A Medical Lens and a Moral Filter: Social Landlords and their Control of Antisocial Behaviour Perpetrated by Occupants with Mental Impairments

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Volume Two of two volumes

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July 2018

CHAPTER 5 The Medical Lens and the Moral Filter

Introduction

This chapter considers how relevant perpetrators are constructed in social landlords' ASB management practice and which model of disability explains this. The data collected using ethnographic methods has been thematically analysed to provide descriptions of case-management with the aim of explaining that practice.[1] Thus, this chapter explains how housing professionals (in the study, chiefly "officers") operate their wide discretion in ASB case-management. It argues that their understanding of disability in this context is affected by their construction of their professional role and their position as street-level bureaucrats. Further, their need to understand disability relates to their responsibility to control ASB given the prospect of litigation which is a risk.[2] Officers' construction of their role and risk affect their decision-making, the former given attention here, the latter in the next chapter. Given that there is, at least a possibility of litigation in all ASB case-management, this chapter sets out how officers investigate the causes of perpetrators' behaviour (i.e. the gathering and assessment of "evidence"). As disclosure of perpetrators' impairments are rare, it explains how officers fill gaps in their knowledge. As the title suggests, this process relies on a construction of "evidence" (and therefore perpetrators) consistent with the medical model: the prospect of litigation forces this necessarily individualised assessment of "evidence". Yet this individualised focus leads officers to also subject it to a moral construction. Throughout, officers' attitudes influence their case-management and this chapter illuminates their decision-making at this conflicted policy intersection making arguments in four sections:

The first section argues that officers manage ASB cases **circuitously** rather than linearly, mirroring the ongoing (in some cases contractual) relationships between social landlords and occupants, both perpetrators and complainants. This continual process of case-management is described and is also argued to be a consequence of the responsibility for the control of ASB that has been bestowed upon social landlords. As this responsibility has been further delegated to front-line officers, their main concern is that the ASB stops[3] and they continually investigate, evaluate, re-evaluate

[1] Martyn Hammersley, 'What's Wrong with Ethnography?' (1990) 24 Sociology 597, 605
[2] Examined in Chapter 6
[3] 6.3

and reflect upon evidence. Consequently, officers' constructions and re-constructions of perpetrators have a reflective relationship with those perpetrators' responses to interventions (ranging from support to litigation).

The second section argues that officers' construction of professional identities and their emotional responses (also further considered in the next chapter) affect their approach to case-management. Officers see themselves as expert in housing and ASB management rather than in the provision of support. Consequently, they often construct other medico-welfare professionals as better suited to this role. However, officers may find these colleagues obstructive and disappointing in this regard and also because they rarely co-operate in the hunt for evidence (information-sharing) which is necessitated by case-management. This is related to constructions of perpetrators via the models of disability.

The third section argues that officers fill **the evidential gap** via a **medical lens.** Investigations frequently cause officers frustration as disclosures are rare and record-keeping in housing management is poor. Direct questioning of relatives and other searches may prove fruitless and officers are consequently reliant on guesswork informed by training, observations, "common-sense", professional intuition and gut instinct and folk psychiatry. Even where "robust" evidence is present, it must be examined in relation to these factors. Whichever "evidence" of perpetrators' impairments is available, examination under this **medical lens** is keenly focused on the individual. Thus, officers use the medical model to construct relevant perpetrators and their ASB.

The final section argues that officers view evidence of perpetrators' impairments and behaviour through a device developed in this thesis called the **"moral filter."** This **moral filter** may in part be understood via the moralising and psychologising dimensions of folk psychiatry that allow for the moral adjudication of perpetrators' intentions (malice) motivating ASB or irresponsibility in their intoxicant misuse. Additionally, folk psychiatry's medicalising dimension allows for an explanation where intention is absent due to lack of capacity. However, **moral filtration** extends beyond these dimensions to evaluate perpetrators' hygiene, dress, aspiration, education or

employment that may, where favourable, lead officers to sympathise with or even pity them. This moral adjudication may also reveal itself in scepticism of the perpetrator's identification with disability or suspicion that the perpetrator or their representatives have manipulated the system. There is no clear sequential separation between the weighing of the medical and the moral, the two for the most part being intrinsically bound in their purpose, each reciprocally aiding the understanding of the other in the construction of the perpetrator. Case-management and the continual evaluation of "evidence" permits officers to construct and re-construct perpetrators in their passage through medical lens and moral filter. However, this weighing of "evidence" often restricts officers' understanding of disability. Lens and filter lead to a binary assessment of perpetrators that divide the deserving from the undeserving. The outcomes, as examined in Chapter 6, are that those who pass the moral filter gain officers' approval and are likely to receive better outcomes in terms of case-management[4] than those who make slower progress or get stuck in it.

[4] Examined in Chapter 6

5.1 Reflective Case-management Across the Four Organisations

This section provides an overview of the four organisations' operational approach to ASB management. Analysis of the data collected using ethnographic methods provides a description[5] of this practice and a background to answering: which model of disability best explains how perpetrators are constructed in social landlords' ASB management practice? This overall approach was *de facto* policy as practice[6] While reference will be made here and in the next chapter to the organisations' local policies as appropriate, it should be noted that while all had policies on ASB, support and equality, they were largely discrete; the ASB policies only gave brief recognition to vulnerable perpetrators.[7]

For the four organisations, responses to complaints and consequent case-management required investigation and the collection of evidence (knowledge or information).[8] The gathering and weighing of evidence was continuous throughout the lifetime of a case alongside the assessment of risks. While risk assessment is important in case-management, it will only be referred to here in passing, as it is the central issue of the next chapter. For present purposes, it is sufficient to say that all elements of case-management are related, reflective and continuous as officers constantly assess and try to make sense of behaviour. Thus, reflective weighing of evidence in case-management turns on the assessment of risks of the behaviour *per se* which may be broad given the extensive definition of ASB.[9] The breadth of ASB and its risks make its management circuitous and non-linear.

The continual investigation and collection of evidence was also affected by accountability to complainants who tended to be victims and neighbours and were in all cases occupants of the landlords' housing stock. These complaints were rarely ignored. This, as the next chapter will argue, was experienced by officers as a risk and affected officers' decision-making.

[5] Martyn Hammersley, 'What's Wrong with Ethnography?' (1990) 24 Sociology 597,605
[6] 4.7
[7] 6.3.1
[8] 1.3.3; David Cowan, Christina Pantazis and Rose Gilroy, 'Risking Housing Need' (1999) 26 J.L.Soc'y 403; EA 2010, s 15
[9] 1.2.2

A consequence of accountability is that the effectiveness[10] of the interventions and therefore the outcome of the case is ever present in officers' minds. Accountability also results in the simultaneous assessment of other risks, principally to the victim, the most recently devised formal means being a risk assessment matrix ("matrix").[11]

While all officers in all four organisations in the sample followed this reflective approach to a greater or lesser extent in every case, their continual weighing of evidence and risks is difficult to determine from a single quote. Moreover, the ongoing process is illustrated in analyses of cases considered in this and the subsequent chapter. As such, there is considerable cross-referencing between the two. Additionally, while the risk-driven reasons behind the continual search or 'information binge'[12] are explored in the next chapter, it is sufficient to note here its relationship with the prospect of a disability-related challenge. Landlords may counter this using arguments about evidence: evidence of how a perpetrator's impairment was responded to with offers of interventions may be used to justify the reasonableness or proportionality of the landlord's response.[13] An absence of evidence may be used to support an argument that the landlord lacked knowledge.[14] Thus, evidence and its collection and weighing are very important as the spectre of litigation looms on the horizon of ASB case-management.

[10] David Cowan and Morag McDermont, *Regulating Social Housing: Governing Decline* (Routledge-Cavendish 2006) 138
[11] 6.1; Fig 6.1
[12] Simon Halliday, *Judicial Review and Compliance with Administrative Law* (Hart 2004) 77
[13] EA 2010, s 15(1); ex "justification" - DDA 1995, s 24(1)(b)
[14] EA 2010, s 15(2); 3.3.1

5.2 Housing Officers: Constructions of Professional Roles and Case-management

This section will consider how officers' constructions of their roles and identity, influences their day-to-day decision-making. It specifically considers their work with other professionals and pressure of work.[15] Central to these pressures is the breadth of responsibility[16] bestowed on them to manage ASB cases that affects the continual, circuitous and non-linear process of case-management. These street-level bureaucrats are risk averse but must at the same time manage the risks of ASB considered in the next chapter. Officers' constructions of their own professional identity and that of other medico-welfare professionals nevertheless affect how they construct their responsibility in managing the risks of ASB. The wider impacts on case-management are explained in Chapter 6. The present concern is how officers' constructions of professional identity affect their case-management which in turn affects their constructions of perpetrators. This therefore also addresses "which model of disability best explains how relevant perpetrators are constructed in social landlords' ASB case-management practice?"

Echoing earlier studies,[17] the findings suggest some officers constructed their role as caring and their emotional language suggested their concern, sympathy, empathy or pity. The more sympathetic responses of officers are considered later particularly in relation to non-concealable impairments.[18] However, other officers had a more pragmatic construction of their approach seeing themselves as "tough", having as HO15 said:

> [I have] a heart like a swinging brick.

This more pragmatic outlook was typified by HO20 who, when asked if he felt sorry for Zac and Walter, replied:

[15] Training is considered at 5.3.4 and 6.4.2.3
[16] 1.2.1
[17] Rionach Casey, 'On Becoming a Social Housing Manager: Work Identities in an 'Invisible' Occupation' (2008) 23 Housing Studies 761, 766; 1.2.4
[18] 5.3.1

> Yeah. But at the end of the day, I get paid to do a job…

HO20 thus constructed their sympathy in managing Zac and Walter's cases to be limited by their professionalism. Yet even those officers who viewed themselves as tough or objective may have a more sympathetic response to *some* perpetrators, depending on how they construct them. These constructions are subject to a medical and moral assessment that are also affected by how perpetrators react during encounters with officers.[19] Thus, as will be noted throughout sections 5.3 and 5.4, officers' emotional responses, of sympathy, empathy and pity, as suggested by language they used, had a role to play in their construction of perpetrators' in their passage through the medical lens and moral filter. This may in turn affect case-management particularly how much leeway is afforded to perpetrators in their engagement with interventions.[20]

Irrespective of how officers constructed themselves as pragmatic or sympathetic, the findings supported the literature describing how they constructed their medico-welfare colleagues in particular, the tense, mistrustful relationship they have with social workers.[21] Thus, officers used language indicating frustration with these colleagues considering support to be within that profession's realm of expertise.[22] Having explained in the focus group[23] that social workers frustratingly pass responsibility back to them when perpetrators do not engage, HO2 said:

> We're housing officers who are maintaining tenancies. We're not social workers… if they want to stay there with support from social services we'll do it but it's their responsibility for people's health.

That officers do not consider themselves as expert in the provision of support[24] is further illustrated by their expressions of disappointment with other medico-welfare

[19] Steven Maynard-Moody and Michael Musheno, *Cops, Teachers, Counsellors: Stories from the Front Lines of Public Service* (University of Michigan Press 2003) 9
[20] 6.3.3
[21] Bridget Franklin and David Clapham, 'The Social Construction of Housing Management' (1997) 12 Housing Studies 7, 10; 1.2.4 and below HO2
[22] Bridget Franklin and David Clapham, 'The Social Construction of Housing Management' (1997) 12 Housing Studies 7, 10; 1.2.4
[23] Regarding Lorraine's vignette
[24] 5.2

professionals involved in this field: while social workers may feel reciprocal frustrations towards officers,[25] the consequences of ineffective multiagency functioning may be serious for perpetrators like Ken (a hoarder). In one-to-one interview, HO2 seemed very frustrated with the obstructive approach of medico-welfare professionals:

> [E]arly on in the process we involved social services and said… can we get [Ken] psychiatrically assessed because if we can get him help, we [will] but we need to know… [T]he psychiatrist agreed to go and see him… which was a disaster… she pulled up outside the house… and drove away… when we asked her why she said it was obvious nobody was living there but we told her the condition of the property before[hand]... So that assessment wasn't done and social services washed their hands of him… [We weren't trying to pass the buck]. He has got these conditions and… doesn't have a GP, what is he going to do? [How can he get]… his next prescription? But they didn't want to know.

HO2 assumed that social services would be able to advise and thus social workers and other relevant agents were constructed as more "qualified" than the officers in providing support. This reliance on experts both the construction of Ken in the *requirement for evidence* to *justify the response* ("help") is a medical model perspective.[26]

Officers' frustration with obstructive medico-welfare professionals tended to enhance their emotional response. Pity suggests disability is a personal tragedy for an individual requiring the assistance of charity, for Oliver a facet of the individual model.[27] Sympathy and empathy may also suggest a sharpened focus *on the individual* and therefore a medical model understanding. This may lead the officer to try to keep perpetrators like Ken to remain housed and therefore socially included. Yet this can also be explained via the social model. What is important to a social model construction is a focus on the barriers to equality and inclusion i.e. discrimination.

[25] Bridget Franklin and David Clapham, 'The Social Construction of Housing Management' (1997) 12 Housing Studies 7; 1.2.4
[26] 1.2.4
[27] Mike Oliver, 'The Individual and Social Models of Disability' Paper presented at Joint Workshop of the Living Options Group and the Research Unit of the Royal College of Physicians Monday 23 July 1990, 5 http://disability-studies.leeds.ac.uk/files/library/Oliver-in-soc-dis.pdf accessed 20 February 2017

HO2 had particular sympathy for Ken which will be revisited[28] yet this case was typical of those of failed support. The four organisations tended not to wash their hands of perpetrators, instead attempting to find alternative sources of support[29] for them. However, as explained in the next section, frustration with obstructive medico-welfare professionals extends beyond their provision of support to their willingness to provide evidence[30] (information-share) which also may be key to the appropriateness of the intervention.[31] Social model outcomes here would involve perpetrators in decision-making and this is further considered in the next chapter. Thus, the process of finding evidence and support are both affected by how officers see their role and those of other professionals and also illustrate the operation of the models in reflective case-management.

[28] HO2 and Ken and dad page 17
[29] 6.3.3.3
[30] 5.3.2.2
[31] 6.4.2.1

5.3 "The Medical Lens": Evidence and the Evidential Gap

The section addresses "which model of disability best explains how relevant perpetrators are constructed in social landlords' ASB management practice?" The need for evidence or "*knowledge*" in these cases has already been explained as the part of the everyday work of officers[32] and therefore part of the professional discourse of housing management: in access to social housing.[33] This keen individualised focus on evidence of impairment is consistent with a medically-based construction yet in ASB, this is compounded by the management of risk[34] and accountability[35] considered in the next chapter.

Officers' awareness of a mental impairment from the outset of a case were rare: this is unsurprising given that people because anticipated stigma may inhibit identification and disclosure.[36] However, officers were largely frustrated by perpetrators' failure to disclose. In the sample of cases, the most common were therefore those where officers suspected there was a mental impairment[37] as the case progressed and this was either eventually confirmed by a third party or not.[38]

A medical report provides robust confirmation of impairment. However, these are unlikely to be produced until litigation is underway.[39] Confirmation of any description was unusual for the majority of time in case-management. This section therefore also addresses how officers' professional role and their understanding of it affects their day-to-day decision-making. It argues that because officers operate in a grey area of guesswork, they must rely on "common-sense" assumptions and intuitive judgements. These guesses and assumptions about the causes of perpetrators' behaviour leads to "diagnosis"[40] and constitutes "evidence" of their mental impairment. Training has a role to play here, yet this default to "common-sense" is typical of the professional housing role: the pressures of ASB case-management upon officers as street-level

[32] David Cowan, Christina Pantazis and Rose Gilroy, 'Risking Housing Need' (1999) 26 J.L.Soc'y 403, 410-411; 1.3.3
[33] 1.1.1
[34] 1.3.3.
[35] 1.3.2
[36] 3.1.1; Cf 5.4.5.1
[37] Cf disclosed diagnosis below – these cases mainly related to physical or sensory impairment; 1.3.3
[38] Figure 4.1, Chapter 4
[39] 3.2.1.2
[40] Steven Maynard-Moody and Michael Musheno, *Cops, Teachers, Counsellors: Stories from the Front Lines of Public Service* (University of Michigan Press 2003) 39

bureaucrats ensure their reliance on "common-sense". These "common-sense" explanations may also be explained by folk-psychiatry.

Analysis of the data revealed certain factors[41] or indicators that influenced these "common-sense" explanations and these were eventually grouped into categorisations in Table 5.1 below.

Table 5.1 Factors Influencing Assessments of Perpetrators

Medical Orientation	Welfare Orientation
Visible Evidence Based (Medical) Old age / elderly Disclosed diagnosis Disclosed medication Physical impairment Sensory impairment Learning difficulty Capacity	**Social-class based** (Unusual) wealth Dress / lack of Speech regional accent / lack ("posh") Intelligence and / or educational aspirations Church / religious belief Décor
Folk Psychiatry Solitary existence Sexual / gender issues Other: talking to self; howling; hearing voices; delusional; name-calling; suspicious; unpredictable / aggressive	**Responsibilisation** Hygiene Rejection by agencies (no fault) Rejection of support (fault) Intention / malice "Just the way they are" Intoxicant (drugs and alcohol) misuse

While Chapter 4 provided a detailed explanation of how coding and grouping was developed, some observations may be made here. These codes broadly fall into two orientations: medical and welfare although some factors could fall into both e.g. intoxicant misuse could be seen as medical.[42] There was a clear moral influence on the welfare-oriented factors listed on the right-hand side of the table although there is a moral influence in folk psychiatry relevant to capacity and intention. Those in the bottom half bear a clearer relationship with national policy that prizes responsibilisation[43] and effects this via welfare conditionality. Responsibilisation is also present in some factors in the top half e.g. education. Medical indicators

[41] 4.7
[42] Table 4.4
[43] 1.2.1 and 1.2.5

considered on the left-hand side of the table reveal the 'power and dominance'[44] of the medical profession and medical model. It should be noted here that in saying officers used the medical lens, it means they constructed them via the medical model. The codes and therefore the constructions derived from the language officers used.[45]

Officers' process of investigating, gathering and weighing evidence suggested by the indicators relied on the following methods and influences:

1. Observation (which mostly relate to indicators grouped together in Table 5.1 as "Visible Evidence Based")
2. Inquiry
3. "Common-sense", professional intuition and gut instinct
4. Training on disability and behaviour
5. Folk psychiatry (relates to indicators grouped together in Table 5.1)

Before considering these methods, it is important to explain that although they will be considered separately, they do not operate in isolation of one another. This is because even though "evidence" may be guessed on the basis of indicators, the non-linear process of case-management means that officers continue to investigate, gather and weigh it including that which may be considered more "robust". Thus, while, methods 1 and 5 as explained above clearly correspond with two of the categories in Table 5.1, other methods of the five may influence officers' constructions of each perpetrator. In addition, consequent on the non-linear process of case-management, operation of lens and filter are inextricably entwined in these constructions. However, to demonstrate some clarity of analysis and explanation of the processes at work, the methods are all considered here in 5.3, and this section covers the medical lens and the indicators in the medical grouping. Welfare-oriented indicators are considered under 5.4 below. Where the codes are specifically referred to, they are emboldened in the text, unless they have their own heading e.g. solitary existence, sexual issues.

[44] Mike Oliver, 'The Individual and Social Models of Disability' Paper presented at Joint Workshop of the Living Options Group and the Research Unit of the Royal College of Physicians Monday 23 July 1990, 5 http://disability-studies.leeds.ac.uk/files/library/Oliver-in-soc-dis.pdf accessed 20 February 2017
[45] 4.7; Introductory Chapter page 27

5.3.1 Observation as a Method of Gathering Evidence

The medical model seems an obvious explanation of officers' construction of relevant perpetrators: when they "diagnose" perpetrators' non-concealable **physical** or **sensory impairments** considering this "robust" evidence. Yet, observations were also linked to other diagnoses and comparisons drawn. Additionally, officers' emotions were influential.

HO10 observed Ben's impairments when he visited Org.1's offices at their invitation following a neighbour's complaints of noise nuisance:

> [Ben was] so worried [he] took an epileptic fit in the interview room… and the upshot of it all was that he… [had] a hearing impairment and… other medical issues that… [i]nterfered with his sleep-pattern.

HO10's thus related Ben's worry to his fit, a medically-based approach. A concerned neighbour had disclosed Ben and his wife Christine's **hearing impairments** and **learning difficulties** to HO10:

> …as soon as I saw them, I thought, you're quite vulnerable... it was quite obvious that perhaps there [were] some learning difficulties there.

This appears deterministic, yet emotional responses also affected officers' constructions. Local policy defined vulnerable perpetrators, to include those with "mental illness or drug and alcohol misuse"[46] However, in contrast with Walter, who misused alcohol and illegal drugs, [47] HO10 equates Ben and Christine's vulnerability with their **learning difficulties.** This suggests a more moral understanding of vulnerability as reduced agency for one's circumstances or actions.[48] However, evidence beyond observation was never any more "robust" than the report of the concerned neighbour. The consequences of constructing someone as vulnerable

[46] Org.4
[47] 5.4.4
[48] 3.4.2

made officers feel guilty as HO14 said of their involvement in possession proceedings against Harry:

> [I]t's something that plays on your mind as a person who has done something like that to somebody else… because… you feel like they are vulnerable people in society… it's just a shame…

Old age is associated with frailty that HO2 observed in Ken, leading them, emotionally, to draw comparisons with their father aged in his seventies:

> [I]f I saw him walking round like that and no one cared, how bad could that be?

Thus, officers' emotions including guilt and pity and perpetrators' conformity with constructions of vulnerability enabled officers to accept as robust observable evidence of their impairments. However, while favourable for Ken, pity is criticised as a feature of the medical model.[49] A tendency to compare also leads to an individualised focus:[50] an examination of the person and the effects of the impairment on them, again consistent with medically based i.e. medical model constructions rather than a social model approach that would consider the effects of the discrimination.

The medical model approach is further evidenced by employment of multi-observational verification. HO1 explained various cues suggesting **hearing impairment** where this is not disclosed:

> [T]here's a lot of things that give people away who are hard of hearing. They speak a lot louder; they'll always look at you when they're speaking to you because they can either hear better or they can lip-read…

Thus, officers seldom relied on one source of evidence seeking further verification e.g. through investigation of other sources to ensure evidence was robust.

[49] Above page 11
[50] 2.3.4

5.3.2 Inquiry as a Method of Gathering Evidence

Officers' formal investigations in the examination of their organisation's records or direct questions of the perpetrators, their family or friends or professionals involved in their care suggests a medical model approach. These investigations are summarised in the following table.

Table 5.2 Inquiry as a Method of Gathering Evidence

Officers may contact			Officers may search	
Perpetrator	Family	Other agencies	Own records	Internet

Inquiry will now be considered under two headings:

1. Examination of the landlords' own records for past disclosures of impairments
2. Direct questioning of perpetrator, family and other agencies and internet searches.

5.3.2.1 Examination of the Landlords' Own Records for Past Disclosures of Mental Impairments

Practice in the organisations allowed for the possibility of evidence of disclosure of disability to be present on the "house file". These may include original housing applications ("sign up"). Figure 5.1 shows a housing application form of one of the four organisations which asks applicants to make disclosures about impairments of themselves or members of their household. However, in the sample of case files, no such disclosures had been retained, nor was there any evidence of subsequent tenancy monitoring. That such record-keeping was generally poor was confirmed in interview and focus groups. Further, the transfer from paper to electronic records at Org.1 led to the destruction of some data.[51] Additionally, off-site archiving of paper

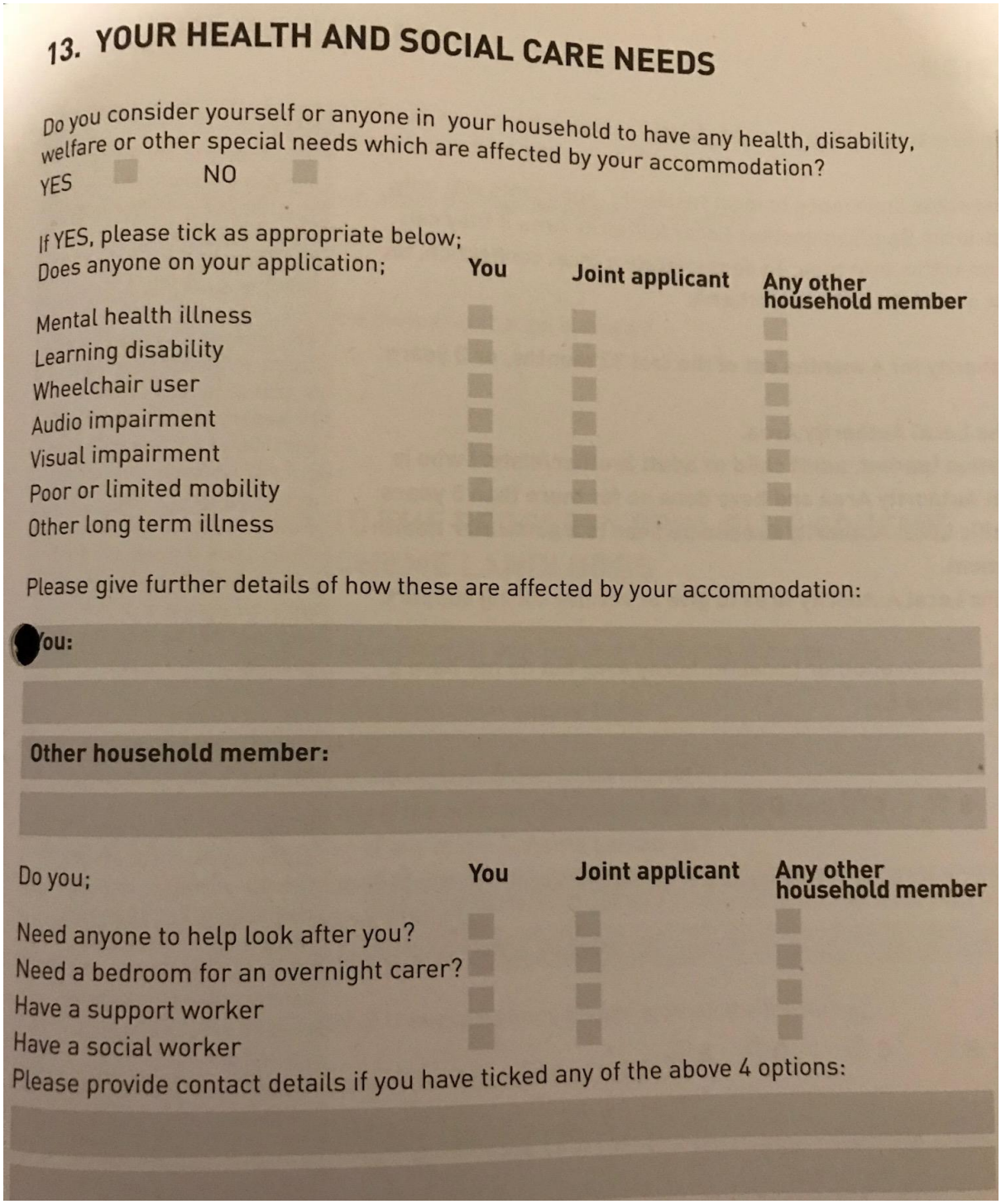
[51] 4.5.2.2 - HO1

records was commonplace compounding my difficulties in finding such disclosures (e.g. Org.3).[52] In the unlikely event that any evidence had been retained, HO5 explained in Org.1's focus group that officers evaluated it but constructed it as vague and insufficiently detailed to be "robust":

> [W]e've got… profiling information… [from] sign up but it… depends… on how much detail someone goes into.

Landlords' records of disclosures made pre-tenancy or in subsequent monitoring were therefore, on the whole, an unreliable source of evidence in contrast with the necessary rigour that would be demanded in litigation.[53] .

[52] 4.5.2.2
[53] 3.2.1



13. YOUR HEALTH AND SOCIAL CARE NEEDS

Do you consider yourself or anyone in your household to have any health, disability, welfare or other special needs which are affected by your accommodation?

YES ☐ NO ☐

If YES, please tick as appropriate below;

Does anyone on your application;	You	Joint applicant	Any other household member
Mental health illness	☐	☐	☐
Learning disability	☐	☐	☐
Wheelchair user	☐	☐	☐
Audio impairment	☐	☐	☐
Visual impairment	☐	☐	☐
Poor or limited mobility	☐	☐	☐
Other long term illness	☐	☐	☐

Please give further details of how these are affected by your accommodation:

You:

Other household member:

Do you;	You	Joint applicant	Any other household member
Need anyone to help look after you?	☐	☐	☐
Need a bedroom for an overnight carer?	☐	☐	☐
Have a support worker	☐	☐	☐
Have a social worker	☐	☐	☐

Please provide contact details if you have ticked any of the above 4 options:

Figure 5.1 Question 13 of a housing application form

5.3.2.2 Direct Questioning and Internet Searches.

As housing records failed to provide a reliable source, in their hunt for "robust" evidence, officers sometimes asked direct questions. These were unlikely to be of the perpetrator themselves suggesting some sensitivity or an awareness that stigma poses a barrier to identification and disclosure.[54] Thus, HM3 commented:

> We can't say to someone you know, "d'you know what I think you might have a mental health issue"

Instead, officers approached relatives hoping they may **disclose a diagnosis**: HO12's quest for evidence of the mental impairment of Larry, who shouted at neighbours and constantly tapped his feet, involved pursuing several lines of inquiry:

> I tried to ring his dad… [but he] didn't seem to want to cooperate with us so… we couldn't really force the issue… [when visiting Larry's flat his carer] just happened to walk in by chance… she [informed me he'd] got a CPN who visits… once every [fortnight] and he gets an injection once a month. I got a bit more into his medical history through contact with the CPN [saying]… we are looking to engage with yourself, we need to address these issues but we need the full picture…

Thus, medical evidence may be disclosed in conversations between officers and medico-welfare professionals and this may particularly arise where discussions concern the appropriateness of support.[55]

Given officers' view of their own expertise,[56] the privileged position accorded medical knowledge 'in the public imagination',[57] and the dominance of the medical profession,[58] it is unsurprising that officers may approach medico-welfare professionals involved with the perpetrator to find evidence which they saw as medically "robust". As HO9 suggested:

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[54] 3.1.1
[55] 6.4.2.1 - defensively twofold
[56] 5.2
[57] Bryan S Turner, *Medical Power and Social Knowledge* (Sage 1995) 47; 1.3.3
[58] Introductory Chapter, Oliver

> I know from my past experiences that when I'm dealing with situations like this … one of the first things I do [is] try to establish what exactly the problem is and… find out as much background information… as I possibly can… with regards to any illness [the]…person may have… [F]irst of all contact[ing] social services and the community health teams and establish[ing] whether there [are] any historical records of… involvement with the perpetrator…

Such information may be acquired through information-sharing practices between agencies. Confirming Cowan and McDermont's observation that these practices are common,[59] Org.4's ASB policy made reference to the monthly meetings of an information-sharing network. The purpose of these meetings was to share information with other social landlords, police, local authority and health and welfare services on perpetrators of ASB and discuss possible interventions and remedies. However, HM4 appears frustrated in their attempts to gain confidential information from mental health teams:

> [Not to] be an open door… We have not got a relationship with our mental health team…

The potential for problems with sharing confidential information has already been noted.[60] Yet the pursuit of evidence including confidential information from a team that would include social workers[61] seems so key to the progress of case-management, especially where litigation is contemplated,[62] that HO9 and HM4 seem unaware of this conflict.[63] It may also breach the CIH[64] codes of ethics that, like that of the BASW,[65] demands respect for the confidential information of others. This lack of awareness of the CIH code in particular may be because, as noted, officers' membership of the CIH is not obligatory.[66] The matrix[67] contains a consent to sharing information presumably

[59] David Cowan and Morag McDermont, *Regulating Social Housing: Governing Decline* (Routledge-Cavendish 2006)136; 1.3.3
[60] 3.3.1
[61] https://www.rethink.org/diagnosis-treatment/treatment-and-support/cmhts/staff accessed 17 February 2017; 1.2.4
[62] 3.3.1
[63] 2.3.5; 3.3
[64] http://www.cih.org/resources/PDF/Marketing%20PDFs/Code%20of%20ethics%202015.pdf accessed 20 January 2017; 3.1.2
[65] http://cdn.basw.co.uk/upload/basw_95243-9.pdf accessed 20 January 2017; 3.1.2
[66] 1.2.4
[67] 6.1

designed to remedy this conflict. However, use of this form largely post-dated the data collected in the study and is focused on victims in any event. Nevertheless, the manifest disappointment that medico-welfare professionals cause in frustrating officers' attempts to obtain this evidence of perpetrators' difficulties underlines the medical model focus of the latter professionals in ASB case-management.

As other professionals mostly proved to be a disappointment,[68] inquiries may go further. Having discovered that during criminal proceedings, Annabelle who held noisy late night parties had been sectioned under MHA 1983 and released, HO9 wanted to know why:

> *Obviously,* we wanted to find out… I… [found] out what her… issues were… because the support worker… told me what medication she was on… So I googled [it]… and… it's… for… bipolar sufferers.

Having gained intelligence from the support worker, HO9 pursued more inquiries about **medication** despite the seemingly "robust" evidence about sectioning. HO9's rationale is "common-sense" – use of the word "obviously" suggests they like anyone would want more evidence. Thus, where officers observed a perpetrator's **medication** at their premises but did not know its purpose, "common-sense" may drive their internet-based investigation of the use of the drug enabling "diagnosis".[69] This individualised approach best explained via the medical model is pragmatic given their role in ASB case-management and the ultimate possibility of litigation.

In the absence of alternative approaches to gathering and verifying evidence, intuition or "common-sense" may be employed in their own right.

[68] 5.3.2.2
[69] 5.3.2.2 - HO9 internet search

5.3.3 "Common-sense", Professional Intuition and Evidence

Officers often weighed observed or disclosed evidence as to whether it was consonant or dissonant with their own "common-sense", professional intuition, gut instinct and experience.[70] Ken had disclosed to HO2 that he had neuropathy in his feet that caused problems with ambulation.[71] HO2, however, focused on Ken's behaviour in constructing his concealed[72] mental impairment:

> This… man… is not well, maybe not for the reasons he will tell you…

The mental health issue was confirmed in evidence:

> …through the court case [he was] psychiatrically assessed… [and]… diagnosed with borderline personality disorder.

Officers may thus, as Hunter and others argue, have a 'degree of faith in their own intuitive sense regarding the 'legitimacy' of a case'.[73] Thus, intuition may allow officers to accept such evidence, although scepticism or even cynicism may make them doubt reports,[74] perhaps especially in cases of late disclosure.

Behaviour may also fit with wider "common-sense" constructions of mental health issues and become "evidence". Thus, while officers were sometimes baffled by behaviour, they suggested mental impairment because a perpetrator's actions otherwise made no sense. HM2 described perpetrators as "clearly having issues" and in clarifying this indicated their "common-sense" approach:

> [It's their] behaviour, the hoarding, the way they dismiss their solicitors immediately before a hearing, then they get others for next week, they represent themselves in court… it's not things that rational people would do.

[70] Reliance on experience is considered throughout this chapter
[71] 5.3.1
[72] Erving Goffman, *Stigma: Notes on the Management of a Spoiled Identity* (Penguin 1990); 3.1.1
[73] Caroline Hunter and others, 'Reconfiguring Knowledge Hierarchies? The Weighting of Medical Evidence in Homelessness Assessments in England' (unpublished) 16; 5.4.5.3
[74] 3.2; 5.4.5.3

HM2 takes no account of alternative explanations including cuts to legal aid[75] that may make self-representation at court a necessity rather than an indication of mental health issues.

Thus, in their continuing search for evidence, officers as typical street-level bureaucrats, relied on "common-sense" understandings of what drives human behavior.[76] This is implicit in their use of the word "obvious"[77] and in their comparisons of cases with previous[78] professional[79] or personal experience: HO20 admitted drawing on his memories of his father's alcohol dependency in managing Walter's[80] case.

Officers' reliance on "common-sense" encourages stereotyping: HO1 deduced that Ivan was experiencing hallucinations from evidence in his neighbour's ASB diary that suggested he had been home alone with no visitors but was arguing:

> [E]ntries… where, I don't know whether he has a bit of an obsession with the marines… [the neighbour]… said… you would get up in the morning and all [his]… windows… would be up and he would be in the garden in a marines t-shirt doing press-ups and talking to other fellas as if they were… training for the army. I asked his mum and dad this and they said, "no he has never been in the forces…" and the [neighbours] were saying, "…he is having a full on conversation and there is nobody there but he answers back… in… other voices." [She could hear him] doing it of an evening… in the house… so, he was obviously… hearing something.

Auditory hallucination is a characteristic laypeople associate with schizophrenia and a 'central aspect of the stereotype of mental illness is dangerousness'.[81] These medical

[75] Legal Aid, Sentencing and Punishment of Offenders Act 2012
[76] Simon Halliday, 'Institutional Racism in Bureaucratic Decision-Making: A Case Study in the Administration of Homelessness Law' (2000) 27 J L & Soc'y 449, 465
[77] 5.3.2.2 – HO9
[78] Nicola Glover-Thomas, 'The Age of Risk: Risk Perception and Determination Following the Mental Health Act 2007' (2011) 19 Med L Rev 581, 600
[79] E.g. 5.4.5.2 HO21; 6.4.2.2 and 5.3.2.2 – HO9
[80] 5.4.4
[81] Bruce G Link and others, 'Public Conceptions of Mental Illness: Labels, Causes, Dangerousness, and Social Distance' (1999) 89 American Journal of Public Health 1328, 1332

constructions are stigmatising, yet Ivan's physical assaults of two elderly female neighbours give HO1 good reason to consider Ivan dangerous, seemingly relating his responses to auditory hallucinations with schizophrenia. However, such reduction to a diagnostic category again overlooks alternative explanations. Ivan may have been watching TV in the house but HO1 does not consider this as is clear from their use of the word "obvious" which suggests "common-sense" has found the right answer.

As street-level bureaucrats, the pressures of case-management, particularly the absence of "robust" medical evidence may make officers more inclined to so construct based on "common-sense", professional intuition and gut instinct. This method of "diagnosing" also permits the weighing of evidence, both observed and disclosed. However, the method tends to focus on the individual and their defects through a medical (model) lens. This tendency to stereotype odd behaviour by finding an explanation within the individual also chimes with folk psychiatry, in particular its medicalising and psychologising dimensions.[82] Folk psychiatry and intuition and "common-sense" also, however, open the door to individual prejudice and morality that may also shape constructions of perpetrators.

