

NUISANCE/ ANTI-SOCIAL BEHAVIOUR

1. INTRODUCTION

Blaby District Council aims to tackle anti-social behaviour (ASB) including all forms of harassment in the communities, in which we live and work. The Council understands that the negative impact of ASB on people can lead to a decline in the local areas and adversely affect peoples well being.

The aim of this document is to set out the Council's procedure for tackling and preventing ASB.

The Council will take positive action, using all the tools available, to deal with cases of ASB to ensure that our tenants enjoy their right to the quiet enjoyment of their tenancy and the feeling of security in their home and communities.

The Council will take appropriate action to tackle ASB caused by anyone living or visiting the communities in which our stock is situated. Our actions are not limited to ASB that is caused solely by our own tenants.

In developing its ASB policy and procedure the Council has, and will continue to consult with residents, partner agencies and stakeholders.

The Council has a responsibility to its customers to take all reports of nuisance and anti-social behaviour seriously and to investigate them promptly and impartially. It is important that clear notes are taken of all reports, regardless of whether or not further action is taken, clear records are kept of action taken, managers informed of the progress of all serious cases, and that procedures are followed at all times.

The Council is committed to keeping complainants informed of all action/progress taken as their complaint is being investigated. We will ensure that all affected parties are aware of the action the Council is undertaking, obtaining their confidence that the situation will be appropriately and efficiently dealt with and is being taken seriously.

2. IMPACT OF ANTI SOCIAL BEHAVIOUR

Anti Social behaviour is a widespread problem. Serious hard-core perpetrators are small in number but their behaviour has a disproportionate effect on large numbers of ordinary people.

Nuisance is uncaring, unthinking behaviour by a person or household that disturbs or adversely affects other people and is one of the most frequent causes of disputes between neighbours. Sometimes disputes are between residents, other times between residents and adjacent owner/occupiers, or

residents of other landlords. In any of these situations the Council may be approached to resolve the problem. Increasingly nuisance is involving damage and deliberate vandalism to property, some of which could endanger life.

3. DEFINITIONS OF ANTI SOCIAL BEHAVIOR

Anti-social behaviour is defined by the Crime & Disorder Act 1998, as

“acting in an anti-social manner as a manner that caused or is likely to cause, harassment, alarm or distress to one or more persons, not of the same household as the perpetrator”.

The Chartered Institute of Housing suggests it is **“behaviour that unreasonably interferes with other peoples rights to the use and enjoyment of their home and community”.**

The Anti Social Behaviour Act 2003 defines ASB as 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 or,**
- **Consists of, or involves using or threatening to use housing accommodation for an unlawful purpose.**

4. EXAMPLES OF ANTI-SOCIAL BEHAVIOUR

Anti social behaviour is often fuelled by wider problems of social exclusion and deprivation such as poverty, unemployment, family breakdown, truancy and school exclusions, drug dependency and community disorganisation.

Recent research suggests that around 30% of the population of Britain feel they have a serious problem with their neighbours. A further 30% have some slight trouble with their neighbours from time to time.

The Council recognises that examples of ASB could include:

- Noise nuisance such as loud music, shouting, disturbance from parties or noise from TV's, radios and hi-fi equipment
- Untidy, overgrown gardens
- Accumulation of rubbish or dumping of litter and waste
- Graffiti, vandalism and damage to property
- Failure to properly control pets
- Unruly behaviour by visitors to a property
- Using properties to sell drugs or for other unlawful activities
- Theft and burglary from property or vehicles
- Inconsiderate parking or parking in prohibited areas
- Vehicle repairs and dismantling of vehicles
- Domestic violence and abuse
- Threatening or intimidating behaviour in common areas or public areas
- Actual violence against people

- Harassment that targets members of identified groups because of their perceived differences (for example, race and ethnicity, religion, gender, age, sexual orientation, mental health or disability).

The Council understands that ASB may or may not constitute criminal activity. We will assess the impact of the particular behaviour on others and the community as a whole to determine whether such behaviour is considered anti-social.

4.1 Racial Harassment and Hate Crime

The Council has clear aims that racial harassment and other hate crimes perpetrated by, or against, the Council's residents will not be tolerated. And full and comprehensive support will be offered to the victims of such behaviour. In conjunction with our partner agencies we will use all of the remedies provided by the law to deal with such incidents.

4.2 Harassment

The Council understands that people suffering harassment experience repeated incidents and problems of intimidation day after day. Often the victim and perpetrator live in close proximity to each other and this, in conjunction with the frequency of incidents can prevent people taking a stand against the behaviour.

