



Northern Ireland
Assembly

Committee for Social Development

OFFICIAL REPORT (Hansard)

Housing (Amendment) Bill: Northern Ireland
Human Rights Commission

8 October 2015

NORTHERN IRELAND ASSEMBLY

Committee for Social Development

Housing (Amendment) Bill: Northern Ireland Human Rights Commission

8 October 2015

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 Stewart Dickson
Mr Sammy Douglas
Mr Phil Flanagan

Witnesses:

Ms Leanne Cochrane	Northern Ireland Human Rights Commission
Ms Claire Martin	Northern Ireland Human Rights Commission
Dr David Russell	Northern Ireland Human Rights Commission

The Chairperson (Mr Maskey): I formally welcome to the Committee this morning the representatives from the Human Rights Commission: David Russell, Leanne Cochrane and Claire Martin.

For technical accuracy at least, I need to remind people that we are not officially in Committee Stage, but we are trying to do this in a way that will allow us to complete our consideration of the Bill within the legislative time frame available to us. Obviously we are still taking evidence. I thank you for making your submission and for coming here this morning. You have been sitting in on the last discussion there; I will leave it with you to make your comments, and then we will open it up for questions.

Dr David Russell (Northern Ireland Human Rights Commission): Thank you, Chair. I am joined by Claire and Leanne, both of whom have been working on the Bill. Hopefully we will be able to assist the Committee with any questions it might have. We are very grateful for the opportunity this morning to talk members through our advice on the Bill. We do so pursuant to our statutory obligation under the Northern Ireland Act 1998 to advise the Assembly on whether a Bill is compatible with human rights laws and standards. By way of a short summary and introduction, I draw the Committee's attention to two general issues that we have given some consideration to, focusing on clause 2 of the Bill, mindful that you have just had quite a long conversation on clause 2 before hearing from us.

The first issue is the proportionality of the proposed measures. The commission recognises the need for appropriate powers for the Department for Social Development, the Housing Executive and the housing associations in respect of their responsibilities to manage social housing properties, including their responsibilities to all their tenants and the community at large, and for those bodies to be able to access information that will enable them to discharge those responsibilities fairly and effectively.

We also note that a similar narrow power with regard to disclosure of information in respect of antisocial behaviour already exists in the Housing (Amendment) Act (Northern Ireland) 2011 and that the purpose of the current Bill is to broaden that provision in part. However, the commission considers the phrasing in clause 2(1) of the current draft to be in very broad terms. When taken together, the respective definitions in the Bill of "person", "information" and "purpose" have a cumulative effect. The practical impact will be an interference with an individual's right to a private and family life, as protected by article 8 of the European Convention on Human Rights (ECHR) and the Human Rights Act 1998 (HRA). The commission is of the view that it would be beneficial if the Committee satisfied itself that the proposals in the Bill meet the requirements of the ECHR and the HRA by asking the Department to conduct its own exercise in considering the proportionality of the arrangements for disclosure of information. If it has already done so, what conclusions were reached?

Secondly, the commission is mindful that the purpose of the proposed measures includes gaining an order for possession, making decisions on whether to allocate housing accommodation or deciding whether to take any other appropriate actions with regard to antisocial behaviour. There are a number of human rights obligations engaged in the Bill, including the International Covenant on Economic, Social and Cultural Rights, which has been ratified by the UK and is binding on the Executive. In its general comment No 7 on the covenant, the UN Committee on Economic, Social and Cultural Rights has said:

"Appropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions".

The commission emphasises, therefore, the rights of tenants to contest any evidence against them and the need to avoid penalising tenants or members of their households who have not been guilty of antisocial behaviour. We advise and recommend that the Committee enquires about what procedural safeguards will be put in place should a tenant wish to contest the accuracy or completeness of the information provided or to have an opportunity to set out what action has been taken to end the behaviour or conduct under scrutiny.

One useful addition to the Bill — I notice that Housing Rights Service has raised this issue with you — that the Committee might want to look at would be additional provisions that require the Department to issue either guidance or regulations on the issue, particularly mindful of the general comment of the UN Committee on Economic, Social and Cultural Rights.

