Northern Ireland Assembly

Committee for Social Development

OFFICIAL REPORT (Hansard)

Housing (Amendment) Bill: Housing Rights Service

8 October 2015

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Mr Alex Maskey (Chairperson)
Mr Fra McCann (Deputy Chairperson)
Mr Jim Allister
Mr Roy Beggs
Ms Paula Bradley
Mr Gregory Campbell
Mr Stewart Dickson
Mr Sammy Douglas
Mr Phil Flanagan

Witnesses:

Ms Sarah Corrigan	Housing Rights Service
Ms Janet Hunter	Housing Rights Service

The Chairperson (Mr Maskey): I formally welcome Janet Hunter and Sarah Corrigan to the Committee this morning. I leave it up to you to decide what you want to present to us on the Housing (Amendment) Bill.

Ms Janet Hunter (Housing Rights Service): OK. Thanks very much for the invitation to come here this morning and provide oral evidence. Hopefully, we will expand on some of the points that we included in our written submission and answer any questions that members may have.

I am the director of Housing Rights Service. My colleague Sarah Corrigan is a qualified solicitor and has been an adviser with us for almost seven years. We often say that, if she were on 'Mastermind', her specialist subject would be antisocial behaviour. That is why she is here with me.

The Chairperson (Mr Maskey): As long as she is not that particular, we will be all right.

Ms Hunter: That is why she is here with me this morning. No pressure, Sarah.

Mr Allister: And no practical experience, of course. *[Laughter.]*

Ms Sarah Corrigan (Housing Rights Service): Definitely not.

Ms Hunter: As members know, the Bill is very short, and our comments are focused exclusively on the clause 2 provisions on the disclosure of information in relation to antisocial behaviour. This is really where we want to focus our comments this morning.

As you probably know, the Housing Rights Service is a charity. We provide advice and assistance to people who are homeless and in housing need. Over the last year, we have dealt with around 1,000 issues relating to antisocial behaviour. So, our comments today are informed very much by that experience, and we just want to make a few points generally.

From our experience, we are very aware that if antisocial behaviour is not tackled effectively, it can sometimes have a devastating impact on the quality of life of not only the individual but, indeed, the wider community. We are very conscious of that. We are also aware that it is often a complex issue. Very often, when we become involved in cases, we identify serious mental health issues, disability, or other medical factors that need to be taken into account. Because of that, there is no simple solution to antisocial behaviour. Landlords who are tasked with dealing with antisocial behaviour in their homes and in the community are therefore required to exercise very reasoned and well-informed judgement on these matters so that they can make the right decisions.

We are aware, because we become involved in advising not just victims of antisocial behaviour but alleged perpetrators, that, at present, there are real barriers for some social landlords in accessing relevant information to enable them to tackle problems effectively. So, we support absolutely the underlying intention of the clause, which is to make accessing relevant information better for social landlords.

Members are probably aware that much of what is contained in the legislation is not new and that most of the provisions already exist in previous legislation. For example, for maybe seven or eight years, an information-sharing protocol has been in place between the Housing Executive and relevant agencies, generally being the councils or the Police Service.

When looking at the legislation, we found it useful to think about what difference it would make to us, in practice, if somebody approached us who was either a victim of antisocial behaviour or had been accused of causing antisocial behaviour. I find that analysis quite useful. We came to the conclusion that it would extend who could be involved in the disclosure of information processes. It would allow relevant authorities, primarily the police and the councils, to share information more freely with registered housing associations, which do not presently have that facility. We are very supportive of that. We recognise that housing associations are now a major social landlord in Northern Ireland, and it is important that they have the information they need to tackle the problem. So, we are very supportive of that principle.

The clause also expands the reasons why information can be shared between relevant parties to include enabling a landlord to make an order for repossession of someone's home, whether they are in a secure or introductory tenancy. It also expands the type of information that can be shared; so, the type of information that they can access from, say, the police. We have concerns about those two areas in relation to why, and what, information can be shared. Having scrutinised the Bill in some detail, our view is that, as currently drafted, it is unnecessarily wide. It allows information to be shared that we do not feel is necessary for the purposes of landlords effectively tackling antisocial behaviour. So, we think that it would be in the interests of all parties if the Committee considered whether the scope of those provisions should be restricted.

At this point, I want to bring Sarah in so that she can explain in a bit more detail to you our rationale behind that thinking.