5. MAKING A COMPLAINT

Customers who wish to make a complaint can contact the Council during office hours with their concerns regarding the ASB. They may make the complaint in person, in writing, via the telephone or e-mail. It would normally be the Housing Officer responsible for the area in which the ASB has taken place that would deal with the matter and communications should be directed to the Housing Officer responsible for the particular area of the District. There are no prescriptive solutions for dealing with ASB or neighbour disputes, each case will vary depending on the personalities and circumstances involved.

In many instances householders are not aware that they are creating a problem, and they would prefer a direct approach from their neighbours rather than a visit by a Housing Officer. Residents should, when appropriate, be advised of this and encouraged to discuss the issue with their neighbour. This would not be appropriate in cases that involve acts of aggression or physical violence. If residents are uncomfortable with discussing issues with their neighbour then the Council will deal with the matter on behalf of the complainant.

Residents should also at the initial stage of the complaint be made aware to report issues to other agencies who may be able to assist with the matter i.e. The Police, Environmental Health Dept etc. The complainant should be advised of particular occasions when it would be appropriate to involve external agencies.

6. RECORDING COMPLAINTS

The following procedure should be followed as far as possible, although it is recognised that officers might need to adapt the procedure to the particular circumstances of the complaint. E.g. where the incident reported is very minor, or where the incident is very serious and needs immediate action. A **key point to remember is to always make clear and accurate notes of reports made and action taken.**

6.1 Initial Report

For each report of Nuisance, Anti Social Behaviour or Harassment an anti social behaviour referral/information sheet should be completed. This should be completed immediately upon receipt of the contact from the customer.

This report form is available on the system and in paper pad form. At this point consideration should always be made as to the seriousness of the incident and if in doubt the person taking the referral should refer to the Tenancy Services Manager for guidance. It may be necessary to involve the police or Leicestershire Social Services or the Environmental Health Team or the Community Safety Team at this stage. The complainant may need to be referred to another agency. A referral /information sheet should be completed for every complaint made over the phone, in writing or in person at the office. It should also be completed if we visit customers in their homes to discuss complaints. The referral/ information sheet records the details of the complainant, details of the person making the complaint and any known history of the incident. If the complaint is received by letter, it is likely that a home visit will be required to clarify the details of the complaint. The case should also be logged on the ASB spreadsheet at this stage so that all reports can be monitored. In addition two progress tracking sheets should be completed for each case, one inserted into the alleged perpetrators property file and one inserted into the complainants property file. The tracking sheet will track action taken by the council and provide a record of visits, contacts, letters sent.

At the initial complaint stage we need to attempt to establish if the complaint is reasonable. However even in such cases we need to follow the procedure outlined to ensure that the complaint is recorded and responded to in the correct manner.

Upon receipt of a complaint of ASB an initial categorisation should then be made based on the following principles:

Class A -Very Serious

This category will include harassment on the grounds of race, sexuality or disability, as well as any other harassment, actual or threatened violence, or any other serious criminal activity. Class A behaviour will be responded to within 24 hours and an immediate response may be required by Tenancy Services staff. It may not be possible to wait for the arrival of the relevant housing officer and a team approach to addressing the issue is of paramount importance. The Tenancy Services Managers advice should be sought in all class A cases and

an action plan formulated. The initial response may be to remove the alleged victim to a place of safety, however information must be sought from the Police and permission to relocate an individual or family must be obtained from the Operations Manager before taking such action. Advice and assistance should be sought from the Housing Options Team where relocation is required. Security of the property may also require the involvement of Housing Works.

Class B - Serious

This category will include serious breaches of Conditions of Tenancy, heated verbal arguments and serious disputes, allegations of petty criminal activity, threats or threatening behaviour, intimidating behaviour from groups or individuals, and any complaint that has the potential for rapid progression to class A. Class B behaviour will be responded to within 5 working days of receipt of the complaint.

The initial response may be to make contact with other relevant organisations e.g. the Police, to verify the severity of the incident. This will then impact upon the next action taken. A visit to the alleged perpetrator and involvement of other agencies such as social services or the Police may be required in order to resolve the issue.

Class C - Minor

This category will include most neighbour disputes, minor breaches of the Conditions of tenancy, domestic every day noises such as noise from washing machines, vacuum etc, parking and the condition of the tenant's property or garden. Class C behaviour will be responded to within 10 working days of receipt of the complaint.