Those are our two main points. We are happy to take any further questions, if we can be of any assistance.

The Chairperson (Mr Maskey): OK, David. Thank you for that. As you say, there are a couple of very fundamental overlaps between your presentation and submission and the previous one from Housing Rights Service. Any members?

Mr Allister: You mentioned in your introduction the rights of tenants. Do neighbours have rights?

Dr Russell: Maybe Claire or Leanne will want to come in on that. Everybody has rights equally.

Mr Allister: So landlords have rights.

Dr Russell: Landlords have rights as rights-holders under the terms of the convention.

Mr Allister: Do neighbours have rights to live in peace?

Dr Russell: Under article 8, yes, arguably so.

Mr Allister: So it is not just about cossetting the tenants when it comes to human rights.

Dr Russell: No, it is not.

Mr Allister: Yet that seems to be the burden of what you have been telling us.

Dr Russell: No. I was very clear at the beginning of the submission that we recognise that it is necessary for the Department, the housing associations and the Housing Executive to have effective powers in that area. We are not questioning that for a minute. We are asking the Committee to give some consideration to the proportionality of the scope of the provisions of the Bill, and to satisfy itself that the article 8 rights are being effectively protected under the provisions.

Mr Allister: Do you think that they are?

Dr Russell: I think that, not dissimilar to the previous presentation, we have some concerns with the breadth and scope of the Bill. When you take the issues of how "person" is defined and how "information" is defined and combine those together, it may go beyond what is required for the stated purposes of the Bill.

Mr Allister: To take one example, what about the Housing Rights Service objection to the inclusion of clause 2(4)?

Dr Russell: I was listening very carefully there, and, without being prescriptive as to what the solution might be, I think that it might be worthwhile looking at that. Obviously the —

Mr Allister: Do you have a view on that?

Dr Russell: I do not have a view on whether clause 2(4) should be included or excluded. As we drew to the attention of the Committee at the beginning of our written submission, I think that it would be wise, first of all, to take more information from the Department on what the full consideration of the Department has been with regard to the protection under article 8 of the convention. In similar situations in England and Wales, Westminster has asked Departments to provide something beyond the standard that we get in an explanatory memorandum — "the Department considers it to be compatible".

Mr Allister: Have you had that conversation with the Department?

Dr Russell: No, we have not had that conversation yet.

Mr Allister: Will you be having it?

Dr Russell: We may well do, after today.

Mr Allister: Or are you just throwing to it the Committee and saying, "You have it"?

Dr Russell: No. The fact is that the commission has not had capacity to have the conversation in advance of receiving the Bill from the Speaker — as much as we would have liked.

Ms Claire Martin (Northern Ireland Human Rights Commission): To follow on from what David said about the breadth of information that could be included in the Bill, I draw your attention to clause 2, which says that "relevant information" includes information about:

"a tenant of a dwelling-house ... if it indicates or suggests that T, or any other person residing in or visiting the dwelling ... has been convicted of an indictable offence."

It is our understanding that previous legislation had written into it that it was in the locality — "has been convicted of an indictable office in the locality of the dwelling". That is an illustration of how we feel the Bill is going to be broadened, and that is one of our concerns in relation to the potential breadth of the Bill.

Mr Allister: So you want a situation where somebody can be untouched because the indictable offence was not committed in the locality?

Ms Martin: It is just an illustration of the breadth of the —

Mr Allister: You would like "in the locality" put into the Bill to give immunity to anyone whose indictable offence was not committed in the locality, is that right?

Ms Leanne Cochrane (Northern Ireland Human Rights Commission): No. We would like there to be some kind of relationship —

The Chairperson (Mr Maskey): Sorry. Just a wee second, Leanne. Jim, in fairness, it is important to ask questions and tease them out, but I think that we should watch the pejorative nature of the question.

Mr Allister: I am sorry if I was pejorative. I did not intend to be.