Ms Corrigan: Thank you very much, Janet. I am going to cover three points that we would ask the Committee to consider in relation to the Bill. We have provided written evidence —

The Chairperson (Mr Maskey): Sarah, can I just interrupt you to let members know that your submission is on page 5 of the tabled items? I am sorry, Sarah.

Ms Corrigan: No problem. We identified in our written evidence what I am going to cover today, but it is probably best to highlight the three points in more detail and explain the practical implications. The first point we are asking the Committee to consider, and which Janet has already covered, is narrowing the definition of "relevant information" and "relevant purpose" for the information that is going to be shared. The Housing (Amendment) Bill is quite wordy, so you may just want to listen and have a look at the points later.

Clause 2 is drafted quite widely. We recommend the removal of clause 2(4) and amendments to clause 2(8)(a)(iv) and (v). The reason we are recommending amendment is to narrow the purpose for the information being disclosed. At the moment, the Bill proposes to allow information to be disclosed for grounds 1, 2, 3 and 5. You will see from the information we have provided that we have picked those four grounds. We have attached them for your ease of reference.

Ground 1 is a catch-all ground for possession. It is usually used by social landlords who wish to gain possession if there is a rent arrears problem. It also includes a provision for "any other breach". Ground 2 is for antisocial behaviour, which is nuisance and annoyance. Ground 3 is to do with neglect of a dwelling. Ground 5 is solely in relation to introduction tenancy in this Bill. It talks about gaining tenancy through false statement. You can see that, at the moment, there is no single statutory definition of antisocial behaviour. However, there is an accepted and regularly used antisocial-behaviour-in-housing definition. I do not want to bore everybody by reading out the legislation, but the pieces of legislation that define antisocial behaviour in housing mirror ground 2 precisely. They do not mention anything about neglect or false statement. With that in mind, it is our concern that the Bill is possibly too wide at present.

As Janet mentioned, I have fortunately been given the task of dealing with a lot of antisocial behaviour cases. I have never seen anything beyond ground 2 cited for antisocial behaviour. Ground 3, about neglect of a property, is never used. When you are talking about antisocial behaviour, its effect on other people and how it is causing significant harm to others, then property neglect, while by no means do we wish to understate its impact, is not an appropriate ground to be defined as antisocial behaviour.

We do not see the benefit of including this in these additional grounds. Ground 2 has never been a barrier to any social landlord taking possession However, there is a risk that, by including these additional grounds for information sharing, you could be open to legal challenge. I am sure that everybody is aware of the laws on privacy and sharing information. You are on delicate ground anyway. It is a delicate balance. We are concerned that opening this and expanding information sharing to these grounds is not necessary and that there is a possibility that you could be open to legal challenge. It is our understanding that the spirit of this Bill is to tackle antisocial behaviour proportionately and effectively. Concentrating solely on ground 2, we see that there would be no barrier to doing that if it were drafted in that manner.

The Chairperson (Mr Maskey): Sarah, before we bring in other members, can I ask whether there are any other remedies available to landlords or property owners to redress the other grounds?

Ms Corrigan: Absolutely. There are 12 statutory grounds, and you can take possession action under any of them. That avenue is always open. It is just information sharing for the other grounds that is on shaky ground.

The Chairperson (Mr Maskey): Yes, because the purpose of this is to deal with antisocial behaviour. You have put it very well that there are a number of other grounds that you do not think should be included in the Bill. That is why I want to clarify that the other grounds can be dealt with by other means.

Ms Corrigan: When a landlord takes possession, it is a two-stem approach. They have to establish the ground and show that it is reasonable. You can establish ground 1 on rent arrears by getting the rent account. For ground 3, you can establish neglect by looking at a property or sending a housing officer round. For ground 5 on a false statement, that information can be got via investigations and evidence that somebody puts forward. However, information-sharing is needed for antisocial behaviour, because you are relying on third-party agencies like the council to get involved. We have delivered training on this. Housing associations have explained their frustration where, for example, they have tried to phone a council on behalf of the tenant and the council will not give them the information. To answer your question, I do not see information sharing being restricted to ground 2 as any kind of barrier, because there are mechanisms to prove the case on the other grounds.

The Chairperson (Mr Maskey): OK, that is fair enough. Thank you for that.

