence in any of its anti-social eviction actions. There was little or no evidence, anywhere, of the use of measures such as alarms linked to central control systems or CCTV monitors being used to provide protection to witnesses. Landlords did not appear to have considered these as possibilities.

VIEWS ON DELAY

The extent of delay, the reasons for it and possible solutions were one of the major themes of the cases study interviews. All of those interviewed were either concerned about delay, or aware that there was widespread concern about delay. However, there were differences of emphasis between different groups of interviewees.

Housing officers, tenants and witnesses

Housing professionals emphasised the sheer extent of delay, its adverse effect on the possibility of mounting cases or winning cases, and the difficulty tenants had in understanding the reasons for delay:

I have been in situations with this organisation where... you can see people are dying inside with the length of time it's taking, if they're the victims of
someone's anti-social behaviour. People leave, they'll take a house ... so you'll lose a witness or you might lose a couple of witnesses. (Housing officer, Association B)

It takes far too long. I mean it can be a year and a half .... It makes me very angry. The tenants are angry.... they were prepared to go last week, and now he's been good again and now we have had another 2 months and he'll be good. But in the meantime these poor tenants have to pass him on the stairs every day with his looks and his idle threats and all the rest of it. Housing Officer, Local Authority B)

Well the main problem with the legal process is the length of time that everything takes. It is a very slow process and in-between times these problems are still going on and you are constantly receiving complaints all through it and it is frustrating for the tenants. They don't understand why we can't just go along and shove somebody out of the house. (Housing officer, Local Authority C)

It is a nightmare. An absolute nightmare. The process is far too long, far too convoluted. We really don't know from one minute to the next what the processes are because they seem to change their mind on a daily basis. I think it is the length of time that it takes is the most frustrating thing. ...You could have an anti-social that has being going on for a year and it takes you maybe a year to get to the stage of contacting legal. When you do it could be another 6 months before the case comes to court and in the meantime the person that has reported it still has to put up with all the problems. They get frustrated and they get angry because they think you are not doing anything about it. ... There must be a quicker way of doing it, there must be. (Housing officer, Local Authority E)

8.62 Witnesses confirmed these concerns:

The only things that I think are wrong with the legal process are that things take so long. If things could be speeded up. We went through 6 years worth of hell and then it takes another 2 years .. while it goes into court, goes back out again, goes back into court, goes back out again. If that could be speeded up. (Witness 1, Court A)

I don’t know if it is the legal process or not but they are not putting them through quick enough. You know what I mean; they are awful slow at actually issuing writs and from the issue of the writ to actually going to court ... I don’t know how they could improve it that way but it will need something. (Witness 2, Court A)

Solicitors

8.63 Both tenants and landlords’ solicitors accepted the concern about delay and its possible adverse circumstances, but to be much more sanguine about delay. They did not express the passion of some housing officers and victims. They were far more likely to come up with specific explanations for the time actions took or specific justifications for delay:
There are a number of causes of delay, some of which are administrative, some of which are legal and some of which are down to the court system. Some of the administrative delays can be built in because a housing office does not get its act together until late in the day ... That is a source of delay, but not a major source nowadays ... There are delays and problems of resourcing within the legal department itself because an anti-social case takes up a lot of time .... Certainly in the past the sisting of a case for legal aid was a difficulty. (Solicitor, Local Authority A)

Delay is a word that councils use, but I think you just have to accept that in any court procedures, it takes time. There have to be certain periods where people are entitled to consider the case, to prepare the case, to gather their evidence and prepare themselves for court. I don’t regard that as delay, I regard it as necessary. If someone came in to see me today with a summons, there may be 40 pages of allegations, there is no way I am ready tomorrow to go to court and defend it properly. (Private solicitor).

8.64 Most solicitors, even where they acknowledged delay as serious problem, accepted that significant delay was probably inevitable, and that some delay was necessary in the interests of fairness. In general, they did not support significant changes to the rules of procedure:

I would not say so, because if the action could be dealt with more quickly, but the nature of the process whereby you have to serve a notice and wait at least a month. You have to raise an action and wait a certain period, 3-6 weeks before the case calls in court. I don’t know really if that could be streamlined without compromising a defender’s rights. (Solicitor, Local Authority D)

There is delay, but I suppose that is endemic to all legal proceedings. People don’t really appreciate or realise that. Partly for me working in the system, I expect and accept that a defender has got to have time to prepare his case as well, and you are not going to get a proof date within a week’s time, etc. I think there are delays, but am not sure it could be speeded up that much. You get adjournments raised if the tenant or defender does not turn up and it is put off for another continuation and I can understand people’s frustration at it, but I don’t see a good way of getting around it. (Private solicitor).

Sheriffs

8.65 Some sheriffs were clearly concerned about the effects of delay:

There is a perception that it is unacceptable, but how much the court can do about that is difficult to answer because most tenants will apply for Legal Aid, which takes up some time. My own feeling is that these cases should be dealt with sooner rather than later, because if there is a genuine case of antisocial behaviour, then it must be sheer hell for the neighbours. (Sheriff, Court C)
8.66 But, like solicitors, they were likely to give explanations and detailed justifications implying that significant delay was unavoidable. In general, they did not support changes to the rules of procedure.

As far as I am aware, the current procedure is perfectly adequate and I don’t see a need for any change. (Sheriff, Court D)

The influence of perspective on views about delay

8.67 There were, therefore, clear differences of perspective on the time it takes to complete legal action. Lay persons, whether housing staff or affected neighbours, were more likely to take the line that the problem was so bad that something had to be done. Lawyers were more likely to take the view that it was inevitable that there should be substantial delay in some cases. That there should be these differences of view is perhaps unsurprising given the different ways they experience anti-social behaviour, their distinct roles in responding to it, and the divergent knowledge that each group has.

8.68 Neighbours themselves directly experience the behaviour, and housing staff are the first line of complaint, and the persons who have to deal with the alleged perpetrators. By contrast, the lawyers, including landlords’ solicitors are insulated from the direct effects of the behaviour, and do not have to manage the problems in the same way as housing staff. Lawyers will also see fewer cases: only those where the housing department/housing association are considering legal action. They will tend to come into the process at a later stage: once it has been decided that housing management efforts to resolve the problem have not worked. Neighbours and housing managers may therefore have been experiencing the problem for a long time before the case gets as far as an NOP being served.

8.69 Lawyers have the advantage of detailed knowledge of the procedure, of practice in their local court, and of the various reasons why the progress of litigation may be delayed. They may also simply have become inured to substantial delay as the ‘normal’ condition of civil litigation. Neighbours’ lack of knowledge of legal procedures, which may mean they are unsure at what stage legal action has started. In addition, they may not clearly distinguish between delay attributable to housing management action, and delay attributable to the legal process itself.

8.70 ‘Good practice’ in housing management may itself contribute to perceptions of excessive delay in the legal process. The ‘last resort’ approach to possession proceedings is likely to result in more time being taken overall to deal with cases, especially if the full range of alternatives to possession proceedings is explored. From our review of the case files it was clear that housing managers often dealt with cases for months or even years before finally giving instructions to issue a summons.18 Yet the housing staff who gave interviews tended not to acknowledged that their efforts to manage the problem might contribute to both tenants and their own perceptions of excessive delay in the legal process.

8.71 Having considered these general views on delay we can now look at views on specific causes of delay in more detail. The choice of quotations in the succeeding sections reinforces the point about different groups having varying degrees of knowledge about the legal

18 We had insufficient information to calculate average intervals between first complaint and the start of litigation for all cases.
process: most of the comments came from lawyers because other lacked the requisite knowledge.

PRE-LITIGATION DELAY

8.72 As noted above, the effort to resolve cases without resort to litigation has the effect of lengthening the time that neighbours have to experience the behaviour, in those cases where the landlord is not successful in resolving the problem. We did not attempt to quantify the time between first complaint and either the service of the NOP or the raising of the summons. However, we did find that on average landlords waited nearly 7 weeks after the date the NOP became ‘live’ before serving the summons, even though the summons could have been served as soon as the NOP became live. So, landlords did not generally start legal action in the shortest possible time. This suggests that there was not necessarily a sense of urgency at that stage.

8.73 However, this does not mean that the interval between the NOP becoming live and the summons being served should be seen as unnecessary delay. Much depended on the policy of the landlord in serving the NOP. For several landlords the NOP was clearly a warning. It was clear from interviews that they still hoped not to be going to court at that stage. Proceedings would not begin unless there were further complaints, and lawyers were not going to issue a summons without further instructions:

> It’s only in the most serious cases that an action would be served as soon as a notice comes into effect. We tell the housing division when the notice has been served, when it comes into effect, and when it expires. We ask them to let us know if they want any further action taken. Sometimes they come back – other times we’ll hear nothing within the 6 months. (Solicitor, Local Authority B)

8.74 NOPs were least likely to be a step on the way to eviction in authority C, which served by far the largest number of NOPs, but followed up only a small fraction with a summons.19 Having said that, it is not possible to explain all pre-litigation delay as a product of policy on case management. In several of the files that we looked at there were clear signs that the gap between the NOP becoming live and the summons being served was due, in part, to inefficiency on the landlord’s part.

8.75 More generally, there was some recognition on the part of a few interviewees that the landlords’ approach to the pre-litigation stage might have lead to unnecessary delay in starting legal proceedings:

> Some of the administrative delays can be built in because a housing office does not get its act together until late in the day … That is a source of delay, but not a major source nowadays … (Solicitor, Local Authority A)

19 Except in the cases where the tenant was convicted of drug-dealing where proceedings for eviction were automatic.
LEGAL AID DELAYS

8.76 In the previous chapter we noted that the average time cases were sisted for legal aid was 202 days (approaching 7 months). Whilst particular applications may have taken a very long time, the information supplied by the Scottish Legal Aid Board (detailed in Chapter 7), suggests that delay is processing legal aid applications (however caused), is not a major problem. In addition, it is not the major cause of the *prima facie* excessive length of legal aid sists in this context.

8.77 We also found in our interviews that landlords were very concerned about the delays caused by legal aid applications. Indeed this attracted more comment than any other specific cause of delay. Solicitors' views of the time it took to apply for and obtain legal aid varied from 4 to 12 weeks.

> I don't know what the Legal Aid board figures say, but I am sure that they are going to be shorter than I am going to say - 8 to 12 weeks.  (Private solicitor, Court C)

8.78 However, some times sorting out legal aid took much longer. This was particularly the case where legal aid was refused initially:

> In cases of this nature, legal aid is very often refused and then you have to apply for a review. In theory you are supposed to complete the forms within 15 days and the Legal Aid Board are supposed to give a decision shortly after, so it should only take another month or so. But, if they have had trouble deciding in the first place, it will take them longer than 6 weeks to get back to you.... My experience lately of the Legal Aid Board ...is that they have taken up to 3 months to let me know their decision in relation to an application for review. There was one case....we had sisted to apply for legal aid and the legal aid board raised so many queries and the client was so unco-operative... and the sheriff was so lenient- all those things combined... that the cases was sisted for about a year.  (Private solicitor, Court D).

8.79 Some local authorities had a policy of objecting to legal aid. This was done because they thought that the defender’s case lacked merit. However, one defender’s solicitor thought that this approach was counter-productive, and only added to the delay:

> I have had objections to almost any legal aid application for anti-social cases. It holds it up and delays it. What happens is that the Legal Aid Board send you the objections and you have 4 weeks to comment on them. While that is happening, I think that they leave the application in limbo, so it causes another delay.  (Private solicitor, Court C).

8.80 The view of several private solicitors was that if legal aid was refused on the merits of the case they would seek review: adding further delay:

> I don’t think that it is up to the Legal Aid Board to make that decision - they are effectively deciding the case by refusing legal aid. It is most definitely for the sheriff to make that decision.  (Private solicitor, Court D).
9.81 There were complaints, particularly from housing officers, that solicitors and defendants deliberately delayed applying for legal aid. None of the solicitors interviewed thought that they caused delay, but they did note that some firms were quicker than others:

*Any delay in legal aid may be due to the solicitors - some may not apply quickly. We do it as soon as we can because there is no point in hanging around. Some firms may take longer.* (Private solicitor, Court B)

9.82 However, defending solicitors said that it was very difficult to get legal aid sorted out before the first calling even if the defender sought advice quickly:

*If the client comes to see you before the first calling, it's a day for putting the flags out.....Someone came in to see me the day that the summons was served on him. I had 3 weeks. The chances of putting together the Legal Aid application, lodging it and having it granted before the first calling are slim to none.* (Private solicitor, Court C).

9.83 The cases examined showed that when the tenant was legally represented a sist for legal aid was usually applied for, and usually granted. The general view of solicitors and sheriffs was that defenders ought to be given sufficient time to apply for legal aid rather than be forced to defend the case by themselves. There were 2 ways of doing this: sitting for legal aid or, alternatively, fixing a proof at slightly longer than the standard interval thus allowing the defender sufficient time to apply for legal aid.

9.84 Where cases have been sisted for legal aid, it is up to the parties to recall the case. There will usually be no advantage to the defence in recalling the case so, effectively, it is up to the landlord’s solicitor to press for swift progress. The landlord's solicitor could check on the progress of the legal aid application and lodge an incidental application for recall of the sist either as soon as the application has been granted, or once they felt that the defender had been given enough time. There was evidence in some of the case files that the progress of the legal aid application was carefully monitored. However, this was not being done systematically by any of the landlords. One local authority solicitor agreed that they could have been more rigorous in checking progress:

*We don’t recall the sist enough and check to make sure that applications have been put in...Legal Services could, on occasion, be more on top of them and keener to spot when an application has not gone in.* (Solicitor, Local Authority A)

8.85 The data supplied by the Scottish Legal Aid Board showed that, in the cases sisted for legal aid for the longest periods, the major cause of the length of the sist was the time taken by landlords to recall the sist. This could have been due to poor case management, or an indication that the purpose of the sist changed to monitoring behaviour.

8.86 One possible way of reducing the delay due to sitting for legal aid was to fix a proof instead of sisting: on the assumption that the defender would have sufficient time to apply for legal aid in the interval. The latter was seen as having the potential advantages of a quicker decision on legal aid, and greater ability to manage the timetable:
I have certainly done that in an effort to make the Legal Aid Board deal with the thing promptly, and agents deal with it promptly.

Q. Would that generally be preferable to sitting from the point of view of speed?
Yes, because once a case is sat, the court loses control of it. (Sheriff, Court C)

8.87 According to solicitors and sheriffs, the practice of fixing a proof rather than sitting was happening to some extent in both courts A to D. However, we were not able to quantify the extent of this phenomenon from the limited information in case files and court records. Although many of the lawyers and sheriffs (including some sheriffs who had not themselves adopted the practice) were in favour of this technique, primarily because it provided a definite timetable for progress of the case, support for the practice was not uniform. Authority B’s solicitor commented on marked differences of approach in their court:

The 2 main sheriffs ...take opposing views on the matter. One of them ...will refuse the sit ...and fix a date and if the legal aid is not available we will look at that again but lets get a date to concentrate the parties minds. The other sheriff takes the view that it is a legitimate request to ask for an action to be sat for legal aid and we can’t deny them the right to apply. (Solicitor, Local Authority B).

8.88 And one of the local authority solicitors warned that this practice might cause difficulties where the legal aid application had not been finally determined:

But when you fix a proof, the effect of having legal aid difficulties can really be the same when it comes up to a proof. A sheriff, where legal aid has been applied for, would be very loathe to allow these actions to proceed without at least some opportunity of seeing whether or not legal aid would be granted. So, you would get at least one adjournment and a discharge on the basis of that, and that would be a delay built in to the process as well. (Solicitor, Local Authority C)

8.89 As noted above the case database provides little information on this issue, in particular in how many cases the practice of fixing a proof instead of sitting has been tried. For what it is worth, in 7 of the 40 cases in which proofs were fixed the first diet was discharged. These were all discharged for reasons other than the legal aid application not being finally determined. However, this may simply reflect the fact that there are not many cases in which the practice has been put to the test.

8.90 Another suggestion to reduce the extent of delay due legal aid was that cases involving anti-social behaviour should be prioritised:

One could make the recommendation that the legal aid regulations would be made so that if a defender in a case of anti-social conduct made an application for legal aid, it should be dealt with forthwith, as an emergency application, which would mean that there would be no delay for legal aid. That’s possible, but I don’t know whether the government would buy that, because there are other cases where people want legal aid urgently. (Sheriff, Court C).
In summary, the overall impression was that interviewees generally thought sists for legal aid lasted longer than they ought to. However, they felt that there were a variety of causative factors: refusals of legal aid leading to appeals, delay by defence solicitors, non-co-operation by the client, the practice of some landlords of objecting to the grant of legal aid, and failure of landlords to monitor the need to recall the sist. There was a lot of support for making routine the practice of some sheriffs in fixing a proof at first calling.

OTHER DELAYS

There were a variety of other reasons why the time scale of a case might be extended. These included the general pressure of business in the courts and court organisation. In addition, from time to time, the defender would be unable to attend. In other cases witnesses, solicitors, or even sheriffs would be unavailable for good reason, which would justify a continuation of the first calling or the discharge of proof. These factors are discussed in more detail below.

Pressure of business and court organisation

It was accepted that some degree of delay due to pressure of business in the courts was inevitable. However, one Scottish local authority had complained strongly to the Scottish Affairs Committee that delay was often due to administrative practices in the courts. They gave the example of scheduling proofs for only one day, when it was clear they would take longer, compounded by allocating such cases to temporary sheriffs. The committee accepted that there was a case to answer in this regard (SAC, 1996, paras 100-102). The report also referred to resource constraints.

In the light of that it is interesting to report that administrative practices in the 5 courts included in the research were not the subject of complaints from our interviewees. Indeed, one of authority B’s solicitors commented on improvements in their jurisdiction:

*There are now 5 courts instead of 3 and 3 permanent full-time sheriffs as well as a number of temporary sheriffs. The delays are not totally eradicated but it is a lot better. The resources in court are now there. The sheriff clerks are better too. If you say that a case will take more than a day they do go to great lengths to find 2 days together to hear the case. They will book a sheriff to come in to do that specific case.* (Solicitor, Local Authority B)

It seemed to be generally accepted by solicitors that if a landlord suggested a need to set down a proof for several days that this would be done, and neither the sheriff nor the sheriff clerk would object to this. Sheriffs suggested that it was up to them whether a case should be given an early diet of proof. Several sheriffs suggested that, in this type of case, they would be sympathetic to a suggestion from the landlord that the case should be given priority over other business in fixing a proof:

*When it comes to jumping the queues...everyone who comes before X sheriff court claims that their case is important and it is sometimes difficult to get a date which is sufficiently near the incident to allow justice to be done quickly...I would certainly take the view that I would give all precedence that I would*
felt I could to such a case. But I am sure that there are often many conflicting demands on court time which might result in a case being put slightly further down the programme. (Sheriff, Court C).

8.96 However, even if was not felt that inefficient administrative practices were causing delay, there was a widely held view that resource constraints had a significant impact on the speed with which cases were processed. One consequence of resources constraints identified by several interviewees was the practice of listing a large number of Summary Cause proofs (in all types of action) for a given day. The number was always far greater than the available court time could accommodate and was done on the assumption that the majority of the proofs would not go ahead. There was, therefore, no guarantee that an anti-social proof would go ahead on the day:

I think probably the biggest cause of proofs being discharged is just that there is not enough time set aside in the court timetable to deal with these and other cases. You're one of a number of summary cause proofs and small claim proofs that are down for the same day. There are other cases which are going ahead in front of you they maybe have priority because they have been discharged before. (Solicitor, Local Authority, A)

However, this comment contradicted the general view that an anti-social proof would be likely to be treated as higher priority than most types of summary cause proofs.

8.97 The case database provided some support for concerns about resource constraints. We have already noted that, at 44 days, the period between the summons being warranted and first calling is longer than necessary to serve the summons on the defender. This may be due, in part, to congestion of business. However, the information in the case files did not suggest that cases being postponed through overloading of the court on days set aside for summary cause proofs was a common occurrence.

Delay due to the parties

8.98 Some of the delay in progressing cases was said to be due to the needs or conduct of the parties. One difficulty was finding dates on which lawyers and witnesses on both sides were available:

If you are looking for a long proof of a number of consecutive days, it can be difficult to get that, bearing in mind that it has to suit your own commitments and those of parties on the other side (Solicitor, Local Authority A).

8.99 Authority B’s solicitor accepted that sometimes delay was partly due to the way the landlord managed the case:

The other main one is trying to find a date when all the witnesses are available. Sometimes we contribute to that. Because of the number of cases and the limited resources we don't go out to interview witnesses at an early stage. We tend to leave it. Sometimes, you'll be at the stage where the date has to be set for the hearing and you haven't had a chance to interview all the witnesses, so you just take the date you are given. Then, you find that a key witness is on holiday. (Solicitor, Local Authority B).
8.100 Delay was sometimes caused by the defender or the defender’s solicitor:

There can be problems of preparation....cases going off because they although legal aid has just been granted, they have not had time to properly prepare. When these cases of an anti-social nature involve 8-10 witnesses, you can see how that can happen. (Solicitor, Local Authority C)

Then if the person doesn’t turn up or if the person turns up unrepresented then the majority cases the judge will continue the case until they find themselves a suitable solicitor to defend them. Then we have had cases where they come unrepresented to the next meeting or the next sitting and it’s been continued again and all that time you are still getting tenants complaining to you about their behaviour. (Housing officer, Local Authority C)

8.101 Some interviewees expressed concern that, occasionally, defenders might be manipulating the legal process to their advantage:

We started court action but the guy’s solicitor deliberately, we think, delayed the case … kept on putting in another legal aid check, “sorry I am out of town, oh my client is this.. our witness has disappeared.” It delayed the case for about 2 and half years’. (Housing manager, Local Authority C)

However, this concern was not shared by all.

8.102 The database provided some support for the existence of each of these causes of delay. There were cases subject to continuations, discharges of proof etc. However, court records and files did not always disclose the precise reasons for continuations, or other postponements. It was not, therefore, possible to quantify the effect of each specific reason for delay, or to distinguish between ‘legitimate’ and ‘illegitimate’ reasons for delay.

8.103 At least amongst the lawyers, it was accepted that there were many legitimate reasons for delay. They argued that, even if there were sometimes delays which should not occur, it was not reasonable to expect that delays could be eliminated altogether. The main suggestion for change was greater prioritisation of business within the courts. It was generally accepted by lawyers that it was, and should be, up to the sheriff to manage the case. None of the lawyers suggested any alternative to the current situation whereby sheriffs decide whether to grant motions which would postpone consideration of the case. Non-lawyers were more inclined to be dissatisfied and to think that much of the delay was due to the defenders and not based on good cause.

SUMMARY

8.104 On the whole, interviewees thought that the statutory grounds for eviction as they existed before 1 December 1998 were sufficiently comprehensive to cover the full range of anti-social behaviour, and claimed not to have experienced problems in practice. There were differing views on whether the changes made to the grounds by the Crime and Disorder Act would have a significant impact.
8.105 There were conflicting views on the way in which the reasonableness requirement operated in practice. Some interviewees were unhappy with their experience of shrieval decisions, although there was only limited support for this from the case files examined. The more common view was to accept that some degree of apparent variation in outcomes as between similar cases was inevitable, given that sheriffs were given substantial discretion. There was some evidence of a difference of perspective on this issue between lawyers and non-lawyers; with the latter more likely to find it hard to understand the reasons for sheriff’s decisions. A clear majority of those who expressed an opinion were against making eviction mandatory in cases involving drug-dealing.

8.106 There was little concern that the rules of evidence or the attitudes of sheriffs to proof posed unreasonable barriers to proof of fact in eviction cases. There was, however, widespread and serious concern about actual and potential witnesses being either intimidated or inhibited by fear of reprisals from giving, or agreeing or to give, evidence. This problem was said to prevent many cases from getting started. However, it was not possible to quantify the extent of this problem either from interviews or other sources of evidence.

8.107 Most landlords provided support to witnesses through regular contact and some were prepared to cover temporary alternative accommodation in cases of serious intimidation. However, overall, there was little systematic support for witnesses and little sign of measures which might protect witnesses who feared intimidation. There was support for, and substantial use of, professional witnesses by case study landlords. Sheriffs were generally willing to accept such evidence. However, on the whole, sheriffs preferred also to hear evidence from neighbours and others who had suffered the consequences of anti-social behaviour.

8.108 The greatest concern about the operation of the legal process – voiced by all categories of interviewees - was over the extent of delay. This is also the issue on which there were the clearest differences in perspective between different groups of interviewees. Neighbours and housing staff were more likely to perceive existing levels of delay as wholly unreasonable. They tended to blame failings on the part of the defender or their manipulation of the legal process, and to think that ‘something must be done’ about it. Lawyers, including sheriffs, appeared genuinely concerned about delay, but to have a greater tolerance for it. They tended to accept that there was a wide range or reasons – some of them perfectly legitimate - why delay might occur. Neighbours and housing staff were less likely to be able to explain the reasons for delay in detail, or to make specific suggestions for improvement, probably because they lacked detailed knowledge of legal procedure and court practice.

8.109 For lawyers, the most important source of delay was the sitting of cases to allow legal aid to be applied for. The pressure of business in the courts, and the way both parties conducted the litigation also contributed to delay. Case records tended to confirm impressions of delays related to legal aid, and to a lesser extent pressure of business.

8.110 None of the interviewees identified the existing rules of procedure as a significant problem, and none of the landlords suggested altering the procedural rules to accelerate the timetable. Insofar as there were suggestions for improvement they tended to relate to matters of practice rather matters of law. There was, for example, the suggestion that sheriffs should fix a proof in preference to sitting for legal aid, or that anti-social cases be given priority, or that the legal aid board prioritise legal aid applications.
CHAPTER 9 EVALUATING EVICTION

INTRODUCTION

9.1 Having considered a good deal of material about eviction we are now in a position to evaluate its effectiveness as a remedy for anti-social behaviour. In Chapter 1 we suggested that the criteria for evaluating legal remedies should be:

- the appropriateness of the substantive law for dealing with anti-social behaviour;
- whether the statutory criteria are properly applied in practice, including whether judicial discretion is properly exercised;
- the ease or difficulty of establishing the necessary factual basis for legal action;
- the speed with which the remedy may be obtained;
- the extent to which pursuing legal remedies contributes to stopping or preventing undesirable behaviour;
- the costs of legal remedies.

The costs are discussed in Chapter 12. The other criteria are discussed below.

THE APPROPRIATENESS OF THE SUBSTANTIVE LAW

The grounds for eviction

9.2 As the previous chapters show, there was little evidence of discontent with the scope of the statutory grounds for eviction, as originally enacted, amongst case study landlords, sheriffs, or defence solicitors. They were felt to be capacious enough to cover a wide range of anti-social behaviour. This was confirmed by the range of types of behaviour pleaded as the basis for eviction in cases brought by case study landlords. These views are consistent with the evidence of the postal survey, and the case studies, which suggested that social landlords across Scotland achieved outcomes which were acceptable as outcomes to the legal process in the great majority of cases. There is, therefore, no evidence that the statutory grounds of eviction as they were operating in practice placed substantial obstacles in the path of landlords seeking to evict for anti-social behaviour.

9.3 However, we should also consider matters from the perspective of tenants threatened with eviction, and ask whether the law made it too easy to get an eviction decree. The breach of contract grounds (1 for secure tenants, and 13 for assured tenants) and the nuisance grounds (7 for secure tenants, 13 for assured) are very broadly expressed. However, the tenant has the protection of the reasonableness requirement which gives the sheriff a broad discretion to consider the appropriateness of eviction. It would, in principle, be possible to draft grounds for eviction which were narrower and more specific. But this risks excluding behaviour that might reasonably give cause for concern, and might lead to much legal debate over the scope of the provisions. The grounds, as they were, appeared to strike a reasonable balance between the interests of tenants threatened with eviction and the interests of neighbours and others affected by anti-social behaviour.