Ms Martin: In terms of the Bill and previous legislation, there is an issue for the commission that the Bill has been broadened, and we would like to find out why it has been broadened. That is one illustration of how the Bill has been broadened in terms of what exists in the Bill and in previous legislation.

Mr Allister: Yes, but staying with the example that you drew attention to — the absence of the refinement of the indictable offence being "in the locality" — I am asking whether you are looking for information that would be blind to the fact that an indictable offence had been committed, provided that it was not in the locality.

Ms L Cochrane: I think it is more about the relationship between the information shared, which could be the indictable offence, and the purpose for which it is shared. Obviously, if an indictable offence is committed in relation to a property that the visitor was visiting — the property that is at issue, basically, in the tenancy agreement — that is potentially a problem, and that is relevant information. If it is an indictable offence that cannot be related —

Mr Allister: But the indictable offence could be arson of a property 10 miles away.

Ms L Cochrane: That is OK, because that is related to antisocial behaviour, but there is no limitation in the Bill in regard to that indictable offence. It just says "indictable offence".

Mr Allister: But if you put the limitation "in the locality", then you would prohibit reliance in the example I gave.

Dr Russell: I understand the point you are making. It is well enough made. We are not being prescriptive. That is merely an illustration as to how the current Bill is broadening the scope of what already exists. Our concern is that there is obviously an impact on article 8. If it is for a legitimate aim, then the commission is not questioning that particularly, but with the fact that, in the Bill, the scope of the legislation that already exists is now being extended, we recommend to the Committee that that is teased out with the Department so that we are satisfied that the provisions of article 8 are being met and that it is a legitimate purpose for the scope of the Bill to be widened.

If it is outside the locality and it is justifiable, I do not think the commission is going to argue with that. It may well be necessary, as you previously pointed out, to protect the rights of other tenants and the rights of the community in the area. That would be well and good. One way of dealing with the issue, which I heard previously from the Housing Rights Service, might be through guidance or regulations where it could be spelt out by the Department. It would be useful to everyone who is ultimately going to use the legislation to understand the limits.

The second reason why we are majoring on it is because of the concept of possession and how that equates in terms of the UN committee's concept of eviction. From the commission's perspective, that is equally as binding on the Executive as the ECHR. There are two significant rights being engaged. I do not think we want to make specific comment on an individual clause as to whether it should be outside the locality or not, because the Department may well have a strong rationale as to why that is necessary.

Mr Allister: OK; thank you.

The Chairperson (Mr Maskey): If I could just follow on from that, in a way, what members have grappled with — particularly because local elected representatives are often dealing with cases like that — is that, on the face of it, on the point that Jim raises, if somebody was involved in arson at another property that was just outside the immediate locality, in layperson's language, how would you defend that? I understand, Claire, that you raised that to illustrate that it is broadening out beyond tackling antisocial behaviour, but, if you look at it from the other side, you are actually saying, "Why would there be a problem including that?" It came up in the discussion with the Housing Rights Service as well. It is all down to the issue of how you define antisocial behaviour and how you capture the relevant information to tackle that. Maybe there needs to be some way of presenting the Bill with a clear definition of antisocial behaviour on the face of it. I do not know. We will have to tease that out.

Dr Russell: Take as another example — maybe Leanne will want to speak to this — the fact that there has been an introduction of "indictable offence". There is a whole myriad of indictable offences, many of which — as I think the Housing Rights Service illustrated through another example — might not actually be relevant to antisocial behaviour. There is no doubt that criminal action has taken place, but it may not be relevant to antisocial behaviour per se. It would be extremely useful to know what sort of indictable offences we are talking about. It is non-specific. I can understand the reasoning for that in that primary legislation is generally non-specific, but the fact that there is no provision for guidance or regulations subsequently in the Bill means that that is what we are potentially going to be left with — "indictable offence". Every indictable offence could potentially be used.

The Chairperson (Mr Maskey): I appreciate that.