Mr F McCann: Thanks for the presentation. I have not had an opportunity to read your guide on antisocial activity. It is fair to say that, when we talk to people when going around the doors or when they call into an advice centre, antisocial behaviour is the single biggest complaint that we hear. You are right that the definition of antisocial behaviour and what people believe it to be is fairly wide.

You said that additional information could be brought to the attention of a court or housing provider. Most housing providers would tell you that the most difficult thing is to get a court or a magistrate to deal with it. I know of cases in my constituency that lasted two or three years and then were lost. That has an impact on the community in the meantime. Residents where I live, in Divis and the Falls, are under severe pressure. It is about trying to get a mechanism that allows you to deal with it effectively, without including people who suffer from mental ill health, alcohol abuse or things like that.

Last week, we had a presentation from the private rented sector. I have spoken to a number of housing associations who believe they have been the poor cousins in all this, and that there is a wee elite group of people who sit above and share information but keep everybody else out. Given the size of the housing associations and the provision of social housing, it is essential that they are included. I would like to ask you about the private rented sector. Unless I picked it up wrongly, they are making a bid to be included. I find it difficult to see how you could control information. Could you give us an opinion on that?

Ms Corrigan: Your last point, about controlling the information, is key. There are two distinct spheres: the private sector and the public sector. The public sector is heavily regulated for because social landlords are public bodies. Guidance can be issued, and there are constraints on how they deal with information and apply that information. They are held accountable under human rights legislation and equality legislation. As private individuals, you are not. To try and have a Bill, or regulation, that regulates how individuals control and store information, for example, is going to be extremely difficult. That is not to say that I do not appreciate the problems that private landlords have, but I would be concerned about the introduction of information sharing for private landlords.

While I appreciate the problem, it may be that another mechanism is needed to help address the private rented sector. With regard to HMOs, more landlord management is being looked at. I have reservations about information sharing being allowed in the private sector just because individuals cannot be held accountable in the same way as a social landlord. However, I am still mindful of the barriers they will face. As well as that, as a social tenant or social landlord, you have security of tenure.For example, as you said, should somebody misbehave, then getting them out of a property can be a protracted process, which is not right either.

Hopefully, this type of information sharing will cut that time. However, if you are a private tenant you are bound by your tenancy agreement. Many people are on a month-to-month basis, so a landlord does not have to prove reasonableness. They can go to court, and you can be out in a couple of months. Therefore, some mechanisms for private landlords to deal with antisocial behaviour are stronger, although they may not have the information sharing that the Bill proposes for the public sector.

Ms Hunter: May I add a comment? To go back to the point you made about the time it can take to get these cases through court and have them dealt with effectively; this is something we are very aware of as well. Again, it is one of the reasons why we think that access to relevant information would enable the right decisions to be made, the right actions to be taken, and the court process to be speeded up. Relevant information makes the entire process easier for everyone, but it does have to be relevant information. We do not see any added value in extending it to the grounds proposed in the Bill.

Ms Corrigan: We have two further points to consider. Obviously, with most legislation there is also going to be supplementary guidance and regulations about how the legislation is going to be implemented, which is key for information sharing. We ask the Committee to consider the sensitive nature — as everybody here has pointed out — and the unique difficulties in dealing with antisocial behaviour, a lot of which comes down to; "He said, she said". This also makes it difficult for a judge to decide. So, we ask for the introduction of some legally enforceable statutory guidance to help a decision-maker to balance such information and apply it. We also seek the possibility of an appeal or review procedure so that should information be given, the person about whom the information is sought has a chance to review it.

To bring in a bit of context: I had a case where there was a question over somebody's eligibility for the list. The social landlord involved had provided a police report with three incidents on it, and an eligibility decision was made on that basis. Luckily, the applicant came to us and said, "Those charges have been dropped and were never pursued". When we contacted the PSNI, they said, "Yes, the records just haven't been updated". The person is now on the list; their eligibility decision was

overturned. This is just about giving people the right to respond to information. We think that this is key in information sharing as well.

Mr F McCann: I think that who is eligible to receive this information is key. I know that the likes of the Housing Executive red-flag people so that others can pick up on that. However, with housing associations not being part of this, it ends up causing serious problems. I think that people have lost all faith in how the judiciary deals with antisocial behaviour. I can think of one case at the minute in which someone has been in front of a court nine times and has been faced with eviction nine times, which were all overturned, and which was causing untold problems. That also needs to be built in.