9.4 We did not have direct evidence of the views of tenants accused of anti-social behaviour, but we did have the views of some defence solicitors. They did not express
concern that the original grounds were overbroad. In addition, our analysis of case files (assuming the allegations were true) suggested that tenants were not generally evicted for trivial misdemeanours that fell within the scope of the grounds.

9.5 Our conclusion, therefore, is that the scope of the statutory grounds, as originally enacted, was appropriate to the purpose of responding to anti-social behaviour, having regard also to the interests of tenants threatened with eviction. However, this aspect of the research has been overtaken by events: given that new forms of two of the relevant grounds for eviction were introduced by section 23 of the Crime and Disorder Act 1998 after the fieldwork started.

9.6 The new grounds were introduced to fill certain perceived gaps in the existing legislation, for example, that the nuisance ground did not cover the behaviour of visitors. The new grounds are clearly, as a matter of law, broader in scope than the old grounds. The majority of interviewees thought that the changes would not make much difference in practice. But there was evidence, from a few interviews, that some landlords might want to exploit the broader scope of the new grounds. The case files suggested that case study landlords had not found the legal limitations of the former grounds to be a problem in practice. In the cases where they wanted to evict there was generally behaviour of the type that fell within the scope of the former grounds to rely on.

**The reasonableness requirement**

9.7 Two issues arise in relation to reasonableness. The first is the aggregate effect of sheriff’s decisions on whether it is reasonable to evict a tenant. The second is the extent to which individual sheriffs apply the reasonableness requirement differently from each other.

9.8 Statistically, the reasonableness requirement was proving little impediment to eviction in the period 1995/97. For social landlords in general, this is strongly suggested by the data on outcomes from the postal survey. For case study landlords, this is confirmed more directly by the evidence from the case database. It appeared that the latter were losing hardly any cases on grounds of reasonableness. Where landlords’ staff expressed dissatisfaction with the application of the reasonableness requirement, this appeared to be based on memories of a very small number of cases where they thought that the sheriff’s decision was wrong.

9.9 We have to be more cautious in assessing the converse proposition: that the reasonableness requirement might not be being applied strictly enough. We relied heavily on landlords’ files for detailed information about cases and would have to be wary of making a definitive judgement. However, the files did not indicate that eviction decrees were being granted in cases where there were only isolated or trivial complaints. The interviews with sheriffs suggested that they took seriously the need to exercise their discretion in such cases, rather than to rubber stamp landlord’s decisions to seek eviction.

9.10 Although some interviewees professed unhappiness with shrieval decisions, the complaint tended to be of inconsistency in decisions rather than a general unwillingness to evict. Even this more qualified concern seemed at odds with the evidence of the case database: which suggested that all the landlords with a substantial caseload won all or most of their cases. Such doubts appeared not to have inhibited those landlords from pursuing legal action in anti-social cases. It did not, therefore, appear that there was a large variation in
shrieval decisions on the application of the reasonableness requirement, which caused substantial difficulties to landlords in practice.

9.11 The whole question of consistency raises conceptual problems. By what yardstick is inconsistency measured? The obvious answer is that there is variation in decision-making where cases with similar facts and circumstances are not disposed of in the same way. But this principle is itself difficult to apply. Cases can only be classified as similar or dissimilar by selecting points of comparison between them. Any given two case might be classified as either like or unlike according to the points of comparison selected. Thus, all drug-dealing cases will seem to be like cases if the only point of comparison is the fact that a resident in the house was convicted of drug-dealing. However, the same cases might seem clearly dissimilar to some degree if other factors were taken into account. These include factors such as whether the conviction was of a tenant or of another family member, the type and value of drugs dealt, the frequency of dealing, the level of nuisance to neighbours, whether or not there are children in the house and behaviour since conviction.

9.12 Given this conceptual point, it is perhaps inevitable that some will have a perception of inconsistency in shrieval decision-making. However, there was nothing in the case records to indicate that there is a real underlying problem of excessive variation in decision-making. In any event the discretion that sheriffs have rests on a legislative judgement that discretion is necessary in order to do justice in this area. Nothing in our research undermines that judgement.

9.13 So, our overall view of the substantive law, as it stood before 1 December 1998, was that it was generally appropriate taking into account the legitimate interests of social landlords, tenants accused of anti-social behaviour, and their neighbours, and that the statutory criteria were properly applied in practice.

PROOF OF FACT

9.14 There was widespread agreement that there were no substantial technical barriers to social landlords leading the evidence in court that was necessary to proof facts sufficient to justify eviction. The more pressing problem as regards proof of fact is the difficulty of persuading persons, especially neighbours to give, or to agree to give, evidence. All the cases study landlords saw this as a major problem. The problem had two aspects. First, actual intimidation of witnesses during the progress of legal action. Second, the reluctance of persons to come forward as potential witnesses in the first place. It was the latter which was the more common impediment to putting together the factual basis necessary for legal action. The case database did include a few examples of witness problems actually undermining legal action (in some cases legal action succeeded despite witness intimidation). The second and more common problem – reluctance to come forward – did not, by definition, show up in the cases taken to court.

9.15 Several case study landlords had used staff as professional witnesses with a high degree of success. There was no sign of sheriffs being reluctant to listen and give weight to such evidence. However, first hand evidence from professional witnesses was not available in all cases and, generally, sheriffs preferred to hear some evidence from the principal complainers in an anti-social case.
9.16 There were signs that landlords’ administrative structures and processes for dealing with anti-social behaviour might be important in minimising the problems with proof of fact. Authority A’s experience of using a specialist anti-social behaviour team together with “out of hours” monitoring was that they increased the opportunities for using professional witnesses to give evidence of anti-social behaviour, and also provided support for witnesses that made it more likely that they would give evidence.

9.17 Opportunities for further law reform to deal with the problem of the reluctance of witnesses seem limited. The law already permits the use of witness statements and affidavits in lieu of oral testimony. This, in theory, removes the need for neighbours to go to court. But where facts are contested, it is hard for sheriffs to assess the credibility of such evidence in the absence of the witness. Moreover, the use of such devices does not necessarily overcome the problem of complainers’ fears of reprisal given that it will ultimately be revealed who has made statements against the defender. It is difficult to see how further law reform could make it easier than it is now to prove cases without removing the fundamental safeguards of the judicial process.20 The problem of the reluctance of potential witnesses is best addressed by practical measures which either reduce the need to use neighbours as witnesses, or increase their sense of security, and indeed their actual security.

SPEED

9.18 Chapter 6 described in detail the duration of eviction actions, the way the duration is distributed across successive steps in the procedure, and the causes of delay and their relative importance. We distinguished between the minimum timetable laid down by legislation, and other “contingent” delay such as the time taken to conclude legal action. Contingent delay could in principle be reduced by changes in the practice of the parties or the courts. The quantitative data suggest that the most substantial causes of contingent delay appear to be the interval the court allows when fixing the date for proof, sitting to allow the defender to apply for legal aid, and sitting to monitor behaviour.

9.19 Views on delay were heavily influenced by perspective. Neighbours and housing staff were more likely to view the extent of delay as simply intolerable, and to consider that “something must be done”. Lawyers were more tolerant of delay and had a greater awareness of its causes. They were more cautious about proposing possible measures of improvement.

9.20 Lawyers were, on the whole, not convinced of the case for accelerating the timetable by changing the rules of procedure, and we would support that stance for two main reasons. The first is a point relevant to all litigation: consideration of the interests of the defender requires reasonable notice at various stages of the procedure. The current timetable reflects legislative views of what is generally appropriate 21 and there is already limited provision for accelerating the first hearing in the Summary Cause rules at the discretion of the sheriff.

20 Any change in procedural safeguards would have to be consistent with the fair trial guarantee in Article 6 of the European Convention on Human Rights. The Convention rights are an absolute constraint on the power of the Scottish Parliament by virtue of section 29 of the Scotland Act 1998 although, even after the Human Rights Act 1998 comes into force, the UK Parliament will be able to enact primary legislation inconsistent with the Convention rights.

21 Here again the European Convention of Human Rights is relevant. Any reduction in time would have to be compatible with Article 6, unless achieved by primary legislation of the UK Parliament.
Second, there seems to be ample opportunity for making improvement simply by changing existing practices.

9.21 The quantitative data suggest that the largest single improvement that could easily be made would to reduce the time cases are delayed by sisting for legal aid applications. This could be done by extending the practice, already employed by some sheriffs, of fixing a proof date instead of sisting the case. In such cases the proof date should be far enough in advance to allow both time for the legal aid application to be determined, and time for the defender to prepare the case if the application is granted. This approach would also go a long way to deal with the concern about the time parties have to wait for proof. On the evidence of this research the length of the postponement required would not, in most courts, be less than the normal wait for a proof date.

9.22 Resource constraints in the courts were an issue for some interviewees, but they did not appear to be major contributors to “contingent” delay in defended cases in the period 1995-97. However, some interviewees suggested the need for prioritisation of anti-social behaviour cases ahead of other court business. This might achieve quicker resolution of such cases without putting extra resources into the court system. Such a decision cannot be taken by viewing anti-social behaviour cases in isolation. It would be more rational to establish relative priorities by reviewing all categories of business to arrive at a judgement on relative priority, but the possibility of prioritising cases is worth further consideration.

9.23 It does also appear that case study landlords own case management practices could be revised with a view to reducing delay, for example, reducing the time that elapses between the NOP becoming live and the service of the summons. There also appears to be substantial scope for reducing pre-litigation delay by reducing the time spent monitoring cases before taking the decision to serve a summons. This is an important point. Our data support the inference that non-lawyers may fail to distinguish clearly between delay due to the landlords’ management of the case, and delay in the legal process. This is partly due to lack of knowledge (particularly in the case of neighbours), and partly due to lack of communication between the various participants in the process. This suggests a need for better communication in general. It does not suggest that social landlords should go to court sooner in all cases. The need for swift action must be balanced with the need to explore other solutions, but it does suggest the need to review carefully for how long cases should be monitored before legal action begins.

9.24 Finally, the information supplied by the Scottish Legal Aid Board suggests that landlords sometimes allow long periods to elapse after determination of the legal aid application, before recalling a sist. This should not be happening unless there are reasons to continue to monitor behaviour rather than pursue the action immediately.

THE APPROPRIATENESS OF OUTCOMES

9.25 The next issue to consider is whether viewed as a whole the eviction process led to appropriate outcomes. Outcomes may be viewed as appropriate when the law is properly applied, the facts are properly found and any discretion (for example, the assessment of reasonableness) is properly exercised i.e. all relevant factors are taken into account. This does not mean that there is a ‘right answer’ in every case to the question whether the tenant
should be evicted. However, we should be satisfied that conclusions on law, fact, and discretion are reasonable in the light of the evidence led and arguments made.

9.26 It is not possible to reach a definitive conclusion on the basis of this study. However, a number of comments can be made. Social landlords were able to obtain outcomes, in most cases, that were acceptable to them as outcomes to the legal process, for example, a decree for possession, or a dismissal by agreement. In general, they did not complain that the decisions of the courts were inappropriate. The one area where there seemed to be significant discontent was the treatment of drug-dealing cases, but that essentially reflected a disagreement with the outcome of an essentially discretionary decision. There was no evidence that sheriffs were exercising their discretion unreasonably to refuse eviction in drug-dealing cases.

9.27 We must also consider the converse possibility that eviction decrees might sometimes be granted too readily. Here, it is worth noting that defence solicitors did not complain about the appropriateness of outcomes. Our review of landlords' case files tends to confirm the appropriateness of outcomes where the file included full details of the evidence (not all files did). However, it is important to note that many cases did not proceed as far as a proof so that the landlord's case was never tested in court.

9.28 It is also important that many tenants did not have legal representation, or did not attend court. Previous research has suggested that both attendance and representation have a positive influence on the outcome of legal proceedings for the individual in a variety of contexts (Genn and Genn, 1989) yet rates of attendance and representation are low in many fora. This has been a particular concern in the field of social rented housing a number of research projects have produced similar findings (Kay et al. 1986; Leathers and Jeffers, 1989; Mason et al, 1995; SAUS, 1986; Nixon et al.,1996). Such studies have consistently found rates of attendance and representation to be low in possession proceedings and a positive association between attendance and representation and favourable outcomes for the tenant. In addition, researchers have commented that, in the absence of the tenant, courts often make orders for possession without having all the relevant information to assess reasonableness. Even when tenants do attend hearings were sometimes be cursory. However, the great majority of the cases in these studies were rent arrears cases.

9.29 We were, therefore, very interested to see what association there was between attendance and representation, in the specific context of eviction for anti-social behaviour. Figures for attendance and representation were given in Table 7.6 and seem to be substantially higher than for the eviction actions generally in the earlier studies. For example, Mason et al's (1995) figure based on their observation of first callings and continuations in the sheriff court found that only 15 per cent of tenants attended court on the days in question and only 29 per cent were represented. The Tenancy Rights research (Mullen et al, 1997) which examined court records in a smaller sample of housing association cases, found that, at the hearing when the case was disposed of only 9 per cent were represented and 8 per cent were present but unrepresented. By contrast, in this research, 49 per cent of tenants were represented at some stage by a solicitor, and a further 14 per cent attended unrepresented.

9.30 However, although attendance and representation rates are clearly much higher in anti-social cases than in rent arrears actions, a substantial minority neither attend nor have a representative. Also, as described in Chapter 6, there was a definite association in our study between attendance, representation and outcomes. However, the correlation between
representation, attendance and positive outcomes does not establish that either of these factors are affecting the outcomes. There are alternative hypotheses, for example, that representatives select the most winnable cases, or that tenants with hopeless cases are more likely to recognise that ‘the game is up’ than other tenants. The research was not designed to explore issues of representation and attendance in detail. But, in the light of the findings of previous research, the finding of correlation between representation, attendance, and outcomes must at least raise a concern that some tenants are being evicted who might not have been so if they had the benefits of legal representation or had attended court.

9.31 It is important to consider any evidence that obtaining legal representation might be difficult. Whilst it appeared from interviews that it was usually possible to obtain legal aid in anti-social behaviour cases, and the files contained few examples of legal aid being refused, cases brought by authority D seemed to be an exception to this pattern. It will be recalled that authority D had not once had to contest a proof in an anti-social case. Authority D’s cases solicitor commented on this:

*I would say more recently, defenders are not getting legal aid to defend these actions … It is not because of their financial circumstances, because many of them are in receipt of benefits. I can only assume it is the subject matter of the case … The Legal Aid Board are just not awarding legal aid for it. Many of the defendants are single males, and legal aid was granted in one case of a joint tenancy – that was the drugs related case – where the wife was saying she had no involvement and there were children, but no-one else has got legal aid for any of the actions.* (Solicitor, Local Authority D)

9.32 A defence agent in the same area also thought that defenders were finding it very difficult to get legal aid:

*It is very difficult in anti-social cases to say that the behaviour did not occur, and what you are relying on is that it would be unreasonable to evict despite the bad behaviour. The Legal Aid Board is obviously anxious to cut their budget and, if you have to admit in a legal aid application that the conduct did occur but it is unreasonable to evict nonetheless, then they are quite reluctant to give legal aid in those circumstances.* (Private Solicitor, Court D)

The solicitor admitted, however, that this was an impression rather than something explicitly said in decision letters.

9.33 We noted several files in which applications for legal aid had been refused, in some cases more than once, but it must be stressed that no judgement about the quality of decisions by the Legal Aid Board may be made from this data. There may have been deficiencies in all the applications. So, whilst the comments of the solicitors are of interest, it remains unclear why defenders in anti-social behaviour cases brought by authority D were failing to obtain legal aid.

9.34 Whatever the reasons, there did appear to be a link between the failure of defenders to obtain legal aid, the fact that no case brought by authority D had proceeded to proof in recent memory, nor had any cases been dismissed except by consent. The outcomes of cases, as a whole, suggest that a sist to monitor behaviour or a dismissal as a result of improvement in
behaviour are reasonably common outcomes. There is, therefore, a concern that eviction or indeed abandonment has occurred in some cases where the court might not have ordered possession had the case been more vigorously contested. It would be valuable, for that reason to carry out research into the reasons why defenders are unrepresented and/or do not appear in court.

**THE EFFECTIVENESS OF EVICTION**

9.35 Thus far, we have evaluated the eviction process according to a relatively narrow definition of effectiveness geared to establishing that the legal process is working as intended: that remedies are in practice neither too difficult, nor too easy to obtain. Indeed the design of this research deliberately concentrated on the narrower definition of effectiveness. However, what social landlords and those who complain about their neighbours most want is that, in particular cases, the behaviour complained of should cease. It would be pointless to recommend the use of eviction by social landlords unless its use contributed to stopping or preventing undesirable behaviour. So, it is important that this broader measure of effectiveness also be considered. However, a thorough assessment of the effectiveness of eviction according to this broader measure would have required a different type of research project. Our research should be regarded as no more than a preliminary study suggesting lines for further inquiry.

9.36 Scepticism about the ultimate value of eviction is usually expressed in the proposition that eviction does not solve the problem of anti-social behaviour, but merely moves it elsewhere (SAC, 1996, para. 83; Scottish Office, 1998, para 11.1.2). However, this oft-repeated statement considers only one of several possible measures of the effectiveness of eviction. We need to consider both its effect on persons taken to court and their families, and its effect on the wider community of tenants in the social rented sector. As regards tenants taken to court, we need to distinguish between the effects on those evicted (i.e. do they repeat their anti-social conduct in other locations?), and the effects on those proceeded against but not evicted (i.e. did taking them to court encourage an improvement in behaviour?). We also need to consider the effect of the threat of eviction on those who are not taken to court, but are warned by the landlord about their behaviour, whether or not a notice of proceedings is issued. As regards the wider community of tenants, the issue is whether the knowledge that landlords will evict in certain circumstances deters persons from engaging in anti-social behaviour.

**Tenants taken to court**

9.37 Landlords claimed to resolve most cases by managerial efforts, and we noted that for most landlords the number of formal warnings in the shape of an NOP greatly exceeded the number of summonses actually served. In addition, our data shows that a significant number of eviction actions resulted in the tenant remaining in their homes because of an apparent improvement in the situation. It might be thought that this supports the notion of a deterrent effect. The problem here is one of establishing cause and effect. The reasons for the apparent improvement in the situation may have been independent of the threat of litigation. It is not possible to determine from our data the extent to which taking tenants to court encouraged improvement in behaviour.
9.38 In theory, where landlords operated a policy of pursuing eviction unless there was an improvement in behaviour, this might have had an effect on those who are complained about but not taken to court. Some staff of social landlords thought that the threat of eviction might affect those to whom it was made or that loss of a house might make repetition of the behaviour less likely:

I would like to think that even the threat of eviction … whether it be for rent arrears or anti-social behaviour – that the threat of losing their home might just be the thing that will make them come around. (Housing manager, Association B)

And in terms of whether their behaviour modifies, I don’t have evidence that that is or isn’t the case. I would have thought that perhaps having lost one home it may have a salutary effect, but I could not put my hand on my heart and say “Yes, I have got evidence to suggest that.” (Housing manager, Local Authority E).

9.39 There did appear to be a general perception that the threat of eviction had a deterrent effect in some cases but that it did not always work. A number of interviewees expressed the view that eviction was regarded a failure of housing management. Some specifically said that their aim was to change behaviour and that those who were evicted were examples of this failure:

Eviction is a failure - so if you have failed to change somebody’s behaviour it doesn’t matter where they go and what - well I don’t think it will. They are not going to change their behaviour so wherever they go, they are going to behave the same, which is sad. (Housing manager, Local Authority C)

**Tenants evicted**

9.40 The Scottish Affairs Committee commented that ‘there is little hard information on what happens to evicted families.’ (SAC, 1996, para. 83). Our research uncovered some limited information to fill this gap in knowledge. Landlords were aware, in a substantial (but unquantifiable) number of cases, of subsequent movements. However, none of the case study landlords had attempted to gather information in any systematic way about people they had evicted. In most cases, landlords said that families evicted for anti-social behaviour would be treated as intentionally homeless and that they would not wish to rehouse them:

A lot of them will revert back in terms of homeless persons legislation and they will make approaches either to this authority or neighbouring authorities … as to whether they would be considered intentionally homeless or not. … There are a number we would refuse to consider at all based on previous track records. (Housing Manager, Local Authority E)

9.41 As a result, a number of interviewees said that, in general, people who were evicted were likely to go to the private rented sector or to stay with friends or relatives.

They go into private rented sector usually. Initially they go to the homeless centre but they can only stay there for 28 days and then they are deemed intentionally homeless. Then they either go to relatives or they get social
work help to get a deposit on a private rented sector flat. …They may move in with another council tenant - a friend or relative and the problem may resurface (Solicitor, Local Authority, B).

9.42 However, in some cases, housing staff were aware that that people had moved back into council housing, either officially or unofficially:

Q: Do they end up back in council houses?
A: A lot of them do.. for a variety of reasons. They will just say that they have improved and that their behaviour has changed and so we have to take them back on. They get Social Work support, some of them change their name. (Housing officer, Local Authority, C)

9.43 In a number of cases, housing staff had information about specific cases:

One moved to Glasgow - a young man who was evicted because he was HIV\(^{22}\). This was more because of his condition - he was housed in a supported unit. Others have gone to families. (X) went to her common law husband. (Housing officer, Local Authority A)

The majority that I have experienced usually end up back with relatives they know locally. (Housing officer, Local Authority D)

9.44 A number of housing officers also cited examples of cases where there were continuing problems at a new address.

Some people who have conducted their tenancy in a very unsatisfactory way .. have ended up in the private sector and our own tenants are complaining about their continued irresponsible activities. (Housing manager, Local Authority D)

Q; Does eviction stop the problem?
A: No. Sometimes they still become a problem. One case in particular up here just moves from house to house to house to house ... So we have to then start the process all over again with the tenant of the house, not the person. (Housing officer, Local Authority, C)

One case that I had – was a severe drugs case, and we evicted this person from [x]. A couple of years later she came back on the scene again with lots of support, supposedly from social work and Barnardos, and we have re-housed her in the [y] area, and the same trouble is starting again.(Housing officer, Local Authority E)

9.45 Solicitors were less likely to be aware of recurrent cases. However, they acknowledged that might be because landlords tended not to rehouse the families in their own accommodation:

\(^{22}\) The HIV status was not the reason for eviction.
I think it’s very rare to get a repeat performance of an anti-social tenant being evicted .. and being granted another one at some point along the line. The system is now honed to try and pick up somebody who has been through that in the past. … What we do find is that sometimes it is displaced… but it tends to be that they are going out into a different type of accommodation, so it’s no longer the council’s problem at the end of the day. It may be a problem which social work and/or the police and/or someone else will have to deal with, but in terms of the council through the homeless hostels, or a new tenancy, it is not something that is a recurrent problem. (Solicitor, Local Authority C)

9.46 It should be noted, however, that some housing staff had little or no experience of renewed complaints:

Q. Have you had difficulties with people who have been evicted, or people who have absconded before the legal process is finished?
A: No, but we have been here only for 4 years, so these people may come back at some point in the future. (Housing officer, Authority A)

9.47 Given the nature of our research it is not possible to draw any firm conclusions about how often eviction merely results in displacement of anti-social behaviour, or more generally what happens to those who are evicted. A study tracking the subsequent fortunes of persons evicted for anti-social behaviour would be a useful addition to research. However, it should noted that a number of interviewees thought that eviction did result only in moving the problem on:

Yes, displacement of the problem is, I think, an issue … However, you must also weigh up the problem. Do we want it on our doorstep or do we just put it on somebody else’s? (Housing manager, Association B)

9.48 Some had specific doubts about the long-term merits of tough eviction strategies.

You can have a firm anti-social policy but that only goes so far. You can have sanctions against people, you can evict people but those people don’t disappear. (Housing manager, Local Authority B)

No, I don’t think it solves the problem at all. Really, I don’t … There is maybe some kind of programme they should send them on to teach them how to be responsible tenants, or responsible human beings would be nearer the mark, but no, I don’t think it solves the problem. It just moves it somewhere else. (Housing officer, Local Authority E)

The wider community of tenants

9.49 There were differing views on the possibility of eviction having an impact on the behaviour of tenants in general. One local authority solicitor was hopeful, but agnostic on the possibility of deterrence:

It’s like turning round a tanker. It will take a lot of research to discover whether that is turning the thing round. … What is happening is a general
perception that the council is becoming tougher on drug-dealing and on anti-social behaviour and there is perhaps some modification of behaviour...The whole point about the policy is to encourage correction of behaviour, not to evict people. If that does feed its way through into people behaving in a more social manner towards their neighbours without the necessity of them having to lose their home, then so much the better as far as the council is concerned. (Solicitor, Local Authority C)

9.50 But this sheriff was sceptical:

I am not a great believer in the deterrent theory altogether. I think the type of person in this context or in the criminal context does not think of the consequences of their actions. They don’t think of the effect of their actions on others and therefore they are not going to form a logical approach saying “I know that if I behave in such a way, I am going to be put out...” I think that is giving them too much rationality, which many of them don’t possess. (Sheriff, Court B)

9.51 The difficulties of determining cause and effect are at their greatest here, and our data do not provide the basis for a firm judgement either way of the broader effectiveness of eviction either in stopping anti-social behaviour once begun, or discouraging it from occurring at all. What is clear is that we need further research into the reformatory and deterrent effects of eviction, including the phenomenon of displacement before we can offer any firm views on the overall effectiveness of eviction in stopping or preventing anti-social behaviour.

SUMMARY

9.52 Whatever the position may have been in the years leading up to the Scottish Affairs Committee’s inquiry, we found little evidence of discontent with the provisions of the substantive law as they were before the changes to the grounds for eviction made by the Crime and Disorder Act 1998. Moreover, the data suggest that neither the statutory grounds, nor the reasonableness requirement, nor the manner in which either were applied by judges presented unreasonable obstacles to eviction in cases of anti-social behaviour. The old versions of the relevant grounds were adequate to cover virtually all circumstances in which landlords wanted to seek eviction, and tenants were protected from the over zealous use of legal action be the reasonableness requirement. It did not appear that this requirement was being applied either too strictly as against landlords, or insufficiently rigorously.

9.53 In practice, most cases the legal process resulted in favourable outcomes for the landlord. However, there is a concern, particularly in view of the substantial minority of tenants who were absent or unrepresented that some cases were not getting a full examination of their merits. There was, therefore, a possibility that eviction may not have been the outcome in these cases, if they had been defended.

9.54 Proof of fact was clearly a substantial problem, but this was not because the laws of evidence were causing difficulty, or because sheriffs were unreasonably strict in their approach to admitting evidence or assessing its probative value. The real problem was the intimidation of witnesses and/or the reluctance of neighbours and others even to come
forward as witnesses. This is perhaps likely always to be a significant problem. However, there was some evidence that practical measure, such as use of professional witnesses, and mechanisms for supporting potential witnesses, could alleviate it to some extent. Landlords should be encouraged to explore these possibilities further.

9.55 Excessive delay in the conduct of proceedings was perceived to be a major problem by social landlords and neighbours affected by anti-social behaviour. However, there were marked differences of perspective between housing staff and neighbours on the one hand, and lawyers on the other. There were a variety of reasons for this including the likelihood that non-lawyers could not clearly distinguish between the legal process itself, and the housing management steps that preceded it. The data suggest both that there is unnecessary delay, and that there is substantial scope for speeding up cases within the existing legal framework, without the need to alter the rules of procedure which govern the timetable for legal action.

