Governing the ungovernable: private sector landlords and anti-social behaviour
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Introduction – the shifting gaze
That housing has been the site of action to deal with anti-social behaviour is borne out by the legislation that has happened since 1996 – with many of the powers being given to landlords – to evict, to injunct, to use the more general powers of ASBOs. That the policy focus of anti-social behaviour has been on controlling the behaviour of tenants of social landlords is also undoubtedly true (Hunter, 2006). Indeed until recently one might have been forgiven, when considering the policy documents produced by government, for thinking that anti-social behaviour was exclusively a problem of social tenants.

The first legal changes specifically to tackle anti-social behaviour were introduced by the Conservative government in 1996. The White paper which preceded the Housing Act 1996 is instructive in showing where the focus on anti-social behaviour lay (DoE, 1995). The Chapter on social renting is entitled "Responsive Social Landlords, Responsible Social Tenants" and includes a section on "Tackling anti-social behaviour." By contrast the Chapter on the private rented sector contains no suggestion that the behaviour of tenants of private landlords needs to be controlled. Rather it is they (the tenants), at least when living in houses in multiple occupation, who need to be protected.

A more tenure neutral approach can be seen in the seminal Labour party document *"A Quiet Life: tough action on criminal neighbours"* from 1995 which talks of "residents" rather than tenants and acknowledges that "plenty of those guilty of anti-social behaviour are private tenants or owner occupiers" (Labour Party, 1995, p.7). However, it is notable that all the examples of action drawn on relate to action against tenants of social landlords or on local authority housing estates and the proposals in the paper for a "community safety order" specifically privilege "public authority" landlords who, it is proposed, would be able to apply for the order alongside a possession order. There is no mention in the paper of the private landlord.

The position had changed somewhat by the time of the 2000 housing White Paper (DETR 2000). This proposed the introduction of licensing of some landlords (subsequently implemented in the Housing Act 2004). The problem for which licensing is a solution is characterised thus at para. 5.32:

> "There are, however, areas of declining housing demand, particularly in parts of our northern cities, where the large-scale operations of some unscrupulous landlord, often linked to criminal activities such as Housing Benefit fraud, drug-dealing and prostitution, are destabilising local communities, creating a range of social and economic problems, and seriously hampering efforts at regeneration. Not only can they make life very difficult for respectable tenants but also they are increasingly offering homes to anti-social households, including some who have been excluded because of their misbehaviour from nearby social housing."

So now we have an "unholy alliance between bad landlords and bad tenants" (para. 5.33). Such bad landlords may be contrasted with "our many good landlords" who "deserve support and encouragement" (para. 5.2).

This characterisation is to an extent echoed in the baseline study carried out prior to the implementation of the licensing provisions of the Housing Act 2004 (DCLG, 2007a). Local authority staff interviewed for this indicated that licensing would address two anti-social behaviour problems. First (p.73):

> "… the behaviour of a small number of individuals. In many cases this was attributed to problem families; often those who had been evicted from social housing for anti-social behaviour and were responsible for burglaries, vandalism, drug abuse etc. in the area. These end up in the private rented sector…."

A second but less common problem was (p.74):

> "private rented houses being used for criminal purposes (sometimes with the knowledge of landlord) eg drug dealing, prostitution etc."

More recently this concern with anti-social behaviour emanating from those living in the private rented sector can be seen in the pages of *Inside Housing*, the trade paper for housing professionals. No longer is it just social tenants who are the problem. In an article in October 2006 (Cooper, 2006) a co-ordinator for the South East London Housing Partnership stated that in relation to mixed tenure developments: "there has been an explosion of anti-social behaviour but it is in private housing and the victims are social housing tenants and shared owners." By June 2007 it was reported that: "The government's new super-agency will set management rules for housing developments to prevent them becoming blighted by anti-social private sector tenants" (Rogers and Thorpe, 2007).

Thus we now see a two-stranded problem being acknowledged. The first outlined in the 2000 White Paper is based primarily in the run-down terraced streets of the North of England. The second is not confined to the North, appears in new mixed tenure developments and indeed seems to be very much a phenomenon of the over-heated south-eastern property market. In both cases, however, it is the perceived failure of private landlords to manage their tenants in these properties that marks out the problem. As so often is the case with matters relating to anti-social behaviour, it is easy to overstate the problem. In a survey of local authority staff implementing the licensing provisions of the Housing Act 2004 (DCLG, 2007a), only 12% agreed with the statement that "behaviour of tenants is not good."