Can you comment on introductory tenancy? Apparently, this was introduced to allow them to deal with antisocial behaviour more effectively. Has that been a success? It is certainly something that we have discussed.

Ms Corrigan: Yes, of course. Introductory tenancies were introduced in 2003 and are an optional scheme for a social landlord to run. Social landlords can make tenants secure from the get-go, but most have chosen introductory tenancies. To describe it as such is not great; it is almost a probationary term. This is because if you do not behave in a tenable manner you can be evicted quite easily. For example, if you were to get served a notice seeking possession you would go to an informal review panel and to court. Although they do have to consider reasonableness, they do so only in exceptional circumstances.I do think that introductory tenancies work well, because most social landlords are very good at educating their tenants to the fact that this is an introductory period. I know that these have been used in conjunction with acceptable behaviour contract (ABC) agreements, and they have been a good tool for controlling antisocial behaviour.

At the opposite end of the scale, they were never designed to be a mechanism to get rid of so-called nuisance tenants, and I see it being used sometimes as well, which is a concern. I worry that the Bill could widen that even further by the sharing of information. It is not necessary to extend it beyond those grounds when there is no issue with ground 2. As well, ground 2 is the only statutory ground for possession that has been amended over time, so it is a developing piece of legislation that is moulded by case law and jurisprudence. It is always going to be a wide clause, therefore, the additional clauses are somewhat questionable.

Mr Flanagan: Thank you for the presentation. I will look at our pack later, but this looks much more straightforward than the proposals in the Bill. With regard to the sharing of information, can you clarify why the Department thinks it is acceptable to share information with housing associations and not with private landlords, given that neither of them sits in the public sector?

Ms Corrigan: This is an ongoing question that is always asked. We are registered housing associations; we are not public. However, there is case law. The case is called Quadrant. We can get the citation if needed. It says that, within a housing management context, registered housing associations are public bodies. While they are not listed in section 75 as a public body like the Housing Executive, in relation to housing management and possession proceeding, they are considered to be a public body. That was always a debated point until recent years, so there is a distinction. While registered housing associations do have a private arm, they are distinctly different from the private sector.

Mr Flanagan: But they are still privately owned.

Ms Corrigan: Yes. You can be privately owned but have a public function; and you can have an entity in which you are considered a public body, and this has traditionally been decided on.

Mr Flanagan: Do housing associations have to comply with the higher standards that apply to a public body or those that apply to a private organisation?

Ms Corrigan: In relation to housing management, absolutely. If you are talking about business accounts and things like that, that is not my area, so I cannot say conclusively. In relation to housing management, they are held under the Housing (Northern Ireland) Order 1983, and they have the same rights —

Mr Flanagan: For the purposes of this, I am talking about clause 2 and the sharing of information — freedom of information requests and things like that. Do they have to comply with those in the same

way that actual public bodies do, or is it merely for the management of housing that they are deemed public bodies?

Ms Corrigan: The management of housing encompasses the things you are talking about. At the moment, the issue is that there are over 20 registered housing associations; they do have a level of autonomy, and so uniformity is not there yet. With the guidance, we hope that there will be one statutory piece of guidance that will unify all social landlords. At present, although they are held under the exact same accountability — the Social Development Committee — they have to have policy and procedures on antisocial behaviour and those can vary slightly. That is why, with the guidance, we want uniformity.

Mr Flanagan: There is an understandable call from private landlords that they should have access to information about tenants who have a poor history, particularly with regard to things like antisocial behaviour, and that is understandable. Has any consideration been given by your organisation or by the Department, as far as you are aware, with regard to how tenants can find out information about landlords that have a history of being poor landlords?

Ms Hunter: There is, of course, the landlord registration scheme, but that provides very limited information. Also, as the Committee is, no doubt, aware, we are about to consider proposals relating to houses in multiple occupation (HMOs). If that is progressed, it will address some of those issues in relation to HMOs. For example, it would include a fit and proper persons test.For HMOs, there has been some policy movement in sharing information about landlords with potential tenants, but not for the broader private rented sector.

Mr Flanagan: Is that something that you would like to see happening?

Ms Hunter: Of course, we would support that, but then —

Mr Flanagan: What would it look like?