9.56 The research provided limited and inconclusive evidence on the broader effect of eviction in stopping, preventing, or deterring anti-social behaviour, and it is clear that more research is needed on that issue. However, it was clear that some interviewees doubted that eviction was effective in changing the behaviour of perpetrators and many thought that legal action served only to displace the problem.
CHAPTER 10  INTERDICT

INTRODUCTION

10.1 In this chapter, we discuss social landlords’ use of interdict before going on to evaluate its effectiveness. In essence, an interdict is an order of the court requiring the person to whom it is addressed to desist from some legal wrong s/he is currently committing, or to refrain from some legal wrong s/he is about to commit. It is an order not to do something. The leading text (Collins & O’Carroll, 1997) and good practice guidance (Reid, 1996) suggest the use of interdict to social landlords as a viable alternative to eviction, and similar views are expressed about injunctions – the equivalent remedy in England and Wales (Hughes et. al., 1994). The legal requirements were summarised in Chapter 2.

10.2 Interdict is supposed to have a number of advantages over eviction as a means of dealing with anti-social behaviour.

• It is speedy. Interim interdict can be obtained on the day it is asked for
• At least for interim interdict, proof of fact is not a problem, as evidence is not heard at this stage
• It is person-specific i.e. it is addressed to the wrongdoer rather than the entire household.
• It is less drastic than eviction in that the person to whom it is addressed does not lose their home
• Where cases do not proceed beyond the interim stage it is likely to be cheaper than a defended eviction
• Not only landlords, but also private individuals may take action against the alleged wrongdoer.
(Hunter, Mullen and Scott, 1998)

10.3 It is these features which explain its prominence in good practice guidance. The question for our research was whether these supposed advantages were realised in practice, and more generally whether interdict is an effective legal remedy for anti-social behaviour.

10.4 This chapter is primarily based on the interdicts sought by the case study landlords and the views of housing staff, solicitors and sheriffs who had some experience of interdict action. It also draws on the postal survey findings and the findings from other research on the use of interdict (and the English equivalent of injunctions) for anti-social behaviour. Our analysis of specific cases was limited to authorities B and D, and one case in authority A. In order to obtain a reasonable size of sample we widened the scope of analysis, in the case of authority D, to cover actions raised from April 1995 to the end of 1998.

LANDLORD’S USE OF INTERDICT

Actions raised

10.5 Despite good practice guidance, the use of interdict as a measure for dealing with anti-social behaviour was largely confined to a few ‘pioneer’ landlords, most of whom were local authorities. The postal survey found that only 8 landlords sought an interdict in 1995/96 and only 12 in 1996/97. Only 4 sought more than one interdict in either year.
10.6 As Table 10.1 shows, only 2 of our case study landlords (authorities B and D) had made substantial use of interdict. Authority A had raised one interdict. Authority C had used them only to prevent abuse of its staff or damage to property (1995-97). Authority E made no use of interdict. None of the housing associations had a strategy, or substantial experience, of using interdict and there were no cases in the study period.

Table 10.1 Interim interdicts in case study landlords

<table>
<thead>
<tr>
<th>Landlord</th>
<th>Interim Interdict sought</th>
<th>Granted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Authority A</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Authority B</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>Authority C</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Authority D*</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>Authority E</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

Notes: *includes cases outside the period April 1995-March 1997
Source: Case database

Outcomes

10.7 In every one of these cases the pursuer succeeded in obtaining interim interdict. This did not appear to be a feature peculiar to the particular cases that we looked at. In Authority D the solicitor who had handled all the interdicts provided information which indicated that 16 interdicts were sought between March 1993 and September 1998. Interim interdict was granted in all of these cases. We did not obtain information about specific cases outwith the study period from authority B, given that the total number of cases there was considerably larger, but there too it appeared that since the practice of seeking interdicts had begun, interim interdict was routinely granted.

10.8 These outcomes are consistent with the returns from the postal survey, which showed 100 per cent of requests for interim interdict being granted in 1995/96 and 90 per cent (all except 3) in 1996/97. It is also consistent with the findings of an earlier study of Edinburgh District Council which found that interim interdict was refused in only one out of 15 actions begun between December 1993 and November 1994 (Scott, 1995).

10.9 We were not always able to tell from the files whether the pursuer had minuted for perpetual interdict. However, this appeared to happen in the majority of cases. Authority B did not always seek to make the interim interdict perpetual, usually progressing to eviction where there were further complaints. However, where they did seek to make interdict perpetual they almost invariably succeeded:

*Every time we have applied for one, we have got it with one exception last year. The complaints were not serious enough and the Sheriff was therefore reluctant to grant a permanent interdict….. But most – interim interdict – that’s as far as they get.* (Solicitor, Local Authority B)

10.10 Authority D routinely sought to make interdict perpetual and claimed always to have succeeded in obtaining perpetual interdict. This was consistent with the files we examined and was also confirmed by one of the local sheriffs:
I’ve looked out some cases here. I’ve got 8 here on my desk and in 7 of the 8 cases, perpetual interdict was granted …… In one of the cases the council proceeded no further. (Sheriff, Court D).

10.11 It does not appear as if interim interdict was recalled in any cases, so even where interdict was not perpetual the prohibitions on conduct remained in force.

LANDLORDS’ APPROACHES TO INTERDICT

Authority A

10.12 Authority A had only used interdict on one occasion in the period studied (compared with the 7 cases raised for eviction action). As noted earlier, this was an unusual case. Both the staff in the specialist unit, and the legal staff, were sceptical about the value of interdict in dealing with cases of anti-social behaviour. They had no plans to use interdict in the future, to combat anti-social behaviour.

Authority B

10.13 Authority B had made the greatest use of interdict amongst the case study landlords. It had been using interdict for more than 5 years, the initiative originally coming from one of the Council’s solicitors. In the period covered by our survey (1995-97) they had raised 11 actions seeking interdict against anti-social behaviour (compared with 25 summons for eviction). All of these actions were brought against tenants. In 6 of the cases the interdict action was taken alone and in 5 the action was taken in conjunction with an action for eviction. The interviewees said that, in most cases, interdict was seen as a first step:

We will try and resolve matters where possible by interdict proceedings …. Now if the person does not abide by the terms of the interim interdict we are then left with two options. One is to raise breach of interdict proceedings which may get us somewhere, what we tend to do is say well that is it in terms ….. on its own and we will go to eviction proceedings and the fact that we have tried this other route is something else that we throw in when we are arguing reasonableness (Solicitor, Local Authority B).

10.14 However, given the differences between the number of interdicts and the number of eviction summonses, it was clear that this first step was not always taken. The decisions on whether to seek interdict were made on the circumstances of the particular case, but there were no hard and fast rules about whether to serve a notice or raise an interim interdict:

Interdict does aim at the people causing the problem - not just the tenant. Some people will adhere to a notice of proceedings; other will adhere to the interdict. It's a way of eliminating the options - of people that might otherwise be the subject of eviction proceedings. (Housing manager, Local Authority B)

10.15 In some cases, an action for interdict would be raised in parallel with an action for eviction:
If we have got a particular problem that is ongoing we might use an interdict as a back up. For example, we will have an eviction action started, problems are still continuing, we are still getting complaints coming in, we will consider an interdict to try and calm that situation down until it gets to court. (Housing manager, Local Authority B)

Authority C

10.16 As noted above, Authority C had not used interdict for nuisance. The legal staff explained that the authority had stopped using interdict because the Sheriff Principal did not recognise that they had title and interest to sue in most cases:

Again its down to the Sheriff Principal and there was a decision in which the Sheriff Principal indicated that he did not think that interdict against an anti-social tenant was a remedy which the council could use: it was a remedy that was open to the person who was suffering the anti-social behaviour. That has never been tested by (name) council because that was an appeal to the Sheriff Principal. It was never taken to the Inner House. (Solicitor, Local Authority C)

10.17 There had been a change of Sheriff Principal since then but the council had not tested the matter afresh. As a result, interdicts had only been sought to protect staff or prevent damage to council property. We did not obtain numbers but it appeared, from the interviews with staff, that interdicts prohibiting verbal or physical abuse and vandalising lifts were common:

If, for instance, a tenant was attempting to become violent before members of staff, they would use interdict in those circumstances, or to protect property, but only in those circumstances. (Solicitor, Local Authority C)

10.18 However, there was a definite division of opinion between housing staff and legal staff over the use of interdict. Several housing staff expressed enthusiasm for the use of interdict but commented on the reluctance of their legal staff to use this remedy:

But we seem to have a reluctance. I mean I am a great believer in - well - putting a toe in the water and test it. But there seems to be a reluctance as far as I can see from certain individuals wanting to actually go away and get it, but my understanding is that it is very easy to get - you just appear and you just get it, is that not right? (Housing manager, Local Authority C)

This is more a legal services argument that they don’t like interdicts, and that is quite clear. Because it didn’t come from us. It came from them because we had great difficulty persuading them. (Housing manager, Local Authority C)

Authority D

10.19 Authority D had begun using interdict at the end of 1992, apparently inspired by the example of housing authorities in England using injunction. A total of 16 interdicts had been sought by the end of 1998. At the time of the research the policy was to use interdict initially, in preference to eviction, as the main legal remedy for anti-social behaviour:
We have had a number of cases where .. interdict has been used as a first level legal remedy.. It sends a signal to the perpetrator, it also sends a signal to the community that we are taking the matter seriously ... We make it clear to them that the interdict action has been raised for a particular purpose and that having been successful with the Interdict action, we are looking for them to respond positively. But if they fail to respond positively then will be repercussions and the implications are this. (Housing manager, Local Authority D)

10.20 However, this was not a rigid policy and, in some cases, the authority would proceed straight to an action for eviction: ‘We may proceed to raising an action of eviction rather than interdict if we felt it was sufficiently serious’ (Solicitor, Local Authority D).  Eviction was also pursued automatically where a tenant had been convicted of dealing controlled drugs from a council house.

Authority E

10.21 Authority E differed from the others in that the single tier council had resulted from the amalgamation of the whole or parts of several pre-reorganisation local authorities. There had been no practice of using interdict against anti-social behaviour in the previous authorities, although some interdicts had been served to prevent violence and abuse of staff. There were plans to include interdict, as a possible remedy for breaches of tenancy conditions, in the draft policy on anti-social behaviour but this had not put in place at the time of the fieldwork. The solicitors interviewed were sceptical about the value of interdict, but also stated that they had not been asked by the housing department to seek any. So it appeared as if no one was pushing for the use of interdict in authority E.

Housing associations

10.22 As noted above, the case study housing associations had limited experience of the use of interdict and both housing staff and their solicitors were sceptical about its value. Outwith the study period, association E had taken out an interdict against a tenant to prevent him breaking windows, association D had considered its use on one occasion where a tenant was being harassed and association B had taken out an interdict to protect its staff from molestation.

TYPES OF BEHAVIOUR

10.23 Collins and O'Carroll (1997) suggest that landlords may seek interdict for a wide range of problems including common law nuisance, noise, animals and breaches of the lease. The breadth was apparent in the cases brought by case study landlords.

10.24 Authority A's only interdict action was unusual because the defender was occupying without right or title after the tenant, his girlfriend, had withdrawn permission for him to stay. The interdict was combined with an accelerated action for eviction under Summary Cause Rule 68A. Interdict had only been used there because of the particular facts, and the object of the litigation was to remove the man from the property.
10.25 Our examination of the 11 case files in authority B found that most cases involved allegations of excessive noise, generally some combination of shouting and swearing in the defender’s house but audible in neighbouring properties, playing loud music and banging on doors. In some cases the behaviour was mainly that of the tenant’s household, but several cases also involved disturbance caused by visitors. Noise was often linked to excess consumption of alcohol. In several cases, the police had attended on many occasions to deal with noise and disturbances. In some cases there was verbal abuse of neighbours, or even threats of violence. Other cases, outwith the period studied, had included vandalism and damage to the landlord’s property and, in one case, a tenant who kept pigeons.

10.26 Both housing staff and the authority’s solicitors said that interdict would primarily be considered as an option where there was clear evidence of a regular pattern of behaviour which could be precisely framed in a writ:

What we look for is recurring problems, so it's so and so always comes here on a Friday night, and always breaks a window or shouts abuse or there is some sort of pattern, it's not a one off, it's a recurring problem. What evidence have we got about that problem - is the concierge telling us what's happening at these times on these dates, is it neighbours telling us that it's happening? What is the severity of the problem? What is it that they are doing? Would an interdict be effective - would it stop them? (Housing manager, Local Authority B)

It needs to be something quite clear that you can summarise narrowly. You need to be able to frame it very precisely – just wide enough to cover the behaviour. Loud music, persistent abuse are the easiest to do. (Solicitor, Local Authority B)

10.27 The characteristics of the caseload in authority D were similar to that in authority B. In addition there were several cases where the interdict had been aimed at the children of the tenant, rather than the tenant themselves:

Now the elderly tenant was responsible for the tenancy.. and was conducting the tenancy in an excellent way, in fact she was a model tenant. However the same could not be said for her son who was causing all manner of problems and was uncontrollable. So... rather than take out eviction action against an elderly tenant, we sought interdict action against her son. (Housing manager, Local Authority D)

10.28 The case below provides a good example of the typical type of situation in which interdicts were raised:
EVALUATING INTERDICT

10.29 The criteria appropriate to evaluating interdict are similar to those appropriate to eviction, and relate to:

- speed
- the appropriateness of the substantive law for dealing with anti-social behaviour
- the ease or difficulty of establishing the necessary factual basis for legal action
- its effectiveness in where there is a breach
- its effectiveness in stopping or preventing anti-social behaviour
- the appropriateness of the outcomes i.e. whether existing laws procedures and practices are properly applied

These criteria are examined in some depth below.

SPEED

10.30 Most of the housing staff and solicitors who had some experience of interdict had found them easy to obtain. This is not surprising, as the whole point of interim interdict is to provide a swift remedy not subject to the procedural complexities and consequent delays of litigation generally. All the case study sheriff courts appear to be organised to permit the pursuer’s solicitor a hearing before the Sheriff within 24 hours of lodging the initial writ, and usually the same day. Our analysis of files, and interviews confirmed that this is what routinely happened:
I would get legal aid sorted out this afternoon, go into court tomorrow morning, lodge it for tomorrow afternoon and hopefully we would get it, say at 2 or 2.30 and have it served by 4. That is fast. I mean you can’t get faster than that. (Private Solicitor, Court C)

10.31 However, some staff did complain that it had taken some months to obtain an interdict:

No, I don’t think so. It wasn’t effective because it wasn’t quick, it wasn’t simple and it seemed, you know, it wasn’t really terribly explicable to tenants. (Housing manager, Association E)

I think the first time we had a problem was with (x) case … As far as I remember, an interdict was granted fairly quickly. I mean law and admin responded within a couple of days to that one. But I have had other experiences where I have waited maybe 5 months to get an interim interdict, and that obviously defeats the purpose… it is meant to be a speedy remedy… (Housing officer, Local Authority D)

It was unclear whether these interviewees were complaining about delays in raising proceedings or delay in the legal process. Given the evidence of other interviews, it is more likely that it was the former.

10.32 The interim interdict is not effective against the defender until served on him or her, but in practice this appears not to have been a source of difficulty. Where the pursuer had sought to make the interdict perpetual, there was often a delay of several months between the interim interdict being granted and made perpetual. In some cases this was due to the case having been sisted to allow the defender to apply for legal aid. This did not appear to concern the landlords because the interim interdict was still in place.

10.33 However, we should also consider matters from the defender’s perspective. The desire for speed means that interim interdicts are usually granted (ex parte) without hearing the defender. In this context, it is unlikely that the defender will have lodged a caveat, guaranteeing the right to be heard before the order is granted. So, in practice the defender has no chance to test the truth of the allegations, or even argue about the legal basis of the writ before the order is made. Although this is an essential feature of the remedy, there is room for argument that, given the difficulty of overturning the initial order, the procedure is unfair to defenders in anti-social cases. We return to this issue below.

THE SUBSTANTIVE LAW

Grounds

10.34 Any behaviour which infringes the legal rights of the pursuer may be the basis for an interdict. The existing law covers assaults on neighbours, threats of violence, damage to property, excessive noise and anything which in law is regarded as a nuisance. Neither authority B nor authority D had experienced any difficulty in convincing sheriffs that there were grounds in law for interdict, and they had not found any difficulties in practice in
establishing grounds for interdict. Only one landlord referred to difficulties, but these related more to the terms of the order than establishing grounds for it:

I found the process very legalistic because what we asked – the interdict from breaking windows or damaging property belonging to (x) housing association within the vicinity of his home, and initially the Sheriff refused to grant an interdict on the basis that the defender could not reasonably be expected to know which windows were ours. (Housing manager, Association E)

However, the sheriff did grant interdict when a list of addresses was provided.

10.35 There were no concerns, therefore, from the landlords who were actively using interdict that the grounds were too narrow. Some of the interviewees in landlords who had little experience of interdict had some concerns, but these were often based on a limited understanding of the remedy:

The problem with interdict is that it can apply only within the locus of the property...It doesn't stop, it doesn't prevent the anti-social behaviour...being continued elsewhere (Housing officer, Local Authority E)

10.36 It is true (and interviewees provided some examples) that people served with an interdict for one behaviour might stop doing that and instead do something else equally vexatious. They might also, for example, stop holding noisy parties in one property and move to another. However, this misses the point that the purpose of an interdict is to stop a specific behaviour, usually in a specific location. A sheriff would be unlikely to grant an interdict which was framed too widely: for example from holding a party anywhere in the district. This point was also made by one of the solicitors interviewed:

You then run the risk of a sheriff saying ‘Well, wait a minute – how can I grant an interdict in those terms, because this is incredibly wide and vague? How is the tenant supposed to know what they are prevented from doing?’ (Solicitor, Local Authority B)

It appears, therefore, that the existing grounds for awarding interdict seem generally appropriate.

Title and interest

10.37 The one area of substantive law, which did appear to cause some difficulty, was title and interest to sue. This would not be a problem for an individual because if they were suffering directly from a problem, they would generally be able to establish an interest. However, a local authority or housing association trying to interdict anti-social behaviour must be able to show that a wrong is being done to it. Otherwise, there is no title and interest to sue. Including a clause in the tenancy agreement forbidding the behaviour which the landlord wishes to outlaw can create title and interest. The leases of most social landlords contain such clauses. Therefore, anti-social behaviour is usually a breach of the tenant’s lease.

10.38 Landlords could also base an interdict action on behaviour that obstructed their staff from carrying out their work, physical damage to their property, or a reduction in the letting
value of the property caused by the behaviour. All of these would infringe the landlord’s legal rights independently of the terms of any lease. However, in the case of Dundee District Council v Cook (1995) SCLR 559 a landlord was unsuccessful in obtaining an interdict against a former tenant who had exercised the right to buy, on the basis that they did not have title and interest to sue.

10.39 Authority B had no difficulty in raising interdicts against its own tenants but it had been refused interdict, for lacking title and interest, when attempting to interdict an owner-occupier living on a mixed tenure estate.

10.40 Authority D might have expected to face some difficulty as many of its actions were brought under an old lease which had no explicit obligations on nuisance to neighbours. However, this had not proved any real obstacle to obtaining interdict:

It was not a condition in the old lease that the tenant should not cause a nuisance. What we are trying to argue is that it is an implied condition at common law that a tenant won’t invert possession of the subjects let to him or use the subjects in a way which is inconsistent with the terms of the lease. It has been raised on a number of occasions in the past at the interim hearing stage, and it has been accepted by the sheriffs that it is sufficient to give us title and interest to sue and it is a breach of the tenancy agreement. (Solicitor, Local Authority D)

The current lease contains a detailed anti-nuisance clause prohibiting expressly a variety of types of behaviour.

10.41 The council had not, on any occasion, been refused an interdict on this, or indeed any other, ground. So title and interest was not a serious problem for either of Authorities B and D. As we noted above, in authority C, we had been told that the former Sheriff Principal had been reluctant to grant interdict in actions brought by the council for neighbour nuisance. However, it was impossible to establish what precisely had been the former Sheriff principal’s approach to neighbour nuisance interdict brought by the council, in the absence of a written judgement.

10.42 What Authority C’s solicitor told us was the only specific example we encountered of sheriffs possibly taking an unduly strict approach to title and interest to sue in cases involving tenants of social landlords. However, there was some evidence that the issue may be imperfectly understood. On several occasions we encountered misconceptions of the requirements of title and interest. Two solicitors said that housing associations, did not, in their view, have title and interest. These views had also been passed on in advice to housing managers:

My interpretation of interdict … is that they are granted basically to separate the parties … the legal advice we got was that we had no locus to take out the interdict against the party. However, the tenant concerned is able to get an interim interdict… (Housing manager, Association B)

10.43 So perceptions that the law does not allow landlords to take out interdicts against tenants may be discouraging some landlords from using interdict. These perceptions are ill-founded in law, and not necessarily supported by experience of judicial practice. Apart from
those with misconceptions, there were many staff who admitted that they did not know enough about the remedy to comment:

The housing officer is .. the person that deals with the person making that complain. However the housing officer is, perhaps, not the person that has good information about the legal process and about interdicts, and that. So I think that it would be important to educate; as much an organisation thing than anything else (Housing officer, Association B)

These uncertainties may be one factor explaining why so few social landlords make use of interdict for anti-social behaviour.

10.44 Taking out interdicts against persons who are not tenants is more likely to raise issues of title and interest. However, where the alleged wrongdoer has no connection with a house owned by the landlord, for example the owner-occupier on a mixed tenure estate, title and interest may be more problematic given the decision in Dundee District Council v Cook (1995) SCLR 559. We return to this issue in the next chapter, when we discuss title conditions.

PROOF AND EVIDENCE

Proof of fact

10.45 Neither authority B nor authority D had experienced problems with proof of fact when seeking interim interdict. This is not surprising, as there is no inquiry into the truth of the pursuer’s allegations at this stage. The facts stated in the pursuer’s writ are assumed to be true. Nor is it normal practice to require affidavits or statements to be lodged with the writ. Landlords, or indeed any pursuer, would be unlikely to encounter difficulty in proving a case unless the action reached the stage of a proof. However, in the vast majority of cases, interdict actions did not get to this stage. Neither authority B nor authority D had ever had to go to proof in an interdict in an anti-social case, including those cases where they had sought to make the interdict perpetual. The rarity of proof seems to be a feature of interdict actions generally, and not just those relating to anti-social behaviour:

No, I don’t recollect one going to proof before me personally. That is not to say that one has not gone to proof in (name) Sheriff Court. Just that I do not recollect it in the 16 years I have been here, of one actually going to proof. (Sheriff, Court D)

10.46 The cases we examined indicate that landlords do ensure that they can substantiate any allegations if a case ever does go to proof. But is clear that in practice they are not being called on to prove their allegations, and this is obviously a major attraction of the remedy for them:

Another advantage is that you can keep the neighbours out of it. You don’t have to disclose the sources of information – at least not too much. (Solicitor, Local Authority B)
Concerns about untested cases

10.47 Cracknell (1996) raised concerns about the use of injunction - the equivalent English remedy. She described a strategy adopted by one English borough to use injunctions in a concerted systematised manner between 1993 and 1995. All the applications were successful. All cases were heard in chambers, none of the defendants had legal representation, and the orders were based on untested affidavit evidence which included hearsay. Cracknell argued that there was a disturbing pattern to the cases as, apart from 6 initial cases, all the cases that went to court involved female single parents. She suggested that it might be too easy for a landlord to obtain an injunction and her account raises the question of whether the defender’s interests are adequately protected in proceedings for injunction and interdict.

10.48 We should consider that there might be similar problems in Scotland. The tests that apply to the granting of interdict make the granting of interim interdict almost automatic. The landlord is generally able to present a *prima facie* case, and the balance of convenience is generally assumed to lie with granting it. Because the order is usually made *ex parte*, the tenant often does not have the opportunity to argue against it. Even where the tenant does appear, for example, at the first continuation, it appears to make little difference:

*Interim interdict would be granted on the basis of the balance of convenience. … And, there it can be quite difficult for the tenant because he might deny vehemently the averments of the writ. But the interdict is to be granted on the basis of saying to the tenant ‘do you intend to behave like this in the future?’ and if the tenant says no, you would ask ‘is there any prejudice to you if I order you not to behave in this way?’ The tenant has to say no, and therefore, on the balance of convenience, without hearing the evidence, we tend to grant interim interdict.* (Sheriff, Court D)

10.49 This, of course, is how interim interdict is supposed to work. The normal procedural safeguards are suspended, but this is on the assumption that there is the opportunity for a full trial at a later stage. In theory, if the case is defended, any weaknesses in the pursuer’s case will be exposed at debate on proof. In practice, in our case studies, cases were either not defended at all or the defence collapsed, so that neither the legal arguments nor the factual averments of the landlords were subject to detailed scrutiny:

*(x) had one case which nearly came to the stage of us having to lead evidence for permanent interdict because the action was going to be defended. That’s the closest we’ve ever come. … We’ve managed so far to keep neighbours out of interdict hearings. However, the vast majority are undefended anyway. (Solicitor, Local Authority B)*

*Interdicts are generally undefended and that means the council is likely to win. The people who tend to get involved in these cases are often not that intelligent or educated. If they are not legally represented they have difficulty defending themselves. It’s a question of proving or disproving the facts and they could not cope with that.* (Private solicitor, Court B)
Legal aid difficulties

10.50 In relation to both local authorities B and D, it was suggested that the main reason for interdicts not being defended on the merits was lack of funds for legal representation. Both local authority and private solicitors defending tenants said that legal aid was not usually granted for defending an interdict.

We haven’t defended any interdict cases. Legal aid is not granted for interdict, so private solicitors don’t tend to get involved. We have had a few queries but when they realise that they would have to pay for a defence, in most cases the answer is no. (Private solicitor, Court B)

I would say about 50% of them are defended initially, but then again defenders are not getting Legal Aid to defend actions of interdict, so their solicitors usually disappear. (Solicitor, Local Authority D)

10.51 The private sector solicitors also suggested that it was also difficult for pursuers who were private individuals to obtain legal aid for interdict:

Quite often we raise an action for interdict. That is where the Legal Aid Board can, to an extent, put a stop to legal involvement, because actions of interdict are almost impossible to obtain legal aid for now, particularly in neighbour disputes. They are all being refused in the first instance; and it is very difficult to get it even on appeal – we are told that the police should deal with it, not lawyers, and that conduct is minor, and legal aid is refused in well of 50% of the cases. (Private solicitor, Court D)

10.52 The statutory tests for obtaining legal aid are that there is probable cause for pursuing or defending the action (probabilis causa litigandi); that the applicant’s income is within the financial limits; and that it is reasonable to grant legal aid. An application may be refused on the grounds that it is not reasonable even if there is probabilis causa and the financial test is satisfied (Legal Aid (Scotland) Act 1986). This solicitor confirmed that the reason for refusal was generally that it was not reasonable to grant legal aid, rather than probabilis causa. Another solicitor made similar comments:

The Legal Aid Board test is fairly strict – and they won’t give legal aid just to any case where there has been offensive conduct. You have got to be able to show ... why interdict is the appropriate remedy, rather than just by the person talking to the other person, or something like that. So we have problems with getting legal aid at the end of the day. (Private solicitor, Court C)

10.53 There is clearly a perception that difficulties in obtaining legal aid are a major cause of the failure or inability of defenders to contest applications for interdict. The perception receives some support from the records of individual cases, although the sample of cases examined was very small. In all of the 5 cases where it was clear an application had been made, legal aid had been refused. However, we did not have access to defence solicitor's files and our information is based only on the records we saw in landlord's files.
Solicitors tended not to mention the special urgency provisions. Regulation 18 of the Civil Legal Aid (Scotland) Act Regulations 1996, S.I. 1996/2444, allow legal aid to be granted to cover work done before the determination of a full legal aid application in a variety of situations, including interdict. It is, therefore, likely that the refusals noted on landlords’ files related to decisions on full legal aid applications to recall interim interdict or defend perpetual interdicts.

