

Drugs, Local Authorities and Exclusion Orders – A ‘Township’ Policy?

During the summer of this year the Government announced its intention, as part of its anti-drug package, to introduce legislation which would entitle Housing Authorities to seek exclusion orders against specific individuals for anti-social behaviour. It also indicated its intention to speed up the eviction process against drug dealers residing in local authority estates.

Cormac ODulachain, Barrister, examines the issues raised.

As the law presently stands, Housing Authorities have unfettered powers of eviction based on the notion that local authority tenants are periodic tenants and that their tenancies can be terminated by a simple notice to quit.

The Supreme Court in the case of *The State (O’Rourke) v. Kelly*, 1983 IR 58 confirmed that the District Court’s function in such eviction cases was simply to confirm the validity of the procedural steps required and was not entitled to embark upon an enquiry as to the Housing Authority’s reasons for seeking such an eviction.

The ‘periodic tenancy’ is in reality a legal fiction. Local authority housing is principally allocated to people who have established a need for long term housing. In addition to meeting the basic need for shelter the allocation of a local authority house can also carry with it the right to purchase it in due course. The tenant’s perception and the housing authorities’ intentions are that it be a home for life.

Irrespective of the Supreme Courts legal analysis of the provision and effect of the Housing Acts it is still unacceptable in principle that a person be deprived of their home and shelter by a public authority in circumstances where the facts grounding the

decision cannot be tested or verified. By comparison, our laws now provide for independent appeal mechanisms in many areas such as where persons are dismissed from their employment, where social welfare is refused and where tax assessments are raised.

As matters currently stand, housing authorities, in seeking evictions for antisocial behaviour, make an assessment of a person’s alleged misbehaviour based on evidence that is secretive, primarily hearsay and untested and where the person or persons affected are not afforded any of the rights conferred by the principles of natural justice.

The Government appears to be intent on reinforcing an eviction process that is already objectionable.

It could be argued that the government’s proposals will mitigate the harsh elements of the existing system in allowing specific family members to be excluded as opposed to the eviction of an entire family.

It may be that there is a case to be made for society to have available, as a protective measure, exclusion orders which would be capable of being applied to all citizens in very special and defined circumstances and for limited periods of time and where such would be subject to judicial control and assessment.

What is in issue is the legislative response that is required to the drugs problem. A response which involves severe sanctions should apply equally to all citizens and not selectively and discriminately on the basis of housing tenure.

The detrimental effects on communities of the misbehaviour of individuals are properly a matter to be regulated by public law and not a matter which falls within the province

of housing law.

The current proposals are not along such lines. There are fundamental features of the proposed legislation which call for serious debate.

For example, what is to be meant by antisocial behaviour?

What function is it of a housing authority to police behaviour?

Is social order a matter for the gardai or a Housing Authority?

Why is it that only one sector of society, those in public housing, are to be subject to exclusion orders?

Are exclusion orders to be punitive protective measures?

Are exclusion orders to be concerned with current or past behaviour?

On what evidence and on what standard of proof are such orders to be granted?

How and by whom are decisions to apply for such orders to be made?

Are these orders to be directed at a handful of people or at the thousands of addicts who are not alone addicts but petty suppliers and in many cases, aids victims?

What emerges from these questions posed is a state of confusion about the purpose of such legislation and of the function of housing authorities and their role in community development. The notion that a housing authority should police the behaviour of its tenants is a concept that is medieval and feudal.

The essentially penal nature of these proposals is confirmed by the further proposals that housing authorities be empowered to refuse housing to people with

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drug related convictions and for tenants who are evicted or the subject of exclusion orders to be refused any other form of housing support, i.e. supplementary social welfare housing allowances.

The introduction into Irish society of a dual system of law whereby tenants of local authorities are subject to sanctions which do not apply to the rest of the community is objectionable. Drug pushers in private housing will not be amenable to the same sanctions. A person who has purchased a house from a local authority will be free from the sanctions applicable to tenants residing in the same street, estate and neighbourhood.

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Finally, there is a real danger that 'antisocial' behaviour will be so loosely defined in legislation that the legislation could become a charter for victimising and discriminating against every 'misfit' in society.

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