Ms Hunter: It would probably look, for the entire private rented sector, something like what has been proposed for houses in multiple occupation. That is probably what it would look like, because our concern is mainly around the fit and proper person and the nature of the behaviour that the landlord may well have been engaged in, particularly if it has breached some form of landlord/tenancy law, or if it has breached some kind of discrimination legislation. So, we think that that is very important for tenants; but one step at a time.

Mr Flanagan: Have you given any consideration to how that could be encompassed in this Bill in terms of the sharing of information?

Ms Corrigan: It is going to be extremely difficult to combine those two sectors. You are walking on extremely difficult territory, as well, with different rights and obligations under human rights legislation. I do agree that there is definitely a barrier for private landlords, but to contain them in the same Bill is not appropriate and is, I would say, very risky legally.

Ms Hunter: As members are aware, there is a more fundamental review of the private rented sector, and I know that it was debated recently in the Assembly. There is a more fundamental review of the private rented sector going on, and that is going to look at improving and enhancing regulation within the private rented sector. Yes, we agree with you that there is an issue, but that is the arena where it could and should be addressed, not in this piece of legislation.

Mr Flanagan: Have you given any consideration to the establishment of a Trip Advisor-type scheme for tenants to give feedback on their landlord?

The Chairperson (Mr Maskey): Sorry, that is not relevant to the Bill.

Ms Hunter: It has been mooted, but, obviously, it is fraught with difficulties and dangers.

Ms Corrigan: You are opening it up massively there —

Ms Hunter: — because then you have to moderate the comments. You are certainly not the first person to suggest it. Our private tenants forum, for example, has talked about it. But it would involve moderation of the comments, and it is not something that we would want to take responsibility for.

Mr Flanagan: You say in your submission:

> *"Safeguards must be put in place to ensure that information collected ... meets a high test of credibility."*

Have you any suggestions on what that might look like, or is that something that you would want to see the Department doing later through guidance?

Ms Corrigan: It would be through guidance. On a broad, sweeping scale, obviously to get that information, you have to consider the sources. There would have to be credible, third-party sources. Also, the information would have to be scrutinised, with a right of response. It is about making sure that there is fairness in the process for both parties.

Ms Hunter: The Department has already produced very comprehensive guidance on the practice of the Housing Executive for antisocial behaviour. It is very good and comprehensive, but it is not on a statutory basis — so, it cannot be relied on in court — and it does not extend to housing associations. We think that the Department has a fairly good record of being able to produce good and comprehensive guidance on a statutory basis, and we would like to see that expanded and developed to take into account some of the points that you were making about the housing associations not being in quite the same regulatory environment as the Housing Executive, which is clearly a public body.

Ms Corrigan: We would not be asking the Department to create a precedent by doing that type of guidance. That type of guidance is already in existence. For example, the selection scheme statutory rules are statutory rules that are legally enforceable. So, the model is there, if it is deemed appropriate to produce that guidance.

Mr Beggs: You talked about removing clause 2(4), and I am just trying to get a better understanding of why you want it removed. In particular, I am thinking of a case where lots and lots of household waste was being stored outside in bin bags, and rats were gathering in the area. I understand that this would allow information about the tenants in that house to be shared with relevant bodies. Why should that information not be shared in order that greater scrutiny should be given by housing officers when anyone in that house went to a new tenancy?

Ms Corrigan: That is a good point, and I am glad that you raised that example, because it can help to further illustrate it. What you have talked about is if, for example, there are overflowing bins. That would be defined as a statutory nuisance, and, therefore, the possession action would be taken under ground 2. We have seen examples of that, not ground 3. Neglect of a property would be, for example, if somebody was not heating a property. That kind of statutory nuisance could be brought under the remit of ground 2. Widening it to ground 3, you are looking at whether there may be medical or personal issues as to why somebody is neglecting a property, whereas statutory nuisance that is antisocial behaviour can fall under ground 2.

Mr Beggs: I read clause 2(4) as meaning that, for anyone who was in the house, the fact that they were in the house when all of that happened can be shared with relevant bodies. Obviously, if you were an adult in that house, you should have taken reasonable action and had a responsibility. Surely it would be right to share the information not just on the official tenant who may have had the house repossessed but on anybody who was lodging in the house, so that, should they move on to another house, the new housing officer would make particular scrutiny of their action from an early stage so that it is not allowed to deteriorate in a similar fashion. If you took that out, surely that information would not be able to be shared.