The Scottish Legal Aid Board’s guidance on applications to defend non-matrimonial interdicts suggests that application of the statutory tests may lead to a refusal of legal aid where ‘the conduct complained of is relatively minor, or the terms so narrow as to cause no hindrance to the applicants normal routine’. Although the Board does not separately code cases involving anti-social behaviour, they were able to provide information on applications by individuals to defend interdicts brought by local authorities or housing associations. They were also able to screen out, from this sample, certain cases which clearly did not relate to anti-social behaviour. This left a group of 75 non-matrimonial interdict applications, which may have related to anti-social behaviour by the defender. Only a quarter of these (24%) were granted. Although not conclusive, these figures are consistent with the perception of solicitors that a full legal aid certificate, which would allow the case to be defended on the merits (as opposed to special urgency cover), would rarely be granted. The grant rate is also much lower than that for legal aid applications to defend recovery of possession in cases brought by social landlords. Some 63 per cent of these applications were granted for the same period. However, it must be stressed that these were mainly arrears cases.

Whatever the reasons for the failure of defenders to maintain their defences, what is clear is that authorities B and D were able to pursue a strategy of seeking interdict against anti-social behaviour almost entirely without having the merits of their cases seriously tested. Even where they went on to seek perpetual interdict, there was no substantial scrutiny of their legal arguments or of the facts. Thus, even where tenants disputed the allegations they did not have the benefit of a substantive hearing on the merits. Moreover, it does seem likely that there are greater difficulties in obtaining legal aid to defend interdicts based on anti-social behaviour as compared to eviction actions, and this issue merits further inquiry.

EFFECTIVENESS OF ENFORCEMENT

Breach of interdict

The Scottish Affairs Committee raised concerns over the enforcement of interdict noting the requirement to raise a separate action, to obtain the consent of the Procurator Fiscal, and the criminal standard of proof. The Committee suggested that:

Apart from the greater difficulties of proof, breach of interdict proceedings would be subject to the usual delays attendant on ordinary civil process. So, in cases where the defender is obdurate, one of the principal advantages of interdict – its speed – may be lost. (SAC, 1996, paras 126-127)

These points were raised by a number of the interviewees. They felt that it did take some time to enforce an interdict where there was a breach and that is was time-consuming. They also faced the same difficulties with witnesses that occurred in eviction cases (see Chapter 8).
The main problem ... is when you go to the breach you have to present witnesses ... when you approach people and say, ‘it might have to go to court as a breach. You will have to go as a witness.’ That’s when they start to back off. But, in this instance, 2 of them said yes, they would go to court, and that was 4 or 5 months ago now, and it still hasn’t gone to court. The behaviour of the young men concerned is still going on but people are not reporting it to us except in a sort of informal way... (Housing manager, Local Authority D)

At the moment ... you have got to raise a separate action – breach of interdict – you have got to get the concurrence of the Procurator Fiscal to raise a new action, and then it is a faff. It takes a while because all this happens. In practice it is never done because it is a faff. (Private solicitor, court C)

Breach actions in practice

10.59 Notwithstanding the quote above, in both authorities B and D, the solicitors said that they were prepared to raise breach proceedings. Solicitors in authority B cited 3 cases where this had been done. However, none of these cases had been pursued to a conclusion:

There have been 3 breach of interdict proceedings raised. One of them was going to be solely from concierge staff. On the Friday before the hearing this guy got 2 years in prison anyway so we didn’t proceed since he was going to be gone. Another one was loud music. Again, it was just concierge staff as witnesses. But we decided that since the behaviour seemed to be improving that we would sist it. The final breach of interdict action is still going through. (Solicitor, Local Authority B)

10.60 Solicitors in authority D indicated that one action had been raised (and lost) and a further action was awaiting the Procurator Fiscal’s consent. Interestingly, both of these cases raised involved the son of a tenant. The fact that eviction was not sought may have been because the local authority did not desire to evict the tenant him/herself. However, in both of these landlords the more usual approach was to begin eviction action if the interdict was breached:

If the conduct continues once the interdict has been granted, we then consider raising an action for breach of interdict. We have raised one of those in the past, which has not been successful, and the thinking now is that if there are breaches of interdict, we should just proceed to the eviction from the premises on the basis of anti-social behaviour. (Solicitor, Local Authority D)

Confirmation that practice was changing came from 2 recent cases in which the authority had proceeded directly to eviction following breaches of the interdicts.

10.61 It is not possible to make an assessment of the possible problems involved in raising breach of interdict on the basis of the 5 cases quoted above. However, it should be noted that the sheriffs that we interviewed all had some experience of breach of interdict (though not necessarily in anti-social behaviour cases raised by landlords). They offered both positive and negative views on this issue. On the positive side, 2 thought that breach of interdict was effective:
Q: Do you think the breach of interdict process is an effective back-up for interdicts when they are not obeyed?
A: Yes, not bad. There are certainly plenty of actions raised for breach of interdict. That’s for sure. (Sheriff, Court E)

I would have thought that if interdict were used frequently, and breach of interdict was hammered pretty hard, then it might be effective. (Sheriff, Court B)

10.62 However, 2 also expressed negative views:

There may be an argument that says that the remedies are not exactly terribly effective and maybe there is a need for them to be greater. … At the moment it is fairly unsatisfactory and it would be worth considering whether the ultimate period of imprisonment could be expanded to perhaps 6 months for bad breaches of interdict. Although, I suppose bad breaches would normally be criminal behaviour. (Sheriff, Court B)

If a neighbour was told ‘if you step out of line one more time, you are liable to prosecution and this could result in a sentence of imprisonment of 5 years’. I think that might work, whereas the punishment for breach of interdict, or the potential punishment is not so severe. (Sheriff, Court C)

10.63 Overall, although the landlords using interdict were prepared to raise breach proceedings, the preponderance of views was negative. Interviewees stressed the delay and complexity of the process and the lack of severity of the sanction if it was finally imposed. The efficacy of breach of interdict proceedings must therefore be regarded as doubtful. In the light of this, it is not surprising that landlords B and D were more likely to opt for eviction proceedings than breach actions. Scott’s study (1995) of Edinburgh District Council also indicated that their policy in cases of breach of interdict was to begin eviction action instead. Since the rate of success in eviction actions is high (see Chapter 7), unless there are particular reasons why the landlord does not wish to evict, this appears to be a rational approach. Possible options for reform are discussed below.

EFFECTIVENESS IN STOPPING BEHAVIOUR

Qualitative findings

10.64 All the points above relate to the narrow conception of effectiveness focussed on the operation of the legal process itself. Ultimately, what is more important is whether interdict can stop or prevent anti-social behaviour. The best evidence of the effectiveness of interdict is the experience of their use, and a reasonable measure of success would be how frequently interdict results in the offending behaviour stopping without the landlord having to resort to eviction. There are 2 difficulties here. The first is that experience of the use of interdict is so limited across the country as a whole. The questionnaire returns indicated that there were only 54 interdicts raised in the period 1995-97. Moreover, it was clear that only 3 landlords, (all local authorities), were using interdict to any substantial degree. Two of those were included in the case studies. So the research involved a detailed examination of substantial
use of interdict by only 2 landlords, involving only 19 cases. This is a limited basis on which to judge its effectiveness.

10.65 The second difficulty is that of establishing causation. We cannot assume that interdict contributed to an improvement in the situation merely because there was improvement in the situation after the interdict was served. Our knowledge of specific cases is based entirely on landlord's records and interviews with their staff. Given that the research did not include alleged wrongdoers, we do not have their views on the effect of interdict on those to whom it is addressed.

10.66 Table 10.2 shows the outcomes in the 19 cases we examined (excluding the unusual case in Authority A). While this table appears to show that the majority of interdicts improved behaviour, the reality is more complex and it is worth discussing the cases in more detail.

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10.67 We obtained information on outcomes in authority B about 11 cases brought to court between 1995 and 1997. Interim interdicts were obtained in all 11 cases. In 5 of these cases, the council also began proceedings for eviction. Two of these resulted in eviction and in 3 there was some improvement in the behaviour. Of the other 6 cases, where interdict alone was sought, in 2 cases the tenant abandoned or gave up the tenancy and in 4 cases there was some improvement. However, in one of these cases, this only occurred after the authority had sought perpetual interdict. Although this was refused for procedural reasons, there did not appear to have been further complaints. In total there were 7 cases in which there was evidence of improvement in behaviour. That figure includes the case last mentioned and 3 of the 5 cases in which an eviction action had been raised.

10.68 In authority D, we examined the outcomes of 8 interdicts raised between April 1995 and the end of 1998. In 2 of these cases, the tenant was later evicted, in one the tenant abandoned the tenancy. In the remaining 5 cases there was an improvement in the situation.

10.69 In assessing the effectiveness of interdict, much depends on how ‘success’ is defined. Judged on the same basis as eviction outcomes, we might infer that landlords were able to obtain an outcome which was acceptable to them in all these cases - though sometimes only in conjunction with further action. Alternatively, we can say that the behaviour complained of appeared to have ceased in 15 of the 19 cases - in some cases because the tenant left the property. At a minimal level, we might argue that interdict alone only appeared to be effective in 9 out of 19 cases. Proportionately, it appears that authority D, with its 'interdict as first step' approach was more successful. It could be argued that some of the

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23 However, in one of these cases the file disclosed that there were further complaints, but no further legal action was taken.

24 Two of these were interdicts raised against each partner of a couple who were the subject of complaints.
improvements in behaviour obtained in authority B might have been obtained without a parallel eviction action. However, the sample is too small to draw any firm conclusions.

10.70 Even at the minimum success level, this does appear to show that a significant minority of interdict actions were effective. This is higher than that found by Scott’s study of Edinburgh District Council’s approach to interdict in 1993/94 (Scott, 1995). Scott reviewed 15 cases in which interim interdict was applied for between December 1993 and December 1994. Interdict was granted in 13 out of 15 cases. In 5 of the 13 cases, the behaviour improved and no subsequent legal action was taken but in other cases the interdict failed to alter the behaviour.

Views on effectiveness

10.71 The landlords who had used interdict also had mixed views about its success rate. On one hand, a number of staff provided examples of cases where interdict had been highly effective in stopping the behaviour: ‘in the vast majority there are no further complaints’. (Solicitor, Local Authority B). It should also be noted that many staff who had used interdict for damage to property and threats to staff were positive about the outcomes: ‘It worked immediately, it stopped it right away’ (Housing officer, Local Authority C, commenting on an interdict to prevent a tenant abusing staff).

10.72 On the other hand, some interviewees expressed the view that most cases in which interdict was served were actually resolved in other ways;

_These cases have tended to resolve themselves in other ways, by the tenants moving away or sometimes it is not really the tenant who is causing the problem but a visitor to the house, e.g. a boyfriend or partner, and the relationship breaks up so that solves the problem. Again, the neighbours who were principally affected move away, and the new neighbours do not regard the conduct as much of a problem._ (Solicitor, Local Authority D)

10.73 While staff stressed the speed at which interdicts could be obtained, they felt that it was only a piece of paper which tenants might ignore:

_I need to come clean a wee bit on interdicts. I don’t really think they are as useful as we would make out. I think I can probably speak for all the area managers who actively use them. We didn’t do hundreds. We didn’t do a lot … That is because of the effectiveness really. An interim interdict, the positive side is that you can get one quickly if you can establish the grounds … We get it – fine, but it isn’t physically going to stop someone doing something. It doesn’t have power of arrest attached. So, yeah, you’ve got a bit of paper that you can wave, but it doesn’t always solve the problem. …. In many ways, it is part of the range of things we use … but my experience is that interdict on its own isn’t gonna solve the problem._ (Housing manager, Authority B)

When I tried to explain to tenants what an interdict was and what would happen, you know; explained to them that the court would be involved, and so they said, ‘what happens if he does it again?’ And I said, ‘well, you know, we sort of have to go back to court and tell them that he broke it’. It wasn’t
immediately explicable to tenants as an effective solution. (Housing manager, Association E)

10.74 There was a similar mix of views from sheriffs and defence solicitors, who were able to offer comments based on their own experience of interdict actions, either in relation to anti-social behaviour or their general use. Some of these had experience of the use of interdict by private individuals in neighbour disputes. There was no consensus of opinion with large numbers in both the positive and sceptical camps. These quotes illustrate the range of opinions on the issue:

*I think interdict might be more effective than the threat of ejection because the defender has had something served on him, which might just concentrate the mind, whereas the distant threat of ejection would not.* (Sheriff, Court B)

*Potentially, very effective. I think it fundamentally depends on how scared people get by incomprehensible legal language. These things kind of scare you, and especially sheriff officers turning up at the door. Then it may work. If on the other hand, you are fundamentally anti-authority, and you don’t care a bugger … so it all depends very much on the character of the individual as well as the nature of the conduct complained about.* (Private solicitor, Court C)

*I am not convinced. An interdict again in my opinion, and in my experience, is a fairly useless remedy. If you have someone who flouts authority, having a bit of paper served on them by a sheriff officer is not going to stop them. Again, I have never thought interdict was a particularly worthwhile remedy for anything, for any sort of behavioural type of case, or matrimonial or personal, e.g. harassment. I have never seen the point. It is a remedy which has no teeth.* (Private solicitor)

10.75 In summary, those who were positive about interdict stressed the speed and the belief that, at least in some cases, it does encourage improvement in behaviour. Those who were sceptical emphasised the absence of adequate and speedy sanctions for breach, the delay and difficulties of proof involved in breach proceedings, and a lack of respect for the authority of the court on the part of wrongdoers.

10.76 Insofar as we can draw conclusions about the effectiveness of interdict in stopping anti-social behaviour, they are somewhat equivocal. In most of the cases in which interdicts have been used, the ultimate outcome has been satisfactory to the council and to neighbours because the anti-social behaviour at the particular locations has ceased. However, in some cases, the problem has been ‘solved’ because the tenant has been evicted, or because the tenant or some other person has moved away, or because new neighbours will tolerate the conduct, rather than any reformatory or deterrent effect of the interdict on behaviour.

**APPROPRIATE OUTCOMES**

10.77 To some staff, the most important value of an interdict was as a part of an array of tools, including mediation, which could be tried where there were complaints. If these tools
did not work, they could be used to show that every-thing had been tried to resolve the problem before they took action for eviction.

> What we will say in court is that we raised this eviction action and another thing that we did to try and solve the situation was an interdict, we are still doing xyz, what more can we do? (Housing manager, Local Authority B)

10.78 Several of the sheriffs interviewed for the study suggested that knowledge that an interdict had been breached was likely to weigh heavily in their consideration of whether it was reasonable to evict:

> Definitely, yes. That would be very relevant to the question of reasonableness, where they had been given an opportunity and failed to take it. (Sheriff, Court D)

> I’m sure it would add to the reasonableness of getting them out. I’m certain it would. If there was perceived to be a widespread cultural inertia on the part of sheriffs to find reasonableness and to, therefore, evict people, one way of jolting sheriffs into not being able to find it anything other than reasonable to evict people might be to have a breached interdict at your back. (Sheriff, Court E)

Scott (1995) also found, in her study of interdict in Edinburgh, that staff felt that the existence of a prior interim interdict helped to convince the sheriff that it was reasonable to grant decree for eviction.

10.79 Whilst there can be no objection, in principle, to Sheriffs taking into account the existence of a breached interdict in deciding whether it is reasonable to evict a tenant, this does presuppose that it was appropriate to grant the interdict in the first place. In the interdict case files that we saw there appeared to be considerable evidence of misbehaviour. However, as noted earlier, interdicts for anti-social behaviour are rarely defended and almost never have a proof hearing. This means that the evidence has not been tested and defenders side of the case has not been heard.

10.80 It could be argued that the purpose of interdict is to forbid a person from committing a legal wrong, so that a law-abiding well-behaved person has nothing to fear from an interdict, even if allegations about conduct are unfounded. However, there are 2 reasons why the award of interdict might materially prejudice the defender. The first is that the terms of the interdict might prohibit conduct which would otherwise be lawful. This might include, for example, being in a particular place, or approaching a particular person, provided the terms of the order can be justified as being for the purpose of preventing the wrongs alleged in the writ. We examined one case in which a tenant was interdicted from visiting a particular building and another for having more than 6 visitors at a time. The second, and more compelling reason, is that success in an action of interdict may influence the outcome of any subsequent eviction proceedings. We have some concerns that cases with similar histories, in terms of the defender’s behaviour, may be treated differently according to whether there is an interdict in force.
SUMMARY

10.81 In summarising the findings, the first point to make is that the number of specific cases we examined is a very small sample on which to base conclusions about the effectiveness of interdict, and confined to only 2 landlords and 2 sheriff courts. Moreover, given that the postal survey found that there are only 3 social landlords who are substantial users of interdict in this context, it fair to say that, in contrast to eviction, interdict has not had a fair trial of its efficacy in addressing anti-social behaviour in Scotland. So, any conclusions - positive or negative - must be highly provisional.

10.82 Drawing together the various strands of our inquiry, and the information acquired, our overall conclusions are:

• Despite its claimed advantages and the encouragement of the good practice literature, interdict has not been widely used as a remedy for anti-social behaviour. Those landlords who have made use of the remedy on any scale, have tended to use it either as a first step, before considering eviction, or as remedy in tandem with eviction. Interdict was used in a wide range of circumstances but most commonly when there was a regular pattern of behaviour such a noisy parties, abusive and threatening behaviour or arguments.

• Interdict is a genuinely speedy remedy in practice as well as in theory. However, that comment only applies to obtaining interim interdict. Breach of interdict is a slow and cumbersome process and the outcomes of the limited number of cases which had been raised were inconclusive as to its effectiveness.

• Except with regard to title and interest to sue, the substantive law poses no major problems for those seeking to obtain interdict and it cannot be suggested that the scope of the remedy is too narrow to make it useful in combating anti-social behaviour. In general, title and interest was not a significant problem for the major local authority users of interdict. However, the Cook case is likely to make it difficult for social landlords to interdict owner-occupiers whose behaviour affects tenants.

• There is some evidence to suggest that that the grounds on which interdict may be sought, and rules of title and interest to sue as they affect social landlords, may be widely misunderstood. This may, in part, explain the limited use of interdict.

• Proof of fact causes no difficulties to social landlords at the interim interdict stage. At the breach of interdict stage, the reluctance of potential witnesses to appear in court appears to be more of a practical problem.

• In general, interim interdict and perpetual interdict are easy remedies for social landlords to obtain in practice. It may be more difficult for private individuals to obtain them because of the cost of the action, and the difficulty of obtaining legal aid. This suggests that it is unrealistic to expect tenants to raise an action themselves.

• It is difficult to evaluate the broader effectiveness of interdict in stopping the behaviour complained about, both because of the complexity of assessing its effects upon behaviour, and because of the small size of the sample of cases that we examined. There is a widely but not uniformly held perception that interdicts have little effect upon the defenders’
behaviour. On the other hand there is evidence to suggest that in a significant minority of cases, the use of interdict has been followed by an improvement in the situation.

- There is a real concern about the appropriateness of the outcomes in interdict cases. Whilst it may well be the case that all such actions are well-founded, we cannot be confident of this because the merits of the landlord’s case are so rarely tested. Obtaining interim and perpetual interdict is close to a formality and hearings on the merits are simply not taking place, even where the person interdicted seeks to defend the action. There appears to be a difficulty in obtaining legal aid to defend interdicts on their merits. There is cause for concern both because it seems wrong, in principle, for persons to be subjected to court orders which are without foundation, and because it appears that the existence of a prior interdict is likely to influence the outcome of eviction proceedings.
CHAPTER 11 OTHER REMEDIES

INTRODUCTION

11.1 Thus far, we have concentrated on remedies which will be invoked primarily against tenants. However, it is important to remember that anti-social behaviour is a problem that may be encountered in all tenures. For both symbolic and practical reasons it is important to have remedies against bad behaviour by persons other than tenants, including owner-occupiers. This chapter covers a range of measures which are not restricted to rented housing.

TITLE CONDITIONS

11.2 Good practice literature suggest the use of real conditions as a possible remedy for anti-social behaviour in the context of mixed tenure estates (Reid, 1996). The problem in such estates is that tenants of the relevant landlord are bound by the terms of their lease but people who have exercised the Right to Buy may have no such constraints on their behaviour. As indicated in Chapter 22, such real conditions could be used to impose behavioural standards on persons who exercise the Right to Buy. A breach of those conditions could also found an action of interdict, in the same way as breach of tenancy conditions.

11.3 A number of local authorities in Scotland include behaviour-related conditions in dispositions of council house sales. However, they are not necessarily included as a policy response to the problem of anti-social behaviour, often being simple prohibitions on nuisance of a type that would have been included in such deeds anyway. In England and Wales, some local authorities have sought to enforce restrictive covenants in right to buy sales in cases of anti-social behaviour, although the legal basis of the practice is somewhat different there (Hunter and Bretherton, 1998). We, therefore treated the use of real conditions as a means of controlling anti-social behaviour as a subject for inquiry in our research.

Legal concerns

11.4 However, as we noted in Chapter 2, there are doubts about the extent to which it is legally competent to attempt to control behaviour by imposing real conditions. One of the doubts is whether a condition forbidding anti-social behaviour relates to the use of land. One solicitor said:

*I think this title conditions business is not properly understood. It is not possible to prohibit in the title conditions occasions relating to personal conduct ... And if it is not one that is capable of running with the land then it would not be a real burden ... So, the only forms of prohibition in the title deeds that could be incorporated, that is, if you want them to be real burdens, are ones which relate to the buyers use of the property, and not the buyers personal conduct, and that is an important distinction.* (Private solicitor, Court C)

11.5 However, it is accepted that a condition forbidding the use of a house in such a way as to cause a nuisance to neighbours would satisfy the test. It should, therefore, be possible to
use real burdens to control behaviour provided the behaviour in question could be regarded as a use of the house. It could be argued that some common causes of complaint, for example regular noisy parties which disturb neighbours, could be regarded as a use of the house. Conversely, types of behaviour which cause a nuisance but which cannot be linked to use of a house could not be the subject of a real condition. However, there is the possibility that a behavioural prohibition, which does not satisfy this test, is at least enforceable against the first purchaser as a matter of contract, s/he having agreed personally to the obligation in question.

11.6 The other major doubt concerns precision. The conditions we saw tended to be very broad and general prohibitions of nuisance. Would they be specific enough to be enforceable? This is hard to say, as the courts have not taken a consistent approach to the question of specificity. Conditions that spell out in detail the prohibited behaviour should not face this problem. However, they must still meet the requirement that the conditions relate to the use of land.

11.7 If doubts about vagueness, and the status of the prohibitions as conditions relating to land could be satisfied, then the problem identified in Dundee District Council v Cook 1995 SCLR 559 (relating to the difficulty of a local authority establishing title and interest to interdict an owner-occupier) could be overcome. Title and interest to sue would derived from the title deeds.

11.8 However, the use of real conditions in this way is going to be affected by the proposed abolition of the feudal system and associated reforms. This is important not just because such conditions are usually imposed by feudal grants, but because there are likely to be changes affecting non-feudal real conditions. We discuss the reform proposals after our examination of current practice.

Use of title conditions

11.9 Examining current use suggests that little attempt is made by Scottish local authorities to use real conditions to control anti-social behaviour. There is certainly much less use of this device than there is of restrictive covenants in England and Wales. Although a number of councils insert anti-nuisance clauses into dispositions of council houses, in most cases this is probably (as noted above) a traditional prohibition on nuisance rather than a deliberate response to the problem of anti-social behaviour. Only one local authority responding to the postal survey claimed to have attempted to enforce title conditions, and no housing associations had done so. Since that authority was not one of our case studies, our interviewees had little experience of the use and enforcement of title conditions.

11.10 The questionnaire returns may underestimate the use of title conditions since it is possible that landlords are applying them, but without resorting to court action. In theory, a solicitor’s letter might lead to compliance:

There was a lady who had great big dogs - something like, 12 or 15 dogs. It was causing havoc with all the neighbours, and law and administration wrote

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Contrast Mannofield Residents Property Company Ltd v Thomson 1983 SLT (Sh Ct) 71 with Lothian Regional Council v D V Rennie & Company 1991 SLT 465.
her a letter, and, give her due, she got rid of them all.  (Housing manager, Local Authority D)

11.11 However, it was clear from the responses of housing managers and local authority solicitors that even the informal enforcement of title conditions was making a marginal contribution to remedying anti-social behaviour. As the examples suggest, title conditions were being used in specific limited circumstances rather than in cases analogous to those involving tenants.

11.12 We have already quoted one private sector solicitor’s doubts about the legal basis for the use of title conditions to control anti-social behaviour. Others, including local authority staff, shared these doubts:

That is the ultimate joining of the conveyancer with the litigator which would be sitting very uneasily. My view is that it would be interesting to see whether or not the courts would be interested in irritating the feu. (Solicitor, Local Authority C)

11.13 There is, therefore, very little evidence on which to base conclusions about the effectiveness of title conditions, and court action to enforce them in combating anti-social behaviour. The doubts expressed about the legal competency of this approach may help to explain why real conditions are not more used. However, it was also clear that some of our case study landlords had not seriously considered use of real conditions in this context: they were not on the conceptual map. This may be the explanation may be the dominant reason for their non-use.

Overcoming problems

11.14 The proposals for abolition of the feudal system are also likely to discourage local authorities from adoption in the near future because of the uncertainty inevitable created by the impending reforms. However, if there were to be more interest in the enforcement of real conditions, the doubts about their legal adequacy would become much more significant. We should, therefore, consider whether it is worth social landlords exploring this route.

11.15 There are at least 3 difficulties facing the use of real burdens under existing law. First, the problem of establishing that the prohibition relates to the use of land. Second, the possibility that prohibitions on behaviour might be deemed too vague. Third, the restricted entitlement to enforce conditions: being a neighbour does not by itself give title to enforce, and neighbours often are not entitled to enforce real conditions. However, the local authority will usually have title and interest to enforce the burden.

11.16 There is also a concern over remedies. There appears to be no particular issue relating to interdict, but the alternative remedy – irritancy of the feu is a drastic remedy, which not only deprives the occupier of the house, but gives the superior (the local authority) the property free of any encumbrance. Quite apart from the effect on the owner, this seems unfair to the third parties with rights in the property, such as lenders. These features and conditions might make the court reluctant to order it, although it is not clear in what circumstances the court would exercise its discretion not to award irritancy.
11.17 The question marks over its appropriateness make it necessary to ask whether the use of title conditions ought to be seen as a significant part of the legal response to anti-social behaviour, and more generally whether it is appropriate to recommend their use. In this regard, it is worth recalling the reasons for the interest in title conditions and, in England, restrictive covenants. The use of restrictive covenants was stimulated by a perception that there was a gap in the system of remedies where the behaviour in question was that of an owner occupier (Hunter, Mullen and Scott, 1998). Restrictive covenants were seized on as an existing legal technique which might help. Title conditions were then suggested as the Scottish equivalent. If other remedies were available to fill this gap, it would undermine the case for using title conditions and, if the alternative remedies were more straightforward, would make the use of title conditions seem less attractive.