Before considering the use of folk psychiatry by officers in the study, training will be considered as this may have affected how officers constructed disability and weighed evidence.

[82] Nick Haslam, 'Dimensions of Folk Psychiatry' (2005) 9 Rev Gen Psychol 35; 3.4.1

5.3.4 The Influence of Training on the Medical Lens

Officers at all four organisations had been provided with training on a variety of topics including hoarding and mental health first-aid. Whether the training took an inclusive social model approach is not clear as officers' constructions of mental impairments were clearly medically-based. However, this may simply be due to the dominance of the medical model[83] that is difficult to displace by training alone.[84] Even if this training had been designed to take an inclusive social model approach, the collection of evidence in case-management and guesswork relied upon in its absence is essentially guided by the legislative definition of disability with its focus on 'impairment'[85] rather than the barriers to disability and therefore best explained by the medical model.[86]

Views on the quality of training varied, with HM4 regarding Org.4's mental health first-aid training positively. However, officers remained perplexed about hoarding,[87] courses on which had been delivered at Organisations 1, 3 and 4, yet HO3 was doubtful as to its effectiveness:

> It's very hard isn't it?... I don't think anyone knows enough about hoarding.

This lack of understanding supports Parr's findings that officers believed they had received 'inadequate training around disability issues'.[88]

Yet just because officers considered training to be poor does not mean it had no impact. The cumulative effect of training on behaviour and disability and the fact training is given on "mental health first-aid" in particular may sharpen the focus on the individual perpetrator resulting in their objectification, a medical model understanding. This focus and objectification, doubtless exacerbated by media attention,[89] may also

[83] Mike Oliver, 'The Individual and Social Models of Disability' Paper presented at Joint Workshop of the Living Options Group and the Research Unit of the Royal College of Physicians Monday 23 July 1990, 5 http://disability-studies.leeds.ac.uk/files/library/Oliver-in-soc-dis.pdf accessed 20 February 2017; Introductory Chapter; Chapter 3
[84] Liz Sayce, *From Psychiatric Patient to Citizen Revisited* (Palgrave Macmillan 2015) 35
[85] EA 2010, s 6; Introductory Chapter
[86] Introductory Chapter
[87] 5.4.2 - Décor
[88] Sadie Parr, 'The Role of Social Housing in the 'Care' and 'Control' of Tenants with Mental Health Problems' (2010) 9 Social Policy and Society 111, 117; 1.2.4
[89] Otto Wahl, *Media Madness* (Rutgers University Press 1995); Ben Hannigan, 'Mental Health Care in the Community: An Analysis of Contemporary Public Attitudes Towards, and Public Representations of, Mental Illness' (1999) 8 Journal of Mental Health 431; Introductory Chapter

give rise to or bolster officers' "common-sense" understanding of how mental impairments affect behaviour, an understanding they necessarily rely on in the absence of other sources of evidence. This understanding may be further explained by folk psychiatry.

5.3.5 Folk Psychiatry as a Method of Gathering and Weighing Evidence

Some of the officers' "common-sense" explanations, initially coded "pop psychology"[90] were later coded as folk psychiatry[91] as Haslam's work more usefully provides a broad framework for explaining *how* laypeople (here officers) construct perpetrators.[92] The purpose of the analysis is not to test Haslam's theory,[93] rather to use it to illustrate how officers as laypeople tend to stereotype and therefore medicalise, psychologise and moralise in their construction of behaviour. Their tendency to medicalise and psychologise in particular suggest use of the medical model in their understanding of mental impairment. Reference will also be made to officers' emotional responses to perpetrators including guilt, pity and blame. The latter two respectively indicate employment of the medicalising and moralising dimensions of folk psychiatry.[94] However, moral influences are wider than this latter dimension and their use will only be fully explored under the moral filter.[95] The examples given here differ from those in 5.3.3 in that here officers referred to specific cues, "factors" or indicators of the perpetrator's mental impairment that might explain their behaviour A selection of factors will now be considered.

[90] Andrew Horwitz, 'Coercion, Pop-Psychology, and Judicial Moralizing: Some Proposals for Curbing Judicial Abuse of Probation Conditions' (2000) 57, 1 Wash & Lee L Rev, 75, 124; 3.4.1
[91] Nick Haslam, 'Folk Psychiatry: Lay Thinking about Mental Disorder' (2003) 70 Social Research 621; Nick Haslam, 'Dimensions of Folk Psychiatry' (2005) 9 Rev Gen Psychol 35; 3.2.2
[92] Nick Haslam, 'Folk Psychiatry: Lay Thinking about Mental Disorder' (2003) 70 Social Research 621, 624, 623
[93] Nick Haslam, 'Folk Psychiatry: Lay Thinking about Mental Disorder' (2003) 70 Social Research 621; Nick Haslam, `Dimensions of Folk Psychiatry' (2005) 9 Rev Gen Psychol 35
[94] Nick Haslam, 'Dimensions of Folk Psychiatry' (2005) 9 Rev Gen Psychol 35
[95] 5.4

5.3.5.1 Solitary Existence as a Folk Psychiatric Indicator

Construction of perpetrators in the cases considered here are to be distinguished from those who refused to let officers into their accommodation, consequently seen as more blameworthy, their intentionality being assessed, a moralising approach. A cause for their behaviour was assumed, but without blame being attributed. Thus, officers sometimes alluded to the solitary lifestyles of perpetrators reasoning that their reclusive or sad and lonely state was indicative of their impairments that in turn explained their behaviour, as HM2 said:

> …they're often single because they've got problems…

Officers sometimes articulated pity towards members of this first group,[96] an emotional response typical of the medicalising dimension. This dimension and psychologising both attribute causes for behaviour but medicalising considers causes somatic, whereas psychologising relies on mental causes.

In this first group, officers were psychologising: mental causes were assumed and it was common for alternative explanations of lifestyle not to be considered. Both Dee and Beatrice were socially isolated for different reasons:

> [Dee] lived with a dog, talked to [it] a lot… it was like a human being… things gone wrong with her life… that she's always bringing up… I think she lost a partner in the past…

HO29 did not reason further, however, that bereavement resulted in her emotional dependence on her dog.

In querying the existence of Beatrice's (a hoarder's) friends, clear from their use of "alleged", HO29 also failed to consider other explanations for this perpetrator's solitary existence:

[96] HO13 about Dale, page 30

> [S]he alleged that she's got… two friends in [area] but we never [saw] them… [she had] friends on Facebook but whether she's actually met them in person is another… matter…

Beatrice's social isolation was in part due to her poor mobility, but may also have had structural causes: her situation (the location of her flat on the very outskirts of a development on the perimeter of a city) and identity (her immigrant status and ethnicity). These factors may have made Beatrice a target of ASB but were unexplored by HO29 who did not make a connection between her social isolation and mental health. However, HO29 believed Beatrice to be manipulative, a trait that often aroused officers' scepticism of perpetrators[97] and this led them to discredit her evidence in general. Thus, HO29's rejection of any signs of normality (friendships) may merely have added to their folk psychiatric construction of her.[98] That anticipated stigma may inhibit social engagement is overlooked. Solitary lifestyle was thus considered an indicator of a mental health issue although officers pitied some perpetrators in this situation because of their lack of family support and this led in turn affected officers' management of cases. HO28 pitied Sandra[99] whose children had been taken into care and whose mother's death led her father to misuse alcohol. HO13 similarly pitied Dale who also lacked family support and was complained about by his neighbour Emma who had a large supportive family around her.

> …I feel quite sorry for him [and]… equally for Emma but… she's got a lot of family support… there's always a son… or… daughter [there].

5.3.5.2 Sexual / Gender Issues as Folk Psychiatric Indicators

Cases where the housing professional commented on sexual or gender issues of the perpetrator were grouped together. While Haslam considers sexual deviance within the moralising dimension of folk psychiatry,[100] the officers' approach was again more akin to his psychologising dimension;[101] their discourse suggests they considered

[97] 5.4.5.1
[98] 5.4.5.2
[99] 5.4.4
[100] Nick Haslam, 'Dimensions of Folk Psychiatry' (2005) 9 Rev Gen Psychol 35, 38
[101] 3.4.1

perpetrators' sexual behaviour indicative of mental impairments and assumed there were causes. However, while they found the sexual behaviour of some perpetrators deviant and/or incomprehensible, officers did not assess intentions or attribute responsibility, i.e. they did not moralise this aspect of perpetrators' behaviour.

HO13 was relieved when Emma disclosed some "evidence" of her mental health but used folk psychiatry to explain her behaviour. Her behaviour was not sexual but for HO13, related to her childhood abuse and in turn the assumed psychological *cause* of the complaints against Dale:

> [W]hen you get to the crux of it… she's [recently] told us… how… [s]he was a victim of [childhood sexual] abuse by her father… quite horrific… and I think [this is why]… she doesn't act rational, she just sits and cries and… I always knew there was something more going on… it [was] almost like a relief… So… very damaging for [Dale] because he is very fragile… and feels like a victim himself in the way they were friends. He had his operation and chose his gender reassignment and then she couldn't accept that and maybe she grieved a friend not being there, you know what I mean?... I don't know, depression there is a fine line isn't there?

HO13's "common-sense" – the 'something else' that they 'always knew' caused Emma's complaints - has been validated in linking Emma's anti-social complaining with its cause – her depression linked to her childhood abuse. Emma and Dale's friendship broke down following Dale's gender reassignment surgery. HO13 assesses Emma's depression has been exacerbated by losing Dale as a friend rather than anything to do with his gender reassignment.

Two perpetrators in the sampled cases were fascinated with pornography and officers involved in these cases specifically commented on the abnormality and inappropriateness of this. HO29 commented that Cary's interior design was obsessive:

> [It] just wasn't normal… [P]ornography … was plastered [everywhere]...There wasn't an inch without something.

The local mental health team had confirmed that Harry, who hoarded pornographic media, did not have psychosis. While neither HO14 nor HO16 ascribed a "diagnosis" to Harry, HO14 determined a cause for his oddness, obvious from his hoarded possessions:

> [He] must have had something there mustn't he?... I don't know… I just think he didn't like women.

Thus, HO14 has used "common-sense" reasoning that some of his behaviour was rooted in misogyny. Yet speculation did not end there. While HO16 estimated that dresses hanging up around Harry's flat probably would have fit him, HO14 was more certain in their psychologised explanation:

> [He had]… blow-up dolls everywhere, that he would dress up and he didn't feel ashamed or anything when you would go in… So they were like his friends.

Like HO16, HO14 felt Harry posed a sexual threat to their safety because:

> [H]e always looked at you funny… he was looking at your boobs… and you just felt vulnerable… [and] uncomfortable… I just didn't feel very safe around him.

Thus sexual / gender issues were not only considered via folk psychiatry but also contributed to the construction of a risky subject and this occurred in a final miscellaneous category:

5.3.5.3 Other Folk Psychiatric Indicators: Obsessive Behaviour, Talking to Self; Howling; Hearing Voices; Delusional; Suspicious; Name-Calling / Accusatory and Unpredictable / Aggressive Behaviour

Officers' "common-sense" explanations extended to other odd behaviours[102] with them speculating that they were caused by mental impairment. Violence was significant in the construction of the perpetrator as a risky subject.[103] In addition to the sexual threat Harry posed, his aggression, physicality and unpredictability added to officers' construction of him.[104]

In other cases, mental impairment was constructed on the basis of bizarre behaviour:

> Brendan was outside with just his underwear on, dancing in a circle. [I]t's quite sad really but [Charlotte] phoned the police [when] he was smearing toothpaste on her front door

Name-calling and accusations such as Dee calling Cary a pervert may seem relatively harmless. However, Cary's accusations of Dee were interpreted to have more substance that were later borne out when HO29 learned that Cary had been sectioned:

> …[W]e started thinking about mental health especially about Cary because… he was paranoid that she was spraying aerosols… saying… she was trying to gas him.

HO29 was reasonably sure the diagnosis was paranoid schizophrenia, so this use of medicalised language could be post-hoc rationalisation'[105] to fill memory-gaps.[106] Thus odd behaviours, whether confirmed by diagnosis or not, nevertheless contributed to the officers' construction of perpetrators as risky subjects.[107]

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[102] 6.1 - risky subject
[103] 5.3.3 - Ivan
[104] 6.1.3
[105] J Peay, *Decisions and Dilemmas: Working with Mental Health Law* (Hart 2003) in Nicola Glover-Thomas, 'The Age of Risk: Risk Perception and Determination Following the Mental Health Act 2007' (2011) 19 Med L Rev 581
[106] 4.5.3.2
[107] Peter Beresford, Chris Harrison and Anne Wilson, 'Mental Health Service Users and Disability: Implications for Future Strategies' (2002) 30 Policy & Politics 387

The cases so far examined are best explained by Haslam's psychologising dimension. This fits within a medical model understanding because of its individualised focus on the causes of behaviour. However, an individualised focus also permits assessment of perpetrators via the moral filter.

5.4 The Moral Filter

In this section, I will consider that while the medical model of disability best explains how officers construct relevant perpetrators of ASB, there is evidence that they also use a moral filter. While Haslam's theory has a moralising dimension,[108] the morality inherent in judicial discourse[109] indicates that a wider moral filter may be employed to sift through medical constructions of perpetrators' ASB. Analysis of the data similarly illustrates how officers similarly operate a moral filter[110] in pre-litigation case-management, their reasoning being more overt than those of the judiciary.[111] Throughout the process, searches for medical "evidence" explaining behaviour may continue in order to tailor responses or be abandoned. Again, the default to "common-sense" understandings or explanations of evidence is seen.

Whatever "evidence" exists it is argued that this is continually subject to reflection and re-evaluation through the narrow individualised focus of the medical lens and moral filter. Consequently, as examined in the next chapter, these constructions of perpetrators may affect decisions as to outcomes: which interventions are used, how long they are persisted with and whether litigation is appropriate and if so, accelerated.[112] Those perpetrators who fail to pass through the moral filter may be subject to minimal compliance with equality legislation and possibly harsher treatment, while those who pass may be selected for extraordinary service.[113]

This section focusses on how perpetrators are selected. Where the person had a clear or obvious usually **physical** or **sensory impairment**[114] or were **elderly** or had **learning difficulties** their passage through the moral filter was usually rapid and uninterrupted. The presence of a **physical** or **sensory impairment** in particular allowed officers to rationalise the behaviour, making them more tolerant of, sympathetic with or pitying of the perpetrator's situation. Expert or third party evidence

[108] Nick Haslam, 'Dimensions of Folk Psychiatry' (2005) 9 Rev Gen Psychol 35, 37; 3.4.1
[109] 3.4.3; 3.3.1.2
[110] introductory Chapter
[111] *Croydon LBC v Moody* (1999) 31 HLR 738; *Gloucester CC v Simmonds* [2006] EWCA Civ 254; *O'Connell v Viridian Housing* [2012] EWHC 1389 (QB); *Lewisham LBC v Malcolm and another* [2007] EWCA Civ 763, [2008] Ch 129 [84]; 3.4.3
[112] 6.3
[113] 6.3.3.2
[114] 5.3.1 HO1 on hearing impaired

in such cases was rarely sought e.g. Ben who demonstrated his **physical impairment** and whose **learning difficulties** or **sensory impairments** were not in doubt.

Where the perpetrator appeared to have a mental impairment, the individual focus of the medical lens allowed for the application of a moral filter, the gauge of which was particularly sensitive to:

1) Capacity, Intention and Malice
2) Respectability
3) Personal Responsibility: the Influence of Welfare Conditionality
4) Substance Misuse
5) Manipulation of "the System"

Categories 1) and 4) especially resonate with Haslam's theory.[115] Again, officers' focus sharpens on perpetrators' ability to demonstrate responsibility. Additionally, a perpetrator's responsibility for their behaviour or health was a theme running throughout and along with 3) relate to the wider policy considerations of ASB governance.[116] Unfavourable constructions slow a person's passage through the filter. Each element will now be considered in turn.

5.4.1 The Mental Element of the Moral Filter: Capacity, Intention and Malice

My data shows that officers constructed perpetrators via the moral filter taking into account the assumptions they made about the mental element behind ASB: this focus on the individual may be understood as the medical model operating in practice. This questioning of capacity or intention may also be explained by Haslam's medicalising dimension,[117] where the cognitive element attributes causes not reasons (unlike moralising). For many officers, lack of capacity and intention seemed to be two sides of the same coin: for the incapacitous, officers often found a cause ("genuine mental

[115] Nick Haslam, 'Dimensions of Folk Psychiatry' (2005) 9 Rev Gen Psychol 35; 3.4.1
[116] 1.2.1
[117] Nick Haslam, 'Dimensions of Folk Psychiatry' (2005) 9 Rev Gen Psychol 35; 3.4.1

illness")[118] meaning these perpetrators could not intend their ASB; conversely, the capacitous perpetrator could be malicious and therefore immoral in intending their ASB. Just as judicial discourse in cases involving disability-related challenges may be scrutinised to discern assessments of moral agency,[119] so too may officers' discourse. Indeed, officers may refer to capacity or intention but seem to mean moral agency. I will first analyse the findings on perpetrators and their capacity or lack thereof before considering malice and intention to commit ASB. I will explain in relation to both, the consequences of officers' binary assessments for subsequent ASB case-management.[120]

Capacity and Incapacity

While local policy may have forced attention to the distinction between mental and legal capacity,[121] officers only referred to "capacity" and there was no evidence in the findings that any such distinction was appreciated. However, assessments of the perpetrator's capacity were nevertheless *specifically* raised by a number of officers without prompt. HO13 seemed to think this was something they could assess themselves, relying on "common-sense" as suggested by their reference to "obvious":

> [I]f [Brendan]… chucked his medication out… [and was] then…jumping round in his underwear then that is going to be quite distressing… so… we would… be having a conversation with whoever is supporting him… Because he obviously wouldn't have that mental capacity….

Official guidance on assessing capacity acknowledges that the MCA 2005 'is designed to empower those in health and social care'[122] to assess capacity and acknowledges training of medico-welfare professionals for this purpose.[123] It is not clear that HO13 means that they will be seeking the assistance of such professionals in assessing capacity, rather more the need for their support. Additionally, there was no evidence

[118] HO9
[119] 3.4.2; 3.4.3
[120] 6.4.2.2
[121] Only Org.1's ASB policy referred to mental capacity - 6.3.1
[122] https://www.scie.org.uk/mca/practice/assessing-capacity/ accessed 23 November 2017
[123] https://www.scie.org.uk/mca/practice/assessing-capacity/ accessed 23 November 2017

that training on capacity had been provided at the four organisations: none of the officers referred to consulting the MCA 2005's codes of practice in making such assessments.[124] Thus, it seems the assessments were founded in nothing more than "common-sense" and intuition: HO13's assessment of Brendan's capacity is based on an association between a perpetrator's behaviour and their comprehension of its effects.

Intuitive assessments went beyond merely assessing the presence or lack of capacity: in equating "*genuine* mental illness" with a loss of capacity, HO9 reveals their attitude to weighing evidence:

> My view was… if the perpetrator has… a genuine mental illness… which means that… when the[y]… commit acts of antisocial behaviour… [they haven't] got the capacity to understand what they are doing.

Whatever the rationale for officers wanting to understand whether or not a perpetrator has capacity, it has no place in establishing the *occurrence* of ASB.[125] Here no assessment of intention is required; indeed Brown considered it irrelevant.[126] The absence of any need to discover a perpetrator's intention (guilt)[127] should mean ASB proceedings are easier for a landlord to pursue.

Conversely, for the perpetrator to successfully challenge proceedings using a disability discrimination argument, they must demonstrate a causal link i.e. that the eviction or other detriment[128] or injunction (unfavourable treatment)[129] has arisen because of their (anti-social) behaviour which has been caused by their impairment.[130] Where officers construct perpetrators as lacking capacity, their ASB is presumed to relate to their mental health issue. HO9 does not say this but such causation, typical of folk psychiatric explanation, is also necessary for a *prima facie* disability-related challenge

[124] Care Quality Commission, *The Mental Capacity Act 2005: Guidance for Providers* (CQC 2011) https://www.cqc.org.uk/sites/default/files/documents/rp_poc1b2b_100563_20111223_v4_00_guidance_for_providers_mca_for_external_publication.pdf accessed 23 November 2017
[125] *Bryant v Portsmouth CC* [2000] 32 HLR 906, [2000] All ER (D) 729; 1.2.3.3
[126] Alison P Brown, 'Anti-Social Behaviour, Crime Control and Social Control' (2004) 43 The Howard Journal of Criminal Justice 203
[127] 3.4.3
[128] Which was the wording under DDA 1995, s 22(3)(c)
[129] The present wording under EA 2010, s 15(1)(a)
[130] 2.3.6

to be established. Resonant of Mostyn J,[131] in conflating capacity and 'mental illness' HO9 seems to believe capacity must be lacking for true disability to exist. However, it is simply not correct in law that a person with "genuine" or "serious" mental disorder is necessarily incapacitous: determinations of capacity are issue specific.[132]

As neither disability nor capacity are matters the landlord is required to establish in proving the occurrence of ASB, officers' concern suggest they anticipate use of the defence.[133] In anticipating use of this defence, officers typically assess capacity: HO13 and HO9 seemed to focus on capacity to establish the presence or absence of *intention* behind the ASB and in so doing assess moral agency.[134]

Perpetrators lacking *capacity* and therefore *intention* pass the moral filter because they *cannot help* their behaviour. This is a medicalised focus per Haslam,[135] giving officers a *very narrow* definition of disability in assuming a *causal link* between the impairment and behaviour, although this remained unstated amongst them. Such perpetrators may be freed from the objective of ASB policy of imposing responsibility upon individuals to control their own behaviour. Although no officers express a belief that only perpetrators lacking capacity may rely on disability arguments, such weighing narrows the group of people seen to be so entitled. However, as Cobb argues, ascertaining the degree to which the behaviour complained of is caused by the mental impairment:

> is impossible to identify with any precision [and it is further problematic to assess] the extent to which [a perpetrator] should be expected to control his anti-social conduct or contribute to the management of his condition to prevent it occurring.[136]

Thus, it is impossible to pinpoint when relevant perpetrators or which perpetrators can be freed from responsibility.

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[131] *Re AA* [2012] EWHC 4378 (COP) (In Private) 11 (Mostyn J) https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Judgments/re-aa-approved-judgment.pdf
[132] MCA 2005, s 2(1); 3.1.2.2
[133] 6.4.2.2
[134] See HO15 on Stark under *Malice and Intention* below
[135] Nick Haslam, 'Dimensions of Folk Psychiatry' (2005) 9 Rev Gen Psychol 35; 3.4.1
[136] N Cobb, 'Patronising the Mentally Disordered? Social Landlords and the Control of Anti-social Behaviour under the Disability Discrimination Act 1995' (2006) 26 LS 238, 251

Officers' notions of capacity instead divide perpetrators into two polarised camps based on notions of responsibility and moral agency:[137] Those without capacity are assumed to lack moral agency; they cannot be held responsible because it is presumed they cannot comply with conditions and are therefore not at fault: no further moral filtering needs to take place. Conversely, those seen to have capacity are assumed to have moral agency and therefore responsibility and are subject to moral scrutiny.

Moral Agency and ASB: Malice and Intention

Where officers did not consider perpetrators to lack capacity, they assessed the motivations behind the ASB.

The behaviour of some perpetrators was seen merely to be a product of "the way they were". Jeremy stored his faeces in bags and smeared it throughout his flat and the common areas of the block. Yet HO1 explicitly emphasises this behaviour as unintentional: Jeremy *did not think there was anything wrong.* This folk psychiatric[138] rationalisation provides an alternative explanation via "common-sense": "obviously" his "eccentric" behaviour indicates that he's not antisocial:

> [W]e… had [his flat] cleaned quite a few times… [and] billed him for it… but he just… didn't think there was anything wrong in what he was doing… Jeremy wasn't antisocial there was no malice [or intent] behind what he was doing… he was obviously… eccentric… He was just trying to be friendly but he's waving a big carrier bag full of poo at you… there was… never any harm in him… [T]here was…no-one in the scheme didn't like him, they just didn't want to have to live with somebody like that.

There was no clarification of what "like that" meant; indeed 'people like that'[139] evince an "us and them" division between those normal and abnormal or dangerous "other"

[137] 1.2.5; 3.2.1
[138] Nick Haslam, 'Dimensions of Folk Psychiatry' (2005) 9 Rev Gen Psychol 35
[139] Beverley Clough, ''People Like That': Realising the Social Model In Mental Capacity Jurisprudence' (2014) 23 Med.L.Rev 53

and non-dangerous. However, that no-one disliked Jeremy was significant; his lack of *malice* deduced from his neighbours' lack of antipathy towards him led to his easy passage through the moral filter. Constructions of malice or intention or lack thereof were very often due to such an absence of complaints from neighbours. Like Harry,[140] Ken's neighbours did not complain about harassment merely "the state of the house".

Conversely, those considered malicious (and to therefore have intention) were culpable for their behaviour and needed to be responsibilised. The Stark and Pye families stood in sharp contrast with one another: on the basis of complaints made, both fitted the stereotype[141] including harassment of neighbours and vandalism of their property, including their cars. However, the officers concerned only saw the Starks as antisocial. HO15 noted explicitly their malice and threats, and described their non-compliance and aggression by reference to throwing, ripping up swearing, threatening and "kicking off":

> …I've never known a family swear so much… [In interview, Iris's] voice was raised but I think she has got a bit of hearing problem… all the family is malicious… it was evident when they were served with the… warning, [Iris] just ripped it up and threw it in front of the complainant's daughter, it's like a threat as well as if I don't care… [W]hen we served her with the injunction… they all kicked off and then… the daughters are threatening the neighbours.

Hearing impairment, a medicalised explanation for Iris's raised voice is sidelined in favour of her evident anger, malice and lack of contrition.

By contrast, legal proceedings were not contemplated against the Pye family as they passed through the moral filter with such flying colours that their ASB (including the alleged vandalism of vehicles in the street, shouting and arguments within the house and specifically swearing) was discounted by HO1:

[140] 6.1.2
[141] Alan Murie, Linking Housing Changes to Crime' (1997), 31(5) Social Policy & Administration 22, 22

> There were obviously some issues… but… the problem… wasn't caused with any intention it was just [Eileen didn't have]… the skills to manage [the children's] behaviour... [S]he was really open and honest… [saying] yes, I do struggle [and]… swear at the kids a lot, I know I shouldn't [but]… it is my everyday language, and… I could tell by speaking to Eileen… her general way of communicating… [is] shouting and she doesn't realise she is doing it, it's completely normal to her… you can hear her for ten minutes before you'll see [her] so… I wouldn't class it as antisocial behaviour it was just… domestic noise and there was a reason for it…

"Common-sense" and observation assured HO10 of Ben's hearing impairment. A clear medicalised cause for his noise nuisance is found and like HO1's understanding of Eileen, HO10 gives Ben a "**just the way they are**" explanation:

> … if he needed… [Christine] because he was hard of hearing he just shouted… that was just the way he was…

Like Ken and Jeremy, Ben is excused from responsibility for his behaviour. Like the Stark family, Eileen swears but because of her candour, she is not constructed as being motivated in her behaviour by malice: "common-sense" tells HO1 that there are issues but the behaviour is assessed as unintentional, being rationalised by reference to Eileen's poor parenting skills. HO1 also believed Eileen to be depressed and this provided an explanation for her struggles with parenting.[142] Thus, the moral construction shapes the medical: both Ben and Eileen pass the moral filter, there is a clear medical cause for their behaviour and there is clearly no intention and therefore they are not constructed as antisocial.

By contrast with Ben, Iris Stark's hearing impairment is mentioned only once in relation to her raised voice, before HO15 concentrates on her use of foul language and malice from which the intention behind her behaviour is constructed. Were the issue to be probed in litigation, a finding that intention rather than mental impairment has caused

[142] 5.4.3

the ASB could sever the causal link,[143] but officers do not go this far. For example, HO15 merely commented on the Starks' malice but nevertheless implicitly invoked the moral filter, clearly attributing responsibility for the behaviour. Conversely, HO12 had discovered from Larry's carer that his constant foot-tapping was a side-effect of his antipsychotic **medication**. This disclosure amounted to relatively "robust" evidence: that Larry's behaviour had clear causes (the underlying condition and effects of the medication). From this, HO12 deduced that the behaviour was unintentional and therefore could not be malicious because it was not targeted at anyone. Thus, HO12's moral construction of Larry's behaviour was also determined by their medical construction of it.

Officers' constructions of the mental element of perpetrators' ASB therefore affected their passage through the moral filter. This applied with reciprocity to these perpetrators' intentions and impact on neighbours: as they tolerated Harry, Jeremy and Ken, an absence of malice was inferred. The Stark family's intentions were deduced from their actions especially their retaliation against complaining neighbours; they were constructed as irredeemably malicious. Alternative medicalised or psychologised explanations – that the Starks' behaviour may have been a feature of their difficulties - were overlooked.

However, complicating perpetrators' passages through the moral filter were officers' emotional responses.[144] Iris's allegation that HO15 had arranged to have her assaulted may understandably have compounded this officer's views of the Starks as malicious and affected their passage through the moral filter. By contrast, HO1 said they,

> [L]oved [Jeremy], he was lovely, bless him.

Such affection that may have eased the passage of some perpetrators[145] seemed driven by another factor, considered next.

[143] EA 2010, s 15(1)(a); ex DDA 1995, s 22(3) 2.3.6
[144] 5.2
[145] Consequently, such perpetrators were afforded lea-way in case-management – 6.3.2.1-3

5.4.2 Respectability and the Moral Filter

Officers' constructions of perpetrators via the moral filter were affected by a perceived lack of **malice** or complaints from the neighbours. Similarly, **intelligence, wealth, smart attire** and **religious** observance convey decency[146] or respectability that similarly redeemed perpetrators obscuring officers' view of their ASB. Somerville explains how this appearance of respectability relating to social class may be used in social housing allocations to discriminate between deserving and underserving tenants.[147] While as Somerville notes, class is not a perfect model,[148] in the present context, officers' perceptions of perpetrators of higher social status affected their constructions of them. Although it is difficult to point specifically to language, officers consistently employ in their discourse, their descriptions tend to note the highest and lowest standards of lifestyle and behaviour, combined with incredulity or in some cases, plain confusion.

Thus, while sympathetic treatment of Ken and Jeremy may be due to their **age** and apparent **vulnerability** (specifically commented on in these and Harry's cases),[149] there is an alternative construction based on **intelligence, wealth, personal appearance** and **décor**:[150] Ken fought much of his litigation unaided and HO2 perceived him to be:

> very intelligent… [using] words that I could not get my head round

Similar to Harry, Jeremy was seen by HO1 to have a higher social status, being **wealth**y and generous:

> [He went to a local café] every… morning… [having] a cooked breakfast, then… [buying an expensive]… bunch of flowers [for] whoever served him… the girls in the [café] phoned the [sheltered] scheme and said, "Look we don't want him

[146] Officers sometimes described tenants as "decent" e.g. HO10 described Ben and Christine as such
[147] Peter Somerville, 'Explanations of Social Exclusion: Where does Housing fit in?' (1998) 13 Housing Studies 761
[148] Peter Somerville, 'Explanations of Social Exclusion: Where does Housing fit in?' (1998) 13 Housing Studies 761, 763
[149] 5.3.1
[150] These categories appear in Table 5.1

> spending all this money on us… we only serve him his breakfast. We tried to speak to him about it… but he was having none of it," and… we thought… that's probably one place where… he's got a bit of interaction with other people so he probably… [feels comfortable and] secure… some days… they would phone up and say he has just left the café and he has got a load of money hanging out his back pocket, we've tried to put it in his inside pocket of his coat and he's having murder… and that [area is not somewhere] you want to be walking round with wads of money hanging out your pocket. So he was… vulnerable to… being mugged...

HO1 describes Jeremy as vulnerable and shows concern for his wealth and safety: he will be mugged and needs protecting from others and himself. That the café is an environment in which Jeremy felt comfortable, shows sensitive case-management driven by a folk psychiatry discourse that rationalises his behaviour via his lack of **malice**, generosity (a positive character trait) and the fondness HO1 felt for him[151] combining to ease passage through the moral filter. That Jeremy's relative **wealth** and generosity, like Ken's intelligence ease this passage reveals the influence of socio-economic elitism on the moral filter that make these perpetrators seem more worthy of favourable treatment.

Appearance and Speech

Odd **dress** (Ivan's military T-shirts) or lack of clothing (Brendan)[152] could, like poor **hygiene**,[153] be constructed by officers as evidence of mental health issues. However, while Harry was less well liked by officers than Jeremy or Ken, HO14 considered him "posh" commenting on his unkempt sartorial elegance and demeanour. These combined with his refined speech and religious observance contrasted with his lifestyle. This confused Org.3 who concluded there must be some medical cause (lifetime trauma) explaining his behaviour. However, like case-management itself, operation of the lens and the filter is not linear and the two constructions operate reciprocally and in parallel:

[151] 5.4.1
[152] 5.3.5.3
[153] Emboldened words to be found in Table 5.1

> [H]e came across [like] he should have been like in another era, he had white long blonde hair, he was very handsome and… although you could tell he was unkempt… he looked… posh… he would have… a nice jacket on, nice trousers, although they were dirty you could tell, you could dress him up and he could really play the part of… lord of the manor… he wasn't rough or anything… [we wondered]… what his background was… where he came from… because he didn't [have any acquaintances or] an accent… he must have led a life, to be involved in the church… something must have happened to him. We… didn't know why he had ended up like that.

HO14's confusion may be driven by expectations of lifestyle partly shaped by morality. Failure to meet these expectations is pathologised.

Harry's **speech, dress** and **religious** observance are cues to his 'decency', a term officers used explicitly in relation to Ben and Christine and Cary. Decency has a moral tone to it; David Cameron contrasted it with degradation on a social housing estate where immoral activities were commonplace.[154] While the behaviour of Harry and Cary may be considered immoral, in constructing them as "decent", they may be seen to have resisted these environmental influences and somehow this makes them more worthy.

Décor and Hygiene

Officers concern about perpetrators' personal or household hygiene or décor provides further evidence of the application of the moral filter. Officers found poor décor particularly incomprehensible where there were indications that the perpetrator had means or was of higher social status. While not explicitly contrasting the evidence of Jeremy's relative **wealth** and his Spartan conditions they seemed to confuse HO1 and affect their construction of him as odd.

[154] Lynn Hancock and Gerry Mooney, '"Welfare Ghettos" and the "Broken Society": Territorial Stigmatization in the Contemporary UK' (2013) 30 Housing, Theory and Society 46, 58; 1.1.2

HO15 was similarly incredulous commenting on a female tenant[155] whose living conditions were reported by a contractor after they refused to enter her property. Like Jeremy, she had little furniture but her possessions were hoarded, filling her bathroom, making HO15 wonder how she bathed. Moreover, HO15 could not comprehend why someone would live like that when they, like Jeremy, had sufficient **wealth** to be required to pay for the deep cleanses of their properties that their landlords organised. HO15's disbelief was perhaps due to the unhygienic woman's employment as a healthcare assistant. That healthcare assistants' salaries are typically between the minimum wage and £19,000 per annum[156] was overlooked.

However, officers also found the lack of furniture amongst seemingly poor occupants incomprehensible, their lifestyle being constructed via wider aspects of the moral filter. Dee's poverty and consequent lack of possessions reduced any sound insulation against noise from Cary's flat. HO29 commented that Dee's failure to own a TV or use her radio meant she focused more on Cary's noise. In not distracting herself, HO29 saw her as more affected by this nuisance or at least trivialised its effect:

> [B]ut if you've got wooden floors and you've got shoes on you'll hear every step… [Dee] had nothing in her flat at all… so, I could imagine it just echoing round. She didn't have a TV, didn't put the radio on, if you're sitting in your flat all day… in those conditions you're going to hear noises aren't you?

Comments made about Cary's décor lead to HO29's speculation[157] about the bizarre. Similarly, HO20 noted that Zac's only furniture was a couch

> …covered with fluffy lining… a blanket and… about thirty or forty cuddly toys.

As these individuals pass through the medical lens, they are constructed as defective and this becomes a point of focus. Thus for those with sparsely furnished homes, officers never considered alternative, socio-economic explanations: poverty, a

[155] Not being a case file that was the basis for an interview

[156] https://www.jobs.nhs.uk/xi/search_vacancy/acff06240e79be92ed34a42c436ff04f/?action=search&staff_group=SG20&keyword=Healthcare%20Assistant accessed 9 March 2017

[157] 5.3.5.2

structural factor could account for the bare condition of the properties and consequent noise nuisance, rather than an individual one - oddness. Poverty is more obvious in Dee and Zac's cases but this reason for their Spartan living conditions is overlooked. Instead, the moral filter applies to the construction. While Zac is viewed sympathetically, Dee is almost blameworthy for her lack of furniture and consequent complaints against Cary. This is because HO29 perceived Dee as malicious whereas Zac was not and was therefore seen as less responsible for his ASB.

So while the dimensions of folk psychiatry are present in the moral filter in determining the mental element of ASB, so too are socio-economic influences. Thus, the moral filter is wider than can be explained by Haslam's dimensions.[158]

Carr argues that 'contemporary concerns with anti-social behaviour can be traced from Victorian fears of the mob and their management of those fears by creating respectability as an aspiration for working classes'.[159] This still permeates housing management of ASB: those constructed as respectable have achieved this aspiration and have the potential to be responsible in governing their own behaviour.[160] Officers' constructions of perpetrators' potential for self-governance may be further affected by current policy, notably welfare conditionality**.**

5.4.3 Personal Responsibility: The Influence of Welfare Conditionality on the Moral Filter

The effect of welfare conditionality on the moral filter is illustrated by officers' sharpened focus on perpetrators' ability to demonstrate responsibility. As examined in the next chapter,[161] they may do this by engaging with interventions thus responding well to conditions of welfare imposed upon them. This section focusses on other indicators of responsibility: those in **employment** or **education** or constructed as

[158] Nick Haslam, 'Dimensions of Folk Psychiatry' (2005) 9 Rev Gen Psychol 35
[159] Helen Carr, 'Looking Again at Discipline and Gender: Theoretical Concerns and Possibilities in the Study of Anti-Social Behaviour Initiatives' (2010) 9 Social Policy & Society 77, 84
[160] 1.2.5
[161] 6.3.2

aspiring to these goals[162] are respectable and additionally responsible for not wishing to be dependent on welfare benefits.

While demonstrations of personal responsibility eased perpetrators' passage through the moral filter, some were absolved in whole or part from expectation of this: the personal responsibility of Sandra,[163] Eileen and Ken[164] was weighed against the failure of the other medico-welfare professionals who officers construct as more suited to the provision of support and are therefore seen to have failed these perpetrators.[165] Such perpetrators are not seen as fully responsible for their behaviour. Thus, officers' language indicates how they excuse perpetrators for their behaviour or point blame to **agencies who rejected** them.

