

STATEMENT OF PROCEDURES

Aim:

The aim of Walsall Housing Group's (whg) Anti-Social Behaviour (ASB) procedure is to,

- inform customers what they can expect from whg.
- ensure that correct and appropriate practices are in place so that there is a consistent approach to complaints of ASB.
- provide colleagues within whg with the necessary guidance to facilitate effective case management and the resolution of reported problems.

Recording reports of nuisance:

In general, reports of nuisance may be received from a variety of sources. ALL reports of nuisance must be recorded using the current relevant recording system and passed to the appropriate colleague for investigation.

Reporting nuisance and ASB:

Complaints should be directed to the local Trust office and can be made verbally, in writing or anonymously, and may come from third parties.

Processing complaints:

Following the initial referral or discovery of a problem the housing advisor responsible for the case must proceed to gather as much relevant information and evidence regarding the nuisance as possible. This will include an acknowledgement of the report of the complaint within 2 working days and an interview with the complainant within 5 working days of the acknowledgement. If the reported incidents include violence or threats of violence, the time periods above may be disregarded and immediate action may be taken. In such cases, the Service Manager will normally review a risk assessment (also see paragraph on Witness Support).

The purpose of the interview is to clarify:

- Who the complaint is about;
- How long the nuisance has been going on;
- Frequency of the incidents of nuisance;
- Severity of the nuisance;
- How the nuisance impacts on the complainant;
- What action has been taken by the complainant i.e. reports to Police, approaches made to perpetrator etc;
- Whether there are any other witnesses or person affected by the nuisance;
- Any involvement of other agencies such as Police or Environmental Health.

The complainant should be advised of:

- Details of whg's ASB procedure and be provided with an explanatory leaflet.
- How they might resolve the problem themselves.
- What support external agencies might offer.
- How the complainant should log complaints (incident diaries should be issued where appropriate and only in accordance with the agreed guidance).
- What action will be taken by whg following the interview.

A report of the complaint and the decision regarding appropriate action must be documented and placed on the case management file. Following completion of investigations if it is decided that there has been no breach of tenancy conditions then the complainant must be notified of this decision, and the case closed. In cases where it is considered that there does appear to be a breach of tenancy conditions then **appropriate** action must be taken within 5 working days to minimise further nuisance and to attempt to resolve the situation at the earliest possible stage.

Collecting evidence

Whg will use a range of methods to collect evidence which may include covert surveillance. Such surveillance will normally be undertaken by other organisations and must be authorised by the Trust Housing Manager. Colleagues gathering evidence will not put themselves or others at risk of harm.

Options available to whg

Writing to or interviewing the perpetrator:

The responsible housing advisor will write to or visit the alleged perpetrator to investigate the allegations of nuisance. In the first instance the complainant's details will not be divulged. Any warning should clearly state in what way the behaviour has breached the terms of the tenancy conditions and will state that further action may be taken should further breaches occur. If a perpetrator has been identified they should be made aware of the potential consequences of their actions, including the ultimate sanction of eviction. Details of any interviews should be recorded and placed on the case management file. The complainant must be informed that a warning has been issued to the tenant concerned and, if appropriate, he/she should be advised to keep the Trust informed of any further incidents which might occur. Where the incidents are of a serious nature or repeated an action plan should be agreed with the complainant outlining what further action whg might then take. Where there has previously been violence or threats of violence, a risk assessment should be completed and the above procedures may be amended with the agreement of the Service Manager.

The Officer having conduct of the case should diary the case to contact the complainant after 28 days.

The perpetrator may make counter-allegations which may lead to further investigations and the consideration of mediation as an appropriate way forward.

Further warning Letters:

Should further reports of nuisance be received a second warning letter must be issued to the perpetrator inviting them for a further interview. If the perpetrator does attend at the pre-arranged interview they should be advised that any further reports of nuisance will normally lead to the service of a Notice of Seeking Possession. In extreme instances of nuisance or tenancy breach, a Notice of Seeking Possession can be served prior to any written warnings being issued, this will be determined by a Service Manager.