11.18 If it is felt appropriate that local authorities, and perhaps social landlords should have power to protect tenants against misbehaviour by others, regardless of the tenure of the wrongdoers, then it seems preferable to address the issue directly, for example, by conferring a general authority to seek interdict. This would remove the effect of *Dundee District Council v Cook* 1995 SCLR 559, which may well be inhibiting the use of interdict in this context. The new anti-social behaviour order, which is in some ways analogous to interdict, goes even further in giving a general power to local authorities to seek prohibitory orders against any person in their area responsible for anti-social behaviour.

11.19 This will not help individuals who wish to take legal action themselves. However, the position of the individual neighbours is probably already adequately catered for by the general law. This allows them to found an interdict on violence, or threats, or abusive behaviour addressed to them, or behaviour which would amount to a nuisance at common law, for example regular and excessive noise from a neighbouring property.

11.20 Of course, there would remain the difference between the sanctions available against tenants and owner-occupiers. The latter would not be under threat of losing their homes, unless it were possible to enforce real burdens, but the existence of ownership rights in the property does make ejection a more complex issue in relation to owner-occupiers.

**Proposals for reform of the feudal system**

11.21 The impending abolition of the feudal system provides further reason not to encourage social landlords down this route. The proposals are based on the Scottish Law Commission *Report on the Abolition of the Feudal System* (SLC, 1999). The Scottish Parliament is now considering the Abolition of Feudal Tenure Etc. (Scotland) Bill, which is expected to be enacted in 2000. However, a further bill will be necessary to complete implementation of the Scottish Law Commission’s proposals. The first bill provides for the abolition of feudal superiorities, and the rights of superiors to enforce real conditions. However, the bill provides a mechanism whereby the superior may seek to have the burden preserved. A notice may be recorded or registered in several cases including where the superior owns adjoining land within 100 metres of the property burdened, and that adjoining land has a building on it used for human habitation or resort. The adjoining land is nominated as the dominant tenement capable of enforcing the burden as a neighbour burden in the future against the servient tenement. The superior may then continue to have the right to enforce the condition or burden.
11.22 So, local authorities may continue, where they own property nearby, to be able to enforce existing real conditions. However, there are strong disincentives to doing so. The notices will require careful research and drafting. They must be served before the day appointed for abolition of the feudal system. They must be registered against both dominant and servient tenements. It must be doubted whether local authorities would be willing to engage in this time-consuming and expensive exercise across the whole of their housing estates. Moreover, the 100 metre rule may cause difficulty in some mixed tenure estates depending upon the extent to which the right to buy has been exercised.

11.23 However, the first bill does not affect non-feudal real conditions i.e. those created by ordinary dispositions rather than by feudal grants. The Scottish Law Commission considered that real conditions were useful legal devices, and the possibility of creating real conditions should be kept for the future. Therefore, it is envisaged that there will be a further bill which deals with existing non-feudal conditions, and the creation and enforcement of non-feudal real conditions in the future. Whether the creation and enforcement of new non-feudal burdens, designed to control anti-social behaviour, will be a realistic option for local authorities will depend on the text of the bill. However, it is very likely that doubts over the competency of using real conditions to deal with anti-social behaviour will remain. It does not appear that either bill is likely to alter the rules for ascertaining what is, or is not, a real burden, (Rennie, 1998). So, there will still be argument over whether an obligation relates to the use of land, and whether it is precise enough to be enforceable.

11.24 Adding all these complexities and uncertainties together serves only to confirm our conclusion that this is not the way forward. The notion of enforcing real conditions to control anti-social behaviour should be left as an interesting idea that never really got off the ground in Scotland. The problem that it might have addressed: the tenure specific nature of other remedies, would be better addressed more directly by conferring powers on local authorities to act across tenures, or to encourage them to make more use of existing cross-tenure provisions.

**SPECIFIC IMPLEMENT**

11.25 The remedy of specific implement is an order of the court requiring a person to perform his or her legal obligations, for example, obligations under a contract. It could be used by a social landlord to require a tenant to take positive action, for example, to maintain garden ground. Sometimes, complaints to landlords from tenants about their neighbours relate to matters that could be the subject of an action for specific implement. In practice, landlords frequently receive complaints about the condition of property including failure of tenants to maintain their own gardens, failure to fulfil responsibilities to clean communal areas, dumping rubbish, and other behaviour affecting the amenity of communal areas such as common closes and drying greens.

11.26 Few authorities reported the use of specific implement to any significant degree. According to the postal survey, only 5 landlords used specific implement in 1995/96, and only 6 in 1996/97. All, with one exception, were local authorities. However, even these figures may give misleading impression: 39 out of 46 applications for implement in 1996/97 were made by 2 landlords.
11.27 The use of specific implement seems to be largely confined to the type of case described above:

The bulk of actions we have had, as I say, are in relation to obligations in the tenancy, to the maintenance of garden ground. (Housing manager, Local Authority D)

11.28 Only authority D and authority E were making any use of specific implement at the time of our inquiries. However, authority C had mounted a large number of actions hoping to obtain orders against tenants to clean common stairs. After successful objections being taken to the competency of the proceedings, the actions were all abandoned. Thereafter, the authority gave up using specific implement:

There was a test case. The question of implement was always looked on as certainly something which in the style of the emperor’s clothes, we would carry on dealing with until somebody shouted “(name of authority) have got no legal clothes on”. That happened in late 96 or early 97 when [name of solicitor] took a plea to the competency of these actions. (Solicitor, Local Authority C)

11.30 Authority D had adopted the use of implement as a deliberate policy to deal with amenity issues such as failure to keep gardens tidy. The threat of legal action might be triggered by complaints from neighbours, from councillors, or by a housing officer’s own observations while out on rounds. Tenants would normally get 2 warning letters, then the matter would be referred for legal action. They had initially attempted to obtain them by raising an action under ordinary cause procedure, but had switched to small claim procedure as it was quicker and cheaper.

11.31 About 25 per cent of the small claims seeking implement were defended, and the council had always been successful in obtaining them. Where the order was not obeyed the practice was to seek a decree for payment of the cost of doing the work. There appeared to be a difference in the perceptions of the effectiveness of specific implement between housing and legal staff. A housing manager was fairly positive:

Where we have been successful in obtaining specific implement it has the desired result. I mean the people have responded … but again these have been relatively few, and I have to say that the level of intensity of the issue has been pretty low scale. (Housing manager, Local Authority D)

11.32 The solicitor who handled such cases disagreed. She had suggested to the housing department that the practice of seeking specific implement was not working given that orders were often ignored, that decrees for payment did not result in payment, and that often it was not worthwhile doing diligence:

In my view the effectiveness of the actions is not great. They are only effective in a small percentage of cases and even when we get decree for payments against the tenants who don’t comply with the implement order, they are not paying. I have suggested that they might want to consider raising actions for recovery of possession on the basis of breach of tenancy conditions. I know other councils do, and they seem to get decrees without too much trouble, and
it might have more impact on the tenant if it is brought home to them that this could lose them the tenancy. (Solicitor, Local Authority D)

11.33 However, the solicitor also thought that the council would be reluctant to propose eviction in such cases, and that sheriffs might also be reluctant to evict:

The feeling in the past was that they would not want to go down that road, because at the end of the day it was unlikely that the sheriff would find it reasonable to evict the tenant for that. They may want to do a sample number of actions to see how we get on with them. (Solicitor, Local Authority D)

11.34 In authority E, actions of implement were used in similar contexts. Generally cases were referred for legal action only after other avenues had been exhausted.

11.35 Examination of a small number of cases (5) in authority D found that the main use of specific implement was get tenants to maintain their gardens. In the case files examined, the housing staff had made a number of visits and issued several warning letters before referring the case to their legal sections. The solicitors then issued a warning letter. If this did not produce an improvement the action for implement was sought. None of the cases examined were contested and the landlord was granted the order. When these were served, the tenant usually made some effort to tidy up the garden. However, in 2 of the cases, it was clear that the effort was not sustained: one tenant had been the subject of 3 actions for specific implement in as many years. In another case, the landlord had finally instructed a 'clean up' by their Parks service. A decree for the costs of this work had been sought, but it was not clear whether payment had been received from the tenant.

11.36 Our review of practice suggests not only that few landlords use this remedy but that it is not always effective. Orders of implement are easy and quick to obtain, but they are only suitable for a limited range of situations, and there appears to be a problem with non-compliance. The obvious sanctions are to do diligence on a decree for payment (which may be sought as an alternative in the same action), and to seek eviction for breach of tenancy conditions. However, there was reluctance to evict for this type of breach of tenancy, as opposed to cases involving noise, threats, violence etc, and a feeling that sheriffs might be less willing to grant a decree for possession in this type of case.

11.37 It is, therefore, hard to see implement making a substantial contribution to dealing with anti-social behaviour. By its nature, it is restricted to situations where the tenant has failed to take some positive action such as cleaning a stair, or maintaining a garden. Whilst landlords do receive many complaints from neighbours on these issues, they would try management measures to resolve the problem in the first instance. It is only where repeated management attempts have failed to solve the problem that legal action would be taken. Since, by definition, these cases would involve the most obdurate tenants, it is not surprising that obtaining implement does not often achieve the desired results. Landlords are reluctant to apply the ultimate sanctions of evictions or diligence. It is more likely that a solution can be achieved through administrative means, for example, the landlord taking over the responsibility for these functions, and adding the cost to the rent.
BY-LAWS

11.38 The postal survey suggested that the use of by-laws to control anti-social behaviour on housing estates was seen as of little importance by local authorities, but housing associations were a little more likely to contemplate their use by referring breaches of by-laws to local authorities for action.

11.39 The case studies little evidence of their use. Authority B said that they might suggest referring cases involving dogs to the District Court:

If it was a complaint about dogs we might suggest the District Court, under the by-laws... The District Court has the powers for control of dogs. Someone can complain to the District Court and the Justice can put a control order on the dog. He can go as far as destroying it. In the first instance, he's likely to make an order and it's only if it's breached that a dog is likely to be destroyed. It depends on the good behaviour of the dog. (Solicitor, Local Authority B)

11.40 However, although several of the other case study landlords said that they had considered the use of by-laws, we did not find any evidence of their use. This may seem surprising given that local authorities typically have by-laws on a range of issues, and no doubt do enforce them from time to time. We did not pursue the reasons why they are not more used in detail with interviewees. There are a variety of possible reasons. Particular local authorities may not have by-laws that would cover the behaviour involved in many neighbour disputes. There may also be a reluctance to enforce by-laws through the criminal process, because that is not under the local authority's control. There may also be a perception that the penalties for breach of by-laws will be ineffective in discouraging anti-social behaviour. It may simply be that the enforcement of by-laws is not something that housing managers think about. The fact that other remedies might often be available, for example, enforcement of the tenancy agreement, may also be significant. Also, the enforcement of some by-laws relating to anti-social behaviour, for example, by-laws banning drinking alcohol in the street may not be the responsibility of housing departments.

11.41 There was evidence from the postal survey that at least some housing associations were aware of the possibilities of referring breaches of by-laws to local authorities. In the case studies, Association C said that it referred cases of refuse in stairwells but it was unclear what action the local authority took. Such referrals probably did not go to local authority housing departments, and so would not add to their experience of the relevance of by-laws. So, our research sheds little light on the use of by-laws in practice except to confirm that they are not seen as a legal remedy of any great significance in the context of anti-social behaviour.

ANTI-SOCIAL BEHAVIOUR ORDERS

11.42 The anti-social behaviour order (ASBO) is a new remedy introduced by sections 19, 21, and 22 of the Crime and Disorder Act 1998, and it became possible to obtain them from 1 April 1999. Further guidance is given in Police Circular 3/1999 (Scottish Office Home Dept, 1999).

housing managers and solicitors were considering how to put the provisions into practice in their areas. This meant that many of our interviewees had opinions on the contribution it might make to dealing with anti-social behaviour. Two subsequent surveys: by Scott et al (forthcoming) on the operation of ASBOs in the first 6 months of their operation and by the Chartered Institute of Housing in Scotland (2000) on the first 9 months of operation, were used to provide information on practice.

11.43 It is, therefore, possible to make a preliminary evaluation of ASBOs in the light of the views expressed by interviewees, using the same criteria as we have used to evaluate other remedies. In undertaking this evaluation, we have compared the ASBO to interdict, as they are broadly similar types of remedy: both are orders of court prohibiting a person from doing something. Some the interviewees also explicitly made the link between interdict and ASBOs.

One of the good things about the anti-social behaviour orders is that we will still be able to use interdicts..... My own initial views is that, if you are talking about a tenant, why wait weeks or months, with all the rigmarole of leading evidence when you can go up and get an interim interdict pretty quickly. (Solicitor, Local Authority B)

Scope of the remedy

11.44 The first question is whether the scope of this new remedy is appropriate. It should allow local authorities to seek prohibitory orders against a wider range of persons and types of behaviour than interdict, as it does not require to be grounded in an infringement of the landlord's legal rights. It would not be necessary to show that the specific behaviour was covered by a prohibition in the tenancy agreement or title deeds, or that the landlord's interests have been adversely affected. This was welcomed by landlords as a means of helping them to deal with non-tenants:

The only advantage of anti-social behaviour orders - where they will provide as major extension of our powers, is in dealing with non-tenants - owner-occupiers. It will get round the problems of establishing title and interest because we will have a statutory power and a basis for the action. For tenants, interim interdict will be better. (Solicitor, Local Authority B)

11.45 More generally, the behaviour need not be tied in any way to the local authority’s function as a landlord in contrast to the extended powers of injunction in the Housing Act 1996. The only restrictions are that the alarm or distress was caused (or was likely to have been caused) in the local authority’s area, and that the order be necessary for the protection of persons in the area. This was a matter of concern for almost all the landlords:

So my concern with the anti social behaviour act, is that it will be being used as a big stick to beat us with, 'why don’t we sort all these problems out, you now have the powers to do it? We potentially could be drawn into it by new disputes and all sorts of things. (Housing manager, Local Authority B)

11.46 Housing managers were also concerned about the implications of this for workloads:
I think that is the view of the Scottish Office, that there will be relatively few orders granted. And I think in terms of the request for ASBO’s I think there could well be a considerable number and I certainly have concerns about the impact on workloads in relation to that because there are an awful lot of requirements that you have put in place (Housing manager, Local Authority D)

11.47 There are also concerns that the range of situations in which an order might be made appear to be considerably broader than the existing law allows in relation to interdict, and are arguably too broad. To obtain an order it is enough that the behaviour which had occurred caused or was likely to cause alarm or distress i.e. the grounds are not limited to cases where the victim fears for their safety. Nor is there any requirement that the alarm or distress be reasonable. The limiting factors are that the defender is allowed to argue that particular acts were reasonable in the circumstances, and the requirement that the order is “necessary for the purpose of protecting persons ... from further anti-social acts”, which ought to prevent orders being granted on the basis of isolated incidents.

11.48 Much will depend upon how these provisions are interpreted. If the triggering conditions are interpreted restrictively that will help allay fears, but it cannot be assumed that they will be. It can also be argued that the terms of the order itself may be overbroad. Section 29(3) allows the court to make an order which “prohibits him [the defendant] from doing anything described in the order” (our emphasis). Both the Scottish Office and Home Office consultation documents suggested that the order could be used to impose a curfew, or prohibit the defender from entering certain areas. If this interpretation is upheld, then it will be possible to impose restrictions on liberty through such orders which are greater than those available under any existing criminal or civil process. It may be the case that libertarian arguments based on the European Convention on Human Rights and the Human Rights Act 1998, will succeed in limiting the scope of the provisions. However, it would be preferable to have a more tightly drawn statute than to rely on the courts to curtail its scope.

**Speed**

11.49 There was concern that the remedy would be very slow to obtain, in comparison to interdict. There is some recognition of the need for speed in the fact that an application for an ASBO is made by a summary application, rather than through ordinary cause procedure. The summary application is a simple procedure. It begins with the pursuer serving a writ on the defender citing them to appear at court. If the case is to be defended, the court would then require defences to be lodged within a given time and fix a date for a hearing on evidence. However, there is no equivalent to interim interdict. Solicitors and sheriffs with experience of summary applications did not consider it to be a particularly speedy process in practice:

*I have my own views on that and I think the great difficulty is that it will not provide a fast-track solution. These antisocial behaviour orders are going to have to be applied for by way of summary application which is not a fast-track procedure in which written answers are usually ordered and in which a hearing will be fixed at some point hence. ... in a summary application ... 3-4 months down the line, in which case the problem is still going to be carrying on because there is no interim order you can apply for.* (Solicitor, Local Authority C)
Another local authority solicitor was more optimistic but would have expected to wait 10-12 weeks after serving the writ in a contested case before getting a decree. Others pointed out that there would be additional delay if the case were sisted to allow the defender to apply for legal aid, and that much depended upon whether such applications were seen as a priority in the allocation of court time:

*Again, it would depend how urgent the court saw it as being, but in the normal course of things it could take 6 months without much difficulty. It’s supposed to be a summary procedure, but if it was defended, then you would have the same problems with the Legal Aid application - sisted for Legal Aid.* (Sheriff, Court E)

The majority view was that, in defended cases, the ASBO would not provide a swift enough remedy for the victims of the behaviour in question, even if attempts were made to expedite cases:

*Some sheriffs might take the view which you mentioned already - this idea of fixing a hearing say 2 months ahead, but again, in many ways is too far ahead. These are things where you want a type of remedy which demonstrates to these people that this conduct is not acceptable and they will be very quickly sent to prison. That is really the point. 8 weeks won’t really do.* (Sheriff, Court C)

The sheriff in question was referring to the practice of fixing a proof far enough in future to allow the defender to apply for legal aid before proof thus obviating the need to sist the case.

Where an order is breached there may be considerable additional time spent enforcing it. The Procurator Fiscal or the Lord Advocate would have to raise criminal proceedings. Apart from the time taken for the police to report the case, and the prosecution to raise proceedings, the proceedings themselves could take months if the defender wished to go to trial. Like civil proceedings, criminal cases may be subject to additional unplanned delays because of adjournments for various reasons. It is possible that the accused would be kept in custody throughout that period, but there could be no guarantee of that. It is not clear that criminal proceedings if defended would generally be concluded more swiftly than breach of interdict proceedings:

*It’s a quite a lengthy process. ..It’s almost like interdict and breach of interdict ... but effectively you end up not with one proof but 2 proofs and one trial27. I think the problem is that it’s a lengthy drawn out process. You get your order first of all ....if there is a breach then in that situation you would have to have corroboration. ....I think I remain to be convinced on that one.* (Private solicitor, Court A)

Therefore, in the absence of provision for interim orders, ASBOs seem to compare very unfavourably to interdicts for speed. It is possible that this will discourage some local authorities from seeking them, and that any potential advantage stemming from the availability of criminal penalties may be lost.

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27 It is not clear why the solicitor referred to there being 2 proofs.
Control

11.54 All the other remedies we have discussed are managed by the local authority itself (except that breach of interdict proceedings require the consent of the Procurator Fiscal). If an ASBO is breached the case is then taken out of the hands of the local authority. Another agency decides whether to take any further proceedings, whether to drop the case if problems emerge, and how much time and effort to spend on preparation. There were mixed views on whether this was an advantage or a disadvantage. Some local authorities may prefer to stick to legal remedies which allow them to keep control. However, others saw this as a potential advantage of the remedy.

The only real advantage of an anti-social behaviour order is that if you eventually get it then it's a criminal offence. If it's breached then its up to the police to enforce it. You don't have to bother with evidence and witnesses. In interdict, it's the person who obtains it who has to do the investigation and the enforcement. (Solicitor, Local Authority B)

11.55 There were also concerns, from both local authorities and housing associations, that associations would have to apply for ASBOs through the council:

I see it being a problem for us. We are supposed to go through our Local Authority to get these orders and I can see us being at the back of any queue. I mean I don't know if they are bringing in extra resources to deal with it all. I just feel it could be bureaucratically quite onerous (Housing manager, Association D)

Financial implications and the potential for conflict because at what stage would we apply for the Anti-Social Behaviour Order? Do we apply as soon as the housing association contacts us and says we have this case, do we take it on then? We would have to be convinced that the housing management processes that had undertaken in response to that problem were correct, that everything had been tried rather than say 'OK you need this and we are going to get it for you'. There is potential for problems there if there is disagreement about the different practices and responses towards this problem. (Solicitor, Local Authority C)

Proof and Evidence

11.56 It is not clear that there are significant advantages over interdict when it comes to proving the facts necessary to obtain the order. The great benefit of interim interdict for the landlord is that there is no need to prove the facts at that stage. There is no inquiry into the truth of the pursuer's allegations unless, and until, there is a proof. By contrast, local authorities will, in all defended ASBO cases, have to prove that the anti-social conduct or course of conduct took place. The victims will then have to wait until after the hearing before getting the protection of the order. Therefore, the reluctance of witnesses arising from fear of what the potential defender may do may be just as much a problem for this process as it is for eviction cases.
11.57 The ASBO tries to deal with this problem to some extent by allowing the order to be made if the conduct “was likely to cause alarm or distress”. This will allow evidence of the effects of the conduct from persons other than the victims to be heard. However, it does not seem possible to cut the victims entirely out of the process. The conduct must be proved to have taken place, and the only witnesses may be victims and other private citizens. Much will depend on the extent to which councils have a working "professional witness" strategy. Even if they do, it is possible that sheriffs will take a less sympathetic attitude to the absence of the principal complainers than is apparently taken in eviction cases, given that the ASBOs are ultimately backed by a criminal sanction. This point was not lost on some of the landlords:

*The amount of proof that is required for the Anti-Social Behaviour Order will be .. .more onerous than an eviction* (Housing manager, Local Authority C)

11.58 There is perhaps less cause for concern from the defender's perspective than there is with interdict. The procedure offers more protection for the defender's interest than interdict procedure. Provided the defender chooses to appear the order will not be granted without inquiry into the evidence, or without hearing the defender’s arguments as to why it should not be granted. However, these protections will be of less value unless defenders are, in practice, able to secure adequate legal representation.

**Effectiveness in stopping behaviour**

11.59 Some of our interviewees thought that ASBOs might be effective in stopping or deterring anti-social behaviour, and this seemed mainly to be based on the availability of the criminal sanctions in the event of breach:

*In that you go straight into criminal proceedings as opposed to going to a quasi-criminal procedure which is interdict, and I think going straight to criminal case has merit.* (Sheriff, Court C)

*Yes, I do, because there are not enough criminal sanctions and for that reason alone I think it will be of more value than an interdict and because the process is quicker as well.*

*Q. Do you think it will have a deterrent effect?*  
*I think it would, yes, because it criminalises the behaviour … my general impression is that it would be of assistance, it would be quick and there would be more enforceable penalties against someone who had breached it.* (Solicitor, Local Authority D)

11.60 This view involves a large number of assumptions, including assumptions as to the sentences likely to be imposed and their effects on those sentenced and any deterrent effect on others. Several interviewees appeared to assume that imprisonment would be the normal sanction for breach of an order, but whether that is so remains to be seen.

11.61 While some of the sheriffs and solicitors were positive about the potential impacts, many housing staff were much less confident that it would make a difference:

*I think the expectations of it and its effectiveness are far higher than you know, what will actually happen in reality. I think these ASBO’s .. people*
think that this is the solution to all their ills, we will just fire these out on people. I am speaking to people in the local authority, Councillors who have got a hold of this idea that suddenly there will be far fewer of their constituents coming to their surgeries moaning about anti-social behaviour because this will sort them out. And I don’t know how much difference it will make you know. (Housing manager, Association D)

11.62 Finally, one solicitor was much more forthright in expressing views about the limitations of the remedy:

The operation of Anti-Social Behaviour Orders is so fenced in with the Scottish Office guidance it is difficult for me to see circumstances in which any local authority would be crazy enough to try - except as just an experiment because somebody up top has ordered them to do it. But I can’t see anyone rationally choosing to go for an Anti-Social Behaviour Order rather than one of the other remedies that we have already got. (Private solicitor, Court C)

ASBOS in practice

11.63 Although the fieldwork for this research took place before ASBOs came into force, there is now some information on their usage in practice. Scott et al (forthcoming) carried out a postal survey as part of research into housing management. This covered all local authorities in Scotland and a representative 50 per cent sample of registered social landlords. Respondents were asked how many ASBOs their organisation had requested between 1st April 1999 and 30th August 1999. The survey found that, in the first 6 months of the remedy coming into force, 6 local authorities and 2 registered social landlords had requested an Anti-social Behaviour Order. In total, 13 ASBOs had been requested. The 2 registered social landlords had each requested one ASBO, while the number requested by the 6 local authorities ranged from one to 3.

11.64 Follow up telephone interviews with housing staff in 2 of these authorities found that in one area, the ASBOs were undefended and granted quickly. In the other, the cases were defended and were sisted for legal aid. The housing officer in this latter authority thought that it was likely that any further cases raised would also be vigorously defended due to the existence of several independent Legal Advice centres in the area. He contended that the effectiveness of the measure would be ‘down to geography’ and that, without an interim remedy, not very useful.

11.65 The Chartered Institute of Housing found that 15 ASBOs had been applied for between April 1999 and December 1999 and that 9 had been granted. Two applications for ASBOs had been discharged in court. In addition, there were 2 cases of breach of the Anti-social Behaviour Orders which had been granted (CIH, 2000). It does not appear, therefore, that there was any great use of this measure in the first few months of its operation.
SUMMARY

11.66 The only legal remedies used to any great extent by social landlords are eviction and interdict. Remedies such as title conditions, specific implement, and by-laws are little used. There is certainly scope for them to be used more, but they probably have only a limited contribution to make to dealing with anti-social behaviour.

11.67 In our view the scope of the ASBO is too wide, and there is a danger of legitimate personal liberty being curtailed without adequate justification. Paradoxically, this may not come about to any great extent because other features of the remedy may discourage its use. Councils which already use interdict thought that it would be a much slower remedy and were concerned that proof of fact would be a serious obstacle. Many housing staff and solicitors appeared unconvinced that the gains that arise from its broad scope, and the ultimate possibility of criminal sanctions, outweigh these disadvantages. While some interviewees were confident that the availability of criminal penalties would make this an effective remedy, this assumes that such sanctions would be imposed. So there is room to doubt whether ASBOs will perform any better than existing remedies according to the narrower measures of effectiveness, especially speed. There are also doubts about their likely performance against the broader measure of effectiveness – stopping anti-social behaviour in specific cases, and deterring it in general.

11.68 Few anti-social behaviour orders were applied for the first 9 months of it coming into operation, which may imply that these concerns were tempering use of the remedy. However, it is too early to attempt to assess the impact of ASBOs in practice.
INTRODUCTION

12.1 The final aim of the project was to analyse the economic costs associated with the legal process. This chapter begins with a discussion of what is known about the overall costs of crime and anti-social behaviour. It then goes on to discuss the costs incurred and provides an assessment of these costs. It concludes with a detailed analysis of the costs of 10 specific cases.

12.2 Before we examine these costs, it is worth putting these in context. As the postal survey carried out for this research indicated, on average, landlords dealt with 38 recorded complaints about neighbours per 1000 tenancies per year. NOPs were served on around 1.5 tenancies per 1000 per year. Only one tenant in every 2000 has legal action taken against them for anti-social behaviour (see Chapter 3). It is clear, therefore, that the costs of the legal process represent only a small part of the cost to the public purse in dealing with anti-social behaviour.