Yet Sandra may still be criticised by some officers as irresponsible for her intoxicant misuse[166] in contrast with Eileen who was above reproach. HO1 believed Eileen wanted to help her children but forgot about appointments. This could be seen as a failure of parental responsibility but HO1 is sympathetic towards her apportioning little blame to her and instead finding social services at fault for not being helpful:

> [S]he just wasn't good at managing her time [or]… the children. Social services… had… [received] an anonymous call saying that [Eileen] was abusive to the children, they go out, they [investigate] check there's food in the fridge and sheets on the mattress… and [decide]… your kids are ok, close the case… They… said… they wouldn't be in a position to help because they didn't think the children were at risk.

HO1 believed Eileen needed help because she had disclosed that her eldest son, Freddie was being assessed for Asperger syndrome and provided details of his hospital consultants. She had produced **medication** and prescriptions for her middle son who had a **diagnosis** of ADHD. For HO1, Eileen is a model tenant: this "robust" observable and disclosed evidence was beyond doubt. Eileen wondered whether her

[162] Emboldened words in Table 5.1; HO1, below this section refers to her Eileen's aspiration
[163] 5.4.4
[164] 5.2 Psychologist driving away from Ken's house
[165] Bridget Franklin and David Clapham, 'The Social Construction of Housing Management' (1997) 12 Housing Studies 7
[166] 5.4.4

youngest son may be copying his brothers' behaviour and HO1 accepted this "common-sense", folk psychiatry "diagnosis". But unlike Iris Stark who denied having mental impairments, let alone provided evidence of them, Eileen did not hold anything back. HO1 viewed her as taking a responsible approach by seeking medical assessment to confirm her concerns. Eileen was seen as honest and compliant in assisting Org.1, looking for an explanation for the ASB rather than a responsibility shirking excuse and this is implicitly condoned by HO1. Thus, where the person was otherwise responsible, available evidence was treated differently to that of the irresponsible: the former was largely accepted and the latter rejected.

In Eileen's case, acceptance of "evidence" extended beyond her disclosures to HO1's observations of her appearance. When HO1 was asked if they thought Eileen was depressed, their diagnosis was beyond doubt:

> HO1: Oh, definitely...
>
> Interviewer: Did she ever say that?
>
> HO1: No, but… sometimes you would see her and she had made an awful lot of effort and… looked well and other days… she didn't look like she'd had a wash for days and you could see how tired she looked… She… struggle[d] to cope with her sons' fighting]… and… always talked about getting back into work… I gave her all the information and leaflets… but she just didn't have the get up and go… it was all on her doorstep so… she [didn't have to go]… far but for me… she was definitely depressed… she came in to the interview with her mum who… lives [nearby]… really well-presented, really articulate, really well-spoken, worked full-time and she said… when Eileen is really struggling… Freddie… stays with me… so I could see that she [had] family support… but it… obviously wasn't enough… I knew if the children were in any kind of immediate danger then mum would have… been more proactive but I think she wanted Eileen to take control basically [and] was trying to encourage her to do that as much as she could.

Here HO1 psychologises the ASB favourably: Eileen's failure to control her sons' ASB is caused by depression, of which there is no clear medical evidence, merely HO1's observation. Yet there is a further moral twist to this "diagnosis": Eileen's depression is caused by her situation; her difficulty in coping in turn prevents her getting into the workforce, something she specifically wants; any responsibility that may be attributed to Eileen for her illness is quashed by her welfare compliance. Compounding the favourable moral filtering is Eileen's well-presented, articulate, well-spoken and therefore *respectable* mother who supports while seeking to responsibilise her daughter rather than make excuses for her.

In managing ASB, officers are mindful of economic considerations (their finite housing stock) and use the moral filter to assess the deservedness of the occupant vis-à-vis the retention of their accommodation. Eileen's deservedness is manifest in her **lack of malice**, exemplary compliance with support[167] and responsible behaviour (providing evidence and aspiring to work).

By contrast, occupants may specifically or more generally demonstrate untrustworthiness or irresponsibility and consequent lack of deservedness by their welfare dependence or intoxicant misuse e.g. Walter[168] and such perpetrators rarely passed the moral filter.

5.4.4 Substance Misuse, Identity and Responsibility in the Moral Filter

Generally, the findings resonated with the literature concerning the Identity of Occupants and Self-Regulation[169] and in turn meta-responsibility for mental health issues.[170] Officers' language showed a sharp focus on perpetrators' ability to demonstrate responsibility. Exceptionally, however, they perceived some perpetrators to have been failed by other agencies. This failure mitigated against perpetrators' responsibility. For example, HO28 considered evidence that Sandra had been

[167] 6.3.3.2
[168] 5.4.4
[169] 1.2.5
[170] 3.4.1

detained under the MHA 1983[171] sympathetically believing that more appropriate assistance could have been provided for her:

> I feel there are certain people that… are desperately let down by statutory agencies and mental health teams… I think regardless of why somebody is mentally ill, she is mentally ill whether that's severe and enduring or whether it's just a small periods of time. I understand that people have the right to live how they want but she is in a position where she's just going to carry on like that until she dies… and that's horrible… but she's either going to have to do something really bad that gets her sectioned for a while but even then… she got sectioned for the thirty-six days or whatever… and [was] then… released… I'm not an expert; I don't know whether she did have a mental health problem [or] whether it was brought on by drugs. But either way to me she needed proper supported accommodation.

Here the medical model is employed not only in deference to medical expertise in diagnosis and support noted already[172] but also in the use of medical language 'severe and enduring'. HO28 seems at once torn between appreciating individual determinism (people having the right to live how they want) and finding the trump card of a diagnosis to remove responsibility. Compounding this individualised focus is the pity[173] it evidently induces: Sandra is going to have to do something 'really bad' to get a diagnosis and therefore the "cure"[174] or care she needs. Despite acknowledging Sandra may be at least partially responsible for her behaviour, HO28 would rather she was absolved of this altogether to get the help she needs which for Cobb 'patronises the mentally disordered'.[175] While Cobb finds those who abuse intoxicants to have meta-responsibility for their 'mental disorder'[176] and therefore ASB, HO28 exculpates Sandra in so far as she has been let down by agencies. HO28 appreciates Sandra failed to engage with them but did not hold her at fault for this[177] observing that she

[171] Seemingly MHA 1983, s 2 as she was discharged at 28 days without diagnosis
[172] 1.2.4. above
[173] 5.2; 5.3.5.1; 5.3.5
[174] 6.4.1.1 – HO9
[175] N Cobb, 'Patronising the Mentally Disordered? Social Landlords and the Control of Anti-social Behaviour under the Disability Discrimination Act 1995' (2006) 26 LS 238
[176] N Cobb, 'Patronising the Mentally Disordered? Social Landlords and the Control of Anti-social Behaviour under the Disability Discrimination Act 1995' (2006) 26 LS 238
[177] cf cases considered in Chapter 6

will have to go to the extreme of being sectioned again before she can get any help. Thus, again[178] medico-welfare professionals are seen to have failed some occupants rather than the reverse. This disappointment resonates with the tensions between housing and medico-welfare professionals,[179] partially shifting the moral burden from certain perpetrators.

However, officers' general disapproval of perpetrators who failed the moral filter for intoxicant misuse admitted the odd exception.[180] Perpetrators may redeem themselves by taking responsibility in controlling their addiction. HO1 explained Org.1:

> [had paid for] a woman who had been alcoholic for… 50 years… caused absolute murder

to be treated and when she returned being welcomed back by neighbours who greatly respected her:

> …because [she'd] gone and sorted herself out at that late stage in her life.

This shows how reflectivity in the operation of the moral filter permits re-construction via responsibilisation. Once Tess's cannabis misusing brothers left the Dillon household, serious ASB ceased and Tess aided HO18's reframing of her family's image to respectable. Consequently, HO18 discredited the complainants, the Marchmains, who had undermined their own complaints by spitefully speculating upon the consequences of Tess's drink problem:

> [Tess] had to have a... kidney transplant… [T]he [Marchmains] were very malicious over that… saying… it's her lifestyle, she drinks too much… She didn't… she's just a young girl who now and again went out with her friends… she was going to college… she didn't have a drink problem at all…

[178] 6.4.1.3
[179] 1.2.4; 5.2
[180] Helen Carr and Dave Cowan, 'Labelling: Constructing Definitions of Anti-social Behaviour?' in John Flint (ed), *Housing, Urban Governance and Anti-social Behaviour: Perspectives, Policy and Practice* (Policy Press 2006) 71; 1.2.5

HO18 uses the moral filter in dismissing the Marchmains' condemnation of Tess as malicious: Tess was at college showing a desire to be educated and therefore not welfare dependent. This in turn evidences Tess's respectability and responsibility, therefore, her drinking was in moderation. Consequently, HO18 did not construct her late-night arrivals home in a taxi as ASB.

HO18 was not present when Tess returned home, nor were they present to observe the alcohol consumption of Marvin, a retired maths teacher whose neighbours Natalie and Ollie were seen as spiteful in their complaints about the noise emanating from his dinner parties. The fact he was a teacher along with the cleanliness and tidiness of his flat provided clues to his respectability, reflecting a traditional housing management view.[181] Thus as they had done with Tess, HO18 constructed Marvin's consumption of alcohol as acceptable. By virtue of their **education** or **educational aspirations**, Marvin and Tess respectively were constructed as **respectable** and the complaints against them consequently dismissed:

> [If Marvin] had... a dinner party, the police would arrive because of the noise… [He said] there's no noise… except us just chatting not even any music or TV… [He and his friends took] turns a piece to go to different houses drinking.

However, more usually, however, substance misuse was condemned by officers. HO28 typically lacked sympathy for Zarine whose drug-use led to her causing significant damage to her property to find the source of "voices". When asked how they felt about Zarine's medical evidence, HO28's response suggested a construction consistent with Haslam's moralising dimension because Zarine was held blameworthy by virtue of her knowledge of the consequences of her actions:[182]

> I don't think it gave us anything we didn't really expect… obviously it showed she was suffering from [paranoid schizophrenia]… the damage… was a result of mental illness but again it's difficult because she was taking [amphetamines and cocaine] at the same time… It's very difficult. It's not a case of someone who's

[181] David Clapham, 'A Woman of her Time' in John Goodwin and Carol Grant (eds), *Built to Last? Reflections on British Housing Policy* (2nd edn, Roof 1997)
[182] Nick Haslam, 'Dimensions of Folk Psychiatry' (2005) 9 Rev Gen Psychol 35, 37

> just suffering from a mental health illness because she knew those drugs stopped her medication from working and there was evidence to suggest that she carried on… the report concluded that it was the medication counteracting with drugs that had made her do this.

This also chimes with Cobb's contention that meta-responsibility for 'bringing about or exacerbating [a] condition'[183] may be scrutinised. In pointing out that Zarine contributed to her mental health issues by her continued willing use of illegal drugs and simultaneous consumption of prescribed anti-psychotics HO28 suggests she had meta-responsibility for her behaviour. Moreover, while HO28 does not say this, consistent with the decision in *Simmonds*[184] the causal link between Zarine's impairments and ASB is severed, limiting the possibility of any defence. The degree of scrutiny shows how the moral filter trumps the medical lens. However, as *Lalli*[185] illustrates, the causes of mental impairments are irrelevant even where they are intoxicant addictions which are not impairments under the EA 2010.[186]

However, while holding a less sympathetic view of Zarine than Sandra, HO28's attitude towards the Wyatt family stood in marked contrast. The Wyatts harassed their neighbours and were involved with cultivating and dealing cannabis. Their ASB therefore matched media stereotypes and moral panics associated with the existence of this phenomena in social housing that contributes to residualisation of the tenure.[187] The criminality of their ASB eliminated their credibility. Consequently, HO28 dismissed Wendy's evidence about her physical health and any resulting possibility of leniency towards them:

> [S]he said she didn't need [any reasonable adjustments] because we did look at that and that's why we asked… obviously the bathroom upstairs... we've found that [many] occupants who have got cannabis farms upstairs say to us, "Don't go upstairs" and when we say to them, "Don't you use the bedroom?" "Yeah, I

[183] E Mitchell, *Self-Made Madness: Rethinking Mental Illness and Criminal Responsibility* (Ashgate 2003) in N Cobb, 'Patronising the Mentally Disordered? Social Landlords and the Control of Anti-social Behaviour under the Disability Discrimination Act 1995' (2006) 26 LS 238, 251; 3.4.1
[184] *Gloucester CC v Simmonds* [2006] EWCA Civ 254; 3.4.3
[185] *Lalli v Spirita Housing Ltd* [2012] EWCA Civ 497, [2012] HLR 477 [36]
[186] Equality Act 2010 (Disability) Regulations 2010, SI 2010/2128, reg 3; 3.4.3.1
[187] Alan Murie, 'Linking Housing Changes to Crime' (1997) 31 Social Policy & Administration 22; 1.1.2

> do. I sleep up there," …but she said she didn't need any adaptations. She manages the stairs fine… A lot of people live with arthritis [but] we have no medical evidence to suggest that it was a major factor…

In saying "obviously" HO28 uses "common-sense" to discredit Wendy who in complaining she has arthritis but admitting she can negotiate the stairs to use the bathroom is hoist by her own petard. This and the absence of medical evidence inform HO28's moral judgement against any possibility she has arthritis or depression, again showing the moral filter to prevail over the medical lens.

While familial introduction to substance misuse could be constructed via the psychologised dimension, like HO28, HO20 has limited sympathy for Walter. This officer's personal experience,[188] objectivity and professionalism[189] limit their sympathy leading to their moralised construction. For HO20, alcoholism is not a "disability" and their "common-sense" and experience precluded a construction of him as "disabled", despite the psychiatrist's findings of dual diagnosis:

> [Walter]… was subjected to alcohol… from a very early age, father was an alcoholic… sent [him] out to buy bottles of whisky when he was [eight or nine]… and then… forced [him] to drink… my father's a chronic alcoholic… so I grew up [with it]… but I've never seen it as a disability. [The psychiatrist recommended that] unless he received some assistance with his alcohol/drug addiction… the problems would continue… if not worsen.

In turn, the definition of "disability" is restricted and potential of the disability-based challenge constrained.[190]

Officers generally viewed intoxicant misuse as discrediting any evidence a perpetrator had of their health particularly for criminal or very dishonest perpetrators like Wendy and Walter.[191] HO20's construction of Walter contrasts with the complexities of dual

[188] 5.3.2.2; 5.3.3
[189] 5.2
[190] 3.4.3
[191] Not only did Walter take illegal drugs but also told HO20 that he acquired them free of charge.

diagnosis. While largely frustrated by perpetrators' failure to disclose,[192] knowledge of substance misuse obscures the medical lens, such perpetrators being constructed in the officers' (typical) view that responsible occupants do not behave thus. This was explained in a general discussion in Org.1's focus group:

> HO1 A lot of… people who drink or take drugs and have got problems [say they're]… bipolar and that's why they're doing this.
>
> HO3 They self-diagnose, don't they?

Reference to self-diagnosis is especially discrediting of identification with mental health issues as there is no expert corroboration and this shows scepticism of such perpetrators, suggesting officers perhaps believe they are manipulating "the system".

5.4.5 Manipulation of "the System": the Influence of Scepticism, Suspicion and Cynicism in the Moral Filter

In operating the moral filter, officers weigh disclosed evidence for consonance with "common-sense".[193] This was particularly important where officers were sceptical, suspicious or cynical about the evidence presented. As in Hunter and others' findings, officers had confidence in their ability 'to detect the truth or falsity of an applicant's narrative and claim to vulnerability'.[194] The search for veracity in evidence was indicated by officers' use of words like "genuine", "real", "actual[ly]", "excuse" and "abuse". Such language implied they thought some perpetrators were fabricating evidence in contrast with others they constructed as real or genuine. This suggests scepticism, suspicion or even cynicism similar to that found in judicial discourse[195] again showing how officers' understanding of disability may be restricted.

[192] 3.1.1; 5.3
[193] 5.3.3
[194] Caroline Hunter and others, 'Reconfiguring Knowledge Hierarchies? The Weighting of Medical Evidence in Homelessness Assessments in England' (unpublished) 16
[195] 3.4.3

This assessment of truthfulness of disclosures also reflects how officers constructed the integrity of the person making them as the condition may be exaggerated to aid a disability-related challenge, the system of justice thus manipulated. This would affect response.[196]

In their search for truth, officers were suspicious of evidence presented by:

1. Perpetrators (or friends or relatives speaking on their behalf). Representations about perpetrators' medication receive particular consideration.

Professionals acting for the perpetrators:

2. Medical representatives
3. Lawyers

Each will now be dealt with in turn:

5.4.5.1 Officers' Cynical Reactions to Evidence Advanced by Perpetrators (or Friends or Relatives Speaking on their Behalf)

Although officers were largely frustrated by perpetrators' failure to disclose their impairments, where they did so, the impairments disclosed had to be sufficiently severe to pass the moral filter. A focus group discussion of profiling information led HO8 to question:

> What's disability? You'll often find people will tick… asthma or hay fever as a disability which it's not. But they class it as you know, "I've got asthma. I've got hay fever. I need to move house." It's up to the individual.

In querying the meaning of disability, HO8 highlights one of the problems of definition: if the legal definition of disability is broad as per the UNCRPD[197] then so too is the

[196] 6.3.3.4
[197] Introductory Chapter; UNCRPD preamble at e) http://www.un.org/disabilities/convention/conventionfull.shtml accessed 30 November 2015

group of intended beneficiaries. Thus, although HO8 seems to acknowledge individual identification with disability, this self-diagnosis is discounted. While it is not clear how aware officers were that disabled people must prove the substantiality of their impairment in order to acquire legal protection,[198] here it seems asthma is regarded as trivial.[199] However, in 2014, 1,216 people in the UK died from asthma.[200] Perhaps self-identification attracts particular scepticism when used to access social housing. In ASB case-management, eyebrows may also rise when a perpetrator reveals a previously undisclosed condition to substantiate their disability-related challenge at the crisis point of litigation. While the perpetrator may be conforming 'to the identity script at the pain of being denied protection'[201] on a more cynical footing they may be seen to 'act out'[202] to manipulate the system.[203]

Officers saw wide manipulation of "the system" beyond access to housing and to include retention of housing and entitlement to other welfare benefits. Walter's failed passage through the moral filter was exacerbated by his manipulation of the benefits system. HO20 believed Walter was avoiding reduction of his housing benefit in consequence of the bedroom tax by allowing his adult daughters to return to the family home periodically. In focus group discussion, HO25 voiced a view that perpetrators may exaggerate their mental health issues to ensure receipt of welfare benefits. This extended even to Lorraine, a vignette perpetrator of noise nuisance diagnosed with paranoid schizophrenia for whom a psychiatrist's report was prepared to support her defence of possession proceedings:

> [S]ometimes people abuse a mental health status… playing on it… to get signed off [and obtain]… benefits.

Officer's disbelief and consequent rejection of a perpetrator's evidence[204] may result from dissonance with "common-sense" and intuition. Thus, in the absence of robust evidence, housing professionals cannot "diagnose" especially where verification of the

[198] EA 2010, s 6(1)(b); Introductory Chapter; 3.2
[199] EA 2010, s 212(1)
[200] https://www.asthma.org.uk/about/media/facts-and-statistics/ accessed 19 February 2017
[201] Samuel Bagenstos, *Law and the Contradictions of the Disability Movement* (Yale University Press 2008) 51
[202] Helen Lester and Jonathan Q Tritter, ''Listen to my Madness'': Understanding the Experiences of People with Serious Mental Illness' (2005) 27 Sociology of Health & Illness 649
[203] 3.4.3.2
[204] 5.3

disclosure is not corroborated by expert evidence. Similar to the judge in *O'Connell*[205] they may then simply reject the perpetrator's identification. This may be contrasted with those whose difficulties or characteristics were accepted and whose behaviour was "**just the way they were**"[206] because they passed the moral filter. While the judge directed a psychiatric report be obtained for Ken, like Eileen and Ben this perpetrator did not claim impairments as an explanation for their behaviour, rather specifically denying it.[207] Thus, none of them was seen as trying to manipulate the system and that aided officers' construction of them via the moral filter.

While perhaps not finding all of Org.1's occupants 'culturally distinct from mainstream'[208] HO1 by implication finds the majority fraudulent and manipulation of the system wide:

> A lot of the people we deal with… might not be the most educated but… they know the system… benefits… housing… court… police. So they know the right things to say at the right time which means they're going to get a blind eye turned and treated a bit more cynically. So I'm a bit of a cynic now.

HO1 makes their suggestion that perpetrators manipulate the legal system specific in focus group discussion of the evidence in Maria's vignette:

> I wouldn't see a reason for saying you're deaf when you're not whereas there's a purpose for saying you got mental health if you haven't because… there's got to be a lot more done to help you sustain your tenancy.

Thus, consistent with the literature on homelessness decision-making[209] and street-level bureaucracy,[210] HO1 and HO25 seem to hold a view that while morally worthy

[205] *O'Connell v Viridian Housing* [2012] EWHC 1389 (QB); 3.2.1.2
[206] 5.4.1 Ben and Eileen
[207] 5.3.3
[208] Ruth Levitas, *The Inclusive Society? Social Exclusion and New Labour* (1998 Macmillan) in David Cowan and Morag McDermont, *Regulating Social Housing: Governing Decline'* (Routledge-Cavendish 2006) 23
[209] Simon Halliday, 'Researching the Impact of Judicial Review' in DS Cowan *Housing: Participation and Exclusion: Collected Papers from the Socio-Legal Studies Annual Conference, 1997* (Ashgate Pub Limited 1998) 208
[210] Steven Maynard-Moody and Michael Musheno, *Cops, Teachers, Counsellors: Stories from the Front Lines of Public Service* (University of Michigan Press 2003) 50

clients do not manipulate the system [211] certain perpetrators did. HO1 was ready to accept the evidence of Maria's hearing impairment because she would not be affecting it as this could not produce a gain. However, what is a gain? Given the moral discourse in housing management particularly in the context of ASB, scepticism about the nature of someone's impairments may be more likely where successful use of a disability challenge leads to exemption from individual moral responsibility[212] and therefore retention of the home.

Are those with mental impairments more readily constructed as likely to manipulate litigation by the dishonest representation of their health? A hearing impairment can still lead a perpetrator to cause noise nuisance as in Ben's case.[213] Discretionary judgements that differentiate between those with physical impairments as opposed to mental health issues may follow from such stigmatising attitudes. Accepting the identification of those with physical and sensory impairments over those with learning or mental health issues has the potential to perpetuate discrimination. If not determined in the courtroom e.g. *Moody,*[214] this may manifest in the preceding case-management.

A consequence of accepting the disability of one group over the other therefore has particularly unfortunate outcomes for those with mental impairments who may be more likely to find themselves socially excluded as a consequence of ASB proceedings.

However, discrimination against morally unworthy clients extends beyond those with mental impairments. Org.3 attached little significance to Iris's hearing impairment. Natalie, who Org.4 constructed as maliciously complaining about respectable Marvin, was treated with scepticism. When asked about Natalie's use of a mobility scooter that constitutes observable evidence of physical disabilities HO18 discounted its necessity:

[211] Steven Maynard-Moody and Michael Musheno, *Cops, Teachers, Counsellors: Stories from the Front Lines of Public Service* (University of Michigan Press 2003) 104
[212] 3.2.1
[213] 5.3.1
[214] *Croydon LBC v Moody* (1999) 31 HLR 738; 3.2.1.2; 3.4.3

> I've been in the property and she's walking around… It was mainly… if she went off anywhere… to the shops.

HO18 implicitly assesses the substantiality of Natalie's mobility but has a rationale for discounting it: she and her son were constructed as dishonest and malicious complaining about Marvin who passed the moral filter with flying colours. Their **malice** and lies undermined observable evidence of physical impairment – use of a mobility scooter by a benefits recipient is not considered "robust" enough to permit any alternative construction of them, their ASB or their defence. As Org.2 also suspected Natalie and Ollie of having mental impairments it is impossible to say how they would have been treated if they had physical impairments only.[215] However, it seems that for particularly discredited perpetrators, physical and mental impairments may be treated with equal scepticism.

It may be concluded that scepticism or sometimes cynicism of the perpetrator's identification with disability and dismissal of their evidence was common where the perpetrator failed the moral filter. This demonstrates not only how the medical lens and moral filter are inextricably entwined in this assessment but how the latter can ultimately dominate, leading to binary thinking that separates complainants and perpetrators into deserving and undeserving groups.

Officers' Scepticism of Perpetrators' Medication

Even when perpetrators disclose seemingly "robust" medical evidence by providing details of their prescribed medication, officers' discourse indicated scepticism. Such language crept into as focus group discussions about Sharon, a vignette remarkably similar to Eileen's case with sons having ADHD. Org.2's HO21's scepticism derives from their experience[216] gained working as a chef and also as a parent:

> [I]t was always [their] stock answer, why did you become a chef? Well I had dyslexia… nothing else I could do… so… I start picking up that… ADHD… It's a

[215] 4.3.1.2 – no such cases in the sample
[216] 1.2.4; 5.3.2.2

> tag like… dyslexia… that's the excuse… so I… did my own research… [and discovered]… that there's certain types of medication… and different ways the medication can be prescribed to the child… I can tell you everything about… [my children's] medical history and… I tend to find [that if I ask about the medication]… if someone's got a real… medical condition… [i.e.] someone's actually been prescribed medication… the mother will be able to tell me when [and how often] they take that medication… I haven't met one [parent] yet… whose son actually has ADHD who can't explain… their medication [to me]… It tends to be regardless… of [the mother's] dependency issues… that's what I want to hear… that level of engagement from a tenant… If they can't… I start having [doubts] about the diagnosis…

HO21 seems sceptical about a parent's representations of their child's condition (an excuse) and would only be satisfied by seemingly "robust" evidence of adequate parental knowledge of medication. While the use of medication and comparisons between parental responses unequivocally demonstrates a medically based model construction,[217] parental disclosure will only be accepted if it passes the moral filter. Thus, while not expecting to be presented with prescriptions, HO21 deduces from talking to a parent that they are genuine, convincing and as good and responsible a parent as HO21 i.e. not manipulating the system. This is irrespective of the parent's own irresponsibility for themselves: by acting responsibly for their children, they may redeem themselves in the moral filter.

The need for such "robust" evidence is given weight by HO21 whose scepticism extends to the medical profession's development of diagnoses. Like dyslexia, ADHD is 'a tag' rather than a "genuine" impairment. Similarly, HO2 was even more cynical of the medical profession and pharmaceutical industry's development of diagnoses:

> …You've got to accept [the evidence because it's from]… a doctor [but] ADHD has just appeared in the last 10 years…They all sat around thinking, "Let's think up a new name for a [behaviour so we can prescribe] pills."

[217] 2.3.4

While trust in medical experts has generally been eroded in recent years,[218] a more likely explanation is that ADHD and other **learning difficulties** have been anecdotally associated with ASB in young people. So widespread were these reports that the British Institute for Brain Injured Children conducted a study of ASBOs in young people finding a significant number with ADHD.[219] While not taking HO2's almost antipsychiatry viewpoint,[220] like HO21, HO1 sees the "tag" of ADHD may provide an excuse. Yet HO1 progresses the discussion into moral agency and individual determinism implying some children with ADHD still choose how to behave:

> There's kids with ADHD that can behave themselves so… whether it's the illness that's the problem or whether they're just choosing to behave like that.

In this response, both the medical lens and moral filter are used to determine whether the illness or choice motivates behaviour. HO1's view in focus group sharply contrasts with that about the Pye family where the sight of a prescription for a son's ADHD was sufficiently robust evidence.[221] Yet Eileen passed the moral filter as her responsible attitude towards her children (disclosing evidence of their medication)[222] matched expectations of engagement e.g. HO21's.

5.4.5.2 Officers' Suspicions of Evidence Presented by Medical Representatives of Perpetrators

Gulland[223] notes how welfare benefits decision-makers prefer evidence gathered by health care professionals seeing this as 'objective' whereas that provided by claimants and their GPs is regarded as 'subjective and untrustworthy [and may be] embellishing the claimant's symptoms'. [224] Again, this shows how expert evidence is prized, a feature of the medical model.[225] Officers in the present study rarely gained access to

[218] Joanne Bretherton, Caroline Hunter and Sarah Johnsen, ''You can judge them on how they look…': Homelessness Officers, Medical Evidence and Decision-Making in England' (2013) 7 European Journal of Homelessness 70, 75
[219] Rachel Fyson and Joe Yates, 'Anti-social Behaviour Orders and Young People with Learning Disabilities' (2011) 31 Critical Social Policy 102
[220] Lennard J Davis, *The Disability Studies Reader* (Routledge 2013) 129
[221] 5.4.3
[222] 5.4.3
[223] Jackie Gulland, 'Ticking Boxes – Decision-making in Employment and Support Allowance' (2011) 18 J.S.S.L 68, 76
[224] Joanne Bretherton, Caroline Hunter and Sarah Johnsen, ''You can judge them on how they look…': Homelessness Officers, Medical Evidence and Decision-Making in England' (2013) 7 European Journal of Homelessness 70, 75
[225] 1.2.4

such confidential information.[226] Beatrice, however, presented an exceptional case, HO29 seeing her as manipulative, the evidence presented by her GP being consonant with her outcome through the moral filter:

> [Beatrice had] a very sharp mind… intelligent and articulate… but there were some problems… over time… [she] had… developed some sort of personality disorder. [T]he GP [who] knew her very well… was quite adamant she [didn't have a mental illness and] was compos-mentis and knew exactly what she wanted… [him] to do for her. But he didn't think she needed that diagnosis… she had some sort of illness that needed treatment… she… struggled to get to the door when you knock[ed] and when we got in, her flat… was like a pharmacy… [t]here weren't any [prescription] tablets she wasn't taking.

While acknowledging the evidence of medication and physical frailty, HO29 seems sceptical of Beatrice's account of her health perhaps because of her GPs view but also because she undermined her own credibility by providing excuses including, 'headaches [all kinds of reasons why]… she couldn't come in' to Org.4's offices. When asked how they felt about the GP's approach to her, HO29 agreed:

> [I] think at times [Beatrice] was her own worst enemy… if someone asks for help and you offer support but [they put] obstacle[s] in the way refusing to communicate or saying they're not well… the GP said… "There comes a point she has to take some responsibility…"

Perhaps deferential to the GP's superior professional standing[227] HO29 seems to accept their evidence, becoming so exasperated with Beatrice's responses as to become sceptical of her identification as disabled.[228] This leads the management of her case far from the social model ideal that demands account be taken of an individual's experience.[229] As per the literature,[230] Beatrice's GP's and HO29 judge

[226] 5.3.2.2 - HM4
[227] 5.3.2.2
[228] 3.1.1
[229] Peter Beresford, Mary Nettle and Rebecca Perring, 'Towards a Social Model of Madness and Distress: Exploring What Service Users Say' (Joseph Rowntree Foundation 2010) www.jrf.org.uk accessed 1 July 2011 8; Introductory Chapter
[230] 1.2.5

her personally responsible for her non-compliance with support. Thus, it seems that officers are happy to agree with medical evidence when it chimes with the moral filter.

Consonance with an officer's experience and "common-sense"[231] extends to expert evidence. HO1 explains that where medical reports accord with a "common-sense" explanation of odd behaviour they will be accepted:

> [Y]ou can read an expert medical report and think]… that… makes sense… that's why she's doing X, Y and Z… [and] you wouldn't challenge it in circumstances like that.

Conversely, where officers were aware of evidence contradicting an expert report they may reject the report as HO1 suggested in focus group discussion of the Sharon vignette where her sons' committed ASB:

> [I]f you [knew the perpetrator was] out… getting off their heads every night… [leaving]… the kids to do whatever… We'd look to get further information and maybe challenge it.

Thus, the moral filter is employed via "common-sense" assessments of medical evidence especially when the perpetrator's intoxicant misuse is known (or even possibly as in Sharon's case, rumoured) or assumed (as in Beatrice's use of prescription medication).

However, while half the cases in the sample proceeded to litigation, few of these used psychiatric evidence in defence. Psychiatric reports were prepared for Zarine and Ken[232] but in the latter case at the direction of the judge. HO18 found it unusual that Natalie and Ollie did not "play the system" supposing that:

[231] 5.3.3
[232] 5.3.3

> [T]hey could have relied heavily on... the[ir]… mental health problems. But… I can't remember the judge asking for a psychiatric report, which is unusual as well.

Thus, psychiatric evidence was expected in litigation. Even where solicitors failed to instruct medical experts there was an expectation that the judge would do so by default.

5.4.5.3 Officers' Suspicions of Evidence Presented by Lawyers Representing Perpetrators

Where lawyers instructed medical experts, scepticism arose as to the veracity of evidence. The mere fact that the first disclosure of evidence was made via a solicitor aroused suspicion. Thus, focus groups responded negatively when, following issue of proceedings, the solicitor in the Sharon vignette, filed a defence with medical reports annexed disclosing evidence of her perpetrator sons' ADHD and Asperger Syndrome. Org.4 suspected evidence commissioned by Sharon's solicitor to be fabricated, as she had not 'said a word' about these conditions 'until proceedings have been issued' nor had she acted responsibly by engaging with support for her sons:

> HO25: [S]he's not engaging with anyone and all of a sudden she's gone to a solicitor and they've come up with this… all this information, would it not have been picked up by social services at some point?

Thus, eyebrows are raised perhaps by the late disclosure[233] but also by the absence of earlier involvement of other agencies. The importance of this is paradoxical given officers' general disappointment in medico-welfare professionals' provision of support[234] and disclosure of evidence.[235]

[233] 3.1.1
[234] 1.2.4; 5.2
[235] 1.3.3; 5.2

The Lorraine vignette considered the appropriateness of possession or injunction proceedings against a perpetrator showing signs of mental health issues. In Org.2's focus group, HO20 showed how cynicism towards evidence commissioned by defence lawyers could be:

> A good solicitor will throw in the mental health card straight away.

This suggests such evidence of mental health issues is necessarily exaggerated. Worse still, officers considered reports biased although HO1 had found a way of challenging them:

> [W]hen a defence solicitor instructs psychiatrists… It's their get out of jail card. So [the psychiatrists] will tend to write the report geared… to what their instructing solicitors asking for. They're putting the money in the pocket whereas when we get a jointly instructed one [the psychiatrist] hasn't got a duty either/or. So they tend to be a lot more balanced and genuine reports.

HO1 seems less bothered that the assumption of non-responsibility 'patronises those it seeks to protect',[236] rather more that this protection is fabricated. Similar to the recorder in *Moody*[237] HO1 sees a report commissioned by a defendant's representative as biased and unsatisfactory. HO1 prefers the reports of single joint experts as 'more balanced and genuine' suggesting that lawyers acting for perpetrators are complicit in manipulating evidence in support of a defence and therefore "the system". However, an expert's duty is 'to help the court on matters within their expertise'[238] and this 'overrides any obligation to the person from whom experts have received instructions or by whom they are paid.' [239] HO1 is emphatic in their preference for single joint experts and the intuitive belief that reports commissioned solely by perpetrators' representatives are fabricated. Employing medical language (the fluctuation of various conditions in contrast with one another);

[236] N Cobb, 'Patronising the Mentally Disordered? Social Landlords and the Control of Anti-social Behaviour under the Disability Discrimination Act 1995' (2006) 26 LS 238
[237] *Croydon LBC v Moody* (1999) 31 HLR 738; 3.2.1.2; 3.4.3
[238] CPR, 35.3(1)
[239] CPR, 35.3(2)

HO1 uses folk psychiatry to justify Org.1's position that they will reject an expert report that does not accord with their construction of the perpetrator:

> [I]f you get… a psychiatrist's report like this… you know it's blagged… we can go back into the court and… say, "we're not satisfied with that. We would like to jointly instruct and have this person assessed again…" Stuff like depression… not ADHD but… a lot of mental health… can fluctuate and… be changed by different things. So we would try and get them assessed quite regularly.

Paradoxically, HO1 does not see that subjecting perpetrators with fluctuating symptoms to continual reassessment in order to get the result they want may also be manipulating evidence.

Thus, while being frustrated by non-disclosure, officers also treated disclosed evidence with caution ranging from scepticism to cynicism where they believed the system was being manipulated; that provided by perpetrators' lawyers fell in the latter end of the spectrum. This caution, however, served to narrow officers' understanding of disability.

Conclusion

This chapter has analysed the reflective process of ASB case-management in relation to the collection of evidence of perpetrators' mental impairments. It has argued that officers construct themselves as experts in housing management but not the medical evidence or support they need for effective management of perpetrators of ASB i.e. the objects of ASB policy. As the previous chapters have suggested, the search for evidence is imperative and this is evident in officers' frustrations with other medico-welfare professionals with whom they have a tense relationship.

While the housing literature criticises the drive of ASB policy,[240] that it only addresses the perpetrator's behaviour, imposing conditions without tackling causes or considerations of pathology, the findings suggested the opposite: causes of behaviour were continually considered. This was particularly so as disclosure of evidence was rare. However, even when disclosure was made, officers' constructions of perpetrators were largely founded in "common-sense" which may be affected by the dominant medical discourse that underlies training and folk psychiatry. The continual process of case-management permitted this construction of the individual via both a medical lens and a moral filter. However, while perpetrators may be seen as having mental impairments, they may alternatively or additionally be constructed as irresponsible or immoral. This is because construction of perpetrators is also shaped by their passage through the moral filter. This chimes with current policy that seeks to make retention of social housing conditional upon responsible behaviour.[241]

Construction via the medical lens means that far from seeing impairments on a continuum as per the Universalist social model, officers have an individualised approach common to the minority rights and medical models. This may provide some perpetrators with an excuse where they lack intention ("capacity") for their ASB. However, where there was evidence that the individual had either caused their ASB by being malicious, had brought about their impairment by substance misuse or appeared to be manipulating "the system" they were more likely to be negatively

[240] Alison P Brown, 'Anti-Social Behaviour, Crime Control and Social Control' (2004) 43 The Howard Journal of Criminal Justice 203; 1.2.3.3
[241] 1.2.5

constructed. Thus, the moral filter narrowed officers' understanding of disability. Scepticism, suspicion and cynicism further reduced the number of perpetrators they saw as entitled to rely on disability arguments. Conversely, the moral filter also expanded officers' constructions of disability where perpetrators appeared respectable (**well-educated, well-dressed, well-spoken or aspirational** perhaps suggestive of **a** higher social class), compliant, responsible and / or lacking **malice**. Such persons were not even constructed as antisocial, their behaviour possibly even dismissed. However, as further discussed in Chapter 6, granting this leeway extends the duration of cases thereby prolonging the risks inherent in their management.