Copies of complaints, interview notes and warning letters will be placed on the case management file.

Service of a Notice of Seeking Possession:

In cases where the service of a Notice of Seeking Possession is not with a view to commencing immediate possession proceedings the tenant should be advised that the Notice will remain in force for 12 months. If further incidents are reported further action will then be considered.

Factors to consider before taking further action:

- Is there sufficient evidence to proceed?
- Is the proposed action appropriate and proportionate in terms of the scale and severity of the nuisance?
- If it is intended to issue legal proceedings, is the Court likely to grant a possession order (i.e. can whg prove reasonableness)? Have alternative remedies been considered?

- Have all parties been contacted and kept informed of action taken?
- Have appropriate warnings been issued to give the perpetrator the opportunity to change his/her ASB and to warn of whg's intentions; and have support measures been considered, where appropriate, to assist him/her to cease their ASB?

Issuing possession proceedings:

In cases where the seriousness of the nuisance means that possession proceedings are required it is important that whg can not only prove the grounds for possession but also establish that it is reasonable for the trial Judge to grant a possession order. It is therefore important to demonstrate that whg has considered and/or pursued (where appropriate) the wider range of tools for preventing and tackling the behaviour.

An order may be outright or suspended and may be immediate or be enforceable at some future date (normally 28 days). A suspended order means that the tenant cannot be evicted unless they break the terms of the order. An outright order means that the tenant can be evicted although they have the right to request a "stay" or postponement of the eviction which the Court may grant if it wishes.

Eviction:

In the event that a possession order is granted or further ASB occurs after the granting of a suspended order whg will apply for a warrant for the eviction of the tenant.

Whg will not normally re-house a tenant who has been evicted for ASB. However such a person is entitled to make an application to a Local Authority as a homeless applicant. Although obliged to consider any application on its merits, account can be taken in any assessment of the previous ASB.

If having considered the application whg decides to offer alternative accommodation it will be ensured that the applicant is not re-housed in the area where they previously lived. Unless the Court has made an order excluding an individual from that area e.g. as a term of an ASB Order, whg cannot prevent them finding alternative accommodation privately in the same area.

Homeless applications/exclusion:

If it is possible that a resident will lose their home as a result of action against ASB, the responsible housing advisor will liaise with the homelessness section of the Local Authority.

In line with our Exclusion Policy, whg will not let or allocate a property where in the reasonable opinion of a Service Manager, the new tenancy may result in ASB.

Other remedies

Mediation:

After the initial investigation, if it is evident that the complaint involves a neighbour dispute between two or more parties, then mediation may be offered as a means of resolving the dispute. The aim of mediation is not to impose solutions but to agree a reasonable way forward by both sides. If either side refuses to engage in mediation then this may weaken their case at a later stage. Mediation is not suitable in all cases and other remedies may be considered.

Undertakings:

An undertaking is a formal promise given by a tenant either to whg (prior to the issue of any proceedings) or to the Court (after the commencement of proceedings) not to cause or allow nuisance to be caused.

Abatement Notice:

If the problem is mainly one of noise the Local Authority Environmental Team may consider it appropriate to serve an Abatement Notice. For this to happen the noise must amount to a statutory nuisance and this is based on an assessment of the loudness, duration and characteristics of the noise.

It is a criminal offence to fail to comply with an Abatement Notice and a person served with such a Notice can be prosecuted and fined or imprisoned if they breach the terms of a Notice.

Breach of an Abatement Notice can be used as evidence in other legal proceedings.

Acceptable Behaviour Contracts:

Whg will work with the Local Authority ASB Unit in respect of drawing up Acceptable Behaviour Contracts (ABC) in appropriate cases. A range of limits on behaviour will be agreed with the perpetrator and drawn up in a signed agreement. The agreement is not legally binding but can be referred to in future Court proceedings. ABCs can be a precursor to applying for an ASB Order or possession.