So what is the response to this concern over the behaviour of tenants of private landlords? As with the tenants of social landlords we see here the development of policy which looks to co-opt the landlord into the governance of the conduct of the tenant. In relation to social landlords a range of mechanisms have been used including regulatory governance through the Audit Commission and the Housing Corporation. The co-opting of the social landlord has not, however, proved difficult. Indeed they have welcomed the increasing powers given to them and called for more (consider e.g. the role of the Social Landlords Crime and Nuisance Group). For historic reasons the control of conduct has

been very much part of the role of the social landlord (Clapham, 1997, Burney, 2000, Flint, 2005). The role of the private landlord and the relationship between private landlords and the state is, though, much more contested.

Given this turn towards problematising the private rented sector in relation to anti-social behaviour we first examine the nature of the private rented sector to explore both whether there is anything in the nature of either the landlords or the tenants which may present particular difficulties in governing the sector. We then consider the mechanisms of governance which have been introduced. Finally, through a case study which examines the role of landlord associations we conclude by reflect on the limits to the use of the private sector landlord to govern anti-social tenants.

The nature of the private rented sector

In this section we consider whether there is anything about the nature of the tenants in the private rented sector which may make anti-social behaviour a particular problem. We then turn to the question of the nature of private landlordism in England which provides the factual backdrop to questions of governability.

Three factors about private rented tenants may exacerbate issues of management and anti-social behaviour. The first is that it has become much more of a tenure for the young. As young people have found owner-occupation less and less affordable they have turned to the private rented sector, so that the proportion of 25-29 year olds who privately rent has risen from 19 to 35% from 1993 to 2006 (DCLG, 2007b, p.127). This younger age profile is also confirmed by analysis of the 2001 census data, which found that more than twice as many private renting household reference persons were aged 16-34 (48%) than compared to overall (22.4%) (Rhodes, 2006). Further "the private rented sector is characterised by a much higher turnover than other housing tenures. In 2005/06, for instance, the proportion of private tenancy groups that had been resident for less than one year was 39%" (DCLG, 2007b, p.128). Finally, the private rented sector has always provided the last refuge for the excluded, the discriminated against, and the ineligible. Whilst social landlords can proclaim that their mission is housing people in need, there has always been a mass of households who are unable to access it. It is to be remembered that Rex and Moore's "twilight zones" were areas of private rented housing. That mass of households is likely to be increasing as a result of reliance on the RSL sector – and its lesser obligations not to exclude – as well as the greater priorities given over by social landlords to the now ubiquitous "homelessness prevention" schemes.

Thus we have a picture of a sector with a churning population of young people, which is always likely to be more problematic for private landlords to manage than a stable, older population. On the other hand, it is frequently asserted that anti-social behaviour is most keenly experienced in areas of most acute poverty (see e.g. Wain, with Burney, 2007) Analysis of the British Crime Survey shows that perceptions of anti-social behaviour are worst in the most deprived areas (Wood, 2004). The socio-economic breakdown of households within the private rented sector does not indicate severe issues of poverty. The percentage of private renters in receipt of housing benefit has reduced in the last 10 years (ONS, 2007). Indeed "people working in the higher professional, and lower

professional and higher technical occupations were slightly over-represented within the private rented sector (18.7 per cent) compared with all people (15.4 per cent). Given the youthful age-profile of the PRS, this pattern tends to confirm the importance of the sector to the loosely-termed 'young professionals' market'" (Rhodes, 2006, p. 46). Another important segment of the market are students (Rhodes, 2006).

These figures indicate the difficulty of referring to a single private rented sector market. Indeed the evidence also shows that one of the most rapidly growing types of households within the sector are single parents. Comparing the 1981 to the 2001 census, Rhodes found (2006, p.60) that "there has been a marked increase in the proportion of lone parents living in the sector: whilst there has been a tripling in the proportion of this household type overall, from 2.1 per cent to 6.4 per cent, the growth in lone parents living in the PRS has increased by more than seven-fold, from 1.4 per cent to 10.2 per cent." Given both the higher levels of poverty amongst lone parent households (Smith and Middleton, 2007) and the undoubted focus on such families in relation to anti-social behaviour enforcement measures (Nixon et al, 2006) we might speculate that these in part are the "problem families" referred to above by the local authority staff.