The two constructions are subject to constant re-evaluation and are so entwined there is no clear sequential separation between the weighing of the medical and the moral, each bound in their purpose and reciprocally aiding the other, but may affect whether the perpetrator is seen to commit ASB or not. It may also affect how cases are responded to in the light of these constructions.

In focusing on the outcomes of case-management, the next chapter will explore what drives officers in their management of cases. In particular, it asks how far case-management is affected by officers' understanding of risk. How does risk affect officers' decision-making in relation to potential outcomes. How do they make decisions in relation to supportive interventions through to litigation? Furthermore, as the reflective process of gathering evidence and the entwined medical and moral constructions of perpetrators have an individualised focus, do the means of intervention reflect or frustrate the operation of the social model and social inclusion?

Table 5.3 MORAL FILTER TABLE											
SL	Org 1							Org 2			
Perp or perps	Jeremy	Eileen Pye & family	Ken	Ivan	Ben & Christine	Annabelle	Larry	Zac	Walter	Dillon Vs Marchmain	Natalie & Ollie Vs Marvin
ASB	Condition of property Smearing of Faeces	Noise	Hoarding	Violence & noise	Noise (alleged domestic violence)	Noise	Foot tapping	Noise; knife	Domestic violence Noisy parties; Foul language Damage to house dogs; garden	Dillons Noise; drugs; Violence Excessive complaining to staff	Parties (noise) Aggressive complaining to neighbour
Medical (assumed unless stated)	MH	Boys ADHD & Asperger Syndrome (known) Mum depression	Borderline PD	MH; diabetes	Deaf and learning disability; epilepsy (fit)	Bipolar	MH (depot injections)	MH	Anger ?PD	Tess Dillon – physical Mr Marchmain MH	Learning Disability
Moral	Elitism; unintentional	Elitism; unintentional	Elitism; unintentional	Alcohol but query counter complaints	Clearly medical unintentional	Alcohol but query capacity	Unintentional	Unintentional (esp. compared with Walter)	Alcohol & drug Misuse; Benefits; cynicism of condition	Alcohol (dismissed) Attending college; Excessive complaints	Motivations for complaints; cynicism of condition
Risks	To neighbours (ill health)	To neighbours (noise)	To stock; to neighbours (fire)	Violence & Noise	To neighbours (noise)	To neighbours (noise)	To neighbours; of abuse and noise	To neighbours; of violence and noise	To neighbours; of noise;	Dismissed	To Mr Marvin of complaints
Outcome / solution	Rehoused with a family	Reasonable adjustment - FIP; sound insulation (party wall)	PO rehoused	Died	Self-help; no action	Rehoused	Reasonable adjustment - Carpets (sound insulation)	Active file In abeyance	SPO; Support with alcohol misuse	Grandsons moved away	PO

SL	Org 3						Org 4					
Perp or perps	Iris Stark & family	Noelle	Harry	Charlotte V Brendan	Alicia	Emma V Dale	Arthur	Wendy Wyatt & family	Sandra	Zarine	Beatrice	Dee Vs Cary
ASB	Noise; drugs; aggression	Condition of property	Hoarding	Odd behaviour	Noise; dogs	Noise; dog	Aggressive complaining to staff; Waste (ground 13)	Noise; cannabis farm; aggression; taunting	Drugs; noise; damage to property	Drugs; damage to property	Hoarding	Condition of property (Cary); Noise; Excessive complaining
Medical	MH	Depression	Autism	OCD and Schizophrenia (both known)	Schizophrenia	Depression	Anger	Depression and Arthritis	Detained under MHA	schizophrenia	Mental and physical	Personality V Schizophrenia
Moral	Aggression and non-compliance	Alcoholic but intermittent compliance	Alcoholic but elitism	Unintentional	Pitied; Non-engagement NB bed tax	Mr D – pitied; Unintentional Queried Mrs.E's motivations in complaining	aggression	Drugs; dishonesty	Drugs but some pity: other agencies had failed her	Drugs	Non comp liance	Sexual; her excessive complaining
Risks	To neighbours and staff (of aggression and taunting)	To stock; economic risk (officer's time)	Fire; sexual	To both because of their vulnerability	Dog	To both because of their vulnerability	To staff	To neighbours (suicide)	To stock	To stock	To stock	To stock Against each other
Outcome / solution	Injunction and PO	PO	PO	Brendan moved	None but PO likely	reconfiguration	injunction	Criminal; PO (mooted)	ASBO; PO	PO (failed)	Active file In abeyance	Cary moved

CHAPTER 6 An Eye on the Endgame

Contents

Introduction

This chapter focusses on the relationship between risks of ASB case-management and its outcomes. Continuing the thematic analysis of the data, it explains that officers identify many and varied risks of ASB and constantly assess these as they manage cases. It also considers how the outcomes of case-management practice affect and are affected by officers' use of the medical lens and moral filter. The literature also tells us that a role of social landlords[242] is to control ASB and that responsibility has been delegated to these organisations and their officers.[243] Various interventions may be used in this control, but responsibility effected via accountability of both social landlords and their officers means that they may ultimately resort to litigation. However, in practice, officers sometimes have difficulty discerning perpetrator from complainant and this prolongs the attendant risks in case-management. Thus, this chapter examines officers' constructions of risks of case-management in relation to their constructions of perpetrators and outcomes using four principal arguments:

The first section examines how officers construct risks involved in ASB case-management. These risks are broadly constructed which mean that any alongside formal risk assessments required by local policy and consciously conducted, sit practices and informal and intuitive risk assessments including those to officers themselves, other individuals and the stock. These assessments are as continuous and reflective as case-management itself. Risk assessments tend to force a focus on the perpetrators involved and this affects and is affected by constructions of them and their impairments via the medical lens and the moral filter.

The second and third sections largely explain how the circuitous case review processes impacts upon the construction of risk and reaching of outcomes. The second section argues that continual assessment of risk may prolong cases using clashes of lifestyle as an example. These are hard cases as officers may struggle to discern perpetrator from complainant. Consequently, the evidence presented and degree of risk each neighbour is constructed as posing to the other may be difficult to

[242] 1.2.1
[243] 1.2.4; 1.3.2

assess with some behaviour constructed as trivial, not amounting to ASB at all. The management of such cases may be particularly protracted and affected by which party is constructed as the most moral. Yet until there is an outcome, risks persist. Thus risk management is inherent in ASB case-management.

The third section considers how risks are managed in the way that they are responded to. It examines the risks of using various alternative solutions. As officers are aware that ASB may be caused by relevant impairments, they typically offer adjustments (including physical adaptations, relocation, auxiliary aids and rehabilitative interventions, principally support) to reduce or stop the behaviour and the risks this presents. However, officers expect perpetrators to engage with these adjustments. Perpetrators' responses and the risk of their non-compliance shape further case-management and the latitude social landlords permit to their engagement. These both affect and are affected by officers' constructions of perpetrators via the medical lens and moral filter. While the limitations of adjustments are noted, those who pass (or make slow passage through) the moral filter because they demonstrate responsibility by complying with adjustments, or are constructed medically as incapable of compliance remain socially included, at least for a longer period, sometimes via extraordinary treatment. Thus, welfare conditionality extends to adjustments and their continued provision. However, favourable constructions of perpetrators *also* affect officers' assessments of the risks presented by them and their ASB. This may extend the duration of case-management and yet paradoxically, again, prolong the risks being endured by neighbours. Conversely, officers may be minimally compliant (tokenistic) with equality law in the adjustments they offer those stuck in or failing the moral filter, irrespective of the risks they pose. For such perpetrators it is more likely that they will be punished by social exclusion.

The final section argues that in case-management officers are averse to the biggest risk to be taken when trying to reach an outcome i.e. of litigating, itself subject to and forcing risk assessment. [244] However, officers' approaches to litigation may create more risks. Frustrations experienced in working with medico-welfare professionals

[244] 6.4.2

(gathering evidence or obtaining support)[245] in the case-management process may lead officers to take an adversarial and potentially exclusionary strategy to achieve inclusion for those passing the moral filter. However, perpetrators may suffer great stress and anxiety because of a consequence of this strategy and it may therefore pose further risk to them.

Typical of street-level bureaucrats,[246] officers are affected in case-management by the secondary risk of litigation, a mechanism for accountability.[247] However, their aversion to the risk of losing litigation is exacerbated by their misunderstanding of the law (particularly the proportionality of their response and capacity) resulting from ineffective training, folk psychiatry and past negative experiences of the process that elide in their construction of a "folk law". Here, most clearly, outcomes and risk affect decision-making and explain officers' reliance on the medical lens throughout case-management. This chapter therefore draws the concept of risk widely. The following table signposts where the risks identified, assessed and managed by the four organisations are further discussed herein:

Table 6.1: Risk Identification and Assessment in ASB Case-management

To	Identification	Assessment	
	Risk (Harm)	Practice	Local Policy
Landlord	Reputation	6.4	
	Economic (cost) Action: Litigation		
	Economic (cost) Action: Intervention	6.3	
	Economic Inaction (stock)	6.1.2	
Officers	Home visits; Lone-working	6.1.3	
	Stress	6.1; 6.3.2	
Victims/complainants	Inaction		6.1
Perpetrators		6.4.1	6.1 (Org.1 only)

[245] 5.2
[246] Mike Rowe, 'Going Back to the Street: Revisiting Lipsky's Street-level Bureaucracy' (2012) 30 Teaching Public Administration 10
[247] 1.3.2

6.1 How Officers Construct the Risks of ASB

In answering the research questions concerning how officers' understandings of risk influence their day-to-day decision-making, this section provides another overview of the four organisations' operational approach, here to risk identification and assessment, relating this to case-management.[248] Analysis of the data collected using ethnographic methods has been used to provide this description[249] of the four organisations' *de facto* policy as practice [250] (although again reference will be made to the organisations' local policies as appropriate.) Officers' professional role affects decision-making because their wide discretion and pressure of responsibility mean they construct risks of ASB far beyond those envisaged in Chapters 1 -3 . The formal means of risk assessment, including quantitative (i.e. technical) and qualitative means are described but informal, indeed intuitive risk assessments which were more common in practice are also examined. It is argued that officers' reliance on "common-sense" has an effect on whichever means of risk assessment it used, be that quantitative or qualitative, formal or informal. Two risks of ASB as identified and assessed intuitively by officers using their "common-sense" assessment are considered by way of example: hoarding and cases where officers commented on their personal safety. The section also argues that all risk assessments of perpetrators may shape and be shaped by officers' views of perpetrators via medical lens and moral filter. As officers' understanding of risk relates to their constructions of perpetrators, this section also addresses the research question asking which model of disability best explains this.

6.1.1 Risk Identification and Assessment

A starting point for illustrating how officers understand risk is to consider how broadly they construct ASB.[251] HM3's interpretation is congruous with the policy definition of ASB,:[252] yet suggest a range from the very trivial to the most serious.

[248] X ref 1.3
[249] Martyn Hammersley, 'What's Wrong with Ethnography?' (1990) 24 Sociology 597,605
[250] 4.7
[251] 1.3.1
[252] Alun Michael MP likened describing ASB to describing an elephant – see Andrew Millie, 'Looking for Anti-social Behaviour' (2007) 35 Policy & Politics 611, 614; 1.2.2; ASBCPA 2014, s 1; HA 1985, sch 2 Ground 2; HA 1988, sch 2 Ground 14; 1.2.2

> [A]nything from somebody… not picking up dog mess to… shooting someone in the head.

These behaviours carry very different risks, underlining the difficulties in definition of ASB and consequently in risk identification and assessment.[253]

To assist in this difficult task, all four organisations had written policies in the form of **risk assessment instruments**. The instruments used by organisations 2 and 3, found in their sampled case files were briefly drafted, a short paragraph in length, requiring officers to document on file that they had assessed risk to *others* as justification for the pursuit of litigation. It asked officers to consider whether the behaviour was likely to prejudice the health and safety of victims and complainants. The definition of health was that of the WHO as considered in *Romano,*[254] which set a low level of risk to such others. This assessment required no quantification of risk, instead, as further discussed below in this section, was a qualitative assessment, depending on "common-sense".

Additionally, organisations 1, 2 and 4 had created *technical* risk assessment instruments, attempting such quantification.[255] This was based on the matrix, (Figure 6.1)[256] a template designed by Home Office[257] and based on a Ministry of Justice Intimidated Witness scorecard. Draft guidance on the matrix stated its adoption was not compulsory, rather recommended. It advised those landlords with existing tools to consider their approach in accordance with the matrix rather recommending a replacement, recognising that some landlords already had such instruments. Thus, HM3 described Org.3's introduction of a new approach to risk assessment. Although technical, this was not as clearly based on the matrix as those of the other organisations. These instruments allowed decision-makers to score risks posed by ASB, particularly to identify vulnerable victims and to share information between agencies.[258]

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[253] 1.2.2
[254] *Manchester CC v Romano, Manchester CC v Samari* [2004] EWCA Civ 834, [2005] 1 WLR 2775 and therefore at the time the DDA 1995 was in force; 2.3.3
[255] Quantification discussed in 1.3.1
[256] http://asbhelp.co.uk/wp-content/uploads/2013/10/Risk-Assessment-Matrix-RHP.pdf accessed 15 November 2017
[257] http://www.cih.org/resources/PDF/Policy%20free%20download%20pdfs/How_to_Manage_ASB_cases_effectively.pdf accessed 19 March 2017
[258] 5.2

HM1 also referred to Org1's matrix as a new development at the time of the fieldwork 2013. The draft guidance on the matrix (reproduced in Figures 6.2 and 6.3)[259] dated its introduction as 2010, which seems to follow from the tragic case of Fiona Pilkington[260] although it seems the White Paper[261] provided impetus for its wider adoption. However, the use of these detailed risk assessments was minimal in the files sampled during the fieldwork,[262] many of which predated the matrix. That only Org.2 mentioned it in focus group suggests practice in using the matrix was not yet embedded within the other organisations at the time the fieldwork was conducted.

The draft guidance directed use of the matrix with all victims / complainants to identify the most vulnerable victims and complainants in particular and 'the extent to which a vulnerable complainant / victim / witness is at risk of experiencing harm.'[263] Here officers are directed to consider whether:

> …the conduct in question causes an adverse impact on [victims'] quality of life. Adverse impact includes the risk of harm; deterioration of their health, mental and or emotional well-being; or an inability to carry out normal day-to-day routine through fear and intimidation.[264]

Despite the technicality of the new instrument, this invitation to assess the risk of harm (specifically) and other harms to health and well-being invites a "common-sense" assessment of the individual and the effects on them just as its briefly drafted predecessor had done.

The form itself does not require any predictions but the guidance seems to take the continuance of ASB and its impact into account by referring to risk of harm i.e. in the future rather than that which has already occurred and also deterioration of health,

[259] The Social Landlord Crime and Nuisance Group explanatory newsletter
[260] http:/www.independent.co.uk/news/uk/home-news/barwell-a-false-symbol-of-broken-britain-1797017.html accessed 8 June 2019
[261] Home Office, *Putting Victims First: More Effective Responses to Anti-social Behaviour* (HMSO May 2012) https://www.gov.uk/government/publications/putting-victims-first-more-effective-responses-to-anti-social-behaviour accessed 21 May 2017
[262] Page 193, Vol 1
[263] Figures 6.2 and 6.3
[264] http://www.cih.org/resources/PDF/Policy%20free%20download%20pdfs/How_to_Manage_ASB_cases_effectively.pdf accessed 19 March 2017

rather than its current state. That the matrix has a precautionary rationale[265] is underlined by the assessment on page two which requires officers score the need for involvement of other agencies with a view to supporting the victim. While scoring appears to make risk quantifiable and therefore objective, officers are called upon to exercise judgement, allowing the influence of their 'subjective perceptions.' [266]

If an organisation chooses not to use the matrix in all cases, officers' discretion as to when to use it may also be problematic. This is because officers must identify risk inherent in the ASB and vulnerable victims *before* using the instrument. Having explained Org.3's practice of using a "basic" risk assessment and a full, two-page tool in cases of vulnerability hate crime, domestic violence or life at risk, HM3 suggested the full version should not be used merely in response to a complaint of a ball being kicked against their fence. Time pressure may force officers to dismiss some behaviour as low level, reserving full assessments for appropriately non-trivial cases. In turn, this forces a "common-sense" risk assessment of what constitutes triviality. Yet, HM3 highlighted the difficulties officers may have here:

> [If the complainant] has vulnerabilities and kicking a ball against their fence…might have a particular disproportionate effect than on someone who didn't have issues then obviously that becomes a different issue and we and we would go to the full.

This seems to put the cart before the horse. When are officers to discern a victim's vulnerabilities? These may only come to light using the full version. However, this

[265] 1.3.1
[266] A Crawford, 'Governing Through Anti-Social Behaviour' (2009) 49 Brit.J.Criminol 810, 818

Figure 6.1

Name: **Address:**

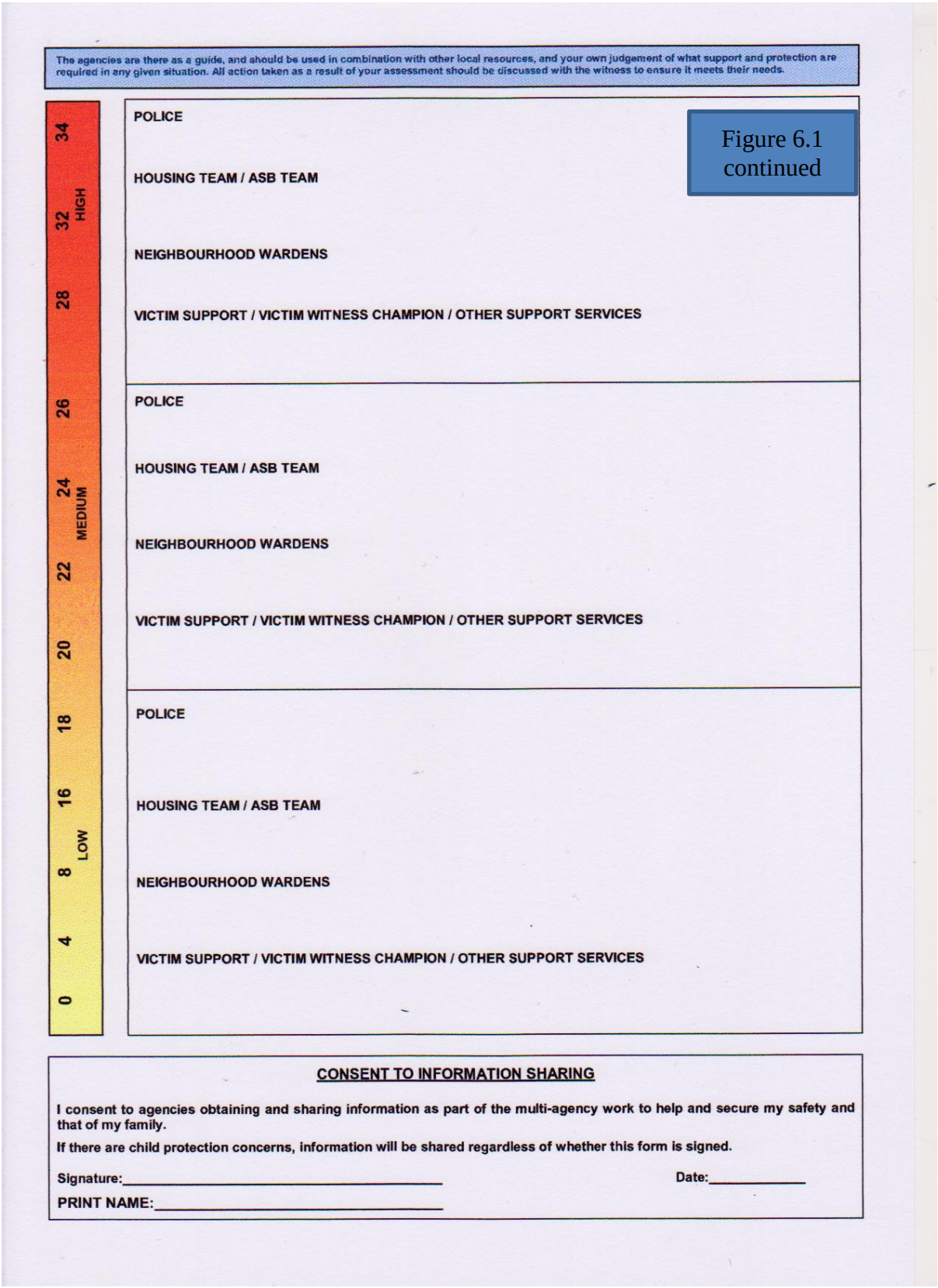
Incident No:

This scorecard is designed to help you identify vulnerable victims, witnesses, and complainants.
It should be used as a guide, and in combination with your own judgement (and that of your neighbourhood partnership) to help ascertain what support and protection is required in any given situation. All action taken as a result of your assessment should be discussed with the witness to ensure it meets their needs.

History	1. Other than this occasion - how often do you have problems?	5 3 2 1 0	Daily Most days Most weeks Most months Only occasionally
	2. Do you think the current incident is linked to previous incidents? If so why?	2 0	Yes No
	3. Do you think that incidents are happening more often and/or are getting worse?	2 0	Yes No
	4. Do you know the offender/ s?	2 1 0	They know each other well They are 'known' to each other They do not know each other
	5. Does the perpetrator (or their associates) have a history of or reputation for intimidation or harassment?	6 4 2 0	Perpetrator or their associates are currently harassing the complainant Perpetrator or their associates have harassed the complainant in the past Perpetrator or their associates have not harassed the complainant, but have a history or reputation for harassment or violent behaviour Perpetrator or their associates have no history or reputation for harassment or intimidation
	6. Have you informed any other agencies about what has happened? If yes, are you happy for us to discuss this problem with them? Details:	0 1	Yes No
Vulnerability	7. Which of the following do you think that this incident deliberately targeted Specify	4 3 1 0	You Your family Your community None
	8. Do you feel that this incident is associated with your faith, nationality, ethnicity, sexuality, gender or disability? Details:	3 0	Yes No
	9. In addition to what has happened, do you feel that there is anything that is increasing you or your household's personal risk (e.g. because of personal circumstances) Details:	3 0	Yes No
	10. How affected do you feel by what has happened? Details:	0 1 2 3 5	Not at all Affected a little Moderately affected Affected a lot Extremely affected
Support	11. Has yours or anyone's health been affected as a result of this and any previous incidents? Details:	3 3	Physical health Mental health
	12. Do you have a social worker, health visitor or any other type of professional support? Can we speak to them about this? Details:	0 1	No Yes
	13. Do you have any friends and family to support you?	3 3 1 0	Complainant lives alone and is isolated The complainant is isolated from people who can offer support The complainant has a few people to draw on for support The complainant has a close network of people to draw on for support
	14. Apart from any effect on you, do you think anyone else has been affected by what has happened? Details:	1 3	Your family Local community Other
	TOTAL SCORE:		

Based on these factors and your own judgement, adjust the scoring accordingly

Low 0 4 8 12 16 20 22 24 26 28 30 High
Medium



The agencies are there as a guide, and should be used in combination with other local resources, and your own judgement of what support and protection are required in any given situation. All action taken as a result of your assessment should be discussed with the witness to ensure it meets their needs.

0 4 8 LOW 16 18 20 22 MEDIUM 24 26 28 32 HIGH 34

POLICE

HOUSING TEAM / ASB TEAM

NEIGHBOURHOOD WARDENS

VICTIM SUPPORT / VICTIM WITNESS CHAMPION / OTHER SUPPORT SERVICES

POLICE

HOUSING TEAM / ASB TEAM

NEIGHBOURHOOD WARDENS

VICTIM SUPPORT / VICTIM WITNESS CHAMPION / OTHER SUPPORT SERVICES

POLICE

HOUSING TEAM / ASB TEAM

NEIGHBOURHOOD WARDENS

VICTIM SUPPORT / VICTIM WITNESS CHAMPION / OTHER SUPPORT SERVICES

CONSENT TO INFORMATION SHARING

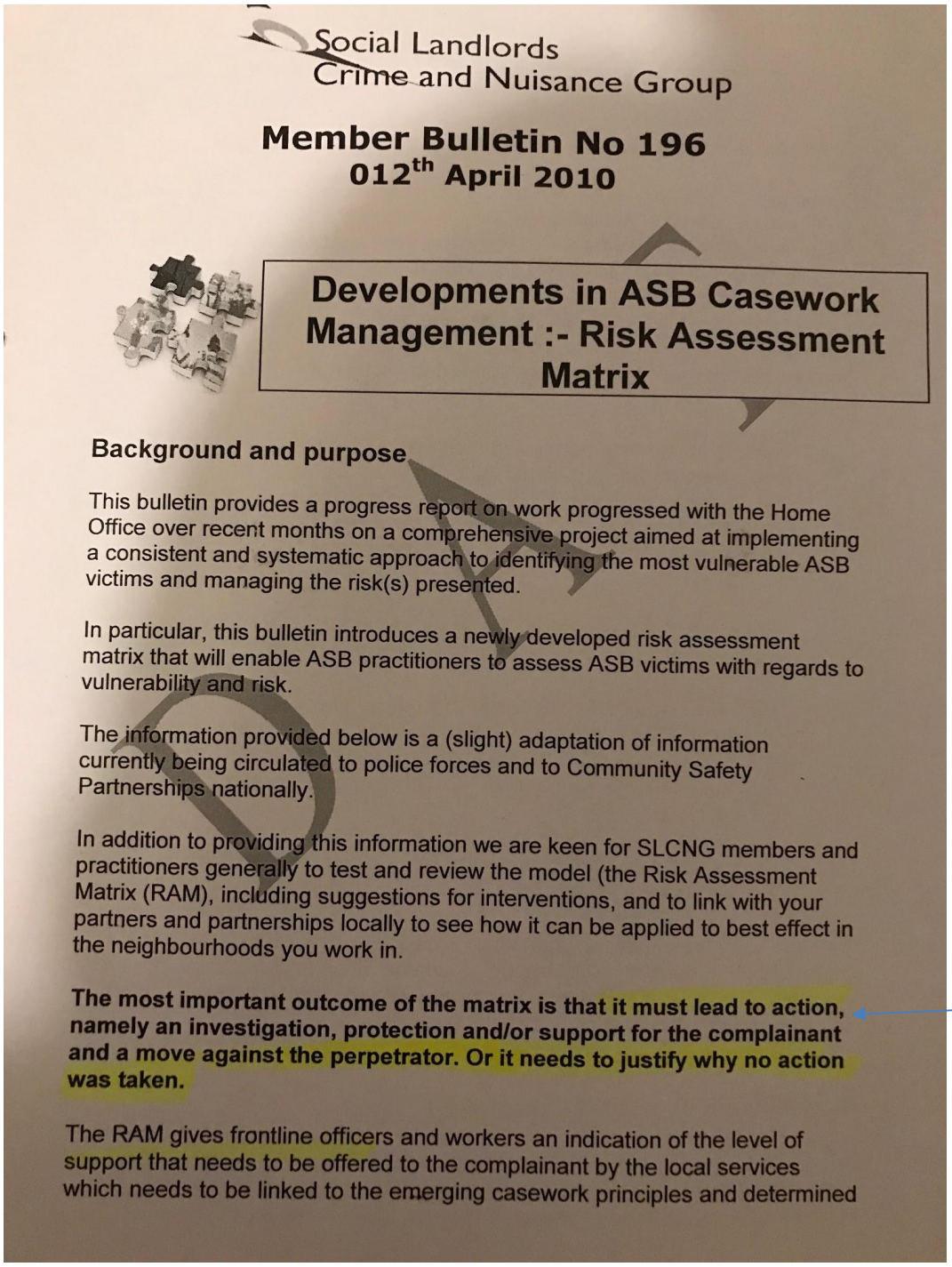
I consent to agencies obtaining and sharing information as part of the multi-agency work to help and secure my safety and that of my family.

If there are child protection concerns, information will be shared regardless of whether this form is signed.

Signature:_____ **Date:**_____

PRINT NAME:_____

Figure 6.1 continued



Social Landlords
Crime and Nuisance Group

Member Bulletin No 196
012th April 2010

Developments in ASB Casework Management :- Risk Assessment Matrix

Background and purpose

This bulletin provides a progress report on work progressed with the Home Office over recent months on a comprehensive project aimed at implementing a consistent and systematic approach to identifying the most vulnerable ASB victims and managing the risk(s) presented.

In particular, this bulletin introduces a newly developed risk assessment matrix that will enable ASB practitioners to assess ASB victims with regards to vulnerability and risk.

The information provided below is a (slight) adaptation of information currently being circulated to police forces and to Community Safety Partnerships nationally.

In addition to providing this information we are keen for SLCNG members and practitioners generally to test and review the model (the Risk Assessment Matrix (RAM), including suggestions for interventions, and to link with your partners and partnerships locally to see how it can be applied to best effect in the neighbourhoods you work in.

The most important outcome of the matrix is that it must lead to action, namely an investigation, protection and/or support for the complainant and a move against the perpetrator. Or it needs to justify why no action was taken.

The RAM gives frontline officers and workers an indication of the level of support that needs to be offered to the complainant by the local services which needs to be linked to the emerging casework principles and determined

Figure 6.2

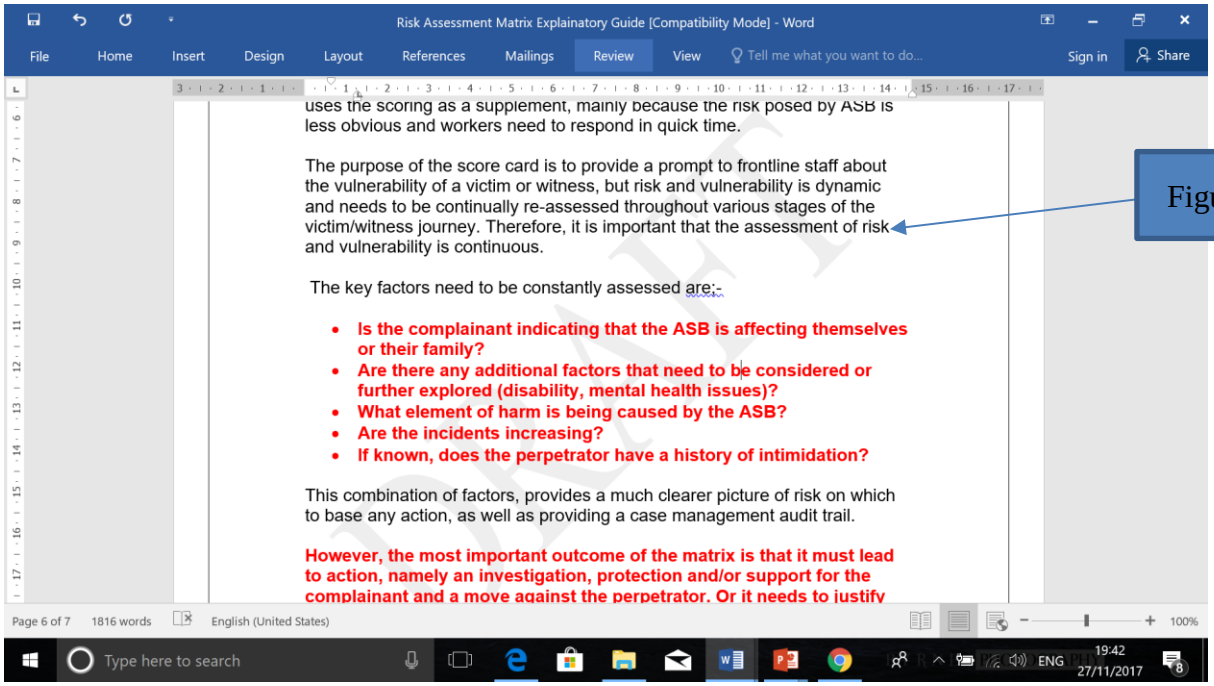


Figure 6.3

emphasises officers' difficulties in determining any occupant's vulnerabilities. The problem relates to knowledge: knowing who is vulnerable may depend, as HM3 said:

> [On] the experience and common-sense of housing officers...

Additionally, as will be seen in 6.2, the distinction between victim and perpetrator is not always straightforward, yet only Org.1 had devised a matrix for perpetrators.

The guidance guards against constructions of risk or vulnerability becoming entrenched by asserting that risk and vulnerability are dynamic and therefore that 'the assessment of risk and vulnerability' of victims 'is continuous'. Despite largely pre-dating the matrix and similar formal instruments and guidance referred to above, as will be demonstrated with examples in 6.1-6.3, the findings show the overall process of risk assessment to be as continual, reflective and re-evaluative (rather than linear and methodical) as the search for evidence, the part of ASB case-management described in Chapter 5.[267] Consequently, cases are more difficult to manage,[268] solutions may take longer to find, simultaneously extending the duration of risks.

[267] 5.1 Thus, again, this continual and reflective process is difficult to determine from a single quote rather being evidenced in analyses of cases considered in both chapters and as such, there is considerable cross-referencing between the two.
[268] The most difficult cases being considered in the next section – 6.2

Use of formal risk assessment instruments along with local policy on lone-working forced conscious consideration of risk. Officers' understandings of risk were not, however, merely drawn from text relating to the answers to questions about risk assessment.[269] This is because analysis of the data revealed officers across the four organisations to largely use informal risk assessments. Even though officers were not asked direct questions about their understanding or definition of risk, their language suggested they identified risk just as Glover-Thomas found in mental health practice, i.e. they knew risk when they saw it.[270] Officers' language also suggested they constructed situations and people as risky. This was indicated by their emotional responses e.g. offence (to HO29), stress and anxiety or because of their express use of the word "risk" or synonymous terms when describing the unpredictability of perpetrators[271] (e.g. Ken and Harry*)*. This identification and assessment of risks, reliant on "common-sense" and knowledge of the occupants is qualitative. Considerations of risk and its assessment, no matter how conducted, nevertheless show a sharp focus on the individual perpetrator, thereby contributing to the construction of them via the medical lens and moral filter. Officers' constructions of perpetrators' impairments may therefore become entwined with their understanding of risk.

Two risks of ASB as identified and assessed intuitively by officers will now be examined as management of both relied on "common-sense" assessment and illustrate that risk is constructed widely, like ASB itself.

6.1.2 Risks to the Stock: Hoarding and Condition of Property Cases

Environmental cases where perpetrators' homes are in poor condition or full of hoarded belongings pose many risks: economic risks to the landlord's stock and also to risk to the health and safety of neighbours (fire; unhygienic conditions attracting vermin and their belongings). Such properties may cause nuisance or annoyance[272]

[269] 4.2.1 and 4.5.4.2
[270] Nicola Glover-Thomas, 'The Age of Risk: Risk Perception and Determination Following the Mental Health Act 2007' (2011) 19 Med L Rev 581, 588 as noted in Chapter 2 above and see further below
[271] 5.3.5.3
[272] HA 1985, sch 2, Ground 2; HA 1988, sch 2, Ground 14; 1.2.2

and provide separate grounds for possession as waste[273] or breach of tenancy.[274] Literature on the attitudes of professionals involved in hoarding cases reveals a variety of emotional responses to the cases but understandings of risk or attitudes towards disability or takes into account case-management in prospect of litigation.[275]

That officers volunteered hoarding and condition of property cases as ASB shows how they understood ASB.[276] This understanding in turn related to their understanding of risk. Officers mentioned both the effects of unhygienic condition of property and hoarding on neighbours and members of the perpetrators' own family. Thus, officers constructed the presence of discarded food in Alicia and Noelle's children's bedrooms as suggestive of neglect. Such behaviour, while posing risks to the environment, shows the potential breadth of officers' construction of ASB and assessment of risk, affecting others *within* the home.[277]

These nuisances pose a risk to the landlord's stock because they diminish the value of individual properties and more widely contribute to residualisation of areas and the tenure.[278] Damage to property[279] necessitates maintenance that obviously has a financial consequence. Contractors may refuse to enter or be unable to gain access to properties in poor condition[280] or full of hoarded possessions.[281] Without maintenance, property declines in value. While no officers commented directly that the aesthetic decline of property contributes to residualisation, as Damer argues, this may amplify negative perceptions about an area.[282] Thus, in addition to the hoarder's property, neighbouring properties may depreciate, becoming difficult to let, increasing voids and reducing rental income, contributing to residualisation.

[273] HA 1985, sch 2, Ground 3; HA 1988, sch 2, Ground 13; 1.2.2
[274] HA 1985, sch 2, Ground 1; HA 1988, sch 2, Ground 12; 1.2.3.3
[275] Kathryn Holden and others, 'The Experience of Working with People that Hoard: a Q-sort Exploration' (2019) Journal of Mental Health 97
[276] 4.7
[277] Considerations extend even beyond that required for the ground for domestic violence: secure tenants - HA 1985, sch 2, Ground 2A and Assured tenants - HA 1988, sch 2, Ground 14A; 1.2.2
[278] 1.1.2
[279] Zarine and Sandra's cases
[280] E.g. Noelle; unhygienic health worker
[281] Ken, Beatrice, Harry
[282] S Damer, *From Moorepark to Wine Alley: The Rise and Fall of a Glasgow Housing Scheme* (Edinburgh University Press1989); 1.1.2

However, while officers may be mindful of these considerations and their responsibility in finding a solution, risks to others may be extended or limited due to operation of the moral filter. Thus, while posing fire risks, many of the hoarders Jeremy, Ken, Noelle and Harry[283] were pitied or at least treated sympathetically by officers.[284] This treatment was in part due to a risk assessment. Harry posed a high risk in terms of fire and vermin both to the housing stock and neighbours. However, HO14 juxtaposed neighbours' tolerance of Harry to the risks his behaviour presented:

> [The neighbours] liked [Harry [well] not liked him but they knew he was… no harm apart from he could have put them all on fire.

Thus, HO14's moral assessment of and pity for Harry almost seem to lead to the trivialisation of the fire risk ("harm")[285] he posed: the moral filter affects the risk assessment. How these hoarding cases are responded to and their risks managed is further considered in 6.3.3.1. For the time being, the fact that officers may put themselves at risk in trying to manage cases, is the focus of discussion.

6.1.3 Risks to Officers - Personal Safety

Home visits and lone-working were a necessary part of ASB case-management. That the risk of harm to officers in these circumstances is a consideration of local and national policy considered by the courts was exemplified in *Barber*[286] where the assault on a caretaker was grounds for possession against the occupant. Therefore, all four organisations had written policies and unwritten "policies as practice" on managing the risks of lone-working and home visits (e.g. circumstances when they could occur, visiting in pairs, the use of panic alerts). When focus groups were asked about risk assessment, officers from Organisations 3 and 4 made an immediate association with such policies: e.g. to record their destination before leaving the office and to be vigilant during a home visit making use of an alert system if necessary. This suggested these particular situations were central to their understanding of risk.