When receiving the complaint or interviewing the complainant a series of questions can be asked to ascertain the true nature of the complaint. Examples are as follows:

- What is the problem? How Long? How Often? How is it affecting you?
- Who/What are causing the problem?
- What actions do you think would help to resolve the problem?
- What have you done about it?
- What was your relationship before?

When interviewing the complainant an ASB interview record sheet should be completed. Any action that is to be taken will be clearly recorded on the ASB interview record sheet. Interviews should be recorded as an event on the progress tracking sheet. Interviews with neighbours and contact with the police should also be recorded on the progress tracking sheet.

6.2 Responding to the Complaint

A letter should be sent to acknowledge receipt of the complaint. However in some circumstances it may be appropriate that the response to the complaint takes the form of verbal advice to the complainant. This verbal advice should be recorded. Verbal advice may be the only action taken and this should be recorded on the tracking sheet and where appropriate a letter sent to the complainant advising them that no further action is intended.

A copy of the referral/information sheet should be placed on the tenancy file of the alleged perpetrator of the nuisance. If the alleged perpetrator is not a tenant then the referral/information sheet should be placed on the affected tenants file.

Residents who are making the complaint should be asked if they have contacted their neighbour about the dispute, if they have not done so they should be encouraged to do so when appropriate. If they are uncomfortable with this then the Council should still deal with the complaint if this is the agreed course of action.

Once we have decided action should be taken we will need to decide what form this action should take – usually it will be to contact the perpetrator to discuss the nature of the complaint. This can be done by letter, telephone or by a home visit. It is usually preferable to discuss the matter in person with the resident so that the true nature of the complaint can be discussed and action can be agreed. Details of the interview must be recorded on the ASB interview record sheet.

A series of questions can be asked to ascertain the nature of the problem. Example questions are as follows:

- Are they aware of any problem? How long? How often?
- How do they think it may affect their neighbours?
- How do they feel? How would they like the situation resolved?
- What have they done about it?
- What was your relationship like before?

6.3 Agreed Action Plan

The Housing Officer should agree an Action Plan that will attempt to resolve the dispute and be acceptable to all parties concerned. The action plan will indicate the actions that the Council will take and the actions that the complainant will take. Deciding how to best deal with a particular case of anti social behaviour and what actions to include on the action plan is vital to the success of the case and Housing Officers are encouraged to discuss the action plan with colleagues and the Tenancy Services Managers. It is important to learn from the experience of others and this can best be done by open discussion on each case. It is important to be aware that as events unfold a review of the action plan may be required at any time.

All involved should be reminded of their responsibilities to prevent nuisance and their responsibilities outlined within their Tenancy Agreement.

Residents should always be made aware that the information they have provided will remain confidential. However, it is likely that the person who has been complained about will realise who has made the complaint that can sometimes exacerbate the situation. However, we should not attempt to prevent complaints from being made.

Where residents are provided with diary sheets in order to record further incidents of ASB, residents should be given guidance about the way in which to complete the diary sheets. It is important to stress that the sheets need to be filled in at the time of the event and signed and dated.

6.4 Resolution of Complaint

Details of the interview/discussion with the alleged perpetrators of the ASB should be recorded on the anti social behaviour interview report. Any agreed action should be confirmed in writing to all parties.

This matter is now dealt with unless we receive further complaints. Residents should be advised of this and the importance of adhering to any agreed action plan. All parties should be advised to report any further incidents of nuisance that they feel are breaches of the agreed action plan or the tenancy agreement.

If a resident has any care or support package in place the key workers involved should always be advised of the position and encouraged to participate in the process of dealing with complaints. A referral to agencies that can support the client may be needed.

The main aim of the Council is to try to reach an amicable agreement that both parties will keep to, and confirm this in writing.

There are a number of alternative remedies which the housing officer can consider to help resolve complaints. The details of the complaint should be assessed and the officer should use their judgement to decide on the most appropriate course of action. A number of alternative actions are available to the complainant. These include mediation, partnership working with Environmental Health, the Domestic Violence worker Louise Savage based at Wigston Police Station, Leicestershire Social Services, housing associations and the Community Initiatives Co-ordinator Susan Willett based at Blaby Local Policing Unit. The Council may also wish to consider transfers and may advise the complainant that they can pursue independent legal action e.g. action for slander.