Turning to the landlords themselves, the sector has been characterized as one "dominated by private individual landlords who let property as a sideline activity and who, in many cases, do not see letting property as a business activity" (ODPM, 2006, p.13). Some statistics paint the picture quite clearly (ODPM, 2006, pp. 13-14):

- 67% of private rented dwelling are owned by private individuals
- A third of all landlords own a single dwelling for rent and 54% own fewer than five dwellings for rent
- Less than a quarter of landlords earn 50% or more of their income from rent
- Two-thirds of private individual landlords have no relevant experience or qualifications
- Less than one in five landlords is a member of a professional/representative body but nearly three-quarters of agents are.

However such landlords are characterised (see e.g. Crook et al. 2000), it can be seen that regulation of such a disparate sector of small landlords operating in a diverse market raises a number of difficulties.

Mechanisms of governance

The regulation of the anti-social subject has been left to a range of bodies: the police, local authorities, housing associations. The Law Commission (2007, Part 5) identifies a number of different regulatory mechanisms which might be used by government: command and control; compliance; economic and self-regulation. Traditionally when seeking to regulate the behaviour of private landlords towards their tenants "command and control" regulation (e.g. Protection From Eviction At 1977) have been used (Law Commission, 2007, p. 47). The lead agency for regulation has been the local authority.

This model has remained in the Housing Act 2004 with local authorities being given a raft of powers to regulate private landlords, not just in relation to anti-social behaviour but also in relation to housing standards. The Housing Act 2004's regulatory approach to private landlords has been characterised by the Law Commission (2007, para. 6.29) thus:

> "The shaping of these initiatives appears to have been influenced by contemporary regulatory thinking: they embody greater acknowledgment of concepts such as risk, proportionality, targeting and use of a pyramid of sanctions. However, they are not without problems and have not departed completely from the world of command and control."

A risk based, targeted approach can be seen in the selective licensing measures. Designation of an area for selective licensing can be made on two basis: either the area is one of "low housing demand" or alternatively (Housing Act 2004, s.80(6)) if it is an area:

- experiencing a significant and persistent problem caused by anti-social behaviour;
- where some or all of the private sector landlords who have let premises in the area are failing to take action to combat the problem that it would be appropriate for them to take;
- where making a designation will, when combined with other measures taken in the area by the local housing authority or others with the authority, lead to a reduction in, or the elimination of the problem.

Thus the area must initially be identified as particularly risky and in need of the targeted approach of licensing. Once an area has been designated (after approval from the Secretary of State), all landlords operating in the area must obtain a licence from the local authority. A licence may be refused on the grounds that the landlord is not a "fit and proper person" (s.88). While there is no definition of who is a fit and proper person, in deciding this authorities must take into account whether the landlord has been convicted of offences involving fraud or other dishonesty, violence or drugs or notifiable sexual offences, has practised unlawful discrimination or contravened any provision of the law relating to housing or landlord and tenant. At the moment there is no evidence as to what basis landlords are being refused licenses or what resources authorities have to investigate the matter.

Another strand of the control offered by licensing is the imposition of conditions – these may include any the authority "consider appropriate for regulating the management, use or occupation of the premises" (s.90). Conditions may require "the taking of reasonable and practicable steps to prevent or reduce anti-social behaviour by persons occupying or visiting the house." Again we have no indication what such conditions might look like – although it will be a mandatory condition that landlords obtain references for all new tenants. This latter may be seen as a move to deal with those "problem families" who have been excluded from social housing by also excluding them from private lettings in a neighbourhood. In some areas authorities have set up information sharing on tenants with private landlords as a means of achieving this. One example is East Manchester Landlord Information Service (EMLIS): "the key to locking out trouble before you let." This is an

instance of private landlords being co-opted into the exclusionary practices of social landlords.

Thus the Housing Act 2004 provides a potentially severe regulatory framework: preventing those landlords who are not "fit and proper" from operating at all and imposing conditions on landlords as to how they manage their properties in order to eliminate anti-social behaviour. That this relatively heavy-handed form of regulation will only be used sparingly was indicated by the DCLG (2007a) base-line study, that indicated only 12% of authorities were considering introducing a selective licensing scheme. The size of proposed areas also varied greatly ranging from 100 properties to 5000. This form of regulation is therefore not likely to affect the vast majority of private landlords.