[283] 5.4.2; 6.3.3.1
[284] 5.3.5
[285] 1.3.1
[286] *Barber v Croydon* LBC [2010] EWCA Civ 51, [2010] 2 P & CR D25; 2.2.1

Officers understandably experienced anxiety when encountering threats on these visits.[287] Thus, HO16 deduced from Harry's possessions and manner that he was ready for an attack:

> [H]e had a big… carving knife… by the door that was sticking upwards as you came in… [and also] you couldn't make any throw away comments… Because he would pick up on absolutely anything [asking], "what do you mean by that?"

This observation was justified by Harry's response to HO14's camera flashing in a covert attempt to obtain photographic evidence in his flat:

> [Harry] picked the knife up and I really thought he was going to kill us…

However, while the lone-working policy may specifically aim to minimise risks, officers' intuition and "common-sense" shaped their understandings of risks (and in turn, the perpetrator) leading to their own practice. Harry's unpredictability led female officers HO14 and HO16 to adopt a strategy of having a male support worker not only accompanying either of them on home visits but also then standing between them and the perpetrator. While this could be a "common-sense" solution, it also illustrates these officers' response to Harry as a risky subject. This was based on a psychologised understanding of his sexual fixations (construction via the medical lens) which affected an intuitive assessment of the risks he posed to them as female officers.[288] This assessment is of sexual threat or even the risk of offence concerned HO29 who had warned Cary that his female colleagues:

> …shouldn't be talked to in your property with what's on your walls.

Clear from HO29's concern is their construction of ASB to embrace home décor (here, pornographic material).[289] Thus, the broad definition of ASB both permits a wide range of risks to be assessed and extends the pool of victims to be considered.

[287] Bridget Franklin and David Clapham, 'The Social Construction of Housing Management' (1997) 12 Housing Studies 7; 1.2.4
[288] 5.3.5.2
[289] 5.3.5.2

6.2 The Impact of Case-Management on the Construction of Risk and Difficulties in Reaching Outcomes: Clashes of Lifestyles

This section examines the relationships between the continual and reflective case-management process and its outcomes and officers' construction of perpetrators, risk and relatedly of ASB itself. To illustrate the difficulties officers have in case-management it uses clashes of lifestyle as exemplar hard cases.

ASB investigations often commence in response to the 'demands of neighbours',[290] and these reports are high in social housing where there is a greater perception of ASB.[291] Responsibilities[292] and consequent accountability of social landlords in the control of ASB demand officers investigate these complaints and respond to them.[293] However, while complainants may construct behaviour as antisocial, this section argues that investigations may lead officers to consider a dispute between neighbours to be a clash of lifestyles i.e. where neighbours have incompatible lifestyles (e.g due to generational gaps) or there are complaints and counter-complaints. Thus, the findings showed officers sometimes had difficulties in discerning the starting point of a dispute. These disputes were typically constructed as arising where, as HO29 said of Cary and Dee, they could not:

> …be confident who's the perpetrator and who's the complainant… You would call both… complainants… [and they were]… both perpetrators… to some degree…

Such difficulties in discernment may arise at the outset of a case or during its progression due to counter-allegations or aggressive chronic or exaggerated complaining like the defendants in *Accent Peerless.*[294] Thus, sometimes complainants became perpetrators by virtue of their complaining. While this shows that officers practice reflected an awareness that risk is dynamic, this section argues that these

[290] Alison P Brown, 'Anti-Social Behaviour, Crime Control and Social Control' (2004) 43 The Howard Journal of Criminal Justice 204
[291] 1.1.2.1
[292] 1.2.4
[293] 1.3.2
[294] *Accent Peerless Ltd (formerly Surrey Heath Housing Association Ltd) v Kingsdon* [2007] EWCA Civ 1314, [2007] All ER (D) 174 (Dec)

disputes proved particularly difficult for them to assess where the balance of risk lay and therefore how to respond. This leads to inaction, leaving cases unresolved, their risks prolonged. Thus, management of these cases stand contrary to that suggested by Baroness Newlove who exhorts agencies involved in ASB control to 'proactively visit those who are suffering anti-social behaviour and provide protection by bringing perpetrators to justice.'[295] This suggests a binary divide between victims and perpetrators and straightforward response. Solutions here are not that simple: two people or households are essentially complaining about each other with little impact on the wider community. Because of this lack of impact or because the behaviour complained of on each side seems trivial *per se*, officers may construct clash of lifestyles cases as low risk.[296] Indeed, in assessing risks, officers may question whether this is ASB at all and this was most likely where the alleged perpetrator passes the moral filter.[297]

Thus, this section considers how constructions of risk and perpetrators affect outcomes of ASB management practice in these cases. It argues that the problems arising in officers' managing clashes of lifestyle are threefold: first, in determining evidence between the parties. Consequently, and affecting the nature, degree and duration of interventions; constructing the behaviour of one or both parties as trivial; finally, the risks of inaction.

6.2.1 Difficulties in Determining Evidence between the Parties

In the exercise of their discretion, officers applied the moral filter *to the complaints* and *of the complainants' evidence*. As HO29 succinctly stated:

> [I]t was difficult to [be] a hundred percent certain about the evidence that [Dee and Cary] were providing to us.

[295] Baroness Newlove, *Our Vision for Safe and Active Communities* (Home Office 2011) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97908/baroness-newlove-report.pdf 40 accessed 22 November 2017
[296] 1.2.2
[297] 5.4.1. Ben and Christine; Eileen

Yet officers are in a position to choose whom to believe and their sympathies tend to lie with the "perpetrator" making smoothest passage through the moral filter. Thus, the constructions of "complainants" and "perpetrators" in these cases may be affected by who is seen as deserving and who is seen as undeserving.[298]

In some cases, officers therefore became sceptical about one party's evidence. While HO10 readily constructed Ben and Christine as having learning difficulties, epilepsy and hearing impairments, they believed the complainant had ulterior motives. HO10 had been informed that the relationship between neighbours had broken down because of a historic mail order fraud incident in which the complainant allegedly exploited Ben and Christine because of their learning difficulties. HO10 suggested the complaint had been made vindictively, the complainant therefore failing the moral filter. This affected case-management. Following Ben's epileptic fit, no further investigation was made into his ASB, his shouting being attributed to his hearing impairment. Similarly, HO13 was suspicious of Emma's motivations in complaining against Dale. HO13's own investigations suggested Dale's dog only barked when someone knocked at his front door and this was rare as he had few visitors or family. When HO13 asked Emma directly if she banged on the party wall between their bungalows:

> … she blew up like a bottle of pop… and then the son blew up, it was quite a tense moment… [I apologised] but in my head I'm thinking, "you've knocked on that wall, I know you have," because the first sign of guilt is blame isn't it?...[I]t wouldn't be the first time a complainant has tried to provoke a reaction for our benefit…

HO13's weighing of evidence is thus intuitive. However, there is also a moral aspect to the assessment of evidence as, like HO10, HO13 assumes vindictiveness motivated the complaints. When asked how they felt about Emma's comments about Dale's gender reassignment, HO13 replied

> [It] just didn't make me feel comfortable, I thought… it was inappropriate… irrelevant… why is she saying that? And it led me to believe there was another

[298] 5.4.2; 5.4.5.1

> issue regarding why she had logged a complaint… I couldn't imagine [Dale] making anything up; he just wants a quiet life; he is not well.

HO13 does not explicitly express a belief that Emma's complaint is due to prejudice against Dale because of his gender reassignment surgery. However, in applying the moral filter to Emma's response to Dale's gender reassignment, HO13 becomes suspicious of her motivations for complaint, which affects this officers' decision-making: Emma has fabricated a complaint and tried to provoke a reaction. The alleged dog barking is discounted as it may be guarding the property as HO13 had observed Dale quietening the dog without even knowing they were at the door, he is constructed as responsible for controlling what might otherwise be ASB, rather than manipulative or malicious. However, HO13 was sympathetic to Emma, convinced by folk psychiatry that her childhood sexual abuse had caused her depression and consequent complaining[299] and permitting her some passage through the moral filter.

Thus, the assessment of risks in a clash of lifestyles case is intrinsically bound with the medical and moral assessment of perpetrators which affects the determination of who is the most credible complainant and relatedly, the construction of behaviour as antisocial or not. These assessments, however, cause delays in subsequent case-management, particularly in finding an outcome[300] allowing the problem and its risks to continue.

6.2.2 Constructing the Behaviour Complained of as Trivial

Officers may construct clash of lifestyles cases as trivial or low risk[301] consequently, dismissing the complaint as not antisocial or discounting it.

Compared with the risks posed by the perpetrators in *Romano*[302] and *Samari,*[303] the risks between Dale and Emma and Brendan and Charlotte may appear trivial. Thus HO13, who handled both cases and did not regard complaints in either to provide a

[299] 5.3.5.2
[300] 6.3
[301] 1.2.2
[302] *Manchester City Council v Romano, Manchester City Council v Samari* [2004] EWCA Civ 834, [2005] 1 WLR 2775
[303] *Manchester City Council v Romano, Manchester City Council v Samari* [2004] EWCA Civ 834, [2005] 1 WLR 2775

sound basis for litigation, constructed Brendan's ASB as trivial while accepting the distress he was causing Charlotte:

> Not… major… it's a nuisance isn't it, toothpaste on your door?... we… know everyone's tolerance levels are different but I think he was getting on her nerves…

HO13 thus recognised the impact Brendan's behaviour had on Charlotte's OCD albeit assessing the risk of the behaviour based on their own "common-sense" construction of this *complainant victim's* disclosure of her impairments. In assessing the veracity of Charlotte's allegations,[304] HO13 was perhaps also concerned about risks to Brendan. HO13 was also concerned about the impact of Emma's complaints on Dale, constructing his additional alleged ASB – the "buzzing of a TV or radio" as posing a minimal risk to Emma. This is evident in the way HO13 discounted Emma's complaints, especially given that they also made pitying comments on Dale's solitary existence in comparison with Emma's family support.

Thus, weighing the effects of the behaviour of one occupant against another was particularly crucial in clashes of lifestyle. This risk assessment affected whether the behaviour or complaint was viewed as antisocial, in turn affected by constructions of the perpetrator. Such complainants may be discredited like the Marchmains with their malicious complaints about Tess, their complaints consequently rejected.[305] However, there are risks of this approach to case-management: as complaints continue, risks persist, and accountability[306] demands action be taken.

[304] 5.3.5.3
[305] 5.4.4
[306] 1.3.2; 6.4.2

6.2.3 The Risks of Inaction

Clash of lifestyle cases may prove difficult to resolve because officers are stymied: in weighing the evidence to substantiate the complaints each party made against the other and assess who is more blameworthy, resolution was delayed. This prolongs the risks each party poses *to each other*, as HO29 commented:

> …one of the risks [was obviously]… this was going to blow up into a serious incident at some stage where either Cary or Dee was going to get hurt.

Cary's passage through the moral filter is slow, yet he is constructed as less risky when weighed against untrustworthy Dee who is unrelenting in her complaints making HO29 cynical of her motivations. Yet despite trying to look at both sides,[307] HO29 could not dismiss the risks Cary posed to Dee:

> …[I] suppose… the risk you would really be worried about was him attacking her, that was always at the back of your mind…

However, complaints to the landlord will continue to consume officers' time[308] (consequently imposing a further risk to them of stress)[309] until a solution is found. Therefore, such cases cannot be ignored because they pose an economic risk to the landlord.

Clashes of lifestyle cases are therefore very time-consuming and affected by officers' constructions of parties yet they cannot limit the scope of their task by dismissing cases as inaction causes further risks because there is no conclusion to the case. Thus, case-management demands a resolution: decisions must be taken as to who to pursue interventions with, particularly if these carry sanctions (i.e. policy-based controls such as ABCs or litigation).

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[307] 6.2.1
[308] 6.3.3.1
[309] Steven Maynard-Moody and Michael Musheno, *Cops, Teachers, Counsellors: Stories from the Front Lines of Public Service* (University of Michigan Press 2003) 57

6.3 The Impact of Case-Management on the Construction of Risk and Difficulties in Reaching Outcomes: the Use of Various Adjustments

This section again examines how the circuitous case-management processes impacts upon the reaching of outcomes, focusing on the latter and how this is affected by officers' constructions of perpetrators and risk.

While the definition of ASB may be vague, the findings showed that officers' preferred outcome of ASB control was to get perpetrators to stop or modify their behaviour and its consequent risks. All possible interventions carry the risk of failure, but in exercising their *discretion* as to which to use, how long they are persisted with and whether litigation is appropriate, officers' decisions were affected by their construction of perpetrators via medical lens and moral filter.[310] Essentially, this affects how risky officers assess them to be and therefore the prospects of the intervention working.

Interventions may avoid the potentially discriminatory consequences of litigation (injunction or eviction) for perpetrators with mental impairments.[311] While litigation will be considered again in 6.4, selected interventions first outlined in 1.2.3 and 2.3.7 are considered here as alternative potential outcomes to the case-management process: policies permitting allocations and alternative practical solutions, physical adaptations, auxiliary aids and support will be considered in turn. It is argued that although where requested, failure to provide a reasonable adjustment may also give rise to a disability-based challenge in ASB litigation,[312] the findings showed that officers lacked awareness of equality law or its technical complexities in relation to them being "reasonable".[313] As such, the interventions considered may merely be regarded as 'adjustments'. Some may be construed in social model terms depending on the perpetrator's involvement in decision-making and the wider benefits of a solution. However, often outcomes for perpetrators were delayed depending on their responses

[310] 6.3.3.2
[311] EA 2010, s 15 requires a consideration of proportionality which may require social landlords to explain why they are not securing alternative accommodation for vulnerable perpetrators (*Manchester City Council v Pinnock* [2010] UKSC 45, [2011] 2 AC 104 [64] (Lord Neuberger); 2.2.2
[312] EA 2010, s 21(2)
[313] EA 2010, s 20

to interventions. This again illustrates how officers' constructions of perpetrators via the moral filter affect the process, here reflecting the responsibilising goals of ASB policy.

6.3.1 Allocation as an Adjustment

The findings revealed minimal **potential for** purposeful allocation of alternative accommodation to perpetrators. This outcome can be understood in terms of both risk and perpetrators' passage through medical lens and moral filter.

Rehousing may minimise the risks posed *to others*, particularly in a clash of lifestyles. However, it may also displace the risks of ASB. Alternative landlords may not want risks displaced to them and this may be one reason hoarders and other condition of property "perpetrators" may prove especially difficult to rehouse.[314] However, Jeremy was rehoused into the home of a family who could care for him on an "adult fostering" basis. HO1 mentioned that Jeremy wanted this and had been mindful of minimising upset to him referring to this outcome as, '…a happy ending'. Thus, HO1 saw the move as a positive solution.[315] It is a socially inclusive outcome that accords with the social model as Jeremy was involved in the decision-making process. However, HO1 was particularly fond of Jeremy and he passed the moral filter.[316]

Generally speaking, minimising risk of ASB via responsibilisation was not a fundamental rationale for the four organisations policies of rehousing in relation to ASB. Officers did not explicitly state that perpetrators needed to learn how to become responsible for their behaviour in order to be rehoused. Nevertheless, there was a moral rationale this policy: rehousing was a dessert that had to be earned. HM2 thus explained:

> [Org.2 want] to solve… the issue but… when they leave… [you don't want them to] feel there was a reward…

[314] Hoarders may dread being forced to relinquish possessions they are particularly attached to: Kathryn Holden and others, 'The Experience of Working with People that Hoard: a Q-Sort Exploration' (2019) 28 Journal of Mental Health 97, 101
[315] 6.3.3.2
[316] 5.4.1

Org.1's ASB policy was the only one to refer to the possibility of rehousing in exceptional circumstances e.g., where 'perpetrators' mental health or mental capacity issues are identified and proven'. Yet this happened in Org.3 as a matter of practice, as HO13 explained:

> I ask [Dale] to get me his medical evidence so I can support his move for a smaller property… but he never does.

Offers of this adjustment are possible even if not written in policy but are dependent on perpetrators surmounting bureaucratic hurdles[317] based on robust evidence. In the absence of Dale's evidence, HO13 devised a less costly alternative in sensitively persuading him and Emma to reconfigure the room-use in their adjoining semi-detached bungalows such that their living rooms, both adjacent to the party wall, were used as bedrooms and vice versa.

Cary and Dee, neither of whom were favourably constructed in their passage through the moral filter, were initially offered a less innovative solution that relied on regular warnings:

> …to stay away from each other… [G]ive each other space… move on past problems…

However, this practical suggestion proved impossible for these occupants of vertically neighbouring flats who were intransigent in their dispute. Dee refused the offer of a bungalow not being satisfied until "she got rid of him", adding to the construction of her as malicious.[318] Once Cary *voluntarily moved back into his family's home*, HO29 insisted his flat was allocated to a *female* tenant and Dee made no more complaints. Thus, purposeful allocation prevented further ASB, but Cary's move was fortuitous for Org.4.

[317] Cf support 6.3.3
[318] 5.4.2

6.3.2 Adjustments – Physical Adaptations and Auxiliary Aids

In providing adaptations to perpetrators' homes or auxiliary aids, landlords may assist perpetrators' in mitigating the risks of their ASB. However, their passage through medical lens and moral filter were relevant to this solution and therefore the outcome of case management.

In discussing the vignette where Darren responds to the landlord's letter about his hearing-disabled mother Maria's ASB, officers were initially sceptical of his motivations suspecting domestic violence as a cause of the noise nuisance.

Once medical evidence was available, confirming Maria's hearing impairment, officers' moral concerns were dispelled. They therefore decided her current accommodation may be adapted and that she may be rehoused in the long-term from her second floor flat because of her risks of falling due to her hearing impairment.[319] Again, there was a medical model construction necessitating evidence with potential for a socially inclusive outcome. Yet, construction of the perpetrator and the related outcome did not depend solely on medical evidence: physical adjustments, which tended to be minor auxiliary aids,[320] were readily offered to those perpetrators who passed the moral filter. This was not the case for Ben, whom HO10 explained was using self-help:

> …[Ben] was… getting hearing aids fitted… and was investigating getting a loop system in his house for his TV and his music…

While the issue was not probed, this clearly proved a cost-effective solution for Org.1. Furthermore, Ben's self-reliance in providing his own adjustment demonstrates his responsibility to mitigate the risks he poses by his ASB. This strengthens his passage through the moral filter.[321]

[319] http://www.nhs.uk/Conditions/Menieres-disease/Pages/Introduction.aspx accessed 11 April 2017
[320] 2.3.7.1
[321] Cf *Lalli v Spirita Housing Ltd* [2012] EWCA Civ 497, [2012] HLR 477 [67]; 3.4.3.2

Although Org.1 had provided Larry with carpets (to insulate his flat from the sound of his foot-tapping),[322] organisations 2 and 3 were concerned recent budgetary restrictions would prevent this adjustment being made for perpetrators.

Thus, cost was a consideration: similar to Kevin Brown,[323] there were concerns that austerity had led to a reduction in adjustments that could be offered. However, the findings suggest that decision-making is guided by the moral filter with high cost adjustments reserved for the most deserving like Eileen to whose property soundproofing (sound attenuating insulation) was installed (at the party wall with the adjoining semi-detached house) and who received mediation with Eric, the complaining neighbour and FIP[324] involvement.[325] Thus, adjustments were affected by moral constructions, themselves affected by the perpetrators' responses. This issue receives further attention, next.

6.3.3 Supportive Interventions as Adjustments – the Influence of Welfare Conditionality

The findings suggested that when offering the reasonable adjustment of support, officers considered perpetrators' engagement with it, thereby scrutinising their ability to be responsibilised. In responding in this way, perpetrators minimise the risks posed by their ASB. In the lengthy, reflective case-management process, this moral assessment may be prolonged but ultimately support operates in a welfare conditional manner. Thus, the moral filter sharpens officers' individualised focus on perpetrators and affects outcomes.

Local ASB policies[326] recognised the relationship between ASB and 'mental illness or drug and alcohol misuse / dependency' and the role the role of support here, advising officers to:

[322] 6.3.3.2
[323] Kevin J Brown, '"It Is Not as Easy as ABC": Examining Practitioners' Views on Using Behavioural Contracts to Encourage Young People to Accept Responsibility for their Anti-Social Behaviour' (2012) 76 JCL 53
[324] 1.2.3.5
[325] 6.3.3.2
[326] These were limited in relating ASB to disability: support policies themselves did not consider ASB Equality policy was restricted to employees rather than occupants

> Consider and where appropriate offer support to vulnerable residents and families who commit anti-social behaviour to modify their behaviour.

The findings evidenced use of supportive interventions including behaviour classes, mediation, the FIP, confidence training (Mr. Marchmain) to aid with mediation (between the Marchmains and the Dillons); assistance with cleansing and de-cluttering (condition of property and hoarding cases – Noelle, Harry and Ken); advocacy and emotional support (Harry, although provided by his church); parenting (Eileen) referral to substance misuse support (various). All four organisations had in-house support workers or used independent support organisations rather than relying on statutory agencies with whom they had difficult relationships.[327]

However, some policies, made the operation of supportive approaches conditional:

> We work with the individual causing the problem or their family to ensure that they have appropriate advice and have access to any relevant support groups for example. The purpose of this is to try and support the perpetrator to understand the impact of their behaviour on others and ultimately to modify their behaviour. If this approach fails to deal with the anti-social behaviour or if the individual or family disengage with [us] or the services offered to them further action will be taken as appropriate.

In practice, operation of support in response to ASB was conditional across the organisations: "bad behaviour" or not taking responsibility for one's actions by accepting support may be punished by the threat or loss of housing or restrictions on its use (exclusion). In taking responsibility by accepting help offered to them, perpetrators comply with the conditions of welfare (to retain their home) i.e. by minimising or eliminating their ASB or mitigating against its effects. Such "good behaviour"[328] which meets prescribed moral codes is rewarded with inclusion.

[327] 1.2.4; 5.2; 6.4.1.1
[328] 1.2.5

The findings generally indicated that while support (or at least offers of it) commenced *before* litigation, progress to sanctions was not as swift as this second policy extract suggests. Indeed, where the perpetrator is found to be vulnerable, local policy (as in the first extract, or policy as practice) may take account of their ability to comply with conditions. Consequently, support may be offered as the sole intervention. Alternatively, support may be offered early in case-management, prior to other interventions with sanctions (the issue of notices and legal proceedings or threats of same). Where engagement is problematic it does not necessitate immediate resort to sanctions including litigation and officers tried to avoid these outcomes by giving many opportunities for compliance with support. Opportunities to comply with behavioural conditions may be formalised in an ABC e.g. Larry. Additional approaches may become progressively more formal, their sanctions more severe. Another possible approach is for support offered alternately with sanctions or the threats of same e.g. Noelle,[329] Jeremy and Harry. Finally, sanctions may be attempted in parallel with support, to encourage compliance with this intervention and discourage ASB, an approach HM4 described as "twin-tracking"[330] e.g. Sandra whom Org.4 attempted to support and also liaised with mental health services while pursuing proceedings. These various approaches illustrate the reflectivity and circuitous nature of case-management.

Whichever approach social landlords employ, they may manage cases strategically. The findings suggest officers' wide discretion in case-management is affected by risk assessments of the likely success of interventions. This is not to say that managing these cases was straightforward. Officers operate support reflectively, evaluating and re-evaluating perpetrators vis-à-vis the intervention i.e. their response and likely continued response in compliance with it. However, consistent with the findings of Clapham, Franklin and Saugeres,[331] officers' moral judgements may also affect decision-making, having have a differential effect on which perpetrators are given more opportunities for compliance with support. Although perpetrators constructed as more deserving *per se* or in their responses may not always receive a total reprieve

[329] 6.3.3.1
[330] 6.4.1.3
[331] David Clapham, Bridget Franklin and Lise Saugeres, 'Housing Management: the Social Construction of an Occupational Role' (2000) 17 Housing, Theory and Society, 68; Bridget Franklin and David Clapham, 'The Social Construction of Housing Management' (1997) 12 Housing Studies 7

from the issue of the proceedings, they would receive more chances to comply with support and / or sanctions therefore remaining socially included.

Officers' moral judgements of perpetrators and their responses resulted in four broad approaches to case-management:

1) Moral approval: tolerance and delayed action
2) Welfare compliant: perpetrator excused and supported
3) Welfare non-compliant: medically-based explanations and delayed action
4) Moral disapproval: lack of tolerance, responsibilisation in the name of equal treatment; hastened recourse to sanctions

These approaches will now be examined in turn.

6.3.3.1 Moral Approval: Tolerance and Delayed Action

Sometimes officers' moral assessment of perpetrators positively affected the *number of opportunities* offered for support. This was typical of the hoarding and condition of property cases: Jeremy, Harry, Noelle and Ken.

The favourable, elitist construction of Harry via the moral filter[332] alongside the hope that his church would be effective in supporting him, rationalised HO14's decision-making which, affected by pity,[333] prolonged the period during which offers of support (of de-cluttering) were persisted with.

> [Harry] didn't want anybody, he wouldn't have anyone there… he would say he was involved with the church… [I]t had gone on for… four or five years trying to engage with him and we had exhausted that list of [help]…

[332] 5.4
[333] 6.1.2

This approach mirrors Maynard-Moody and Musheno's finding that street-level bureaucrats keep cases longer open for those clients they believe deserve the extra service.[334]

Harry's case was typical of hoarding and condition of property cases that were notably of extensive duration, Ken's case lasting eighteen years before a possession order was obtained. Thus, much time may pass before a decision of non-engagement with or other failure of support led to the use of sanctions.

Noelle's case lasted approximately nine years due to her intermittent compliance; this allowed her partial passage through the moral filter. However, ensuring such compliance posed risks to officers, as HO15 explained:

> [I]t was very, very time-consuming going back all the time, then checking, then writing and sending [Noelle] the letters, then checking again...

Thus, while the costs (in terms of officers' time) incurred in managing cases including these attempts at engagement were never recorded, the case files typically comprised letters to perpetrators and emails with other services evidencing follow-up visits.[335] The high volume of these documents on hoarding and condition of property cases evidenced the time spent, suggesting the costs of these cases were high. There is thus an economic risk to the organisation that impacts at an individual level as pressure on officers' time that may be experienced as stress.[336]

The extended duration of these cases also prolonged the risks to neighbours. In Jeremy's case, they had complained to their MP and a law centre. HO1's handling of the case seemed to last at least nine-months before Jeremy was rehoused but the wardens had previously been trying to manage the case and the overall duration was uncertain due to the cleansing of files at Org.1. While Jeremy's passage through the

[334] Steven Maynard-Moody and Michael Musheno, *Cops, Teachers, Counsellors: Stories from the Front Lines of Public Service* (University of Michigan Press 2003)
[335] 4.5.2.2
[336] Steven Maynard-Moody and Michael Musheno, *Cops, Teachers, Counsellors: Stories from the Front Lines of Public Service* (University of Michigan Press 2003) 57

moral filter permitted tolerance, allowing him to engage with support and change his behaviour, HO1 was mindful of urgency in case-management:

> [T]here was no way you were going to get [him] to change quickly enough before… someone… [ended] up hurt or ill… it needed to be sorted quicker.

While, like Cary, Jeremy voluntarily moved, of the other hoarding / condition of property cases in the sample[337] possession orders were *eventually* sought and obtained against Ken and Noelle, while Beatrice's case was ongoing. Thus, although perpetrators may be constructed favourably by the moral filter, officers may remain mindful of the risks posed by their behaviour. Additionally, continued environmental risks cause concern for neighbours who may complain about this and the appearance of the house leading to a serious case review and more time incurred by the organisation.[338]

Officers in the study had been provided with training on hoarding but felt particularly ill-equipped to deal with this behaviour.[339] Their resulting anxiety[340] may have contributed to their inaction providing an additional or even alternative explanation of the duration of these cases. Nevertheless, the extended duration of these cases prolongs the risks posed by the ASB.

6.3.3.2 Welfare Compliant: Perpetrator Excused and Supported

While the perpetrator who has a favourable construction in the moral filter may still be subject to interventions with sanctions because of the risks they pose, those making the best progress because they show unequivocal welfare compliance and individual moral responsibility are likely to receive the best outcomes. Thus, extraordinary service[341] rather than tokenistic support (and therefore minimal compliance with

[337] Table 5.3 – The Moral Filter
[338] 6.4.2.4
[339] 5.3.4
[340] 6.4.2.4 - HO16
[341] Steven Maynard-Moody and Michael Musheno, *Cops, Teachers, Counsellors: Stories from the Front Lines of Public Service* (University of Michigan Press 2003)

equality law)[342] may be shown to perpetrators constructed as more deserving and therefore less risky by virtue of the responsibility they have shown in their compliance.

Similar to Kevin Brown's finding that negotiation of ABCs forms part of the process of active responsibilisation,[343] the present findings show that by engaging with the support on offer, perpetrators demonstrate a willingness to improve their behaviour by their acceptance of conditions. Initial and subsequent offers of support are dependent on passage through the moral filter. Support remaining available is conditional on the tenant meeting a prescribed norm: their compliance with the support offered. Eileen did this and in so doing controlled her son's behaviour

> Eileen was in regular contact [with the FIP] and… was keeping her appointments… they were putting things in place for her like parenting classes and different things, she was going to absolutely everything that they advised her to do and there was a real improvement as well… the more she started to engage with them the more the complaints seemed to reduce.

Thus, Eileen showed she was actively responsibilised: by engaging with support she minimised the risks posed by the behaviour of herself and her sons. In so doing, she also demonstrated her capacity for governance of her own behaviour and that of her sons.

Thus, Eileen was constructed as trying to adhere to norms and be one of the included.[344] Her compliance and repsonsibilisation were rewarded. First she received highly favourable treatment in being given many chances at compliance with support. This included mediation that Org.1 had arranged between her and the complainant neighbour Eric. When this failed, Eric was constructed as unreasonable whereas Eileen was not. Cumulatively, she demonstrated herself to be the opposite of an antisocial, anti-consumer.[345] Consequently, HO1 did not see litigation as the solution:

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[342] Mike Oliver, 'The Social Model in Action: If I Had a Hammer' in Colin Barnes, and Geof Mercer (eds), *Implementing the Social Model of Disability: Theory and Research* (The Disability Press 2004) 18, 30
[343] Kevin J Brown 'It Is Not as Easy as ABC': Examining Practitioners' Views on Using Behavioural Contracts to Encourage Young People to Accept Responsibility for their Anti-Social Behaviour' (2012) 76 JCL 53, 66; 3.4.2
[344] 1.2.5
[345] Helen Carr and Dave Cowan, 'Labelling: Constructing Definitions of Anti-social Behaviour?' in John Flint (ed), *Housing, Urban Governance and Anti-social Behaviour: Perspectives, Policy and Practice* (Policy Press 2006) 70

> …I thought, the way to solve [the noise] is to try and address that family's needs rather than looking at any kind of enforcement and [Eileen] was willing to go along with that...

Therefore, a further solution to the problem was found; HO1 offered soundproofing:

> …because Eileen had basically done everything that I had asked her to do; she had engaged with the agencies… they were speaking really… highly of her… but even though the complaints had reduced they were still coming through so what I said to [Eric] was obviously this isn't ASB and he accepted that… and… spoke positive[ly] about [Eileen] and the kids as well.

Thus, Eileen was ultimately rewarded with physical adjustments to help her retain their home.[346]

But is soundproofing a reasonable adjustment?[347] That managers are mindful of *cost* is clear from HM3:

> …in certain areas if given a choice we'd sound insulate every single property… It comes down to what is reasonable, proportionate and what we can afford.

Yet controllers of let premises are not bound to remove or alter a physical feature.[348] Even if considered reasonable, high costs can mitigate against this.[349] Despite Eric moving out soon after work was completed, HO1 justified the high cost of soundproofing in the belief that:

> [T]hey are always going to be a noisy family so whoever moves in will still get the benefit.

[346] 6.3.3.2
[347] 2.3.7.1
[348] EA 2010, s 20(10), sch 4 para 1(8);
[349] Equality and Human Rights Commission *Equality Act 2010 Statutory Code of Practice – Services, Public Functions and Associations,* 7.30; 2.3.7.1

This is a social model *outcome* – the adjustment benefits both neighbours and anyone who moves into the property afterwards.[350] However, it is not clear that HO1 has this in mind; rather Eileen's superior passage through the moral filter provides the rationale.

Larry was not the ideal tenant Eileen proved to be, but became responsibilised, refraining from aggressive behaviour via the comparatively cheap solution of an ABC. While this contractual device is usually backed with sanctions and therefore a disciplinary intervention, Larry's compliance, along with officers' construction of him as not malicious and therefore blameless for his foot-tapping,[351] led Org.1 to provide him with fitted carpets, a physical adjustment and a relatively cheap form of soundproofing compared to that provided to Eileen. However, recent case-law specifically cited sound attenuation as a proportionate response for Stephenson, a perpetrator like Larry, living in an uncarpeted flat.[352] Similar to both Larry and Eileen, it seems Stephenson could be constructed as deserving, passing the moral filter there being no suggestion he was at fault for his behaviour or mental health.[353]

Decisions to offer and to persist with support also have an economic impact. Although the costs of maintaining Eileen's tenancy, were not clear from the file, HO1 believed that support was cost effective:

> You can guarantee that… support… will always cost less than [litigation].

However, as support may be intensive then it may prove expensive. On this basis, this adjustment may not have been reasonable. The costs of maintaining Eileen's tenancy must have been exceptional, including time spent by two officers in communicating with both Eileen and Eric,[354] the support provided by the FIP plus soundproofing.

[350] Mike Oliver, 'The Social Model in Action: If I Had a Hammer' in Colin Barnes, and Geof Mercer (eds), *Implementing the Social Model of Disability: Theory and Research* (The Disability Press 2004) 18, 21
[351] 5.4.1
[352] *Birmingham CC v Stephenson* [2016] EWCA Civ 1029, [2016] HLR 776; 2.3.5
[353] Cf *Gloucester CC v Simmonds* [2006] EWCA Civ 254; 3.4.3.1
[354] 6.3.3.1

The high costs of adjustments could nevertheless be seen to have a moral basis and be constructed by officers as reasonable where they justify their decisions based on a perpetrator's compliance and therefore their responsibilisation. HO1 did not provide such explicit reasoning for Eileen but their decision-making may be interpreted as such.

6.3.3.3 Welfare Non-compliant: Medicalised Explanations and Delayed Action

Those perpetrators who refuse to engage with support may be constructed as risky like the tenants in *Accent Peerless*[355] of whom medical evidence of the likelihood of their non-engagement with treatment was accepted as relevant to the assessment of the recurrence of their ASB and therefore the reasonableness of making a possession order.[356] Lack of engagement was similarly given a medicalised rationale in the case of elderly siblings discussed by HO23 in the focus group at Org.4:[357]

> [T]hey didn't want to engage… Because they couldn't see any harm in what… they're like …obviously because of [their] age.

Thus, lack of engagement may be understood as a product of lack of intention. Such construction will not, however, bar attempts at alternative interventions or delayed litigation although the case may be proceeded with more cautiously.

However, lack of engagement was not *entirely* excused save for those lacking capacity who were constructed as blameless.[358] Thus, all but those deemed or assumed incapacitous may be constructed as irresponsible for their failure to comply with support showing further application of the moral filter. Yet there are further reasons for the medicalised focus of capacity, analysed below.[359]

[355] *Accent Peerless Ltd (formerly Surrey Heath Housing Association Ltd) v Kingsdon* [2007] EWCA Civ 1314
[356] 2.1.1
[357] Condition of property; not a case file; discussed in passing
[358] 5.4.1
[359] 6.4.2.2

6.3.3.4 Moral Disapproval: Lack of Tolerance, Responsibilisation in the Name of Equal Treatment and Hastened Recourse to Sanctions

Kevin Brown found that housing professionals commonly accepted the existence of risk factors and underlying causes of perpetrators' behaviour which needed to be addressed but at the same time felt 'there is no excuse and we think people have a choice'.[360]

As the officers' moral assessment of perpetrators affected the *number of opportunities* offered for support, this may be negative: where perpetrators failed the moral filter, they may be given less opportunities. In this assessment process, where perpetrators were constructed as rejecting support due to non-compliance, or a lack of engagement, HO1 expressed exasperation at the law's inability to responsibilise:

> I think everything to do with ASB… [is] nearly as bad as the criminal system it is all weighted towards the defendant, give them another chance… if somebody is given an opportunity to get help or to change their behaviour and they don't take it the first time, then, why should that [neighbour] be left to suffer… until this person finally decides, "do you know what I might do something to help myself instead of blaming everybody else for once". I find it really frustrating… it is a total disservice to decent, upstanding members of the community… I agree with trying to change people's behaviour but only to a certain extent… there has got to be a balance between helping people who are causing a problem and helping people who are victims… [W]hen you get in to…court…it's even worse…these people get set a court date…they are personally served by a process server who…reads out to them…[and]…also makes it very clear, you must go and get a solicitor, you must turn up at court on this day. They turn up at court late, they don't bother getting a solicitor and then it's our victim or our witness who has taken a day off work, [sorted out childcare]… and then a judge… [adjourns]… so they can go and get a solicitor… and then [they] turn up again in a couple of weeks' time… [without a solicitor causing another adjournment].

[360] Kevin J Brown, 'It Is Not as Easy as ABC': Examining Practitioners' Views on Using Behavioural Contracts to Encourage Young People to Accept Responsibility for their Anti-Social Behaviour' (2012) 76 JCL 53, 60

HO1 aligns case-management with the criminal justice system. Their exasperation with case-management, especially litigation, leads them to a harsher construction of perpetrators[361] who all fail the moral filter. Yet HO1 favourably constructed Eileen and Jeremy[362] both of whom passed the moral filter respectively on welfare conditional and elitist grounds, both being seen to lack intention. Civil ASB cases are only concerned with behaviour or its consequences for the victim; the perpetrator's intention[363] need not be proved.[364] Yet officers' focus on intention may hamper their consideration of alternative explanations. Consequently, HO1 applies the moral filter more rigorously in the early stages of case-management. For those deemed to have intention, less chance at change permits a truncated version of welfare conditionality. This view of perpetrators as underserving of the number of chances they are given to engage with support takes no account of hard cases such as clashes of lifestyles and victims turned perpetrators. HO1 also handled Ivan's case. His passage through the moral filter was marred by his alcoholism and attack on an elderly neighbour.[365] His victim's extended family threatened to assault him and were rendered unreliable as witnesses when shortly thereafter, Ivan was attacked by an unknown assailant. Cleansing of files at Org.1 and Ivan's death prior to resolution of the case made it difficult to discern how many attempts had been made to support him. It seems efforts were made but HO1 expressed awareness of the limitations of support:

> [W]e definitely would have put things in place [for Ivan] but we can only put them in if they'll accept them and even then we can make referrals to the community mental health nurses without their consent and they'll go out but again if they won't engage with them their hands are tied to what they can do.