6.5 Repeat Complaint

Initially the same action should be taken as at stage 1. The fact that it is a repeat complaint would suggest it may become more serious or the agreed action between the Council and its residents has not been adhered to.

6.6 Responding to Repeated Complaints

At this stage all parties must be interviewed if we believe we should be taking action.

The complainant should be advised to complete a diary record of the future complaints.

They need to be advised:

- How to complete the form
- That they must witness all events recorded
- That each person should keep an individual record
- That incident should be recorded as soon as possible after they occur. The record should include start and the finish times of the incidents
- They should state how the incident has affected them i.e. disturbed sleep, upset child
- Foul/abusive/insulting language should be accurately recorded
- The details of the person responsible for the behaviour recorded on each occasion
- Each record sheet should be signed

During the interview the housing officer should inform the complainant the formal procedures that may result in legal action and it should be established if the complainant is willing to be involved in such procedures. Residents should be advised that this is required to satisfy requirements of the court should further action be taken. It is important to carefully review the content of diary sheets in order to be sure about the severity of the ASB. The Council must be careful to advise residents that it is not realistic to expect an eviction judgement in the County Court in cases of intermittent low level noise.

All interview details must be recorded and all actions should be confirmed in writing to both parties. All parties should monitor any agreed action plan to ensure it is implemented successfully.

6.7 Continuing Complaints

If further complaints are received it is important that the Housing Officer discuss the case with the Tenancy Services Manager with a view to reviewing the action plan. If we continue to receive complaints of a serious nature we must consider alternative remedies including appropriate Legal Action and Possession where all other options have failed.

This procedure details other possible remedies as an alternative to Possession Action and the Housing Officer should again consider these alternatives. These alternatives include mediation, partnership working, transfers and are detailed in 6.4. The individual nature of all complaints should be carefully considered.

We must establish if residents are prepared to provide evidence, attend court if required and/or provide witness statements at this stage. It is usually a requirement if we are to proceed with any legal remedy successfully.

All complaints should continue to be recorded.

It is important to remember that all record sheets/file notes and witness statements should be signed by the tenant/witness/housing officer to confirm that they are true and accurate records should they be required in court at a later date.

7. TAKING LEGAL ACTION

If the ASB continues, is of a serious nature and appears that it will not be resolved by agreement the Council must consider alternative remedies to resolve the problem. Many alternatives may result in serious consequences for the perpetrator, be costly for the Council and take a considerable amount of Officer time. We must be clear that the action we take is appropriate, reasonable, likely to succeed and resolve the issue for our resident before we take the action.

7.1 Possession Action

The principle method of redress that the Council has is to take possession action for a breach of tenancy conditions.

7.2 Terms of Tenancy Agreement

The success of possession action will depend upon being able to demonstrate that there has been a breach of tenancy conditions. The tenancy agreement contains a clause regarding nuisance.

(1) Tenancy Obligations

- ***Nuisance***

The tenant must act in a reasonable manner in respect of the treatment of the premises and the adjoining property and avoid any conduct by himself/herself, his/her family, lodgers, sub tenants, visitors or pets likely to cause nuisance or annoyance to others..

If, after careful consideration of all the facts and circumstances, the Housing Officer and the Tenancy Services Manager and the Operations Manager believe that the tenancy terms have been breached, and that it is necessary to take action against one party, then legal action can commence.

8. COMMENCING POSSESSION PROCEEDINGS

Legal action should be commenced when previous action has not resolved a serious and persistent case of anti social behaviour.

8.1 Serving of Notice of Seeking Possession

The first step in commencing possession proceedings is to serve a Notice of Seeking Possession. This action should only be commenced when all previous

attempts to resolve nuisance and neighbour conflicts have failed or if we are aware of a very serious breach of the Tenancy Agreement

Possession procedure for cases of nuisance differs to those from rent arrears. We can ask the court to dispense with the need to serve a NOSP. This will only be granted in special cases where we can demonstrate that the complainant is in danger.

If we do have to serve a NOSP we can start proceedings without waiting for the notice to expire. Legal advice should be sought at this stage.

8.2 Grounds of Notice

8.2.1 Secure Tenants

The NOSP can be served on Ground 1 (breach of tenancy) and/or Ground 2 (guilty of conduct which is a nuisance or annoyance to neighbours)

Proceedings in these cases can commence 28 days after the serving of the notice, and not before.

8.2.2 Good Practice for the Serving of NOSP

The notice must be served so that it comes to the tenant's attention. It is sufficient to show that the notice has come to the attention of the tenant even if it has not been served on him or her.