Rather authorities are likely to continue with more attempts to encourage forms of self-regulation and voluntarism. Typical of this approach are accreditation schemes, which largely operate by offering "carrots" to landlords to sign up to the standards of the scheme. While primarily focused on setting physical standards for properties, accreditation may also set requirements as to management standards. Nonetheless, how far such an approach actually requires landlords to focus on anti-social behaviour must be doubted. One recent study concluded (DCLG, 2006): "In most cases accreditation schemes focused solely on property standards rather than the incidence of other factors, such as ASB."

The study also highlighted how difficult local authorities found it to work with private landlords in dealing with anti-social behaviour. There is a recognition amongst local authorities of the difficulties that private landlords have in dealing with the problem (DCLG, 2007a, p. 102):

> "Another [authority] remarked that it was not just the inexperienced landlords who ran into difficulties with this, but also much larger and more experienced organisations:
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> > 'I got a letter from a firm of solicitors who are also landlords asking for help in dealing with a problem tenant and I thought if you can't sort it, it's no wonder Joe Public who has inherited a bit of money from his granny and thought, I know what I'll do, I'll buy a house, rent it out and there's my pension. No wonder they are in it way over their heads when the local mafia moves in.'"

However, authorities still find it hard to provide this support because of the level of staffing it requires (DCLG, 2006).

This perhaps explains the reversion to command and control type regulation evidenced in North Tyneside where it was suggested that the police would seek ASBOs against private landlords "if they fail to control the behaviour of their tenants" (Hilditch, 2007). Reversion to enforcement is typical of behaviour found in tackling anti-social behaviour.

Governing the ungovernable private landlord

Developing the problematic of government

The previous sections of this paper have highlighted the diverse ways in which the state envisions private landlords and, indeed, draws divisions between them. As we have said, the state's reaction to anti-social behaviour in the PRS was delayed, perhaps because the social sector was controllable. Historically, private renting has perhaps been constructed as ungovernable for two separate and perhaps contradictory reasons.

- First, state rent control and security of tenure in the private rented sector, granted in 1915 and continued albeit accumulating complexity until 1965, was widely perceived as problematic. Introductory economics textbooks tell us that rent control produced less and worse quality properties in the sector. The writing out of rent control and long-term security of tenure from the 1980s onwards, however, has produced an amateurism in the sector.
- Additionally and crucially, the casual nature of the sector has also produced uncertainties in the numbers of landlords and tenants as they move in and out of the sector with regularity and ease. We simply do not know. It is by a sleight of hand – and an interesting one because it is policy-driven – that New Labour divides landlords up into "good" and "bad", and draws tenants into this binary.
- It is important to recognise that private renting is an important part of the social state in that it provides accommodation for the homeless and disenfranchised. It is able to fulfil this role because of the emergence and reliance on state benefits. Equally, the state needs to be careful not to disturb this role ad one way in which such a disturbance might occur, it is said, is through over-regulation.

The question that can then be posed is in the form of a problematic of government, that is *how is the sector to be governed without being seen to govern.* The New Labour approach, as described in the previous sections has been to divide the private rented sector into sub-sets of regulatory communities. The divisions are broad and generalised and their boundaries are permeable. Government has relatively successfully so far mapped out a regulatory space in which neo-liberal governmental strategies of self-regulation have been mixed with more authoritarian, sovereign forms of control. Both are essential – as has often been remarked, the purpose of the workhouse and prisons was not only to regulate the behaviour of those inside but also those outside. That kind of apparent architectural regulation has given way to more subtle, technical forms of regulation. Both forms of government rely on some form of developed or developing regulatory community which serves to include and exclude individuals. This is particularly apparent in the work of the Law Commission, which seeks to develop the regulatory community beyond the state, so to speak. It is what Dean (2007: 53) refers to as "enslaved sovereignty":

> [The state's] autonomy is compromised. Internally, it must rely on relationship to other 'non-state' forms of organization such as businesses, charities and local organizations to implement policies and to achieve its goals. Externally, it must attract the attention of large corporations and flows of investment.

Regulatory communities: A Case Study

This point about the regulatory community is what this part of the paper focuses on. Much of current government and governmental strategies "beyond the state" is, as we have suggested, predicated on the existence of regulatory community, or several regulatory communities, acting to drive standards in the sector upwards. Consequently, our research question is, to what extent are these governing societies capable of adopting, and willing to adopt, this role on behalf of their constituencies in relation to anti-social behaviour? In our case the governing societies were the landlord associations which seek to represent private landlords. Our research question illustrates a rather different starting point – we were not seeking a top-down nor bottom-up set of understandings about the regulation of the PRS. Rather, our study begins horizontally, so to speak, by considering the governance role played by these organisations or that role which they desire to play.