However, such a view has the potential to justify offering only tokenistic support to certain perpetrators having or constructed as having mental impairments yet for

[361] Baroness Newlove, *Our Vision for Safe and Active Communities* (Home Office 2011) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97908/baroness-newlove-report.pdf accessed 22 November 2017; 6.2
[362] 5.4.1
[363] 5.4.1
[364] Alison P Brown, 'Anti-Social Behaviour, Crime Control and Social Control' (2004) 43 The Howard Journal of Criminal Justice 203, 206; 1.2.3.3; 3.4.2
[365] 5.3.3

whatever reason failing the moral filter e.g. misusers of intoxicants like Ivan and Walter.

Org.2 offered mediation between Walter and his neighbours. Possession proceedings followed the failure of this intervention and support was only offered to enable Walter to comply with the postponed possession order. HO20 deemed Walter's[366] failure to engage showed a lack of responsibility:

> At the end of the day if people are not prepared to engage with us the only action we've got is through the courts, you know to… deprive them of the[ir] accommodation…

This understanding that all perpetrators have full moral agency as to their engagement may lead to equal treatment i.e. that the disabled are treated the same as the non-disabled rather than more favourably to mitigate against the effects of disability and this mirrors a traditional anti-discrimination stance.[367] Thus, HO15 says they treat all perpetrators equally, regardless of whether they misuse substances or not:

> [I] felt sorry for [Harry]… a bit… even though he didn't engage as much as [Noelle] and it's not a case of [me feeling] sorry for drunks… they're all treated more or less the same it's just how they respond to you…

HO15, who constructed themselves as objective,[368] justifies their approach based on the perpetrators' responses i.e. individual responsibilisation. However, the approach of equal treatment significantly reduces the potential of equality law and is far removed from the social model's goal of removing barriers to disability equality including attitudes informed by moral judgements. That perpetrators may be deemed irresponsible for failing to comply with support offered may justify the erection of barriers via the quicker route to sanctions, particularly litigation.

[366] 5.4.4
[367] Introductory Chapter
[368] 5.2

Officers' constructions of perpetrators who passed the moral filter and for whom the organisations persisted with support are not subject to equal treatment. While court orders were obtained in half of the cases in the sample, support was persisted with longer for those who passed the moral filter. Those most worthy, like Eileen, were never likely to face litigation, being assisted in their social inclusion. Yet the moral focus precludes social model outcomes: those failing or stuck in the moral filter may fare much worse. Alternatively, those failing to engage with offers of support or the support itself may be constructed as risky (therefore failing the moral filter) by not demonstrating individual moral responsibility and consequently may be treated tokenistically thereafter. Fewer attempts may be made at gaining either a response to offers of interventions or engagement with them when they are in place or cheaper forms of soundproofing may be used. Thus, these failed responses may be more readily deduced by the landlord e.g. HO20 of Walter. Such perpetrators have failed to comply with the conditions of welfare and consequently may have more difficulty arguing against the landlord's proportionality arguments under section 15(1)(b).[369] It is to the setting of those arguments I turn next.

[369] 6.4.2

6.4 The Risks of Outcomes and their Effect on Case-management

This section explains how officers see one potential outcome of their decision-making – litigation – as a risk in itself and the backwash effect of this illuminates the reasons for their reliance on the medical lens throughout case-management. This is because litigation relies on evidence. Of the twenty-three files, ten cases proceeded to possession with an injunction sought in one further case (Arthur). Possession was sought against Sandra at both her original and temporary addresses and an ASBO obtained to exclude her from the area. Litigation thus has serious consequences for perpetrators: a failed defence to a claim for possession may result in the termination of their right to occupy their home. A failed defence against an injunction may result in the restriction of their use of their home or exclusion from an area. Any proceedings may result in perpetrators' disqualification from future access to social housing via operation of allocations policies[370] or a finding of intentional homelessness.[371] For the landlord, a failed claim is costly, especially in the case of possession where a fully contested case can cost in the region of £20,000.[372] A possession order may be suspended or postponed rather than outright. This may be a phyrric victory in terms of accountability that remains owed to neighbours disgruntled by this outcome.[373] Thus, there are risks to the landlord of using these formal interventions and these are a constant consideration of officers although not formally risk assessed. The landlord's decision to litigate[374] is based on accountability and this affects the preceding case-management, yet the decision to litigate is not without risk to others, causing stress to the perpetrator and officers and damaging to multi-agency relations. Officers' investigations and assessment of evidence (and therefore how they construct the perpetrator through medical lens and moral filter) are critical to this approach. Thus, the section also considers how outcomes are affected by officers' professional role and their understandings of it.

[370] 2.3.5
[371] 2.3.5
[372] Anecdotal evidence only
[373] The contractual and other responsibility to perpetrators, victims, complainants and other neighbours is explained in Chapter 2
[374] 6.4.2

This section also shows how officers' focus on the outcome was affected by housing professionals' understandings of policy: training and their interpretation of legal language affects estimations of the prospects of success and therefore of the risk of litigating, leading to the operation of "folk law". The focus on the endgame of litigation and its risks affect and are affected by constructions of perpetrators: this individualised focus overlooks perpetrators' problems with barriers to disclosure.

6.4.1 Risks to Perpetrators, Tensions with Other Agencies

While litigation or threats of litigation may be used strategically to engage perpetrators with support or other interventions, this approach carries risks. These risks are not only to perpetrators but also to the already tense relationships social landlords have with medico-welfare agencies. These strategies have the potential to hamper future multi-agency working,[375] yet in the immediate term, only pose economic risks to the landlord if they fail to control ASB.

6.4.1.1 Threats of Litigation as a Strategy to Engage Medico-Welfare Agencies

Officers expressed numerous frustrations with medico-welfare colleagues: HO13 lamented that officers were excluded from involvement in multi-agency meetings until "crunch time". HO28 explained how litigation was thus used to not only responsibilise perpetrators or change their behaviour (and therefore stop the ASB) but to get other medico-welfare agencies to see they are serious:

> …[S]ometimes when we take possession proceedings it's not because… we want to evict that person… we want to force them to get help or to change their behaviour in some way. Sometimes by starting the legal proceedings that… gets the mental health team in [gets the mental health assessment underway]… gets the social worker involved…

[375] 6.4.1.3 - HM4

While a potentially exclusionary strategy, HO28 lacks intention to pursue proceedings to conclusion. Resorting to threatening action (via service of notices i.e. documentary evidence) tortuously involves other agencies to effect a change in the perpetrator, preventing their future ASB. HO9 agreed that this role be shared between agencies in the "cure" of individuals. This language and the individualised focus evinces a medically-based construction:

> …it is up to… the relevant authorities, the police, the housing associations, the local authority, social workers… community mental health teams… [to] get round a table and discuss a way forward… to try and cure, for want of a better word… whatever illness that person is suffering from.

However, HO1 was not convinced of inter-agency co-operation, specifically expressing a frustration that supports the argument established earlier[376] that officers do not construct themselves as having a welfare role:[377]

> I called… multi-agency meetings… and that basically got them… involved because I said to them if you don't do something we're going to have to evict [Jeremy], we've got no choice because other residents are at risk and we're a housing association we haven't got… anywhere with more support to put him… it's your job to identify… adults… at risk…

HO1 nevertheless seems to experience some conflict in their role, having concern about risks to Jeremy:

> …I typed up a notice [having] no intention of proceeding with it… I didn't even want to serve it on Jeremy… because I knew it would distress him but I said to them I'm going to go and serve it after this meeting and I'm going to get it issued… as soon as possible and they then said ok… Technically, none of us…wanted to get him evicted but to get him what he needed from social services that's the line that we have to go along with in most of the cases…

[376] 5.2 e.g. HO2
[377] Bridget Franklin and David Clapham, 'The Social Construction of Housing Management' (1997) 12 Housing Studies 7; 1.2.4; 5.2

Thus, "common-sense" assessments of risks to perpetrators in taking or even serving a notice threatening to take proceedings against them were made. Officers typically experienced a heightened awareness of risks to perpetrators passing the moral filter (e.g. Jeremy who HO1 constructed as lacking intention and wealthy); where the officer is somehow sympathetic towards the perpetrator (e.g. Sandra who HO28 pitied believing other agencies had failed her);[378] where there is "robust" evidence of the deterioration of a perpetrator's mental health. The final possibility is clear use of the medical lens and is evident here where evidence from a community psychiatric nurse made HO12 mindful of the risks of serving notice on Larry:

> If this guy's mental health condition was deteriorating as… was admitted by the CPN… then it's not really wise to just go out doing enforcement and start slapping NISPs[379] down…

However, even when an officer is aware of risks to the perpetrator, even one favourably cast via medical lens and / or moral filter, this does not mean proceedings or enforcement will not be pursued because:

1. Risks to the perpetrator may be dismissed

2. The attempts to engage other agencies may fail

6.4.1.2 Risks to the Perpetrator may be Dismissed

During a meeting after the possession order had been made and to discuss eviction, Harry made a gesture with his hand as though pulling a noose around his neck and according to HO14:

> At one point… started really screaming… and… ran out of the building… [his friend from church] said… "he's probably going to kill himself."

[378] 5.4.3
[379] Notice of Intention to Seek Possession

While reassuring the friend they would do what they could to help Harry, HO14 did not really believe he was going to commit suicide rather:

> [H]e was just desperate… lots of people who come in here… say they are going to kill themselves and I am not being blasé about that but, people are pretty desperate… we have been on training… but, I think… he was just that low you know and he didn't know what else to say. He couldn't express himself.

The nature of Org.3's training relevant to this risk was not clear: it could have been on hoarding *per se,*[380] the meaning of health, mental health, risk assessment in litigating or managing distressed clients. While unlikely to be the only factor affecting the decision to pursue a warrant, HO14 dismissed this suicide risk, deducing that Harry could not express himself.

6.4.1.3 Attempts to Engage Other Agencies May Fail

Even when aware of risks to the perpetrator and taking a cautious approach, the strategy may fail. HO20 discovered that mental health services would not act without legal obligation:

> I… asked could they assist us and they said… as there was no order in place that… would cause [Zac] to go to them… they, "Couldn't do anything unless he came voluntarily." …I had served a notice on him… and I wrote to the GP… concerning [service of the notice]… and I didn't really want to go down… that road on him because obviously his mental state was frail and it wouldn't assist [but I] never even got a reply from the GP.

It seems the local mental health team would only involve themselves in Zac's case if he became a patient either compulsorily[381] or voluntarily.[382] A cautious approach of

[380] 5.3.4
[381] MHA 1983, ss 2 and 3
[382] MHA 1983, s 131

notifying Zac's GP of the gravity of the situation justifying, as HM4 suggested, a more strident approach:

> [W]e'd carry on with [twin-tracking] because we can't let them think the enforcement will stop... [A] lot of agencies don't always understand the way we have to enforce... As soon as we had a case where we were enforcing as well as trying to support [the local mental health trust] didn't think... it was right to be in there… working with us.[383]

The frustration that officers feel against other medico-welfare professionals for failing to provide support therefore justifies the risk of causing stress to perpetrators. The risk of further souring relations with other medico-welfare agencies by letting their staff think perpetrators are going to lose their homes seems worth taking if it means social landlords garner their continued assistance in providing support, with the aim of preventing further ASB. The added advantage of this strategy is analysed below.[384]

6.4.2 Risks to Social Landlords: Not Achieving the Desired Outcome

Officers and managers perceived risks of litigation differently. Officers were well aware of risks inherent in the litigation process and their potential to heighten the overall litigation risk. In the following extract, HO29 imagines Cary and Dee's dispute progressing to court. Their qualms about the reliability of witness evidence reveal a deeper unease:

> …It'll be like a comedy act… once you reason about the risk… of not getting your injunction, the judge looking at it going, "I can't… be confident who's the perpetrator and who's the complainant." I mean… [the] credibility of either witness… you wouldn't put either on the stand…

[383] While the trust may not want to work with the landlord, if a perpetrator was the subject of a community treatment order after care arrangements including housing must be organised in concert with voluntary agencies although the responsibility for this does not necessarily sit with trusts alone – MHA 1983, s 117
[384] 6.4.2.1

While acknowledging the clash of lifestyles[385] and consequent credibility of witnesses as problematic, HO29 critically refers to the risk of *not getting the order sought* i.e. *failing to achieve the desired outcome*. Managers like HM3 were particularly focused on this risk and the consequences for their organisation's image and reputation:

> [I]f the [defendant] got to court and [explained their behaviour was due to their disability] then we would need to show [we'd done] X, Y and Z to support that person and if we didn't we'd look pretty silly.

Thus, managers perceive wider risks including a concern, like that of HM1, that judges may see some social landlords as litigating frivolously:

> [I]t would be a waste of [everybody's] time and resource to do that. You would be best using your energy trying to do appropriate support… [W]hy… [litigate]… when you know the judge [will ask], "[H]ave you tried this?" and you say no, then they would just throw it out… [and]… if we had a reputation of going to court frivolously… every time our name got mentioned, judges would go, "[R]ight, we have got an opinion about your reputation."

HM1 and HM3 both clearly wish to project an image of competence with HM1 being particularly concerned that pursuing unfounded cases may make judges less inclined to make orders in Org.1's favour. The explicit reference to wasting time and resources when a judge may reject the case shows a focus on the endgame and that managers view litigation as an economic risk which if pursued needs to be successful.[386] Thus, they are concerned about the outcome of case-management and analysis of related risks may affect how earlier stages are handled.

6.4.2.1 Folk Law: searches for Evidence and Discrimination Challenges

While this is not a comparative study of past and present legislation, it is important to note that many of the cases sampled had been managed when the DDA 1995 was in

[385] 6.2
[386] 6.4.2.2; Noel Whitty, 'Human Rights as Risk: UK Prisons and the Management of Risk and Rights' (2011)13 Punishment & Society 123, 123; 2.3.5

force. However, two managers referred to "proportionality" a term only appearing in the EA 2010.[387] Mirroring the language of Org.1's policy to pursue legal action where 'appropriate and proportionate', HM1 demonstrated their mindfulness of it:

> [in] court… you need [to prove action] is appropriate. The words appropriate and proportionate are key…

HM3 similarly explained:

> It's not just… a tick box exercise. It isn't: we've offered support OK were off to court… it's a genuine attempt to get that person to engage… If we… were going to court, it's all about reasonableness and… proportionality.

Both terms appear in local policy. Org 1's ASB policy made reference to taking legal action 'where appropriate and proportionate' and HM1's understanding of proportionality bears closer resemblance to the Code that links it to appropriate responses and also refers to "necessary"[388], while HM3 conflates reasonableness with proportionality. Technical understandings are, not central to this thesis; rather the terminology itself and the anxiety it may cause landlords.[389] Affecting officers' anxiety is the organisations' awareness that their action is to be measured against such nebulous criteria and that their offers of support are important in this.[390] Thus, proportionality may be built into case-management systems, requiring officers to justify action on the basis that it is appropriate (on grounds of risk) and necessary because all other action has failed.

Thus, officers and managers alike, including HM3, referred to demonstrating in court that they had done "X, Y and Z". This makes consideration of criteria sound like a tick-list that HM3 specifically says it is not. Yet HO14 of their own staff referred to it as such:

[387] 2.2.2; 2.3.5
[388] Equality and Human Rights Commission *Equality Act 2010 Statutory Code of Practice – Services, Public Functions and Associations,* 5.25 to 5.35; 2.3.5
[389] 2.1; 2.2.2
[390] EA 2010, s 15(1)(b)

> [W]e have like… a tick-list because we know we are going to court and we have got to be seen in court to have done everything possible to try and help this person… especially if they have got mental health problems because judges don't want to throw anybody out…

Both officers and managers are clearly aware of the risks of not being able to evidence in court their efforts at alternative solutions to eviction. HO14's reference to 'being seen' hints at tokenistic compliance that may be used particularly for perpetrators failing the moral filter. Moreover, a tick list may not be addressed with appropriate rationalisation and applied with discretion, generously in favour of those who pass the moral filter.

Contrary to arguments of tokenistic compliance, HO10 described *extensive* attempts at support yet these were also tied to the need to investigate. This leads Ben and Christine to be constructed via the medical lens. Through this individualised focus, HO10 constructs their behaviour as not anti-social,[391] they are blameless and in need of help.

Finding the cause of the problem is linked with providing support. The projected judicial response to a failure of case-management[392] is not getting the desired outcome.

> [W]hat [complainants] probably don't appreciate is, we have to go and investigate the background and even if Ben and Christine were perpetrators and causing noise, given that they've got learning difficulties, obviously we would *have to* offer them every support we could and if that was still going on, then we might consider [litigation]… but until we've tried… to see… *what's causing the problem* in the first place… *No judge would evict on those grounds if we haven't put in support for them.*

[391] 5.4.1
[392] 5.3

The consequence of this link between investigation leading to knowledge and proportionate responses was made explicit by HM3. When asked how Org.3 investigated cases where a perpetrator did not disclose their disability, HM3's reply shows how the response is linked to construction via the medical lens:

> We would say to them is there anything that you feel [you]… might be struggling with that might be contributing to this? What about if we were to make a referral to our internal support team they might be able to help you or what about the [FIP]… depending on what… [was] …suspect[ed]. I suppose the one we're really thinking of is mental health because that's the one that's the most difficult to pin down… and probably the one that is more likely to have impact on antisocial behaviour and so …in those cases we would say "is there anything… do you have any medical conditions, anything that could be contributing to this?" …they would probe around that…

While this could take a social model approach, listening to the perpetrator and negotiating support[393] with them to meet their wants or needs, the information is more often used by the officer to offer support assumed *appropriate* to the disability – to cure or care for,[394] an individualised, medical model approach.

HM3 like the other contributors[395] except HM1[396] only refers to support and no alternative adjustments or interventions. In this respect, the findings therefore generally evidenced a medical model approach that did not take account of perpetrators' needs or wishes.

Additionally, while offers of support were *not entirely* dependent upon disclosure, they may lead to evidence. While neither officers nor managers had a strong understanding of technicalities of law, the underlying rationale for gaining knowledge of a person's disability was defensively twofold:

[393] 6.3..3
[394] 6.4.1.1
[395] In this section, 6.4.2
[396] Suggesting rehousing - 6.3.2.1

1) If a landlord seeks to offer *appropriate* support to address behaviour, this, as HM3 makes clear, may depend on some fact-finding as to the nature of the disability, promoting officers' use of *the medical lens*. Moreover, gathering and assessment of evidence[397] throughout case-management have a reflective and re-constructive relationship with offers of support. Perpetrators' rejection of support may lead officers to (re)construct them via the moral filter or to weigh later disclosures cynically.[398] A denial of disability (disclosure) can be deduced from refusal of support strengthening a landlord's argument[399] that they lacked knowledge:[400] Thus, the landlord shows via efforts to provide support that they tried to find out but no disclosure was made; that they could not know or reasonably be expected to know and therefore could not have discriminated.

   Further, twin-tracking cases[401] permits an alternative means of investigation and obtaining evidence while support is offered, providing another rationale for this case-management strategy.

2) Simultaneously, this risk-based, outcome-focused strategy can be tokenistic, a 'compliance approach'[402] and yet satisfy the requirements of the EA 2010, s15 (1)(b). If support was refused or if *adequate* support (or other adjustments) are being provided but fail to control the ASB and officers have resort to formal control (litigation) this "unfavourable treatment"[403] may be explained[404] as being a proportionate response and there is no discrimination.[405]

Thus, the reflective case-management of offering support while conducting simultaneous searches for evidence of relevant impairments and assessments of risk resonate with Cowan and others' observation that the management of risk is dependent on knowledge; that officers commonly felt that the routine processes of

[397] Chapter 5
[398] 5.4.5
[399] HM3 above, HM2 below this section
[400] EA 2010, s 15 (2) and previously *Mayor and Burgesses of the LB of Lewisham v Malcolm* [2008] UKHL 43, [2008] 1 AC 1399 [161]-[163] (Lord Neuberger)
[401] 6.3..3 HM4
[402] Mike Oliver, 'The Social Model in Action: If I Had a Hammer' in Colin Barnes, and Geof Mercer (eds), *Implementing the Social Model of Disability: Theory and Research* (The Disability Press 2004)18, 30; 2.3.5
[403] EA 2010, s 15(1)(a)
[404] Arguments under DDA 1995, s 24 would have concerned justification
[405] Landlord's arguments may be strengthened by pointing to the responsibility of other agents in relation to perpetrators' health. Where officers feel they have no option other than litigation they may argue other medico-welfare agencies' failures to provide interventions is relevant to the issue of proportionality.

obtaining knowledge about households were insufficient and this led to the "need for biography".[406]

Throughout case-management, officers' 'information bingeing'[407] in searching for and weighing evidence via the medical lens and moral filter[408] can be understood as a defensive strategy that related to the knowledge and proportionality counter arguments of the EA 2010, section 15. In turn, this demonstrates that officers had a constant eye on the endgame of litigation driven by accountability-informed anxiety.[409] Thus, officers' predictions of risks as to certain outcomes have an effect upon case review processes and promote *the medical lens*.

However, the extensive duration of investigations leading to appropriate alternative solutions may be viewed as an economic risk. Additionally, as knowledge can occur at any stage,[410] especially once sanctions become formalised, should litigation commence or continue after a disclosure has been made, a perpetrator has a stronger argument that they have been discriminated against under the EA 2010, section 15. Additionally, searches for evidence may be indirectly discriminatory[411] or infringe privacy rights.[412]

Thus, an alternative strategy, as Kevin Brown found, may be that housing professionals do not probe too deeply matters they are not necessarily or *adequately* trained in.[413] Thus, where perpetrators denied having impairments this may provide relief. HM2 responded to being asked whether Org.2 was overwhelmed with perpetrators with mental impairments by explaining:

> …when the… perpetrator… says, "I haven't got mental health" and instructs [their] solicitor to act on that basis. Many will do that in the belief that they haven't

[406] David Cowan, Christina Pantazis and Rose Gilroy, 'Social Housing as Crime Control: An Examination of the Role of Housing Management in Policing Sex Offenders' (2001) 10 S&LS 435, 447; 1.3.3
[407] Simon Halliday, *Judicial Review and Compliance with Administrative Law* (Hart 2004) 77
[408] Chapter 5
[409] 6.4.2.4
[410] EA 2010, s15 (2); *Mayor and Burgesses of the LB of Lewisham (Appellants) v Malcolm (Respondent)* [2008] UKHL 43, [2008] 1 AC 1399 [161]-[163] (Lord Neuberger); 3.3.1
[411] EA 2010, s 19; 3.3.1
[412] 3.3.1
[413] Kevin J Brown, 'It Is Not as Easy as ABC': Examining Practitioners' Views on Using Behavioural Contracts to Encourage Young People to Accept Responsibility for their Anti-Social Behaviour' (2012) 76 JCL 53, 64

> got issues [and] that makes it a lot easier for us, even though, they clearly have got issues.

Thus, while Morrison J noted the inquisitorial element of the Employment Tribunal's rules[414] (to assist 'disabled persons' unable or unwilling to accept that they suffer from any 'disability' or where this denial may be symptomatic of their condition)[415] there is no parallel in the CPR.[416] Housing professionals may be relieved by this denial because no challenge can therefore be made under the EA 2010, section 15. While HM2 took this view, information bingeing by officers remained common.

While officers were clearly aware disability gives grounds for a challenge to ASB proceedings, they lacked technical knowledge of the law. They seemed unaware of the causal link that needs to be established between disability and discriminatory treatment.[417] Officers' lack of technical legal knowledge was particularly obvious in relation to reasonable adjustments. While the adjustment of support was offered without exception, physical adjustments tended not to be. However, for discrimination to arise, a reasonable adjustment must be requested by the person with the impairment and refused by the organisation.[418] This contrasts with the Code that says the duty is anticipatory and applies whether or not a service provider knows a reasonable adjustment is needed.[419] As landlords' practice offering support, almost universally, it seems hard to see how they could discriminate here. However, a practice of offering support as the only non-sanction based intervention has the potential to be discriminatory particularly if another adjustment may better achieve the objective of stopping the ASB therefore precluding any subsequent sanction based interventions. Here the social model approach of listening to the perpetrator and involving them in the choice of intervention may assist. Thus, a misguided approach to support may lead to discriminatory practice where alternatives are not fully considered.

[414] Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 SI 2013/1237 sch 1, para 41; 3.1.1
[415] *Goodwin v Patent Office* [1999] ICR 302, 309; Introductory Chapter; 3.1.1
[416] 3.2.1
[417] EA 2010, s 15(1)(a) and previously under DDA 1995, s 22(3); 2.3.6
[418] EA 2010, s 21
[419] Equality and Human Rights Commission, *EA 2010 Statutory Code of Practice – Services, Public Functions and Associations* (EHRC 2011) 7.22

6.4.2.2 From Folk Psychiatry to Folk Law: the Specific Problem of Capacity

As investigations often failed to produce the requisite knowledge, officers may be particularly inclined to default to folk psychiatry[420] where they suspected the perpetrator may lack capacity. Their application of the law is based on a misunderstanding of the legal meaning of capacity; that distinctions between mental and legal capacity were not drawn[421] is key to them here operating a folk law.

HO9's thoroughness in investigating Annabelle's case[422] related to the risks of litigating against a perpetrator who may lack capacity:

> I wanted to establish really how serious the mental health problem was because when we go to court and… apply for whatever… order… when it comes to… the Disability Discrimination Act[423]… we're conscious… this covers not only physical but mental health… *we have to prove* that the… person has the capacity… *and that is a key word here, capacity to understand what is going on*… if someone for example hasn't got the capacity to understand… the legal proceedings then we are not going to go to court no matter what…

Litigation seems a risk not worth taking. Skewed understandings of the legal meaning of capacity may have been affected by a medical focus in training on disability and behaviour[424] or indeed law.[425]

Whatever the cause of risk aversion, it is akin to that of Whitty who found the mere *prospect* of prisoner litigation, with its attendant costs and unpredictability, unacceptable to organisational risk management.[426] Indeed, HO9 may be aware of

[420] 5.3.5
[421] 5.4.1
[422] 5.3.2.2
[423] EA 2010 was in force at the time of the interview - 2013
[424] 5.3.4
[425] 6.4.2.3
[426] Noel Whitty, 'Human Rights as Risk: UK Prisons and the Management of Risk and Rights' (2011) 13 Punishment & Society 123, 129; 1.3.2

his manager HM1's concern about gaining a poor reputation with the judiciary for frivolously litigating.[427]

The findings did not suggest case-management to be so outcome-focused that evidence was sought merely to justify the outcome[428] of exclusion. The non-linear case-management process, with its continual search for evidence in tandem with offers of support, did not permit this. However, where the endgame had been reached and court orders obtained *and complied with*, there were morally-based 'post-hoc rationalisations'[429] of the appropriateness of decision-making and underlying assumptions. As HM4 reflected:

> We know after our recent injunction… [Arthur] does understand what he's to do and what he's not to do so you glean from that… he's got capacity…

Here compliance with an ASBI provided supposedly robust evidence of capacity justifying Org.4's risk in litigating as the correct approach. HO28, also of Org.4 similarly reflected that Sandra's compliance with her ASBO was evidence of her capacity. Such rationalisation may have passed into Org.4's discourse as a lesson learned. During case-management, there was no robust evidence of incapacity for either perpetrator and decision-making in that regard may have been based on folk psychiatry. Compliance with court orders may, however, confirm "common-sense" constructions of capacity[430] to be correct. While what officers may mean is that perpetrators, by their compliance, demonstrate moral agency,[431] they nevertheless gain confidence in their instinctive approach to evidence. The legal consequence of their decisions compound the organisational approach to this tactic as correct: case-management based on folk psychiatry becomes folk law.

Officers' *de facto* misunderstandings of capacity can have a profound effect. HO9 conflated lack of capacity with "genuine mental illness."[432] This is a particularly

[427] 6.4.2
[428] J Peay, *Decisions and Dilemmas: Working with Mental Health Law* (Hart 2003) 57 in Nicola Glover-Thomas, 'The Age of Risk: Risk Perception and Determination Following the Mental Health Act 2007' (2011) 19 Med L Rev 581
[429] J Peay, *Decisions and Dilemmas: Working with Mental Health Law* (Hart 2003) in Nicola Glover-Thomas, 'The Age of Risk: Risk Perception and Determination Following the Mental Health Act 2007' (2011) 19 Med L Rev 581
[430] 5.4.1
[431] 5.4.1
[432] 5.4.1 – HO9

individualised, folk psychiatric misunderstanding. Numerous officers e.g. HM2 and HO9[433] respectively believed the courts would not make an order where a person has mental ill-health or lacks mental capacity.

Disability-based challenges, even where capacity is an issue, cannot be assumed to floor the intervention sought. While a perpetrator's understanding of the terms of an injunction are key to it being granted,[434] in possession this is not necessarily the case. *Knowsley Housing Trust v McMullen*[435] illustrates that a defendant's lack of capacity did not prevent the Court of Appeal upholding the SPO, merely amending its terms. Therefore, should the claimant wish to apply for a warrant of possession, it must first apply to the court for permission to do so.[436] HO9's concern about a perpetrator's lack of capacity in specifically understanding litigation may lead to the involvement of the Court of Protection thereby complicating enforcement of an order. [437] Clearly, resulting costs issues will affect the assessment of litigation risk[438] but it is simply not true that no order will be made.

Thus, litigation against incapacitous perpetrators is assessed as a risk not worth taking. Conversely, it may be argued that litigation against capacitous perpetrators with known or suspected mental health issues (not "genuinely" mentally-ill) *is* worth taking. If social landlords may more readily litigate against such a person, this folk law based misunderstanding has potential for direct discrimination.[439]

[433] Above, this section
[434] *Wookey v Wookey; Re S (a child) (injunction)* [1991] 3 WLR 135
[435] [2006] EWCA Civ. 539, [2006] 2 P & CR D45 [62]
[436] [2006] EWCA Civ. 539, [2006] 2 P & CR D45 [67]
[437] [2006] EWCA Civ 539, [2006] 2 P & CR D45
[438] 2.3.5
[439] EA 2010, s 13

6.4.2.3 Folk Law: the Failure of Training

Policy terminology had clearly passed into the consciousness of organisations, resulting in cautious decision-making. However, the nature of the housing professional's role with its street-level bureaucratic pressures affect officers' constructions of policy i.e. their understandings and misunderstandings of the law.

Training may be Undermined by Competing Pressures

Such training had been provided by lawyers to staff involved in such cases at all four organisations. Additionally, there had been equality and diversity, welfare-reform and safeguarding training. While this could have included training on disability equality legislation, neither the legal content nor the relationship of this training with ASB was clear. Furthermore, the will to incorporate training or the practical effects of training may be overridden by the objective of coping with bureaucratic demands of a heavy workload.[440] Thus, like the officers in Parr's study, economic factors impinged on the decision-making of officers who found problems in handling cases were exacerbated by time and workload pressures[441] which obviously increased as a case proceeded towards trial, as HM2 explained:

> [I]t's a bit misleading to quote numbers because you can have one case that can consume your time for six months, you can have fifteen cases and there's not much to do… As soon as you've got legal proceedings [and go to court], that's when the time really gets taken up.

Awareness of economic pressures was apparent especially amongst generic officers like HO15 who found that cases especially at the litigation stage left them little time to deal with their other workload and seemed especially stressed:

[440] Simon Halliday, *Judicial Review and Compliance with Administrative Law* (Hart 2004) 76
[441] Sadie Parr, 'The Role of Social Housing in the 'Care' and 'Control' of Tenants with Mental Health Problems' (2010) 9 Social Policy and Society 111; 1.2.4

> [B]asically for the past two weeks I've virtually almost dropped everything in order to do this for the injunctions and stuff… you've got four weeks to do your statements but you are still doing the rest of your work.

For generic officers, the rest of their work includes core housing management tasks of effecting repairs, collecting rent and allocations.[442] These at once illustrate the pressures of work placed on such officers and the contradictory commercial and caring roles[443] of housing management. These street-level bureaucratic pressures and housing professionals' conflicting roles may increase the likelihood of their reliance on "common-sense" rather than social model understandings of perpetrators and corresponding responses to them

Training and Information may be Distorted

Questions on training were only directly posed to managers and even then did not require an evaluation of the quality of training delivered.[444] Managers did, however, confirm that training was not provided to all officers. While knowledge gained from training may be cascaded throughout organisations by circulation of copied handouts, there is the potential for verbal translation of their content to non-attendees: the risks of failed litigation may be thereby exaggerated as a distorted interpretation of law. I had attended some training provided by a barrister to the four organisations in which much reference to proportionality was made. This barrister advised attendees to maintain their files well to show what steps they had taken in the case, particularly with reference to the case of *Stephenson.*[445] I perceived the language used by the barrister (especially in relation to the tactics of "clever lawyers" representing tenants) likely to instill fear into housing professionals.

[442] Bridget Franklin and David Clapham, 'The Social Construction of Housing Management' (1997) 12 Housing Studies 7, 15; 1.2.4
[443] 1.2.4 and 5.2
[444] Chapter 4 and Appendix 6 - Interview with Manager
[445] *Birmingham CC v Stephenson* [2016] EWCA Civ 1029, [2016] HLR 776; 2.3.5

Perpetrators' challenges[446] rooted in the vague language of proportionality[447] and reasonableness[448] translate to "X, Y and Z" that lack doctrinal substance but may be founded on fear. Lord Neuberger's vague pronouncements on proportionality per Article 8 and its relevance to 'occupants vulnerable because of mental or learning disability'[449] may have similar effect. Such proclamations crystalise in narratives that become folk law. Renteln and Dundes[450] explain the existence of folk laws existing at societal level. This thesis has described a folk law existing in the narrower, organisational sphere of social landlords. Yet as for Renteln and Dundes, folk law bears close resemblance to folk lore[451] i.e. customs, beliefs and stories circulated by word of mouth and distorted by "Chinese whispers". Folk law, the apocryphal tales of past cases where landlords' claims[452] have been floored or prolonged by the disability challenges of legendary tenants (as HO1 described Ken) magnify the risks of litigation.

Folk law permeates from management to front-line officers embedding into organisational discourse and distilling into fear of the wrong outcome. *Knowledge* of the law *per se* was *weak* but *fear* of the *wrong outcome* was *strong*. This fear is a street–level bureaucratic pressure that leads to a practice of risk-averse coping mechanisms that becomes the policy. Yet if, as HO10 says, the reality of this practice is attempting all alternative solutions before litigating, as *Stephenson* [453] suggests they should, then should the case proceed to litigation, the perpetrator's position in resisting an order is extremely weak.

Thus, officers' misunderstood the law and this affected their assessments of the outcomes of litigation. These misunderstandings combine with a risk averse approach continuing throughout reflective case-management that may permit the continuation of all risks[454] longer than necessary. Officers are nevertheless aware that accountability demands a solution to stop the ASB.

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[446] Chapter 2; 6.4.2.1
[447] Or its DDA 1995 predecessor, justifiability
[448] 2.3.5
[449] *Manchester CC v Pinnock* [2010] UKSC 45, [2011] 2 AC 104 [64]
; 2.2.2[450] Alison Dundes Renteln and Alan Dundes (eds), *Folk Law: Essays in the Theory and Practice of Lex Non Scripta* (University of Wisconsin Press 1995) 2
[451] Alison Dundes Renteln and Alan Dundes (eds), *Folk Law: Essays in the Theory and Practice of Lex Non Scripta* (University of Wisconsin Press 1995) 2
[452] 6.4.2 – HM1 and HM3
[453] *Birmingham CC v Stephenson* [2016] EWCA Civ 1029, [2016] HLR 776; 2.3.5
[454] Outlined in 6.1

6.4.2.4 Risk and Accountability and its Effect on Decision-making

While officers are risk averse: mindful, if not fearful, of the outcomes of litigation, their constructions of risks of the ASB continuing and consequent anxiety affected their desire to nevertheless find a resolution. This was evident in their express use of "worry" and "dread" which appear to show concern for clients' lives:

> HO1: [I] was just worried that somebody whose health was pretty rough anyway… I didn't want anybody to pick something up… it could have been fatal.

> HO16: …in all conscience we couldn't leave [Harry] in the property… it was always a dread of mine that I'd… be at home and [hear] on the news that this whole block had burnt down and everyone had died in it.

> HO2: My biggest worry at the time [was that Ken]… was going to be found dead and someone [saying] why didn't you do something…?

Deeper analysis however, reveals that beneath these feelings liesa rationale of accountability for their response, or lack thereof. This is evident in HO2's expression of fear, of attack on their professionalism. While no officers expressed specific concerns that their performance may be audited (another pressure on street-level bureaucrats),[455] they specifically fear criticism of an omission in their case-management i.e. being asked to justify why they did not take action; to account for this omission. HO16's awareness of accountability is suggested by the reference to collective ("we") morality ("in all conscience") couldn't leave Harry, in knowledge of the fire risk revealing how fears affected their professionalism (decision-making).

Officers' awareness of the consequences of their *inaction* clearly resulted from pressures from management. Management in turn related *action* to countering another risk - of accountability to communities: [456]

[455] Simon Halliday, *Judicial Review and Compliance with Administrative Law* (Hart 2004) 94
[456] 1.3.2

> So part of my job, I have constantly got my foot on people's necks saying, it is important that we do this, and you might not think so because we have got other things and that is not the priority in your job, but... I keep saying to them if you don't fill this in, and it is actually built in to our system now… that is a responsibility and one of the things we try and impress on people is that at any stage in the future this could all go wrong and that person [is vulnerable] and it goes wrong it goes to a serious case review… you will be accountable… [and gets] in to the paper… then you have to demonstrate what you did, why you did it, and anything could come up including emails between us.

HM1 makes explicit reference to officers' responsibility in the control of ASB. Implicit in HM1's consideration of (mis)management of cases is a threat to officers' job security. This disciplinary consequence can be countered, as HO14 and HO10[457] mentioned, by taking steps "X, Y and Z". At the same time, records kept may show all appropriate action was taken should public disapproval demand accountability. Failure to maintain adequate records is another risk. Thus, as for medical professionals,[458] defensive practice entailed record-keeping[459] (expressly referred to by HM1) including compliance with disability equality legislation.