12.3 There has been no research which explicitly seeks to investigate the overall costs associated with the impact and management of anti-social behaviour. However, the following figures on the costs of crime give some flavour of the scale of the costs. The cost of crime in Britain has been estimated to be in the region of £20 billion per annum (Straw and Michael, 1995). This figure includes the running costs of the Criminal Justice System, domestic and commercial property theft, criminal injuries compensation and the cost of the private security industry. The cost of personal and household crimes in Scotland per annum is estimated at a little under £1 million for Scotland (MVA, 1998). The costs of vandalism, break-ins and vehicle crime to business premises has been estimated to be around £44 million per year and, in total, businesses in Scotland were estimated to have spent some £293 million on crime prevention at premises in 1998. This included expenditure on CCTV, contract and internal security (Burrows et al, 1999).

12.4 The Scottish Affairs Committee Inquiry (1996) found that landlords, social work and environmental health departments, and the police, expend considerable resources in dealing with the problem of anti-social behaviour. If cases do go to court there are costs for the civil justice system. Therefore, similar calculations might be made for the costs of dealing with anti-social behaviour. However, such work is beyond the remit of this project. What we have tried to do is identify where these costs might be located at a local level and provide some assessments of overall costs to landlords.

COST-EFFECTIVENESS ANALYSIS

12.5 At a local level, Bannister and Scott (2000) suggested that cost-effectiveness analysis might be used to assess the costs and benefits of measures to deal with anti-social behaviour. Costs can be identified from a number of perspectives. These can be divided into operational costs and societal costs. The operational cost perspective examines the costs of the service provider. The societal costs perspective aims to measure more 'holistically' the costs of delivering a service. At an organisational level, therefore, the costs of anti-social behaviour
can be classified as direct costs, indirect costs and societal costs. These are illustrated in Table 12.1.

**Table 12.1  Costs of neighbour nuisance**

<table>
<thead>
<tr>
<th>Cost Type</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>Direct Costs to Landlord</td>
<td>• Housing staff time spent dealing with neighbour complaints by housing officers, area Managers, senior staff, caretakers</td>
</tr>
<tr>
<td></td>
<td>• Costs of implementing initiatives and on-going costs associated with these</td>
</tr>
<tr>
<td>Additional Direct Costs</td>
<td>• Legal costs for advice, interdicts, eviction action.</td>
</tr>
<tr>
<td></td>
<td>• Costs of repairs for vandalism and graffiti.</td>
</tr>
<tr>
<td></td>
<td>• Staff time of homeless and allocation staff in dealing with requests for transfer</td>
</tr>
<tr>
<td>Indirect Costs</td>
<td>• Loss of rental income due to additional voids.</td>
</tr>
<tr>
<td></td>
<td>• Void security and repairs.</td>
</tr>
<tr>
<td></td>
<td>• Reduction in desirability of property (reduced market value/ reduction in demand).</td>
</tr>
<tr>
<td></td>
<td>• Opportunity costs: diversion of staff time from other work.</td>
</tr>
<tr>
<td></td>
<td>• Increase in staff stress related illness from work.</td>
</tr>
<tr>
<td>Societal Costs</td>
<td>• Costs to disputants and other residents.</td>
</tr>
<tr>
<td></td>
<td>• Costs to other departments/ agencies including police, social work, environmental health, courts</td>
</tr>
<tr>
<td></td>
<td>• Decrease in social cohesion and loss of informal social control</td>
</tr>
</tbody>
</table>


12.6 Dignan et al. (1996) identified the principal direct costs to the landlord as the salaries of the housing officers dealing with neighbour complaints. In the majority of cases, neighbour problems are dealt with by generic housing officers (Jones, 1997). However, some cases may require the involvement of a wide range of staff. In addition, further direct costs may include the costs of legal action, the costs of repairing vandalism and removing graffiti and staff costs incurred in dealing with requests for transfers brought about by neighbour problems. A number of the interviewees agreed that these costs were incurred:

> You have to bear in mind that it comes hand in glove normally with vandalism. So even in the instance of fences being kicked down, graffiti being sprayed on walls, the time inspecting those...that is coming about as a result of anti-social behaviour and I think the vandalism element tends to be pushed aside when we look at costs for anti-social behaviour. (Housing manager, Local Authority E)

12.7 The indirect costs incurred by the landlord represent the ‘secondary’ impacts of a measure. This means that, if a measure is ineffective, there may be ‘knock-on’ costs. Hence, for example, failure to deal with a problem adequately may lead people to leave the area. This would result in additional voids, loss of rental income and additional security costs. In addition, there may be other outcomes which cannot be given a monetary value, but can be assessed qualitatively. These include reduced demand for an area as a result of its reputation...
for neighbour problems and reduced tenant satisfaction. The interviewees also commented on the overall impact of anti-social behaviour:

_The biggest cost is the cost to the community. The community gets and become stigmatised._ (Housing manager, Local Authority E)

12.8 Societal costs encompass the wider impacts of measures. Those which are particularly important are the costs to other agencies (such as the police, social work and environmental health departments) and the costs to residents. For example, the failure of a landlord to deal effectively with a particular problem may lead to increased stress and ill-health being experienced by tenants. One tenant interviewee described the effects of staying next to a ‘problem’ family:

_The kids they were all traumatised the wee yin, the baby was, he just wouldn’t got out, he wouldn’t go into a room himself. He wouldn’t even go to the toilet himself. One of us had to be with him at all times. It’s only last year he has kind of came to. The oldest… we had to actually move him out to stay with his brother in law because the boy couldn’t get sleeping. He was sleeping in for his work, he was about to lose his job. The other boy was in the process of doing his exams, he failed every one of them. …. I went down to under 7 stone… I couldn’t sleep. Everybody’s health was affected._ (Witness, Court A)

12.9 The benefits of a measure are assumed to achieve the opposite effect to the costs. Hence, an effective measure might have the direct benefit of reducing staff time in dealing with neighbour complaints. Indirect benefits might include increases in the popularity of an area, an improved environment, reductions in the loss of rental income and voids running at normal levels. Societal benefits might include decreased costs to other agencies and increases to tenants’ feelings of security.

12.10 Due to the time constraints in this study, the attempt to assess costs concentrated on the time spent by housing staff in dealing with neighbour problems, landlords legal costs and other costs to the public purse such as court time, time of police officers and defence costs.

**ASSESSING COSTS**

**Housing officers time**

12.11 The direct costs of staff involvement are, in principle, fairly easy to determine. Given particular salary levels, an hourly rate including overheads, can be assessed for each member of staff involved (Scott et al., 1994). We calculated that a housing officers time, including overheads, would be between £25 and £30 per hour while a housing manager would be between £40 and £45 per hour – depending on salary and likely overhead rates. To confirm these figures we asked landlords in the case studies for their hourly rates. Two of the case study landlords (a local authority and a housing association) provided their rates. The remaining landlords, while expressing unwillingness to tell us their actual rates for reasons of commercial sensitivity, were able to confirm that these calculations were reasonably accurate.

12.12 However, it is also necessary to ascertain the amount of time officers spend on neighbour complaints. Bannister and Scott (2000) identify 3 main ways of assessing this:
• global estimates by the landlord
• cost accounting by landlords
• analysis of case records

Global estimates

12.13 Several studies have asked landlords to assess global estimates of the amount of time staff spend on neighbour disputes. Aldbourne Associates (1993) found that landlords thought that neighbour disputes took up around 20 per cent of staff time - the equivalent of one day per week. Scottish studies have found more widely varying estimates. A survey by the Chartered Institute of Housing found that local authorities in Scotland estimated that the staff spent between 5 per cent and 40 per cent of their time dealing with complaints about neighbours (CIH, 1996). A study of housing associations found that estimates varied from one to 50 per cent (Gibson, 1997).

12.14 Housing staff were asked, during the interviews, to estimate how much of their time was spent dealing with neighbour complaints. However, these individual time estimates varied widely both within organisations and between different organisations, as the following quotations show.

We have got 2 people in the team here, whose remit is to deal with - or part of their remit is to deal with incidents of anti-social behaviour. So if you were to include just initial complaints in dealing with them from someone writing in or phoning up, I would reckon one of these people may spend 15 hours a week maybe out of 35…..There is a lot of work in there. There is a lot of to-ing and fro-ing and they are time consuming because if you go and see someone who has complained, they want to tell you everything, so you might be with them for a couple of hours (Housing manager, Association D)

The percentage of my time is a very low percentage. It would be a guess but probably about 5 per cent or less of my time. The housing officers would probably have a different story to tell. Anti-social behaviour is a fairly major issue for them and even if it is one or 2 cases they can be very, very time consuming…. I would say roughly a quarter of our housing officers’ time is taken up dealing with anti-social behaviour. (Housing manager, Local Authority E)

The patch I have got has got main doors, tenements and multis… I would say probably the majority of my anti-socials are in the tenements and the main doors. On average, on a good day I would say maybe half an hour. On a bad day I could be a whole day dealing with a case. (Housing officer, Local Authority C)

12.15 Overall, generic housing officers were likely to estimate that they spent between one fifth to one third of their time dealing with neighbour cases while locally based housing managers estimates ranged from 5 per cent to 10 per cent of their time. Senior staff also spent a proportion of time in this area. Some were involved in policy development and others also had a certain amount of direct involvement in decisions on serious cases. There are around 10,000 staff working in social landlords in Scotland (Scott and Keoghan, 2000), of which around a quarter are ‘housing officers’ - the type of staff most likely to be dealing with
anti-social behaviour complaints. If it is assumed that these staff spend 20 per cent of their time on this task, then it could be estimated that around 110,000 staff days are spent on this at a cost in the region of £17.5 million.

Cost accounting

12.16 A recent postal survey of housing management in Scotland (Scott et al, forthcoming) found that few landlords had a detailed analysis of costs in this area. Table 12.2 (reproduced from that report) shows that, of 32 local authorities and 83 registered social landlords surveyed, only 7 per cent had kept records of staff time spent on crime and anti-social behaviour.

<table>
<thead>
<tr>
<th>Cost record type</th>
<th>Landlords with records</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
</tr>
<tr>
<td>Housing staff time spent dealing with neighbour complaints</td>
<td>7</td>
</tr>
<tr>
<td>Legal costs</td>
<td>12</td>
</tr>
<tr>
<td>Costs of repairs</td>
<td>32</td>
</tr>
<tr>
<td>Loss of rental income</td>
<td>7</td>
</tr>
<tr>
<td>Void security costs</td>
<td>26</td>
</tr>
<tr>
<td>Criminal damage to offices</td>
<td>9</td>
</tr>
</tbody>
</table>

Source: Scott et al (forthcoming)

12.17 Of the 10 case study landlords, only 2 (a local authority and a housing association - who did not wish to be identified) were able to produce global costs for the amount of time spent by housing staff in dealing with neighbour complaints based on time-monitoring records. The local authority’s records indicated that their costs for anti-social behaviour for 1996/97 were £209,500 – or around £6 per house per year. This figure included the salaries of housing staff which were charged to the ‘anti-social’ cost heading, legal costs, sheriff and court fees, departmental and central overheads. The housing association calculated costs in a similar way:

We identify the time we spent dealing with neighbour nuisance in our cost centre accounting. It includes time with the tenants, time in case meeting discussing cases and the specifically legal action stuff. (Housing manager, association)

12.18 This association assessed the annual cost of dealing with anti-social behaviour in 1998/99 as around £120 per week or £6000 per year. This also equates to around £6 per property per year. It should be noted that, in both cases, the costs did not include the costs of implementing initiatives, costs of vandalism and repairs or void losses. The true costs are therefore likely to be considerably higher. The remainder of the landlords did not keep any figures on the costs of housing staff time spent dealing with anti-social behaviour, although one landlord was planning to do so in the future:

Well, we haven’t costed it as such but I think that is something that we recognise that we need to do. I think it is fair to say that there is a general feeling that it is a proportionate amount of time spent by staff on neighbour nuisance. (Housing manager, Local Authority D)
12.19 It should be noted that, if these costs were typical of the sector, then around £3.9 million per year would be spent on dealing with anti-social behaviour (excluding the costs of repairs etc). This is considerably lower then the amounts for staff time noted above. We were not able to examine the landlord’s records in detail, or assess their methods for calculating costs. It may be that staff distinguish between neighbour disputes and serious anti-social behaviour cases – and only record their time for the latter. Dealing with more trivial disputes may be recorded as general estate management duties. While this is supposition, it fits with figures provided by a second local authority. This authority could not provide information on the costs of all staff time for dealing with neighbour complaints. However it did provide cost information for its specialist unit, which dealt with more serious cases referred by neighbourhood offices. These costs equated to around £5 per property per year.

**Individual case records**

12.20 The third method is to examine individual case records of neighbour complaints to assess the costs involved. Using this method, Dignan et al (1996) found that housing officers had spent widely varying amounts of time - from 14 hours to 20 days – on cases. In practice, we found it difficult to locate the housing officer's files for many of the cases which had proceeded to legal action. This was because organisations tended to destroy or archive files where the tenancy had been terminated. However, many of the legal files contained details of action taken by housing officers and other agencies so it was possible to reconstruct the material and make some estimates of costs (see below).

**Legal costs**

12.21 The legal costs of anti-social behaviour cases can be substantial. Dignan et al (1996) identified a number of high-profile cases in the private sector where the legal bill ran into thousands of pounds. For example, one English case involving leylandi hedge cost around £100,000 in legal fees, while a bitter dispute in a block of flats costs one of the participants over £1 million. In the public sector, the well-publicised ‘Grahams of Glenrothes’ eviction case is estimated to have cost over £100, 000 (Mackay and Brown, 1998). However, these cases are exceptional and typical legal costs are much lower.

12.22 Although 88 per cent housing organisations responding to the housing management survey said that they did not have identified records (see Table 12.2 above), we found that the solicitors had a good idea of the legal costs of anti-social behaviour cases. Both private solicitors and council legal departments were likely to keep time-monitored records of the time spent on anti-social behaviour cases because these were used for billing purposes. In the private sector, solicitors fees are guided by recommendations from the Law Society of Scotland (LSS, 1999). These suggest that solicitors may charge by the unit, according to circumstances or by applying a fee detailed in the LSS table. The current value of a unit is £8.85 and in normal circumstances there are 10 units per hour. The recommended hourly rate is therefore £88.50. However, the LSS suggests that solicitors take into account:

*The skill, specialised knowledge and responsibility involved, the complexity or novelty of the question raised, the importance of the matter to the client and the place where and the circumstances in which the services were rendered.*

(LSS 1999)
12.23 The solicitors acting for housing associations said that they usually charged an hourly rate for their services, rates quoted varied from with £60 per hour to £80 per hour. These rates are below the Law Society recommended rates of £88.50 per hour but one solicitor commented that he charged a lower rate because the association was a ‘good client’.

12.24 We were able to examine the legal costing information in 2 of the local authority case studies. One of the local authorities used units to calculate costs for billing purposes and charged £4.80 per unit (or £48.00 per hour). In the other authority, the solicitors were charged at an hourly rate which included allowance for administrative support and overheads. The hourly rate there was £50.00 per hour. We also calculated local authority solicitor’s hourly rates using the same method as for housing officers and estimated that the hourly rates would be between £45 and £50 per hour, depending on the seniority of the solicitor.

12.25 We were able to obtain information on the legal costs charged for a number of specific cases and obtained wider information on costs from interviewees. The costs for repossession cases varied widely from £600 up to £3,000 and more. This variation was due to the varying complexity of the cases, whether or not it was defended, the number of days required for proof and the amount of evidence. Two quotes illustrate the reasons for the variation:

*The legal costs for an association… depends on…a number of factors, from how many proofs are discharged, to how many witnesses you have, to how many days of proof you have. It can vary widely. You could be talking, simplest ones, …anywhere between £600-750 or up to £2000 for more complex cases. (Private solicitor, Court A)*

*At least £3000 – just in legal time fees, etc. There was one that was really expensive because the proof lasted 10 days, so that cost a fortune. (Private solicitor, Court C)*

12.26 As noted in previous chapters, many interviewees (solicitors and housing officers) who were involved in legal action complained about sitting around in the court waiting to be called - sometimes being sent away again.

*Then I would have staff costs in going to court. That can be a bit of a hassle because you have 2 or 3 people going along to court, it adjourns and they come back again, and then there is their time in collating all the information, so the cost is quite considerable (Private solicitor, Court C)*

*It can be time consuming in terms of your time in court and the preparation work that has to be done, the interviewing you have to go through, precognition’s with the lawyers… The last court case I went to, it was myself, the housing officer, 2 senior concierge and a concierge. That’s 5 members of staff away from the place of work at the one time and if you start taking their costs. .. It can be quite costly. (Housing manager, Local Authority C)*

*There are also various outlays to be paid in the course of processing the legal case and collecting evidence. These costs include serving notices and the summons, court costs, precognitions and obtaining police reports. These*
costs could add up to a substantial amount. There would be outlays on top of that. It costs £35 for the warrant and it is up to £36 now and the last one was £108 for the police reports. That was quite high. It used to be £90 odd. Housing … gets a free report but it is very, very basic and all it says is there was an incident at this house. Here is the officer that attended it. It doesn’t tell you any details about the incident or time. (Solicitor, Local Authority E)

12.27 If the landlord wins the case, legal costs may be awarded against the defendant. However, in practice, all the case study organisations said that they would absorb these costs. The main reasons given for this approach were that it was time-consuming to claim costs and that there was little change of obtaining any money from the defendants. One solicitor summed up a number of the points:

(The association) take a rather pragmatic view and normally they would just not even bother moving for expenses because, chances are your average defender is legally aided and therefore chances are, even if you get an award of expenses it would be modified to nil, even if you were to get expenses you will not recover it from them….It just prolongs the procedure because they have to have an account of expenses prepared and assessed before the case can be referred back to the Sheriff. Usually by that stage, if decree is granted, they just want to be in a position to try and get it extracted and enforced as soon as possible. (Private solicitor, Court A)

Conversely, if the landlord loses, they may have to pay the defendants costs. Where clients are legally aided, the Scottish Legal Aid Board requires that an award of expenses is made.

12.28 There is a complex scale of fees for solicitors. There are different rates for ordinary cause actions (such as interdicts) and summary cause actions (such as evictions). Generally, the fees payable are subject to regulations as set out in the statutory instruments on Fees of Solicitors in the Sheriff Court (SI 1993/3080 and SI 1998/2675). These set out a table of fees for both defended and undefended summary cause actions. However, the court has discretionary powers to modify the fees. The factors which the court may take into account are similar to those recommended by the Law Society. However, in addition, the court may take into account the steps taken to settle the cause, limit the matters in dispute or limit the scope of the hearing. Where a party abandons the case the court has powers to 'decern against that party for payment of such expenses as it considers reasonable' (SI. 1993/3080).

Costs of defence

12.29 As noted previously, many cases for possession for anti-social behaviour are defended and most of those accused of causing problems are eligible for legal aid. Where legal aid is granted, solicitors claim a set scale of fees for particular activities associated with the case. These include taking instructions, preparation for proof, attending court, drawing up and lodging productions, precognition’s, taking evidence, conduct of proof and drawing up accounts. The solicitors in private practice said that the overall costs of the defence would vary according to the complexity of the case, but typically legal aided cases would be charged at between £2000 and £3000. A complex case, involving a number of days of proof or complex legal arguments would cost more. Where legal aid is refused, the solicitor can claim for legal advice and assistance, typically £300. It should be noted that more than one of the private solicitors said that they took on legal aid work at a loss.
Court costs

12.30 The average costs of summary cause actions in the Sheriff Court is unknown. However, the Audit Commission suggested that prosecution through the criminal court in England cost an average of £2,500 per person. In contrast, the cost of a hearing under the Scottish Children’s panel system was estimated to be £880 per person (Audit Commission, 1996). It seems reasonable to assume that costs to the sheriff courts will lie somewhere between these 2 figures.

Police costs

12.31 The Audit Commission (1996) estimated that between one in 10 and 2 in 10 reports to the police involves concern about nuisance caused by young people. MacKay, Moody and Walker (1994) also found that such issues consume large amounts of police time. They found that, of 12,255 incidents reported to the police in 5 areas of Tayside, some 3510 related to neighbourhood nuisance: around 30 per cent of the total. Both reports note that very few of these incidents appear to result in legal proceedings. Nonetheless, it is clear that front-line beat officers spend a lot of time following up complaints about noise, youths hanging around and children causing annoyance. Our interviewees noted that, while many police call outs were an appropriate response to the nuisance, some complaints were very trivial.

*The Police were called again. The child had a birthday party so they got a bouncy castle and put it on the grassed area at the front of her house, at their end, but she had the police at 8 o'clock in the morning - complaining, they were blocking her sunlight with the bouncy castle.* (Housing officer, Local Authority C)

12.32 As police officers are often called to neighbour cases, they are also often asked for information about incidents by housing officers and may be required to attend court to give evidence. Although the cost to the police is clearly substantial, we have not tried to cost this.

CASE COSTS

12.33 In addition to examining overall costs of responding to anti-social behaviour, it is also worth analysing the specific costs of pursuing legal remedies. Dignan and Sorby (1999) provided calculations of the costs of legal action based on a sample of cases in England in 1995/96. They estimated that obtaining an injunction (the English equivalent of interdict) cost between £800 and £1200. A typical cost was given as £339 in housing department costs and £900 in legal department costs. A typical defended eviction case was estimated to cost £3907 (of which £1300 was the cost of housing officer's time) while a complex case could cost up to £5133 (of which £2419 was the cost of housing officer's time). The authors note that council solicitor costs appear to be higher in Scotland and that the estimates would need to be updated for inflation to assess present day costs.

12.34 We carried out a detailed analysis of the costs involved in 10 cases drawn from the cases we examined. These included 7 repossession actions, 2 interdicts and one action for specific implement. The sample was drawn from a number of landlords and aimed to
encompass a variety of different types of case. The cases are outlined below in figure 12.1 and Table 12.3 summaries the costs.

Table 12.3  Costs of legal cases

<table>
<thead>
<tr>
<th>Case</th>
<th>Housing Cost £</th>
<th>Legal cost £</th>
<th>Court fees and outlays £</th>
<th>Total £</th>
</tr>
</thead>
<tbody>
<tr>
<td>Case A</td>
<td>4,400</td>
<td>2,700</td>
<td>400</td>
<td>7,500</td>
</tr>
<tr>
<td>Case B</td>
<td>1,945</td>
<td>705</td>
<td>200</td>
<td>2,850</td>
</tr>
<tr>
<td>Case C</td>
<td>790</td>
<td>470</td>
<td>90</td>
<td>1,350</td>
</tr>
<tr>
<td>Case D</td>
<td>3,500</td>
<td>1,970</td>
<td>80</td>
<td>5,550</td>
</tr>
<tr>
<td>Case E</td>
<td>285</td>
<td>1,240</td>
<td>225</td>
<td>1,750</td>
</tr>
<tr>
<td>Case F</td>
<td>1,150</td>
<td>765</td>
<td>185</td>
<td>2,100</td>
</tr>
<tr>
<td>Case G</td>
<td>295</td>
<td>1,015</td>
<td>155</td>
<td>1,415</td>
</tr>
<tr>
<td>Case H</td>
<td>480</td>
<td>625</td>
<td>245</td>
<td>1,350</td>
</tr>
<tr>
<td>Case J</td>
<td>565</td>
<td>470</td>
<td>65</td>
<td>1,100</td>
</tr>
<tr>
<td>Case K</td>
<td>435</td>
<td>510</td>
<td>205</td>
<td>1,150</td>
</tr>
</tbody>
</table>

Source: Cost database

Figure 12.1 Case histories in costs database

Case A. Repossession action.
Tenant and 2 teenage children in a multi-storey. Numerous complaints from neighbours regarding anti-social behaviour including refuse left in common areas, items thrown from windows, noise and disturbance around the home, misuse of intercoms, urinating in the lifts, playing loud music and verbal abuse. Over 40 specific incidents were recorded involving contact with housing officials and the concierge had been involved on a daily basis. On a number of occasions, the police were called to investigate disturbances. Legal aid granted. Decree for possession granted at proof hearing. Cost to landlord (housing and legal time, court fees and outlays). £7500.

Case B. Repossession action.
Tenant a single man. Numerous complaints about loud music, shouting, swearing, banging and abuse by tenant and visitors. Most complaints were alcohol related. 20 specific incidents were noted over a 5 month period. The tenant was jailed for a 4 month period (reason unknown) but on his release, there were further incidents of anti-social behaviour. The police were called to investigate disturbances on a number of occasions. Case sisted after proof hearing. After further complaints the case was recalled (still ongoing). Cost to landlord (housing and legal time, court fees and outlays). £2850.

Case C. Repossession action.
Tenant a single woman. 30 specific incidents recorded over the period of a year regarding playing loud music in the early hours of the morning, fights between the tenant and her boyfriend and threats to the neighbours. The police were called on a number of occasions. Case undefended and tenant abandoned. Dismissed at first hearing. Cost to landlord (housing and legal time, court fees and outlays).£1350.

Case D. Repossession action.
Single parent with 4 sons. Over 60 complaints received about the behaviour of the boys including vandalism, theft from cars, starting fires, verbal abuse and assaults on neighbours over an 18-month period. Legal aid granted. Decree for possession granted after 2 day proof hearing. Cost to landlord (housing and legal time, court fees and outlays). £5550.
Case E. Repossession action.
Partner of tenant convicted of possession and supply of cannabis from the premises. No record of complaints from neighbours. Housing officers initially identified the case from press reports and were involved in visits to establish facts. Police were involved in the original arrest and the police officers involved gave interviews (precognitions) to the landlords solicitors. Legal aid granted. The case was eventually dismissed when it was accepted that the perpetrator no longer lived at the address. Cost to landlord £1750

Case F. Repossession action.
Complaints of noise, parties. Tenant a single man with mental health problem who refused to accept support from social work. Numerous visits by housing officers and police (16 recorded police visits on file). Legal aid granted. Decree granted after proof hearing. Cost to landlord (housing and legal time, court fees and outlays). £2100.

Case G. Repossession action.
Tenant convicted of possession and supply of a Class A drug. No complaints from neighbour noted. Tenant was refused legal aid and decree was granted at proof hearing. Cost to landlord (housing and legal time, court fees and outlays). £1465

Case H. Interdict.

Case J. Interdict.

Case K. Specific implement.
Tenant failed to maintain garden. Specific implement sought. Decree granted and served. Regular visits by housing officers to monitor state of garden. Cost to landlord (housing and legal time, court fees and outlays). £1150.

12.35 It is interesting to note that the drug cases (E and G) were generally less expensive than the noise and nuisance behaviour cases. Of the noise cases, only case C was less expensive - and this was because the tenant abandoned the property before the hearing. The key reason for the lower cost of drug cases was the light involvement of housing staff. The interviewees suggested this was not usual because these cases are founded on criminal convictions rather than complaints from neighbours. As one housing officer noted:

> Strangely enough, drug dealing, isn’t that time consuming. You get a disclosure from the police, you write back to them saying what happens and that is more or less the end of it, we can’t do very much really. We issue an NOP right away, we monitor what is going on - tenants will tell us informally what is going on. We write it down but we can’t do anything. Whereas the small anti-social one, the clash of lifestyles, one guy coming in today and the next guy coming in the next day. Those interviews can last about three quarters of an hour at a time to tell you the whole story and ask questions. So there is a difficulty there. (Housing officer, Local Authority C)

12.36 The task for solicitors is also usually more straightforward as the case usually relies on the reasonableness of evicting on the basis of illegal use of the premises. Case E appeared
to be slightly unusual, in this respect, as the solicitors interviewed the police involved in the original arrest.

12.37 Much of the cost to the housing staff was in responding to complaints and gathering initial evidence. It could be argued that many of these costs would have been incurred even if no legal action had been taken.