Preferably the notice should be served in person by hand to the tenant of the property. On serving the notice to the tenant we should confirm the name of the tenant and explain the details of the NOSP i.e. Breach of agreement, Further action etc. Where there is a risk of violent behaviour at the tenant's home the NOSP may be served at the Council Offices

A covering letter should also be attached to the NOSP that explains the legal process of the notice and what the tenant should do next.

If the tenancy is in joint names a notice should be drawn up for each tenant naming them individually. The same serving procedure should be followed where possible but it is not necessary to serve the notice individually on each tenant. If a Notice can be served on one joint tenant and not the other it is sufficient to leave the notice in the property or to post it separately. It should not be left with the other occupier of the property.

In circumstances where the Housing Officer feels it is beneficial for a third party to serve the NOSP this can be arranged via the Councils solicitor Jeremy Rainbow, who can serve NOSP on behalf of the Council.

All details surrounding the serving of the notice i.e. date, conversation, whom served to should be recorded in case we are required to provide proof of service at any possession action.

It is important that the Particulars of Claim within the Notice are completed with as much details as is possible about the nuisance, which has occurred. Where possible we should include the dates when incidents occurred and the full details of each incident including the associated remarks made at each incident.

Although details of all Nuisance cases and the records should be kept on the appropriate Tenancy file it would be advisable to keep the details of cases once they reach the Notice stage in a separate folder within the file. All details should be kept in chronological order and the progress tracking sheet completed at each stage.

9. POSSESSION HEARINGS

Once the relevant timescale of the Notice has elapsed we can apply for a Possession Hearing. It should be remembered that in extreme situations Possession proceedings can commence before the usual 2 or 4 week time period has elapsed. The Housing Officer must seek the approval of the Tenancy Services Manager and the Operations Manager before commencing with proceedings. Full discussion will take place with the Councils solicitors before instructions are given to proceed with the case. Possession should only commence if all other options have failed and there appears to be no prospect of resolving the problem.

The court has discretion and must consider the over riding question of REASONABLENESS in deciding whether or not to grant Possession. The quality of evidence is important in demonstrating that every action has been taken to prevent possession action. It is essential that detailed notes of all interviews with complainants and the perpetrators of the nuisance are taken. It is also important that the residents sign to confirm that the interview record is a true and accurate picture of events. In addition the complainant should keep a comprehensive diary giving dates, times and frequency of the nuisance.

There are no mandatory grounds for possession.

In many cases the most likely outcome is for the order to be suspended or adjourned on the condition that no further acts of nuisance occur.

9.1 Types of Possession

Immediate possession - Possession within a certain time - usually 7, 14 or 28 days.

Suspended Possession - Sometimes the judge will give the perpetrator another chance. If the tenant is responsible for further breaches of their tenancy agreement we must go back to the court with evidence of the breach to obtain possession.

10. Witness Statements

Good quality and accurate witness statements are vital to a successful case. Drafting detailed witness statements for court action takes time and a level of

expertise. However obtaining a good quality written account will improve the quality of record keeping immeasurably. The Witness Statement can be completed by the Housing Officer, or we can employ our Solicitor or Private Investigator to complete this work. The following guidelines will help.

- Start by writing down the name and address of the witness. Confirm with the witness all the family details concerning his or her household. What is the size of the property and how long has the witness lived there? Is the witness a tenant, private tenant or homeowner?
- Ask the witness in their own words to describe in general terms what the problems are. For example try and get them to list the different types of problems affecting them: car repairs, youths playing football; late night disturbances; drug dealing; barking dog. Make sure you have written down the main categories of nuisance.
- Make sure the witness knows the identity of the main perpetrator of this nuisance. Write down as much detail as they know about the perpetrator and their household members.
- Now ask the witness when the first problems stated, what action they have taken to resolve the issue themselves and what was the outcome of this. When did they first report the problems to the landlord and when did they first start to keep detailed diaries of the problem.
- You are now ready to obtain the bulk of the witness statement. The incidents you will now write down will go back over months, or could be related to the last 2 or 3 days. This format should also be used when taking a detailed account of a single incident. In date order, list each incident that the witness has seen or heard. For each incident get the complaint to describe what happened, who did what, what exactly was said, what happened next and so forth. Remember that we are most interested in what the witness saw or heard themselves. If the incident was reported to them (i.e. by their child) then this must be clearly explained in their statement. Time spent on these important details will have major consequences in obtaining a successful resolution in court.
- An important point is where was the tenant during the incidents? What was the tenant doing? Was the tenant the direct perpetrator, was the tenant watching what was going on? Was the tenant at home at the time of these incidents?
- How has the nuisance or antisocial behaviour affected witnesses and their family? Are they suffering stress, health problems, lack of sleep, anxiety etc? What about their normal family life? How have their family been affected by the neighbour problems.
- If you do not understand what has happened you must keep going over it until you know exactly what happened. Do not accept vagueness, unless the witness clearly does not remember or does not know what happened.