Additional to direct accountability to the community in controlling ASB,[460] HM1 expresses concern again that negative publicity[461] may damage to Org.1's reputation but this time that this may be wider, amongst the public, as disseminated by the media. HO16 expressed a dread that a fire at Harry's flat may make the news. Thus, housing professionals at both officer and manager levels are conscious that officers may be held accountable not only for mishandling cases but also harming the organisation's reputation. The reluctance of other statutory agencies referred to in this study to disclose confidential information[462] was likely also to have been affected by their accountability to clients. Thus, as with other agencies, negative media reporting may

[457] 6.4.2.1
[458] Wayne Cunningham and Susan Dovey, 'Defensive Changes in Medical Practice and the Complaints Process: A Qualitative Study of New Zealand Doctors' (2006) 119 NZMJ 1
[459] Alexandra Hillman and others, 'Risk, Governance and the Experience of Care' (2013) 35 Sociology of Health & Illness 939, 949
[460] 1.3.2
[461] 1.3.2
[462] 1.3.3; 5.3.2.2

lead to defensive practice amongst practitioners in which record-keeping is prioritised over clients' well-being[463] e.g. in negotiating support.[464] This suggests minimal compliance with the law rather than a social model informed practice. [465]

[463] Richard Mullen, Anita Admiraal and Judy Trevena, 'Defensive Practice in Mental Health' (2008) 121 The New Zealand Medical Journal 85; Alexandra Hillman and others, 'Risk, Governance and the Experience of Care' (2013) 35 Sociology of Health & Illness 939, 949; 1.3.2

[464] 6.4.2.1

[465] V Williams and P Heslop, 'Mental Health Support Needs of People with a Learning Difficulty: a Medical or a Social Model?' (2005) 20 Disability and Society 231; Introductory Chapter

Conclusion

This chapter has mapped out and evaluated the wide and varied risks assessed in managing ASB cases where the perpetrator has mental impairments. It has sought to explain how practitioners construct risk in this context. These constructions and relatedly constructions of perpetrators were illustrated by the problems arising in clash of lifestyles cases that perversely prolong risks of ASB. However, the resultantly broad construction of risk showed officers also construct ASB widely, at least because accountability demands a response. This wide definition is slightly mitigated, as the findings in Chapter 5 show, by the fact that officers do not construct the behaviour of certain perpetrators as anti-social, where they were welfare compliant and did not intend the behaviour.

The chapter then sought to examine these constructions in relation to the risks of using various interventions in case-management including adjustments, as alternatives to litigation were considered. The most widely used adjustment was support that was routinely offered to perpetrators who officers knew or suspected to have mental impairments. However, officers used this intervention in a risk averse way. Thus, while in some cases, officers may deem attempts at support to be a failure, this was usually rationalised by application of the moral filter. Socially inclusive strategies were also persisted with for those perpetrators making some passage through the moral filter. Where other more socially inclusive adjustments were possible, for example alternative accommodation, they were often only offered with a medically-basedunderstanding of perpetrators or overridden by moral considerations of welfare conditionality. However, the extraordinary service officers sometimes provided to perpetrators passing the moral filter (e.g. Eileen), may have been disproportionate when considering the impact of the behaviour on neighbours as they may prolong risks of ASB.

The findings suggest law was, as may be expected, a pervasive consideration in risk assessment and in turn decision-making. Thus, the risks of litigating were discussed. The potential for using support to aid investigations was examined as this may lead to disclosure of evidence of relevant impairments or where support failed, making a

decision to litigate seems "proportionate", therefore minimising the risk of a successful disability–related challenge under the EA 2010, section 15.

While officers were mindful of risks to perpetrators they may seek to press ahead with threats of litigation in the hope of engaging the support of other medico-welfare agencies. Their misunderstandings of the law could be attributed to organisational responses to training and the pervasive influence of medically-based discourse and therefore the medical model of disability, especially relating to capacity.

However, misunderstandings of the law combined with fears relating to accountability meant officers largely approached case-management and litigation defensively. Where litigation was resorted to, landlords approached this with their minds on the biggest risk - not achieving the desired outcome. While the research was conducted pre-*Stephenson*,[466] which suggests extensive attempts at interventions before possession is sought, the findings suggest social landlords took this approach anyway before this nuclear option was resorted to.

Overall, the methods of gathering evidence and relatedly offering support were with an eye on this endgame that viewed the perpetrator through medical lens and moral filter permitting social inclusion for those meeting officers' approval. This individualised focus, however, failed to enable a social model approach to case-management.

[466] *Birmingham CC v Stephenson* [2016] EWCA Civ 1029, [2016] HLR 776

Conclusion

This thesis concerns the position of social landlords at a conflicted policy intersection: having the responsibility to control ASB yet also to house people whose mental impairments may relate to their ASB. It has used three theoretical frameworks to explain how social landlords manage ASB cases where occupant perpetrators have known or suspected mental impairments. The models of disability were considered against the alternative frameworks of housing professionalism and risk. Social constructionism was utilised in relation to these frameworks, seeking to explain how housing professionals understand their role, risk and disability and how this affects ASB case-management. It operated from the premise that policy and the surrounding discourse would affect housing officers and therefore social landlords in ASB case-management. Therefore, the first three chapters examined policy and literature relating to disability, housing professionalism, ASB and risk to raise further questions about how these matters may affect officers and their practice.

Data from a small-scale study of four social landlords was analysed to address the housing practice aspects of the research questions. Answers to the research questions, summarised below, will steer the remainder of this conclusion:

- Which model of disability best explains how relevant perpetrators are constructed in policy and social landlords' ASB management practice?
- How are housing officers affected by their professional role and their understanding of it and how does that affect their decision-making?
- How do officers understand risk and how does this affect their decision-making?
- What are the outcomes of social landlords' ASB management practice?
- Can outcomes be explained by the models of disability? How are they affected by housing professionalism and risk and officers' constructions of them?

Setting the Scene: Residualisation, Responsibility and ASB

The thesis opened, highlighting the discourses of risk and moral responsibility in ASB policy that may affect officers' decision-making. It was noted that policies concerning access to social housing admit disproportionately high numbers of vulnerable, welfare dependent or deinstitutionalised individuals into the tenure. Not only may such occupants be constructed as risky, but as it was noted, so too is the tenure by virtue of its residualisation. To resist these many risks, policy seeks to responsibilise social housing occupants to regulate their behaviour as a condition of their continued residence. Occupants demonstrate moral responsibility by self-governance, conforming to the norms of expected behaviour. Self-governance is encouraged by the employment of incentives but resort may be had to interventions: supportive, contractual and punitive. Interventions may be operated in a conditional manner, with perpetrators being given multiple opportunities to change their behaviour. This results in officers' consideration of occupants in terms of both morality and risk: can occupants demonstrate moral responsibility by managing their own behaviour, where necessary in response to these interventions, thereby modifying their risks?

A review of policy and case-law on disability-based challenges to ASB proceedings, revealed a precautionary and therefore risk-based rationale. There is little evidence in case-law that such challenges have proved successful.

Which model of disability best explains how relevant perpetrators are constructed in policy and social landlords' ASB management practice?

In terms of the models, the thesis sought to address whether policy and practice conceptualise disability and responses to relevant perpetrators via a medical lens which conflates it with impairment and focusses on the individual and attending to their needs, or via a social lens that shifts the focus to the barriers to disability equality.

As gatekeepers of both entry and exit to the tenure, housing policy forces officers to consider applicants in a medical way. Domestic disability legislation fails to capture the ethos of the social model, specifically how policy can remove barriers to disability.

Both the EA 2010 and its predecessor[1] are framed on the minority rights model therefore fail in this regard by defining disability narrowly, conflating it with impairments that are substantial and long-term. Reasonable adjustments are narrowly defined as is discrimination which is qualified by proportionality and causation. Unsurprisingly, the ethos of the social model does not find its way into case-law. A narrow interpretation of both disability and discrimination suggests employment of the medical model. This is encouraged also by the law of evidence and case-law suggests the weighing of evidence frustrates the success of perpetrators' disability arguments. Perpetrators' evidence of the effects of the impairment on them is denied with more "robust" expert evidence being favoured.

Judicial discourse suggests a moral evaluation of both evidence and the perpetrators themselves, apparent in responses to arguments of causation and proportionality. It was hypothesised that parallels could be drawn between judicial treatment of evidence and that of officers, i.e. that officers' constructions of perpetrators would be both medical and moral and combined with their constructions of risk would affect subsequent case-management. This was borne out in the findings.

Officers' need for knowledge (evidence) of perpetrators' impairments relates to the appropriateness of their response: the importance of evidence (in prospect of litigation) and adjustments including support for perpetrators (if litigation is to be avoided). This resulted in officers searching widely for "robust" medical evidence of the causes of perpetrators' ASB, including searching their own records and contacting perpetrators and their families. These efforts were rarely fruitful: poor record-keeping amongst social landlords and rare disclosure from occupants meant officers were often unable to find evidence as to whether a perpetrator's behaviour was caused by their impairment. The social model recognises that stigma is a barrier to identifying with an impairment, let alone constructing oneself as disabled, all of which will prevent disclosure. Although participants were well aware of non-disclosure of impairment, there was no clear evidence that they recognized stigma as a barrier to identity and disclosure.

[1] Disability Discrimination Act 1995

Officers therefore filled the evidential gap in their inquiries by observations, "common-sense", intuition and folk psychiatry and these may be influenced by training. Officers' views of perpetrators including the knowledge they gained about them are best explained via the medical model. Additionally, officers' understanding of disability may be explained by the moral policy context of ASB and by the nature and pressures of their professional role.

How are housing officers affected by their professional role and their understanding of it and how does that affect their decision-making?

The literature suggests the pressures and difficulties that officers experience in the management of ASB are typical of descriptions of them as street level bureaucrats and that this affects their way of working. Intuition and "common-sense" are both coping mechanisms of street level bureaucrats. For housing officers acting at the vanguard of ASB management, the chief pressure derives from the focus of ASB policy which imposes responsibilities upon social landlords and their officers for controlling the widely defined ASB and its associated risks - ranging from resisting the decline of social housing to stopping the incivilities of individual perpetrators. Yet this policy focus of control conflicts with other roles of social landlords. These conflicts in policy are mirrored in a number of conflicts faced by officers in their professional identity, adding to the pressures they face and affecting their exercise of discretion in ASB case-management. Exacerbating these pressures are tensions between housing officers and other professionals which may be particularly dysfunctional given the role officers have to play in managing ASB.

The findings suggested information-sharing between social landlords and their partner was uncommon (and is likely to remain so given recent changes in data protection law).[2] Officers experienced frustration with these colleagues not only in terms of their refusal to share evidence but their reluctance to provide appropriate support. These tensions with medico-welfare professionals reflect both issues in housing officers' conflicted professional identity and pressures of work.

[2] Data Protection Act 2018

Officers' responses to clients ranged from cynicism to sympathy and pity. The latter, was typically expressed for those perpetrators with observable physical or sensory impairments (therefore conforming to stereotypical constructions of vulnerability). This bore out my concern that officers may view perpetrators with physical or sensory impairments or learning difficulties (except ADHD) differently to those with mental health issues.

The Medical Lens and the Moral Filter

Officers' employment of intuition, "common-sense" and folk psychiatry enabled officers to subject their "findings", including limited disclosures, to moral constructions. The moral filter described in the thesis combines folk psychiatry with the moral responsibility that underlies the conditional operation of ASB interventions.

Sympathy was also afforded to perpetrators confirming to welfare or elitist constructions having wealth, intelligence or a desire to be employed or educated. Officers constructed those who appeared decent or respectable (the well-educated, well-dressed, well-spoken or aspirational) as being more responsible.

Officers' negative constructions of perpetrators manipulating "the system", seen as irresponsible or lacking respectability mirrored those of the judiciary.[3] Particularly irresponsible were those considered not to have impairments at all or to have caused them by immoral conduct - intoxicant misuse. Here officers tacitly severed the causal link between disability and behaviour, seeing such perpetrators as responsible for their ASB. There is no legal basis for this, although this seems to have occurred in *Simmonds,*[4] a case which, especially given the absence of consideration of dual diagnosis in the medical report appears to have been wrongly decided. Nevertheless, officers follow this *Simmonds*[5]-like rationale narrowing the construction of disability.

[3] *Croydon LBC v Moody* (1999) 31 HLR 738; *O'Connell v Viridian Housing* [2012] EWHC 1389 (QB); *Lewisham LBC v Malcolm and another* [2007] EWCA Civ 763, [2008] Ch 129 [84]; 3.4.3; 3.2.1.2; 3.4.3; 5.4
[4] *Gloucester CC v Simmonds* [2006] EWCA Civ 254
[5] *Gloucester CC v Simmonds* [2006] EWCA Civ 254

Furthermore, officers' conflation of mental impairments that were "genuine" with lack of capacity also illustrates their tacit establishment of a causal link between impairments and behaviour. "Knowing" which perpetrators had or lacked capacity may make officers feel they know who is exempt from being responsible in the control of their own behaviour. However, conflation of genuine impairments with incapacity suggests officers assess the incapacitous perpetrators as lacking moral agency and conversely those with intention or malice as having moral agency. While officers may believe incapacity means perpetrators must literally not understand their behaviour or its effects, assessment of capacity is not this simple. Furthermore, such assessment of intention and therefore responsibility for ASB is stigmatising.[6]

Relatedly, this illustrates how ASB policy delegates responsibility for its control from State to social landlord to housing officer and in turn to occupants of social housing having the responsibility for controlling their own behaviour or facing sanctions. However, as Cobb[7] argues it is impossible to assess degrees of moral agency, leaving an indeterminate number of perpetrators whose behaviour officers have the responsibility for controlling.

Officers' assessments of intention and capacity and also meta-responsibility for mental health issues and consequent behaviour because of substance misuse highlight the particularly entwined relationship between medical lens and moral filter. Thus, there is no clear sequential separation between the weighing of the medical and the moral, each bound in their purpose and reciprocally aiding both constructions of perpetrators. However, this entwined construction is employed by officers policing the boundary between who is and who is not disabled revealing a narrow understanding of disability. Implicit throughout the thesis is the notion that the social model is preferable to the medical model because of its aim to remove barriers to disability inequality. However, construction via the medical lens and moral filter means that far from seeing mental impairments as part of a continuum per the Universalist variant of the social model, and focussing on the barriers to disability equality and experiences of these, officers in their individualised focus, may at best take a minority rights if not a medical model

[6] Nick Haslam, 'Dimensions of Folk Psychiatry' (2005) 9 Rev Gen Psychol 35, 42
[7] N Cobb, 'Patronising the Mentally Disordered? Social Landlords and the Control of Anti-social Behaviour under the Disability Discrimination Act 1995' (2006) 26 LS 238

approach to disability equality. In drawing the group of people as disabled very narrowly, officers also construct who they believe is and who is not entitled to use disability challenges to resist social exclusion and this has the potential to reduce the impact of disability rights legislation. Officers' use of the moral filter extends to their views of the professionals representing perpetrators and in particular, the expert evidence they provide for them which is treated with sceptisim.

How do officers understand risk and how does this affect their decision-making?

That risk is a pervasive consideration in ASB policy discourse is explained above. Officers constructed risks intuitively throughout the lengthy and reflective process of ASB case-management. While this may mean their understanding of risk is subjective, the thematic analysis of the data permitted common experiences to be discerned. Although the risks officers constructed in ASB and its management are wide and varied ranging from behaviour that causes fires to risks involved in litigation, this can be explained by the responsibilities and therefore pressures policy imposes upon social landlords and their officers to control ASB. The nature of their professional role means officers' are forced to rely on "common-sense" in assessing risks as for other aspects of case-management. An additional consequence is that their practice in case-management was generally risk-averse.

The consequences for officers' constructions of risk and relatedly constructions of perpetrators were illustrated by the particular difficulties they experience when managing clash of lifestyles and hoarding cases. The sympathy felt for occupants, the lack of complaints in the cases of hoarding or the seemingly innocuous nature of the ASB in clashes of lifestyle meant these cases had limited numbers of complainants. In clashes of lifestyle, there tended to be only two households involved and in hoarding cases, complaints, if at all, were confined to the appearance of the property or nuisance rather than of the complainant personally. Common to both types of cases is a low level of impact of these types of ASB on the wider community.

Because of these impacts, clashes of lifestyle were perceived to carry a low level of risk, and along with hoarding cases, a high litigation risk. The slow, lengthy, reflective process of case-management was driven primarily by this latter risk. Yet the length of these cases and the difficulty of resolving them, prolonged the risks of the ASB to all, causing officers frustration and stress. While officers were mindful of risks that litigation may pose to any perpetrators, they may press ahead with threats of taking proceedings in the hope of engaging other agencies in the provision of support.

What are the outcomes of social landlords' ASB management practice and can they be explained by the models of disability, housing professionalism and risk or how officers construct these matters?

Officers' decision-making described so far is explained by the moral filter and the models, risk and housing professionalism and the relationship between these: Foremost in officers' construction of their role is the need to stop or minimize ASB and its risks. As case-management contemplates litigation as a means of controlling the risks, this drives their need for evidence. Officers' operate the medical lens and moral filter in their constructions of perpetrators and their impairments to explain their ASB whether evidence is present or not. However, this has consequences in terms of how these cases were managed.

While officers' choice of interventions in the control of ASB is an outcome-focused management decision, primarily what will stop the ASB, analysis of the findings revealed how officers' constructions of perpetrators also affect these decisions. The choice of interventions included adjustments as alternatives to litigation. The most widely used adjustment was support which was routinely offered to perpetrators who officers knew or suspected to have mental impairments, whether they passed the moral filter or not. However, officers used this intervention in a risk-averse way. Thus, while in some cases, officers may deem attempts at support to be a failure, socially inclusive strategies were also persisted with. Where other more socially inclusive adjustments were possible, for example alternative accommodation, they were often only offered with a medical understanding of disability i.e. a focus on the impairment or overridden by considerations of welfare conditionality.

Perpetrators making swift passage through lens and filter (e.g. Eileen) tended not to be considered antisocial and received extraordinary treatment and a social model approach was taken, involving them in negotiation of the interventions. It cannot be said that all those who made swift passage through lens and filter were necessarily free from sanctions but in gaining the sympathy of officers, they received better treatment than those who make slower passage through or were stuck in the filter who tended to receive minimal compliance with equality law. For all perpetrators however, the extensive process of case-management led to continued interventions giving perpetrators greater opportunities to engage with them. This allowed officers to reconstruct perpetrators via the medical lens and moral filter. Thus, even those stuck in the filter have opportunities to receive support or at worst face injunction proceedings and therefore remaining socially included by the retention of their homes. However, while officers may still ultimately have resorted to litigation, this delayed response in facilitating adjustments may have been disproportionate or unreasonable particularly when considering the impact of the behaviour on neighbours as they may prolong risks inherent in ASB case-management.[8]

The potential for using support to aid investigations was considered as this may lead to disclosure of evidence of mental impairments or where support failed, make a decision to litigate seem "proportionate", therefore minimising the risk of a successful defence under the EA 2010, section 15. This approach may minimally comply with disability equality law and therefore not maintain the spirit of the social model in listening to and working with disabled people as to their choice of support and interventions.

It was argued that the lack of understanding or misunderstandings of legal terminology including proportionality and capacity could be attributed to organisational responses to training and the pervasive influence of medically-based discourse and therefore the medical model of disability. As morality clearly affected constructions of disability, officers may be seen to discriminate in moral terms because of the way they apply the filter and the difference in their approaches and outcomes between those who pass or

[8] Chapter 6

fail it. However, in relation to the EA 2010, section 15, and given the number of offers of support made even to those who fail the moral filter, when organisations pursue ASB control proceedings, their actions may be argued to be proportionate[9] and therefore not discriminatory.[10] Organisations may have a further argument that their attempts to discover perpetrators' impairments mean they could not know and could not reasonably be expected to know of the disability[11] and therefore could not discriminate.[12] However, their investigations may prove indirectly discriminatory contrary to the EA 2010, section 19 or invade privacy rights.

Misunderstandings of the law combined with fears relating to accountability that demands a response meant officers largely approached case-management in general and litigation in particular, defensively. Here their minds were on the biggest risk - not achieving the desired outcome or there being no outcome to a case (i.e. the ASB will not stop) because it seemed that the landlord would not get their order where evidence in the case was weak (clashes of lifestyle) or because a challenge would succeed. Thus, should the nuclear option of litigation be resorted to, the social landlord will not obtain their order and this seemed to influence the ongoing reflective nature of case-management in particular the search for evidence, promoting the use of the medical lens.

Knowledge of the law *per se* was *weak.* Thus, while officers and managers alike may be aware of legal terminology including reasonableness and proportionality their knowledge does not extend to technicalities in the meanings of disability, capacity or discrimination (especially causation). Housing professionals were instead informed by folk law, organisational customs and beliefs founded in misconceived notions of capacity and proportionality, which exaggerate the risk that they will not get their order. Folk law combines with accountability and adds further street-level bureaucratic pressures on officers in addition to their responsibility to control ASB. Officers and managers were fearful of the wrong outcome i.e. of there being no court order to exclude those who deserved to be excluded. This had the backwash effect of driving the search for evidence in the lengthy circuitous process of case—management.

[9] EA 2010, s15 (1)(b)
[10] EA 2010, s 15 (1)(a)
[11] EA 2010, s 15(2)
[12] EA 2010, s 15 (1)(a)

A defensive mindset is unsurprising given the expense involved in a fully contested possession case.[13] This is understandable: officers do not want the courts letting perpetrators off the hook if they expend such effort and money in litigating. Social landlords seem to use the moral filter to rationalise *necessary* claims on resources whether that is in funding litigation to exclude the unworthy or on adjustments to include the worthy.

Yet it was not clear that *costs* of litigation were foremost in the minds of officers; only HO1 mentioned this. Organisational reputation seemed to affect the managers' thinking on litigation. Only the provision of the physical adjustment of sound attenuation was consciously costed. This was only offered to two perpetrators in the sample: one being provided with carpets, the other, who most successfully passed the moral filter, had full sound insulation installed to her property. an economic focus was less explicit in relation to other adjustments including support and the technical complexities of the law seemed no barrier to them being offered as a routine step. Perhaps support was perceived as cheaper, yet attempts over the duration of long-running cases had not been costed and were therefore unknown. Paradoxically, such genuine cases that pass through lens and filter and would legitimately be entitled to rely on disability challenge wouldn't have proceedings taken against them anyway and would be supported because they are constructed as deserving.

So what? Where do we go from here?

The richness of data generated and consistency of themes hopefully ensure the transferability of findings to other landlords. With respect to the operation of the social model, the findings are not encouraging. While Equality Law may have aimed to facilitate a removal of the barriers to disability, it seems that the dominance of medical discourse and considerations of risk and morality in the management of social housing have stymied this goal of the social model in this context. Thus, the persistence of these influences counter the social model spirit underlying the EA 2010. Officers are unaware of the potential of the social model to remove barriers to disability equality by

[13] Anecdotal evidence only

social inclusion and therefore retention of housing or how adjustments may be offered and to whom. As professionals, they therefore seem to do what structuralists like Oliver suggest – provide limited options for disabled people.[14] Yet there is an explanation for this: the BASW code of ethics, being framed by the social model,[15] refers to human rights and emphasises independent living, choice and empowerment. An absence of such references in the CIH code and separate training[16] means that practitioners are less likely to understand key social model concepts and goals. Moral constructions of perpetrators may affect officers' offers of interventions. However, officers may appear to discriminate in social model rather than legal terms by not engaging all perpetrators in discussions about interventions. Consequently, interventions are less likely to work with perpetrators not engaged in these negotiations who may be constructed as risky or non-compliant. Officers' moral constructions of perpetrators may then affect the staging of subsequent interventions and determinations of their successes and failures. A wider level of engagement may improve trust[17] that the social model recognises as key to the support and empowerment[18] of service users and improve success in interventions.

Further research is needed particularly on clashes of lifestyle and hoarding to focus on the extent of those problems, alternative solutions and social landlords' work with different agencies e.g. environmental health. Additional research with social landlords could focus on their use of the matrix and officers' emotional responses in managing ASB cases concerning relevant perpetrators.

The finding that the judiciary employ the medical lens and moral filter was based on an examination of case-law alone. Qualitative research using similar research instruments to those in this study would further illuminate judges' moral constructions of relevant perpetrators.

[14] Michael Oliver and Colin Barnes, *The New Politics of Disablement* (Palgrave Macmillan, 2012)
[15] http://cdn.basw.co.uk/upload/basw_95243-9.pdf accessed 20 January 2017
[16] 1.2.4
[17] Mike Oliver, 'The Social Model in Action: If I Had a Hammer' in Colin Barnes and Geof Mercer (eds), *Implementing the Social Model of Disability: Theory and Research* (The Disability Press 2004)18, 28
[18] V Williams and P Heslop, 'Mental Health Support Needs of People with a Learning Difficulty: a Medical or a Social Model?' (2005) 20 Disability and Society 231

Perpetrators' views of officers' attempts to gain their trust and engage them in decision-making about interventions, a more social model approach to case-management, require further exploration. This could illuminate reasons behind perceived non-engagement and assess the impact of the social model in this field of practice. The findings may inform training for social landlords to and increase the likelihood of interventions succeeding. However, austerity may be used to justify limits on interventions and adjustments.

Policy responses to ASB are not encouraging: the support of individual perpetrators was not considered in the White Paper.[19] Officers tendencies to make folk psychiatric diagnoses of persons with solitary existence leave uncomfortable prospects for the individual occupier lacking any other source of support. One policy change that may be recommended in general is an ease in relations between social landlords and medico-welfare agencies involved with perpetrators alongside an understanding of the need for both sides to recognise the need to resolve ASB cases and also respect dignity and privacy. Facilitation of such a diplomatic exercise is a challenge given tense relations between the professions, yet the duration of ASB cases and consequent risks make it one that needs rising to.

Yet the fundamental reform required lies with domestic equalities legislation. Progress has been slow in the re-framing of disability by increased recognition of the UNCRPD with its broader, more Universalist, definition while it co-exists with the EA 2010. Furthermore, while precedent may specifically caution judges about the effects of sympathy in the determination of cases,[20] emotional responses cannot be legislated for. Moral constructions of perpetrators will undoubtedly continue to influence the emotions of both officers and judges in their day-to-day decision-making. A social model solution to effect attitudinal change therefore seems to lie in the amendment of the EA 2010 in accordance with the UNCRPD definitions of both disability and discrimination.

[19] Home Office, *Putting Victims First – More Effective Responses to Anti-Social Behaviour'* (HMSO May 2012)
[20] *Holley and another v LB of Hillingdon* [2016] EWCA Civ 1052, [2017] HLR 24 [31]

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Appendix 1 Initial Contact email

From: Roberts, Leigh
Sent: 30 August 2012 13:02
To: xxxxxx
Subject: "Social landlords and their control of anti-social behaviour perpetrated by mentally-disabled tenants: A critical analysis of law, policy and practice."

Dear xxxxxx,

"Social landlords and their control of anti-social behaviour perpetrated by mentally-disabled tenants: A critical analysis of law, policy and practice."

I am employed by Liverpool John Moores University. I am presently undertaking research for a PhD at the University of York. The title of the thesis is given above.

From April – August 2013 I will be conducting an evaluation of the practice of social landlords and their control of anti social behaviour where the perpetrator has a mental impairment. Primarily this will involve collecting the views of housing officers working on such cases.

Before I collect views from housing officers it will be helpful to interview the CEO of each organisation which agrees to take part in the research.

I am writing to invite your organisation to take part in the research. I anticipate the interview with the CEO to last no longer than one hour. I will be asking questions about the policy and practice of your organisation. This can be arranged for a mutually convenient time at your premises.

After this, I would like to arrange to focus group research and case file reviews with housing officers.

If you would like to take part, or have further questions about the project, please contact me by telephone or email. My contact details are given below. Due to the limited timescale of this project it would be really helpful, should you be interested in taking part, if you could respond as soon as possible.

I have enclosed some information (presently in draft) about what taking part involves and how the information collected from you will be used.

If you are not able to assist with the research, can you please pass this information to the person or team who could help.

If you would like to take part, I should be grateful if you would, prior to the interview, provide me with a copy of your policies relevant to anti social behaviour and disability.

I would be very grateful for your help with this project and look forward to hearing from you.

Thank you for taking the time to consider this request.

Yours sincerely,

Leigh Roberts

Appendix 2 Information sheet (for ASB Managers)

THE UNIVERSITY of York

Social landlords and their approaches to anti-social behaviour caused by mentally-disabled tenants: A critical analysis of law, policy and practice."

Can you help?

Between April and August 2013, I will be carrying out research to examine the approaches of social landlords in response to anti-social behaviour caused by mentally-disabled tenants.

I would like to invite you to take part in this research by talking to me about your organisation's approach to ASB and disability.

Who is the researcher?

My name is Leigh Roberts. I am an experienced housing solicitor and law lecturer. As a solicitor I have worked with social landlords and tenants. I am conducting this research as part of my PhD thesis.

I am working closely with my supervisors, Dr Charlotte O'Brien and Professor Caroline Hunter at the University of York to ensure the research is conducted in an ethical and sensitive manner.

What is the research about?

The purpose of the research is to examine the approaches of social landlords in response to anti-social behaviour caused by mentally-disabled tenants.

In order to ask the right questions, I first need to examine your organisation's policies on ASB and disability.

My interview with you will be followed by focus group research based on hypothetical cases.

This will be further followed by c*ase file analysis* which will in turn be followed by *interviews* with individual officers involved in those cases.

What is involved?

If you agree to take part, I will visit you at work, to ask you some questions about your organisation and its policies on ASB and disability inclusion, the level of training and expected awareness of disability issues among housing officers and the nature and intended outcomes of partnership working with other agencies.

You will also be asked to sign a consent form.

If you agree, our conversation will be recorded and transcribed in order for it to be used as part of the research.

Do you have to take part?

You do not have to take part in the interview. If you do decide to take part, you can change your mind at any time (including after the interview). You do not need to give a reason.

Will I tell anyone else what you say?

Only I will know your personal views. All identifying information will be removed from interview records.

Your name will NOT be mentioned to others or published in any of my reports, and great care will be taken to ensure your views are not identifiable. Further, individual occupants / tenants or indeed any participants or organisations involved in the research will not be identifiable.

How will the information you provide be used?

It will be used in my PhD thesis.

A final report of the research will be also written and given to your organisation. This will include findings and recommendations based on the information collected from you and your colleagues and officers and managers in other associations.

The findings may be written about in other publications read by lawyers, policy makers and housing officers from other organisations. Presentations on the findings may also be made to such people.

A summary of the research will be available to all participants.

As a result of the research, I will also provide your organisation with bespoke training based on findings and current law.

For more information

If you would like more information about the research, please contact me on 07985 529006 or at L.E.Roberts@ljmu.ac.uk

Appendix 3 Information sheet (for focus group participants)

THE UNIVERSITY of York

Social landlords and their approaches to anti-social behaviour caused by mentally-disabled tenants: A critical analysis of law, policy and practice."

Information sheet

Can you help?

Between April and August 2013, I will be carrying out research to examine the approaches of social landlords in response to anti-social behaviour caused by mentally-disabled tenants.

I would like to invite you to take part in this research by inviting you to take part in focus group research.

Who is the researcher?

My name is Leigh Roberts. I am an experienced housing solicitor and law lecturer. As a solicitor I have worked with social landlords and tenants. I am conducting this research as part of my PhD thesis.

I am working closely with my supervisors, Dr Charlotte O'Brien and Professor Caroline Hunter at the University of York to ensure the research is conducted in an ethical and sensitive manner.

What is the research about?

The purpose of the research is to examine the approaches of social landlords in response to anti-social behaviour caused by mentally-disabled tenants.

In order to ask the right questions, I will first examine your organisation's policies on ASB and disability and interview your ASB Manager.

What is involved?

I would like you to take part in a focus group. If you agree to take part, I will visit you at work.

The focus group will include you and 3-5 other housing officers from your organisation who have handled ASB cases. The exact number of participants will depend upon the size of your organisation. The focus group discussions will be guided by four vignettes. These are intended to stimulate discussions about typical situations and how you would deal with such cases. The vignettes are hypothetical cases founded on authentic ASB cases either reported in the law reports or cases which I have dealt with as a practising solicitor. Each of the cases will be different to allow for a range of discussion to take place and to allow all members of the focus group (but not me) to air their views on what possible approaches could be taken to respond to the ASB.

It is anticipated that the focus group will meet once and discussion will last between 1-2 hours.

You, along with all members of the focus group will also be asked to sign consent forms.

If you agree, the focus group discussion will be recorded and transcribed in order for it to be used as part of the research.

The focus group discussion will be further followed by c*ase file analysis and interviews* with officers handing real cases. This is a separate part of the research which you may or may not be involved in. There is a separate information sheet and consent form for that part of the research.

Do you have to take part?

You do not have to take part in the focus group. If you do decide to take part, you can change your mind at any time (including after the focus group has met). You do not need to give a reason.

Will I tell anyone else what you say?

Only I will know your personal views. All identifying information will be removed from interview records.

Your name will NOT be mentioned to others or published in any of my reports, and great care will be taken to ensure your views are not identifiable. Further, individual

mentally-disabled tenants or indeed any participants or organisations involved in the research will not be identifiable.

How will the information you provide be used?

It will be used in my PhD thesis.
A final report of the research will be also written and given to your organisation. This will include findings and recommendations based on the information collected from you and your colleagues and officers and managers in other organisations.
The findings may be written about in other publications read by lawyers, policy makers and housing officers from other organisations. Presentations on the findings may also be made to such people.
A summary of the research will be available to all participants.
As a result of the research, I will also provide your organisation with bespoke training based on findings and current law.
For more information: If you would like more information about the research, please contact me on 07985 529006 or at L.E.Roberts@ljmu.ac.uk

Appendix 4 Information sheet (for housing officers)

THE UNIVERSITY of York

Social landlords and their approaches to anti-social behaviour caused by mentally-disabled tenants tenants: A critical analysis of law, policy and practice."

Information sheet

Can you help?

Between April and August 2013, I will be carrying out research to examine the approaches of social landlords in response to anti-social behaviour caused by their mentally-disabled tenants.

I would like to invite you to take part in this evaluation by talking to me about some files of tenants who have caused such behaviour.

Who is the researcher?

My name is Leigh Roberts. I am an experienced housing solicitor and law lecturer. As a solicitor I have worked with social landlords and tenants. I am conducting this research as part of my PhD thesis.

I am working closely with my supervisors Dr Charlotte O'Brien and Professor Caroline Hunter at the University of York to ensure the research is conducted in an ethical and sensitive manner.

What is the research about?

The purpose of the research is to examine the approaches of social landlords in response to anti-social behaviour caused by mentally-disabled tenants.

In order to ask the right questions I first need to examine your organisation's policies on ASB and disability and interview your ASB manager on organisational approaches to ASB. I will also first conduct focus group research based on hypothetical cases.

This will be followed by c*ase file analysis.* I will choose some of your most recent files on ASB cases. These cases will include action against occupiers with disabilities (including both cases that chose to continue / discontinue proceedings after awareness of disability was gained). Such action would include initial contact, visits to the homes of and interviews with the occupants. Due to the timescale this selection will be limited to up to 20 cases. These will be cases which you have been involved with.

In addition, I will review some cases of this type that proceeded to warning letter (the first stage in any decision) / Letter Before Action / court. Information will be recorded in a pro-forma. Due to the timescale this selection will be limited to up to 7 cases. You may also have been involved with some of these cases.

What is involved?

If you agree to take part, I will visit you at work, to ask you some questions about the case files which you were involved with to explore the issues that arose from those cases e.g. what alternative approaches were attempted, what particular problems arose. The interview will be guided by an outline set of questions and should last between 30 minutes and (no longer than) one hour.
You will also be asked to sign a consent form. If you agree, our conversation will be recorded and transcribed in order for it to be used as part of the evaluation.

Do you have to take part?

You do not have to take part in the interview. If you do decide to take part, you can change your mind at any time (including after the interview). You do not need to give a reason.

Will I tell anyone else what you say?

Only I will know your personal views. All identifying information will be removed from interview records.

Your name will NOT be mentioned to others or published in any of my reports, and great care will be taken to ensure your views are not identifiable. Further, individual occupants/tenants or indeed any participants or organisations involved in the research will not be identifiable.

How will the information you provide be used?

It will be used in my PhD thesis.

A final report of the research will be also written and given to your organisation. This will include findings and recommendations based on the information collected from you and your colleagues and officers and managers in other organisations.

The findings may be written about in other publications read by lawyers, policy makers and housing officers from other organisations. Presentations on the findings may also be made to such people.

A summary of the research will be available to all participants.

As a result of the research, I will also provide your organisation with bespoke training based on findings and current law.

For more information

If you would like more information about the research, please contact me on 07985 529006 or at L.E.Roberts@ljmu.ac.uk

<u>Appendix 5</u> – Consent Form

THE UNIVERSITY of York

"Social landlords and their approaches to anti-social behaviour caused by mentally-disabled tenants A critical analysis of law, policy and practice."

Please read and answer every question.

	YES	NO
Do you understand what the interview is about and what taking part involves?	☐	☐
Do you understand that you do not have to take part and that if you do take part, you can notify the researcher of your withdrawal at any time (including after the interview) without giving a reason?	☐	☐
Do you understand that the information you share will be used to write a PhD thesis about social landlords and their approaches to anti-social behaviour?	☐	☐
Do you understand that neither your name or that of your organisation or any occupiers or perpetrators of ASB will be identified and that the information you share will not be given to anyone else?	☐	☐
Would you like to take part in the interview?	☐	☐
If yes, is it OK to digitally record your interview?	☐	☐

If not OK to digitally record your interview, is it OK for it to be recorded in typed / hand written notes? ☐ ☐

Name of participant:

……

Signature of participant: .....

Name of researcher: Leigh Roberts

Signature of researcher:.....

Date of interview: .....

You will be provided with a copy of this consent form by post.

Appendix 6: Schedule for semi-structured interviews with that landlord's senior representative - the ASB manager

1. Can you explain your role within the organisation?

2. Can you outline how the ASB service is organised?
   Probe: Find out where it sits within "tenancy management" generally; how many staff; how are they organised – in particular whether distinctions are drawn between responsibilities for housing management in general; specialised ASB team or different divisions within ASB e.g. MARAC, hate crime.

3. For an individual officer, how many ASB cases are they likely to be handling ASB at any one time?

4. For an individual officer what proportion of perpetrators will have a disability: physical, learning or mental health or other vulnerability known at the outset of the case (probe for whether and how recorded on file)?