ASB Orders:

These orders are similar to injunctions and can be obtained independently in the Magistrates Court or in the County Court as part of possession proceedings against the tenant and/or a third party if the person's anti-social acts are material to the principal proceedings. They can be made against anyone who is aged 10 or over who has acted in a manner that has caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself. They are designed to be preventative and orders remain in force for a minimum period of two years. Breach of an order

is a criminal offence with possible conviction for up to 5 years imprisonment or a fine or both. Different sentences may apply to juveniles.

ASB orders will only be sought after consultation with the Local Authority.

ASB Injunctions:

An injunction is a civil remedy which is obtained through the County Court and either compels or forbids a person to doing something. Breach of an injunction amounts to contempt of Court and could lead to a fine or imprisonment. They are available against persons aged 18 or over. They can be obtained against a tenant or against any other person to prevent conduct which:

“is capable of causing nuisance or annoyance to any person and directly or indirectly relates to or affects the housing management functions of a relevant landlord”,

and is capable of causing nuisance to:

“a person living in accommodation owned or managed by the landlord or in other accommodation in the neighbourhood of the housing accommodation owned by the landlord”;

“a person engaged in lawful activity in the neighbourhood of the housing accommodation”;

“a person employed in connection with the landlords housing management functions”.

The Court may attach a power of arrest or include an exclusion order to an injunction if there has been the use of violence or a threat of violence or a there is a significant risk of harm to a person in the categories referred to above.

Injunctions will normally be sought when there is an urgent need for action to protect the health or safety of a resident. At the same time as seeking an injunction, the responsible housing advisor will prepare details of further actions which will alleviate the ASB in the longer term.

Demoted tenancies:

A Demotion Order has the effect of reducing the status of a tenancy from an assured to an assured shorthold tenancy. The Court must be satisfied that the tenant or a person residing at or visiting the property has engaged in behaviour as set out as the criteria for obtaining an injunction and that it is reasonable to grant an order. At the end of the demoted tenancy period if there has been no further ASB then the tenancy will revert to an assured tenancy. However, if there is evidence of further ASB then whg can apply to the County Court for possession. Whilst a tenancy is demoted the tenant loses the right to assign and the right to buy.

WITNESS SUPPORT

For any legal action to succeed, complainants and other witnesses are usually required to attend Court to give evidence as to what they have seen and heard. The best possible evidence is that of the victims of the ASB. Their evidence is crucial, although in some cases evidence can be supplied by third parties such as Housing Officers, Police Officers and other professional witnesses.

Each Trust will have a limited budget each year to support witnesses and will also work closely with other partners to support witnesses.

Methods to consider in relation to witness support when approaching management of severe cases of ASB:

- Maintain close contact with neighbours and witnesses by use of regular visits/liaison in order to build up trust and support.
- With the agreement of the witness, seek support from relatives and friends.

- Assurance of confidentiality: Ensure wherever possible that the individual complainant's details are not revealed to the perpetrator.
- Access to interpreters where appropriate.
- Consider the use of injunctions to ensure witnesses feel protected from intimidation in the run up to the hearing.
- Ensure that other relevant agencies are aware of the situation and can offer support.
- Advise witnesses of the procedure in Court and for Officers to accompany them to Court and arrange transport where necessary.
- Availability of temporary accommodation/security measures. Whg will carry out a risk assessment if in the judgement of the responsible housing advisor, the occupant may be at risk in their home.
- Ensure contact/support is maintained after the court hearing in the event that further action is necessary or witnesses require access to counselling services.

CCTV:

CCTV may be installed if it is likely to prevent further incidents of ASB and thereby protect witnesses or victims.

Monitoring cases and the service:

Whg will monitor reports of ASB and the service provided to tackle it to assist in evaluating the effectiveness of specific ASB initiatives; identify key priorities and issues; understand the nature and location of areas where ASB is prevalent, and distinguish between different types of behaviour, which could

be categorised as ASB. Whg will monitor every open case on a 2 weekly cycle.

The responsible housing advisor will have responsibility for maintaining up to date records of cases allocated to them.

Complaints Procedure:

Complaints about the service provided will be dealt with under whg's normal complaints procedure details of which will be made available. Any dissatisfied customer will be offered details of the whg Complaints Procedure