Landlord associations in fact comprise probably no more than 10 *per cent* of landlords (almost certainly an over-estimate) but have managed, nevertheless, to become significant tools for government partly (and paradoxically) because they resist government interventions. In our analysis, resistance is positive and productive, even though, at first blush, it appears destructive. Like O'Malley's study of indigenous governance of aboriginal peoples, our interviewees operate in subterranean ways because regulatory resistance '…must not violate the authenticity of the indigenous governance in the eyes of the programmers and the programmed' (1996: 313). The organisations in our study are primarily in existence to challenge their regulatory environment, but they also became enmeshed within it in seeking to mould that environment.

Whilst these associations operate in open competition with each other, seeking to wrest members away from each other, this is a story also about individual personalities. These associations are led by people who see themselves as powerful. They are involved by government, which appears to take their consultation as the *sine qua non* of any regulatory involvement. They are regularly quoted by the wide variety of media outlets which concern themselves with the sector (from popular to trade press). One association chair, referred to in this paper as A, in fact had a face-to-face meeting with the minister of state, engineered by civil servants (something for which many strive but few achieve). Thus, they have the appearance of power although this does not mean that they can get others to do their bidding (Latour, 1986: 273). These people are also responsible for fundamentally re-ordering their organisations.

Our research began with a regulation concerning the licensing of houses in multiple occupation which was successfully challenged in the Northern Ireland High Court (we have discussed this at length in Carr *et al*, 2007). In Belfast, we talked with those responsible for the regulation and the private landlord organisation, or individuals, who mounted the challenge. Quite the most remarkable facet of this story is the way these landlords managed to enrol primarily English landlord associations in their challenge. We spoke to as many of these organisations as we could (two did not respond to our advances) to find out why they became involved in what were matters apparently outside

their jurisdiction and interest. Also, we wanted to find out what purpose their involvement served, or to put it another way, the impact of their involvement. These associations are referred to in this paper by letter of the alphabet.

The regulations

A compulsory registration and licensing scheme was promulgated by the Northern Ireland Housing Executive in 2004. Rather than follow their desired option, the NIHE were driven by their English governors to accept the English solution. Its explicit purpose was to make houses in multiple occupation visible. Landlords had to pay a registration fee. Their competitors in the student market, the Universities, did not. Managers were to be on call at all times, day or night, and required to be fit and proper persons. The scheme included special control provisions. Clause 10(4) included as a condition of registration:

> The person having control of the house, or the person managing the house, shall take such steps as are reasonably practicable to prevent the existence of the house of the behaviour of its residents from adversely affecting the amenity or character of the area in which the house is situated, or to reduce any such adverse effect.

A Good Management Practice Guide (NIHE, 2004c) allied to the scheme stated that registration could be revoked or refused where the amenity and character of an area was adversely affected by a range of issues including excessive noise within the HMO, anti-social behaviour by occupants and guests of the occupants in the area in which the HMO is situated, etc. Information would normally be supplied to the NIHE by the police or Environmental Health department. Landlords were required to take reasonably practicable steps, including: having clauses relating to behaviour in the written tenancy agreement to set the parameters and boundaries of the behaviour at the outset; the inclusion of clauses in the tenancy agreement whereby the tenant agrees to keep the garden and curtilage free from litter, and so on.

The focus of regulation, for sure, was on houses in multiple occupation, but there was also a significant drift to a rather different problematization about how the occupiers themselves could be controlled; or rather, who would do the controlling. The specific occupiers about whom concerns had been expressed were unruly university students. The police wouldn't assist after a period of intensive policing – they pleaded limited resources. The residents were complaining. The universities said they were powerless because they had no sanctions for bad behaviour outside the precincts (they were criticised for this powerlessness and set up their own regulatory committee with powers of suspension for off-campus bad behaviour). The landlords weren't doing anything about it because they wouldn't; worse, they had been destructive of partnerships which the NIHE had sought to build in the affected communities. Thus, they were constructed as being guilty of anti-social behaviour themselves – they were said to complain about everything down to the use of wheelie bins. The partnership between state and potential regulatory community had broken down.