- Once you have taken the interview notes, type the draft statement for the witness to read and make any necessary amendments to the statement. The witness should then sign a final typed account of what has happened as accurate.

11. PROFESSIONAL WITNESSES

In exceptional cases, the use of professional witnesses to gain evidence may be considered. Approval for use of professional witnesses should be sought from the Operations Manager. Professional witnesses are very expensive so serious consideration should be given about how, where and when they should be used. A frank discussion should also be held with our solicitors to ensure that the evidence that these witnesses can provide will be of benefit to the particular case.

12. Alternative Legal Action Available

12.1 Injunctions

Current ``good practice' guidance from Central Government put more emphasis on the use of Injunctions. An injunction is a court order that tells a person to either do something specific (mandatory) or to stop doing something (prohibitory). Injunctions are made at the courts discretion .The injunction is a very effective weapon in the battle against anti social behaviour .We can apply for an injunction on the basis that they have broken their tenancy agreement. Injunctions can be effective against other people too.

We can apply for an injunction against people who have no connection to the Council using powers defined by the law. We would work with our partnerships to obtain the injunction.

It can be used to prohibit acts of nuisance, annoyance and harassment. A breach of an injunction amounts to a contempt of court and is punishable by a fine or imprisonment of up to two years. Best Practice is increasingly encouraging Councils to consider using injunctions although officers should be aware that they can be expensive and difficult to acquire.

In certain circumstances we can ask for a power of arrest to be attached to an injunction .If the injunction is broken the police can arrest them immediately. They are then brought before a judge where a trial will determine whether the injunction was served properly and whether it has been broken. Usually witnesses will be required to give evidence and the judge if satisfied beyond doubt that the injunction has been broken can impose a fine, agree a new injunction or a custodial sentence.

The power of arrest can only be attached in certain circumstances-violence to a person or the threat of violence must always have been involved. Like the injunction itself the judge will decide whether to attach the power of arrest or not.

12.2 Advantages of an injunction

- Action can be taken almost immediately in serious cases. They also provide quick results
- Signed statements are usually sufficient evidence so witnesses do not need to attend court
- Courts only have limited power to refuse to grant an injunction which is preventative in nature
- Hearings are in private
- They may deter anti social behaviour and avoid the need for eviction proceedings
- Give control to the Council and the complainant and not the perpetrator
- Usually obtain an injunction without residents giving oral evidence
- Obtainable against people with no connection to the Council

12.3 Using Injunctions

- Used or threatened violence to someone in areas of Blaby District Council and there is a significant risk of harm if the injunction is not granted.
- Damaged Blaby District Council property.
- An injunction can be obtained to prohibit the perpetrator: -
- From entering or being in the locality of a particular area of Housing.
- Causing or threatening to cause a nuisance or annoyance to someone in the locality.
- Using or threatening to use Blaby District Council housing for something illegal or immoral.

12.4 Applying for an Injunction

An injunction is a discretionary remedy granted by the County Court. There are a number of different types of injunctions and legal advice should be sought as to the most appropriate type, having regard to the circumstances of the case.

In most instances it will be appropriate to issue a claim for damages for breach of covenant (i.e. not to cause a nuisance or not to have a pet without the Council's permission) and to seek an injunction in those proceedings restraining the resident from committing the nuisance complained of.

To obtain an injunction it is necessary to show that there is an arguable case (quality of evidence is therefore very important) and that the balance of convenience favours granting the injunction rather than refusing it.

The purpose of an injunction is to preserve the status quo or to preserve what ought to be the status quo.

If the terms of an injunction are breached a fine or imprisonment can be imposed.

Make sure we obtain a copy of the injunction. It will advise the date, name, advise what they are forbidden to do and where. It will also advise how long the order is in force for.

It will also advise of the consequences of any breach in the order.

If the Injunction is granted with a power of arrest we must ensure that the police have a copy of the injunction, the arrest certificate and the papers confirming that the paperwork has been served on the perpetrator. In reality the Council's solicitor will complete this.