Ms Corrigan: That is more about a tenant's behaviour if they were seeking to transfer. That is allowed. That has always been allowed. Under section 13 of the Housing (Amendment) Act, information can be shared if you want to exchange or to transfer. There is no bar to the sharing of that information. This is for seeking possession of a property. It is a comprehensive Bill. You might need to go back and look over it again in detail. I agree with what you are saying, but this is for the purpose of including ground 3 for seeking possession of a property, not for the likes of exchange.

Mr Beggs: It is obviously increasing statutory powers to get repossession. Will it reduce the cost to the public purse in achieving that when there is significant antisocial behaviour, such as I have illustrated, with lots of bin bags and rats developing in an area?

Ms Hunter: I think that better relevant information leads to better decision-making. That is why we support the extension of the disclosure of information. It leads to better decision-making and, therefore, is likely to lead to a quicker legal process, but we do not think that that information is necessary to speed up that process. In fact, our concern is that it could be open to legal challenge if the Bill was used in that way, saying that it was unnecessarily wide.

We do not think that it is necessary. We think that better relevant information would speed up the process, but we do not think that this is relevant, and we think that it is open to legal challenge. So, from our perspective, there is a risk to introducing the legislation as it stands.

Mr Beggs: But surely, if all the relevant information is available, that allows housing officers and housing associations to make a better judgement. If you remove this, not all of the information may be available.

Ms Hunter: The key point is whether it is relevant information to enable them to effectively tackle antisocial behaviour. Ground 2 is already drafted widely enough to enable them to obtain all the relevant information they require. There is a risk that you are going beyond what is relevant, and then that would be open to challenge.

Mr Beggs: There might be a risk, but let us find out if there is. Presumably it could be challenged if there is a problem, but I can see advantages in sharing —

Ms Corrigan: The challenges are significant. I am not just talking about how you can go and object to it. You ask why not just give them all the information so that they can better manage it. If everybody knew everything about everybody, everything would be transparent and things could be solved, but there is a right to privacy. There is a right to family and private life. People have the right to have certain information kept private. We are not saying that that is not a barrier. Of course, relevant information under the relevant terms should be shared to enable them to deal with it properly, but, if you do not put boundaries around that information, you are talking about human rights challenges, which have massive impacts. And you are talking about public costs there.You would not want to think about the figures for the legal bills in a challenge like that. It is about trying to anticipate any possible challenges but also achieve the purpose of the Bill.

Mr Beggs: Clause 2(4)(a) says:

> *"the condition of the dwelling, or of any common parts of the dwelling, has deteriorated owing to acts of waste by, or the neglect or default of, T or any person residing in the dwelling".*

Surely that is relevant information.

Ms Corrigan: It is, but you can put it under ground 2. Ground 3 is never used for antisocial behaviour in practice. If the antisocial behaviour is significant, you can request that information under ground 2 as it exists.

Mr Beggs: Through a court?

Ms Corrigan: No. If the Bill comes in, you can make a request for that information.

Mr Beggs: Are you saying that there is duplication?

Ms Corrigan: Yes, there is duplication. Furthermore, ground 3 would allow much more information to be given.

Ms Hunter: That information may not be relevant. If it is relevant to antisocial behaviour, it can be sought under ground 2. It is not necessary, in our view, to also include ground 3. We are saying that it opens up the possibility that irrelevant information can be accessed and that is when the potential challenges could arise.

Mr Beggs: I am reading from ground 3, which is already in force at present. Is that right?

Ms Corrigan: It is enforced in relation to the transfer and exchange of properties, not to seek possession of a property. Antisocial behaviour is about significant harm to others and how it affects others in the community. I am not saying that waste is not an issue; if it is affecting others, that is covered in ground 2. If you are going to seek personal information under ground 3, there is a risk there and it is open to legal challenge.

Mr Allister: This is not, of itself, a criticism, but in order to get the perspective right, is it fair to say that you are approaching this from the view of maximising the rights of tenants?