Mr F McCann: I will be brief. Thanks for the presentation. It is certainly interesting. As I said to the people from the Housing Rights Service, this is probably one of the most serious issues that most elected representatives face within their communities. Many of the communities that we live in are under attack from within by groups of people. I am also mindful that you have to get the legislation right so that those who are not involved in that behaviour do not caught in a catch-all situation. As I asked the Housing Rights Service, have you sat down with the Department to raise these concerns about trying to shape a Bill that could come to the Committee and on through to legislation to get a happy medium that suits you, the Department and the Housing Rights Service?

Dr Russell: No, we have not spoken to the Department specifically about the Bill. Our first sight of it was when it was introduced to the House and the Speaker passed it on to the commission. I do not know whether the Department had previously consulted on the subject; I am assuming that it probably has. It is simply down to capacity in the commission at the moment. We do not have the ability to engage with Departments consistently in advance of Bills being introduced to the Assembly.

Mr F McCann: I understand that, and I do not underestimate how busy you are. Obviously, this is a crucial piece of legislation that will impact on people's lives. I take it from here that there is a possibility that you can sit down with people from the Department to raise those concerns. If the Bill goes through as drafted, it could have serious implications for people's human rights. Equally, however, many people take on board the human rights of people who live in communities, whether they are groups of people, groups of tenants or individual tenants or neighbours. That is a crucial thing, even to take up the whole question of whether guidance and regulations are put into the Bill that could cover many of the concerns that have been raised today.

Dr Russell: I agree wholeheartedly with that. As I said at the beginning, we do not question that the legislation is necessary. Specialists in housing will know more than the commission about that, so we are not questioning that at all. We are not questioning its necessity in protecting the rights of other tenants and members of the community. We will be more than happy to sit down with the Department to discuss the matter if the opportunity arises and the Department wants to approach the commission. We are not contesting that for a minute.

One of our primary concerns, as was suggested earlier, is that we make sure that the legislation is robust enough and is not going to be subject to some sort of legal challenge at the opposite end — particularly, from the commission's perspective, a legal challenge on the grounds of article 8, given the breadth of it at the moment.

Mr F McCann: I have one other question about the sharing of information protocols being extended to housing associations. Obviously you heard the previous discussion; where do you stand on that?

Ms Martin: I am not really sure about that. The commission's issues were in relation to the privacy argument and the procedural safeguards. We do not have an issue with sharing information more widely, as long as appropriate procedural safeguards are in place for tenants should they wish to challenge some of the information that has been raised about them. We do not have an issue with sharing information more freely.

Dr Russell: As I understand it at the moment, one of the issues is, for example, the PSNI sharing information with the housing associations, which might not be as readily given as it would be between the two statutory public authorities of the PSNI and the Department or the Housing Executive. From the commission's perspective, the important thing is that we do not really make a distinction between the housing associations, so there is no real problem with the flow of information. They are carrying out a public function for the purposes of the Human Rights Act 1998, so housing associations are already bound by the provisions of the ECHR. As long as the procedural safeguards are in place, as Claire says, the flow of information — particularly given the issues that members have raised about it being a necessary flow of information to protect other tenants, perhaps — is perfectly fine with the commission.

Mr Campbell: On the subject of the broadening of the Bill, I just wanted to make sure that I understood the issue that you referred to earlier about locality, just so that there is no misunderstanding. In terms of sharing of relevant information about indictable offences, however it would be worded in the Bill, does the commission make any distinction as to where those previous indictable offences occurred?

Dr Russell: No. We need the specifics, perhaps, to illustrate it a wee bit more but, in principle, no. The issue is that, if the purpose is to address antisocial behaviour, is the indictable offence that we are talking about relevant to the aim and purpose of the Bill? If it is an indictable offence that is directly linked to antisocial behaviour, I do not think it really matters where that has occurred.

Mr Campbell: The more serious the type of antisocial behaviour that led to an indictable offence occurring, the more likely — many people believe — that the person convicted is going to move. So the locality thing would almost become null and void, if you were to insist on that. Are you really saying, then, that it is largely irrelevant whether the indictable offence occurred five miles away or 55?