Decide who else to advise of the Injunction- i.e. social services, youth offending team probation, neighbours etc.

12.5 Undertakings

Before or during the hearing the judge may ask us to accept an undertaking rather than go through the full injunction procedure.

An undertaking is a written agreement made by the perpetrator in front of the judge to keep to certain conditions. This has the same effect as an injunction. The advantages of an undertaking are that there doesn't have to be a trial of evidence, the complainant doesn't have to be cross-examined. In cases of violence we should attempt to obtain an Injunction as it has the power of arrest whereby an undertaking does not.

12.6 Breach of an Injunction

Breaking an Injunction is very serious. The perpetrator is in contempt of court and can go to prison.

If an injunction has a power of arrest the complainant should tell the police immediately. The perpetrator will be brought before a judge within 24 Hours and if the judge is satisfied that the injunction has been broken can impose a fine, agree a new injunction with more stringent terms or a custodial sentence (immediate or suspended) usually of between 7 or 14 days.

The judge must be satisfied that the injunction has been breached so the complainant will be required to give evidence. If a power of arrest is not attached then we must go back to court to get them committed to prison. Evidence must justify the action and the complainant will need to give evidence.

13. ANTI-SOCIAL BEHAVIOUR ORDER ACT 2003

The Crime & Disorder Act 1998 (updated by Anti-Social Behaviour Act 2003) gives local authorities, RSL's and Housing Associations and the police significant powers for dealing with persistent nuisance, harassment and criminal behaviour. Council's must work with the police to take out orders to deal with anti-social behaviour affecting their tenants. Tools available are as follows: -

- Anti-social Behaviour Orders

- Parenting Orders
- Child Safety Orders
- Curfews

13.1 Anti-Social Behaviour Orders

Anti-social behaviour orders are a last resort. The aim is that they will only be used when all other measures have failed. The preferred route is for the Local Authority to take out and administer the ASBO.

13.2 Children and the Law

In cases where children have committed serious anti social acts, the courts can now agree to requests for Possession - even if parents claim they are unable to control their children providing we show that we have acted reasonably and with consideration to the needs of the wider community.

Crime and Disorder Act 1998 extends full criminal responsibility to all children over ten years of age.

The Act empowers courts to impose Child safety orders on under tens assessed as at risk of becoming involved in crime or already behaving in an anti social manner. Children are placed under strict supervision with the intention of providing appropriate support and control.

Parenting orders are legally enforceable orders on parents requiring their attendance at counselling or guidance sessions to assist with the moderation of their children's behaviour. Such orders can be imposed in a variety of situations including when the child is subject to a child safety order or not regularly attending school (Truancy Order).

Child Curfew Orders can now be issued by Local Authorities banning children under the age of ten from being in public places during specified hours unless specifically under the control of an adult. This must be completed in consultation with the police.

13.3 Acceptable Behaviour Contracts

ABC's are voluntary agreements between the child perpetrator, adult perpetrator and the landlord or local authority and police and specify certain acts that the perpetrator agrees not to be undertaken. An ABC is the first step towards an ASBO. As with ASBO's the Council will work together with the police.

13.4 Demoted Tenancies

A Demotion Order terminates an assured/secure tenancy and sends the strongest possible warning to the tenant that the anti-social behaviour must stop. A Demoted Tenancy has fewer rights and creates a probationary period to encourage the tenant to demonstrate that he/she can comply with the tenancy conditions.

However, if the nuisance continues the Council may ask the County Court to issue an outright order for possession of the property. This means that the tenant will be evicted from their home. The County Court does not have the discretion to refuse to grant the possession order once a tenancy has been demoted.

Demoted tenants who change their behaviour and do not cause further problems will become assured again at the end of the demotion period.

14. Alternative Remedies to Legal Action

14.1 Actions Available to the Complainant

These are applicable to both council and non council residents. In situations where the Council is not taking action or if the complainant wishes to take their own action some legal remedies are available. The Council may choose to support a resident who wishes to pursue such action. Residents must be made aware that they can seek alternative remedies through the local authority, police or pursuing independent legal action.

14.2 Mediation

Some residents may not be prepared to work with Council staff because they may believe that we are biased/ have a preferred outcome. A good way to avoid this situation is to provide details of independent local mediation services. These agencies are very successful in reaching an agreement that both parties can adhere to. There will usually be a charge to the Council for using this type of service so approval must be sought from the Tenancy Services Manager before this expenditure is incurred.