Ms Hunter: I probably should have said this earlier. We have extensive experience of dealing with antisocial behaviour cases, and we are involved in advising and representing the victims and the alleged perpetrators of antisocial behaviour. We are not involved in acting on behalf of landlords, but we certainly have been involved in trying to resolve antisocial behaviour for those who were victims of it. We have experience of both parties, but, of course, we do not have experience of acting on behalf of landlords. Because of that, however, we think that we have a fairly balanced view of what is needed and what works. We have been involved in the past in challenging landlords who, we felt, were not adequately tackling issues of antisocial behaviour in their properties. We are coming from the perspective of victims and alleged perpetrators but obviously not from the perspective of landlords, who have their own professional solicitors.

Mr Allister: But when you talk to us about the need for statutory guidance that might build in appeal or review mechanisms etc, you are talking about putting in another layer before anything can be done about the antisocial tenant.

Ms Corrigan: It is a necessary layer that could stop legal proceedings if you are looking at the cost perspective. There is always a right to respond in anything. If information is given about a person that is going to be relied on for seeking possession action, housing associations' guidance says that that person has the right to ask about that information. I am not saying that it needs to be a protracted period, but there needs to be a right to challenge that information or look at it.

When we are running antisocial behaviour cases in court, we want to stop that as soon as possible. We are trying to hold off civil bills being served because the costs are disproportionate. You are not going to be able to recover those costs.

Mr Allister: Do you run antisocial behaviour cases in court for tenants and landlords?

Ms Corrigan: No.

Mr Allister: So you act only for tenants.

Ms Hunter: We act only for tenants.

Mr Allister: That is why my first question was to identify the perspective from which you are essentially coming.

Ms Corrigan: We train landlords.

Mr Allister: That may be.

Ms Corrigan: Last week, I delivered training to social landlords.

Mr Allister: However this legislation ends up ultimately drafted, in your future court actions, you will be arguing on finding refuge wherever you can within the wording of the legislation on behalf of tenants.

Ms Corrigan: Like any solicitor —

Mr Allister: I am not criticising that. I am just establishing it as a fact.

Ms Corrigan: It is like any solicitor instructed on any side. However, that said, the guidance is of benefit to both parties. For example, in homelessness challenges, it is there as a necessary safeguard and it stops. That is why there are so few County Court homeless appeals.

Mr Allister: Is it your perspective of essentially acting on behalf of tenants, including bad tenants, that causes you to say that there should be fewer grounds within this legislation, within clause 2?

Ms Hunter: No. It is our desire to tackle the problem of antisocial behaviour effectively. As I said at the beginning of our presentation, we have seen both sides; the victims and the alleged perpetrators. We have seen the devastating consequences it can have on people if it is not dealt with properly. We are utterly committed to improving the mechanisms to deal effectively with antisocial behaviour. We do not think that it needs to be drafted as broadly as it is, and, in fact, we think that could be an impediment because it could potentially open up other challenges, which will further delay the process.

Mr Allister: I would like you to elaborate a wee bit on that, because you say that by keeping subsection (4) of clause 2, for example, the legislation is more at risk of legal challenge on privacy grounds etc. Why would you be more at risk on that particular ground than you would be on ground 2, which you are quite happy to keep?

Ms Corrigan: We have commonly found this. Say, for example, there is an issue of hoarding, which is to some extent neglecting the property, and the condition of the property is not great. You may be seeking disclosure of information on the tenant's medical history or more personal, sensitive matters. Bear in mind, as well, that this Bill is for antisocial behaviour: that is the spirit of it. That is not antisocial behaviour, so —

Mr Allister: Sorry, which is not antisocial behaviour?

Ms Corrigan: Hoarding in the property: it is a personal issue, and if you are getting information on the tenant's mental health or a medical issue, disclosing that information is open to legal challenge. The spirit of the Bill, as it says at the beginning of the clause, is to help tackle antisocial behaviour. Hoarding is not, legally, antisocial behaviour. It does not cause significant harm to others; it does not fall within the guidance of the jurisprudence in the area.

Mr Allister: If the Bill remains as drafted, how would you mount a challenge in respect of subsection (4)?

Ms Corrigan: You would need much more time, obviously, to think of the main substance of your legal arguments, but the main starting point would be that it is not antisocial behaviour. The jurisprudence does not support that that is antisocial behaviour. If information needs to —

Mr Allister: Allowing the premises to deteriorate:

"owing to acts of waste ... neglect or default".

Is none of that capable of being antisocial behaviour?

Ms Hunter: The point is that, if it is significant enough to constitute antisocial behaviour, that information can be disclosed under ground 2. It would not prevent that information being disclosed if it was significant enough to be relevant.