Challenging the regulations

The landlords who found themselves the subjects of these regulations decided to challenge them. They did not object to the regulations per se, but they did object to being required to act as policemen outside their properties and they objected to what they saw as unfair competitive advantage being given to the Universities. They needed to find £120,000 to do so, an amount which was too much for them to collect locally. The specific regulations were identified as a problem but they needed to interest other actors. The regulations themselves were their key resource – they were the 'plug-in' (Latour, 2006) - but they were lengthy and, perhaps consequently, somewhat obscure. They had to develop strategies to enrol others into their challenge. Who should those others be? Would they provide the necessary backing? What would the outcome be? There were risks in the possible range of answers to each of these questions.

Their first step was to obtain advice from a barrister about a possible challenge. This step was important because the issue was re-defined at this point not as a narrow dry legal issue of, say, due process, but, more fundamentally and sexily, about their human rights to be consulted about regulations that affected them. This translation was important because it facilitated the process of enrolment. Such a description spoke to the interests of landlords more generally who complain that their human rights, expressed in terms of their property rights, are ignored.

The Northern Ireland landlords were now in position where they could seek to enrol others. They contacted a number of associations. Their natural starting point was to contact associations which they termed their 'brethren on the mainland'. They contacted Association 2, an English federation of landlords to which they are affiliated. Their strategy to enrol Association 2 in their challenge was about processes of devolution. Put simply, they said that Northern Ireland was a test case. What was introduced there would soon come to 'the mainland'. It infringed their human rights but unless it was challenged at this point, it would be implemented across England as well. Northern Ireland has British courts: 'it wasn't a matter that it was Northern Ireland, as far as we were concerned, Northern Ireland was a British court, but it just happened to be across the water and that if we got a good enough ruling, this government would have to take note of it.'

Their other message was equally strong and played to the concern of Association 2's chair that landlords are required to act as policemen. At this stage, a shared understanding of the role of the landlord became evident, a successful enrolment:

> But it was absolutely obvious that more and more local authorities in England and in Scotland were trying to make landlords responsible for the conduct of their tenants. And, you know, I've got a fairly strong view on this. I'm not responsible for you, you're not responsible for students if you're teaching, politicians aren't responsible for their constituents, people who employ staff aren't responsible for them when they go to lunch at dinner time. Why should we, who are not even in business, because we're not businesses, be responsible for the conduct of a tenant walking down the street or a tenant's friend in the street. You know, who ever

> imagined that they should pass the responsibility for your conduct on to somebody else who has not power to do anything about it. And if you're 25 and a landlord is 50 or 60, what chance has a landlord got of dealing with this. We're talking about in the street.

Scotland is an important actor in this process of enrolment because it was a spectre. They do things differently there; very differently, in fact, because they have a far more intrusive scheme. The English landlords are being hemmed in by devolution.

In true neo-liberal style, Association 2's chair then sought to involve the local associations and he was remarkably successful using these two key messages. Association 2's Chair communicates with his members by e-mail and he is, therefore, able to send attachments. The regulations could then be read by local landlords in England. The response of one such landlord association, whose chair read the regulations to the local members '…in intimate detail so that they couldn't possibly misinterpret it in any way, shape or form, the possible consequences for them and their families', was emotional:

> And when we read the Act, which I think absolutely shocked everybody. When I read it, I read it again and again and again because I thought I must have taken leave of my senses. And once we'd read that, we thought whatever it takes, however much it takes - immaterial - because if this is allowed to progress to the mainland, we might as well pack up and leave.

The regulations, designed to deal with specific local problems, were being translated, for the process of enrolling others into the challenge, into a generic challenge to the landlord's livelihood.

But the Northern Ireland landlords needed more money. They had to enrol others who initially were not interested in the challenge and whose interests also lie in competition with Association 2. Association 1 initially did not want to become involved. Their target was elsewhere. They are developing a new ethic of 'professionalisation' through which, rather than be obstructive of government, they are seeking to influence government and align themselves with the governmental interest:

> [W]e are at pains to develop appropriate, sensible links with officials by avoiding stridence, we don't shout, we make our points and find that they are listened to. … I mean, the government does not want to abolish the private rented sector, it wishes to see a healthy private rented sector with high standards of accommodation ...

Professionalisation was constructed by them as an object around which their actions flow. They try to influence public policy but they also want to improve standards in the sector. At the same time, they walk a tightrope because they are also a representative organisation and offer benefits to their members. (They used to be part of Association 2's federation, but demerged and are seeking other members from within Association 2, which they argue, in an open letter to landlords, is missionless.)

