

MAYOR & CABINET			
Report Title	Response to Housing Select Committee: Responding to the Recent consultation on creating a mandatory power of possession for anti-social behaviour		
Key Decision	No	Item No.	
Ward	All		
Contributors	Executive Director for Customer Services		
Class	Part 1	Date	7 December 2011

1 Purpose

- 1.1 This report is in response to a request by the Housing Select Committee that their views are reflected in the Council's response to the recent consultation issued by the Department of Communities and Local Government (DCLG) on creating a mandatory power of possession for anti social behaviour.

2 Summary

- 2.1 The Housing Select Committee asked the Mayor to ensure that the Borough's response to the DCLG's consultation on a new mandatory power of possession for anti-social behaviour should be clear in its support for retaining the courts current discretionary powers. This would enable the courts to take into account all of the available evidence before making a decision that is proportionate to the circumstances of the household.

3 Recommendation

The Mayor is recommended to:

- 3.1 Note the consultation response attached as appendix 1 and agree that it be forwarded to the Housing Select Committee.

4 Policy Context

- 4.1 *Shaping our future*, Lewisham's Sustainable Community Strategy for 2008-2020, sets out a vision for Lewisham;-
 'Together, we will make Lewisham the best place in London to live, work and learn'
 All activity to achieve this vision is based on two key principles:

Delivering together efficiently, effectively and equitably – ensuring that all citizens have appropriate access to and choice of high-quality local services

Reducing inequality – narrowing the gap in outcomes for citizens.

- 4.2 In addition, the Council has ten corporate priorities which support delivery of the Sustainable Community Strategy. These include:

- ***Decent Homes for all*** – investment in social and affordable housing to achieve the Decent Homes standard, tackle homelessness and supply key worker housing.
- ***Inspiring efficiency, effectiveness and equity*** – ensuring efficiency, effectiveness and equity in the delivery of excellent services to meet the needs of the community.

5 Background

- 5.1 On 13 September the Housing Select Committee considered a report outlining the latest key housing issues, including a consultation that DCLG had issued on a proposed mandatory power of possession for anti-social behaviour.
- 5.2 The DCLG consultation proposed that landlords would be able to use a new mandatory power of possession where serious ‘housing related’ anti-social behaviour had already been proven. It would be available to all landlords – private and social – and it was intended to speed up the eviction process for those involved in serious crime where findings have already been made in another court.
- 5.3 The Housing Select Committee believed, however, that the court’s power should remain discretionary, so that courts could take into account all available evidence and the circumstances of the tenant and their family and decide not to make an outright possession order where it was reasonable not to do so. In reaching this view the Committee considered a range of circumstances in which an outright possession order would not be a proportionate response and these included victims of domestic violence who might be evicted due to the actions of a perpetrator resident at the property or a tenant suffering from a mental illness or disability who may have been guilty of causing a nuisance or anti-social behaviour but who may be capable of conducting their tenancy in a tenant like manner with appropriate treatment and support. The Housing Select Committee believed that the courts should retain the discretion to make a range of orders proportionate to the circumstances such as an order adjourning the claim for possession either generally or for a fixed term, or a suspended possession order, on terms as to the tenant’s conduct in the future.
- 5.4 The Housing Select Committee also noted that the threat of a possession order could only be applied to people in certain tenures, subjecting them to harsher consequences than owner occupiers who may have displayed similar anti-social behaviour and who would not receive the same level of sanction. If the power of possession remains discretionary it is likely to be used less frequently and this will help maintain equality before the law.
- 5.5 The Housing Select Committee agreed to request that the Mayor ensures that the Council’s response to the consultation reflects these views.
- 5.6 Accordingly a response that reflected these views was forwarded on 7th November 2011 to the DCLG and is attached as appendix 1.

6 Financial implications

- 6.1 The report is for information and has no financial implications.

7 Legal Implications

- 7.1 The Constitution provides for Select Committees to refer reports to the Mayor and Cabinet, who are obliged to consider the report and the proposed response from the relevant Executive Director; and report back to the Committee within two months (not including recess).

8 Crime and Disorder

- 8.1 There are no specific implications.

9 Environmental Implications

- 9.1 There are no environmental implications .

10 Equalities Implications

- 10.1 The response seeks to ensure equality for all residents of Lewisham

- 10.2 The Equality Act 2010 (the Act) brings together all previous equality legislation in England, Scotland and Wales. The Act includes a new public sector equality duty (the equality duty or the duty), replacing the separate duties relating to race, disability and gender equality. The duty came into force on 6 April 2011. The new duty covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

- [i] In summary, the Council must, in the exercise of its functions, have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - advance equality of opportunity between people who share a protected characteristic and those who do not.
 - foster good relations between people who share a protected characteristic and those who do not.
- [ii] As was the case for the original separate duties, the new duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.
- [iii] The Equality and Human Rights Commission issued guides in January 2011 providing an overview of the new equality duty, including the general equality duty, the specific duties and who they apply to. The guides cover what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guides were based on the then draft specific duties so are no longer fully up-to-date, although regard may still be had to them until the revised guides are produced. The guides do not have legal standing unlike the statutory Code of Practice on the public sector equality duty. However, that Code is not due to be published until April 2012. The guides can be found at: <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-duties/new-public-sector-equality-duty-guidance/> .

11 Background Papers and report author

- 11.1 A background paper to this report is DCLG Consultation Paper A new mandatory power of possession for anti-social behaviour: Held by Strategic Housing 5th Floor Laurence House.
- 11.1 If you want any further information on this report please contact Gary Cummins on 0208 314 6155.