Mr Allister: What harm is subsection (4) doing, then?

Ms Corrigan: I used the example of disclosing people's medical information. If somebody got your medical records or mine —

Mr Allister: But if you could do it under ground 2 —

Ms Corrigan: Not necessarily. You could not do it under ground 2. Say, for example, it was a statutory nuisance, you would be getting the council and maybe the police involved. I am not saying

that ground 3 is not a problem; if it were not a problem, it would not be a ground for possession. I am just saying that you need to be careful about the boundaries of it.

Mr Allister: Have you discussed your concerns with the Department?

Ms Hunter: Not directly, no, because we only had sight of the Bill when you did.

Mr Allister: OK.

Ms Hunter: It is only over the last few weeks that we have had the opportunity to scrutinise it and to review the types of antisocial behaviour cases that we have dealt with over the last few years. Although, instinctively, we had concerns, we wanted to review our cases to validate those concerns before we expressed them in writing. The opportunity to do that over the last few weeks has led us to the conclusion that we are presenting to you today. We think that it is unnecessarily wide. It will not add anything in allowing social landlords to tackle effectively antisocial behaviour; the key words there are "effectively" and "antisocial behaviour". The grounds already exist for the properties to be repossessed under the existing legislation. We do not think that it is necessary.

Ms Corrigan: It has never been a barrier.

Ms Hunter: It has never been a barrier, whereas allowing housing associations to have access to information most clearly has been a barrier. That is why we are very happy to support that.

Mr Allister: I will ask you one final thing. Clause 2(1) begins:

"A person may disclose relevant information".

When a departmental official was before us, he told us that that does not apply to Joe Public; it applies only to agencies. Is that your understanding of that clause?

Ms Corrigan: Yes.

Mr Allister: It does not say that anywhere, does it?

Ms Corrigan: That is what the guidance would, hopefully, clarify. When I think of legislation, it is the skeleton. Guidance is the meat on the skeleton that helps to bring legislation to life. Hopefully, that will be clarified.

Mr Allister: I cannot remember, but does the Bill allow for guidance?

Ms Corrigan: Guidance can be written in; a clause can be added.

Mr Allister: But there is no clause authorising guidance.

Ms Hunter: There is not, but you will see in our submission that one of our recommendations is that that clause is added to allow statutory guidance to be provided. As it stands, it does not — you are absolutely right — but that is why we included that point in our written submission and I have taken the opportunity to reiterate it here today.

Mr Campbell: I can see either side of this, but are you saying that subsection (4) so fundamentally widens the ambit that you think that it simply should not be in the Bill, or is it amendable? You are shaking your head.

Ms Hunter: We do not see what it adds at all.

Mr Campbell: I understand that, but you can see the argument for having something along the lines of subsection (4).

Ms Corrigan: That would fall under ground 2. If you are talking about amending ground 3, it would need to go back to the primary piece of legislation — the 1983 Order — to do that.

Ms Hunter: The way that it is described here mirrors ground 3 in the 1983 Order. I do not think that that would be the way to approach it.

Mr Campbell: So, you think, effectively, that clause 2(4) is unnecessary.

Ms Hunter: It is unnecessary. We absolutely understand that, in extreme cases, this sort of issue may be relevant to tackling antisocial behaviour, but, if that is the case, there would be powers to disclose it under ground 2. We are confident that that is the case. There is nothing to be added to the legislation by including that clause. We think that it introduces risks.

The Chairperson (Mr Maskey): No other members are indicating. We have covered a fair wee bit of ground. Janet and Sarah, are you content that you have made your arguments on the back of your submission and in response to members' questions?

Ms Hunter: Yes.

The Chairperson (Mr Maskey): Essentially, you are reminding us that the Bill is designed to tackle antisocial behaviour, which is a well-established problem that is grounded in jurisprudence. You believe that the Bill goes further than what is required to do that. There may be some need for a little bit of clarity or some way of reminding people that some of the issues that you have drawn attention to in the other grounds will fall into ground 2 and will be relied on to tackle antisocial behaviour. We will probably need to discuss that as a Committee and then with the Department to see whether we can square that circle, if the Committee is minded.

Many thanks to you and the Housing Rights Service for making the submission and coming here to help us in our deliberations.

Ms Hunter: Thank you very much.