Dr Russell: I do not think that that is the issue. Just to be clear, what Claire was doing was illustrating the fact that, in the previous legislation, locality was in. In the current draft, locality is out. So that has broadened it. The points that members have made —

Mr Campbell: Most people, I think, would welcome that.

Dr Russell: Yes. I can see the strong rationale from the Department as to why that might well be necessary. That is fine. The question is: by removing locality, and if all indictable offences everywhere potentially fall within the scope of the Bill, is that a legitimate aim? What is the Department's understanding with regard to that? It would be very useful if that were teased out so that we could see clearly that the indictable offences that we are talking about are the sorts of examples that members are giving. It may well be that they happened somewhere else. People may have moved, as you suggest, and it would be legitimate for that information to be shared.

Mr Campbell: To be clear on the locality issue, not only are you in favour of "locality", but you welcome its removal?

Dr Russell: Yes, as long as we are absolutely crystal clear that there are sufficient safeguards as to what we are talking about when we say "indictable offences".

Mr Campbell: OK.

Mr Beggs: You question this language of "indictable offences". I am thinking that they could involve violence. You would need to make sure that housing officers dealing with the case are aware of that and that they do not fall to harm. Maybe somebody is involved in fraud: can you believe someone like that if they tell you that they are going to do something? You need to follow it up quickly and make sure that it happens. You are questioning the use of "indictable offences". Can you give me an example of an indictable offence that should not be disclosed? That would be useful. If you are questioning this wording, can you illustrate where it would be inappropriate?

Dr Russell: You put me on the spot: I do not think that I can. I do not know. Can anyone help me out?

Ms L Cochrane: Can I say a little bit more about this? The grounds that the Housing Rights Service was talking about were grounds 1, 2 and 3. It was disputing, if I am right, whether grounds 1, 3 and 5 should still be in. These are the grounds on which you can apply for an order of possession. Ground 2 is the one that is traditionally used for antisocial behaviour. You can use information relating to indictable offences; that provision exists within that ground. The caveat is that it is indictable offences

"committed in, or in the locality of, the dwelling-house."

What we are trying to extract is that there is some kind of relationship, if you like, between the information and the antisocial behaviour. If a visitor is visiting a house and they have a previous indictable offence that is not related to the property — I am trying to think what it would be. OK, say it was —

Mr Campbell: Or if they were a frequent visitor, it may relate to the property.

Ms L Cochrane: I do not think that it says "frequent visitor". It just says a tenant or a person "visiting the dwelling-house".

Mr Campbell: Yes, but what I am saying is that, if the visitor were a frequent visitor, as opposed to just a casual visitor who happened to arrive once —

Ms L Cochrane: Would that make a difference?

Mr Campbell: That is what I am asking you. Would it?

Ms L Cochrane: It could make a difference, if the indictable offence was somehow related to the relevance of this. If you still have ground 1 existing here, which is that you can apply for an order for possession for non-payment of rent, we have already heard that that is not related to antisocial behaviour. What is the relationship between someone visiting a property for an indictable offence and that information being used somehow to seek an order for possession for the tenants not paying their rent? The point is that the legislation is drafted so that you could link those two together, but they have no real relationship.

The Chairperson (Mr Maskey): Can I ask Leanne to tease this out, while Roy and Gregory are trying to elicit something on it? The trigger for requiring any information — before you then take into account relevance and so on, or, in this case, an indictable offence — is antisocial behaviour as alleged by the tenant. So the starting point has to be that antisocial behaviour is going on in that property. Is that not right? That is the trigger for all this, and the legislation is about trying to tackle that. So you could be a tenant who has been convicted of an indictable offence, but if you are not involved in any antisocial behaviour, it does not apply — if you understand what I mean — so why would anybody need the information? This is designed to tackle antisocial behaviour in a property by a tenant or their visitors. In a way, I am trying to come at this from the other point of view. OK, I am sure that there are people with indictable offences living in a lot of places who are not involved in any other activity, illegal or otherwise, or antisocial or otherwise.