A new mandatory power of possession for anti-social behaviour

Consultation Response

Question 1: Do you agree that we should not amend the current discretionary ground for possession for anti-social behaviour?

Lewisham is of the view that the amendment should not be made.

The discretionary ground for possession should remain where criminality is linked to a tenant's housing, through use of the premises in a criminal manner or the commission of significant criminal offences in the locality, but it should not extend to criminality that is not linked in any way to their housing situation.

The proposed amendment would enable an additional and significant punishment on top of the criminal justice system's sanction for those convicted of criminal behaviour namely the eviction from their home. It is our view that punishment of those convicted of criminal offences should be for the criminal justice system, not administered by housing providers.

If the amendment is enacted it would be a very selective additional punishment because it would only apply to those who have a social housing tenancy. Owner occupiers would not be at risk of the loss of home if convicted of these offences and whilst the grounds for possession would also be available to private landlords, it is very unlikely that they would use them if the behaviour did not impact in any way on the conduct of the tenancy. We do not see how the double punishment for one tenure group would fit with the Government's philosophy of "fairness".

Lewisham is concerned that intensifying an individual's exclusion through potential homelessness may exacerbate the individual's circumstances and move them further away from sustainable social integration. Lewisham is also concerned that a stiffening of the anti-social behaviour criteria governing possession orders may impact disproportionately on the vulnerable and excluded individuals and push them into homelessness.

Neither do we believe that the displacement of an entire household on the basis of anti-social behaviour of one member is the most appropriate way forward.

This proposal appears to have originated as an immediate response to the rioting witnessed in many towns and city centres over the summer, yet there is no research or other evidence to demonstrate that the availability of a ground for possession of housing in these circumstances would have any deterrent effect on this type of criminal behaviour.

Question 2: Do you agree that we should construct a new mandatory power of possession in this way?

Lewisham's view is that there is not the need for a new mandatory power. As is pointed out in paragraph 2.1 of this consultation, there is already a discretionary ground for possession on an assured or a secure tenancy if a tenant, household member or visitor has been convicted of using the property or allowing it to be used for illegal or immoral purposes, or has been convicted of an indictable offence committed in the locality of the property.

Schedule 2 of the Housing Act 1985 and Schedule 2 of the Housing Act 1988 set out grounds for possession on secure and assured tenancies, a number of which are discretionary, where the ground must be proven and a court must be satisfied that it is reasonable to grant a possession order, others are mandatory where if the ground is proven the court must grant a possession order. With one exception, grounds of possession related to the behaviour of the tenant are discretionary, that exception being Ground 8 of Schedule 2 of the Housing Act 1988, severe rent arrears.

We believe there are already sufficient grounds for possession based upon a criminal conviction in existence, without the need for any mandatory power.

Lewisham would argue that it is entirely correct that grounds for possession related to the behaviour of the tenant (or other family members) should be discretionary and a judge should always be able to exercise discretion as to whether the behaviour of any individual is severe enough to warrant the serious sanction of evicting a person or family from their home.

Further clarification on the issue of proportionality is required. The guidance states that the proposition was to base the mandatory power on the process for ending introductory tenancies. It then states that recent Supreme Court judgements in Pinnock and Powell, Hall and Frisby confirm that a human rights defence, based on proportionality of the landlord's decision is available. The two points above appear to be contradictory; therefore, further guidance is required to determine how proportionality should be taken into account in the mandatory power process.

Question 3: Are these the right principles which should underpin a mandatory power of possession for anti-social behaviour?

For the reasons given above, it is our view that there should not be a mandatory power of possession. Evicting a person from their home is a very serious matter. When the sole focus is upon speed and ease, justice can become lost. There will clearly be situations where eviction does become necessary, but eviction should remain a last resort, not an easy option.

Question 4: Have we defined the basis for new mandatory power correctly? If not, how could we improve the definition?

Lewisham is of the view that there needs to be further clarification around what constitutes a 'serious housing related offence'. Social housing providers will require suitable guidance/clarification on what constitutes sufficient demonstration of proportionality in cases that they propose to take to court.

Question 5: As a landlord, would you anticipate seeking possession using the mandatory power in some or all of the instances where this would be available?

Lewisham does not anticipate using the proposed powers.

Question 6: Are there other issues related the introduction of a mandatory power for possession for anti-social behaviour that we should consider?

We are concerned about the potential pressure that these provisions will place on local authority housing options services in the assessment of homelessness applications and the provision of advice and guidance to households that are evicted. Local authorities will also have a duty to provide accommodation to families pending a decision on a

homelessness application if they are unable to make a decision before the homeless date and there will be a cost incurred in doing this.

Lewisham is concerned that there is a danger of heading too far in the direction of social housing being seen as a means of achieving social control, as an extension of the criminal justice system, rather than the provision and management of housing.

Whilst the consultation paper acknowledges that possession should always be a last resort and recognises the very positive work through Family Intervention Projects and other approaches, we believe there is insufficient consideration given to the impact that these measures might have upon homelessness. People evicted in these circumstances will face major problems obtaining any further housing. This will have a disproportionate impact on children and young people and those most vulnerable. Families at risk because of the behaviour of their teenage children may be tempted to exclude the child from the family home if they believe their homes are at risk. This may lead to increased family breakdown and youth homelessness. This will in turn place an additional burden on hard-pressed local authority homelessness services and children's services in authorities where families lose their homes as a result of these changes, and for others seeking to work positively to challenge anti-social and criminal behaviour.