   This may build a background picture of the sort of pressures that officers are under in terms of workloads, but more importantly:

   Probe for whether they as an organisation are "overwhelmed" with ASB perpetrators with disabilities (who for example (possibly with the help of their lawyers or other representatives) have exaggerated their assertions to be disabled or fabricated them altogether (malingerers)

   This may reveal some level of prejudicial attitudes (borne out by how the case is managed); OR may reveal awareness of multiple disabilities and vulnerabilities.

5. What approach is taken to information sharing with other agencies? How easy is it to share information with other agencies? Who do they have protocol agreements with? Who do they disclose information to and how does this impact on how they work?

6. What training is provided to (which) staff making decisions on ASB perpetrators?

7. What training on:

- Social inclusion
- Safeguarding adults / vulnerable people
- Equality (Act policy in relation to ASB?)
- Disability (discrimination)
- Other vulnerabilities
- Multiple vulnerabilities

Is provided to (which) staff making decisions on ASB? Is it included in / separate from Q6 above?

Probe, (In particular, for the focus of the training officers might receive; if included in ASB training, what weight on disabilities / vulnerabilities; if separate training on issues in Q6, does that touch on complaints of ASB?)

8. What training is provided to (which) staff making decisions on ASB perpetrators with **disability** support (in particular probe for anything in relation to other vulnerabilities and particular medical conditions and evidence officers might receive)

   Probe how much is specific to perpetrators with physical disorder and how much is specific to perpetrators with mental disorder?

9. What training on risk assessment is provided to (which) staff making decisions on risk in ASB cases?

Probe for the perspective taken on risk; how much focus on the perpetrator being seen as potentially vulnerable; policy (esp current national) suggests not much.

10. Could you describe the process to be followed where a typical adult ASB perpetrator who comes in for initial interview / at home visit following initial complaint of ASB?

    - How are details recorded?
    - What criteria (internal policy, checklist, risk assessment) are they given to work to?
    - What is known in advance of disabilities?
      Probe for whether details esp of (suspected) vulnerabilities / disabilities are recorded; Probe for mental and / or physical
    - Who helps make decisions especially where there is a suspicion of mental impairment
      Probe for how suspicions arise; probe for involvement of 3rd parties and what they may reveal)

11. A) Do individual officers assess risk of / in relation to:

    - Themselves / other staff / contractors visiting the property?
    - Causing (serious) harm / alarm / distress to other tenants and their families and visitors?
    - Causing (serious) harm / alarm / distress to victims / witnesses?
    - The perpetrator continuing the same behaviour if they are re-housed?
    - Perpetrators with disabilities or arising out of disabilities (mental / physical) (*prompt mental impairment and risky behaviour?)*
    - The perpetrator if action taken (informal, formal (policy), legal (order)?

    B) If not, who do they consult?

Disability disclosed / acknowledged by perpetrator

12. Do you think you have a problem of people with mental or physical disabilities causing ASB?
Probe for why?

13. Is there a clustering of people with particular mental disabilities in your stock? If so, how does this arise?

Probe: Are there any areas of housing where people with particular disorders are housed?

14. Can you explain in detail how you / staff assess how to progress case once disability issues disclosed by a perpetrator at any point of contact in following your ASB procedure?

- How do you / staff assess risk?
- How do you / staff decide whether support appropriate?
- In obtaining further information to assess how to progress the case / provide support do you / staff contact perpetrator's:

- GP
- Psychiatrist / psychologist (consultant
- Other medics involved (e.g. RMN)
- Other support services (SW)
- Counsellor / psychotherapist

15 Alternatively, do you use known "support agencies" (e.g. social services, MH services, voluntary sector) to provide evidence, if so who, when and on what basis?

16. In relation to 14 and 15 above? Do you / staff get consent form signed; expect applicant / support agency to provide medical evidence?

Support for physically and mentally disabled tenants (to maintain tenancy)

17 If using external support services to assist with perpetrators with disabilities, on what basis were they chosen?

Probe reputation of agencies, cost, approach to disability and care, awareness of multiple disability and vulnerability by the same agency, equality and inclusion.

NB there may be > 1 agency.

18 Can you give examples of cases where you have considered adjustments to allow tenant to continue living in accommodation?

Probe for different types of adjustments; whether there is a difference between different cases; different diagnoses / types of vulnerability.

Probe for views on malingering i.e. whether the condition is an exaggeration or fabrication.

19 Is different support offered depending on the mental / physical disability / vulnerability (multiple vulnerabilities; substance abuse) of perpetrator?
P*robe for differing attitudes to support (compliance with ASB control; risk) and thereby attitudes to perpetrators with mental impairments.)*

20 What is the value in having such support in dealing with a perpetrator with mental impairments?

(The question of whether someone needs support rides on more than just medical evidence and should be made by a multi disciplinary team – the question to *probe is how far staff simply rely on / accept medical evidence as opposed to how far they can see other support would benefit the individual)*

21 Is the perpetrator with mental impairments consulted on their support needs at any stage?

(NB The question of whether someone will be receptive to support rides on consultation with them as opposed to the judgements of others)

22 When will you consider re-housing?

Probe for whether there is a difference between different cases; different diagnoses / types of vulnerability; probe for views on malingering i.e. exaggeration or fabrication of condition.)

23 On what basis is risk (presented by perpetrator & the likelihood of them committing further ASB in future) assessed as against adjustments offered i.e. support, re-housing etc (probe for compliance)?

Probe to see weight attached to vulnerability of complainant / other neighbours; perpetrator's disclosed disability; incidents of ASB; whether necessarily associated with any particular impairment; compliance with ASB control.

24 Are vulnerable perpetrators regularly represented by lawyers and advice agencies? Is the "unexpected" disability defence a regular occurrence?

Probe here for whether representation welcomed, tolerated, seen as a huge inconvenience, reveals a malingerer (i.e someone who has exaggerated or fabricated their condition), cost, likely to result in continuance of the problem.

25 Is there anything else we should have asked you?

BEFORE INTERVIEW

APPENDICES

Obtain all policies referred to above including adjustments to see if they have a tick box approach.

Consent form to be signed. Obtain following information

BACKGROUND INFORMATION

Do they have totally electronic files or paper files?

Get clarity from managers when I interview them

BACKGROUND QUANT INFORMATION

prior to interview could you send me any statistical data that you have on ASB?

Does it inc disability (NB may be on website) I may be provided with

1. Are complaints of ASB systematically recorded?
2. If so, how many complaints in the last 12 months lead to:

i. Warning letters;
ii. Home visits
iii. Notices served
iv. ABCs?
v. litigation commenced to seek the following (as appropriate): ASB manager

a) Demoted tenancy order;
b) ASBI;
c) Possession

3. In how many cases was the SL aware the occupant had a mental impairment at the outset?
4. During the course of the complaint / proceedings
5. What is the size of stock?
6. Are they a specialist or generalist housing provider? How manu units of each type
7. What information is collected / known about occupants / occupants and when/how often collected

Appendix 7

Vignettes for ANTI-SOCIAL BEHAVIOUR/ MENTAL IMPAIRMENT research (to guide discussions of focus groups of officers)

Short speech

I thought it would be useful to start off with one physical disability which may easily lead to an offer of support possibly even rehousing, in order to get the discussion flowing easily and from which comparison can be made with possibly different approaches for mental disabilities.

Each vignette concerns an assured tenant with the rent paid in full and no arrears or other problems with their tenancies (probably very unrealistic but want to avoid any distractions). The type of dwelling (flat, house) will be indicated, but all are general needs.

No tenant has obvious support available to them so they are on a level playing field in that respect – I don't want discussions to go off into gender or familial support issues.

At each stage in the decision-making process I need to be considering:

- Why the step is taken; do they suspect disability; whether all perpetrators should be treated the same; whether **all** (physically or mentally) disabled perpetrators should be treated the same (support considered) whether the answer to these Qs depends on the nature of the impairment; whether and w
- When the impairment is suspected?
- Whether suspicion of mental impairment ever arises from risk assessment?
- Whether they accept medical evidence in a case – whether that depends on the "seniority" of the medical professional providing the evidence and whether the evidence could be provided by a medical professional or lawyer in collusion with and in support of a tenant who is a "malingerer" i.e someone who has exaggerated or fabricated their condition?
- Whether an offer of support is appropriate?

- Whether *risks* to perpetrator are ever considered?
- Whether the view of the perpetrator is taken as to their support needs?
- Whether the perpetrator is likely to be compliant i.e. not causing further ASB as a result of *support;* following threats of legal action.
- In general, I need to explore views on likelihood of compliance i.e. not causing further ASB in relation to mental impairment.

1. **Maria Thompson**

Maria Thompson is a 65 year-old woman who lives in a two bedroom flat on the top floor of a three-storey block with her only child Darren a full-time student aged 28. Mrs Kingsley, also 65 years of age, resides in the flat directly beneath and has telephoned you / your organisation to complain about the volume at which Darren and Maria play their TV and radio and thinks there must be "something very wrong going on up there" as she also often hears sound like someone is falling over sometimes accompanied by screams. Mrs Kingsley does not want to interfere and so has not complained direct to Maria or Darren.

What would you do?

What steps would you take at this stage?

Why would you take these steps?

Probe for risk assessment; what this entails; probe for how risk is assessed. Probe for any concern there may be a health issue for the tenant given her age.

You visit the property, but although someone appears to be at home (you can hear sounds of the television through the front door), no one answers. **What would you do now?**

What further steps would you take at this stage?

Why would you take these steps?

Whatever step you would actually take, let's imagine you take the following action:

You send a letter to Maria asking her to contact you. Darren promptly calls you and says that his mum has showed him the letter you sent and asked him to call you as she cannot speak because of her hearing impairment and is very worried. Darren

reveals that Maria has been treated by their GP initially with antibiotics for what the GP thought was an ear infection. However, when Maria finally saw a specialist he confirmed Meniere's disease, a condition of the inner ear with symptoms of tinnitus and vertigo (leading to partial deafness and loss of balance causing her to fall over) and that as she had the disease for so long without treatment, her symptoms are likely to be permanent. Darren explains that he is trying to finish his degree so cannot support his mum, as much as he'd like and she is very determined to look after herself, but she is often very tired. He also says he is worried about his mum as he has been offered a job working on North Sea oil rigs.

What would you do?

What further steps would you take at this stage?

Why would you take these steps?

Would you seek any further information?
If so, where from? Tenant confirming what Darren has told you?
Would you want medical evidence at this stage and if so from consultant / GP?

The necessary (medical) evidence is provided.

Would you offer alternative accommodation?

If not your policy to offer alternative accommodation, why

If it *is* your policy to offer alternative accommodation, but no suitable alternative accommodation is *readily available*, what decision would you come to in this case and why?
What steps would you take to allow Maria to stay at her property?

Would you make any adjustments?

Why?

If you would not offer to make any adjustments, why not?

Probe – is she deserving of such measures?

Probe difficulty of engaging tenant.

2. Tom Mayhew

Tom is aged 63. He lives on his own in a three-bedroom house he shared with his parents until they died in quick succession approximately three-years ago. Neighbours have been complaining since that time about the untidiness of Tom's garden, which is a source of vermin. The problem has gradually worsened over time. You have now received the following letter:

113 Tanner Way
Woolston
X85 4RF

The name of your Housing Association
The address of your Housing Association

Dear Sirs,

Tom Mayhew, 85 Tanner Way, Woolston

You may recall that I am the chair of the local Neighbourhood Watch and Tenants' Association. You may also recall that I have complained verbally on countless occasions about the state of the garden at the above property, occupied by your tenant.

At the most recent meeting, all tenants present (all of your housing association and whom either reside in accommodation on Tanner Way or the neighbouring streets) expressed their anger at the state of Mr Mayhew's garden which is a source of vermin. Many tenants also expressed concern that there are piles of newspapers and other combustible materials piled up on all window ledges in the house. I have called on Mr Mayhew on several occasions in an attempt to take a more conciliatory approach but he has not answered the door.

I would be grateful if you would please confirm in writing that you will now take some remedial action against Mr Mayhew?

Yours faithfully,

Rose Middleton

Rose Middleton

What steps would you take at this stage?

Probe – any further info sought from whom?

Probe for which agencies? EHOs?

Probe for any concern there may be health issue given the age of the tenant -

Probe do they suspect mental impairment?You send a letter to Mr Mayhew but receive no reply within the expected / your policy's timescale.

You carry out a home visit, but Mr Mayhew does not answer the door. You also see that Mrs Middleton's complaints are substantiated: there are piles of newspapers and other combustible materials on all window ledges and there is vermin in the very untidy garden.

What steps would you take at this stage?

Probes – any further information sought from whom?

Probe for which agencies they would expect to get / already have involved

Probe for who (themselves, manager, other agency) or what determines what happens at this stage?

Probe for risk assessment, what this entails; probe for how risk is assessed?

You send the following letter to Mr Mayhew.

[YOUR NAME] HOUSING ASSOCIATION LIMITED

Your address

Your Ref:

Your Telephone Number:

Tom Mayhew,
85 Tanner Way,
Woolston

BY RECORDED DELIVERY Date

Dear Mr. Mayhew,

Complaints about your house and garden

I have received numerous complaints concerning the state of your garden which has not been tidied for many years and also the stacks of newspapers and other combustible materials which are visibly stored on your window ledges. Your garden is a source of vermin and presents an environmental nuisance to neighbouring tenants. Storage of combustible materials presents a fire hazard which could have serious if not fatal consequences for yourself and your neighbours

Please contact this office on receipt of this letter. It is important that we discuss the state of your property and arrange for it to be tidied. If you fail to do so we will have no option but to serve you with Notice of Seeking Possession followed by:

1. Possession proceedings as a result of which you may lose your home and
2. A court order called an injunction which will enable us to gain access to your accommodation and carry out the necessary work of clearing your garden and house.

Yours sincerely,
Housing Officer (name)

What legal proceedings would you take at this stage?

Probe for what type of proceedings? Are they as stated in the letter?

Possession and / or injunction?

Probes – would you seek any further information at this stage and who from?

Probe who or what determines what happens at this stage?

You receive no response from Mr Mayhew and after a number of failed attempts to contact him, you issue a NSP and then commence proceedings. A defence is submitted claiming that it would not be reasonable to take proceedings against an elderly and vulnerable man, making no further assertions about his vulnerability.

What would your response be?
Probes - Would you seek further:

- ***Information /***
- ***Clarification /***
- ***Evidence of vulnerability?***

Two days before the trial, a psychiatric report is submitted confirming that the defendant, Tom, was very difficult to engage and they suspect he has long suffered from a schizotypal personality disorder, psychotic depression and obsessive-compulsive disorder of which Tom has no insight. However, the report confirms that the condition is susceptible to treatment which the psychiatrist considered could be successful. The psychiatrist confirmed his opinion that Tom was “an elderly, vulnerable man” and losing his home “would be highly detrimental to his health.”
What decision would you come to in this case and why?

Probe – do they believe this medical opinion?
?
Probe – why/not?
What steps would you take to allow Tom to stay at his property?

Probe for what adjustments / support / may be offered or whether an offer of alternative accommodation may be made?

Probe – is he deserving of such measures?

Probe whether they think they have done enough? Whether they would have done anything differently?
Probe difficulty of engaging tenant.

3. Lorraine Jones

Lorraine Jones, aged 31, is the tenant of a first floor flat in your most desirable area. Lorraine's mother, also one of your tenants, lives in the same road, in the same house in which Lorraine was born. She presently has custody of Lorraine's only child Charlotte aged 3 years.

In the last 6 months there have been 20 complaints from neighbours (in person at your offices or by phone) of nuisance emanating from Lorraine's flat including Lorraine leaving bin bags full of household waste in the communal areas of the flats (cleared away by neighbours), leaving broken glass on the front door step to the flats (again, cleared away by neighbours) and allegations of Lorraine shouting abuse and neighbours and slamming doors. The majority of complaints concern Lorraine staring at neighbouring residents for lengthy periods of time (7 incidents) and keeping neighbours awake from late evening to the early hours of the morning by playing loud music (8 incidents).

What would you do next?

Probe – do you suspect mental impairment?

You are contacted by the police and Adult Social Services (or see them in a Multi Disc team meeting) who both report and a high level of involvement.

Adult Social Services tell you that they have tried to engage with this tenant but she refuses to co-operate.

What would you expect them to tell you?

Probe what steps would you take now?

Probe – would you contact mother?

Complaints of a similar nature continue. You write to the tenant but she does not respond.

What steps will you take next? If legal action, what type?

What would the attitude of social services be to legal action?

Proceedings for possession are issued.

Lorraine's solicitors submit a defence on the grounds that it would not be reasonable to grant possession because of Lorraine's mental health and given the proximity of Lorraine's present home to that of her mother and daughter. The defence has attached to it a report of the opinion of Dr Schafer, consultant psychiatrist who confirms that Lorraine is suffering from paranoid schizophrenia, including symptoms of auditory hallucinations, hearing voices that are attacking and threatening her; delusional beliefs relating to conspiracy and persecution; associated significant anxiety and depression. Dr Schafer continues "a considerable amount of her hostile, threatening and abusive behaviour can be understood as "retaliation" as to how she is experiencing and perceiving the people around her" and asserts that the condition appears to have developed from post puperal psychosis which Lorraine suffered after giving birth to Charlotte.

What would your response be to that defence of disability?

Probe – do they believe it?

Probe – why/not?

What steps would you take to allow Lorraine to stay at her property?

Would you offer to make:

- **Any adjustments /**
- **Support /**
- **Offer alternative accommodation?**

Probe whether they think they have done enough?

Whether they would have done anything differently?

Probe – is she deserving of such measures?

Probe difficulty of engaging tenant.

4. Sharon Adams

Sharon is 38 years of age, and lives with her four sons Connor aged 19, Callum aged 17, Dexter aged 4 and Alfie aged 18 months. Her parents both died in 2009 and she has no close or extended family living nearby and has no contact with the father of the children.

Over the past 3 months you have received complaints (from neighbours either in person at your offices or over the phone) of 20 separate incidents of ASB including:

- Slamming doors and shouting
- Noisy parties involving Connor and Callum
- Callum, the 17-year-old, wanders round the estate with an air rifle with which he allegedly shot a neighbour's cat.

What would you do next?

Probe risk assessment.

Would you have anything on file about any medical conditions for either Sharon or her sons?

Would you make any investigations of mental impairment?

Probe any suspicion of mental impairment for either Sharon or her sons?

You write to Sharon inviting her and her two eldest sons into your offices to discuss the allegations. Letter not reproduced. However, you receive no response within the expected / your policy's timescale.
What would you do next?

Whatever you would do next, imagine you send the following letter:

[YOUR NAME] HOUSING ASSOCIATION LIMITED

Your address

Your Ref:

Your Telephone Number:

Sharon Adams
76 Molyneux Road,
Woolston **Date**

Dear Miss Adams,

Complaints about Anti-social behaviour

I write further to my letter of (earlier date, copy enclosed (letter not reproduced)) to which I have not received a response.

As stated in my earlier letter, I have received numerous complaints concerning:

- Slamming doors and shouting
- Noisy parties involving your two eldest sons, Connor and Callum

- That your 17-year-old son, Callum, wanders round the Woolston estate with an air rifle with which he allegedly shot a neighbour's cat.

This noise nuisance is preventing your neighbours from sleeping and causing them distress. Callum's behaviour is causing your neighbours considerable alarm and distress.

As you have not responded to my earlier letter, I have no option but to serve you with the enclosed Notice of Seeking Possession. If I receive any further complaints of the noise nuisance and anti-social behaviour we will commence possession proceedings as a result of which you may lose your home.

Yours sincerely,
Housing Officer (name)

Soon after you send this letter, you receive a letter from Sharon's solicitor explaining: There were only two noisy parties which organised by their client's for her two eldest sons' birthdays. Their client has disposed of Callum's (17-year-old's) air rifle.

How would you respond to this?

Probe for likely recurrence of ASB.
Probe any suspicion of mental impairment for either Sharon or her sons if anything is mentioned.

After a brief respite, the same types of ASB start again. Neighbours complain that Callum the 17-year-old still wanders the estate with his air rifle.

What would you do next?

Proceedings for possession are issued against Sharon and ASB Orders are sought against Connor and Callum.

A defence in respect of Sharon is submitted with a medical report annexed. This report of the opinion of Dr Baxter, a consultant psychiatrist stating that Sharon has for a long time suffered from depression. This has been exacerbated by bereavement and postnatal depression. The ASB is a result of Sharon's inability to control her children due to her depression. [Medication is then set out]
There is a separate report from the GP confirming Callum (the 17-year-old) suffers with learning difficulties having an IQ of 80, ADHD and autism.

How would you respond to this?

How would you view this medical evidence?

Probe as to whether they consider it to be an excuse, exaggeration or fabrication)?

Probe for any difference in view of GP report as opposed to consultant psychiatrist?

What steps would you take to allow Sharon to stay at her property?

- **Any adjustments / support:**
- **Family Intervention Project ? /**
- **Offer of alternative accommodation (Family Intervention Tenancy)?**

Probe – is she deserving of such measures?

Probe difficulty of engaging tenant.

Appendix 8

Pro-forma for collection of data from case files

Evidence from housing files NB One sheet per file			
1	**Nature of ASB**		
2	**Identifier for file**		
		Present on file	Evidence of any evaluation
3	Who provided the initial complaint - police / neighbour?		
4	What did the neighbour want to achieve? Objective		
5	SL's initial risk assessment		
6	**Disability perceived**		
A	Type – mental / physical		
B	How? Evidence of HO		
C	**"Disclosure" by member of MDT**		
I	SW		
II	Community MH		
III	CPN		
IV	Police including hearsay or ss.135/6 MHA 1983 latter very unlikely		
V	Voluntary agency		
D	**"Disclosure" by other e.g lawyer**		
E	How was evidence obtained? DPA signed? (likely to be existing agreement in MDT)		
F	**Risk assessment** following information from 3rd party		
G (i)	**Support** considered?		

G (ii)	Any consideration of means of communication		
G (iii)	View of perp sought on support?		
7	**Disability known / disclosed by perp (following the above)**		
A	Type – mental / physical		
B	Date of disclosure		
C	How? Evidence of perp e.g. application form / disability monitoring / disclosure following above section on suspicions and 3rd parties		
8	**Formal Evidence from 3rd party (following disclosure in 7)**		
A	GP		
B	Psychologist		
C	Psychiatrist		
D	Consultant Psychiatrist		
E	Counsellor		
F	Psycho therapist		
G	SW		
H	Community MH		
I	CPN		
j	Police (ss.135/6 MHA 1983) – very unlikely		
K	Voluntary agency		
L	Other e.g. lawyer		
9	How was evidence obtained? DPA signed? Necessary?		
10	**Risk assessment** following disclosure		

11	**Support** considered by SL? (prior to ASB control)		
12	Any consideration of means of communication		
13	View of perp sought on support?		
14(1)	**ASB Control local / informal (policy)**		
A	Warning – verbal – home visit		
B	Warning written		
C	Warning at interview		
D	Other		
14(1)(a)	Risk assessment		
14(1)(b)	Assessment of compliance		
14 (2)	**ASB Control formal (policy)**		
A	Parenting contract		
B	ABC		
C	NSP		
D	Other		
14(2)(a)	Risk assessment		
14(2)(b)	Assessment of compliance		
14(3)	**ASB Control legal action**		
14(3)(a)	Order(s) sought		
14(3)(b)	Outcome		
14(3)(c)	If allowed to keep tenancy - Risk assessment		
14(3)(d)	If allowed to keep tenancy - assessment of compliance		
14(4)	**In all cases where ASB control used:**		
A	What did the SL want to achieve?		
B (1)	Support offered?		
B (2)	Accepted / rejected		

B (3)	Where support offered – assessment of risk / compliance with support		
B (4)	Support not offered - Risk / compliance assessment		
B (5)	Any consideration of means of communication concerning support		
B (6)	View of perp sought on support?		
B (7)	Any adjustments considered (reasonable / PSED)		
B (8)	Perp consulted on support needs?		
C	Any other steps taken (enforcement)?		
14(5)	**Formal documented evidence in defence of any level of ASB control**		
A	GP		
B	Psychologist		
C	Psychiatrist		
D	Consultant Psychiatrist		
E	Counsellor		
F	Psycho therapist		

Appendix 9

Schedule for semi-structured in-depth interviews with the housing officer (s) handling each case

Date of interview:

Indicator

1 INITIAL VIEWS

A. PERCEIVED / SUSPECTED

i. What made you initially suspect the perpetrator may have a mental or physical disability / vulnerability based on the initial evidence you perceived?

Could be at the following stages:

- Initial complaint(s)
- Your contact with them (home visit)
- Phone call
- Perpetrator's response to letter sent
- A stage in risk assessment

Probes anything about appearance, behaviour, verbal response of perpetrator to accusation, past experience with that tenant or in general

ii. What did you think of the view of 3rd parties at multi party meeting where disability / vulnerability disclosed OR suggested/hinted at? NB support may be suggested by 3rd party in which case, 2 ii below is redundant)

Probe for whether they agreed with view; what they thought of view; how it affected decision making thereafter.

OR

B. DISCLOSED

What was your initial impression of the perpetrator's disability / vulnerability from your contact with them and the initial evidence they disclosed?

In both A and B

What did they do once disability came to light?

Probe for EA compliance –.

Refer, if necessary, to what was said on original application form about physical/mental health disabilities or through disability monitoring.

2 SUPPORT (reasonable adjustment) to maintain tenancy)

i. What decisions did you make as to what (if any) support was needed and why?

Probe as to how they made their decision.

Refer to decisions to refer to …….(voluntary) agency if known (depends on particular SL) and their policy also likely to be affected by whether the perpetrator lives alone or with family member / partner who able to provide support i.e not dependent on perpetrator.

ii. What did you think of the view of 3rd parties at multi party meeting where support discussed?

Probe for whether they agreed with view; how it affected decision making thereafter.

3. ADJUSTMENT

What decisions did you make as to what (if any) other adjustment was needed to help the perpetrator maintain their tenancy and why? (Probe for e.g: soundproofing, headphones, other (mental)

Door widening, grab rails, other (physical)

Any other?

Probe – How did they make these decisions? Were they made as a result of EA compliance? / applying EA policy?

4 RISK ASSESSMENT (usually only made following policy concerning risk to victims / witnesses, however, most social landlords have a safeguarding policy)

You assessed the risk to:

- yourself / other staff / contractors visiting the property
- other tenants and their families and visitors
- continuing the same behaviour if they are re-housed?
- victims / witnesses

as ….

- (serious) harm / alarm / distress
- high medium / low / other

Did this affect your view of the perpetrator's MH?

Was this affected by your view of the perpetrator's MH?

If applicable (i.e. if there was a next step) how did this affect the next step taken (in 5)?

Probe for influences on risk assessment – victim neighbours and also 3rd parties; assessment of risk to the perpetrator if action taken (informal, formal, legal (order

5 ASB CONTROL

In all cases probe for communication – any adjustments made to means of communication where there were any indicators of lack of understanding on the part of the perpetrator which could be attributable to mental or physical disability.

i. The case has been dealt with by a local policy-based measure (stopping short of threat of legal action) to ensure no further ASB e.g. verbal warning at home visit; letter inc warning / interview with warning/ tenancy enforcement notice

What are/were your views on the perpetrator's (non) compliance? Why?

Probe for views on likelihood of risk (of further incidents) / compliance.

ii. The case has been dealt with by a more formal measure with the threat of legal action to ensure no further ASB parenting contract / ABC / NSP

What are/were your views on the perpetrator's (non) compliance? Why?

Probe for views on likelihood of risk (of further incidents) / compliance.

iii. The case has been dealt with by legal action (record type)

What are your views on the perpetrator's (non) compliance?

Probe for views on likelihood of risk (of further incidents) / compliance.

6 In relation to all 3 possibilities in 5 probe for:

Why they took the action taken? and

Whether they thought the right step was taken?

Probe in terms of risk (of further incidents) and likely compliance with the step taken?

Probe in terms of risk to the perpetrator as a result of the action being taken against them.

Probe for their view of how knowledge of disability & EA policy affected decision making.

7 EVIDENCE - FORMAL

i. (Where applicable) What was your view of the perpetrator's lawyer's approach? *Probe for whether they think lawyer is "playing the game"?*

ii. What was your view of the evidence from those providing evidence for the perpetrator (GP/consultant / psych / counsellor)?

Probe for how they viewed the different evidence, is some "better" than others, if so why?
Less likely to have colluded with a malingerer (i.e someone who has exaggerated or fabricated their condition);
Physical more reliable than psych/ mental;
Seniority of medical professional consultant more reliable than GP;
psych more reliable than counsellor
Probe for scepticism about EA legislation.

iii. How did this affect how you handled the case?

Probe for how they view the provision of support for the perpetrator?; the likelihood of future risk (further incidents) / compliance

8 RE-HOUSING as a solution to ASB (reasonable adjustment)

If your general approach is that you do not re-house, what will override that?
Where requested / offered what is your view of this is as solution to that particular case
Probe for views as to whether they consider perpetrator (or their representative) to have exaggerated / fabricated their disability i.e. that they are a malingerer.
Probe for what the mean by proof?

9 MOP UP QUESTION ON EA COMPLIANCE

Do you think anything more could be done to comply with your organisation's EA policy / procedure?

Appendix 10

Org.1

Ken Jones (HO2) was an elderly hoarder residing in a three bedroom semi-detached house with a severely overgrown garden. The hoarded possessions were largely combustible. Ken was perceived as difficult by officers but this did not stop them being sympathetic and tolerant towards him; despite his disagreeable personality **Org.1** did not want to litigate but eventually took possession proceedings following numerous attempts to gain Ken's compliance with requests to tidy his garden and home over a considerable number of years. Ken disclosed physical impairment but litigation led to a diagnosis of Borderline Personality Disorder. A Possession Order was obtained

Ivan (HO1) lived alone in a house, used cannabis and alcohol and suffered with diabetes which he poorly managed. The ASB - his assault on an 81 year old female neighbours and another elderly female who came to her defence - lead to his arrest with bail conditions that excluded him from his home leading him to live temporarily in another area. During Org.1's investigation of the civil case, Ivan died.

Larry (HO12) lived alone in a top floor flat. His ASB resulted from his continuous foot tapping and shouting of obscenities mainly to himself but occasionally to neighbours and Org.1 staff leading HO12 to suspect mental disorder. The case was resolved by the fitting of new carpets in Larry's flat and also the use of an ABC

Annabelle (HO9) lived alone in a flat. Her ASB arose from her frequently bringing friends home from the pub late at night and also racist abuse of neighbours. As the case progressed, HO9 discovered Annabelle had been sectioned but was unaware of her diagnosis. Criminal proceedings were taken against her which lead to her being detained under the Mental Health Act 1983. Upon release she was allocated a different social worker and this lead to a reduction in her ASB.

Pye family (HO1; HO11) Single mother Eileen, wanted to work and was compliant with all support offered to her by Org.1 but appeared to HO1 to be depressed. Eileen's neighbour Eric complained about the behaviour of her three sons (Freddie, Graham and Harrison all of whom had learning difficulties) which included the alleged vandalism of vehicles in the street. Eric also criticised Eileen's parenting skills because she shouted foul language to reprimand them and for arguing with neighbours in the street. Eileen's mother was supportive of her but also sympathetic to the complainant. The case was resolved with support from the family intervention Project and sound insulation installed to the party wall with Eric's neighbouring property

Jeremy (HO1) was elderly, living alone in a flat in a sheltered block. His ASB consisted of defecating into carrier bags, smearing his faeces over walls and leaving bags of it in communal areas. His flat was sparsely furnished but he had unusual wealth visiting a café every day and buying flowers for whoever served him. He was not perceived as nasty or malicious and great lengths were taken to ensure he was supported. He was eventually moved to the home of a family who looked after him.

Ben and Christine (HO10) were an elderly couple living with their adult son David. All had apparent learning difficulties (reported to Org.1 by a concerned neighbour). Additionally, Ben was deaf and suffered with epilepsy. There were historic tensions with their neighbour who complained of noise nuisance. No action was taken against Ben and Christine and it was suggested that the neighbour's complaints were malicious

Org.2

Walter (HO20) was a single father whose daughters did not always live with him and whose tenancy was at risk for rent arrears due to bedroom tax. The ASB started as domestic violence until his wife left. Thereafter noisy parties and his two barking dogs which had led to a postponed possession order. As a consequence of this litigation, a psychiatrist's report was commissioned which recommended anger management classes to help Walter desist from his ASB and retain his tenancy. At the time of the interview HO20 suggested Walter was in breach of the PPO by *inter alia* failure to maintain his garden

Zac (HO20) lived alone in a sparsely furnished flat. He was rarely seen but his ASB consisted of an allegation he had been brandishing a knife (which had led to his arrest and consequent assessment under the MHA) and putting Chinese meals outside the neighbours' doors. **Org.2** were not aware of Zac's diagnosis

Natalie and Ollie (HO18) a mother and son lived next door to Marvin, a retired teacher. Natalie and Ollie complained of Marvin's ASB which was primarily noise emanating from dinner parties which he hosted for his friends. Eventually, Natalie and Ollie were evicted for their ASB which resulted from their malicious complaints. Despite resort to possession proceedings, Natalie's use of a mobility scooter and her suggestion that her son had learning difficulties, no medical report was ever obtained or ordered. A possession order was obtained

The Dillon family (HO18), a grandmother (tenant) living with several children, whose neighbours, the Marchmain family, complained about various acts of ASB perpetrated by the grandsons including noise nuisance, verbal racial abuse of neighbours, cannabis use and animal cruelty. **Org.2** came to regard the Marchmains as perpetrators, their complaints being seen as trivial and excessive once the perpetrator members of the Dillon family had moved out and mediation between the families had failed. No proceedings were taken against the remaining members of the Dillon family

Org.3

Alicia (HO13) had lived with her three children in a four bedroom house. She was a substance user (alcohol and class A drugs) and service user. Her present ASB related to her inability to control her Alsatian puppy. HO13 was involved in meetings with other agencies including mental health and social services as Alicia's children had been taken into care. The outcome of the case was uncertain at the time of interview but it was likely that possession would eventually be obtained due to under-occupation and consequent rent arrears.

Brendan (HO13) lived alone in a flat. His diagnosis of paranoid schizophrenia was ultimately confirmed via the involvement of the local mental health team and also his family; his behaviour became odd when he stopped taking his medication. Brendan's behaviour had a particularly negative effect on his neighbour **Charlotte** who had Obsessive Compulsive Disorder ("OCD") particularly around cleanliness. HO13 was not sure what happened to Brandon but thought he moved in with his family

Harry was a middle aged hoarder who lived in a flat. His hoarded material included pornographic magazines and DVDs and blow up dolls. Three female officers had managed the case but tolerated him (i.e. many attempts given to provide support / ensure compliance) despite his disagreeable personality, their belief that he was sexually threatening to women **(HO14 and HO16)** and apparent mental health condition of which there was never a diagnosis (the Mental Health Trust was involved with the case). **Org.3** did not want to litigate against Harry because he was not disliked by neighbours being friends with some and thereby did not pose the economic risk of time taken dealing with complaints. Further he had a veneer of respectability due to his involvement with a local church and appeared vulnerable which induced pity. He posed risks of fire and consequently to the lives of his neighbours due to the combustible materials he hoarded, risks exacerbated by his smoking and alcoholism. A secondary economic risk followed as contractors refused to access his flat to carry our cyclical maintenance and repair, thus diminishing the value of the property. A possession order was obtained

Stark (HO15) shouted abuse at neighbours and threatened them and vandalized vehicles. **Iris,** the perpetrator tenant and mother of the adult occupiers also complained of harassment on grounds of faith and disability (wearing spectacles) although she denied any other disability. She also alleged HO15 had arranged for her to be attacked in a phone box and made abusive comments about HO15 and HM3. Injunction and possession proceedings were being pursued at the time of the interview.

Dale and Emma (HO13) were next door neighbours who had been good friends until Dale's female to male gender reassignment. After this, Emma refused to speak to Dale and made complaints of ASB against him e.g. that his dog was barking. The dispute was resolved in part by reconfiguration of the neighbours living arrangements whereby they changed the use of their living rooms (situated on either side of the party wall of their semi-detached bungalows) to bedrooms

Noelle (HO15) lived with her son and a lot of cats in a flat. There was no ASB as such; the problem was condition of property which came to the attention of Org.3 when contractors refused to carry out maintenance work. Further Noelle's son was taken into care and a children's charity were in touch with Org.3. A possession order was obtained

Org.4

Cary and Dee (HO29). Dee lived in the ground floor flat beneath Cary and their lifestyles clashed: Dee's flat was sparsely furnished and Cary had decorated his flat with explicit pornography. Dee had complained excessively about the noise from Cary's flat and he had complained about her. **HO29** never discovered any mental disorder for Dee but discovered Cary had a diagnosis of paranoid schizophrenia, HO29 was not sure what happened to Brandon but thought he moved in with his family

Beatrice (HO29) was a single female who lived in a flat. Her physical health was fragile and she had originally been a complainant being the victim of racist and homophobic ASB. However, her hoarding made her a perpetrator. While **HO29** speculated she may have a personality disorder and commented on her obvious physical frailty, they were unaware of a firm diagnosis for Beatrice despite contact with her GP. **HO29** had moved away from working in antisocial behaviour at the time of the interview but was reasonably certain no proceedings have been taken against Beatrice.

Sandra (HO28) lived in a semi-detached property with her children but they had been taken into care. She had caused considerable damage to the property and also noise nuisance to neighbours. She had been a heavy user of cocaine, cannabis and alcohol. A possession order was obtained and ultimately an ASBO to exclude her from the area

Zarine (HO28) lived in a semi-detached property to which she had caused considerable damage. A possession order was sought but successfully defended. Unlike Sandra, Zarine had much family support in the area and unlike Sandra, Zarine had a clear dual diagnosis: Paranoid schizophrenia and heavy illegal drug use including cocaine and amphetamines.

Arthur (HM4) lived alone in a block of flats and had built a pond so large that it dominated its location in the communal gardens. He enjoyed sitting by his creation smoking cannabis and preventing other tenants from using the space. He

had also damaged his kitchen walls by removing units from them. He had complained about the latter "disrepair" in person at Org4's offices so aggressively that they obtained an injunction against him**.**

The Wyatt family (HO28) Wendy Wyatt's two adult sons had been prosecuted for cultivation of cannabis in a first floor room in the family home. Their consequent absence led to Wendy's under-occupation. Wendy's two adult daughters lived elsewhere but their adolescent children sometimes stayed at the family home and verbally abused, harassed and intimidated neighbours' children, one of whom attempted suicide. Possession proceedings were taken. Wendy disclosed that she suffered with depression, arthritis and bone disease but Org.4 did not seek further evidence of these.