12.38 Most of the legal costs were due to internal letters between the legal staff and housing officers, advising of progress in the cases. It is obviously necessary for solicitors to keep their clients informed but the cost is significant. For example, in case G there were 11 memos or letters from the housing dept to the legal department and 20 memos and letters from legal to housing. This correspondence accounted for around £700 of the landlord's costs. In some organisations, NOPs were served by housing officers using recorded delivery post and cases were not referred to the solicitor unless there were further problems. In other organisations, NOPs were drawn up by the solicitors and served by sheriff officers. While the latter practice may reduce the risk of inaccurate or defective notices, it was much more expensive. For example, in case C, the NOP was served by housing officers at a cost of £15 while in case B the NOP preparation was carried out by solicitors and served by sheriff officer at a cost of £200.

12.39 There was some evidence of bureaucratic inefficiency. In one local authority, the solicitor had to write to the Finance Department to ask for a cheque for £21 to obtain a copy of a conviction for drug offences from the court. By the time the cheque had been produced and sent to the court, the fee had increased - necessitating another letter to the Finance department for another cheque. There is, of course, a need for tight financial control in housing organisations but this exercise cost the council around £100. It occurred to us that it would be much more efficient if the sheriff court could invoice large organisations that used their services regularly. However, overall, it did not appear that there were large amounts of unnecessary work. Indeed, a number of the solicitors said that they would like to spend more time collecting evidence and building up the case but felt that their resources were very stretched.

**TOTAL COSTS OF LEGAL ACTION**

12.40 Our estimates (at 1999 costs) suggested that the landlord's costs of obtaining an interdict (housing and legal time, court fees and outlays) were between £1000 and £1350. An undefended eviction action cost between £1350 and £2100 while a complex defended case could cost up to £7,500. However, other cases in the database which were not subject to the detailed analysis might have cost more than this.

12.41 If these figures are applied to the court action figures for 1996/97, the total figure for the landlords' costs of civil legal action for anti-social behaviour can be estimated at around £500,000 per annum. This is, of course, a very small sample and it assumes that the cases analysed are representative of all the cases. However, the analysis did produce a similar range of costs to that found by Dignan and Sorby, allowing for inflation and possibly higher costs in Scotland generally. Nevertheless, it can only be regarded as a very crude estimate which gives some general idea of the expenditure on the legal process.
Table 12.4  Estimates of the cost of legal action to landlords in 1996/97

<table>
<thead>
<tr>
<th>Legal action</th>
<th>Number of cases</th>
<th>Average cost per case</th>
<th>Total cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court action for eviction</td>
<td>128</td>
<td>£3,200</td>
<td>£409,600</td>
</tr>
<tr>
<td>Interdict</td>
<td>30</td>
<td>£1175</td>
<td>£35,000</td>
</tr>
<tr>
<td>Specific Implement</td>
<td>43</td>
<td>£1150</td>
<td>£49,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td><strong>£493,600</strong></td>
</tr>
</tbody>
</table>

Source: Calculated from costs data base

**SUMMARY**

12.42 The global costs of anti-social behaviour are, undoubtedly, significant. However, there has not been any research which has attempted to put a figure on this. We identified a range of the costs but it was beyond the remit of this research to produce global estimates. If the estimate that, in total, housing officers were spending around 20 per cent of their time dealing with complaints about neighbours was a reasonable one, the cost of this alone would be over £17.5 million per year. To this should be added (if it were known) the costs of repairs caused by anti-social behaviour, void losses and preventative measures. The cost to landlords of dealing with more serious cases was estimated to be around £3.9 million per year. In total, we estimated that the costs of taking legal action might be around half a million pounds in 1996/97. As one might expect, from statistics presented earlier in the report, the costs of legal action are only a small proportion of the overall costs. In addition, it is likely that many of the costs of housing officer’s time would have been incurred anyway. Viewed from this perspective, the costs of taking legal action for anti-social behaviour do not look expensive.

12.43 Whether the legal process is cost-effective is obviously much more difficult to judge. It depends on all the factors of effectiveness discussed in previous chapters. If legal action (whether eviction, interdict or specific implement) solves the problem, whether as a result of the behaviour ceasing or the tenant leaving, then it may be considered cost-effective because the landlord will not have continuing costs in dealing with complaints. However, if the problem is merely displaced to another area then the wider cost-effectiveness may be questioned.
CHAPTER 13 CONCLUSIONS AND RECOMMENDATIONS

13.1 This chapter aims to draw together the findings from the various stages of the research and suggest some recommendations.

DEFINITIONS

13.2 We began by discussing how to define anti-social behaviour, and the question of whether there was a coherent subject for inquiry under this label. We thought that there was: with problems persons experienced with immediate neighbours, or in their neighbourhood at its core. However, we also thought that an academic inquiry ought not to start from a precise definition, given the difficulty of fixing clearly the boundaries of the relevant phenomena. Much the same might be said about government policy. Arguably, it is not necessary for government policy to be based on a precise definition. However, policy makers should appreciate the difficulty of defining the ‘problem’ which is to be addressed, and the need to specify clearly the particular aspects of the problem which are being addressed, when considering what solutions might be appropriate.

13.3 The various legislative initiatives in this area are a mixture of narrowly focused and more broad-brush approaches to definition and legal remedies. The power given to local authorities in England and Wales by section 152 of the Housing Act 1996 to seek injunctions against anti-social behaviour, and the power given by section 153 to attach a power of arrest to injunctions sought by social landlords are both examples of the former. They are restricted to conduct which is blameworthy and relatively serious and they apply only to neighbour and neighbourhood issues. By contrast, both the extended grounds for possession (in both jurisdictions) and the anti-social behaviour order (discussed in Chapter 2) proceed on a broader definition of anti-social behaviour. The most broad brush approach of all is the introductory tenancy, introduced for England and Wales by the Housing Act 1996. This applies to all new tenants, without distinction, of any local authority which adopts the scheme.

13.4 Our research suggests that despite the inherent uncertainties over definition, and the varying approaches to definition evident in Government policy initiatives, there is a large common element to the approach that social landlords take to the definition of anti-social behaviour. Both policy documents and practice demonstrated some sensitivity to the ambiguities of definition. In particular, there is recognition that not everything that causes annoyance is necessarily blameworthy, and that there are important differences of degree between different sorts of unacceptable behaviour.

13.5 Up to now, social landlords have not had to confront the issues of spatial focus too directly. They have been assumed by their tenants (as indeed by the community as a whole) to be the agency primarily responsible for responding to anti-social behaviour in and around social rented housing. In practice, the principal legal remedies employed - interdict and eviction - have been confined to situations where complaints are received from tenants from their immediate neighbours or near neighbours. There was little sign of conduct geographically far removed from the house being used as a basis for legal action. Perhaps unsurprisingly, for social landlords anti-social behaviour is perceived primarily as a neighbour, or neighbourhood problem, even where, as in the case of local authorities, their
functions would allow them to take a broader view. What remains to be seen is whether social landlords adapt their policies to exploit the scope of the extended grounds for eviction and the anti-social behaviour order introduced by the Crime and Disorder Act 1998, both of which proceed from a broad-brush approach to definition of the problem.

THE SCALE OF THE PROBLEM

13.6 Neighbour problems and anti-social behaviour have been seen as a serious problem over the last decade and government has responded with new legislation and good practice guidance. The Baseline Study of Housing Management found that a fifth of tenants had had a problem with their neighbour in the previous year. However, the postal survey (detailed in Chapter 3) found that only 15 per cent of social landlords felt that anti-social behaviour was a big or very big problem while 40 per cent thought that it was a small or very small problem. There were clear sectoral differences with local authorities more likely to consider that they had a serious problem. Less than half the respondents were able to provide figures on the number of complaints. The median rate of complaints was 38 per 1000 tenants - i.e. 4 per cent - far lower than the Baseline Study finding. However, there were wide variations in the complaint rates- and the case studies found considerable variations in recording practices. Perceptions of the scale of the problem were not closely matched to numbers of recorded complaints. It is likely, therefore, that the recorded complaints in many organisations underestimate the scale of the problems perceived by tenants. In order to establish the scale of the problem more clearly, guidance on common recording systems is required. We suggest that statistics should be kept on all complaints, with a common framework for type of complaint and seriousness of complaint.

MANAGEMENT OF ANTI-SOCIAL BEHAVIOUR

Policies

13.7 The postal survey (Chapter 3) found that over 86 per cent of landlords had written policies or procedures for staff although only 49 per cent had produced guidance for tenants on the issue. This suggests a considerable increase since the Baseline Study, which found that only 37 per cent of public sector landlords had policies on the issue. The analysis of policy documents (Chapter 4) found that there was wide variety in the style and content of policy and procedure documents. However, policies which attempted to categorise different types of the problems, and suggest graded responses according to the perceived seriousness of the problem, were common. Almost all expressed willingness to take legal action - though only as a last resort after management efforts had failed. Eviction was most frequently mentioned as a legal remedy. Hard-line policies on drug-dealers were common, sending clear signals that this would be not be tolerated. There were far more mixed views on the treatment of sex offenders. The Scottish Executive and Scottish Homes may wish to consider whether more guidance on policies is required.

Leases

13.8 The review of the leases (Chapter 4) found that most local authorities had reviewed their leases since local government re-organisation. There was wide variation in styles and few authorities had adopted the Model Secure Tenancy Agreement (MoSTA). However,
local authority leases were in general more comprehensible and accessible, and more likely to have been drafted with a view to responding to anti-social behaviour, than had been found in previous studies. Housing associations had usually adopted the Model Assured Tenancy Agreement (MATA), but few had upgraded their lease to the revised version which provides a more comprehensive nuisance clause. The case studies showed that, in practice, the terms of the lease had little bearing on landlords’ success or failure in eviction actions. When landlords wished to take legal action there was invariably behaviour which fell within a statutory ground.

13.9 The extended grounds for eviction, introduced by the Crime and Disorder Act 1998, were felt to be useful by some landlords. However, case study landlords did not feel that the previous grounds had unduly limited the scope for legal action. The extra breadth of the new grounds suggests that, for purposes of grounding an eviction action, there is no longer a practical need for landlords to define anti-social behaviour in the lease. However, the terms of the lease remain important when seeking interdict and specific implement, where landlords need to show that the terms of the lease have been breached.

13.10 The other potential purpose of the lease was to communicate standards of behaviour. However, some landlords felt that the lease was a poor vehicle for communicating standards of behaviour. One of the case study landlords had, instead introduced a Good Neighbour Charter. The views expressed in the case studies have implications for the proposed Single Social Tenancy. The consultation paper on this (Scottish Executive, 1999b) suggests that a new model lease, based on the MoSTA will be drafted. The research suggests that many landlords will not adopt a model lease, unless they are required to do so by the regulator. The Scottish Executive may wish to consider whether the model lease should be advisory or compulsory. Landlords might also be encouraged to produce Good Neighbour Charters.

Procedures

13.11 Chapter 6 notes that, in practice, most of the interviewees differentiated between neighbour disputes (often purely bilateral and involving differences of opinion over minor matters) and more serious anti-social behaviour, often affecting more than one neighbour. There was also a clear view that only serious anti-social behaviour would be considered for legal action, and the use of legal remedies especially eviction was a ‘last resort’. Procedures in all the case study landlords were also very similar and these were described in detail in Chapter 6.

13.12 In most of the case study landlords, cases were dealt with by local generic housing officers, with some support from their line managers where court action was contemplated. Only one local authority had a specialist unit. However, our overall impression was that the staff with specialist knowledge and experience were more confident about legal action and had a better understanding of the legal system. We also noted that a parallel English study of legal remedies suggested that Specialist Units were more effective. Our study suggests that specialist units may be more effective than relying exclusively on generic staff. This is an area which requires further investigation and research but we suggest that larger landlords should consider this option seriously.
Resolution of complaints without legal action

13.13 Interviewees said that the vast majority of cases were resolved without resort to legal action. The general statistics from the postal survey on the number of complaints compared with the number of NOPs and the number of eviction summonses and interdicts tend to back this up. However, only a minority of the cases study landlords could substantiate their claims with statistical evidence of the number of complaints and number of notices served as compared to the number of court actions raised.

13.14 Both the postal survey and the case studies found that there were wide variations in the rates at which NOPs were served. Many landlords (51% in 1996/97) appeared not even to have served a single NOP on neighbour nuisance grounds. There were differences of practice as regards the NOP. In some landlords, the NOP was served only where the landlord appeared to have definitely decided to take the tenant to court, although they would suspend legal action if behaviour improved. In other landlords, the NOPs were served in a large number of cases, and service of an NOP did not necessarily mean that a summons was likely to follow. In some landlords the NOP might be served without a prior warning letter in serious cases. Drug-dealing was seen as a special category and NOPs were usually served as soon as the landlord became aware of a conviction for drug-dealing.

13.15 Research on rent arrears has indicated that notices may be more effective when served less frequently rather than more frequently. Conversely, excessive use of notices may lead to them being ignored by tenants. It is not clear whether the same holds true for anti-social behaviour cases. Landlords should have clear strategies for serving NOPs and should monitor how successful they are in stopping the behaviour complained of.

Mediation

13.16 The postal survey found that a quarter of social landlords use mediation, with local authorities being most likely to do so. The case studies suggest that mediation was becoming a significant element in the way some social landlords handle neighbour disputes. Where dedicated mediation services had been set up, they were said to have achieved a significant measure of success with low-level disputes. We did, however, find evidence that the concept of mediation was misunderstood by some landlords, who regarded any attempt by housing officers to resolve disputes between neighbours as mediation. We did not attempt to evaluate the mediation services in operation, as this was not the focus of the research. More guidance and training on the nature of mediation is required and the relationship between mediation and legal remedies merits further inquiry.

Multi-agency working

13.17 Chapter 6 also reviewed arrangements in the case studies for working with other agencies. This suggested that housing staff are still expected to take the lead in dealing with the problem of anti-social behaviour in social rented housing, but that there were significant links with other agencies. Most landlords had both formal protocols and informal links with the police and these generally appeared to work satisfactorily.

13.18 Local authorities generally thought that local government re-organisation had increased joint working and the effectiveness of inter-departmental co-operation. Despite
their best efforts, housing associations appeared to have less success in achieving social work co-operation than local authorities.

13.19 However, there were a number of the cases in which an eviction summons was raised against people who could be regarded as vulnerable. These included people with alcohol problems, children out of control and people with mental health problems. In a number of these cases, there was evidence that landlords had attempted to involve social work services and health services, without success. In others, support by other agencies had only occurred once a NOP had been served. The concept of social work supported specialist projects was one positive way forward for some of these cases. An evaluation of one such unit (the Dundee Families Project) is currently taking place. This study is being carried out by the University of Glasgow and will report in 2001. Specialist family support projects might be a more suitable alternative to eviction for families with problems. Landlords should consider whether they should establish such a unit.

13.20 The least effective links appeared to be those between housing staff and environmental health departments. According to housing staff, in most authority areas, the latter saw domestic noise as primarily a matter for housing departments/associations to deal with. Further guidance on partnership working in this area between social work services and social landlords may be required. Guidance on the role of environmental health departments would also be useful.

EVALUATION OF LEGAL REMEDIES

13.21 Our criteria for the evaluation of legal remedies were:

- The speed with which the remedy may be obtained.
- The appropriateness of the substantive law for dealing with anti-social behaviour
- Whether the statutory or other legal criteria are properly applied in practice, including whether judicial discretion is properly exercised.
- The ease or difficulty of establishing the necessary factual basis of the legal action.
- The costs of legal remedies
- The contribution of legal remedies to stopping or preventing anti-social behaviour.

These can be applied to each of the remedies used in practice

EVICATION

Extent of use of eviction

13.22 Eviction was the most widely used of any of the legal remedies. The postal survey found that willingness to evict varied by sector with local authorities expressing greatest readiness to use the legal process and co-ops the least. There were also very substantial variations in the rates at which social landlords actually used eviction actions both within and between the different sectors. Overall, we estimated that there were probably no more than 150 court actions for eviction raised on the basis of anti-social behaviour in Scotland in 1995/96 and 1996/97. This is a very small proportion of the total number of eviction actions:
the vast of majority of which are for rent arrears. The proportion of landlords actually taking tenants to court for anti-social behaviour was small: most landlords did not serve even one eviction summons in either year.

**Types of behaviour in eviction actions**

13.23 The case studies found that, usually, behaviour had to be regarded as a serious problem and there had to be repetition over time before landlords raised proceedings for eviction. The eviction actions that we examined suggested that there was a range of situations in which all the case study landlords were in practice prepared to take tenants to court. These included excessive noise; aggressive and abusive behaviour, violence and threats of violence towards neighbours and to the landlord’s staff and vandalism. The behaviour of visitors and of juvenile children was also generally treated as an appropriate basis for eviction. With the exception of those evicted for drug-dealing, all the cases involved a number of complaints over a period of time. This supports the common claim that eviction is a ‘last resort’. However, few landlords had attempted alternative legal remedies such as interdict, or specific implement or non-legal solutions such as mediation. **Landlords’ strategies and practices for dealing with anti-social behaviour should include a wide range of both legal and non-legal remedies.**

**Outcomes of eviction cases**

13.24 The analyses of outcomes, in both the postal survey and the case database, showed that social landlords usually obtain outcomes that are acceptable to them as an outcome to the legal process. This includes, for example, a decree for possession, the tenant abandoning the property, or an improvement in behaviour. It appears to be rare for landlords to lose a contested case and a large proportion of cases were not contested at all. The findings do, not, therefore support perceptions that eviction is too difficult to obtain. This finding is relevant to discussion of the grounds for eviction, the reasonableness requirement, and the question of proof all of which are discussed below.

13.25 However, there is a concern, particularly in view of the substantial minority of tenants who were absent or unrepresented, that some cases were not getting a full examination of their merits. There was, therefore, a possibility that eviction may have been the outcome in cases where it was not appropriate. **It would be valuable to carry out a research into the reasons why defenders are unrepresented and/or do not appear in court.**

**Delay**

13.26 The greatest concern about the operation of the legal process – voiced by interviewees in all categories of all types - was over the extent of delay. The research findings do not support claims that excessive delay was routinely a feature of evictions based on anti-social behaviour, although there were a number of instances of very lengthy proceedings in the cases examined. However, the data does suggest that the process often takes substantially more than the minimum time laid down by the rules of procedure and that there is considerable scope for reducing the level of delay in contested cases.

13.27 Chapter 7 presented detailed figures on the progress and duration of eviction actions. **There appears to be substantial scope for reducing pre-litigation delay by reducing the**
time spent monitoring cases before taking the decision to begin legal action. Landlords should review how long cases should be monitored before serving a summons.

13.28 Many cases were disposed of at first calling. Cases which were defended took much longer than undefended cases. Overall the mean duration, measured from the warranting of the summons to final disposal, was around 9 months. The most substantial causes of delay appeared to be the interval the court allows when fixing the date for proof, sisting to allow the defender to apply for legal aid, and sisting to monitor behaviour. There were a number of complaints about the time taken to process legal aid applications for these cases. However, data supplied by the Scottish Legal Aid Board indicates that often the time taken to determine the application is only a fraction of the total time sisted. This suggests either that landlords are slow to recall sists or that the purpose of the sist has changed to that of monitoring behaviour. **The largest single improvement that could easily be made would be to reduce the time cases are delayed by sisting to allow the defender to apply for legal aid. Landlords should manage cases more effectively to ensure sists are recalled as soon as possible unless there is good reason to continue to monitor behaviour. However, a better alternative may be to extend the practice, already employed by some sheriffs, of fixing a date for proof instead of sisting.**

13.29 However, there was evidence that pressure of business in the courts made a significant contribution to delay, for example, in the time taken between warranting of the summons and the first calling. There was evidence that prioritisation of anti-social cases was taking place in some courts, but a number of interviewees felt that there was insufficient prioritisation of such cases. There was little support for changes to the timetable laid down by the Summary Cause Rules. **No changes are required to the existing rules of procedure. However, it is worth considering whether more serious cases should be given priority over other classes of cases.**

**The statutory grounds for eviction**

13.30 There is no evidence that the statutory grounds of eviction, prior to the changes introduced by the Crime and Disorder Act 1998, placed substantial obstacles in the path of landlords seeking to evict for anti-social behaviour. Here the views of landlords reinforce the quantitative data summarised above. There is a concern that the new grounds substituted by the Crime and Disorder Act 1998 may be overbroad. Many interviewees suggested that the new grounds would make little difference, but it appeared possible that landlords might exploit the extra breadth of the new grounds in future. **Landlords should not push the revised eviction grounds to their limits.**

**Reasonableness and the willingness of sheriffs to evict**

13.31 Chapter 8 presented the views of interviewees on reasonableness. There were conflicting views on the way in which the reasonableness requirement operated in practice. Although some of the interviewees were unhappy with their experience of shrieval decisions, this appeared to be based on memories of a small number of cases. The analysis of files in the case database showed that hardly any cases were dismissed solely on the ground that it was not reasonable to evict. The solicitors interviewed generally accepted that some degree of variation in outcomes was inevitable given that sheriffs were given substantial discretion. The Scottish Affairs committee had heard demands for mandatory eviction for cases involving a conviction for drug-dealing but this received little support from interviewees. A
clear majority of those who expressed an opinion were against making eviction mandatory in such cases.

The difficulty of obtaining and presenting evidence and treatment of witnesses

13.32 There was little concern that the rules of evidence, or the attitudes of sheriffs to proof, posed unreasonable barriers in eviction cases. There was however widespread and serious concern about actual and potential witnesses being either intimidated or inhibited by fear of reprisals from giving or agreeing to give evidence. There was evidence, in some of the cases that we examined, that witness intimidation had taken place. We were not able to quantify the extent to which witness fears had prevented cases going forward at all, however, we accept that this is a serious problem. Opportunities for law reform to deal with this problem seem limited given the importance of ensuring procedural fairness in litigation. The problem is one that should be dealt with by practical measures. Some landlords had developed mechanisms for support of those who were victims of anti-social behaviour and potential witnesses, and this appeared to have some positive effect. Landlords should consider ways of improving their arrangements for support of victims and potential witnesses. Measures might include trained officers to support witnesses, out-of-hours services, better liaison with the police, connection to community alarm services and CCTV cameras. In serious cases temporary rehousing may be appropriate.

13.33 Both the postal survey and the case studies found that a large proportion of those landlords who took tenants to court used professional witnesses such as housing staff and the police. Several case study landlords had used such witnesses with a high degree of success. There was little use of private investigators and none of cases we examined had used evidence from such a source. Sheriffs were generally willing to accept the evidence of professional witnesses. However, wherever possible, they wished to hear evidence from neighbours and others who suffered the consequences of anti-social behaviour. Landlords should be encouraged to explore further the possibilities for using their own staff and other professionals, as witnesses. The experience of specialist units and out-of-hours services, in obtaining evidence, should also be considered.

Whether eviction changes behaviour

13.34 The research was not designed to evaluate the effectiveness of eviction in stopping, preventing, or deterring anti-social behaviour. However, interviewees did express views on this topic. More research is needed on the issue of whether eviction stops, prevents or deters anti-social behaviour.

13.35 One issue of particular concern has been whether eviction merely displaces anti-social behaviour to another location. Given the nature of our research, it is not possible to draw any firm conclusions about how often eviction merely results in displacement of anti-social behaviour, or more generally what happens to those who are evicted. A study tracking the subsequent fortunes of persons evicted for anti-social behaviour would be a useful addition to research.
INTERDICT

Extent of use of interdict and types of behaviour

13.36 The postal survey found that interdict was employed much less frequently than eviction and by an extremely small proportion of landlords overall. Interdict was mainly a local authority pursuit. Other social landlords rarely expressed even slight willingness to use it, and only a handful recorded any actual use of it. There has not, therefore, been enough use of interdict in this context properly to assess its efficacy in relation to anti-social behaviour. Those landlords who have made use of the remedy on any scale, have tended to use it either as a first step, before considering eviction, or as a remedy in tandem with eviction.

13.37 Interdict was used in a wide range of circumstances but most commonly when there was a regular pattern of behaviour such a noisy parties, abusive and threatening behaviour or arguments. Social landlords should be encouraged to consider using interdicts as part of their range of strategies for tackling anti-social behaviour.

Outcomes

13.38 Applications for both interim interdict and perpetual interdict were nearly always successful. Although there were a number of cases in which the interim order was opposed, it was rare for cases to proceed as far as a proof. Perpetual interdicts were, therefore, usually being granted without a final decision on the merits.

Speed

13.39 Unsurprisingly, we found that interim interdict is a genuinely speedy remedy in practice. However, the same is not true for enforcement in cases of breach of the terms of an interdict. Breach of interdict is a slow and cumbersome process. There should be an accelerated procedure for breach of interdict, which would allow the pursuer to return to court speedily in the same action. In addition, in order to ensure a swift response, it should be possible to attach a power of arrest to an interdict sought by a social landlord in anti-social behaviour cases.

Substantive law

13.40 Except with regard to title and interest to sue, the substantive law poses no major problems for those seeking to obtain interdict. There appeared to be widespread misunderstanding of how the requirement of title and interest to sue could be met in this context. This resulted in the mistaken belief that social landlords could not seek interdict when the principal victim of the behaviour was a neighbouring tenant. More specifically, the decision in Dundee District Council v Cook 1995 SCLR 559 may in practice be deterring social landlords from seeking interdict against owner occupiers on mixed tenure estates. Landlords and their solicitors should be encouraged to take a robust attitude towards title and interest to sue. There should be legislation to clarify the right of social landlords to seek interdict on behalf of their tenants against non-tenants.
Proof of fact

13.41 In practice social landlords face no difficulties with proof of fact in obtaining interim interdict. Again, this is not surprising since interim orders are granted without inquiry into the truth of the pursuer’s allegations. However, there is a real concern about the appropriateness of the outcomes in interdict cases. Obtaining interim and perpetual interdict appeared to be a formality in practice and hearings on the merits were not taking place. A number of interviewees suggested that cases were not defended vigorously because there were difficulties in obtaining legal aid, and data supplied by the Scottish Legal Aid Board suggested that the rate of granting of applications to defend interdict proceedings (other than at interim interdict stage) was low.

13.42 It may be more difficult for private individuals than social landlords to obtain interdicts because of the cost of the action, and the difficulty of obtaining legal aid to pursue interdict. This suggests that it is unrealistic to expect tenants to raise an action themselves. There is a need for further inquiry into the reasons why applications for interdict are not defended on their merits.

Effectiveness

13.43 Interdict appears generally effective as a remedy for anti-social behaviour in terms of the above criteria. However, there are clear deficiencies in the arrangements for enforcement in cases of breach and this may be affecting landlords’ willingness to use the remedy. Those landlords who did use interdict tended to seek eviction if there was a breach rather than raise an action for breach of interdict. More generally, its effectiveness in stopping anti-social behaviour is difficult to assess both because of the complexity of assessing its effects upon behaviour, and because of the small size of the sample of cases that we examined. However, the limited evidence did suggest that, in a significant minority of cases, the use of interdict had been followed by an improvement in the situation without the need for further legal action such as eviction. A specific study, focused on the use of interdict by landlords, may be required to establish its effectiveness.

USE OF OTHER LEGAL REMEDIES

13.44 The postal survey found that only 5 and 6 landlords in each of the relevant years sought specific implement of the tenancy agreement, almost exclusively local authorities. The case studies show that it is only used in a limited range of situations. Landlords were generally successful in such applications. It is difficult to judge, on the basis of our data, how effective specific implement is in achieving improvement in the situation, but there were indications that it may not be very effective.

13.45 The enforcement of behavioural title conditions in the deeds of property sold under the right to buy appears virtually non-existent. It has been seen as a possible solution to the problems created by mixed tenure estates. However, proposed abolition of the feudal system and associated reforms, cast doubt on whether it will be possible to use this technique in the future. Other ways of dealing with problems arising in mixed tenure estates, such as extending landlords powers to seek interdict, seem preferable. The use of by-laws to combat anti-social behaviour is uncommon and seems to be confined to housing associations.
Landlords should consider the use of specific implement and by-laws as part of the range of techniques for responding to anti-social behaviour.