The Northern Ireland landlords enrolment strategy built on their appeal to Association 1 with a twist. Association 2 had not committed funds to the challenge at that time. The Northern Ireland landlords lied to the chair of Association 1, telling him that Association 2 had committed funds for the case. Association 1 then became interested and receptive to the problems. They committed the money ostensibly for the same reasons as Association 2. Interestingly, the Northern Ireland landlords were not members of Association 1. But Association 1 was able to rationalise its involvement because, rather than challenging policy, it was seeking to clarify it. Further, it was about the business aspect of being a landlord. Equally, it had similar concerns about devolution and particularly the spectre of Scotland:

> [T]hat's the fear that a place like Scotland would introduce some quite draconian laws. So that was the driver. You've got to start now, don't allow it to go any further.

Finally, and importantly, it spoke to their interests in, or spin on, 'human rights':

> All of this does raise a rather more fundamental issue, let's say it almost opens up to debate the nature of property ownership and how far should in a supposedly free society the government legitimately intervene in housing and in the ownership of property. This is an issue that is being aired increasingly at the international level. … There is a limit to how far a government in a society like ours can legitimately intervene in what is, after all still, a free transaction, freely entered into, a contractual arrangement entered into by two people, two parties who are not obliged to do so. But of course there are all sorts of factors in play here but the fundamental right to property ownership, it depends whether you believe that property ownership underpins and stablises society and the right to title, for instance, is critical which is why perhaps in some countries in South America the economy can't get going because they can't prove title. In Venezuela, two-thirds of the population have no title to their property so they can't generate economic activity on the basis of loans etc. So the right to own property is an inalienable right if you like which you find in human rights legislation etc.

Both associations shared similar positions about this thing called anti-social behaviour. It is not their fault. Such behaviour is endemic in society. Others – teachers, police, mental health and other authorities – have responsibility. Landlords are not an instrument of government policy (although they accept that they are in terms of the supply of tenants). Their relation of control is through the tenancy agreement which is property specific.

It goes on from there. Both Association 1 and 2 chairs claimed to us that they had enrolled Associations 3, 4 and 5 into the challenge, and Association 3 claimed to have enrolled Associations 4 and 5 as well. Association 3, an association responsible for letting agencies, put £10,000 into the pot. What "spoke to" him about the Northern Ireland situation was the 24 hour contact required of managing agents (which had, in fact,

been written out of the final regulations). Again the talk was of human rights: 'But the main problem I think with it was the fact that it was against the managing agents human rights to have somebody potentially phoning him up every blinking [minute of the] day or night'.

The success of the Northern Ireland landlords, then, had much to do with their creativity, which enabled them to align the interests of these diverse groups which are in competition with each other. Their successful enrolment of those associations in this struggle was more impressive because these associations had no track record of engagement with court proceedings. Their primary milieu was a policy audience. Only Association 2 had been engaged in challenging regulations concerning housing benefit in the courts. They had stopped this aspect of their work because they realized that it was a Sisyphean task – every time they were successful, the regulations just changed.

What emerges from this case study?

The first point is that, in a limited fashion, these regulations served to highlight a shared norm amongst and within these associations about the proper role of landlords. Whilst these associations are highly competitive with each other, they bought into a broad public/private distinction concerning the regulation of their occupiers. They were responsible for regulating behaviours in their properties, but not outside them – a very different view than that which has emerged amongst social landlords. Although unformed in terms of specifics, there appeared to be a broad understanding, at quite an emotional level, that *landlords* have human rights as much as tenants. Regulations are gradually encroaching on their rights from different directions – devolution and licensing being the two major concerns – and they feel hemmed in.

Second, and related to this, the contract between landlord and tenant was regarded as having a special value in this context because it provides the proper place, in the view of the landlords in our study, where acceptable standards of behaviour can be set out. It is this document which delimits the boundaries of self-regulation and self-policing of tenants. It creates a contractual community based on the self-interest of both landlords and occupiers.

Third, despite these limitations and despite the apparent objective of some of our interviewees to frustrate policy-making on the back of an old-fashioned version of freedom of contract theory, these associations were clearly engaged in governance techniques through resistance. Morag McDermont (2007: 374) has pointed out that although legislation produces a map of the territory to be governed, "the mechanisms of governance become determined by the struggles that took place prior to the making of the map". Emerging governance arrangements in the private rented sector are a further example of that thesis.

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