14.3 Partnership Working

Any partners i.e. Environmental Health, Police etc. should be contacted at the earliest opportunity to provide their individual expertise and advice.

14.4 Transfers

Neighbour disputes are not automatically considered to be grounds for a transfer. However, there are occasions when this does prove to be the best solution. This is a last resort and shouldn't automatically be considered to be the solution when the dispute is first reported. The decision to approve a transfer on the grounds of a neighbour dispute should be taken by the Operations Manager.

15. NEIGHBOURHOOD PROBLEMS

Occasionally there are concentrated problems of nuisance within a specific area. Sometimes this will affect our properties and residents. This may be through vandalism to the properties, intimidation of residents, harassment, lack of demand for the properties due to the reputation of the area.

It is extremely important that the Officers identify when this situation begins to occur and ensure that prompt action is taken to remedy the situation. An action plan should be drawn up in agreement with the Tenancy Services Manager. The situation should also be brought to the attention of the Operations Manager. Every effort should be made to maintain the high standards of our properties by taking whatever action is deemed necessary. This may include:

- Immediate removal of graffiti
- Prompt repair of damage caused by vandalism, taking account of cost and being aware of the Council's maintenance procedures.
- Installation of security measures, e.g. CCTV, additional fencing, improvements to design etc.
- Increased lighting, entry phones
- Designing out the opportunities for crime and ASB on our property
- Improving sound insulation
- Amending maintenance priorities for the consequences of ASB. For example the removal of Graffiti or repairs to door entry systems and upgrading security outside normal routine repair work timescales.
- Monitoring systems in place for recording the costs of ASB
- Use of Estate agreements which define values i.e. if children can play out, where is it reasonable for them to congregate, What times of the day, is it different in summer or school holiday time?

Every effort should be made to contact other professional organisations in the area and to liaise with them and work together to resolve the problems. Blaby District Council is already involved in numerous working groups and partnerships with other key agencies and officers are encouraged to participate in these initiatives whenever possible. These organisations may include:

- The Police
- Other social housing landlords
- Residents Groups/neighbourhood watch
- Voluntary agencies
- Mental health workers/ social workers
- Mediation services
- Probation services
- Victim support services
- Planning, Environmental Health, Social services

16. Supporting Complainants

Action should be taken to make a complainant feel safe and secure in their home when trying to address issues of nuisance and anti social behaviour.

- provide emergency contact points
- provide community or mobile alarms or mobile phones
- Treat any damage as emergency repairs
- Maintain regular contact
- Remove graffiti promptly
- Improve home security
- Improve scheme security

- Provide security patrols
- Install surveillance equipment
- Provide alternative accommodation
- Provide referral to the local victim support networks

We must ensure that our witnesses are properly prepared. Evidence must be admissible which generally means it must be first hand or the direct experience of the witness. Evidence must be well presented, in sufficient detail and based on contemporary diaries which are dated timed and signed.

To encourage your witness and build up trust you must keep in touch with them and maintain regular contact. Never let them feel used or abandoned. Make sure they are aware of the legal process and make it clear that we are working for them and not the other way round. Also keep witnesses informed about what is going on. Do this in writing if possible.

17. PREVENTATIVE MEASURES

The Council is committed to using a range of preventative measures to seek to reduce the incidence of ASB.

17.1 Lettings Policy

The Council's Lettings Policy enables the prevention of those applicants with a history of ASB being accepted into an active category on the waiting list.

17.2 Sign Up Procedure

The Council has in place procedures that ensure new tenants are fully aware of the obligations and standards of behaviour required by their tenancy agreement. The tenancy agreement has a clear clause that states that the tenant must act in a reasonable manner in respect of the treatment of the property and avoid any conduct by himself/herself, his/her family, lodgers, sub tenants, visitors or pets likely to cause nuisance or annoyance to others. Action will be taken if their behaviour does not comply with this requirement. These conditions are brought to the tenant's attention during the sign-up procedure.

17.3 Diversionary Projects

The Council will work to create projects that may assist in deterring ASB by providing diversionary activities. We will also work in partnership with other agencies to achieve this.

17.7 Support of Vulnerable Persons

The Council recognises the positive effect that support may have on perpetrators of ASB. We will seek support for vulnerable people from our partner agencies e.g. Social Services, Health, Education, Mediation, Drug Support Groups etc to assist with the prevention of ASB.