ANTI-SOCIAL BEHAVIOUR ORDERS

13.46 There were a number of concerns about anti-social behaviour orders. Councils which already use interdict thought that it would be a much slower remedy and were concerned that proof of fact would be a serious obstacle. Many housing staff and solicitors appeared unconvinced that the gains, which arise from its broad scope and the ultimate possibility of criminal sanctions, outweigh these disadvantages. Few anti-social behaviour orders were applied for in the first 9 months of it coming into operation, which may imply that these concerns were tempering use of the remedy. In our view, the scope of the ASBO is too wide, and there is a danger of legitimate personal liberty being curtailed without adequate justification. A more detailed study of the impact and effectiveness of ASBOs is required.

COSTS

13.47 The global costs of anti-social behaviour, including policing and the cost of the court system are, undoubtedly, significant. However, there has not been any research which has attempted to put a figure on this. Our study concentrated on the cost, to the landlords, of taking legal action. Most landlords did not separately identify the costs they incurred as a result of anti-social behaviour and it was therefore difficult to assess whether legal remedies could be considered to be cost-effective. However, we did estimate that the cost of housing officers' time in dealing with neighbour complaints might be over £17.5 million per year. We also estimated that the costs of taking legal action were around half a million pounds in 1996/97. This was a small proportion of the overall cost and much of it would been incurred even if no legal action had taken place. A study should be undertaken to assess the global costs of anti-social behaviour. However, landlords must also be encouraged to separately identify both the housing management and legal service costs they incur in responding to anti-social behaviour.

THE FUTURE

13.48 Our research examined approaches to the management of anti-social behaviour, and the use of legal remedies in social rented housing against the backdrop of current arrangements for providing social rented housing. However, the structure of provision may change dramatically over the next few years. In particular, there may be large-scale transfers of stock from a number of local authorities to housing associations and other providers. Some councils may be left with little or no stock. Up until now, discussion of local authority responses to anti-social behaviour has concentrated on their role as the major providers of social rented housing, rather than on their role as enablers or as an elected body, representing the whole community.

13.49 The possible change in the structure of provision has at least two implications. First, local authorities may see their role differently and will not have access to the full range of legal remedies which they enjoy as landlords. Second, housing associations may not be able
to respond to anti-social behaviour in the same way as local authorities have done in the past. The impact of these changes on the way that society responds to anti-social behaviour needs to be considered. **It will be necessary for government to consider the respective contribution that local authorities, housing associations and other agencies should make to dealing with anti-social behaviour in the new environment of social rented housing.**
APPENDIX 1  METHODS

This appendix details the methods used in the research and comments on methodological problems.

FEASIBILITY STUDY

The research began with a feasibility study to clarify the methodological and practical issues relevant to the research. This study consisted of 2 main parts. The first was desk research to draw to gather data from previous surveys and assess the need for a new postal survey of landlords to gather data about their use of legal remedies. The second part aimed to pilot the methods proposed for the main study. The desk research led to the conclusion that a new postal survey should be carried out.

The pilot took the form of a case study based in one geographical area based on a particular court (subsequently referred to as Area A ). This area was selected because it was thought to have a relatively substantial caseload of anti-social cases. There was a both a large local authority and a number of associations. Both the council and one of the associations agreed to take part in the pilot.

The landlords were sent copies of the questionnaire and asked to complete and evaluate them. Interviews were carried out with housing managers and policy staff, and a local authority solicitor. We also scrutinised relevant policy documents and examined files of cases in which legal action had been taken.

Identifying cases

We wished to trace a number of actual cases through the legal process. There were two options for this. One was to trawl through all court records relating to actions for possession. However, this posed major difficulties because previous research had suggested that neighbour nuisance cases were likely to be only a small proportion of the total number (Mullen et al, 1997). In addition, court records often did not disclose important information such as the facts of the case and the grounds on which possession was sought. The alternative method was to use the landlord's own records to trace the cases. This strategy worked well with both the landlords in the pilot study and we were able to gather all the information needed from the landlords files and the court records simply provided a cross-check.

Remedies

This pilot confirmed that we should limit the main study to the examination of civil legal remedies.

- eviction
- interdict
- specific implement
- the enforcement of title conditions
- local authority by-laws
These remedies were identified from the existing literature including good practice guidance. (See Reid, 1996; Collins & O’Carroll, 1997 and the Scottish Affairs Committee, 1996). These sources also refer to other legal processes including the use of statutory nuisance powers, and the enforcement of by-laws. These and the criminal sanctions were excluded because the research brief was limited to ordinary civil remedies. The exception, was the inclusion of by-laws which may be enforced by prosecution. It was felt that it would be easy to include by-laws in a study of local authorities’ housing management function.

**Definitions**

The report on the feasibility study also suggested the following broadly inclusive working definition as a starting point:

> Anti-social behaviour is behaviour which threatens the physical or mental health, safety or security of individuals and households, or causes offence or annoyance to individuals and households.

The next question was whether this broad and somewhat open-ended definition would prove adequate for the purpose of collecting and analysing data. It seemed appropriate for the purposes of carrying out interviews as it would permit the exploration of perceptions of the meaning of anti-social behaviour. However, we thought that something more concrete was required for the purpose of gathering information about cases brought to court. This led us to formulate a more precise definition in relation to eviction, but not the other remedies, as described below.

**Eviction**

The most straightforward approach to identifying eviction actions involving anti-social behaviour was by reference to the statutory grounds on which the actions were brought. Certain statutory grounds were identified as essentially related to anti-social behaviour, namely, grounds 1 (excluding rent arrears), 2, 7 and 8 for secure tenancies, and grounds 13 and 15 for assured tenancies. The grounds in question refer to breach of tenancy terms, immoral or illegal use of the house, and causing a nuisance. It was cases brought to court under those grounds, and behaviour of the type that could be brought under these grounds that were the subject of inquiry. Both the postal questionnaire and the examination of cases brought to court by case study landlords were structured accordingly. We felt that this working definition of anti-social behaviour could be adequately related to the conceptual definition suggested above, and the experience of carrying out the research tended to bear this out.

**Interdict**

No such neat solution was possible for interdict. The postal questionnaire simply asked social landlords about interdicts in neighbour nuisance cases leaving them to decide how such cases should be defined. Again, no specific definition was used for identifying cases brought by case study landlords. However, as the research was carried out, it became clear that interdicts against individuals were used by local authorities and housing associations for a limited range of purposes and were few in number. The experience of the case studies suggested that the few landlords using interdict in this context had little difficulty identifying
which interdicts were relevant to the inquiry. We were, therefore, confident that we had succeeded in establishing the extent of relevant use.

Other Remedies

Other remedies – specific implement, enforcement of title conditions, and by-laws - seemed to be very little used in this context. Again, there was no neat solution comparable to that used for eviction actions. So, in both the postal questionnaire and on the case studies landlords were simply asked about their use of these remedies in response to anti-social behaviour. The one remedy specifically tailored for anti-social behaviour – the anti-social behaviour order – came into operation too late for any of the research subjects to have direct experience on it, but some did offer opinions on its potential merits.

THE MAIN RESEARCH

This research was aimed at establishing the effectiveness of civil legal remedies which might be used by landlords in the social rented sector. The methods used were:

- a postal survey of social landlords;
- analysis of leases and policies
- case studies,
- analysis of court records;

These are discussed in more detail below.

THE POSTAL SURVEY

The postal survey was issued to all social landlords at the beginning of 1999, a total of 225 landlords. From this 185 returns were received, a percentage return of 82%, allowing confident inferences to be made of the generalisability of the data, though it is possible that non-returning landlords were of a particular type. For example, it might be that they were characterised by a low awareness of, or poor response to, the problem of anti-social behaviour. Breaking down the returns by sector, 31 of the 33 Scottish local authorities (including Scottish Homes) responded (a response rate of 91%), 137 out of 169 housing associations (81%) and 17 out of 23 fully mutual co-op's (74%).

The responses were analysed using SPSS. There were some difficulties in that some landlords failed to answer every question, and the number and identity of landlords failing to provide the required information was different for each question. However, the major problem did not become fully apparent until we commenced the case study stage. At this point, in a number of the case study landlords, we were unable to reconcile the number of cases in which they claimed to have served a summons for eviction in their responses to the postal survey with the number of case files produced. This was a greater problem in local authorities than in housing associations. There were various possible explanations for this. First, some of the local authorities had experienced considerable upheaval as a result of local government re-organisation and had had a number of staff changes. As a result, case files were inaccessible. Second, recording systems were not set up to capture this data. In a number of the authorities staff in local offices liased directly with solicitors in the legal
department and there was no accurate central record of legal cases. Third, some local authorities had made returns without consulting their legal service relying only on information provided by housing staff. The case studies suggested that it was probable that some housing staff treated all referrals to the legal service as “court action”, whereas many of these cases were never taken to court.

Overall, we found that some case study landlords’ responses to the postal survey appeared to over-estimated both the number of NOPs and the number of cases in which a summons was served. We also telephoned a number of other organisations whose original returns did not add up or were in other ways implausible, and the responses suggested that inaccurate responses tended to be over-estimates rather than underestimates. As we wished to provide an accurate picture (or as accurate as possible) we therefore adjusted the database in relation to the cases study landlords to reflect the number of cases they could actually confirm having taken to court from files or other records. This produced figures much closer to the ‘true’ figures than the unadjusted postal survey returns. There were fewer problems with information on the use of other remedies - largely because so few cases had been raised.

Table A.1 summarises the minimum, maximum and mean rates per 1000 for use of, and outcomes of all remedies.

### Table A.1 Summary of rates of use of all legal remedies per thousand tenancies

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<th>Stage of the Legal Process</th>
<th>Mean</th>
<th>Minimum</th>
<th>Maximum</th>
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Source: Case database
CASE STUDIES

Selection of Case Study Areas

The case studies were geographically based. The intention was to look at 5 sheriff courts, and 5 local authorities, and 5 housing associations operating within the jurisdiction of those courts. The principal concern in choosing case study landlords was to ensure a substantial sample of cases in which legal action had been taken, and a substantial number of interviewees with actual experience of the use of legal remedies in this context. We began with the choice of local authorities, which in turn determined the choice of sheriff courts. We then chose a housing association operating within the district of each of the 5 sheriff courts. The case studies were structured in this way to facilitate comparison of the experiences of the different types of social landlords. However, one consequence of this approach was that whereas the 5 local authorities were major users of legal remedies as compared local authorities generally, only two of the housing associations were relatively major users of legal remedies within their sector.

We were concerned to include in the selection, at least some landlords using each of the legal remedies mentioned above. All the case study landlords had made use of eviction at some point, although only two of the housing associations had taken tenants to court within the period of the postal survey (April 1995 to March 1997). All the local authorities had used interdict at least once in this context, although only two had done so to a substantial extent during the period of the postal survey. Three of the housing associations had used interdict but only occasionally, and again not within the period of the postal survey. Apart from the two local authorities mentioned, most interdicts were taken out to stop behaviour directed towards the landlords’ staff or property rather than behaviour towards neighbours. Only two local authorities were using specific implement, there was virtually no enforcement of title conditions, or use of by-laws.

Subject to the need to obtain a reasonably large sample of cases in which legal remedies were used, we were concerned to make the selection of local authorities as representative as possible. The other factors to which we had regard in selecting the 5 local authorities were the range of responses other than legal remedies to anti-social behaviour, including use of mediation and professional witnesses, and the range of local authority stock sizes, and the spread of rural and urban locations.

The various factors just referred to were derived and purposively selected using the data gathered from the survey of landlords. In the event the landlords chosen did reflect a range of stock sizes, a mix of urban/rural locations, and a variety of approaches to anti-social behaviour.

Table A.2 summarises the characteristics of case study landlords. Landlords are shown as using interdict only if they did so to a substantial extent.

---

28 Four of the local authorities were entirely within the jurisdiction of one sheriff court. The fifth authority spread over the jurisdiction of two sheriff courts but only one of these courts was included in the research.
Table A.2  Landlords and selection criteria

<table>
<thead>
<tr>
<th>Landlord</th>
<th>Stock Size</th>
<th>Type</th>
<th>Scale of problem</th>
<th>Legal remedies used</th>
<th>Court rates per 1000 (95-96/96-97)</th>
<th>Mediation</th>
<th>Prof. witness</th>
</tr>
</thead>
<tbody>
<tr>
<td>LA - A</td>
<td>Medium (15-30,000)</td>
<td>Urban</td>
<td>Average</td>
<td>Eviction</td>
<td>0.17/0.13</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>LA- B</td>
<td>Medium (15-30,000)</td>
<td>Urban</td>
<td>Big</td>
<td>Eviction Interdict</td>
<td>0.51/0.55</td>
<td>Yes external</td>
<td>Yes</td>
</tr>
<tr>
<td>LA - C</td>
<td>Large (30,000+)</td>
<td>Urban</td>
<td>Very Big</td>
<td>Eviction</td>
<td>0.29/0.20</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>LA - D</td>
<td>Medium (15-30,000)</td>
<td>Urban/Rural</td>
<td>Average</td>
<td>Eviction Interdict Specific Implement</td>
<td>0.00/0.09</td>
<td>Yes in-house</td>
<td>Yes</td>
</tr>
<tr>
<td>LA - E</td>
<td>Large (30,000+)</td>
<td>Urban/Rural</td>
<td>Average</td>
<td>Eviction</td>
<td>0.08/0.08</td>
<td>Yes in-house</td>
<td>No</td>
</tr>
<tr>
<td>HA- A</td>
<td>Medium (251-999)</td>
<td>Local general needs</td>
<td>Big</td>
<td>Eviction</td>
<td>2.38/1.19</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>HA- B</td>
<td>Small (0-250)</td>
<td>Fully Mutual Co-op</td>
<td>Small</td>
<td>Eviction</td>
<td>4.55/0.00</td>
<td>Yes external</td>
<td>No</td>
</tr>
<tr>
<td>HA - C</td>
<td>Large (1000+)</td>
<td>CBHA 29</td>
<td>Average</td>
<td>Eviction By-laws</td>
<td>0.00/1.83</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>HA - D</td>
<td>Large (1000+)</td>
<td>National – general needs</td>
<td>Average</td>
<td>Eviction</td>
<td>0.32/0.32</td>
<td>Yes external</td>
<td>No</td>
</tr>
<tr>
<td>HA - E</td>
<td>Medium (251-999)</td>
<td>National – special needs</td>
<td>Big</td>
<td>Eviction Specific Implement</td>
<td>0.00/2.5</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

Source: Postal survey

**Interviewees**

We aimed to carry out semi-structured interviews, using a topic guide, with a wide range of key actors in each of the case study areas. These included:

*From the landlords:*
- someone responsible for policy on ASB
- at least one ‘front-line’ housing officer dealing with ASB cases, preferably more than one where decentralised housing service
- a Managerial supervisor for front-line officers
- at least one in-house solicitor who had conducted relevant litigation.
- specialist ASB staff, if they existed

29 Community based housing association.
Because of different stock sizes and managerial structures there were fewer interviews conducted within housing associations than within local authorities.

*From the courts*

- One or 2 sheriffs per court - we chose sheriffs who had significant experience of ASB cases.
- The sheriff’s clerk’s staff

*From the wider community*

- victims/witnesses, where possible, who had been witnesses in court actions.
- Private solicitors: This included some who had acted for only for housing associations; others had acted only for private clients including tenants; some had acted for both.

It proved highly difficult to obtain a reasonable number of victims/witnesses. We attempted to contact victims/witnesses through case study landlords. This approach had proved successful in the pilot study, but did not work well in the main study.

There were several reasons for this. First, the opportunity to find witnesses was restricted by the fact that several landlords had no recent cases, local authority D had never had to go to proof in ASB cases, and local authority E could not locate many files.

Where tenant witnesses had been used in the proof hearing it was found that:
- a) it was very difficult to contact a number of tenants due to migration after the event (though we would not be able to suggest that the 2 facts were related)
- b) there was a marked reluctance to take part in the research.

We did not interview alleged perpetrators of nuisance primarily because of time constraints of the research, and the anticipated difficulty of tracing them and persuading them to take part in the research.

The total number of interviewees, by type, is shown in Table A3.

**Table A.3 Types of case study interviewees**

<table>
<thead>
<tr>
<th>Type of interviewee</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Housing Managers/ Policy officers</td>
<td>18</td>
</tr>
<tr>
<td>Housing Officers</td>
<td>16</td>
</tr>
<tr>
<td>Local authority solicitors</td>
<td>8</td>
</tr>
<tr>
<td>Private solicitors</td>
<td>6</td>
</tr>
<tr>
<td>Sheriffs/sheriffs clerks</td>
<td>8</td>
</tr>
<tr>
<td>Witnesses</td>
<td>4</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>60</strong></td>
</tr>
</tbody>
</table>

**Analysis of interview data**

The interview topic guides tended to take different approaches to different types of subject e.g. lawyers were asked more technical questions than lay persons. The topic guides were intended to be very flexible with all interviews taped and subsequently transcribed to allow the use of comparative and rigorous qualitative analysis techniques.
The analysis was carried using a computerised text analysis package called NUDIST. The acronym NUDIST stands for Non-numerical Unstructured Data Indexing, Searching and Theorising. This, and other, packages are designed to aid the interrogation of transcripted interview and other qualitative data by allowing the multiple coding and on-line manipulation of documents. The package also enables the collation and 'fracturing' of data in a multitude of ways in order to test hypotheses as well as allowing the emergent properties of the data to appear. However, it must be stressed that NUDIST is only a tool that allows engagement with one's data with the retention of a theoretical framework at the heart of its operation. Both the tagging of data with nodes and its analysis is formed by the ideas and opinions of the researchers in relation to preceding literature as well as the ideas and interviews conducted.

In relation to the research presented here NUDIST allowed the support of analysis functions by producing node reports which can then be assessed for their representativeness or individuality as well as cross-referencing node results with an interviewee's organisation or role. The node codes for the documents were split into 3 sections. Case base data, the problem and the solution. The case base data was split into organisational and role differences as well as a reference to which case study the actor was from. The 'problem' was split into actors perceptions of a number of issues such as the nature of legal delay, types of anti-social behaviour, surprising responses and so on. The third area, solutions, was used as a heading for a series of nodes on the themes of the Crime and Disorder Act and other proposed answers to current problems.

The data was analysed by making reports for each of the node headings before more closely analysing the data using the 'intersect' command. An example of this might be to look at what housing officers though of sheriff's judgements. Finally the data was evaluated in relation to the aims of the project with key typical and atypical responses being derived for the report.

CASE FILES

Each of the 10 case study landlords were asked to provide housing department and legal files relating to eviction actions. The intention was to create a database of all eviction actions begun by cases study landlords in the 2 years 1995/96 and 1996/97. We chose the same period as was covered in the postal survey for various reasons including providing a check on the survey, and ensuring that the great majority of cases analysed would be likely to have finished their passage through the courts.

For each case study organisation we aimed to examine the following:

- Case files of all ASB cases in which landlord took court action (eviction, interdict, other) which began in financial years 1995/96 or 1996/97 - both legal and housing departments’ files.
- Access to a sample of ASB case files in which landlord did not take court action, again in 1995/96 or 1996/97 – again both legal and housing departments’ files.
- A sample of court records were inspected for eviction cases and cross checked with landlords’ data on cases in 1995/96 and 1996/97.
These were entered onto a database for quantitative analysis.

**Eviction Case Files**

Only seven of the case study landlords had taken cases to court within the relevant period, and one was not able to produce any files or access data relating to the relevant years due to local government re-organisation. Although they did produce a few files for 1997/98 these were not entered in the database.

The original aim of looking at all housing files of cases taken to court, could not be achieved for a number of reasons, including landlords inability to locate files, and logistical difficulties where there were decentralised housing services.

In the case of authorities A, D, and E we also looked at files from outwith the period 1995/97 to get a better sense of the history of attempts to use legal remedies to control anti-social behaviour. This was not done for authorities B and C because of the large numbers of files involved.

Manual data collection forms were designed to allow the extraction of data required for quantitative analysis i.e. the production of data indicating the length of delay at each stage of the process. The cases files and data forms also helped with more qualitative assessments, for example how do landlords’ attitudes to ASB and legal remedies compare? Who is ‘tough’ ‘soft’ or ‘indifferent’? Why do they have the approaches that they have? In total we produced a database of 90 cases in which court action for eviction had been commenced between 1995 and 1997. These were analysed using both SPSS and Excel. Quantitative data on eviction actions was based solely on these 90 cases.

**Interdict Files**

We had intended to examine all files relating to interdict actions begun during the years 1995/96 and 1996/97 to achieve consistency with the survey of eviction files. However, some of these files were missing, and to restrict analysis to these cases would have restricted us to only 14 cases in total. We were able to obtain further information from summaries of legal actions supplied by authority D, and from the solicitors who had handled cases in both authorities. This gave us information about 19 specific cases. This is a small sample, but it must be borne in mind that would have been very difficult to obtain a larger sample given the need to select a limited number of case study landlords, and the low numbers of interdicts across the whole of Scotland.

**Specific Implement**

Only one of the two local authorities using implement could produce case files.

**COSTS**

Production of data on costs proved even more problematic. Most landlords were unable, or unwilling to provide information from their records on the actual costs of cases. In the event, it was necessary to compile costs manually from a sample of cases. A total of 10 cases were
selected, in different organisations and were manually analysed to assess the time which had been spent by solicitors, housing staff and the police.
APPENDIX 2 QUESTIONNAIRE

Legal Remedies for Neighbour Nuisance

LOCAL AUTHORITY

This questionnaire is part of a study which is being carried out by the University of Glasgow on behalf of the Scottish Office. However, the answers you give in this questionnaire will be held in strict confidence and will be seen only by the research team. The data will be analysed in aggregate form only and it will not be possible to identify any individual organisation from the published report. Please complete and return to us by 12th June 1998.

- Please use abbreviation DK for ‘don’t know’
- Please use abbreviation NA for ‘not applicable’
- Please use a zero (0) to indicate the value zero
- References to 1995/96 and 1996/97 are to the financial year (beginning April to end March)

What is the name of your organisation?

....................................................................................................................

1. How many tenancies was your organisation letting at 31st December 1997?
   Total No. of Tenancies [ ]

2. Does your organisation have written policies, procedures or guidance for staff on neighbour nuisance?
   Yes ( ) No ( )

3. Does your organisation have written leaflets or other guidance for tenants on neighbour nuisance?
   Yes ( ) No ( )

4. Do you keep records of the number of complaints received about neighbours nuisance?
   Yes ( ) No ( … )

4b. If yes, how many complaints were received 1st April 1996 to 30th March 1997?
   Total number [ ]
5. How would you describe the scale of the problem of neighbour nuisance to your organisation:
A very big problem [  ]
A big problem [  ]
Average [  ]
A small problem [  ]
A very small problem [  ]

6. Does your organisation operate an out-of hours service to deal with complaints about neighbours?
  Yes ( )  No (  )

7. In practice, does your organisation refer tenants in dispute with neighbours to a specialist mediation service?
  Yes ( )  No (  )

7b. If yes, is this service: (Tick all that apply)
  Provided by trained staff within the organisation [  ]
  Provided by a specialist independent organisation [  ]
  Other (Please describe) ...........................................[  ]

8. In practice, does the organisation take legal action for possession for neighbour nuisance:

8b. How many notices of proceedings (NOP) were served on neighbour nuisance grounds in:

<table>
<thead>
<tr>
<th></th>
<th>1995/96</th>
<th>1996/97</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of NOP served</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
</tbody>
</table>

(Note: in questions 8b-8e the term ‘neighbour nuisance grounds’ covers cases brought under Grounds 2, 7 and 8 in Schedule 3 to the Housing (Scotland) Act 1987 and also those brought under Ground 1 where the breach of tenancy conditions consisted of anti-social behaviour.)

8c. How many tenants were taken to court for repossession on neighbour nuisance grounds in:

<table>
<thead>
<tr>
<th></th>
<th>1995/96</th>
<th>1996/97</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number taken to court</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
</tbody>
</table>
8d. What was the outcome of the cases (above) taken to court for repossession on neighbour nuisance grounds in:

<table>
<thead>
<tr>
<th></th>
<th>1995/96</th>
<th>1996/97</th>
</tr>
</thead>
<tbody>
<tr>
<td>Repossession decree granted</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Case dismissed</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Case continuing*</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Case sisted **</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
</tbody>
</table>

(Notes: This question seeks the outcomes of the cases covered by question 8c i.e. where court proceedings were begun during 1995/96 and 1996/97. We do not wish to know about cases which were concluded during these two years, but in which proceedings had been begun in earlier years. The outcome should be entered in the column for the year in which proceedings were begun i.e. cases in which proceedings were begun during 1995/96 but concluded during 1996/97 should be entered in the first column.

* this covers cases which have been continued for further procedure including cases awaiting a proof, but does not include any cases which are sisted at the end of 1996/97.

** “Case sisted” covers all cases in which a sist has been granted and not yet recalled. Include all such cases whether or not they are likely to return to court.)

8e. In how many of the neighbour nuisance cases in which a repossession decree was granted (above) was the decree enforced:

<table>
<thead>
<tr>
<th></th>
<th>1995/96</th>
<th>1996/97</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tenant(s) evicted</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Tenant(s) left before eviction</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
</tbody>
</table>

(Note: The outcomes should be entered in the column for the year in which proceedings were begun)

9. In practice, have you used professional witnesses to give evidence in court cases?

Yes ( ) No ( )

9b. If yes, what sort of professional witnesses have you used? (Tick all that apply)

- Generic Housing Officers [ ]
- Specialist ‘anti-social’ staff [ ]
- Environmental Health Officers [ ]
- Police [ ]
- Private Investigators [ ]
- Other [ ]
10. In practice, does the organisation use interdicts to prevent or stop neighbour nuisance:

10b. How many interim interdicts were requested and granted in:

<table>
<thead>
<tr>
<th></th>
<th>1995/96</th>
<th>1996/97</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total requested</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Total granted</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
</tbody>
</table>

11. In practice, does the organisation use actions for specific implement to require tenants to carry out their conditions of tenancy:

(Note: Specific implement is an order of the court requiring the addressee to do some positive act e.g. to maintain a garden)

11b. How many orders for specific implement were requested or granted in:

<table>
<thead>
<tr>
<th></th>
<th>1995/96</th>
<th>1996/97</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total requested</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Total granted</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Case continuing</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
</tbody>
</table>

(Note: The figures for orders granted and case continuing should be entered in the column for the year in which proceedings were begun. “Case continuing” includes sisted cases.)

12. In practice, does your organisation impose title conditions forbidding anti-social behaviour when selling properties for owner-occupation?

12b. How many times did you seek to enforce such title conditions by legal action in:

<table>
<thead>
<tr>
<th></th>
<th>1995/96</th>
<th>1996/97</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total enforced</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
</tbody>
</table>

13. In practice, does the organisation use local authority by-laws to deal with neighbour nuisance:

13b. How many times did you attempt to enforce such by-laws by legal action in:

<table>
<thead>
<tr>
<th></th>
<th>1995/96</th>
<th>1996/97</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total enforced</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
</tbody>
</table>
Thank you for completing this questionnaire. Please enclose:

A copy of your main tenancy agreement
Copies of policies on neighbour nuisance
Copies of written information to tenants on neighbour nuisance

Please give a contact name and telephone number in case we have any queries.

Contact Name ...............................................................................

and Telephone Number..................................................................
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