Ms L Cochrane: That brings in our second point about procedural safeguards. What you say is reasonable. If you go to court and there is an order for possession, often, on ground 2, the reasonableness argument is taken into account. However, what we would like to see potentially is guidance that sets out how the information should be evaluated and used to ensure that it is only relevant information, or information related to antisocial behaviour. When we look at the legislation through an article 8 right-to-privacy lens, we see that antisocial behaviour is a legitimate aim, but there must be proportionality. The measures here must be reasonably connected to that legitimate aim, and we just want to ensure that, in practice, there are sufficient procedural safeguards.

Dr Russell: Including the right to contest and appeal. That is not really the ECHR point that we are making there, but in order to comply with the UN Covenant on Economic, Social and Cultural Rights, that procedural safeguard needs to be in place, not so much for the rent-related issue but certainly when we are talking about possession of a property.

The Chairperson (Mr Maskey): Roy, back to you.

Mr Beggs: I will start at clause 2(1), which states:

"if the information is disclosed for the relevant purpose".

Under clause 2(8), "relevant purpose" is defined as applying for:

"(i) an injunction under ... the Housing (Northern Ireland) Order 2003 (injunctions against anti-social behaviour)".

So you only get access to the information if you apply for an injunction against antisocial behaviour.

The second part is:

"(ii) an injunction against breach of a tenancy agreement granted or sought on grounds of behaviour ...

(iii) an anti-social behaviour order under any Article of the Anti-social Behaviour (Northern Ireland) Order 2004."

So it has to be for one of those three relevant purposes, or the information cannot be shared. Is that not correct?

Ms L Cochrane: Or, as you will see on the next page, when applying for an order for possession. That is the point that Housing Rights Service was taking issue with. That is quite broad. You can apply for an order for possession on a number of grounds, two or three of which do not appear to be linked with antisocial behaviour.

The Chairperson (Mr Maskey): Yes, like non-payment of rent or something like that.

Ms L Cochrane: Yes.

Mr Beggs: OK. Thank you.

Mr Douglas: I had a couple of questions, and Roy asked one of them. Thanks very much, Roy.

I suppose that this is a general question. You have heard today from a number of MLAs about the problems of antisocial behaviour, which are pertinent to not just Northern Ireland but other parts of the United Kingdom and the Republic of Ireland. On the issues that you have raised, have you looked at other legislation to see what happens in other parts of the UK, as an example, or in other parts of Europe?

Ms L Cochrane: No.

Dr Russell: But I understand that there are similar provisions in England and Wales with regard to sharing information. I would have to go away and check that.

Mr Allister: Similar to these?

Dr Russell: I do not think that it is dissimilar with regard to the purpose of what is being suggested here. I am not entirely sure about the detail of the scope and the breadth, which is really what we are focusing on. Like I say, anything that we say comes with the caveat that we totally accept that the overall purpose of the Bill is legitimate and, as the Department has argued, necessary — particularly, I understand, the sharing of information with housing associations.

Mr Douglas: Thank you, Chair.

The Chairperson (Mr Maskey): No other members have indicated. Again, we have covered a fair wee bit of ground. David, Claire and Leanne, thank you for making your submission and coming to us

this morning to elaborate on that and take members' questions. It is a help to us in deliberating on these issues. It sounds like there is a bit of confusion around the precise purpose of it, the definition, what is relevant and appropriate to disclose and whether that is required or requested. You have given us a lot more food for thought. Thank you for that.

Fra, are you looking back in?

Mr F McCann: I have just one thing. From the past two submissions and listening to members, I think that a lot of the confusion is in and around the definition of antisocial activity. With regard to human rights, is there any clear definition of the terms that we are talking about?

Dr Russell: There is no definition of antisocial behaviour in human rights law, but, like I say, it is a legitimate reason to interfere with the right to private and family life, which, in essence, is what the Bill is about. It is legitimate to do so on those grounds.

Mr F McCann: Thanks.

The Chairperson (Mr Maskey): OK. Again, thank you very much.